

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

PAUL MARRIOTT, BARBARA DAVIS,
and ANDY RIVERA, on behalf of
themselves and a certified class of others
similarly situated,

Plaintiffs,

v.

No. 03-CV-0531 (DNH/DEP)

THE COUNTY OF MONTGOMERY,
et. al.,

Defendants.

SETTLEMENT AGREEMENT

Plaintiffs, by and through their counsel, and Defendants, by and through their counsel, hereby enter into this Settlement Agreement providing, subject to the approval of the Court, for settlement of the claims herein described against Defendants.

WHEREAS, Plaintiffs filed the above-captioned class action lawsuit alleging that Defendants had violated Plaintiffs' constitutional rights-by illegally strip searching them upon entry into the Montgomery County Correctional Facility.

WHEREAS, Defendants deny any wrongdoing or liability of any kind to the individual Plaintiffs or the Class.

WHEREAS, the Parties to this Settlement Agreement have conducted and are continuing to conduct a thorough examination and investigation of the facts and law relating to the matters in this litigation.

WHEREAS, the Defendants have concluded that settlement is desirable in order to avoid

the time, expense, and inherent uncertainties of defending protracted litigation and to resolve finally and completely all pending and potential claims of the individual Plaintiffs and Class relating to alleged conduct involved in this litigation.

WHEREAS, Plaintiffs and Class Counsel recognize the costs and risks of prosecution of this litigation, and believe that it is in the interest of the individual Plaintiffs and Class to resolve this litigation, and any and all claims against Defendants, as well as all employees of the County of Montgomery who may have devised, promulgated or enforced the policy or participated in the conduct that is the subject of this Settlement Agreement.

WHEREAS, this action was certified as a class action by the Honorable David N. Hurd, United States District Judge, on March 25, 2005,

WHEREAS, substantial settlement negotiations have taken place between the Parties, including mediation conducted by the Honorable David E. Peebles, United States Magistrate Judge and Michael Young, Esquire of the Judicial Arbitration and Mediation Service, and, as a result, this Settlement Agreement has been reached, subject to the Court approval process set forth herein.

WHEREAS, Class Counsel believe that this Settlement Agreement offers significant benefits to the individual Plaintiffs and Class and is fair, reasonable, adequate and in the best interest of the individual Plaintiffs and Class.

WHEREAS, this Settlement Agreement is made and entered into by and among Defendants and Plaintiffs Paul Marriott, Barbara Davis and Andy Rivera, individually and on behalf of a national class of similarly situated persons defined as:

All persons in the United States who have been or will be placed into the custody of the Montgomery County Jail after being charged with misdemeanors, violations, violations of probation or parole, traffic infractions or other minor

crimes, or held on civil matters, and were strip searched upon their entry into the Montgomery County Jail pursuant to the policy, custom and practice of the Montgomery County Sheriff's Department and the County of Montgomery. The class period commenced on April 29, 2000 and extended until March 25, 2005. Specifically excluded from the proposed class are Defendants, and all of the respective affiliates, legal representatives, heirs, successors, employees or assignees.

NOW, THEREFORE, it is hereby stipulated and agreed, by and between the undersigned as follows:

I. DEFINITIONS

As used in this Settlement Agreement, the following terms shall have the meaning set forth below. Where appropriate, terms used in the singular shall be deemed to include the plural and vice versa.

A. Claim Form. "Claim Form" shall mean a form in substantially the same form as that attached hereto as Exhibit A.

B. Claims Period. "Claims Period" shall mean the time period during which claims may be made by Settlement Class Members, extending from the Notice Date until the date 120 days thereafter, including weekends and holidays, provided that if the last day of the Claims Period falls on a weekend or Federal holiday, then the end of the Claims Period shall be the next following day that is not a weekend or Federal holiday.

C. Class Counsel. "Class Counsel" shall mean: The Law Offices of Elmer Robert Keach, III, PC; Beranbaum Menken Ben-Asher & Bierman, LLP; and The Mason Law Firm, PC.

D. Class Notice. "Class Notice" shall mean the Court-approved form of notice in substantially the same form as Exhibit B.

E. Class Settlement. "Class Settlement" shall mean the terms provided in this Settlement Agreement.

F. Court. “Court” shall mean the United States District Court for the Northern District of New York, The Honorable David N. Hurd presiding, or his duly appointed or designated successor.

G. Defendants. “Defendants” shall mean the County of Montgomery, Michael Amato, John Pecora, Jeffrey Smith, Kevin Snell and Sue Buddles, and shall include all employees of the County of Montgomery who may have devised, promulgated or enforced the policy or participated in the conduct that is the subject of this Settlement Agreement.

H. Defendants’ Counsel. “Defendants’ Counsel” shall mean Wilson, Elser, Moskowitz, Edelman & Dicker, LLP.

I. Distribution Amount. “Distribution Amount” shall mean the amount available from the Settlement Fund after payment of the costs of notice and administration of the Settlement, attorneys’ fees and expenses and incentive awards to class representatives.

J. Effective Date. “Effective Date” shall mean the date the Final Approval Order is issued.

K. Final Approval Hearing. “Final Approval Hearing” shall mean the hearing at which the Court will consider and finally decide whether to enter a Final Order.

L. Final Approval Order. “Final Approval Order” shall mean that Court order that finally certifies the Settlement Class, approves this Settlement Agreement, approves payment of attorneys’ fees and expenses, and makes such other final rulings as are contemplated by this Settlement Agreement, in substantially the same form as Exhibit C.

M. Litigation. “Litigation” shall mean the above-captioned lawsuit pending in the United States District Court for the Northern District of New York as No. 03-CV-0531.

N. Mediator. The “Mediator” shall mean The Honorable David E. Peebles, United

States Magistrate Judge of the United States District Court for the Northern District of New York.

O. Notice Program. “Notice Program” shall mean the program for disseminating the Class Notice to Settlement Class Members, including public dissemination of the Summary Notice, in accordance with the terms herein.

P. Notice Date. “Notice Date” shall mean the date upon which Class Notice is mailed to known Class Members in accordance with the terms herein.

Q. Objection Date. “Objection Date” shall mean the date ordered by the Court, by which Settlement Class Members must submit any objection to the Settlement Agreement's terms or provisions and submit any required statements, proof, or other materials and/or argument.

R. Opt-Out Deadline. “Opt-Out Deadline” shall mean 60 days from the mailing of notice, by which any Settlement Class Members who do not wish to be included in the Settlement Class and participate in the Settlement must complete the acts necessary to properly effect such election to opt out.

S. Opt-Out List. “Opt-Out List” shall mean a written list prepared by the Settlement Administrator of the names of all Settlement Class Members who submit timely Requests for Exclusion or Opt-Out Notices.

T. Opt-Out Notice. “Opt-Out Notice” shall mean a Request for Exclusion.

U. Parties. “Parties” shall mean the Plaintiffs and Defendants.

V. Plaintiffs. “Plaintiffs” shall mean Plaintiffs Paul Marriott, Barbara Davis and Andy Rivera, individually and on behalf of a national class of similarly situated persons defined as:

All persons in the United States who have been or will be placed into the custody of the Montgomery County Jail after being charged with misdemeanors, violations, violations of probation or parole, traffic infractions or other minor crimes, or held on civil matters, and were strip searched upon their entry into the Montgomery County Jail pursuant to the policy, custom and practice of the Montgomery County Sheriff's Department and the County of Montgomery. The class period commenced on April 29, 2000 and extended until March 25, 2005. Specifically excluded from the proposed class are Defendants, and all of the respective affiliates, legal representatives, heirs, successors, employees or assignees.

W. Preliminary Approval Order. "Preliminary Approval Order" shall mean the order of the Court preliminarily approving this Settlement Agreement and conditionally certifying a provisional Settlement Class, in substantially the same form as Exhibit D.

X. Release. "Release" shall mean the release described in Section VII herein.

Y. Released Claims. "Released Claims" shall mean and include any and all claims or causes of action, in law or in equity, by or on behalf of any and all Plaintiffs (and their predecessors, successors, heirs, administrators, executors, agents, trustees, representatives, and assigns) that are released by the Release described in Section VII herein.

Z. Request for Exclusion. "Request for Exclusion" shall mean any request by any class member for exclusion from the Settlement Class in compliance with Section IV herein.

AA. Settlement. "Settlement" shall mean the agreement by the Plaintiff and Defendants to resolve the Litigation, the terms of which have been memorialized in this Settlement Agreement.

BB. Settlement Administrator. "Settlement Administrator" shall mean the qualified party selected by the Plaintiff and designated and approved by the Court in the Preliminary Approval Order to administer the Settlement, including implementing the Notice Program. The Defendants shall not have any responsibility for any acts or omissions of the Settlement Administrator.

CC. Settlement Agreement. “Settlement Agreement” shall mean this Settlement Agreement, including any amendment hereto agreed to by the parties pursuant to Section X.D hereof, and all the exhibits attached hereto.

DD. Settlement Fund. “Settlement Fund” shall mean a fund; governed by terms of this agreement which shall be placed in an escrow account and utilized to administer the monetary requirements of the Settlement. The Settlement Fund will be established by Class Counsel and entitled the “Montgomery County Correctional Facility Class Action Settlement Fund” and treated as trust fund monies under relevant New York ethical standards.

EE. Settlement Amount. “Settlement Amount” shall mean the amount of Two Million Dollars (\$2,000,000.00) to be paid by the Defendants. Notwithstanding anything in this agreement to the contrary, under no circumstances are Defendants to pay more than Two Million Dollars. Class counsel also agrees not to represent any class members who opt out nor refer them to new counsel, except to refer them to the New York State Bar Association.

FF. Settlement Website: Class Counsel will establish a website to provide information to settlement class members with a world wide web address of www.mcjsettlement.com.

GG. Admissions Search Policy. “Admissions Search Policy” shall mean the written policy, to be revised by the Defendants as part of this Agreement, to govern the conduct of all searches by Defendants, their agents, and employees, including strip searches, upon a person’s entry into the Montgomery County Correctional Facility.

HH. Summary Notice. “Summary Notice” shall mean a notice in substantially the same form as that which appears at Exhibit E.

II. Website Administrator: “Website Administrator” shall mean the qualified party

selected by the Plaintiff and designated and approved by the Court in the Preliminary Approval Order to administer the Settlement Website, including implementing the distribution notice and other settlement documentation via the internet. The Defendants shall not have any responsibility for any acts or omissions of the Website Administrator.

II. REQUIRED EVENTS

A. Promptly after execution of this Settlement Agreement by all Parties:

1. The Parties to the Settlement Agreement shall jointly move for entry of a Preliminary Approval Order in substantially the same form as Exhibit D, which by its terms shall preliminarily approve the terms of the Settlement Agreement and schedule a Final Approval Hearing to review comments regarding the proposed Class Settlement and to consider the fairness, reasonableness, and adequacy of the proposed Class Settlement and the application for an award of attorneys' fees and reimbursement of expenses, and to consider whether the Court should issue a Final Approval Order (in substantially the same form as Exhibit D) approving the Class Settlement, granting Class Counsel's application for fees and expenses, and dismissing the Litigation with prejudice.

2. Class Counsel and Defendants' Counsel will use their best efforts, consistent with the terms of this Settlement Agreement, to promptly obtain a Final Approval Order.

3. In the event that the Court fails to issue the Preliminary Approval Order or fails to issue the Final Approval Order, Class Counsel and Defendants' Counsel agree to use their best efforts, consistent with this Settlement Agreement, to cure any defect identified by the Court; provided, however, that in no event shall any Defendants be required to agree to any such cure of the Settlement Agreement that would result in any additional payment to Plaintiffs or materially increase the burden to such Defendants.

4. Any disputes regarding the Parties' obligations under this Agreement shall be submitted to the Mediator for mediation and, if the parties are unable to reach an agreement following mediation, resolution with the Mediator's decision shall be binding on the Parties; except for the following:

i. that the Mediator shall have no authority to order the Defendants to pay Plaintiffs any monies beyond the agreed-upon \$2,000,000.00 payment;

ii. paragraph 1 of Appendix B, which the parties agree to file under seal with the Court until 90 days after the Notice Date, is incorporated herein by reference.

iii. the Mediator shall have no authority to address the terms of the new Admissions Search Policy to be issued no later than September 15, 2006.

5. The parties will issue jointly drafted press releases at the time of submission of the settlement to the Court for preliminary approval, at the time of preliminary approval, and at the time of final approval. Class counsel will limit their comments about the settlement to the topics addressed in this Settlement Agreement.

III. SETTLEMENT TERMS

A. New Admissions Search Policy and Corrections Officer Training

1. No later than September 15, 2006, Defendant County of Montgomery will issue new Admissions Search Policy. The new policy will comply with the directives of the permanent injunction entered in this lawsuit, and Defendant County of Montgomery will comply with this policy.

2. The Montgomery County Correctional Facility Employee Manual will include a copy of the new Admissions Search Policy.

3. A summary of the Admissions Search Policy shall be posted conspicuously in the

booking room and the training room and a copy of the full policy will be readily available to all corrections personnel.

4. Current and new corrections officers will be trained in the new Admissions Search Policy. The training of current officers will be completed within 60 days of September 15, 2006. Defendant County of Montgomery will confirm in writing that all Montgomery County Corrections Officers have received the required training.

5. The Admissions Search Policy shall provide, among other things, that all admission strip searches performed on all arrestees will be conducted only based on reasonable suspicion and only in the presence of corrections officers of the same sex of the detainee.

6. The parties will make a joint application to U.S. District Judge David N. Hurd when seeking preliminary approval of this settlement for the Court to lift its permanent injunction as part of this settlement. Said lifting of the injunction shall not take effect until the Admissions Search Policy has been implemented, including all training required by this section.

B. Settlement Fund

1. Defendants will pay into the Settlement Fund the sum of \$2,000,000.

2. Not later than twenty days after entry of the Preliminary Approval Order, Defendants will pay into the Settlement Fund the amount of \$ 50,000 (the "Initial Contribution") to be used by the Settlement and Website Administrators to cover the initial costs of Notice and administration of the Settlement. If, at any time, whether by order of any court or because of Defendants' exercising any option to withdraw, the Settlement does not become final, then any unspent money remaining from the Initial Contribution shall be returned to the Defendants with no obligation on the part of Class Counsel to repay any portion of the money actually spent.

3. Defendants' remaining monetary obligation of \$1,950,000 will be provided for

deposit into the Settlement Fund within 21 (twenty-one) days of the Effective Date by check drawn on a United States bank.

3(a) The parties acknowledge that \$184,000 of the defendants' contribution to the settlement fund will be paid by the New York State Liquidation Bureau ("Bureau") and that in order for this payment to be made, the parties must complete and submit certain Bureau documents. In order to effectuate payment of this money into the settlement fund in a timely manner, the parties agree to use their reasonable best efforts to:

(i) submit all necessary documents to the Bureau within seven (7) days of execution of this settlement agreement; and

(ii) do all that is necessary to insure payment of the \$184,000 contribution to the settlement fund within twenty-one (21) days of the Effective date, but under no circumstances will a delay of payment by the Bureau constitute a breach by Defendants of this agreement.

4. All administrative expenses, including the costs of attorneys' fees, settlement administration, website administration and the provision of notice to class members, will be deducted from the Settlement Amount prior to determining the "Distribution Amount."

C. Payments to Class Members

1. Each Class Member who submits a timely Claim Form will be entitled to receive their proportionate share of the Distribution Amount. This amount will be distributed to the Class based on the Plan of Distribution attached to this agreement as Exhibit F.

2. No Class Member shall be entitled to more than his or her individual share of the Distribution Amount regardless of the number of times he or she has been booked and/or strip

searched at the Montgomery County Correctional Facility.

3. No portion of the Distribution Amount shall be disbursed before the Effective Date, except as set forth in Section III.D.1., below.

4. Late claims may be allowed, if submitted on or before the date of the Final Approval Hearing, under the sole discretion of class counsel for good cause shown. All late claims must be approved by the Court prior to being paid as part of the distribution of the settlement.

5. Defendant County of Montgomery will not seek enforcement of any liens for monies owed solely and wholly to County. Additionally County agrees not seek enforcement of any liens through the Settlement Administrator or Class Counsel, and will accordingly not serve the Settlement Administrator or Class Counsel with notice of any liens, unless the County has a legal obligation to do so and/or will be penalized for failing to do so. Nothing in this agreement shall be construed to be a waiver of any liens, but instead is an agreement by the County not to seek the recovery of any liens from Settlement Administrator or Class Counsel, unless the County has a legal obligation to do so or will be penalized for failing to do so. Defendant further represents that they will not attempt to collect any liens held by third-persons, or any liens resulting from the assignment of child support payments to Montgomery County, the collection of which was delegated to the County Department of Social Services, unless the County has a legal obligation to do so and/or will be penalized for failing to do so.

6. The County also agrees not to distribute or disclose the identities of any individual who is a member of the settlement class or who makes a claim on the settlement fund, including disclosing these identities to other County or State Departments of Social Services, unless the County has a legal obligation to so and/or will be penalized for failing to do so. This

waiver does not limit the Montgomery County Department of Social Services from asserting a lien on any other assets that a Class Member or Class Representative may possess. It also does not preclude the enforcement of any liens held by third parties against class members where enforcement efforts are made independent of the Montgomery County Department of Social Services.

D. Attorneys Fees and Expenses

1. Class Counsel will petition the Court for an award of attorneys' fees and expenses in the amount of \$600,000. Defendants shall not oppose Class Counsel's application for said award of fees and expenses, nor will they oppose any appeal filed by Class Counsel relating to their application for an award of attorneys' fees.

E. Additional Disclosure of Plaintiffs' Addresses

1. Plaintiffs will make a motion to the Court, as a part of the preliminary approval motion, for the disclosure of the Montgomery County Department of Probation and Department of Social Services' records of the names and addresses of the members of the Plaintiffs, and for a protective order providing that such names and addresses will only be used for purposes of this lawsuit, and that the aforesaid Probation and Social Services records will be destroyed after the issuance of the Final Approval Order.

2. The costs, including but not limited to any costs incurred by the County of Montgomery, of production the aforesaid Probation and Social Services records shall be paid from the Settlement Fund as an administrative cost.

F. Partial Distribution Pending Appeal

In the event that final approval of the settlement is appealed by Plaintiffs or a third party objector, Defendants will nevertheless make the payment(s) required by part III.B.

herein. Class Counsel will distribute such portion of the proceeds that is not subject to dispute on appeal with the remainder placed in escrow with the Settlement Administrator. Defendants agree not to oppose any appeal taken from the final approval order by the Plaintiffs.

IV. NOTIFICATION TO CLASS MEMBERS

Plaintiffs will make a motion to the Court, as a part of the preliminary approval motion, for approval of the notice plan appended to this agreement as Appendix A. Defendant will not object to this notice plan, and has no responsibility for any notification of this Settlement to the Plaintiffs.

V. REQUESTS FOR EXCLUSION BY CLASS MEMBERS

A. The provisions of this paragraph shall apply to any Request for Exclusion. Any Settlement Class Member may make a Request for Exclusion by mailing or delivering such request in writing to the Settlement Administrator. Any Request for Exclusion must be postmarked or delivered not later than the Opt-Out Deadline. Any Request for Exclusion shall state the name, address and telephone number of the person requesting exclusion and contain a clear statement communicating that such person elects to be excluded from the Settlement Class, does not wish to be a Settlement Class Member and elects to be excluded from any final order entered pursuant to this Settlement.

B. Any Putative Settlement Class Member who submits a timely Request for Exclusion may not file an objection to the Settlement and shall be deemed to have waived any rights or benefits under this Settlement Agreement.

C. Not later than three (3) business days after the deadline for submission of Requests for Exclusion, the Settlement Administrator shall provide an Opt-Out List to Class Counsel and to Defendants' Counsel together with copies of the Request for Exclusion. Class

Counsel and Defendants' Counsel shall jointly report the names appearing on the Opt-Out List to the Court no less than three (3) business days prior to the Final Approval Hearing.

D. Paragraph 2 of Appendix B, which the parties agree to file under seal with the Court until 90 days after the Notice Date, is incorporated herein by reference.

E. Class counsel agrees that they will not represent any individuals who opt out from the Settlement, and further agree to only refer opt-outs to the New York State Bar Association, in asserting claims against Defendants that are the subject of this agreement.

VI. OBJECTIONS BY SETTLEMENT CLASS MEMBERS

A. Any Settlement Class Member who wishes to be heard orally at the Final Approval Hearing, or who wishes for any objection to be considered, must file a written notice of objection by the Objection Date. Such objection shall state the name, address and telephone number of the person and provide proof of membership in the Settlement Class, as well as a detailed statement of each objection asserted, including the grounds for objection and reasons for appearing and being heard, together with any documents such person wishes to be considered in support of the objection.

B. The agreed-upon procedures and requirements for filing objections in connection with the Final Approval Hearing are intended to ensure the efficient administration of justice and the orderly presentation of any Settlement Class Members' objections to the Settlement Agreement, in accordance with such Settlement Class Members' due process rights. The Preliminary Approval Order and Class Notice will require all Settlement Class Members who have any objections to file such notice of objection or request to be heard with the Clerk of the Court, and serve by mail or hand delivery such notice of objection or request to be heard, including all papers or evidence in support thereof, upon Class Counsel and Defendants'

Counsel, at the addresses set forth in the Class Notice, no later than the Objection Date. The Preliminary Approval Order will further provide that objectors who fail to properly or timely file their objections with the Clerk of the Court, along with the required information and documentation set forth above, or to serve them as provided above shall not be heard during the Final Approval Hearing, nor shall their objections be considered by the Court.

VII. RELEASE, DISMISSAL OF ACTION, AND JURISDICTION OF COURT

A. Plaintiffs hereby irrevocably release Defendants, and all of their respective affiliates, predecessors, successor and assigns, officers, agents, representatives, insurers, reinsurers, and employees are released from any and all claims or causes of action, suits debts, dues, sums of money, attorney fees, interest, treble damages, accounts, reckonings, bonds, bills, specialties covenants, contracts controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims and demands whatsoever, in law, admiralty or equity, that were, could have been, or should have been asserted by the named Plaintiffs or any member of the Settlement Class against the Released Persons, their heirs, successors, and assigns, or any of them, based upon or related to the actions that are the subject of this Settlement Agreement.

B. The above-mentioned Settlement Fund is accepted in full compromise, settlement, accord and satisfaction of all the aforesaid claims and demands including all consequences thereof which may hereafter develop as well as those already developed or now apparent. All claims, if any, for attorneys', insurers', workers' compensation, hospital, physician, ambulance, or any other liens are included herein and that plaintiffs will indemnify and hold the defendants, and all of their respective affiliates, predecessors, successor and assigns, officers, agents, representatives, insurers, reinsurers and employees harmless from any such claims, from

any and all third-party claims to the settlement proceeds and from any and all third-party claims against all plaintiffs relating to the claims described herein above. It is further understood and agreed that this Release and settlement is in compromise and settlement of the claims described herein above against the parties released. Any and all liens relating to the claims asserted by plaintiffs in this litigation will be satisfied out of the settlement sum provided by the parties released.

C. This settlement constitutes complete payment for all damages and injuries and is specifically intended to release the defendants, and all of their respective affiliates, predecessors, successor and assigns, officers, agents, representatives, insurers, reinsurers and employees and also is specifically intended to release, whether presently known or unknown, all other tortfeasors liable or claimed to be liable jointly with the defendants and all of their respective affiliates, predecessors, successor and assigns, officers, agents, representatives, insurers, reinsurers and employees and, whether presently known or unknown, all other potential or possible tortfeasors liable or claimed to be liable jointly with the defendants and all of their respective affiliates, predecessors, successor and assigns, officers, agents, representatives, insurers, reinsurers and employees for the claims which are the subject of this lawsuit.

D. This Settlement Agreement and Release does not affect the rights, if any, of Settlement Class Members who timely and properly exclude themselves from the Settlement.

E. The administration and consummation of the Settlement as embodied in this Settlement Agreement shall be under the authority of the Court. The Court shall retain jurisdiction to protect, preserve, and implement the Settlement Agreement, including, but not limited to, the Release. The Court expressly retains jurisdiction in order to enter such further orders as may be necessary or appropriate in administering and implementing the terms and

provisions of the Settlement Agreement, including, but not limited to, orders enjoining Settlement Class Members from prosecuting claims that are released pursuant to the Settlement Agreement.

F. Upon the Effective Date and the conclusion of any appeals: (i) the Settlement Agreement shall be the exclusive remedy for any and all Released Claims of Settlement Class Members; (ii) the Released Parties shall not be subject to liability or expense of any kind to any Settlement Class Members or their successors, predecessors or assigns except as set forth herein; and (iii) Settlement Class Members and their successors, predecessors and assigns shall be permanently barred from initiating, asserting, or prosecuting any and all Released Claims against any Released Party in any federal or state court in the United States or any other tribunal.

G. Tolling of Statute of Limitations. Defendants agree that, with respect to any claims asserted in the Litigation that are subsequently asserted by any member of the Settlement Class who has properly opted out of the Settlement, Defendants shall not assert any statute of limitations, repose, or laches defense that did not exist as of April 29, 2003, through and including the date that their application to opt-out was approved by the court. Further, in the event that the Court does not approve this Settlement Agreement, or the Court's approval of this Settlement Agreement is terminated pursuant to the provisions of this Settlement Agreement, Defendants agree that, with respect to any claims asserted in the Litigation that are subsequently asserted or maintained in any existing or subsequently filed class action lawsuit, by any member of the Settlement Class, Defendants shall not assert any statute of limitations, repose or laches defense that is premised upon the time period of April 29, 2003 through and including the date of the last of the following events to occur: the entry of the Court's order disapproving this Settlement Agreement, the appellate court's decision reversing the Court's order approving this

Settlement Agreement, or the termination of this Settlement Agreement.

H. Within three (3) days of the execution of this Settlement Agreement, Class Counsel will execute a Stipulation of Dismissal as to the individual Defendants. Such Stipulation of Dismissal will be with prejudice, except in the event that the Defendants elect to terminate this Settlement Agreement pursuant to paragraph V.D *supra*, or in the event that the Court does not grant final approval to this Settlement Agreement, such Stipulation of Dismissal will be null and void, and the individual Defendants will be restored as parties to this action.

VIII. INCENTIVE AWARDS TO CLASS REPRESENTATIVES

A. Given the efforts of the named Plaintiffs on behalf of the Settlement Class, Defendants will not oppose total awards by the Court to the Plaintiffs and Class Representatives as follows:

1. Subject to the Court's approval, Plaintiff and Class Representative Barbara Davis will be awarded \$15,000 from the Settlement Amount, such amount to be paid before distributions to the general Class. It is agreed between the parties that Ms. Davis provided substantial assistance to Class Counsel in their prosecution of this action, and that Ms. Davis, was forced to answer questions at her deposition about her personal life that were highly embarrassing and caused her emotional distress.

2. Subject to the Court's approval, Plaintiff and Class Representative Paul Marriot will be awarded \$12,500 from the Settlement Amount, such amount to be paid before distributions to the general Class. It is agreed between the parties that Mr. Marriott provided substantial assistance to Class Counsel in their prosecution of this action, and that as lead plaintiff in this action, Mr. Marriott was subject to considerable public scrutiny as a result of the filing of this action.

2. Subject to the Court's approval, Class Representative Andy Rivera will be awarded \$7,500.00 from the Settlement Amount, such amount to be paid before distributions to the general Class. It is agreed between the parties that Mr. Rivera provided assistance to Class Counsel in their prosecution of this action.

IX. REPRESENTATIONS, WARRANTIES AND COVENANTS

A. Class Counsel, who are signatories hereof, represent and warrant that they have the authority, on behalf of Plaintiffs, to execute, deliver, and perform this Settlement Agreement and to consummate all of the transactions contemplated hereby. This Settlement Agreement has been duly and validly executed and delivered by Class Counsel and Plaintiffs and constitutes their legal valid and binding obligation.

B. Defendants, through their undersigned attorneys, represent and warrant that they have the authority to execute, deliver, and perform this Settlement Agreement and to consummate the transactions contemplated hereby.

X. MISCELLANEOUS PROVISIONS

A. This Settlement Agreement, and the exhibits and related documents hereto, are not, and shall not at any time be construed or deemed to be, or to evidence, any admission against or concession by Defendants with respect to any wrongdoing, fault, or omission of any kind whatsoever, regardless of whether or not this Settlement Agreement results in entry of a Final Approval Order as contemplated herein. Any payment of monies, or any other action taken, by any of the Defendants pursuant to any provision of this Settlement Agreement, shall not at any time be construed or deemed to be, or to evidence, any admission against or concession by Defendants with respect to any wrongdoing, fault, or omission of any kind whatsoever, regardless of whether or not this Settlement Agreement results in entry of a Final

Approval Order as contemplated herein. Defendants and each of them deny any liability to Plaintiffs and to all Members of the Settlement Class. This provision shall survive the expiration or voiding of the Settlement Agreement.

B. This Settlement Agreement is entered into only for purposes of Settlement. In the event that the Effective Date does not occur for any reason or the Final Approval Order is not entered, then this Settlement Agreement, including any releases or dismissals hereunder, is canceled. In the event this Settlement Agreement is cancelled or deemed cancelled, no term or condition of this Settlement Agreement, or any draft thereof, or of the discussion, negotiation, documentation or other part or aspect of the Parties' settlement discussions shall have any effect, nor shall any such matter be admissible in evidence for any purpose, or used for any purposes whatsoever in the Litigation or in any other litigation, and all Parties shall be restored to their prior rights positions as if the mediation had never occurred and the Settlement Agreement had not been entered into.

C. The headings of the sections and paragraphs of this Settlement Agreement are included for convenience only and shall not be deemed to constitute part of this Settlement Agreement or to affect its construction.

D. This Settlement Agreement, including all exhibits attached hereto, may not be modified or amended except in writing signed by all of the Parties.

E. This Settlement Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

F. This Settlement Agreement shall be governed by and construed in accordance with the substantive laws of the State of New York, without giving effect to any choice or

conflict of law provision, or rule that would cause the application of the laws of any other jurisdiction.

G. Except as otherwise provided in this Settlement Agreement, each party to this Settlement Agreement shall bear his or its own costs of the Litigation.

H. If any clause, provision or paragraph of this Settlement Agreement shall, for any reason, be held illegal, invalid, or unenforceable, such illegality, invalidity, or unenforceability shall not affect any other clause, provision or paragraph of this Settlement Agreement, and this Settlement Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable clause, paragraph, or other provisions had not been contained herein.

I. The Parties to this Settlement Agreement reserve the right, by agreement and subject to the Court's approval, to grant any reasonable extensions of time that might be necessary to carry out any of the provisions of this Settlement Agreement.

J. All applications for Court approval or Court orders required under this Settlement Agreement shall be made on notice to Plaintiffs and Defendants.

K. The determination of the terms of, and the drafting of, this Settlement Agreement, including its exhibits, has been by mutual agreement after negotiation, with consideration by and participation of all Parties and their counsel. Since this Settlement Agreement was drafted with the participation of all Parties and their counsel, the presumption that ambiguities shall be construed against the drafter does not apply. Each of the Parties was represented by competent and effective counsel throughout the course of settlement negotiations and in the drafting and execution of this Settlement Agreement, and there was no disparity in bargaining power among the Parties to this Settlement Agreement. In entering into this Settlement Agreement, none of the Parties relied on advice received from any other Party or any other Party's counsel.

L. Integrated Agreement

1. All of the exhibits to this Settlement Agreement are material and integral parts hereof, and are fully incorporated herein by reference.

2. This Settlement Agreement and the exhibits thereto constitute the entire, fully integrated agreement among the Parties and cancel and supersede all prior written and unwritten agreements and understandings pertaining to the settlement of the Litigation.

M. Notice:

1. Any notice, request or instruction or other document to be given by any party to this Settlement Agreement to any other party to this Settlement Agreement (other than class notification) shall be in writing and delivered personally or sent by registered or certified mail, postage prepaid:

If to Defendants to: Thomas W. Hyland Esquire, Wilson, Elser, Moskowitz, Edelman & Dicker, 150 East 42nd Street, New York, NY 10017.

If to Class Counsel or Plaintiffs to: Elmer Robert Keach, III, Esquire, Law Offices of Elmer Robert Keach, III, PC, 1040 Riverfront Center, P.O. Box 70, Amsterdam, NY 12010.

IN WITNESS WHEREOF, Plaintiffs and Defendants and their respective counsel have executed this Settlement Agreement as of the date(s) indicated on the lines below.

Dated: August __, 2006

Elmer Robert Keach, III, Esquire
LAW OFFICES OF ELMER ROBERT KEACH, III, PC
1040 Riverfront Center

P. O. Box 70
Amsterdam, NY 12010
Telephone: 518.434.1718

ATTORNEY FOR PLAINTIFFS

Thomas W. Hyland, Esquire
Wilson, Elser, Moskowitz, Edelman & Dicker
150 East 42nd Street
New York, NY 10017
Telephone: 212.490.3000

ATTORNEYS FOR DEFENDANTS



County of Montgomery
By: Thomas Quackenbush

APPENDIX A

NOTICE PLAN

A. Responsibilities of the Settlement Administrator and Website Administrator

1. The Settlement Administrator shall implement and administer the Notice Program.

2. The Settlement Administrator shall be responsible for, without limitation: (i) mailing the Class Notices; (ii) arranging for the publication of the Summary Notice; (iii) responding to requests for a copy of the Class Notice; (iv) distributing payments to class members; and otherwise administering the Notice Program. The Notice Program shall comply with all requirements of applicable law. The Settlement Administrator will maintain an appropriate insurance policy to protect against any violation of their fiduciary duty to the Court, Class Members, or Class Counsel.

B. Notice

1. Notice will be provided to the Class by direct mailing of Class Notice and a Claim Form to all individuals at their last known or readily ascertainable address and by publication in the Amsterdam Recorder, Schenectady Gazette and Gloversville Leader Herald on at least one day per week for three consecutive weeks commencing on the Notice date, and on one occasion during the last ten days of the Claims Period. The mailed notice will be provided

in Spanish and English, and newspaper advertisements will provide instruction that a Spanish copy of the notice will be provided upon request.

2. The Settlement Administrator shall also provide a copy of the Class Notice and Claim Form to anyone who requests notice through written communication to the Settlement Administrator, or through a toll-free telephone number to be established by the Settlement Administrator. The Website Administrator will also provide downloadable copies of notices, claim forms, court decisions and other information to class members through a dedicated internet website, www.mcjsettlement.com.

3. Defendant will provide Montgomery County Correctional Facility booking sheet(s) for each person believed to fall within the Class Definition, together with any other information (e.g. Social Security Numbers, Dates of Birth) that a third party administrator may need to facilitate proper notice. The Defendants will also provide addresses for class members that are detailed in Montgomery County Probation Department and/or Department of Social Services records, if this is the last known address. The Defendants will not be responsible to provide these records in an electronic format to the extent that they do not exist in an electronic format. Any expenses associated with obtaining data from the Probation Department and/or Department of Social Services, including but not limited to expenses incurred by the County will be borne by the Plaintiffs as an administrative expense, and these expenses will be paid from the settlement fund.

4. If, after the initial mailing, the Notice is returned as undeliverable, the Claims Administrator will attempt to locate the Class Member by way of a national locator database or service and, if another address is found, remail the Notice to that new address.

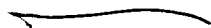
5. The Settlement Administrator shall provide an affidavit to the Court, with a copy

to Class Counsel, attesting to the measures undertaken to provide Notice of the Settlement to Settlement Class Members. The Website Administrator will also provide an affidavit attesting to activity on the settlement website, including number of visitors and number of documents downloaded.

6. The Settlement Administrator (and any person retained by the Settlement Administrator) shall sign a confidentiality agreement in a form which shall provide that the names, addresses and other information about specific Settlement Class Members and/or specific Settlement Class Members that is provided to it by Defendants, Class Counsel, or by individual Settlement Class Members or individual Settlement Class Members, shall all be treated as confidential and shall be used only by the Settlement Administrator as required by this Settlement Agreement.

7. Class Counsel will employ an interpreter on a *per diem* basis to assist class members whose primary language is Spanish in filing claims under the settlement. The costs of this interpreter will be paid as an administrative cost.

EXHIBIT A



CLAIM FORM AND RELEASE

PLEASE READ THESE INSTRUCTIONS AND CLAIM FORM CAREFULLY

You must fill out and send in the attached Claim Form, postmarked by [INSERT DATE] to share in the settlement money.

I. GENERAL INSTRUCTIONS

A. To get money from the Settlement Fund in this litigation (*Marriott v. County of Montgomery*), members of the Settlement Class must fill out the Claim Form Release. The Form is attached at the end of these instructions. The completed and signed Claim Form and Release ***must be postmarked by [insert date]. If you fail to send it in on time, it will be rejected and you will not get any money.*** You must submit it in the enclosed envelope or another properly addressed, postage prepaid envelope to the following address:

Settlement Administrator
[insert address + 800 number]

B. If you have any questions about how the Settlement Fund will be divided up, you should write or call the Settlement Administrator. Their address and phone number is above.

C. All Settlement Class Members who do not exclude themselves are bound by the terms of the final order in this litigation. This is true whether you send in a form or not.

D. If you have asked to be excluded, **do not** submit a Claim Form or the Release.

II. DEFINITIONS

- A. "Settlement Class" are all the people who satisfy ALL the following four conditions:
1. you entered the Montgomery County Correctional Facility;
 2. you were charged with a non-felony offense, violation of probation or parole, or held on a civil matter such as on a Family Court warrant;
 3. you were strip-searched at the jail upon entry; AND
 4. you were searched during the period April 29, 2000 through March 25, 2005.
- B. "Defendant" is the County of Montgomery.
- C. "Litigation" is the case of *Marriott v. County of Montgomery*, Index No. 03-CV-0531(DNH)(DEP) in the United States District Court for the Northern District of New York.

III. CLAIM FORM INSTRUCTIONS

- A. Please type or neatly print all the information that is asked for.
- B. By signing below you are verifying that the information you have included is correct, and that you agree to provide additional information to Plaintiffs' Co-Lead Counsel or the Settlement Administrator to support your claim. They may ask you to do this in the future.
- C. By signing below you are also verifying that you have not filed a claim or lawsuit about being strip searched at the jail, and that you did not ask anyone else to file one for you, and you don't know of anyone who might have filed one for you.
- D. You also may be required to send other documents with this Claim Form and Release. **Please read the instructions carefully.** Your claim will be checked and verified by the Settlement Administrator. You should keep copies of all documents that support your claim while this is going on.
- E. If you want money from the Settlement Fund you must complete Part 1 of the Claim Form and the additional Parts of the Claim Form that apply to you.
- F. A Claim Form and Release will be considered "submitted" to the Settlement Administrator if it is mailed in a first-class envelope that is postmarked by the due date. If you send the Claim Form and Release to the Settlement Administrator in some way other than first-class mail, the Claim Form and Release will be considered "submitted" when it is received by the Settlement Administrator.
- G. The Settlement Administrator will not tell you when they get your form. If you want to make sure the Settlement Administrator gets your form, you should send it by certified mail, return receipt requested. It will take some time to process all the forms and send the checks. This work will be done as fast as possible, but each claim must be checked for accuracy and recorded.
- H. Please write or call Settlement Administrator if your address changes.

THE CLAIM FORM MUST BE FILLED OUT AND SIGNED IF YOU WANT TO GET MONEY FROM THE SETTLEMENT FUND. THE ENVELOPE MUST BE POSTMARKED NO LATER THAN [INSERT DATE] 2006, AND MUST BE MAILED TO:

SETTLEMENT ADMINISTRATOR [INSERT ADDRESS]

IV. CLAIM FORM

MARRIOTT v. COUNTY OF MONTGOMERY

PART 1: CLAIMANT IDENTIFICATION

Claimant's Name: _____

Mailing Address:

City: _____, State/Country: _____ Zip Code: _____

Date of Birth: _____

Date of Arrest, if known, (Please say so if the date you give is an estimate): _____

____ Actual

____ Estimate

Criminal charges or other reason for arrest, if known (i.e. violation of probation, Family Court warrant):

(If you do not know what the charges against you were, but believe you are still a Class Member, you should file a claim. We will get your arrest record from the County. You may still be asked to provide more information about your case.)

Social Security Number:

(If you fail to include this information, your claim may not be paid)

Telephones: () _____ (day) () _____ (evening)

Person to contact if there are questions regarding this claim:

SUBMISSION TO JURISDICTION OF THE COURT

By signing below, I agree that the United States District Court for the Northern District of New York has the power to rule on my claim as a Settlement Class Member, and that the Court has the power to enforce the Release described below.

RELEASE

By signing below, I acknowledge the release and discharge of the Defendants, and all of their respective parents, subsidiaries, affiliates, predecessors, successors and assigns, officers, agents, representatives, and employees, from any and all claims or causes of action that were, could have been, or should have been asserted by the named Plaintiffs or any member of the Settlement Class against the Released Persons, or any of them, based upon or related to strip searches in the Montgomery County Correctional Facility.

VERIFICATION

I declare under penalty of perjury under the laws of the United States that the foregoing information provided by the undersigned is true and correct. I also declare that I was strip searched when I entered the Montgomery County Correctional Facility.

I filled out and signed this Proof of Claim and Release form on _____, 2006, in

(City, State, Country)

(Sign your name here)

(Type/Print your name here)

EXHIBIT C

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

PAUL MARRIOTT, on behalf of
himself and on behalf of a class of
others similarly situated, *et al.*,

Plaintiffs,

THE COUNTY OF MONTGOMERY,
et. al.,

Defendants.

No. 03-CV-0531 (DNH/DEP)

**ORDER GRANTING FINAL APPROVAL OF CLASS ACTION SETTLEMENT
AND JUDGMENT**

THIS CASE coming on for hearing before the undersigned Judge on _____,
2006, pursuant to this Court's Order of _____ in order for this Court to conduct a final fairness
hearing to determine whether the proposed Settlement Agreement between the parties is fair,
reasonable and adequate, and to address Class Counsel's application for an award of attorney's fees
and costs; and the Class Members being represented by Class Counsel and Defendants being
represented by their attorney;

AND THE COURT having read and considered the Settlement Agreement, the Notice Plan, and
Memoranda of Law submitted by Class Counsel, having received evidence at the hearing, having
heard arguments from Class Counsel and the Defendants, and having considered the submissions
by Class members, now makes the following:

FINDINGS OF FACT

1. This action was commenced on April 29, 2003, as a class action.
2. After years of intensive litigation, including extensive discovery and motion practice before this Court, and including the granting of the Plaintiff's motions for class certification, preliminary injunction, and partial summary judgment, and as a result of intensive, arm's length negotiations between Class Counsel and Defendants, the parties have reached accord with respect to a Settlement that provides substantial benefits to Settlement Class Members, in return for a release and dismissal of the claims at issue in this case against the Defendants ("Settlement Agreement"). The resulting Settlement Agreement was preliminarily approved by the Court on _____.
3. As part of the Order Granting Preliminary Approval, this Court approved a proposed Notice Plan and Class Notice, which provided Settlement Class Members notice of the proposed settlement. The Notice Plan provided an opportunity for class members to file objections to the Settlement.
4. As of the deadline for the filing of objections, only _____ objections were filed. Given the size of this Settlement, and the notice plan described above, this Court finds that the comparatively low number of objections is indicative of the fairness, reasonableness and adequacy of the Settlement with the Defendants.
5. The settling Parties have filed with the Court an affidavit from _____ declaring that the mailing of the Court-approved notice, consistent with the Notice Plan, has been completed.
6. The Court finds that the published notice, mailed notice and Internet posting constitute the best practicable notice of the Fairness Hearing, the proposed Settlement, Class Counsel's application for fees and expenses, and other matters set forth in the Class Notice and the Short Form Notice; and that such notice constituted valid, due and sufficient notice to all members of the Settlement Class, and complied fully with the requirements of Rule 23 of the Federal Rules of Civil Procedure, the

Constitution of the United States, the laws of New York and any other applicable law.

7. Any persons who wished to excluded from this Action were provided an opportunity to "opt out" pursuant to the Notice. All persons who have validly excluded themselves from this Action have no rights under the Settlement Agreement and shall not be bound by the Settlement Agreement or the final judgment herein. **[List attached]**

8. Class Members are bound by the Settlement, the Settlement Agreement and releases contained therein, and the Final Order and Judgment, and do not have any further opportunity to opt-out of the Action.

9. Any class member who did not timely file and serve an objection in writing to the Settlement Agreement, to the entry of Final Order and Judgment, or to Plaintiffs' Class Counsel's application for fees, costs, and expenses, in accordance with the procedure set forth in the Class Notice and mandated in the Order Granting Preliminary Approval of Settlement, is deemed to have waived any such objection by appeal, collateral attack, or otherwise.

10. On the basis of all of the issues in this litigation, and the provisions of the Settlement Agreement, the Court is of the opinion that the Settlement is a fair, reasonable and adequate compromise of the claims against the Defendant in this case, pursuant to Rule 23 of the Federal Rules of Civil Procedure. There are a number of factors which the Court has considered in affirming this Settlement, including:

11. The liability issues in this case have been vigorously contested.

12. The Court notes that for settlement purposes, this Settlement has the benefit of providing relief to Class Members now, without further litigation. This Settlement provides Class Members with a substantial monetary benefit.

13. This Settlement is clearly a byproduct of hard-fought litigation between the parties, and not

a result of any collusion on the part of Class Counsel or Counsel for the Defendants.

14. Class Counsel submitted to the Court and served on the Defendants their application for reasonable attorneys' fees, costs, and expenses consistent with the terms of the Settlement Agreement. This Court has considered Class Counsel's request and hereby grants the request.

15. The claims procedure established under the Settlement Agreement is fair, a simplified process, and workable. In any event, the Court will retain jurisdiction to work out any unanticipated problems.

NOW, THEREFORE, ON THE BASIS OF THE FOREGOING FINDINGS OF FACT,

THE COURT HEREBY MAKES THE FOLLOWING:

CONCLUSIONS OF LAW

16. This Court has jurisdiction over the parties and the subject matter of this proceeding.

17. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the following Settlement Class is certified for purposes of final settlement:

All persons in the United States who have been or will be placed into the custody of the Montgomery County Jail after being charged with misdemeanors, violations, violations of probation or parole, traffic infractions or other minor crimes, or held on civil matters, and were strip searched upon their entry into the Montgomery County Jail pursuant to the policy, custom and practice of the Montgomery County Sheriff's Department and the County of Montgomery. The class period commenced on April 29, 2000 and extended until March 25, 2005. Specifically excluded from the proposed class are Defendants, and all of the respective affiliates, legal representatives, heirs, successors, employees or assignees.

18. The Court finds that, for the purpose of this Settlement, the requirements of Rule 23 of the Federal Rules of Civil Procedure are satisfied, and that a Class Action is an appropriate method for resolving the disputes in this litigation. All the prerequisites for Class certification under Rule 23 are present. The Class members are ascertainable and too numerous to be joined. Questions of law *and* fact common to all Class members predominate over individual issues and should be determined

in one proceeding with respect to all Class members. The Class Representatives' claims are typical of those of the Class. The Class action mechanism is superior to alternative means for adjudicating and resolving this action.

19. The Class Representatives Paul Marriott, Barbara Davis and Andy Rivera are entitled to and are hereby awarded payments of \$12,500, \$15,000, and \$7,500, respectively, in recognition of the efforts she undertook in connection with this lawsuit.

20. The Court grants final approval of the Settlement Agreement, as being fair, reasonable and adequate, pursuant to Rule 23 of the Federal Rules of Civil Procedure.

21. The Courts finds that the request for attorneys' fees is reasonable.

NOW, THEREFORE, ON THE BASIS OF THE FOREGOING FINDINGS OF FACT AND CONCLUSIONS OF LAW, IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

22. The Motion for Final Approval of the Proposed Settlement is GRANTED.

23. The Class Representatives Paul Marriott, Barbara Davis and Andy Rivera are entitled to and are hereby awarded payments of \$12,500, \$15,000, and \$7,500, respectively.

24. The Class Counsel's application for attorneys' fees and expenses is granted.

25. This Action and all claims against the Settling Defendant are hereby dismissed with prejudice, but the Court shall retain exclusive and continuing jurisdiction of the Action, all Parties, and Settlement Class Members, to interpret and enforce the terms, conditions and obligations of this Settlement Agreement.

26. All Class members who have not timely filed an opt-out request are barred and enjoined from commencing and/or prosecuting any claim or action against the Defendant. Any Class member who has not timely filed a request to exclude themselves shall be enjoined from initiating and/or

proceeding as a class action in any forum.

IT IS SO ORDERED.

Dated:

Hon. David N. Hurd
United States District Judge

EXHIBIT D

EXHIBIT D

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

PAUL MARRIOTT, on behalf of
himself and on behalf of a class of
others similarly situated, *et al.*,

Plaintiffs,

THE COUNTY OF MONTGOMERY,
et. al.,

Defendants.

No. 03-CV-0531 (DNH/DEP)

ORDER PRELIMINARILY APPROVING SETTLEMENT

WHEREAS, the Plaintiffs and Defendants have entered into a Settlement Agreement intended to resolve the litigation pending in this Court; and

WHEREAS, the Settlement Agreement, together with supporting materials, sets forth the terms and conditions for a proposed settlement and dismissal with prejudice of this action against the Defendants; and

WHEREAS, the Court has before it the parties' Joint Motion for Preliminary Approval of Settlement and Joint Memorandum in Support of Motion for Preliminary Approval of Settlement, together with the Settlement Agreement and supporting materials; and

WHEREAS, the Court is satisfied that the terms and conditions set forth in the Settlement Agreement were the result of good faith, arm's length settlement negotiations between competent and experienced counsel for both Plaintiffs and Defendants,

IT IS HEREBY ORDERED AS FOLLOWS:

1. Capitalized terms used in this Order have the meanings assigned to them in the Settlement Agreement and this Order.

2. The terms of the parties' Settlement Agreement are hereby conditionally approved, subject to further consideration thereof at the Final Approval Hearing provided for below. The Court finds that said settlement is sufficiently within the range of reasonableness and that notice of the proposed settlement should be given as provided in this Order.

3. Pursuant to Fed R. Civ. P. 23, the Court conditionally certifies the following settlement class:

All persons in the United States who have been or will be placed into the custody of the Montgomery County Jail after being charged with misdemeanors, violations, violations of probation or parole, traffic infractions or other minor crimes, or held on civil matters, and were strip searched upon their entry into the Montgomery County Jail pursuant to the policy, custom and practice of the Montgomery County Sheriff's Department and the County of Montgomery. The class period commenced on April 29, 2000 and extended until March 25, 2005. Specifically excluded from the proposed class are Defendants, and all of the respective affiliates, legal representatives, heirs, successors, employees or assignees.

The above class definition supercedes and replaces the class definition contained in the Court's decision and order of March 25, 2005 certifying this action as a class action. All other findings of fact and conclusions of law in that decision and order remain in full force and effect, pending the final disposition of this action.

4. The Court approves the Class Notice of Settlement attached hereto as Exhibit A and the Summary Notice for Publication attached hereto as Exhibit B. The Court also approves the Notice Program as set forth in the Appendix of the Settlement Agreement.

Notice to Settlement Class and Appointment of Settlement Administrator

5. Counsel for the Class ("Class Counsel") are as follows:

Elmer R. Keach, III, Esq.
1040 Riverfront Center
P.O. Box 70
Amsterdam, NY 12010

Telephone (518) 434-1718
Facsimile (518) 770-1558

Bruce E. Menken, Esq.
Jason J. Rozger, Esq.
BERANBAUM MENKEN BEN-ASHER & BIERMAN LLP
80 Pine Street, 32nd Floor
New York, NY 10005
Telephone (212) 509-1616
Facsimile (212) 509-8088

Gary Mason
THE MASON LAW FIRM, PLLC
1225 19th Street, NW
Suite 600
Washington, DC 20036
Telephone (202) 429-2290
Facsimile (202) 429-2294

6. Beginning no later than **[insert date]**, 2006, Class Counsel shall cause to be disseminated the notices, substantially in the form attached as Exhibits A and B hereto, in the manner set forth in Paragraph IV of the Settlement Agreement. Such Notice Program will be completed expeditiously pursuant to the terms of the Settlement Agreement. Class members will have sixty (60) days from the Notice Date to opt out and one hundred twenty (120) days from the Notice Date to file claims. Prior to the Final Approval Hearing, Plaintiffs and/or the Claims Administrator shall serve and file a sworn statement attesting to compliance with the provisions of this paragraph.

7. The notice to be provided as set forth in the Settlement Agreement is hereby found to be the best practicable means of providing notice under the circumstances and, when completed, shall constitute due and sufficient notice of the proposed settlement and the Final Approval Hearing to all persons and entities affected by and/or entitled to participate in the settlement, in full compliance with the notice requirements of Fed R. Civ. P. 23, due process, the Constitution of the United States, the laws of New York and all other applicable laws. The Notices are accurate, objective, informative and provide Class members with all of the information necessary to make an informed

decision regarding their participation in the Settlement and its fairness.

8. Class Counsel are authorized to retain Rust Consulting Inc., 117 Central Avenue North, Fairbault, Minnesota as the Claims Administrator in accordance with the terms of the Settlement Agreement and this Order.

Requests for Exclusion from the Settlement Class

9. Any member of the Settlement Class that wishes to be excluded ("opt out") from the Settlement Class must send a written Request for Exclusion to the Claims Administrator, so that it is received by the Claims Administrator at the address indicated in the Notice on or before the close of the opt out period. The Request for Exclusion shall fully comply with the requirements set forth in the Settlement Agreement. Members of the Settlement Class may not exclude themselves by filing Requests for Exclusion as a group or class, but must in each instance individually and personally execute a Request for Exclusion and timely transmit it to the Claims Administrator.

10. Any member of the Settlement Class who does not properly and timely request exclusion from the Settlement Class shall be bound by all the terms and provisions of the Settlement Agreement, whether or not such person objected to the Settlement and whether or not such person made a claim upon, or participated in, the Settlement Fund pursuant to the Settlement Agreement.

The Final Approval Hearing

11. A hearing on final settlement approval (the "Final Approval Hearing") is hereby scheduled to be held before this Court on _____, 2006, to consider the fairness, the reasonableness, and adequacy of the proposed settlement, the dismissal with prejudice of this class action with respect to the Released Parties that are Defendants herein, and the entry of final approval order in this class action. Class Counsel's application for award of attorney's fees and costs shall be heard at the time of the fairness hearing.

12. The date and time of the Fairness Hearing shall be set forth in the Notice, but the Fairness Hearing shall be subject to adjournment by the Court without further notice to the members of the Settlement Class other than that which may be posted by the Court.

13. Any person or entity that does not elect to be excluded from the Settlement Class may, but need not, enter an appearance through his or her own attorney. Settlement Class members who do not enter an appearance through their own attorneys will be represented by Class Counsel.

14. Any person who does not elect to be excluded from the Settlement Class may, but need not, submit comments or objections to the proposed Settlement. Any Class member may object to the proposed Settlement, entry of Final Order approving the settlement, and Class Counsel's application for fees and expenses by serving a written objection.

15. Any Class member making the objection (an "objector") must sign the objection personally. An objection must state why the objector objects to the proposed Settlement and provide the basis to support such position. If an objector intends to appear personally at the Fairness Hearing, the objector must include with the objection a notice of the objector's intent to appear at the hearing.

16. Objections, along with any notices of intent to appear, must be filed no later than 60 days from the Notice Date. If counsel is appearing on behalf of more than one Class Member, counsel must identify each such Class Member and each Class Member must have complied with the requirements of this Order. These documents must be filed with the Clerk of the Court at the following address:

Clerk of the Court
U.S. District Court for the Northern District of New York
James T. Foley U.S. Courthouse
445 Broadway
Albany, NY 12207

17. Objections, along with any notices of intent to appear, must also be mailed to Class Counsel

and counsel for Defendant at the address listed below:

CLASS COUNSEL

Elmer R. Keach, III, Esq.
1040 Riverfront Center
P.O. Box 70
Amsterdam, NY 12010

DEFENSE COUNSEL

Theresa Marangas, Esq.,
Wilson, Elser, Moskowitz, Edelman & Dicker
One Steuben Place
Albany, NY 12207

18. Only Class Members who have filed and served valid and timely notices of objection shall be entitled to be heard at the Fairness Hearing. Any Class Member who does not timely file and serve an objection in writing to the Settlement, entry of the Final Approval Order, or to Class Counsel's application for fees, costs, and expenses, in accordance with the procedure set forth in the Class Notice and mandated in this Order, shall be deemed to have waived any such objection by appeal, collateral attack, or otherwise.

19. Persons wishing to be heard at the Fairness Hearing are required to file written comments or objections and indicate in their written comments or objections their intention to appear at the Fairness Hearing. Settlement Class members need not appear at the hearing or take any other action to indicate their approval.

20. All members of the Settlement Class who do not personally and timely request to be excluded from the Class are enjoined from proceeding against the Defendants for the claims made in the Complaint until such time as the Court renders a final decision regarding approval of the Settlement and, if the settlement is approved, enters a final order as provided in the Settlement Agreement.

Other Provisions

21. Upon approval of the settlement provided for in this Settlement Agreement, each and every term and provision thereof shall be deemed incorporated herein as if expressly set forth and shall have the full force and effect of an Order of this Court.

22. All reasonable costs incurred in notifying members of the Settlement Class, as well as administering the Settlement Agreement, shall be paid as set forth in the Settlement Agreement.

IT IS SO ORDERED.

Dated:

Hon. David N. Hurd
United States District Judge

EXHIBIT E

COURT ORDERED LEGAL NOTICE

If you were admitted into the Montgomery County Correctional Facility between April 29, 2000 and March 25, 2005 and were strip searched when you entered, you could get a payment from a class action settlement.

A settlement has been proposed in a class action lawsuit about the strip search policies of the Montgomery County Correctional Facility ("MCCF"). The settlement will provide \$2,000,000 to pay claims from individuals who were admitted into the MCCF and charged with misdemeanors, violations, traffic violations, violations of probation or parole, or held on civil matters, and were strip searched upon their entry into the facility.

The United States District Court for the Northern District of New York authorized this notice. The Court will have a hearing to decide whether to approve the settlement, so that the benefits may be paid.

Who's Included?

You are a Class Member and could get benefits if you were admitted into the MCCF from April 29, 2000, through and including March 25, 2005, and you were charged with a misdemeanor, violation or traffic violation, violation of probation or parole, or held on a civil matter, and you were strip searched upon your entry into the Jail.

What's This About?

The lawsuit claimed that Defendant Montgomery County and its officers had an unlawful practice of strip searching everyone who was admitted into the Jail, whether or not there was a reason to search the individual. Defendants deny they did anything wrong. Both sides agreed to the settlement to ensure a resolution and to provide benefits to the Class Members.

What Does the Settlement Provide?

Defendant agrees to pay a total of \$2,000,000 to pay claims to Class Members, administrative costs of the settlement, incentive awards to the three named Plaintiffs, and attorneys' fees and expenses. Each Class Member who makes a claim will receive an equal share of the portion of the \$2,000,000 allocated to pay claims to Class Members. There are believed to be approximately 1,750 Class Members. You can only make one Claim, even if you were strip searched more than once.

How Do You Ask For A Payment?

A detailed Notice and Claim Form package contains everything you need. Just call or visit the settlement website, www.mccfsettlement.com, to get one. To qualify for a payment, you must send in a Claim Form. **Claim forms are due by [insert date], 2006.**

What Are Your Other Options?

If you don't want the settlement benefits or don't want to be legally bound by the settlement, you must exclude yourself by **[insert date] 2006** or you won't be able to sue, or continue to sue, the Defendants about the claims in this case. If you exclude yourself, you can't get any benefits from this settlement. If you stay in the settlement, you may object to it by **[insert date] 2006**. The detailed notice, available by calling or visiting the website below, explains how to exclude yourself or object.

The court will hold a hearing in this case (*Marriott, et. al. v. County of Montgomery, et. al.* case no. 03-CV-0531) on **[insert date]**, to consider whether to approve the settlement and a request by the lawyers representing all Class Members (E. Robert Keach, Esq. Albany, NY, Beranbaum Menken Ben-Asher & Bierman LLP, New York, NY, and The Mason Law Firm, Washington, DC) for attorneys' fees and costs. You may ask to appear at the hearing, but you don't have to. For more information, call toll free 1-800-000-0000, visit the settlement website www.MCCFsettlement.com, or write to Settlement, P.O Box X, City, State, 00000.

EXHIBIT F

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

PAUL MARRIOTT, BARBARA DAVIS,
and ANDY RIVERA, on behalf of
themselves and a certified class of others
similarly situated,

Plaintiffs,

THE COUNTY OF MONTGOMERY,
et. al.,

Defendants.

No. 03-CV-0531 (DNH/DEP)

PLAN OF DISTRIBUTION

Defendants County of Montgomery, Michael Amato, Jeffrey Smith, Kevin Snell, Sue Buddles and John Pecora (the "Defendants") have agreed to settle this class action by, among other things, paying \$2.0 million into a Settlement Fund for the benefit of class members and the named plaintiffs in this litigation. Subject to Court approval, Class Counsel intend to distribute the Settlement Fund as set forth below. As more fully set forth in the Settlement Agreement and the Class Notices, class members have the right to submit to the Court objections for its consideration to the Settlement and/or this Plan of Distribution.

Attorneys' Fees, Costs, Administrative Expenses and Incentive Awards

Pursuant to the Settlement Agreement and applicable law, Class Counsel intend to seek from the Settlement Fund reimbursement for the costs advanced in the prosecution of this litigation and an award of attorney's fees. Plaintiffs' counsel will apply to the

Court for an award of costs and attorney's fees of no more than thirty percent (30 %) of the settlement fund, or \$600,000. Additionally, Class Counsel proposes to allocate up to \$35,000 of the settlement fund to pay incentive awards to class representatives Paul Marriott (\$12,500), Barbara Davis (\$15,000) and Andy Rivera (\$7,500), who Class Counsel maintain provided assistance to them during the prosecution of this litigation. Deducting for estimated administrative expenses of \$65,000 and for attorney's fees, costs and incentive awards, class counsel estimates that there will be approximately \$1,300,000 in the settlement fund for distribution to class members.

Distribution to Class Members

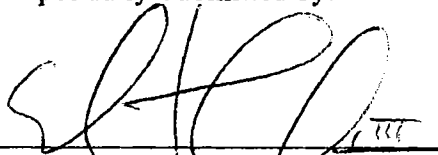
Class Counsel proposes that approximately \$1.3 million of the settlement fund be allocated to pay claims by class members, and that each class member who files a valid claim will receive their *pro rata* share of the settlement fund when the fund is distributed after final approval. Based on data provided by Montgomery County when the initial notice to class members of the certification of this action was mailed in September, 2005, Class Counsel estimates the class size here to be approximately 1,650 individuals. Individuals who were admitted to the Montgomery County Jail on more than one occasion will only be allowed to file one claim against the settlement fund. When considering the claims rates achieved in similar settlements, Class Counsel estimates that each member of the settlement class that files a claim will receive between \$2,000 and \$3,000 as a settlement payment.

Court Approval

At the time of the final approval hearing, Class Counsel will detail to the Court the final distribution to be made to settlement claimants and the amount to be paid per

claim. Subject to the Court's approval, all proceeds to class members will then be paid based on the final distribution amounts provided at the time of the final approval hearing.

Respectfully Submitted by:



Dated: August 31, 2006
Amsterdam, New York

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