

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

PERRY HILL and JAMES RODGERS,
on behalf of a Certified Class of Other
Similarly Situated Plaintiffs,

Plaintiffs,

v.

THE COUNTY OF MONTGOMERY,
et. al.,

Defendants.

No: 9:14-CV-0933 (BKS/DJS)

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 against the Defendants – the County of Montgomery, Michael Amato, and Michael Franko – alleging Defendants failed to provide them, and others similarly situated, with adequate nutrition while placed in custody of the Montgomery County Jail in Fultonville, New York, in violation of the Eighth and Fourteenth Amendments.

WHEREAS, this Court granted class certification and denied Defendants’ Motion for Summary Judgment.

WHEREAS, Plaintiffs further allege that, in violation of law and pursuant to the policy of Montgomery County, all persons such as Plaintiffs and the members of the class they purport to

represent, were placed into the custody of the Montgomery County Jail for a period of at least two consecutive weeks, fourteen or more consecutive days.

WHEREAS, it is plaintiffs' good faith belief that Montgomery County, subsequent to the filing of this action, took substantial remedial steps to address the claims alleged in this Litigation.

WHEREAS, Montgomery County has denied and continues to deny Plaintiffs' claims, and Defendants deny any wrongdoing or liability of any kind to Plaintiffs or to any members of the Class (as defined hereinafter).

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 and that such examination included documentary and deposition discovery in the course of the Litigation.

WHEREAS, Montgomery County has 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 Plaintiffs and all Class Members relating to alleged conduct involved in this Litigation.

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

WHEREAS, substantial, adversarial settlement negotiations have taken place between the Parties, including a full day mediation conducted by United States Magistrate Judge Daniel J. Stewart, and, as a result, this Settlement Agreement has been reached, subject to the Court approval process set forth herein.

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

WHEREAS, this Settlement Agreement is made and entered into by and among Montgomery County and Plaintiffs Perry Hill and James Rogers, individually and on behalf of a class (the “Class”) of similarly situated persons (the “Class Members”) defined as: “All persons who have been placed into the custody of the Montgomery County Jail and were detained for at least two consecutive weeks from July 25, 2011 to December 31, 2018.”

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: Elmer Robert Keach, III, Esquire, and Maria Dyson, Esquire, Law Offices of Elmer Robert Keach, III, P.C., Albany, New York, and Nicholas A. Migliaccio, Esquire, Jason S. Rathod, Esquire, and Ashley M. Pileika, Esquire, Migliaccio & Rathod LLP, Washington, District of Columbia.

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

E. Class Representatives: “Class Representatives” shall mean Plaintiffs Perry Hill and James Rogers.

F. Class Settlement. “Class Settlement” shall mean the terms provided in this Settlement Agreement.

G. Court. “Court” shall mean the United States District Court for the Northern District of New York, The Honorable Brenda K. Sannes presiding, or her duly appointed or designated successor.

H. Defendants. “Defendants” shall mean the County of Montgomery, Michael Amato, and Michael Franko, and shall include all employees of Montgomery County who may have devised, promulgated or enforced the alleged policy or participated in the alleged conduct that is the subject of this Settlement Agreement.

I. Defendants’ Counsel. “Defendants’ Counsel” shall mean Jonathan M. Bernstein, Esquire, Goldberg Segalla, LLP, Albany, New York, and William Mergner, Leary, Bride, Mergner & Bongiovanni, P.A., Cedar Knolls, New Jersey.

J. Distribution Amount. “Distribution Amount” shall mean the amount available from the Settlement Fund after payment of the costs of Class Notice and administration of the Settlement, attorneys’ fees and expenses, and incentive awards to Class Representatives.

K. Effective Date. “Effective Date” shall mean thirty days from the date on which the Settlement has been finally approved by the Court, and/or the date on which any appeals from final approval are resolved, whichever is later.

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

N. Final Judgment. “Final Judgment” 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.

O. Litigation. “Litigation” shall mean the above-captioned lawsuit pending in the United States District Court for the Northern District of New York as No. 9:14-CV-0933

P. Mediator. The “Mediator shall mean The Honorable Daniel J. Stewart, United States Magistrate Judge of the United States District Court for the Northern District of New York.

Q. 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.

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

S. Objection Date. “Objection Date” shall mean 60 days after the Notice Date, or as otherwise 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.

T. Opt-Out Deadline. “Opt-Out Deadline” shall mean 60 days after the Notice Date, or as otherwise ordered by the Court, 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.

U. 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. This Opt Out List will include all individuals who have already opted out of the class after receiving the prior, pre-settlement class notice.

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

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

X. Plaintiffs. “Plaintiffs” shall mean Perry Hill and James Rogers.

Y. 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.

Z. Release. “Release” shall mean the release described in Section VII herein.

AA. Released Claims. “Released Claims” shall mean and include any and all claims or causes of action by or on behalf of any and all Settlement Class Members (and their predecessors, successors, heirs, administrators, executors, agents, trustees, representatives, and assigns) that are released by the Release described in Section VII herein.

BB. Released Parties. “Released Parties” shall mean all persons or entities against whom Released Claims will be released pursuant to the Release described in Section VII herein.

CC. Request for Exclusion. “Request for Exclusion” shall mean any request by any Settlement Class Member for exclusion from the Settlement Class in compliance with Section V herein.

DD. Settlement. “Settlement” shall mean the agreement by the Plaintiffs and Defendants to resolve the Litigation, the terms of which have been memorialized in this Settlement Agreement.

EE. Settlement Administrator. “Settlement Administrator” shall mean the qualified party selected by the Parties and designated in the Preliminary Approval Order to administer the

Settlement, including implementing the Notice Program. Neither Plaintiffs nor Defendants shall have any responsibility for any acts or omissions of the Settlement Administrator. The Parties have agreed to select RG/2 Claims Administration LLC as the Settlement Administrator.

FF. Settlement Agreement. “Settlement Agreement” shall mean this Settlement Agreement, and all the exhibits attached hereto.

GG. Settlement Class. “Settlement Class” shall mean: “All detainees who have been placed into the custody of the Montgomery County Jail and were detained for at least two consecutive weeks, from July 25, 2011 to December 31, 2018.

HH. Settlement Class Members. “Settlement Class Members” shall mean all persons in the Settlement Class who do not exclude themselves pursuant to Section V herein.

II. Settlement Fund. “Settlement Fund” shall mean a fund or funds, governed by terms to be agreed to between Class Counsel and Defendants’ Counsel which shall be earmarked specifically for this case and remain in Montgomery County’s General Indemnities Fund until such time as to be utilized to administer the monetary requirements of the Settlement. Defendants shall provide documentation verifying that the Settlement Amount is available, has been earmarked for the sole purpose of this case, and will not be utilized for any other payments or purposes. Defendants will not allow the General Indemnities Fund to ever have less money in it than enough to cover the entire cost of this Settlement.

JJ. Settlement Amount. “Settlement Amount” shall mean the amount of One Million Dollars (\$1,000,000.00) to be paid by the insurance carriers for Defendants.

KK. Settlement Website. “Settlement Website” means a website established by Class Counsel to provide information about the Settlement with a World Wide Web address of www.montgomerycountyclassaction.net.

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

II. REQUIRED EVENTS

Promptly after execution of this Settlement Agreement by all Parties:

1. Class Counsel and Defendants’ Counsel shall use their best efforts to cause the Court to enter the Preliminary Approval Order and the Final Judgment in substantially the forms attached hereto as Exhibits D and C, respectively.

2. 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:

a. Preliminarily approve the terms of the Settlement Agreement, including the certification of the Settlement Class for purposes of this Settlement Agreement only, as within the range of fair, reasonable and adequate Settlement for purposes of issuing notice;

b. Approve the contents of the Class Notice and methods in the Notice Plan;

c. 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 Judgment (in substantially the same form as Exhibit C) approving the Class Settlement, granting Class Counsel’s application for fees and expenses, granting the incentive awards application by the Class Representatives, and dismissing the Litigation with prejudice.

3. Class Counsel and Defendants’ Counsel will use their best efforts, consistent with the terms of this Settlement Agreement, to promptly obtain a Final Judgment.

4. In the event that the Court fails to issue the Preliminary Approval Order or fails to issue the Final Judgment, 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 Defendants be required to agree to any such cure that would increase the cost or burden of the Settlement Agreement to the Defendants.

5. The Parties acknowledge that prompt approval, consummation, and implementation of the Settlement set forth in this Settlement Agreement are essential. The Parties shall cooperate with each other in good faith to carry out the purposes of and effectuate this Settlement Agreement, shall promptly perform their respective obligations hereunder, and shall promptly take any and all actions and execute and deliver any and all additional documents and all other materials and/or information reasonably necessary or appropriate to carry out the terms of this Settlement Agreement and the transactions contemplated hereby. Any disputes regarding the Parties' obligations under this paragraph shall be submitted for decision by Judge Brenda K. Sannes or her designated representative and her decision shall be binding on the Parties.

III. SETTLEMENT TERMS

A. Settlement Fund

Upon entry of the Preliminary Approval Order, Defendants' insurers shall make available an amount from the Settlement Fund, not to exceed the sum of \$50,000, to be used by the Settlement Administrator to cover the costs of Notice and administration of the Settlement. Any unused portion of the \$50,000 by the Settlement Administrator will revert to the Settlement Fund. If, at any time the Settlement does not become final, then any unspent money remaining from this sum shall be returned to Defendants with no obligation on the part of any party to repay any portion of the money actually spent.

Within fifteen (15) days of the Effective Date, Defendants shall provide Plaintiffs with documentation verifying that the remaining portion of the Settlement Amount is available, has been earmarked for the sole purpose of this case, and will not be utilized for any other payments or purposes. On or before the Effective Date, Defendants shall send the Settlement Payment to the Settlement Administrator who shall set up a qualified settlement fund to hold the Settlement Fund in escrow for ultimate disbursement.

All administrative expenses, including the costs of Settlement administration, website administration and the provision of notice to class members, as well as the amounts awarded by the Court for attorneys' fees and costs, and incentive awards to the Class Representatives, will be deducted from the Settlement Fund prior to determining the "Distribution Amount."

B. Distribution of Settlement Fund

Class counsel will petition the Court for a service award to the named Plaintiffs Perry Hill and James Rodgers will each receive an incentive award of \$ 10,000 each for their willingness to step forward and file suit, and otherwise commit time and effort as a Class Representative, including providing deposition testimony and other crucial information to support the prosecution of the litigation. This amount was determined to be appropriate only after an agreement had been reached on the award to the Class Members and other terms of this Agreement. In the event the incentive award is not finally approved by the Court, the rest of this Agreement shall remain in full force and effect. Plaintiffs Perry Hill and James Rodgers will file a claim on the settlement, but will not receive any payments other than the incentive award should such a payment be approved by the Court and exceed an expected settlement payment from the pro rata formula noted below.

Fifteen members of the class were deposed in this action, in addition to the Plaintiffs. The parties have agreed to provide these individuals with a small service award (\$500.00 per

individual above their pro-rata share of the settlement fund, for a total of \$7,500.00) for being deposited during the pendency of this action. Should any of the following individuals file a claim, they will, assuming approval by the Court, receive this service award: Carolynlee Ardizzone, Chadd Battisti, David Canales, Joseph Chirico, Andre Cruz, Eric Engle, Kyle Edick, Kenneth Crous, Eduardo Oquendo, Bruce O'Shaughnessy, Robert Pettit, Douglas Rivera, Robert Staley, Joanne Strobel, and Robert Washington. These individuals will only receive a service award if they file a claim.

Class Counsel will petition the Court for an award of attorneys' fees equating to 30% of the entire Settlement Fund, or \$300,000.00. 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 relative to their application for an award of attorneys' fees. The parties acknowledge that class counsel spent a significant amount of time litigating this matter, and the award of attorneys' fees will not cover the amount of attorneys' fees to which they would be entitled should they file an application as representatives of a prevailing party under 42 U.S.C. § 1988 or Fed. R. Civ. Proc. Rule 23. In the event the attorneys' fees and expenses are not finally approved by the Court, the rest of this Agreement shall remain in full force and effect.

The remaining portion of the Settlement Fund (approximately \$622,500) will be distributed to Class Members on a *pro rata* basis. Each Class Member who submits a timely Claim Form will be entitled to receive \$50 in addition to a *pro rata* share of the Settlement Fund determined by number of days spent in the Montgomery County Jail, capped at 365 days per Claimant. Each stay credit toward a class member's *pro rata* share at the Montgomery County Jail must equal or exceed two consecutive weeks. By way of example, if a class member was admitted to the MCJ on four separate occasions each stay for 15 consecutive days, that class member would receive \$ 50.00 plus sixty days credit toward their pro rata share of the remaining

settlement fund. If a class member was admitted once to the MCJ for 100 days, they would receive a \$50.00 payment plus 100 days credit toward their pro rata share. There will be an aggregate cap of 365 days of *pro rata* credit per Claimant. The *pro rata* distribution schedule will be determined by the Claims Administrator based upon the records provided by Defendants.

No Class Member shall be entitled to more than his or her individual share of the Settlement Fund regardless of the number of days he or she spent in the Montgomery County Jail in excess of 365 days. No Class Member will receive any credits for multiple incarcerations in the Montgomery County Jail beyond the *pro rata* credit formula detailed above.

The Parties acknowledge the Class list and list of claimants was compiled by Defendants, pursuant to the mutually agreed upon definition of the Settlement Class and provided to Class Counsel. Montgomery County will provide Class Counsel with a revised class list on or before the date of preliminary approval.

All payments to be made under this Settlement, including to the Settlement Administrator, the Named Plaintiffs, and Class Counsel will be made within thirty (30) days of the Effective Date. Each mailed check shall become void one-hundred eighty (180) days after issuance. Any uncashed checks will escheat to the New York Fund for Client Protection, following an appropriate motion to the New York Supreme Court.

IV. NOTIFICATION TO CLASS MEMBERS

A. Responsibilities of the Settlement Administrator

The Settlement Administrator shall implement and administer the Notice.

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) otherwise administering the Notice Program and (v) distributing payments to the Settlement Class Members. 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 its fiduciary duty to the Court, Class Members, Defendants or Class Counsel.

The Settlement Website will provide information about the Settlement to Class Members, including notice and claims documents, court documents, and a copy of the Settlement Agreement.

B. Notice

Notice will be provided to the Settlement 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. The published notice and mailed notice will be provided in English, and will provide instruction that a Spanish copy of either notice will be provided upon request.

Notice will also be provided to the Settlement Class by way of direct mail to class members, and advertisements in local newspapers (Amsterdam Recorder, Gloversville Leader Herald). Class Counsel also maintains, based on the advice of the Settlement Administrator, that a limited televised notice campaign on television, roadside billboards placed in the City of Amsterdam (East Amsterdam and on Route 30 in South Amsterdam), and targeted facebook advertising should also be used to facilitate notice to the Class. The Defendants disagree on this point, and the question of the propriety of these additional notice efforts will be submitted for decision by the Court at the time of preliminary approval. The Defendants will have the opportunity to review and consent to the ads prior to their broadcast and/or display, and any dispute between the Parties regarding the content of the ads will also be decided by the Court. Additional notice will be provided to the Settlement Class by way of posting of the Class Notice and Claim Form in the Montgomery County Jail.

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 Settlement Administrator will also provide downloadable copies of notices, claim forms, court decisions and other information to Settlement Class members through a dedicated internet website, www.montgomerycountyclassaction.net.

Defendants will cooperate in the Notice Program by providing Class Counsel and/or the Settlement Administrator with information necessary to effect notice to the Settlement Class, including providing to Class Counsel and/or the Settlement Administrator a database of Settlement Class Members in a computerized format. Upon good cause shown the Defendants will supply Class Counsel and/or the Settlement Administrator with available information necessary to locate a class member and/or to verify an individual's eligibility, or lack of eligibility, to participate in the class action settlement.

If, after the initial mailing, any Class Notices are returned as undeliverable, the Settlement Administrator will attempt to locate the relevant Settlement Class Members by way of a national locator database or service and, if another address is found, re-mail the Notice to that new address.

The Settlement Administrator shall provide an affidavit to the Court, with a copy to Class Counsel and Defendants' Counsel, attesting to the measures undertaken to provide Notice of the Settlement. The Website Administrator will also provide an Affidavit attesting to activity on the Settlement Website, including number of visitors and number of documents downloaded.

The Settlement Administrator (and any person retained by the Settlement Administrator) shall sign a confidentiality agreement in a form agreed to by the Parties, 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, shall be treated as confidential and shall be used only by the Settlement Administrator as required by this Settlement Agreement.

Class Counsel will employ an interpreter on a per diem basis to assist Settlement 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.

V. REQUESTS FOR EXCLUSION BY SETTLEMENT CLASS MEMBERS

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, does not wish to be a Settlement Class Member and elects to be excluded from any judgment entered pursuant to the Settlement. Prior requests made for exclusion during the prior notice campaign will be honored as part of this settlement, although class counsel will contact these individuals to confirm their intent to exclude themselves from the settlement, and to also encourage them to file a claim on the settlement.

Any 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.

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 each Request for Exclusion. Class Counsel and Defendants' Counsel shall jointly report the names appearing on the Opt-Out List to the Court at the time of the Final Approval Hearing.

Class Counsel agrees that they will not represent any individual that opted out from the Settlement or opted out as a class member in asserting claims against the Defendants that are the subject of this agreement.

VI. OBJECTIONS BY SETTLEMENT CLASS MEMBERS

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.

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 one of the 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.

In accordance with law, only Settlement Class Members who have objected to the Settlement pursuant to the terms immediately above may appeal any Final Judgment. The proposed Final Judgment shall provide that any Settlement Class Member who wishes to appeal the Final Judgment, which appeal will delay the distribution of the Settlement to the Class, shall post a bond with this Court in an amount to be determined by the Court as a condition of prosecuting such appeal.

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

By this Settlement Agreement and specifically as provided herein, Defendants, and all of their respective affiliates, predecessors, successors and assigns, along with past, present and future officers, elected officials, agents, representatives, insurers, attorneys, representatives, servants, employees, assigns, Greenwich Insurance Company, AXAXL, Summit Risk Services, Inc., and St. Paul Guardian Insurance Company (collectively Released Parties), are released 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 Parties, or any of them, based upon or related to the actions that are the subject of this Settlement Agreement.

Plaintiffs and the Settlement Class Members acknowledge and agree that the payment and acceptance of the settlement sum and execution of this Release are the result of compromise and that the settlement was entered in good faith and shall never for any purpose be considered an admission of liability or responsibility for the allegations alleged in the Litigation. No past or present wrongdoing on the part of the Released Parties shall be implied as a result of the settlement or payment of the settlement sum. Consequently, Plaintiffs and their attorneys acknowledge and agree that they will not reference this settlement as evidence of wrongdoing by the Released Parties in any public or private statements, or in statements made during the course of any future litigation against the Released Parties. Plaintiffs Perry Hill and James Rogers, along with their

attorneys of record, are prohibited from using by any means, including but not limited to any written, oral or any form of electronic media, the terms of this settlement as a basis for claiming defendants are liable for the allegations in the complaint.

Any class member that submits a Claim Form must complete a release that releases the Released Parties from any and all claims related to this Litigation. A copy of all executed releases shall be supplied to defendants' attorneys, Goldberg Segalla, LLP. Any class member that submits a Claim Form and receives payment from the settlement proceeds shall be responsible for satisfying any and all liens whether known or unknown. Plaintiffs Perry Hill and James Rodgers will sign individual releases for the benefit of the Defendants.

Plaintiffs and any member of the Settlement Class that submits a Claim Form and receives payment from the settlement proceeds agree to hold the Released Parties harmless from any and all liens and other rights and obligations including any responsibility to any health insurer subject to ERISA, Medicare and/or Medicaid, whether known or unknown and to indemnify the Released Parties for all legal fees and/or other damages arising from their failure to satisfy said liens, rights or obligations.

Any liens to be asserted by Montgomery County against any members of the class filing claims on the settlement will be asserted against that class member individually. No liens will be served by the County on Class Counsel or the Settlement Administrator.

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

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.

Upon the Effective Date: (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 not initiate, assert, or prosecute any and all Released Claims that were brought or could have been brought as against any Released Party in any federal or state court in the United States or any other tribunal.

Tolling of Statute of Limitations. Defendants agrees 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 unless such defense (i) existed as of July 25, 2014, the date this class action was filed or (ii) arose after a Request for Exclusion was effected pursuant to Section V, or a combination thereof. Any toll of the statute of limitations for a class member that opted out of the Settlement begins to run from the day after that person mails or delivers in person a Request for Exclusion to the Settlement Administrator.

VIII. REPRESENTATIONS, WARRANTIES, AND COVENANTS

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.

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. The execution, delivery and performance by Defendants of this Settlement Agreement and the consummation by them of the actions contemplated hereby have been duly authorized by all necessary corporate action on the part of Defendants. This Settlement Agreement has been duly and validly executed and delivered by Defendants and constitutes their legal, valid, and binding obligation.

IV. MISCELLANEOUS PROVISIONS

This Settlement Agreement, and the exhibits and related documents hereto as well as any payment of moneys, or any other action taken, by the Defendants pursuant to any provision of this Settlement Agreement 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 Judgment as contemplated herein. Defendants and each of them deny any fault or liability to Plaintiffs and to all Members of the Settlement Class. This provision shall survive the expiration or voiding of the Settlement Agreement.

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 Judgment 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.

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

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.

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.

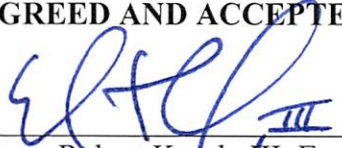
The determination of the terms of, and the drafting of, this Settlement Agreement, including its exhibits, has been by mutual agreement after negotiation, with consideration by and participation of all Parties and their counsel. Since this Settlement Agreement was drafted with the participation of all 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.

The Parties agree that any disputes regarding the terms and conditions of this Settlement Agreement shall be submitted to the Court, who shall attempt to mediate such dispute, and if such

dispute cannot be resolved via mediation, shall decide such dispute. The Court's decision shall be final and binding.

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.

AGREED AND ACCEPTED:



Elmer Robert Keach, III, Esquire
LAW OFFICES OF ELMER ROBERT
KEACH, III, PC
One Pine West Plaza, Suite 109
Albany, NY 12205
Tel: 518.434.1718
bobkeach@keachlawfirm.com

Date: 7/17/2020

AGREED AND ACCEPTED:

Jonathan Bernstein, Esquire
8 Southwoods Boulevard
GOLDBERG SEGALLA
Suite 300
Albany, New York 12211-2364
Tel: 518.935.4240
jbernstein@goldbergsegalla.com

Date: _____

Nicholas A. Migliaccio, Esquire
Jason S. Rathod, Esquire
Ashley M. Pileika, Esquire
MIGLIACCIO & RATHOD LLP
412 H Street N.E., Suite 302
Washington, D.C. 20002
Tel: (202) 470-3520
nmigliaccio@classlawdc.com

Date: _____

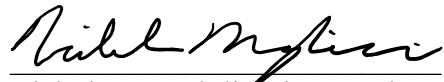
dispute cannot be resolved via mediation, shall decide such dispute. The Court's decision shall be final and binding.

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.

AGREED AND ACCEPTED:

Elmer Robert Keach, III, Esquire
LAW OFFICES OF ELMER ROBERT
KEACH, III, PC
One Pine West Plaza, Suite 109
Albany, NY 12205
Tel: 518.434.1718
bobkeach@keachlawfirm.com

Date: _____



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MIGLIACCIO & RATHOD LLP
412 H Street N.E., Suite 302
Washington, D.C. 20002
Tel: (202) 470-3520
nmigliaccio@classlawdc.com

Date: 7/20/20

AGREED AND ACCEPTED:

Jonathan Bernstein, Esquire
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Albany, New York 12211-2364
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jbernstein@goldbergsegalla.com

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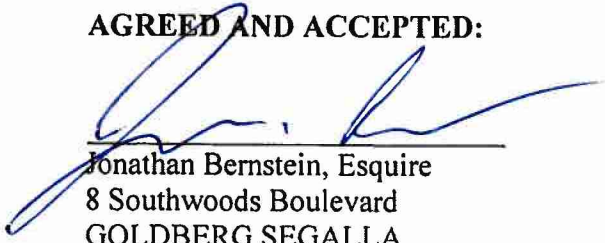
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Date: 7-22-2020

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Ashley M. Pileika, Esquire
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Washington, D.C. 20002
Tel: (202) 470-3520
nmigliaccio@classlawdc.com

Date: _____

EXHIBIT A

PROOF OF CLAIM 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, members of the Settlement Class must fill out the Proof of Claim and Release Form. The form is attached at the end of these instructions. The completed and signed Proof of Claim and Release Form ***must be postmarked by [insert date]. If you fail to send it in on time, it may be rejected, and you will not get any money.***
- 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 are at the end of these instructions.
- C. All Settlement Class Members who do not exclude themselves are bound by the terms of the Litigation judgment. This is true whether you send in a claim form or not.
- D. If you have asked to be excluded, do not submit a Proof of Claim and Release Form.

II. DEFINITIONS

- A. “Settlement Class” are the people in the United States who satisfy ALL the following three conditions:
 - 1. You were held in the Montgomery County Jail (“MCJ”)
 - 2. For at least two consecutive weeks (14 days)
 - 3. During the period from July 25, 2011 until December 31, 2018.
- B. “Defendants” refer to Montgomery County, the Montgomery County Sheriff, and employees of the Montgomery County Sheriff’s Department.
- C. “Litigation” refers to the following case that was filed in the United States District Court for the Northern District of New York: *Hill v. Cty. Of Montgomery*, No. 9:14-cv-00933 (BKS/DJS) (N.D.N.Y.).

III. CLAIM FORM INSTRUCTIONS

- A. Please type or print all the information that is asked for.
- B. By signing this form you are confirming the information you have given is correct. You also agree to give more information to Plaintiffs' Counsel or the Settlement Administrator to support your claim. They may ask you to do this in the future.
- C. By signing this form you confirm that you have not filed a claim or a lawsuit about being denied adequate nutrition at the jail. And 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. **Please read the instructions carefully. You may be asked to send other documents with this Proof of Claim and Release Form.** 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 fill out Part 1 of the Claim Form and the additional Parts of the Claim Form that apply to you.
- F. A claim form will be considered to have been "submitted" to the Settlement Administrator if it is mailed in a first-class envelope that is postmarked by the due date. In all other cases, the form 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 got your form, you should send it by certified mail, return receipt requested. It will take some time to process all the forms and send out the checks. This work will be done as fast as possible, but each claim must be checked for accuracy and recorded. Please write or call the Settlement Administrator if your address changes.
- H. The claim form on the next page must be filled out and signed if you want to get money from the Settlement Fund. You should use the enclosed envelope and send it to the address shown below. You can use your own envelope as long as it is correctly addressed and stamped. The envelope must be postmarked by [Insert Date], for your claim to be considered.

RG/2 Claims Administration LLC
[insert address + 800 number]

IV. CLAIM FORM

Hill v. Cty. Of Montgomery, No. 9:14-cv-00933 (BKS/DJS) (N.D.N.Y.)

PART 1: IDENTIFICATION

Name: _____

Street Address: _____

City: _____ State: _____ Zip Code: _____

Date of Birth: _____

Date(s) of Detention, if known (*please indicate if the date you give is an estimate*):

[If you do not know your date(s) of detention at the MCJ, but believe you are still a Class Member, you should file a claim. We will get your detention records from the County. You may still be asked to provide more information about your detention at the MCJ.]

Social Security Number: _____

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

Telephone: _____

Email: _____

Person to contact if there are questions about this claim:

Next of Kin/Close Friend Name and Contact Number (for locating you later if necessary):

SUBMISSION TO JURISDICTION OF THE COURT AND RELEASE

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. By signing below, you agree to release Defendants Montgomery County, Michael Amato, Michael Franco, and any of their successors in interest, from the claims asserted against Defendants in this litigation, including any claims you have for not allegedly receiving adequate subsistence in the Montgomery County Jail.

By signing below, Defendants, and all of their respective affiliates, predecessors, successors and assigns, along with past, present and future officers, elected officials, agents, representatives, insurers, attorneys, representatives, servants, employees and assigns, Greenwich Insurance Company, AXAXL, Summit Risk Services, Inc., and St. Paul Guardian Insurance Company (collectively Released Parties), are released 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 Parties, or any of them, based upon or related to the actions that are the subject of this Settlement Agreement.

You acknowledge and agree that the payment and acceptance of the settlement sum and execution of this Release are the result of compromise and that the settlement was entered in good faith and shall never for any purpose be considered an admission of liability or responsibility for the allegations alleged in the Litigation. No past or present wrongdoing on the part of the Released Parties shall be implied as a result of the settlement or payment of the settlement sum.

By receiving payment from the settlement proceeds you shall be responsible for satisfying any and all liens whether known or unknown. By receiving payment from the settlement proceeds you agree to hold the Released Parties harmless from any and all liens and other rights and obligations including any responsibility to any health insurer subject to ERISA, Medicare and/or Medicaid, whether known or unknown and to indemnify the Released Parties for all legal fees and/or other damages arising from their failure to satisfy said liens, rights or obligations.

VERIFICATION

I declare under penalty of perjury under the laws of the United States that the information I gave on this form is correct.

I filled out and signed this Proof of Claim and Release Form on _____

2020, in _____ (City, State).

(Sign your name)

(Type or print your name)

EXHIBIT B

Legal Notice
United States District Court for the Northern District of New York

NOTICE OF PROPOSED SETTLEMENT AND HEARING

If you Were Detained At The Montgomery County Jail (“MCJ”) For At Least Two Consecutive Weeks (14 Days) From July 25, 2011 To December 31, 2018, Then Your Rights Could Be Affected By A Proposed Class Action Settlement.

Read This Notice Carefully

The United States District Court for the Northern District of New York Authorized This Notice. It Is Not From A Lawyer. You Are Not Being Sued.

- This is a proposed settlement of a class action alleging individuals detained at the MCJ for at least two consecutive weeks from July 25, 2011 to December 31, 2018 were denied adequate nutrition, in violation of their constitutional rights.
- The primary benefit of the settlement to class members is a payment, determined principally on how long class members spent in the MCJ. Each Class who submits a timely Claim Form will be entitled to receive a minimum payment of \$50 in addition to a *pro rata* share of the Settlement Fund determined by number of days spent in the Montgomery County Jail, capped at 365 days per Claimant. The eligible days may be non-consecutive, but each stay at the MCJ must be at least two weeks, and the aggregate cap of 365 days will remain per Claimant. The *pro rata* distribution schedule will be determined by the Claims Administrator based upon the records provided by Defendant.
- The settlement requires the defendants’ insurance carriers to: (1) establish a Settlement Fund in the amount of \$1,000,000 to pay all costs, expenses, and payments to class members; (2) pay, on behalf of the class, plaintiffs’ attorneys’ fees and litigation costs in an amount to be determined by the Court; (3) pay incentive awards to the class representatives; and (4) pay all of the costs of notifying the class about, and administering all aspects of, this settlement, including distributing payment to members of the class.
- Visit the settlement website at www.montgomerycountyclassaction.net for additional details about the settlement. You may also get additional information by calling X or by writing to:

Montgomery County Jail Civil Rights Class Action Administrator
PO Box

Your legal rights are affected whether you act or you don't act. Read this notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
Submit a Claim Form	You must submit a Claim Form to receive payment under the Settlement. You must submit a Claim Form by [insert date] to receive any money.
Exclude Yourself	If you exclude yourself from the Settlement, you will not be bound by the Settlement or judgment and will not be entitled to a cash payment. You will be free to pursue your claims against the Defendant. This is the only option that allows you to bring or be part of any other lawsuit against the Defendant in this case about the same legal claims that are advanced in this case. You must exclude yourself from the Settlement by [insert date].
Object	If you do not exclude yourself, you may write to the Court about why you do not like the Settlement or the request for legal fees and costs. You must send a written objection to the Court postmarked no later than [insert date].
Go to a Hearing	You may ask to speak in Court about the fairness of the Settlement or the request for fees and costs.
Do Nothing	You get <u>no</u> payment. You give up your right to sue Defendants on these claims later.

- These rights and options – **and the deadlines to exercise them** – are explained in this notice.

- The Court in charge of this case still must decide whether to give final approval to the Settlement. Likewise, payments to class members will be distributed only if the Court grants final approval of the Settlement and after any appeals are resolved.

BASIC INFORMATION

I. WHY DID I GET THIS NOTICE PACKAGE?

You or a member of your family may have been housed for two weeks or more at the Montgomery County Jail between July 25, 2011 and December 31, 2018. Only the person that was confined to the Montgomery County Jail qualifies as a class member.

The Court sent you this notice because you have a right to know about a proposed settlement of a class action, and about your options, before the Court decides whether to approve the settlement. If the Court approves it and after objections and appeals are resolved, an administrator appointed by the Court will make the payments that the settlement allows. You will be informed of the progress of the settlement.

The Court in charge of this case is the United States District Court for the Northern District of New York. United States District Judge Brenda K. Sannes is in charge of this case. The case is known as *Hill et al. v. County of Montgomery et al.*, Case Number 14-cv-00933. The people who are suing are called Plaintiffs, and the municipality they sued, Montgomery County, and officials employed in the County's Sheriff's Department, are called the Defendants. The lawyers that represent the Plaintiff and the Class are called Class Counsel.

II. WHAT IS THIS LAWSUIT ABOUT?

The lawsuit alleges that the Defendants engaged in the policy and practice of providing insufficient food and nutrition to all detainees and prisoners admitted to the Montgomery County Jail between July 25, 2011 to the present who spent two weeks or more housed at the jail. The lawsuit alleges that these practices violate the Constitution and laws of the United States. Defendants deny they did anything wrong. The Defendants further claim that the Class Members are not entitled to any damages.

III. WHY IS THIS A CLASS ACTION?

In a class action, one or more people, called Class Representatives (in this case Perry Hill and James Rogers), sue on behalf of all people who have similar claims. All these people are a Class or Class Members. One Court resolves the issues for all Class Members, except for those who exclude themselves from the Class. United States District Judge Brenda K. Sannes is in charge of this class action.

IV. WHY IS THERE A SETTLEMENT?

The Court did not decide in favor of Plaintiffs or Defendants. Instead, both sides agreed to a Settlement. That way, they avoid the costs and risks of a trial, and the people affected will get compensation. The Class Representatives and their attorneys think the Settlement is best for everyone who was housed at the MCJ for more than two consecutive weeks during the class period.

WHO IS IN THE SETTLEMENT?

V. HOW DO I KNOW IF I AM A MEMBER OF THE CLASS?

District Judge Sannes has decided that everyone who fits the following descriptions of Class Members:

All detainees who have been or will be placed into the custody of the Montgomery County Jail (“MCJ”) and were detained for at least two consecutive weeks. The class period commences on July 24, 2011 and extends to December 31, 2018.

If you fall within the above criteria, you are a member of the class.

VI. HOW DO I KNOW IF I QUALIFY TO BE IN THE CLASS?

Class Counsel understands the sensitivity that many class members have about their time in the Montgomery County Jail. Any contact between class members and Class Counsel is confidential. If you are delivered this notice, Class Counsel has reviewed your records and determined you are a member of the Class.

If you did not receive this notice in the mail, however, you may still be a class member. You may contact Class Counsel or the Settlement Administrator to confirm your membership in the class. For more information, you can also visit the website, www.montgomerycountyclassaction.net, or you can just fill out the Claim Form and return it to the Settlement Administrator to see if you qualify.

THE SETTLEMENT BENEFITS – WHAT YOU GET

VII. WHAT DOES THE SETTLEMENT PROVIDE?

Defendants’ insurance carriers have agreed to provide a settlement fund amount of \$1,000,000 to compensate Class Members who plaintiffs allege were denied adequate nutrition while housed at the Montgomery County Jail for at least two consecutive weeks during the class period. Defendants’ insurance carriers have also agreed to pay for attorneys’ fees and expenses, up to a maximum of \$300,000, and provide each class representative a service award of \$10,000 for stepping forward and representing the Class. The Defendants’ insurance carriers have also agreed to pay an additional \$500.00 from the fund to each individual who was required to participate in a deposition, provided they file a claim on the settlement.

Defendants' insurance carriers have also agreed to pay all the expenses of notifying the class about, and administering all aspects of, this Settlement, and delivering payments to class members. Attorneys' fees, administration costs and incentive awards are taken out of the settlement fund amount. A complete description of the settlement is provided in the Settlement Agreement and Release. You can get a copy of the Settlement Agreement and Release by visiting www.montgomerycountyclassaction.net.

VIII. WHAT CAN I GET FROM THE SETTLEMENT?

The benefits you will receive from the Settlement depend on the amount of time you were housed in the Montgomery County Jail. The Settlement Fund will be distributed to Class Members on a pro rata basis. Each Class who submits a timely Claim Form will be entitled to receive \$50 in addition to a pro rata share of the Settlement Fund determined by number of days spent in the Montgomery County Jail, capped at 365 days per Claimant. The eligible days may be non-consecutive, but each stay at the MCJ must exceed two weeks, and the aggregate cap of 365 days will remain per Claimant. The pro rata distribution schedule will be determined by the Claims Administrator based upon the records provided by Defendant.

IX. WHAT IF I WAS ADMITTED TO THE MONTGOMERY COUNTY JAIL ON MORE THAN ONE OCCASION?

Individuals who were admitted to the Montgomery County Jail on more than one occasion during the class period can recover money for each period that spans at least two consecutive weeks. However, the maximum amount of time each Class Member is entitled to recover for is capped at 365 days. This means that Class Members will receive a pro rata payment based on time period(s) he or she was housed at the Montgomery County Jail for at least two weeks (14 days), for up to 365 days. In other words, even if you were housed at the Montgomery County Jail for more than 365 days, the payment you receive will be capped at 365 days.

For example, if a class member was admitted to the Montgomery County Jail on two occasions for fourteen consecutive days during the class period, they would receive a payment of \$50.00 plus their proportionate share of the settlement fund for 28 days. If a class member was admitted to the Montgomery County Jail on one occasion for 100 days, they would receive a payment of \$50.00 plus their proportionate share of the settlement fund for 100 days. If someone was admitted to the Montgomery County Jail for ten days on five occasions, they would not be a class member because they had not spent 14 consecutive days in the Montgomery County Jail.

X. WHAT IF I SPENT MORE THAN 365 DAYS HOUSED IN THE MONTGOMERY COUNTY JAIL DURING THE CLASS PERIOD?

No Class Member shall be entitled to more than his or her individual share of the Settlement Fund regardless of the number of days he or she spent in the Montgomery County Jail in excess of 365 days. Any uncashed checks will escheat to the New York Fund for Client Protection, after an appropriate application is made in Court.

XI. DOES IT MATTER WHAT CRIMINAL CHARGES I WAS HELD UNDER AT THE MONTGOMERY COUNTY JAIL?

No. Anyone who was admitted to the Montgomery County Jail for fourteen consecutive days or more is eligible to participate in the settlement. Individuals charged and/or convicted felonies, misdemeanors, federal crimes, family court violations, violations of probation and parole, failure to pay fines, or for any reason, are members of the class.

HOW YOU GET A PAYMENT – SUBMITTING A CLAIM FORM

XII. HOW CAN I GET A PAYMENT?

To qualify for a payment, you MUST send in a Claim Form. A Claim Form is attached to this Notice. You can also get a claim form online at www.montgomerycountyclassaction.net. Read the instructions carefully, fill out the form, sign it, and mail it postmarked no later than [insert date].

You may be asked for additional documents, and will be contacted in writing. You may want to send in your claim form by Certified Mail, Return Receipt Requested, to ensure that it is received by the Settlement Administrator.

XIII. WHEN WOULD I GET MY PAYMENT?

The Court will hold a hearing on [insert date] to decide whether to approve the Settlement. If Judge Sannes approves the Settlement, there may be appeals. It is always uncertain whether those appeals can be resolved, and resolving them can take time, perhaps more than a year. Everyone who sends in a Claim Form will be informed of the progress of the Settlement. Please be patient.

XIV. WHAT AM I GIVING UP TO GET A PAYMENT OR STAY IN THE CLASS?

Unless you exclude yourself, you are staying in the Class, and that means you cannot sue, continue to sue, or be part of any other lawsuit against Montgomery County, former Sheriff Michael Amato and former Jail Administrator Michael Franco, or any other Montgomery County employees about the legal issues in this case. It also means that all of the Court's orders will apply to you and legally bind you. If you sign the claim form, you will agree to release all claims that you have related to being denied adequate nutrition while housed at the Montgomery County Jail during the class period.

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you do not want a payment from this settlement, but you want to keep the right to sue or continue to sue Montgomery County, on your own, about the legal issues in this case, then you must take steps to get out of the settlement. This is called excluding yourself – or is sometimes referred to as “opting out” of the Settlement Class.

XV. HOW DO I GET OUT OF THIS SETTLEMENT?

To exclude yourself from the settlement, you must send a letter by mail saying that you want to be excluded from Hill et al. v. County of Montgomery et al., Case Number 14-cv-00933. Be sure to include your name, address, telephone number, email address, and your signature. You must mail your exclusion request postmarked no later than [insert date] to:

Montgomery County Jail Exclusions
c/o Class Counsel
Law Offices of Elmer Robert Keach, III, PC
One Pine West Plaza, Suite 109
Albany, NY 12205

You can't exclude yourself on the phone or by e-mail. If you ask to be excluded, you will not get any settlement payment, and you cannot object to the settlement. You will not be legally bound by anything that happens in this lawsuit. You may be able to sue (or continue to sue) Montgomery County in the future.

XVI. IF I DO NOT EXCLUDE MYSELF, CAN I SUE MONTGOMERY COUNTY FOR THE SAME THING LATER?

No. Unless you exclude yourself, you give up the right to sue Montgomery County for the claims that this settlement resolves. If you have a pending lawsuit, speak to your lawyer in that lawsuit immediately. You must exclude yourself from this Class to continue your own lawsuit. Remember, the exclusion deadline is [insert date].

XVII. IF I EXCLUDE MYSELF, CAN I GET MONEY FROM THIS SETTLEMENT?

No. If you exclude yourself, do not send in a claim form to ask for money. But, you may sue, continue to sue, or be part of a different lawsuit against Montgomery County.

THE LAWYERS REPRESENTING YOU

XVIII. WHO ARE THE LAWYERS IN THIS CASE?

The Court approved Elmer Robert Keach, III, Esquire and Maria K. Dyson, Esquire, Law Offices of Elmer Robert Keach, III, PC, Albany, New York; Nicholas A. Migliaccio and Jason S. Rathod of Migliaccio & Rathod LLP, Washington, D.C., to represent you and other Class Members. Together, the lawyers are called Class Counsel. You will not be charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

XIX. HOW WILL THE LAWYERS AND CLASS REPRESENTATIVES BE PAID?

Class Counsel will ask the Court for attorneys' fees and expenses as a percentage of the settlement, and a payment of \$10000 each for Class Representatives Perry Hill and James Rogers. Class Counsel also seeks the payment of a \$500 incentive award for class members who were deposed in the lawsuit, provided they file a claim. The Settlement Agreement provides that thirty percent of the Settlement Fund will be paid to Class Counsel as an award of attorneys' fees, together with an award for the reimbursement of expenses. These amounts will be deducted from the Settlement Fund before payments are made to Class Members. The costs of administering the Settlement, which are estimated at \$X, will also be deducted from the Settlement Fund.

OBJECTING TO THE SETTLEMENT

You can tell the Court that you do not agree with the Settlement or some part of it.

XX. HOW DO I TELL THE COURT THAT I DO NOT LIKE THE SETTLEMENT?

If you are a Class Member, you can object to the Settlement if you don't like any part of it. You can give objections why you think the Court should not approve it. The Court will consider your views. To object, you must send a letter saying that you object to Hill et al. v. County of Montgomery et al., Case Number 14-cv-00933. Be sure to include your name, address, telephone number, your signature, and the reasons why you object to this Settlement and the case number (014-cv-00933). Mail the objection to these three different places postmarked no later than [insert date].

COURT

Clerk of the Court
United States District Court For the Northern District of New York
James M. Hanley Federal building & U.S. Courthouse
100 S. Clinton Street
Syracuse, NY 13261

CLASS COUNSEL

Elmer R. Keach, Esq.
Law Offices of Elmer Robert Keach, III, PC
One Pine West Plaza, Suite 109
Albany, NY 12205

DEFENSE COUNSEL

Jonathan M. Bernstein, Esq.
Goldberg Segalla
8 Southwoods Boulevard, Suite 300
Albany, NY 12211-2364

XXI. WHAT IS THE DIFFERENCE BETWEEN OBJECTING AND EXCLUDING MYSELF?

Objecting is simply telling the Court that you do not like something about the Settlement. You can object only if you stay in the Class. Excluding yourself is telling the Court that you do not want to be a part of the Class. If you exclude yourself, you have no basis to object because the case no longer legally affects you.

THE COURT'S FAIRNESS HEARING

The Court will hold a hearing to decide whether to approve the Settlement. You may attend and you may ask to speak, but you do not have to do so.

XXII. WHEN AND WHERE WILL THE COURT DECIDE WHETHER TO APPROVE THE SETTLEMENT?

On [insert date] the U.S. District Court for the Northern District of New York will hold a fairness hearing in the James M. Hanley Federal building & U.S. Courthouse located at 100 S. Clinton Street in Syracuse, NY to determine whether the Class was properly certified and whether the proposed Settlement is fair, adequate, and reasonable. The Court will listen to people who have asked to speak at the hearing. The Court may also decide how much to pay Class Counsel. This hearing may be continued or rescheduled by the Court without further notice. We do not know how long it will take the Court to give its decision.

XXIII. DO I HAVE TO COME TO THE HEARING?

No. Class Counsel will answer questions the District Court may have about the settlement. But you are welcome to come at your own expense. If you send an objection, you do not have to come to Court to talk about it. As long as you mailed your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not required.

XXIV. MAY I SPEAK AT THE HEARING?

You may ask the Court for permission to speak at the Fairness Hearing. To do so, you must send a letter saying that it is your "Notice of Intention to Appear in *Hill et al. v. County of Montgomery et al.*, Case Number 14-cv-00933." Be sure to include your name, address, telephone number and your signature and the case number (14-cv-00933). Your Notice of Intention to Appear must be postmarked no later than [insert date] and be sent to the Clerk of the Court, Class Counsel, and Defense Counsel, at the three addresses in question XX. You cannot speak at this hearing if you excluded yourself.

IF YOU DO NOTHING

XXV. WHAT HAPPENS IF I DO NOTHING AT ALL?

If you do nothing, you will get no money from the Settlement. But, unless you exclude yourself, you will not be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against Montgomery County about the legal issues in this case, ever again. Unless you exclude yourself, you need to file a claim to receive a monetary payment under the Settlement.

GETTING MORE INFORMATION

XXVI. ARE THERE MORE DETAILS ABOUT THE SETTLEMENT?

This Notice summarizes the proposed Settlement. More details are in a Settlement Agreement. You can get a copy of the Settlement Agreement by contacting Class Counsel or the Settlement Administrator or by visiting www.montgomerycountyclassaction.net, where you will also find answers to common questions about the Settlement, a Claim Form, plus other information to help you determine whether you are a Class Member and whether you are eligible for payment.

EXHIBIT C

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

PERRY HILL and JAMES ROGERS,
both individually and on Behalf of
a Class of others similarly situated,

- v -

MONTGOMERY COUNTY, *et. al.*,

Defendants.

Civil Action No. 9:14-cv-933 (BKS/DJS)

ORDER GRANTING FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND
JUDGMENT

THIS CASE coming for hearing before the Honorable Brenda K. Sannes on _____, 2020, 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 Defendant being represented by its attorneys;

AND THE COURT having read and considered the Settlement Agreement, the Notice Plan, the Memorandum of Law submitted by Class Counsel and the Certification of Elmer Robert Keach, III, one of the Class Counsel, in support of the Settlement, having received evidence at the hearing, having heard arguments from Class Counsel and the Defendant, and having considered all matters heretofore had in this case, now makes the following findings:

FINDINGS OF FACT

1. The action was commenced on July 25, 2014 as a class action.
2. After over six years of litigation, including extensive discovery, dispositive and class certification motion practice and intensive negotiations between Class Counsel and Defendant, including during a lengthy settlement conference before United States Magistrate Judge Daniel J. Stewart, 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 Defendant (“Settlement Agreement”). The resulting Settlement Agreement was preliminarily approved by the Court on July __, 2020.
3. As part of the Order Granting Preliminary Approval, this Court approved a proposed Notice Plan and Class Notice, which provided Class Members notice of the proposed settlement. The Notice Plan provided an opportunity for Class Members to file objections to the Settlement, and an opportunity to opt-out of the Settlement.
4. As of the deadline for the filing of objections, ___ objections were filed. Given the size of this Settlement, and the Notice Plan described above, this Court finds that the lack of objections is indicative of the fairness, reasonableness, and adequacy of the Settlement with the Defendants.
5. Class counsel has filed with the Court an affidavit from the Settlement Administrator declaring that the mailing of the Court-approved notice, consistent with the Notice Plan, has been completed. Additionally, Class Counsel has evidenced the establishment of the Court-approved settlement website and publication of notice in the news media, which class counsel paid for themselves to facilitate additional notice efforts.

6. The Court finds that the Notice Plan, as effectuated, constituted 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 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 other applicable law.

7. Any persons who wished to be excluded from this action were provided an opportunity to "opt-out" pursuant to the Notice. ____ individuals opted out of the settlement.

8. Settlement Class Members are bound by the: Settlement, Settlement Agreement, released contained within the Settlement Agreement, and the Final Order and Judgment. Settlement Class Members do not have a further opportunity to opt-out of this Action.

9. Any Class Members who do not timely file and serve an objection in writing to the Settlement Agreement to the entry of Final Order and Judgment, 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 the Order Granting Preliminary Approval of Settlement, is deemed to have waived any such objection by appeal, collateral attack, or otherwise. No individuals filed an objection.

10. On the basis of all 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 Defendants 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:

- a. The liability issues in this case have been vigorously contested.

- b. This Settlement has the benefit of providing relief to Class Members now, without further litigation, under circumstances where the liability issues are still vigorously contested among the parties to this litigation and among the parties to individual litigation. This Settlement provides Class Members with a substantial monetary benefit.
- c. This Settlement is clearly a product 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.

11. 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 MAKE THE FOLLOWING CONCLUSIONS OF LAW:**

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

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

All detainees who have been or will be placed into the custody of the Montgomery County Jail and were detained for at least two consecutive weeks. The class period commences on July 25, 2011, and extends until December 31, 2018. Specifically excluded from the class are Defendant and any and all of its respective affiliates, legal representatives, heirs, successors, employees or assignees.

14. 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.

15. The Settlement Class Representatives, Perry Hill and James Rogers, are entitled to and are hereby awarded a payment of \$ 10,000 each, in recognition of the efforts they undertook in connection with this lawsuit.

16. All members of the Class who appeared for a deposition and filed a claim on the settlement, including ____, are awarded a payment of \$ 500.00 in addition to their pro rata share of the settlement fund in recognition of the efforts they undertook in connection with this lawsuit.

17. All Class Members who have made claims on the settlement are entitled to receive their Settlement payment after administrative expenses, attorneys' fees and expenses, and incentive awarded are deducted from the Settlement fund.

18. Class Counsel are qualified, experienced, and have aggressively litigated this case thereby demonstrating their adequacy as counsel for the Settlement Class. Elmer Robert Keach, III and Maria K. Dyson, of the Law Offices of Elmer Robert Keach, III, PC, Albany, New York; and Nicholas Migliaccio and Ashley Pileika, of Migliaccio & Rathod, LLP, are hereby appointed as Counsel for the Settlement Class. Class Counsel submitted to the Court and served on the Defendant 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. The Court finds that final approval of attorneys' fees and expenses in the amount of ____ is warranted as demonstrated by the Certification of Elmer Robert Keach, III.

19. The Court finds that the payment of the incurred and anticipated expenses of the Settlement Administrator as set forth in the Certification of Elmer Robert Keach, III, is reasonable and justified.

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.

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

1. The motion for Final Approval of the Proposed Settlement is GRANTED.
2. The Class Representatives, Perry Hill and James Rogers, are entitled to and is hereby awarded a payment of \$ 10,000.00, subject to the terms of the Settlement, in recognition of the efforts they undertook in connection with this lawsuit.
3. All members of the Class who appeared for a deposition, including ____, are entitled to and are hereby awarded a payment of \$ 500.00 in recognition of the efforts they undertook in connection with this lawsuit.
4. All Class Members who have made claims on the settlement are entitled to receive their share of the Settlement Fund after administrative expenses, attorneys' fees and expenses, and the incentive awards are deducted from the fund.
5. The Class Counsels' application for attorneys' fees and expenses is granted in the amount of \$ ____, and the Settlement Administrator is ordered upon Final Approval to pay such amounts to Elmer Robert Keach, III, PC for disbursement to the Class Counsels' Law firms.

6. The costs and expenses incurred to date or hereafter incurred for finalization of the Settlement by the Settlement Administrator, but not to exceed \$_____ without leave of Court and subject to approval by Class Counsel and Defendant, are granted for payment and the Settlement Administrator can disburse to itself from the Settlement funds such funds, upon approval by Class Counsel and Defendant.

7. 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 Class Members, to interpret and enforce the terms, conditions and obligations of this Settlement Agreement.

8. 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 himself or herself shall be enjoined from initiating and/or proceeding as a class action in any forum.

9. The Defendants are hereby released from any and all claims asserted in this action or could have been asserted in this action by each and every member of the settlement class, regardless of whether or not they have filed a claim. The Defendants are not released from any claims that can be asserted by individuals who opt out of the settlement, or who have opted out previously. Defendants have not waived any rights or defenses by entering into the settlement as against those individuals that have opted out.

IT IS SO ORDERED.

Dated: _____

The Honorable Brenda K. Sannes
United States Magistrate Judge

EXHIBIT D

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

PERRY HILL and JAMES RODGERS,
on behalf of a Certified Class of Other
Similarly Situated Plaintiffs,

Plaintiffs,

v.

THE COUNTY OF MONTGOMERY,
et. al.,

Defendants.

No: 9:14-CV-0933 (BKS/DJS)

PROPOSED ORDER FOR PRELIMINARY APPROVAL OF SETTLEMENT

WHEREAS, MONTGOMERY COUNTY, FORMER SHERIFF MICHAEL AMATO
AND FORMER JAIL ADMINISTRATOR MICHAEL FRANCO and Plaintiffs have entered
into a Settlement Agreement intended to resolve the litigation pending in this Court;

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

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;

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:

Preliminary Approval of Settlement and Conditional Certification of the Settlement Class

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 Settlement Agreement are hereby preliminarily approved, subject to further consideration thereof at the Fairness 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 hereby conditionally certifies the following settlement class:

All persons who have been placed into the custody of the Montgomery County Jail and were detained for at least two consecutive weeks from July 25, 2011 to December 31, 2018.

4. The Court further finds that the Plaintiffs are adequate class representatives for the Settlement Class.

5. The Court further finds that Plaintiffs' Counsel are adequate Class Counsel, and the Court has found Class Counsel adequate when initially certifying this case as a class action.

6. 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 Settlement Agreement.

7. If the Settlement Agreement is terminated or is not consummated for any reason whatsoever, the conditional certification of the Settlement Class shall be void, the Defendants shall have reserved all their rights to oppose any and all class certification motions, to contest the adequacy of Plaintiffs as representatives of any putative class, and to contest the adequacy of Class Counsel as adequate Class Counsel. Additionally, Plaintiffs have reserved all of their rights, including their right to continue with any appeals pending at the time of the settlement.

Notice to Settlement Class Members and Appointment of Settlement Administrator

8. Counsel for the Class (“Class Counsel”) are as follows:

Elmer Robert Keach, III, Esquire
Maria K. Dyson, Esquire
LAW OFFICES OF ELMER ROBERT KEACH, III, PC
One Pine West Plaza, Suite 109
Albany, NY 12205

Nicholas A. Migliaccio, Esquire
Jason S. Rathod, Esquire
Ashley M. Pileika, Esquire
MIGLIACCIO & RATHOD LLP
412 H Street N.E., Suite 302
Washington, DC 20002

9. Beginning no later than [insert date], 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 the Settlement Agreement. Notice will be disseminated expeditiously pursuant to the terms of the Settlement Agreement. Class members will have Sixty days (60) from the Notice Date to opt out and One-Hundred Twenty days (120) from the Notice Date to file claims. Prior to the Fairness Hearing, Plaintiffs and/or the Claims Administrator shall serve and file a sworn statement attesting to compliance with the provisions of this paragraph.

10. The notice to be provided as set forth in the Settlement Agreement is hereby found to be the best means practicable of providing notice under the circumstances

and, when completed, shall constitute due and sufficient notice of the proposed settlement and the Fairness 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.

11. Class Counsel are authorized to retain RG/2 Claims Administration LLC as a Claims Administrator in accordance with the terms of the Settlement Agreement and this Order.

Requests for Exclusion from the Settlement Class

12. 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.

13. 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, including but not limited to the releases, waivers and covenants described in 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 created pursuant to the Settlement Agreement.

The Fairness Hearing

14. A hearing on final settlement approval (the “Fairness Hearing”) is hereby scheduled to be held before this Court on no later than one hundred fifteen (135) days from the Notice Date, to consider the fairness, reasonableness, and adequacy of the proposed settlement, the dismissal with prejudice of these Class Actions with respect to the Released Parties that are Defendants therein, and the entry of final judgment in the Class Action. Class Counsel's application for award of attorneys' fees and costs shall be heard at the time of the fairness hearing.

15. 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.

16. 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.

17. 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 the Final Order and Judgment approving the settlement, and Class Counsel's application for fees and expenses by filing and serving a written objection.

18. 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.

19. 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
United States District Court For the Northern District of New York
James M. Hanley Federal building & U.S. Courthouse
100 S. Clinton Street
Syracuse, NY 13261

20. Objections, along with any notices of intent to appear, must also be mailed to Class Counsel and counsel for Defendant at the addresses listed below:

Elmer R. Keach, Esq.
Law Offices of Elmer Robert Keach, III, PC
One Pine West Plaza, Suite 109
Albany, NY 12205

Jonathan M. Bernstein, Esq.
Goldberg Segalla
8 Southwoods Boulevard, Suite 300
Albany, NY 12211-2364

21. 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 Final Order and Judgment,

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 the Order, shall be deemed to have waived any such objection by appeal, collateral attack, or otherwise.

22. 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.

23. 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.

Other Provisions

24. Upon approval of the settlement provided for in this Settlement Agreement, each and every time 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.

25. 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.

27. Counsel for the parties are authorized to jointly use all reasonable procedures in connection with approval and administration of the settlement that are not materially inconsistent with this Order or the Settlement Agreement, including making without further approval of the Court minor changes to the form or content of the Notice, and other exhibits that they jointly agree are reasonable and necessary.

IT IS SO ORDERED.

Dated: _____

The Honorable Brenda K. Sannes
United States District Judge

EXHIBIT E

IF YOU WERE ADMITTED INTO THE CUSTODY OF THE MONTGOMERY COUNTY JAIL FOR MORE THAN FOURTEEN CONSECUTIVE DAYS BETWEEN JULY 25, 2011 TO DECEMBER 31, 2018, YOU MAY BE PART OF A \$1,000,000 CLASS-ACTION SETTLEMENT AND ELIGIBLE TO SUBMIT A CLAIM.

A settlement valued at \$1,000,000 has been proposed in a class action lawsuit about the alleged failure to provide inmates with proper sustenance at the Montgomery County Jail (“MCJ”) in Fultonville, New York. If you meet the criteria explained below, you can share in the settlement.

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 to the Montgomery County Jail for a period of fourteen consecutive days or more, from July 25, 2011 until December 31, 2018.

WHAT IS THIS ABOUT?

Plaintiffs claim in this lawsuit that individuals admitted to the Montgomery County Jail from July 25, 2011 until December 31, 2018 were not provided with sufficient food during their detention, in violation of the United States Constitution. Montgomery County, former Sheriff Michael Amato and former Jail Administrator Michael Franco have denied these claims. The Court did not decide which side was right, but both sides agreed to the settlement to ensure a resolution and to provide benefits to the people who were affected.

WHAT DOES THE SETTLEMENT PROVIDE?

The settlement requires Montgomery County’s insurance carriers to pay \$1,000,000 into a settlement fund. The settlement will provide payments to individuals who were admitted to the custody of the Montgomery County Jail for a period of fourteen consecutive days or more, from July 25, 2011 until December 31, 2018. All members of the class will receive a payment of \$50.00, plus a proportionate payment from the fund for all days spent in the Montgomery County Jail on any qualifying detention of fourteen days or more, with a maximum of 365 days in detention being credited towards this proportionate payment. Attorneys’ fees, administrative expenses, service awards for the class representatives and the \$50.00 payments to class members will be paid from the settlement fund before the proportionate payment to class members is determined.

HOW DO YOU ASK FOR A PAYMENT?

A detailed Notice and Claim form package contains everything you need. Just call 1-800-xxx-xxxx or visit the settlement website, www.montgomerycountyclassaction.net, to get one. To qualify for a payment, you must send in a claim form. **Claim forms are due by [insert date], 2020.**

If you want to share in the settlement, all you need to do will be to obtain a Claim Form, as just explained, and return it according to its directions. If you do not want the settlement benefits or do not want to be legally bound by the settlement, you must exclude yourself by **[insert date], 2020.** If you exclude yourself, you cannot get any benefits from this settlement, but you could bring a separate case against the defendants if you want to do so. If you stay in the settlement, you may object to it by **[insert date], 2020.** 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, *Hill & Rodgers v. County of Montgomery*, No. 9:14-CV-0933 (BKS/DJS) on _____, 2020 to consider whether to approve the settlement and the request for attorneys' fees and expenses by class counsel, the request for service awards to class representatives and members of the class who were subject to a legal examination, and administrative expenses associated with the settlement. The class is represented by Elmer Robert Keach, III and Maria Dyson, Law Offices of Elmer Robert Keach, III, PC, Albany, New York and Nicholas Migliaccio and Ashley Pileika from Migliaccio and Rathod, LLP, Washington, DC. You may ask to appear at the hearing, but you do not have to do so. For more information, call toll free 1-800-xxx-xxxx, visit the settlement website, www.montgomerycountyclassaction.net, or write to MCJ Settlement, P. O. Box X, Somewhere, State, 000000.