

## RELEASE AND SETTLEMENT AGREEMENT

This 25<sup>th</sup> day of November, 2015, [REDACTED] and The Christian Brothers (NJ) Institute, d/b/a Bergen Catholic High School ("BCHS") agree as follows:

WHEREAS, [REDACTED], on his own behalf and on behalf of his successors, and assigns (collectively, "Releasor"), has alleged or may allege that BCHS, by one or more past, present, or future agents, employees, faculty members, Trustees and/or officers, may be liable for actions or omissions relating to, arising out of or connected in any way with alleged misconduct (the "Dispute"); and

WHEREAS, [REDACTED], in lieu of filing suit, filed a claim with BCHS that was the precursor to a civil action if not settled (the "Civil Action"); and

WHEREAS, Releasor and BCHS (together, the "Parties") have concluded and agreed that the Dispute is best resolved without litigation, and in a timely manner; and

NOW THEREFORE, in consideration of the payment of money and other good and valuable consideration, the Parties agree as follows:

- 1. Parties to Agreement.** This Release and Settlement Agreement is entered into by BCHS, on one hand, and Releasor, on the other hand. This settlement was achieved after contentious and extensive discussions in an adverse context and mediation, and after what was at all times an arms-length negotiation conducted in good faith by the Parties.
- 2. Acknowledgment of Sufficient Consideration.** The Parties, intending to be legally bound, enter into this Release and Settlement Agreement in consideration of the payment of funds, release of claims and other good and valuable consideration, all of which the Parties confirm is sufficient.
- 3. Release.** Releasor, being a member of the group of 21 Claimants (hereafter referred to as "Claimants"), and as evidenced by his signature hereafter, being of full legal age and of sound mind, for and in consideration of the promises and undertakings contained in this Release and Settlement Agreement, and in consideration of the total sum of ONE MILLION NINE HUNDRED THOUSAND (\$1,900,000.00) DOLLARS (hereafter referred to as the "Settlement Proceeds") paid by or on behalf of BCHS to the group of 21 Claimants and other good and valuable consideration, the receipt of which is hereby acknowledged, do hereby release and forever discharge BCHS, as well as its past, present, or future agents, subsidiaries, affiliates or related organizations or entities of BCHS, employees, staff, faculty members, Trustees, directors, officers, administrators, students, student teachers, interns, servants, and/or other representatives of BCHS and any and all other persons or entities affiliated with BCHS, as well as their successors and assigns (collectively hereafter referred to as "Releasees"), from any and all liability, claims, causes of action, damages, costs, expenses or demands of any kind whatsoever in law or in equity, and, specifically, from any claims or joinders for sole liability, contribution, indemnity or otherwise, against BCHS, and all others released herein, that the Releasor ever had, now has or which Releasor may have in the future, or which his heirs, executors, successors, and assigns hereafter can or may have by reason of any bodily injury, personal injury, emotional injury or psychological injury and any and all other damages

sustained by the Releasor, the consequences thereof, known or unknown, foreseen or unforeseen, arising or which may arise as a result of or in any way connected with alleged incidents of sexual abuse which have formed the basis for the claims against Releasees, and all other persons released herein. By way of example, and without limitation, the claims released by Releasor include all claims for damages or remedies of whatever kind or character, known or unknown, that are now recognized by common law, statute, regulation, judicial decision, or in any other manner or that may be created or recognized in the future by statute, regulation, judicial decision, or in any other manner, in which Releasor seeks or could seek, against any Releasee, including:

- Money damages, including consequential damages, interest, and punitive or exemplary damages;
- Compensatory damages, statutory, and other multiple damages or penalties of any kind;
- Loss of past or future wages, benefits, income earnings or earning capacity, and other financial or pecuniary loss of any kind;
- Prejudgment or post-judgment interest, indemnity or contribution, or delay damages;
- Litigation costs, attorneys' fees and/or court filing fees; or
- Any other damage, remedy, indemnity, benefit, injunctive relief, reinstatement, reimbursement, fee, expense, or award of any kind.

The claims released by this Paragraph shall be referred to as "Released Claims."

**RELEASOR UNDERSTANDS AND AGREES THAT THIS RELEASE IS FINAL AND BINDING AND MAY NOT BE CHALLENGED BY RELEASOR EVEN IF RELEASOR IS NOT SATISFIED WITH THE AWARD BY THE ARBITRATOR AS SET FORTH IN PARAGRAPH 16 BELOW, WHICH SHALL BE FINAL AND NON-APPEALABLE.**

4. Covenant Not To Sue. Releasor promises not to sue BCHS or Releasees or any other person, firm, corporation, or entity against whom Releasor could assert any claim, liability, or right to damages or payment arising out of or relating in any way to the Dispute, whether as joint tortfeasors or otherwise, under any statute, theory of law, or equity, including any past, present, or future employee, officer, director, trustee, teacher, administrator, current or former student, agent, servant, representative or any such persons arising out of or connected to the Dispute or Released Claims.

5. Payment. It is understood and agreed by the Releasor that the Settlement Proceeds paid by and on behalf of the Releasees will be deposited into an escrow account as described in Paragraph 15 below for distribution to the Releasor as described in Paragraph 16 below. The Releasees have no responsibility, nor obligation, nor will they have any involvement in the means and manner by which the Settlement Proceeds are to be distributed among the Claimants except as specifically set forth in Paragraph 15 below. The Releasor understands and agrees that upon payment of the Settlement Proceeds that the Releasees will no longer have any obligation or responsibilities to make any additional monetary payments to any of the Claimants

in exchange for the release of all claims as set forth and described above.

6. Attorneys' Fees and Costs. The Parties are responsible for their own attorneys' fees and costs, and any tax consequences arising out of this Release and Settlement Agreement. Moreover, Releasor understands that BCHS does not have any independent or other obligation to pay attorneys' fees to Releasor's attorneys or any referral counsel. To the contrary, Releasor understands that he is responsible for paying any and all of his attorneys' fees, expenses, or costs.

7. No Admission of Liability. Nothing in this Release and Settlement Agreement shall be construed by any party, court, tribunal or arbitrator as constituting an admission of liability by BCHS or any Releasees. The payment is made without BCHS admitting any wrongdoing, or any guilt or liability. Acceptance of the Settlement Proceeds is in full accord and satisfaction of disputed claims against the Releasees, and any liability to such claim is hereby expressly denied by Releasees. It is further understood and agreed that it is the position of the Releasees that the amount of the Settlement Proceeds paid by Releasees does not relate or correlate to merits of alleged civil liability or responsibility of any kind of the Releasees.

8. No Other Representations By Released Parties. Releasor acknowledges and agrees that he is relying wholly on his own judgment, belief, and knowledge of the nature, extent, effect, and duration of his alleged damages or possible damages and liability therefor, and that this Release is granted without any reliance upon any statement or representation by any of the Released Parties or any of their representatives other than those made herein. Releasor expressly denies that any such statement or representation has been made by any of the Releasees or their representatives. It is further understood that this is a complete Release and Settlement Agreement and that it is Releasor's express intent to completely and fully terminate any exposure or liability that BCHS has to Releasor for the Dispute and the Released Claims

9. Warranty as to Medicare Involvement. It is understood and agreed that the Releasor is responsible for the payment of any liens or charges against the Settlement Proceeds including all liens and/or claims by Medicare, Medicaid and/or any other health-care provider, any attorneys, lawyers, or counselors, and any claims for workers' compensation subrogation. Should any person or entity make claim for payment of any liens or charges against the Releasees for costs, expenses, and fees associated with any claims against the Releasor and directly related to the Settlement Funds set forth above, the Releasor to whom the lien, charge, or claim relates hereby agrees to indemnify and hold harmless the Releasees from any and all liens, charges, fees, costs, interest, and other sums arising out of the payments made pursuant to this settlement.

10. Further Representations of the Parties and Counsel. The Parties further represent the following:

a. The Releasor hereby declares that he has been fully advised by respective Counsel of the terms and conditions of this Release and Settlement Agreement and its intended effect; that he fully understands the terms of this Release and Settlement Agreement; that the amounts and process stated herein are the sole consideration for this release; and that he has knowingly and voluntarily accepted said amounts and process for the purpose of making a full and final compromise and settlement of all claims against Releasees.

b. Authority. Each signatory has the right, power, and authority to: (i) sign this Settlement Agreement and Release; (ii) bind himself or itself to the terms of this Settlement Agreement and Release; (iii) with respect to Releasor, to so bind his successors, and assigns; and (iv) to receive the consideration set forth in this Release and Settlement Agreement.

c. No One Else Has Any Interest. No other person or entity has any interest of any kind in the claims, demands, obligations, and causes of action referred to in this Release and Settlement Agreement.

d. No Assignments. The Parties have not sold, assigned, transferred, conveyed, or otherwise disposed of or relinquished any of the claims, demands, obligations, or causes of action referred to in this Release and Settlement Agreement.

11. Construction. This Release and Settlement Agreement shall be so construed that wherever applicable, the use of the singular number shall include the plural number, and the use of the masculine gender shall include the feminine or neuter gender.

12. Representation. Attached as Exhibit A is a list of Counsel for the Claimants, along with the number of Claimants represented by each Counsel. The undersigned, one of the referenced 21 Claimants, understands that the other 20 Claimants have each executed or will execute a Release and Settlement Agreement identical to this document. Each of the 21 Claimants shall receive an arbitration award as described below to compensate each of the Claimants for claimed physical injury or sickness arising from the claimed sexual abuse. It is understood that the Releasees shall not participate in the arbitrations.

13. Known Claimants. It is further understood and agreed that the number of Claimants listed after the name of Counsel for Claimants on Exhibit A is, as of the date of this Release and Settlement Agreement, the total number of individuals with claims against Releasees based on alleged incidents of sexual abuse now represented by Counsel for Claimants, with the exception of the claimant Kobutsu Malone, who is not listed on Exhibit A.

14. Channeling Injunction. BCHS agrees that this Release and Settlement Agreement is not conditioned upon the grant of a "Channeling Injunction" in favor of BCHS by the Bankruptcy Court handling the Christian Brothers bankruptcy proceedings, which were docketed at No. 11-228201 (RDD) in the United States Bankruptcy Court for the Southern District of New York ("Christian Brothers Bankruptcy Court"). However, the Releasor agrees that the Releasor is taking no position with regard to any Channeling Injunction sought by the Releasees for future claimants, if any, who may file claims against Releasees after the date of this Release and Settlement Agreement, and that Releasor will not oppose, nor will Releasor request that any one on Releasor's behalf oppose or appeal the issuance of a Channeling Injunction by the Christian Brothers Bankruptcy Court in favor of BCHS.

15. Escrow. [REDACTED] shall serve as "Escrow Agent." Within two (2) business days of receipt by the Escrow Agent of the signed Release and Settlement Agreements from all 21 Claimants, Releasee shall pay \$1,900,000.00 to the Escrow Agent. The parties agree that no payment shall be due until receipt by the Escrow Agent of settlement agreements signed by all 21 Claimants. The Escrow Agent shall promptly notify Counsel for each of the Claimants of the receipt of the funds, totaling \$1,900,000.00.

16. Arbitration. [REDACTED] shall serve as "Arbitrator." The criteria for the evaluation of the claims shall include the following, each of which are to be accorded equal weight by the Arbitrator: (1) the nature of the abuse suffered; (2) the duration and frequency of the abuse; (3) the extent of injuries suffered by the Claimant; and (4) whether the claim is within the New Jersey statute of limitations. The issue of liability will not be considered by the Arbitrator. Each award shall be no less than \$65,000.00, and no more than \$115,000.00. The total of all awards to the 21 Claimants shall be \$1,900,000.00. The Arbitrator shall provide each Claimant with a written report in support of the Arbitrator's evaluation of that Claimant's claim.

a. The arbitrations may start after the 21 Release and Settlement Agreements have been executed by all Claimants. Each Claimant shall pay the Arbitrator's fee for his own arbitration, which fee can be deducted directly from the award prior to distribution. Each Claimant will bear his own costs for presentation of his case.

b. Each presentation shall be made solely in writing, and written submissions shall be limited to five (5) pages. The Claimant may submit any information, records, or written testimony bearing upon criteria described in Paragraph 16 above for consideration by the Arbitrator. Presentation of all documentation regarding any of the criteria described in Paragraph 16 above is within the discretion of each Claimant with no mandatory requirements, such as forensic reports, testimony, or tolling agreements, although such evidence may be presented. Upon request of a Claimant or at the Arbitrator's request, the Arbitrator may meet with a Claimant telephonically. The Arbitrator shall not consider any information, records, or testimony not submitted by the Claimant or Claimant's counsel. All information submitted in support of a claim must, be received in hand by the Arbitrator by November 20, 2015.

c. On or before November 30, 2015, the Arbitrator shall issue arbitration awards as to all Claimants, and provide the Escrow Agent with notification of the arbitration awards as to all Claimants. The award of the Arbitrator shall be final and non-appealable.

d. On or before December 7, 2015; the Escrow Agent shall make payment by delivering a check in the amount of the award payable to the law firm representing the Claimant as Counsel for the Claimant, or if Counsel for the Claimant directs otherwise, to a trust or similar entity created for the Claimant's benefit. Said check shall be sent to Counsel for the Claimant by priority mail service of the United States Post Office.

e. **RELEASOR UNDERSTANDS AND AGREES THAT THIS RELEASE IS FINAL AND BINDING AND MAY NOT BE CHALLENGED BY RELEASOR EVEN IF RELEASOR IS NOT SATISFIED WITH THE AWARD BY THE ARBITRATOR AS SET FORTH IN THIS PARAGRAPH, WHICH SHALL BE FINAL AND NON-APPEALABLE.**

17. Tolling. It is further understood and agreed that the tolling provision of the Mediation Protocol for each signatory Claimant expires once Counsel for such Claimant receives the check from the Escrow Agent for that signatory Claimant as described in Paragraph 16.d. above.

18. Nature of Injuries. The aforementioned sum being paid by the Releasees constitutes payment of damages solely on account of personal physical injuries and physical

sickness, within the meaning of Section 104(a)(2) of the Internal Revenue Code of 1986, as amended, and all other applicable sections and regulations. No portion of the agreement upon consideration is being paid for damages other than personal physical injuries and physical sickness sustained by Releasor.

19. Miscellaneous Provisions.

a. Final Agreement. This Release and Settlement Agreement contains the entire and final settlement terms among the Parties with regard to the subjects covered herein. This executed Release and Settlement Agreement supersedes all prior agreements, negotiations, discussions, and understandings not otherwise expressly memorialized in this document.

b. Choice of Law. This Release and Settlement Agreement is governed by and interpreted in accordance with the substantive law of the State of New Jersey, without regard to conflicts of law principles.

c. Construction. Counsel for the Parties have reviewed and had the opportunity to comment on and offer revisions to this Release and Settlement Agreement. The rule of construction that any ambiguities are to be resolved against the drafting party does not apply in interpreting this document.

d. Severability. The provisions of this Release and Settlement Agreement are severable, and if any provision is declared invalid, the invalidity of that provision shall not invalidate any other provision in this Agreement.

e. Amendments or Modifications. This Release and Settlement Agreement may not be amended or modified without the written consent of all 21 Releasors and BCHS.

f. Counterparts/Fax and E-Mail Copies. This Release and Settlement Agreement may be executed in multiple counterparts, each of which shall be considered as an original. Facsimile or electronically mailed copies of signature pages are acceptable substitutes for executed originals.

20. Releasor's Signature. By signing this Release and Settlement Agreement, Releasor assures BCHS and each Released Party that;

- COMPLETELY READ: He has completely read every part of this Release and Settlement Agreement; and
- CONSULTED WITH ATTORNEY: He has discussed the terms of this Release and Settlement Agreement with an attorney, and the attorney has explained those terms and answered any and all of his questions to his satisfaction; and
- UNDERSTANDS: He fully understands the terms of this Release and Settlement Agreement, and the effect of those terms; and
- VOLUNTARILY ACCEPTS: He voluntarily accepts the terms of this Release and Settlement Agreement with the intention of making a full,

complete, and final release of all claims and disputes. As evidenced by his signature hereafter, this statement is made subject to the pains and penalties or perjury.

RELEASOR

THE CHRISTIAN BROTHERS (NJ)  
INSTITUTE D/B/A BERGEN CATHOLIC  
HIGH SCHOOL

Signature

BY: 

NAME: Brother Brian M. Walsh, C.F.C.

Printed Name


TITLE: President

Date

November 25, 2015

DATE: 12/14/15

ESCROW AGENT

  
DATE: \_\_\_\_\_