

## **MODIFIED CONTINGENT FEE AGREEMENT**

**To: Edward D. Fagan Esq. 5 Penn Plaza, 23rd Floor, New York, NY 10001**

1) **The Claims To Which Retainer Agreement Applies**

a) The undersigned \_\_\_\_\_  
("Client"), residing at \_\_\_\_\_

\_\_\_\_\_  
Telephone # \_\_\_\_\_; Fax # \_\_\_\_\_  
and Email Address \_\_\_\_\_

retains Edward D. Fagan Esq. ("Fagan") to prosecute Client's individual claims as a member of and as part of the existing case entitled Teachers4Action et al v. Bloomberg et al 08-cv-0548 (VM) presently pending in the United States District Court for the Southern District of New York (hereinafter "The Claims or The Federal Action");

b) This Retainer Agreement relates only to representation by Fagan for Client in relation to The Federal Action and does not extend to or require Fagan to represent Client in any other cases, including but not limited to the representation of Client in 3020a Hearings or other actions or claims or defense of actions brought against Client by the New York City Department of Education for alleged misconduct or violations of the employee conduct or any other allegations that may be made against Client; and

c) The Targets of or Defendants to be named in The Claims are those persons or entities involved with or responsible for due process violations or other allegations which form the basis of the Federal Action:

- (i) Mayor Michael Bloomberg;
- (ii) Chancellor Joel Klein;
- (iii) New York City Department of Education;
- (iv) New York State;
- (v) Certain Superintendents;
- (vi) Certain Principals;
- (vii) The United Federation of Teachers; and
- (viii) And other persons or entities who/which may be discovered to be responsible for the wrongful acts directed at and which caused damages to the Client;

2) **Member of Teachers4Action**

- a) Client confirms that he/she is a member of Teachers4Action and agrees to cooperate with Florian Lewenstein and other official representatives from Teachers4Action in the prosecution of this action;
- b) Client understands that Teachers4Action has advanced and may continue to advance certain costs and/or expenses necessary to the prosecution of this case and that at the end of the case, Client agrees that Teachers4Action is entitled to recover these costs and/or expenses first and on a pro-rated basis based on the number of members and/or such other formula that shall be the responsibility of Teachers4Action and the Client and in which Fagan has no involvement.

3) **Extent of Fagan's Authority**

- a) Client gives Fagan the exclusive right to take all legal steps to prosecute The Claims and Client's rights through trial, including, but not limited to, pre-litigation resolution, litigation and/or alternative dispute resolution (arbitration or mediation);
- b) To the extent practicable, Client directs Fagan to use his best judgment to include Clients claims among the claims of other members of Teachers4Action and to include any and all professionals Fagan and Teachers4Action believe can advance the interests of and can help with the prosecution of The Claims;

4) **Fees to be Paid By Client**

a) Initial Fee

(1) Client agrees to contribute to the Teachers4Action budget for this case, based upon the Clients ability and in accordance with whatever agreement shall be reached between Client and Teachers4Action, as to which Fagan shall have no involvement;

(2) Client will pay no more fees until the successful conclusion of the case;

b) Contingent Fee

- (1) Client agrees to pay Fagan a contingent fee upon the successful conclusion of the case in the amount equal to 30 % of the net proceeds to be secured from the Client's claims, after trial, settlement or agreement;
- (2) The Calculation of the Contingent Fee that shall be made at the end of the case is that there will be an amount that is awarded or agreed upon as the damages to be paid to Client – that is the Gross Award. From that amount, all expenses related to the prosecution of the case will be deducted (in some instances the expenses will be on a pro-rata basis since some claims are group claims); expenses include things such as experts, consultants, researchers, law clerks, of counsel lawyers paid on an hourly basis, investigators, depositions, printing, faxing, copying, mailing, support staff allocations and all other services related to the Clients' claim or prosecution of the action. After those deductions, there will be a net amount. From the net amount, the agreed upon percentage for the contingent fee will be taken and paid directly to the lawyer or lawyers.

*Note: Client was offered an opportunity to pay for Fagan's services based on a regular hourly fees basis. Client does not want to pay hourly fees expenses as incurred. Instead, Client wishes to pay Fagan on a contingent fee basis as noted above.*

c) Additional Terms

- (1) Client understand that an essential element in the ability to prosecute The Claims, is Clients cooperation with Teachers4Action;
- (2) Client agrees that in the event his/her help is necessary, he/she will assist and cooperate with Teachers4Action and Fagan to take any and all necessary and reasonable steps to get additional funding for the prosecution of The Federal Action.
- (3) In the event, additional lawyers are needed to assist with the future prosecution of The Claims, Fagan and Client will consult with one another and agree to the terms under which such additional lawyers

may be brought in to work on The Claims. However, it is expressly understood that Client's contingent fee obligations are to pay only one Contingent Fee one time no matter how many lawyers may work on The Claims.

5) **No Requirement to File Appeal**

- a) Fagan is not responsible, nor does this Retainer Agreement require Fagan, to work on any appeal in this case;
- b) In the event any appeal is necessary from any Order or Judgment that may be filed in this matter, Fagan and the Client shall discuss same in a timely fashion so that Client is advised of his / her rights;
- c) The Client shall be liable, in advance, for all costs of the appeal, and if the client retains, or substitutes, new counsel to process the appeal; and
- d) Fagan shall nonetheless be entitled to a lien in the amount of the net legal fees of any recovery, plus all costs and disbursements incurred.

6) **Client's Opportunity to Make Inquiries of Fagan**

- a) Client confirms that he/she has been told certain negative or pejorative things about Fagan; and
- b) Client confirms that he/she has executed a separate memorandum confirming this fact and agreeing to Fagan's representation of Clients interests.
- c) Client has had an opportunity to make inquiries of Fagan including but not limited to existence of ongoing ethics or disciplinary matters, and allegations that Fagan will be disbarred or disqualified in NY or NJ, that Fagan has no funds, that Fagan cannot be trusted and other allegations of a similar nature;
- d) Prior to executing this Retainer, Client has had an opportunity to answer any questions that Client may have of Fagan; and

- e) Fagan will make himself available to Client to answer questions that Client may have and which may arise in the future about The Claims and any other matters related to the prosecution of The Claims.

7) **Client & Representatives Affirmative Obligations to Cooperate**

It is expressly understood that the ultimate success of The Claims is dependent upon the Clients cooperation with the strategy that has been developed by Teachers4Action and Fagan; and

8) **Confidentiality Agreement**

a) Client and Fagan understands that at times they may communicate with one another by sending communications to a broader group of clients who have other or similar claims and who are part of The Federal Action.

b) Client agrees to retain as confidential any and all materials, including but not limited to identity of plaintiffs, identity of Teachers4Action members, contact information, litigation strategies, settlement strategies, evidence, documents and other matters related to The Claims, and which are from time to time distributed by Fagan related to The Federal Action, regardless of whether they are marked Confidential and/or Privileged. Clients and Fagan's execution of this Retainer constitutes their consent to honor this terms of the Confidentiality Agreement which are a material term and provision of this Retainer Agreement.

9) **Termination Provisions**

a) Termination of Client by Fagan

(1) In the event Client fails to cooperate with or assist Teachers4Action or Fagan in any of the provisions outlined above, or takes any prejudicial or detrimental actions, or violates the terms of the Confidentiality Agreement that is being entered into contemporaneously with this Retainer Agreement, or fails to provide information, documents and/or assistance, this Retainer Agreement shall automatically terminate;

(2) In the event of a termination by Fagan of Client,

- (i) Client agrees to cooperate with Fagan so that Fagan can be formally relieved by the Court of his obligations to Client;
- (ii) Client agrees to retain new counsel or to proceed with his/her claim without counsel;
- (iii) Client agrees that his/her claims shall be immediately severed from the claims of other Teachers4Action members and that Client will do nothing to interfere with Fagan's ability to continue to represent other Teachers4Action members involved in The Federal Action; and
- (iv) Client understands that Client may be held responsible for damages and costs resulting from such failure to cooperate or other prejudicial and/or detrimental actions.

b) Termination of Fagan by Client

(1) Client has the right to terminate Fagan with cause or without cause.

(2) In the event Client terminates Fagan,

- (i) Fagan agrees to cooperate with Client to return all original Client documents and to cooperate with Client's new counsel so that Client's claims can be continued;
- (ii) Client and Fagan agree to cooperate with one another to expeditiously fix the amount of Fagan's entitlement to fees or reimbursement of expenses or the *quantum meruit* (reasonable value) of services provided.

10) **Laws to Apply**

This agreement is subject to the laws of New York.

11) **Dispute**

- a) Any dispute between Client and Fagan shall be submitted for binding arbitration on an expedited basis in New York to an Independent Arbitration

Tribunal, such as JAMS, ENDISPUTE or any other recognized tribunal, which shall apply the Rules of the American Arbitration Association.

- b) Each party shall bear his/her/their own costs of arbitration, as the process is ongoing and until the dispute is resolved.

**12) No Representations about Case**

Fagan has explained that claims such as these are difficult, risky and that no promises can be made as to the eventual outcome of the case. Client confirms that no such representations have been made to induce Client into signing this Retainer Agreement.

**13) Right to Cancel**

In addition to any other rights that the Client has to terminate the relationship and to cancel the Retainer Agreement, Client has the right to cancel this Retainer Agreement within five (5) business days from the date of its execution in accordance with the laws of the State of New York.

**14) Statement of Client Rights**

Client has been provided with the attached Statement of Clients Rights Section 1210.1 of Joint Rules of Appellate Division (22NYCRR§1210.1)

**15) Opportunity to Consult Counsel**

Client has had an opportunity to consult with his/her/their own counsel before entering into this Retainer Agreement.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Client Signature

\_\_\_\_\_  
Client Name (*please print name*)

Dated: \_\_\_\_\_

\_\_\_\_\_  
Edward Fagan Signature

Statement of Client's Rights  
Section 1210.1 of Joint Rules of Appellate Division  
( 22NYCRR§1210.1 )

1. You are entitled to be treated with courtesy and consideration at all times by your lawyer and the other lawyers and personnel in your lawyer's office.
2. You are entitled to an attorney capable of handling your legal matter competently and diligently, in accordance with the highest standards of the profession. If you are not satisfied with how your matter is being handled, you have the right to withdraw from the attorney-client relationship at any time (court approval may be required in some matters and your attorney may have a claim against you for the value of services rendered to you up to the point of discharge).
3. You are entitled to your lawyer's independent professional judgment and undivided loyalty uncompromised by conflicts of interest.
4. You are entitled to be charged a reasonable fee and to have your lawyer explain at the outset how the fee will be computed and the manner and frequency of billing. You are entitled to request and receive a written itemized bill from your attorney at reasonable intervals. You may refuse to enter into any fee arrangement that you find unsatisfactory. In the event of a fee dispute, you may have the right to seek arbitration; your attorney will provide you with the necessary information regarding arbitration in the event of a fee dispute, or upon your request.
5. You are entitled to have your questions and concerns addressed in a prompt manner and to have your telephone calls returned promptly.
6. You are entitled to be kept informed as to the status of your matter and to request and receive copies of papers. You are entitled to sufficient information to allow you to participate meaningfully in the development of your matter.
7. You are entitled to have your legitimate objectives respected by your attorney, including whether or not to settle your matter (court approval of a settlement is required in some matters).
8. You have the right to privacy in your dealings with your lawyer and to have your secrets and confidences preserved to the extent permitted by law.
9. You are entitled to have your attorney conduct himself or herself ethically in accordance with the Code of Professional Responsibility.
10. You may not be refused representation on the basis of race, creed, color, religion, sex, sexual orientation, age, national origin or disability.