

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA**

NAKISHA BOONE and GEORGE BYRD,
on behalf of themselves and a proposed
class of others similarly situated,

Plaintiffs,

v.

THE CITY OF PHILADELPHIA,

Defendant.

No. 05-CV-1851

SETTLEMENT AGREEMENT

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

WHEREAS, Plaintiffs filed the above-captioned class action lawsuit against the Defendants the City of Philadelphia, Philadelphia Prison System, Leon King II, Esquire, Charles J. Grant, Esquire, Paul Lancaster Adams, Lisette Shirdan-Harris, Esquire, Wesley Pinnock, Esquire, Elanor M. Kahanna, Reginald Hammond, Josh Murphy, and Robert Tomaszewski alleging that Defendants had violated Plaintiffs' constitutional rights under color of state law by illegally strip searching them in the absence of reasonable suspicion and others similarly situated upon entry into the Philadelphia Prison System after being charged with minor offenses.

WHEREAS, the Defendants other than the City of Philadelphia subsequently were dismissed, by stipulation.

WHEREAS, Plaintiffs further allege that, in violation of law and pursuant to the policy of the City of Philadelphia, all persons such as Plaintiffs and the members of the class they purport to represent, were placed into the custody of the Philadelphia Prison System after being charged with misdemeanors, summary offenses, violations of misdemeanor probation, traffic infractions, civil commitments, or other minor crimes, and were strip searched in the absence of reasonable

suspicion upon their entry into the Philadelphia Prison System pursuant to the policy, custom and practice of the City of Philadelphia.

WHEREAS, the City of Philadelphia, subsequent to the filing of this action, took substantial remedial steps to address the claims raised in this Litigation on or about October 9, 2007;

WHEREAS, the City of Philadelphia has denied and continues to deny Plaintiffs' claims, and Defendant denies 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, the City of Philadelphia 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 the City of Philadelphia, as well as all employees of the City of Philadelphia 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 mediation conducted by United States Magistrate Judge Elizabeth T. Hey and former United States Magistrate Judge James K. Melinson, 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 the City of Philadelphia and Plaintiffs Nakisha Boone, and George Byrd individually and on behalf of a class (the "Class") of similarly situated persons (the "Class Members") defined as:

"All persons who were placed into the custody of the Philadelphia Prison System after being charged with misdemeanors; summary offenses; traffic infractions; civil commitments; or other minor crimes; or bench warrants and/or probation violations where the underlying charge was a misdemeanor, summary offense or other minor crime; and who were strip searched in the absence of reasonable suspicion upon their entry into the Philadelphia Prison System pursuant to the policy, custom and practice of the Philadelphia Prison System and the City of Philadelphia. The class period commences on April 21, 2003 and extends to, and includes, October 9, 2007."

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: Levin, Fishbein, Sedran & Berman, Philadelphia; The Mason Law Firm, LLP, Washington, DC; The Law Offices of Elmer Robert Keach, III, PC, Amsterdam, New York; and Cuneo Gilbert & LaDuca, LLP, Washington, DC.

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 Nakisha Boone and George Byrd.

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 Eastern District of Pennsylvania, The Honorable Mary A. McLaughlin presiding, or her duly appointed or designated successor.

H. Defendant. “Defendant” shall mean the City of Philadelphia and the Philadelphia Prison System, and shall include all employees of the City of Philadelphia who may have devised, promulgated or enforced the policy or participated in the conduct that is the subject of this Settlement Agreement.

I. Defendant’s Counsel. “Defendant’s Counsel” shall mean Craig M. Straw, Chief Deputy City Solicitor, Civil Rights Unit, City of Philadelphia Law Department, Philadelphia, PA.

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 sixty 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 Eastern District of Pennsylvania as No. 05-CV-1851.

P. Mediator. The “Mediator” shall mean The Honorable James R. Melinson, former United States Magistrate Judge of the United States District Court for the Eastern District of Pennsylvania.

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 the date agreed upon by the Parties or 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 the date agreed upon by the Parties or 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.

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

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

X. Plaintiffs. “Plaintiffs” shall mean Nakisha Boone and George Byrd.

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 Defendant 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 the Defendant shall have any responsibility for any acts or omissions of the Settlement Administrator. The Parties have agreed to select RSM McGladrey, Inc. as the Settlement Administrator.

FF. Settlement Agreement. "Settlement Agreement" shall mean this Settlement Agreement, including any amendment hereto pursuant to Section X.D hereof, and all the exhibits attached hereto.

GG. Settlement Class. "Settlement Class" shall mean:

All persons who were placed into the custody of the Philadelphia Prison System after being charged with misdemeanors; summary offenses; traffic infractions; civil commitments; or other minor crimes; or bench warrants and/or probation violations where the underlying charge was a misdemeanor, summary offense or other minor crime; and who were strip searched in the absence of reasonable suspicion upon their entry into the Philadelphia Prison System pursuant to the policy, custom and practice of the Philadelphia Prison System and the City of Philadelphia. The class period commences on April 21, 2003 and extends to, and includes, October 9, 2007.

HH. Settlement Subclasses. The Settlement Class shall include the following two subclasses:

Subclass I:

All persons in the Settlement Class, EXCEPT for persons who (1) were charged with certain violence, drug and/or weapons (hereinafter "VDW") related misdemeanor charges as defined and mutually agreed upon by the Parties at the time of their admission, or (2) were charged with bench warrants and/or probation violations where the underlying charge was a VDW misdemeanor charge, or (3) had convictions for felonies and/or VDW misdemeanor charges predating the date of their admission.

Subclass II:

All persons in the Settlement Class who were (1) charged with VDW misdemeanor charges at the time of their admission, or (2) were charged with bench warrants and/or probation violations where the underlying charge was a VDW misdemeanor charge, or (3) had convictions for felonies and/or VDW misdemeanor charges predating the date of their admission.

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

JJ. Settlement Fund. “Settlement Fund” shall mean a fund or funds, governed by terms to be agreed to between Class Counsel and Defendant’s Counsel which shall be earmarked specifically for this case and remain in the City of Philadelphia Law Department’s General Indemnities Fund until such time as to be utilized to administer the monetary requirements of the Settlement. Defendant 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. Defendant will not allow the General Indemnities Fund to ever have less money in it than enough to cover the entire cost of this Settlement.

KK. Settlement Amount. “Settlement Amount” shall mean the amount of Five Million Nine Hundred Thousand Dollars (\$5,900,000.00) to be paid by or on behalf of the Defendant.

LL. Settlement Website. “Settlement Website” means a website established by the Website Administrator to provide information about the Settlement with a World Wide Web address of www.philadelphiastripsearch.com or, if unavailable, a mutually agreed upon address.

MM. Strip Search Policy. “Strip Search Policy” shall mean the written policy, to govern the conduct of all strip searches by Defendant, their agents, and employees upon a person’s entry into the Philadelphia Prison System in place as of and after October 9, 2007.

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

OO. Website Administrator: “Website Administrator” shall mean the qualified party selected by the Parties and designated in the Preliminary Approval Order to administer the Settlement Website. Neither Plaintiffs nor any other of the Defendant shall have any

responsibility for any acts or omissions of the Website Administrator. The Parties have agreed to select RSM McGladrey, Inc. as the Website Administrator.

II. REQUIRED EVENTS

Promptly after execution of this Settlement Agreement by all Parties:

1. Class Counsel and Defendant's 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 Defendant's 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 Defendant's 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 Defendant be required to agree to any such cure that would increase the cost or burden of the Settlement Agreement to the Defendant.

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 Mary A. McLaughlin or her designated representative and her decision shall be binding on the Parties.

III. SETTLEMENT TERMS

A. Provision of New Policies and Corrections Officer Training

1. The Defendant affirmatively states that, effective October 9, 2007, the City of Philadelphia stopped strip searching detainees admitted to the Philadelphia Prison System on a blanket basis, and also stopped strip searching misdemeanor detainees in the absence of reasonable suspicion. The City of Philadelphia acknowledges that its change in practice was due in part to the institution of this Litigation by Plaintiffs and proposed Class Counsel.

2. The Defendant maintains that their current written policy is constitutional, and has been reviewed by the City of Philadelphia Law Department for compliance with state and federal law.

3. The Philadelphia Prison System Policies and Procedures Manual will include a copy of the Strip Search Policy.

4. All correction officers have access to policies and are trained on search policy. Defendant will post the Strip Search Policy in the Intake Area of the Philadelphia Prison System.

5. Current and new corrections officers who work in the PPS Admissions unit have been, and will continue to be, trained regarding the Strip Search Policy and when strip searches may and may not be performed.

6. Defendant will take reasonable steps to ensure that all corrections officers abide by the Strip Search Policy.

B. Settlement Fund

1. Upon entry of the Preliminary Approval Order, the City of Philadelphia will make available an amount from the Settlement Fund, not to exceed the sum of \$330,000, to be used by the Settlement Administrator to cover the costs of Notice and administration of the Settlement. Any unused portion of the \$330,000 by the Settlement Administrator will revert to the City of Philadelphia. If, at any time, whether by order of any court or because the Defendant is exercising any option to withdraw, the Settlement does not become final, then any unspent money remaining from this sum shall be returned to the City of Philadelphia with no obligation on the part of any party to repay any portion of the money actually spent.

2. Within five (5) days of the Effective Date, the City of Philadelphia shall provide Plaintiffs with documentation verifying that \$5,570,000 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.

3. 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."

C. Payments to Class Members

1. The Settlement Fund will be divided into two amounts of money to compensate members of each subclass.
2. Subclass I will receive \$5,170,000 of the Settlement Fund minus a proportionate share of attorneys' fees, expenses and administrative costs. Each Class Member within Subclass I who submits a timely Claim Form will be entitled to receive a pro rata share of that Settlement Fund except no Class Member within Subclass I shall receive in excess of \$3,000. Any unused funds will be donated to the Philadelphia Bar Foundation and any other mutually agreed upon charitable organization.
3. If a Class Member is a member of both Subclass I and Subclass II, he or she will receive payment based on the Subclass status during his first admission to the Philadelphia Prison System during the class period.
4. Subclass II will receive \$400,000, with a cap of \$100.00 per claimant and any remaining portion of the \$400,000 amount will revert to the City.
5. No Class Member shall be entitled to more than his or her individual share of the Settlement Fund regardless of the number of times he or she has been strip searched at the Philadelphia Prison System.
6. No portion of the Settlement Fund shall be disbursed before the Effective Date, except as set forth in Section III (B)(1) above and III (E) below.

7. Both parties anticipate that late claims may be filed subsequent to the end of the claims period. Late claims may be allowed, if submitted on or before the date of the Final Approval Hearing, under the sole discretion of Class Counsel for good cause shown. All late claims will be approved by the Court prior to being paid as part of the distribution of the Settlement.

8. The Parties acknowledge that the Class list and list of claimants was compiled by Defendant, pursuant to the mutually-agreed upon definition of the Settlement Class and Subclasses I and II, and provided to Class Counsel. The City of Philadelphia will provide Class Counsel with a revised class list on or before the date of preliminary approval.

9. The City will exercise right of recovery of any unpaid municipal liens and/or taxes owed by any claimant to the City of Philadelphia, not including any unpaid fines from criminal cases. The City will be able to obtain up to and including fifty percent (50 %) of a class member's individual payment for the purpose of collecting these liens. The funds due to eligible claimants under the terms of the Settlement approved by the Court shall be withheld from them and paid to the City of Philadelphia. In order to expedite such collection, after the Settlement Administrator has determined which claimants are eligible to receive monetary relief under the Settlement, the Settlement Administrator shall provide to the Defendant a list of such eligible claimants, along with their mailing addresses, dates of birth and social security numbers, which will be used to determine which eligible claimants have unpaid municipal liens and/or taxes pending against them. This list will be provided to the City by the Settlement Administrator within twenty days before the Effective Date, and the City will provide the Settlement Administrator with a corresponding list of class members and payments to be withheld within 5 days before. In the event of a dispute by members of Settlement Class to the City as to unpaid municipal liens and/or taxes owed to the City, Class Members will have the right to apply to the Court for resolution of the dispute. The decision of the Court will be final in this regard.

D. Attorneys Fees and Expenses

Class Counsel will petition the Court for an award of attorneys' fees in the amount not to exceed 30% of the entire Settlement Fund. Defendant 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.

E. Partial Distribution Pending Appeal

In the event that Final Approval of the Settlement is appealed by either party or a third party objector, and if the payment of some portion of the Settlement Fund is not subject to dispute, that undisputed portion of the Settlement Fund shall be distributed in accordance with this agreement. In the event that Final Approval of the Settlement is overturned on appeal, all unpaid funds will remain with Defendant, as per the Settlement Fund, with the exception of the initial contribution, detailed in Section III(B)(1), and any additional notice and administration costs incurred above the Initial Contribution.

IV. NOTIFICATION TO CLASS MEMBERS

A. Responsibilities of the Settlement and Website Administrator

1. The Settlement Administrator shall implement and administer the Notice Program.
2. The Settlement Administrator shall be responsible for, without limitation:
(i) mailing the Class Notices; (ii) arranging for the publication of the Summary Notice; (iii) responding to requests for a copy of the Class Notice; (iv) 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, Defendant or Class Counsel.

3. The Website Administrator will maintain the Settlement Website, www.philadelphiastripsearch.com, or, if unavailable, a mutually agreed upon address by the Parties, which 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

1. 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.

2. Notice will also be provided to the Settlement Class by way of a limited televised notice campaign on television. The Defendant will have the opportunity to review the ads prior to their broadcast, 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 Philadelphia Prison System and in State Correctional Institutes throughout the Commonwealth of Pennsylvania, if approved by the Department of Corrections. Claim Forms will be made available at these institutions.

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

4. Defendant 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. Under supervision of the Defendant, Class Counsel and/or the Settlement Administrator may review the raw data used to compile said database.

5. 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, remail the Notice to that new address.

6. The Settlement Administrator shall provide an affidavit to the Court, with a copy to Class Counsel and Defendant's 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.

7. 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 Defendant, 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.

8. 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

A. The provisions of this paragraph shall apply to any Request for Exclusion. Any Settlement Class Member may make a Request for Exclusion by mailing or delivering such request in writing to the Settlement Administrator. Any Request for Exclusion must be

postmarked or delivered not later than the Opt-Out Deadline. Any Request for Exclusion shall state the name, address and telephone number of the person requesting exclusion and contain a clear statement communicating that such person elects to be excluded from the Settlement, does not wish to be a Settlement Class Member and elects to be excluded from any judgment entered pursuant to the Settlement.

B. 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.

C. Not later than three (3) business days after the deadline for submission of Requests for Exclusion, the Settlement Administrator shall provide an Opt-Out List to Class Counsel and to Defendant's Counsel together with copies of each Request for Exclusion. Class Counsel and Defendant's Counsel shall jointly report the names appearing on the Opt-Out List to the Court at the time of the Final Approval Hearing.

D. Class Counsel agrees that they will not represent any individuals who opt out from the Settlement in asserting claims against the Defendant that are the subject of this agreement.

VI. OBJECTIONS BY SETTLEMENT CLASS MEMBERS

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

B. The agreed-upon procedures and requirements for filing objections in connection with the Final Approval Hearing are intended to ensure the efficient administration of justice and

the orderly presentation of any Settlement Class Members' objections to the Settlement Agreement, in accordance with such Settlement Class Members' due process rights. The Preliminary Approval Order and Class Notice will require all Settlement Class Members who have any objections to file such notice of objection or request to be heard with the Clerk of the Court, and serve by mail or hand delivery such notice of objection or request to be heard, including all papers or evidence in support thereof, upon one of the Class Counsel and Defendant's 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.

C. 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

A. By this Settlement Agreement and specifically as provided in this Paragraph, Defendant, and all of its respective affiliates, predecessors, successors and assigns, officers, agents, representatives, insurers and employees 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.

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

C. 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.

D. 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 be permanently barred from initiating, asserting, or prosecuting any and all Released Claims against any Released Party in any federal or state court in the United States or any other tribunal.

E. Tolling of Statute of Limitations. Defendant 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, Defendant shall not assert any statute of limitations, repose, or laches defense unless such defense (i) existed as of April 21, 2005, 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. Further, in the event that the Court does not approve this Settlement Agreement, or an appellate court reverses the Court's order approving this Settlement Agreement, Defendant agrees that, with respect to any claims asserted in the Litigation that are subsequently asserted or maintained in any existing or subsequently filed class action lawsuit, or

by any member of the Class, Defendant shall not assert any statute of limitations, repose or laches defense that is premised upon the time period of April 21, 2005 through and including the date of the latter of either: the entry of the Court's order disapproving this Settlement Agreement or the appellate court's decision reversing the Court's order approving this Settlement Agreement. This tolling will cease thirty days after one of the events detailed in the preceding sentence comes to pass.

VIII. INCENTIVE AWARDS TO CLASS REPRESENTATIVES

Given the efforts of the named Plaintiffs on behalf of the Settlement Class, Defendant will not oppose an application for awards of \$15,000 each on behalf of the Class Representatives Nakisha Boone and George Byrd. It is agreed between the Parties that the Class Representatives provided substantial assistance to Class Counsel in their prosecution of this action.

IX. REPRESENTATIONS, WARRANTIES AND COVENANTS

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

B. Defendant, 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 Defendant 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 Defendant. This Settlement Agreement has been duly and validly executed and delivered by Defendant and constitutes their legal, valid, and binding obligation.

X. MISCELLANEOUS PROVISIONS

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

B. This Settlement Agreement is entered into only for purposes of Settlement. In the event that the Effective Date does not occur for any reason or the Final 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.

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

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

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

F. This Settlement Agreement shall be governed by and construed in accordance with the substantive laws of the Commonwealth of Pennsylvania, without giving effect to any choice or conflict of law provision, or rule that would cause the application of the laws of any other jurisdiction.

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

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

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

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

K. The determination of the terms of, and the drafting of, this Settlement Agreement, including its exhibits, has been by mutual agreement after negotiation, with consideration by and participation of all Parties and their counsel. Since this Settlement Agreement was drafted with the participation of all Parties and their counsel, the presumption that ambiguities shall be construed against the drafter does not apply. Each of the Parties was represented by competent and effective counsel throughout the course of Settlement negotiations and in the drafting and

execution of this Settlement Agreement, and there was no disparity in bargaining power among the Parties to this Settlement Agreement. In entering into this Settlement Agreement, none of the Parties relied on advice received from any other Party or any other Party's counsel.

L. Integrated Agreement

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

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

M. Notice:

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

If to Defendant to: Craig Straw, Chief Deputy City Solicitor, Civil Rights, City of Philadelphia, 1515 Arch Street, 14th Floor, Philadelphia, PA 19102.

If to Class Counsel or Plaintiffs to: Daniel Levin, Esquire, Levin Fishbein Sedren & Berman, LLP, 510 Walnut Street, Philadelphia, PA 19106.

N. Dispute Resolution

1. 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 Defendant and their respective counsel have executed this Settlement Agreement as of the date(s) indicated on the lines below.

Dated: 2/19/09


Elmer Robert Keach, III, Esquire
LAW OFFICES OF
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Philadelphia, PA 19103
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ATTORNEYS FOR PLAINTIFFS

Dated:

CITY OF PHILADELPHIA
LAW DEPARTMENT

BY:
Shelley R. Smith, City Solicitor

Craig Straw
Chief Deputy City Solicitor,
Civil Rights

1515 Arch Street, 14th Floor
Philadelphia, PA 19102
Telephone: (215) 683-5442

ATTORNEYS FOR DEFENDANT

CLAIM FORM AND RELEASE

**PLEASE READ THESE INSTRUCTIONS AND CLAIM FORM
CAREFULLY**

To determine if you are eligible to receive money from the Settlement, you must fill out the Claim Form and Release ("Claim Form"). The Claim Form is attached at the end of these instructions. The completed and signed Claim Form ***must be postmarked by [insert date]. If you do not send it in by [insert date], you will not get any money. You must sign on the last page.*** You must submit it in the enclosed envelope or another properly addressed, postage prepaid envelope to the following address:

Settlement Administrator
[insert address + 800 number]

If you have any questions about how the Settlement Fund will be divided up, you should write or call the Settlement Administrator at this number.

All Settlement Class Members who do not exclude themselves are bound by the terms of the judgment. This is true whether you send in a Claim Form or not.

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

I. WHO IS IN THE SETTLEMENT CLASS?

You are in the "Settlement Class" if you meet the following conditions:

1. you entered the Philadelphia Prison System; **AND**
2. you were placed in the custody of the Philadelphia Prison System after being charged with misdemeanors; summary offenses; traffic infractions; civil commitments or other minor crimes; or bench warrants or probation violations where the underlying charge was a misdemeanor, summary offense or other minor crime; **AND**
3. you were strip searched upon entry to the Philadelphia Prison System without reasonable cause; **AND**
4. you were strip searched during the period of April 21, 2003 through October 9, 2007.

If you have questions about these requirements, review the Class Notice.

II. CLAIM FORM INSTRUCTIONS

- A. Please type or neatly print all the information that is asked for.

- B. If you believe you are entitled to money from the Settlement Fund, you must complete Part 1 of the Claim Form and the additional parts of the Claim Form that apply to you.
- C. By signing below you are verifying, under penalty of perjury, that the information you have included is correct. You also agree to provide additional information to Class Counsel or the Settlement Administrator to support your claim. They may ask you to do this in the future.
- D. By signing below you are also verifying that you have not filed a claim or lawsuit about being strip searched at the Philadelphia Prison System, that you did not ask anyone else to file one for you, and that you don't know of anyone who might have filed one for you.
- E. **Please read the instructions carefully.** Your claim will be checked and verified by the Settlement Administrator. You should keep copies of all documents that support your claim while this is going on.
- F. A Claim Form will be considered submitted to the Settlement Administrator if it is mailed in a first-class envelope postmarked by the due date. You may want to send in your Claim Form by Certified Mail, Return Receipt Requested. If you send the Claim Form to the Settlement Administrator in some way other than first-class mail, the Claim 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 Claim Form. If you want to make sure the Settlement Administrator gets your form, you should send it by Certified Mail, Return Receipt Requested. It will take some time to process all the forms and send the checks. This work will be done as fast as possible, but each claim must be checked for accuracy and recorded.
- H. Please write or call the Settlement Administrator if your address changes.

THE CLAIM FORM MUST BE FILLED OUT AND SIGNED IF YOU WANT TO DETERMINE IF YOU ARE ENTITLED TO GET MONEY FROM THE SETTLEMENT FUND. THE ENVELOPE MUST BE *POSTMARKED NO LATER THAN [INSERT DATE] 2009*, AND MUST BE MAILED TO:

[SETTLEMENT ADMIN / ADDRESS]

III. CLAIM FORM

BOONE, ET AL. v. CITY OF PHILADELPHIA

PART 1: CLAIMANT IDENTIFICATION

Claimant's Name: _____

Mailing Address: _____

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

Date of Birth: _____ Social Security No. _____

PPN #, if known: _____

Date of Arrest if known. Please say so if the date you give is an estimate. Please note that only persons who were admitted to the Philadelphia Prison System between April 21, 2003 through October 9, 2007, who were incarcerated in the Philadelphia Prison System are eligible. If you were arrested and admitted to the Philadelphia Prison System on multiple occasions during the Class Period, please identify your first arrest and admission during the Class Period, April 21, 2003 through October 9, 2007.

_____ Actual Date

_____ Estimated Date

Criminal charges or other reason for arrest, if known (check one):

_____ SUBCLASS I: All persons in the Settlement Class, EXCEPT for persons who (1) were charged with certain violence, drug and/or weapons (hereinafter "VDW") related misdemeanor charges at the time of their admission, or (2) were charged with bench warrants and/or probation violations where the underlying charge was a VDW misdemeanor charge, or (3) had convictions for felonies and/or VDW misdemeanor charges predating the date of their admission.

_____ SUBCLASS II: All persons in the Settlement Class who were (1)

charged with VDW misdemeanor charges at the time of their admission, or (2) were charged with bench warrants and/or probation violations where the underlying charge was a VDW misdemeanor charge, or (3) had convictions for felonies and/or VDW misdemeanor charges predating the date of their admission.

For purposes of the Settlement, a Serious Misdemeanor means misdemeanor crimes in the Pennsylvania Criminal Code that are: (1) weapons, (2) drug, or (3) violence-related. A Felony means the felony crimes in the Pennsylvania Criminal Code. A Violation/Bench Warrant with a Serious Misdemeanor Charge means admission was for a bench warrant and/or probation violation where the underlying case included at least one charge that matched one of the Serious Misdemeanor charges at the time of admission. A Violation/Bench Warrant with a Felony Charge means admission was for a bench warrant and/or probation violation where the underlying case included at least one charge with a Felony or Homicide status at the time of admission.

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

____ Please check this box to signify that you were subjected to a strip search upon that admission to the Philadelphia Prison System.

Telephones:

_____ (daytime)

_____ (cell)

_____ (evening)

_____ (email)

IV. SUBMISSION TO JURISDICTION OF THE COURT

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

RELEASE

By signing below, you acknowledge the Release and discharge of the Defendant, and all of its respective parents, subsidiaries, affiliates, predecessors, successors and assigns, officers, agents, representatives, and employees, from any and all claims or causes

of action that were, could have been, or should have been asserted by the named Plaintiffs or any member of the Settlement Class against the Released Parties, or any of them, based upon or related to strip searches in the Philadelphia Prison System.

VERIFICATION

I declare under penalty of perjury under the laws of the United States that the foregoing information provided by the undersigned is true and correct. I also declare that I was strip searched when I was admitted into the Philadelphia Prison System.

I filled out and signed this Proof of Claim and Release form on _____,
2009, in _____ (City, State, Country).

(Sign your name here)

(Type/Print your name here)

Legal Notice
United States District Court for the Eastern District of Pennsylvania

NOTICE OF PROPOSED SETTLEMENT AND HEARING

If You Were Admitted The Philadelphia Prison System From April 21, 2003 To October 9, 2007 And Were Strip Searched Upon Admission, Then Your Rights Could Be Affected By A Proposed Class Action Settlement.

The United States District Court for the Eastern District of Pennsylvania authorized this notice. It is not from a lawyer. You are not being sued.

- This is a proposed Settlement of a class action lawsuit alleging that corrections officers employed at the Philadelphia Prison System engaged in the illegal strip searches of all individuals charged with only minor offenses upon their entry into the Philadelphia Prison System from April 21, 2003 until October 9, 2007. After the Litigation was filed, Defendant changed its strip search policy. The proposed Settlement does not include individuals who were convicted at the time of their admission to the Philadelphia Prison System, or who were not strip searched when they entered the Philadelphia Prison System.
- The Settlement would entitle each Class Member to a share of a \$5.9 million Settlement Fund (after payment of administrative costs, an incentive award to the representative plaintiffs, and attorneys' fees).
- Visit the Settlement Website at [INSERT] for additional details about the Settlement. You may also get additional information by calling 1-800 [insert phone #] or by writing to [insert address].
- Your legal rights are affected whether you act or 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.

I. WHY DID I GET THIS NOTICE PACKAGE?

You or someone in your family may have been admitted to the Philadelphia Prison System after being charged with misdemeanors, summary offenses, traffic infractions, civil commitments, or other minor crimes, or bench warrants or probation violations where the underlying charge was a misdemeanor, summary offense or other minor crime, from April 21, 2003 to October 9, 2007 and been subject to a strip search.

You were sent this notice because you have the right to know about a proposed Settlement of a class action lawsuit, and about your options, before the Court decides whether to approve the Settlement. If the Court approves it, and after any possible

objections and appeals are resolved, an administrator appointed by the Court will make the monetary payments that the Settlement allows. You will be informed of the progress of the Settlement. You should understand that the process of Court approval may take a good deal of time.

This package explains the lawsuit, the Settlement, your legal rights, what benefits are available, who is eligible for them and how to get them.

The Court in charge of this case is the United States District Court for the Eastern District of Pennsylvania, United States District Judge Mary A. McLaughlin presiding. The case is called *Boone, et al. v. City of Philadelphia*, Case No. 05-CV-1851. The persons who sued are called the Plaintiffs, and the municipality they sued, the City of Philadelphia, is called the Defendant.

II. WHAT IS THIS LAWSUIT ABOUT?

Plaintiffs claim in this lawsuit that the City of Philadelphia illegally strip searched individuals upon their admission to the Philadelphia Prison System who were charged with minor offenses, in violation of the unreasonable search provisions of the United States Constitution. Defendant denies that it did anything wrong, and contends that even if it did do anything wrong, Plaintiffs and the Class Members are not entitled to any money as a result of being searched.

III. WHY IS THIS A CLASS ACTION?

In a class action, one or more people, called the Class Representatives (in this case, Nakisha Boone and George Byrd), sue on behalf of all people who have similar claims. All of these people are a Class or Class Members. A class action resolves the issues for all Class Members, except for those who exclude themselves from the Class. United States District Judge Mary A. McLaughlin is in charge of this class action lawsuit.

IV. WHY IS THERE A SETTLEMENT?

The Court did not decide in favor of Plaintiffs or Defendant. 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 is alleged to have been illegally strip searched.

V. HOW DO I KNOW IF I AM PART OF THE SETTLEMENT?

Everyone who fits the following description is a Settlement Class Member: you were placed in the custody of the Philadelphia Prison System after being charged with

misdemeanors; summary offenses; traffic infractions; civil commitments or other minor crimes; or bench warrants or probation violations where the underlying charge was a misdemeanor, summary offense or other minor crime, and you were strip searched in the absence of reasonable suspicion upon your entry into the Philadelphia Prison System pursuant to the policy, custom and practice of the Philadelphia Prison System and the City of Philadelphia.

The Settlement Class includes the following two subclasses:

Subclass I:

All persons in the Settlement Class, EXCEPT for persons who (1) were charged with certain violence, drug and/or weapons (hereinafter “VDW”) related misdemeanor charges at the time of their admission, or (2) were charged with bench warrants and/or probation violations where the underlying charge was a VDW misdemeanor charge, or (3) had convictions for felonies and/or VDW misdemeanor charges predating the date of their admission.

Subclass II:

All persons in the Settlement Class who were (1) charged with VDW misdemeanor charges at the time of their admission, or (2) were charged with bench warrants and/or probation violations where the underlying charge was a VDW misdemeanor charge, or (3) had convictions for felonies and/or VDW misdemeanor charges predating the date of their admission.

The Class Period commences on April 21, 2003 and extends to October 9, 2007.

The Settlement does not cover individuals who entered the Philadelphia Prison System after being convicted of (as compared to only being charged with) a crime, or anyone who entered the Philadelphia Prison System but was not strip searched as part of the Philadelphia Prison System’s booking procedure.

VI. DO I NEED TO PROVE THAT I WAS STRIP-SEARCHED, AND WHAT DOES THAT MEAN?

In filling out the Claim Form, you will affirm, under penalty of perjury, that you were strip searched during the admission process at the Philadelphia Prison System. If your name is not contained in Philadelphia Prison System’s records, you may be asked to provide additional documentation before being allowed to participate in the Settlement.

A strip search occurred if, during the admission process, you were ordered to take off some or all of your clothes by a Philadelphia Prison System employee, with that employee watching you undress. Some members of the Class may also have been forced to bend at the waist or manipulate body parts to allow for a visual inspection. If you were

searched in this manner when you were booked into the facility and meet the other eligibility criteria, you are a member of the Class and entitled to make a claim. You will need to provide an affirmation on the Claim Form confirming that one of these searches was conducted on you when you entered the Philadelphia Prison System.

VIII. HOW DO I KNOW WHETHER THE CRIME FOR WHICH I WAS CHARGED UPON ADMISSION TO THE PHILADELPHIA PRISON SYSTEM QUALIFIES ME FOR INCLUSION IN THE CLASS?

You were placed in the custody of the Philadelphia Prison System after being charged with misdemeanors; summary offenses; traffic infractions; civil commitments or other minor crimes; or bench warrants or probation violations where the underlying charge was a misdemeanor, summary offense or other minor crime. Everyone brought to the Philadelphia Prison System pre-adjudication on such minor offenses and strip searched in the absence of reasonable suspicion upon admission during the Class Period is eligible under this Settlement Agreement.

For example, you are eligible under the Settlement Agreement if you were admitted to the Philadelphia Prison System subject to a civil commitment. A civil commitment is an order from a non-criminal court, usually the Family Court, committing that individual to the Philadelphia Prison System. Individuals admitted to the Philadelphia Prison System, on a civil commitment, for example, a commitment for failure to pay child support, are members of the Class.

Similarly, if you were arrested and brought to the Philadelphia Prison System for traffic offenses or under traffic warrants, failing to pay fines and contempt, pre-adjudication, you are eligible under the Settlement Agreement. Consequently, if you failed to honor a payment order with a municipal court and were arrested, or failed to appear for a municipal court date and arrested, brought to the Philadelphia Prison System and strip searched, you are eligible to receive a settlement payment.

If you were charged with a Serious Misdemeanor, Violation/Bench Warrant with a Serious Misdemeanor Charge, or had a prior conviction for a felony or Serious Misdemeanor predating your admission, you will be a member of Subclass II. For purposes of the Settlement, a Serious Misdemeanor means misdemeanor crimes in the Pennsylvania Criminal Code that are: (1) weapons, (2) drug, or (3) violence-related. A Felony means the felony crimes in the Pennsylvania Criminal Code. A Violation/Bench Warrant with a Serious Misdemeanor Charge means admission was for a bench warrant and/or probation violation where the underlying case included at least one charge that matched one of the Serious Misdemeanor charges at the time of admission.

IX. I WAS ADMITTED TO THE PHILADELPHIA PRISON SYSTEM BUT I CAN'T REMEMBER WHAT MY CRIMINAL CHARGES WERE. HOW CAN I FIND THIS OUT, AND HOW DO I KNOW IF THE CHARGE WAS A MISDEMEANOR OR VIOLATION?

There are several ways for potential class members to determine the nature of their criminal charges. First, you can review your charging documents, which should reflect your actual charges. If you do not have your charging document and remember the local court where you were prosecuted, the court clerk will be able to help you find these documents.

If you need additional help determining whether you are a class member, or if you have other questions, you can contact the Settlement Administrator at [insert number].

You can still make a claim if you do not remember your criminal charges if you believe you are a member of the Class, but you may be asked for additional information.

X. I PLED GUILTY TO A CRIME. HOW DOES THIS AFFECT MY RIGHT TO PARTICIPATE IN THE SETTLEMENT?

If you were admitted to the Philadelphia Prison System solely on non-felony or other minor charges, as defined above, you can participate in the Settlement regardless of how you resolved your criminal charges, including if you pled guilty to those charges. This is provided that you were admitted to the Philadelphia Prison System during the Class Period before being sentenced by a court. For most Class Members, this would mean that they were committed to the Philadelphia Prison System after they were arraigned before a Judge. If you were sentenced before admission to the Philadelphia Prison System (meaning you were committed after pleading guilty or being convicted at trial) you are not a Class Member.

XI. WHAT IF I WAS ADMITTED TO THE PHILADELPHIA PRISON SYSTEM ON MORE THAN ONE OCCASION DURING THE CLASS PERIOD? CAN I STILL PARTICIPATE IN THE SETTLEMENT?

Yes. Individuals who were admitted to the Philadelphia Prison System on more than one occasion during the class period can be members of the class and can recover money. They can only recover one payment, however, meaning that you will not be provided with extra payments if you were admitted to the Philadelphia Prison System more than one time. Your subclass will be determined based on your first admission to the Philadelphia Prison System during the Class Period.

XII. I AM STILL NOT SURE IF I AM INCLUDED.

If you are still not sure if you are included, you can ask for help. You can call [insert number] and the Settlement Administrator or Class Counsel may help answer your questions. For more information, you can also visit the website, [INSERT], 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

XIII. WHAT DOES THE SETTLEMENT PROVIDE?

Defendant has agreed to pay \$5,900,000 (Five Million Nine Hundred Thousand Dollars) to resolve this Litigation. The money will be used to: 1) compensate Class Members who have been illegally strip searched; 2) pay \$330,000 for notifying Class Members and administering the Settlement; 3) pay incentive awards of \$15,000 each to the named Plaintiffs Nakisha Boone and George Byrd; and 4) pay attorneys' fees and expenses.

A complete description of the Settlement is provided in the Settlement Agreement. You can get a copy of the Settlement Agreement by visiting [enter website address] or by calling [enter administrator phone number].

XIV. WHAT CAN I GET FROM THE SETTLEMENT?

The benefits that you will receive from the Settlement depend on whether you are a member of Subclass I or Subclass II:

Members of Subclass I will receive an equal pro-rata share of \$5,170,000, minus an incentive award for the Class Representatives, attorneys' fees, and expenses. Class Counsel anticipates, based on claims rates from other settlements, that all individuals who are members of Subclass I that make a claim on the Settlement will receive between \$600 and \$900 as a settlement payment. These amounts are dependent on how many claims are received by the Claims Administrator during the claims period, and are subject to change based on the number of claims received. Payments to members of Subclass I shall not exceed \$3,000. No amount is guaranteed.

Members of Subclass II will receive an equal pro-rata share of \$400,000 minus an incentive award for the Class Representatives, attorneys' fees, and expenses. Class Counsel anticipates, based on claims rates from other settlements, that all individuals who are members of Subclass II that make a claim on the Settlement will receive between \$50 and \$100 as a settlement payment. These amounts are dependent on how many claims

are received by the Claims Administrator during the claims period, and are subject to change based on the number of claims received. Payments to members of Subclass II shall not exceed \$100 per claimant. No amount is guaranteed.

HOW YOU GET A PAYMENT - SUBMITTING A CLAIM FORM

XV. 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 on the Internet at [INSERT]. 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.

XVI. WHEN WOULD I GET MY PAYMENT?

The Court will hold a hearing on [insert date] to decide whether to approve the Settlement. If Judge McLaughlin 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.

XVII. 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 can't sue, continue to sue, or be part of any other lawsuit against the City of Philadelphia, its employees, or its elected officials about the legal issues in *this* case. It also means that all 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 relating to having been strip searched.

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 the City of Philadelphia on your own about the legal issues in this case, then you must take steps to preserve these rights. This is called excluding yourself - or is sometimes referred to as "opting out" of the Settlement Class.

XVIII. HOW DO I GET OUT OF THE SETTLEMENT?

To exclude yourself from the Settlement, you must send a letter by mail saying that you want to be excluded from *Boone, et al. v. City of Philadelphia*. Be sure to include your name, address, telephone number and your signature. You must mail your exclusion request postmarked no later than [insert date] to [insert address].

You can't exclude yourself on the phone or by email. 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) the City of Philadelphia in the future.

XIX. IF I DO NOT EXCLUDE MYSELF, CAN I SUE THE CITY OF PHILADELPHIA FOR THE SAME THING LATER?

No. Unless you exclude yourself, you give up the right to sue the City of Philadelphia for the claims that this Settlement involves. If you have a pending lawsuit, speak to your lawyer in that lawsuit immediately. You must exclude yourself from *this* class action to continue your own lawsuit. Remember, the exclusion deadline is [insert date].

XX. IF I EXCLUDE MYSELF, CAN I GET MONEY FROM THE 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 the City of Philadelphia.

THE LAWYERS AND INDIVIDUALS REPRESENTING YOU

XXI. DO I HAVE A LAWYER IN THIS CASE?

The Court approved Levin, Fishbein, Sedran & Berman, Philadelphia, Pennsylvania, The Mason Law Firm, LLP, Washington, DC, The Law Offices of Elmer Robert Keach, III, PC, Amsterdam, New York, and Cuneo Gilbert & LaDuca, LLP, Washington, DC 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.

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

Class Counsel will ask the Court for attorneys' fees and expenses as a percentage of the \$5,900,000 (Five Million Nine Hundred Thousand Dollars) settlement, and a payment of \$15,000 (Fifteen Thousand Dollars) each for Class Representatives Nakisha Boone and George Byrd. 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 \$330,000, 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.

XXIII. 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 *Boone, et al. v. City of Philadelphia*, case no. 05-cv-1851. Be sure to include your name, address, telephone number, your signature, and the reasons why you object to this Settlement and the case number (05-cv-1851). Mail the objection to these three different places postmarked no later than **[insert date]**.

COURT

U.S. District Court for the Eastern District of Pennsylvania
Office of the Clerk of Court
James A. Byrne Federal Courthouse
601 Market Street, Room 2609
Philadelphia, PA 19106-1797

CLASS COUNSEL

Daniel C. Levin, Esquire
Levin, Fishbein, Sedran & Berman
510 Walnut Street, Ste. 500
Philadelphia, PA 19106

DEFENSE COUNSEL

Craig Straw, Chief Deputy, City Solicitor Civil Rights
City of Philadelphia Law Department
1515 Arch Street, 14th Floor
Philadelphia, PA 19102

XXIV. 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.

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

On [insert date] the U.S. District Court for the Eastern District of Pennsylvania will hold a fairness hearing in the James A. Byrne Federal Courthouse, 601 Market Street, Philadelphia, PA 19106, in Courtroom [insert courtroom] 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.

XXVI. DO I HAVE TO COME TO THE HEARING?

No. Class Counsel will answer questions Judge McLaughlin may have. 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.

XXVII. 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 *Boone, et al. v. City of Philadelphia*, case no. 05-cv-1851.” Be sure to include your name, address, telephone number and your signature and the case number (05-cv-1851). 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 XXIII. You cannot speak at this hearing if you excluded yourself.

IF YOU DO NOTHING

XXVIII. 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 the City of Philadelphia 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

XXIX. 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 writing to the Settlement Administrator at **[insert address]** or by visiting **[insert web address]**.

XXX. HOW DO I GET MORE INFORMATION?

You can call **[insert number]**, write to the Settlement Administrator at **[insert address]**, or visit the website at www.philadelphiastripsearch.com, where you will 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.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

NAKISHA BOONE, et al.,

Plaintiffs,

- vs -

CITY OF PHILADELPHIA,

Defendant.

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Civil Action No. 05-CV-1851

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

THIS CASE coming on for hearing before the Honorable Mary A. McLaughlin, U.S.D.J. on _____, 2009, 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 Settlement Class Members being represented by Class Counsel and Defendant being represented by their attorney; **AND THE COURT** having read and considered the Settlement Agreement, the Notice Plan, and Memoranda of Law submitted by Class Counsel, having received evidence at the hearing, having heard arguments from Class Counsel and the Defendant, and having considered the submissions by Class Members, now makes the following:

FINDINGS OF FACT

1. This action was commenced on April 21, 2005, as a class action.
2. After several years of intensive litigation, including extensive discovery and

motion practice, and as a result of intensive, arm's length negotiations between Class Counsel and Defendant, including settlement conferences before Magistrate Judge Elizabeth T. Hey and former Magistrate Judge James K. Melinson, 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 _____.

3. As part of the Order Granting Preliminary Approval, this Court approved a proposed Notice Plan and Class Notice, which provided Settlement Class Members notice of the proposed Settlement. The Notice Plan provided an opportunity for Class Members to file objections to the Settlement, 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 comparatively low number of objections is indicative of the fairness, reasonableness and adequacy of the Settlement with the Defendant.

5. The settling Parties have filed with the Court an affidavit from RSM McGladrey, Inc. declaring that the mailing of the Court-approved notice, consistent with the Notice Plan, has been completed.

6. The Court finds that the published notice, mailed notice and Internet posting constitute the best practicable notice of the Fairness Hearing, 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 Pennsylvania and any 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. All persons who have validly excluded themselves from the action have no rights under the Settlement Agreement and shall not be bound by the Settlement Agreement or the final judgment herein and the names of those persons are set forth in Exhibit A hereto.

8. Settlement Class Members are bound by the: Settlement, Settlement Agreement, Release 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 Member who did not timely file and serve an objection in writing to the Settlement Agreement, to the entry of Final Order and Judgment, or to Class Counsel’s application for fees, costs, and expenses, in accordance with the procedure set forth in the Class Notice and mandated in the Order Granting Preliminary Approval of Settlement, is deemed to have waived any such objection by appeal, collateral attack, or otherwise.

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

- 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. 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 Defendant.

11. 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.

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

NOW, THEREFORE, ON THE BASIS OF THE FOREGOING FINDINGS OF FACT, THE COURT HEREBY MAKES THE FOLLOWING CONCLUSIONS OF LAW:

13. This Court has jurisdiction over the Parties and the subject matter of this proceeding.

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

Settlement Class:

All persons who were placed into the custody of the Philadelphia Prison System after being charged with

misdemeanors; summary offenses; traffic infractions, civil commitments, or other minor crimes; or bench warrants and/or probation violations where the underlying charge was a misdemeanor, summary offense or other minor crime; and who were strip searched in the absence of reasonable suspicion upon their entry into the Philadelphia Prison System pursuant to the policy, custom and practice of the Philadelphia Prison System and the City of Philadelphia. The class period commences on April 21, 2003 and extends to, and includes, October 9, 2007.

Subclass I:

All persons in the Settlement Class, EXCEPT for persons who (1) were charged with certain violence, drug and/or weapons (hereinafter “VDW”) related misdemeanor charges at the time of their admission, or (2) were charged with bench warrants and/or probation violations where the underlying charge was a VDW misdemeanor charge, or (3) had convictions for felonies and/or VDW misdemeanor charges predating the date of their admission.

Subclass II:

All persons in the Settlement Class who were (1) charged with VDW misdemeanor charges at the time of their admission, or (2) were charged with bench warrants and/or probation violations where the underlying charge was a VDW misdemeanor charge, or (3) had convictions for felonies and/or VDW misdemeanor charges predating the date of their admission.

15. 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.

16. The Settlement Class Representatives, Nakisha Boone and George Byrd, are entitled to and are hereby awarded a payment of \$15,000 each, in recognition of the efforts they undertook in connection with this lawsuit. All Class Members who have made claims on the settlement are entitled to receive their *pro rata* share of the Settlement fund, as members of Subclass I not to exceed \$3,000 or Subclass II not to exceed \$100, after administrative expenses, attorneys' fees and expenses, and incentive awards are deducted from the fund.

17. Any unused monies will be donated to the Philadelphia Bar Foundation and _____.

18. Class Counsel are qualified, experienced, and have aggressively litigated this case, thereby demonstrating their adequacy as counsel for the Settlement Class. Daniel C. Levin, Esquire of Levin, Fishbein, Sedran & Berman, Philadelphia, PA, Charles J. LaDuca, Esquire and Alexandra Warren, Esquire of Cuneo Gilbert & LaDuca, LLP, Washington, DC; Elmer Robert Keach, III, Esquire of the Law Offices of Elmer Robert Keach, III, Amsterdam, New York; and Gary E. Mason, Esquire and Nicholas A. Migliaccio, Esquire of the Mason Law Firm, LLP are hereby appointed as counsel for the Settlement Class.

19. 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.

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

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

1. The Motion for Final Approval of the Proposed Settlement is GRANTED.
2. The Settlement Class Representatives, Nakisha Boone and George Byrd, are entitled to and are hereby awarded a payment of \$15,000 each in recognition of the efforts they undertook in connection with this lawsuit. All Class Members who have made claims on the Settlement are entitled to receive their *pro rata* share of the Settlement Fund, as members of Subclass I (not to exceed \$3,000) or Subclass II (not to exceed \$100), after administrative expenses, attorneys' fees and expenses, and incentive awards are deducted from the fund.
3. The Class Counsel's application for attorneys' fees and expenses is granted.
4. This Action and all claims against the settling Defendant are hereby dismissed with prejudice, but the Court shall retain exclusive and continuing jurisdiction of the Action, all Parties, and Settlement Class Members, to interpret and enforce the terms, conditions and obligations of this Settlement Agreement.
5. All Class Members who have not timely filed an opt-out request are barred and enjoined from commencing and/or prosecuting any claim or action against the Defendant. Any Class Member who has not timely filed a request to exclude themselves shall be enjoined from initiating and/or proceeding as a class action in any forum.

IT IS SO ORDERED.

Dated: _____

The Honorable Mary A. McLaughlin
United States District Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

NAKISHA BOONE, et al.,

Plaintiffs,

- vs -

CITY OF PHILADELPHIA,

Defendant.

Civil Action No. 05-CV-1851

ORDER PRELIMINARILY APPROVING SETTLEMENT

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

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

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

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

IT IS HEREBY ORDERED AS FOLLOWS:

1. Capitalized terms used in this Order have the meanings assigned to them in the Settlement Agreement and this Order.
2. The terms of the Parties' Settlement Agreement are hereby conditionally approved, subject to further consideration thereof at the Final Approval Hearing provided for below. The Court finds that said Settlement is sufficiently within the range of reasonableness and that notice of the proposed Settlement should be given as provided in this Order.
3. Pursuant to Fed. R. Civ. P. 23 the Court conditionally certifies the following Settlement Class and subclasses:

Settlement Class:

All persons who were placed into the custody of the Philadelphia Prison System after being charged with misdemeanors; summary offenses; traffic infractions, civil commitments, or other minor crimes; or bench warrants and/or probation violations where the underlying charge was a misdemeanor, summary offense or other minor crime; and who were strip searched in the absence of reasonable suspicion upon their entry into the Philadelphia Prison System pursuant to the policy, custom and practice of the Philadelphia Prison System and the City of Philadelphia. The class period commences on April 21, 2003 and extends to, and includes, October 9, 2007.

Subclass I:

All persons in the Settlement Class, EXCEPT for persons who (1) were charged with certain violence, drug and/or weapons (hereinafter "VDW") related misdemeanor charges at the time of their admission, or (2) were charged with bench warrants and/or probation violations where the underlying charge was a VDW misdemeanor charge, or (3) had convictions for felonies and/or VDW misdemeanor charges predating the date of their admission.

Subclass II:

All persons in the Settlement Class who were (1) charged with VDW misdemeanor charges at the time of their admission, or (2) were charged with bench warrants and/or probation violations where the underlying charge was a VDW misdemeanor charge, or (3) had convictions for felonies and/or VDW misdemeanor charges predating the date of their admission.

4. The Court further conditionally finds that Plaintiffs Nakisha Boone and George Byrd are adequate Class Representatives for the Settlement Class.
5. The Court further finds that Plaintiffs' Counsel are adequate Class Counsel.
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 Section IV of the Settlement Agreement.
7. If the Settlement Agreement is terminated or not consummated for any reason whatsoever, the conditional certification of the Settlement Class shall be void, the Defendant shall have reserved all its rights to oppose any and all class certification motions, to contest the adequacy of Plaintiffs as representative of any putative class, and to contest the adequacy of Class Counsel as adequate Class Counsel. Additionally, Plaintiffs reserve all of their rights, including the right to continue with the litigation pending at the time of the Settlement should the Settlement Agreement not be consummated.

Notice to Settlement Class and Appointment of Settlement Administrator

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

Daniel C. Levin, Esquire
LEVIN, FISHBEIN, SEDRAN & BERMAN
510 Walnut Street, Ste. 500
Philadelphia, PA 19106

Charles LaDuca, Esquire
Alexandra Warren, Esquire
CUNEO GILBERT & LADUCA, LLP
507 C Street NE
Washington, DC 20002

Elmer R. Keach, III, Esquire
LAW OFFICES OF ELMER ROBERT KEACH, III, PC
1040 Riverfront Center
P.O. Box 70
Amsterdam, NY 12010

Gary E. Mason, Esquire
Nicholas A. Migliaccio, Esquire
THE MASON LAW FIRM, LLP
1225 19th St, NW, Suite 500
Washington, DC 20036

Christopher G. Hayes, Esquire
The Law Office of Christopher G. Hayes
225 South Church Street
West Chester, PA 19382

Kevin T. Birley, Esquire
1601 Sansom Street, Suite 2C
Philadelphia, PA 19103

9. Beginning no later than sixty (60) days from the date of this Order Preliminarily Approving Settlement, 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 Section IV of the Settlement Agreement. Such Notice Program will be completed expeditiously pursuant to the terms of the Settlement Agreement. Class Members will have forty-five (45) days from the Notice Date to opt out or to object, and one-hundred twenty (120) days from the Notice Date to file claims. Prior to the Final Approval Hearing, Plaintiffs and/or the Claims Administrator shall serve and file a sworn statement attesting to compliance with the provisions of this paragraph.
10. The Class Notice to be provided as set forth in the Settlement Agreement as filed

with the Court is hereby found to be the best practicable means of providing notice under the circumstances and, when completed, shall constitute due and sufficient notice of the proposed Settlement and the Final Approval Hearing to all persons and entities affected by and/or entitled to participate in the Settlement, in full compliance with the notice requirements of Fed. R. Civ. P. 23, due process, the Constitution of the United States, the laws of Pennsylvania 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 RSM McGladrey, Inc. 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, whether or not such person objected to the Settlement and whether or not such person made a claim upon, or participated in, the Settlement Fund

pursuant to the Settlement Agreement.

The Final Approval Hearing

14. A hearing on the Settlement is hereby scheduled to be held before this Court on no later than one hundred fifty (150) days from the Notice Date, to consider the fairness, the reasonableness, and adequacy of the proposed settlement, the dismissal with prejudice of this class action with respect to the Released Parties that are Defendant herein, and the entry of final judgment in this class action. Class Counsel's application for award of attorney's fees and costs shall be heard at the time of the hearing.

15. The date and time of the hearing shall be set forth in the Notice, but the 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. Class Counsel will advise members of the Settlement Class of any scheduling issues by way of the Settlement Website.

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 Final Order and Judgment approving the Settlement, and Class Counsel's application for fees and expenses by 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 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 forty-five (45) 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:

U.S. District Court for the Eastern District of Pennsylvania
Office of the Clerk of Court
James A. Byrne Federal Courthouse
601 Market Street, Room 2609
Philadelphia, PA 19106-1797

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

CLASS COUNSEL:

Daniel C. Levin, Esquire
Levin, Fishbein, Sedran & Berman
510 Walnut Street, Ste. 500
Philadelphia, PA 19106

DEFENSE COUNSEL:

Craig Straw, Chief Deputy City Solicitor, Civil Rights
City of Philadelphia Law Department
1515 Arch Street, 14th Floor
Philadelphia, PA 19102

21. Only Class Members who have filed and served valid and timely notices of objection shall be entitled to be heard at the Final Approval Hearing. Any Class Member

who does not timely file and serve an objection in writing to the Settlement, entry of Final 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 this Order, shall be deemed to have waived any such objection by appeal, collateral attack, or otherwise.

22. Persons wishing to be heard at the hearing are required to file written comments or objections and indicate in their written comments or objections their intention to appear at the 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 Defendant for the claims made in the Complaint.

Other Provisions

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

IT IS SO ORDERED.

Dated: _____

The Honorable Mary A. McLaughlin
United States District Judge

COURT ORDERED LEGAL NOTICE

If you were admitted into the Philadelphia Prison System between April 21, 2003 and October 9, 2007 and were strip searched upon admission, you could get a payment from a class action settlement.

A \$5.9 million settlement has been proposed in a class action lawsuit about the strip search policies of the Philadelphia Prison System. If you meet the criteria explained below, you can share in this Settlement.

The United States District Court for the Eastern District of Pennsylvania 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:

1. you entered the Philadelphia Prison System; **AND**
2. you were placed in the custody of the Philadelphia Prison System after being charged with misdemeanors; summary offenses; traffic infractions; civil commitments or other minor crimes; or bench warrants or probation violations where the underlying charge was a misdemeanor, summary offense or other minor crime; **AND**
3. you were strip searched upon entry to the Philadelphia Prison System without reasonable cause; **AND**
4. you were strip searched during the period of April 21, 2003 through October 9, 2007.

What's This About?

The lawsuit claims that the Defendant City of Philadelphia unlawfully strip searched everyone admitted into the Philadelphia Prison System on only minor charges. The City of Philadelphia has denied those 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?

Defendant agreed to pay a total of \$5,900,000.00 to settle the case. That will pay for the claims of the Class Representatives, the administrative costs of the Settlement, an incentive

award to the Class Representatives, and the attorneys' fees and expenses. There are believed to be approximately 37,000 Class Members. You can only make one claim, even if you were strip searched more than once. Each Class Member who makes a claim will receive an equal share of the portion of the Settlement Fund allocated to pay the claims of members of Subclass I or Subclass II, depending on which subclass you are a member of. Class Counsel anticipates, based on claims rates from other settlements, that all individuals who are members of Subclass I that make a claim on the Settlement will receive between \$600 and \$900, as a settlement payment, and that all individuals who are members of Subclass II that make a claim on the Settlement will receive between \$50 and \$100 as a settlement payment. These amounts are dependent on how many claims are received by the Claims Administrator during the claims period, and are subject to change based the number of claims received. No amount is guaranteed.

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, **XXXXXXX**, to get one. To qualify for a payment, you must send in a Claim Form. **Claim forms are due by [insert date], 2009.**

What Are Your Other Options?

If you want to share in the Settlement, all you need to do is obtain a Claim Form, as just explained, and return it according to its directions. If you don't want the Settlement benefits or don't want to be legally bound by the Settlement, you must exclude yourself by **[insert date] 2009**. If you exclude yourself, you can't get any benefits from this Settlement, but you could bring a separate case against the Defendant, if you want to. If you stay in the Settlement, you may object to it by **[insert date] 2009**. 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 (*Boone, et al. v. City of Philadelphia*, Case No. 05-CV-1851) on **[insert date]**, to consider whether to approve the Settlement and a request by the lawyers representing all Class Members (Levin, Fishbein, Sedran & Berman, Philadelphia, Pennsylvania, The Mason Law Firm, LLP, Washington, DC, The Law Offices of Elmer Robert Keach, III, PC, Amsterdam, New York, and Cuneo Gilbert & LaDuca, LLP, Washington, DC; Christopher Hayes, The Law Office of Christopher G. Hayes, West Chester, PA; Kevin Birley, Philadelphia, PA) for attorneys' fees and costs. You may ask to appear at the hearing, but you don't have to. For more information, call toll free 1-800-000-0000, visit the Settlement Website **[INSERT]**, or write to Settlement, P.O Box X, City, State, 00000.