

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

GRETA CAZENAVE, ET AL

Plaintiffs

VERSUS

SHERIFF CHARLES C. FOTI, JR. ET AL

Defendants

CIVIL ACTION

NUMBER 00-1246

SECTION A

JUDGE JAY C. ZAINY

MAGISTRATE SECTION 5

MAGISTRATE ALMA L. CHASEZ

CLASS ACTION SETTLEMENT AGREEMENT
PRESENTED TO THE COURT FOR PRELIMINARY APPROVAL¹

The Plaintiffs², Jeff Brite, William Brice White III, Lionel Nelson, George Wurz, Anthony Pogorzelski, Kendra Spencer, Tony Buchen and Sylvia Brown, appearing herein as Class

¹This Agreement is presented to the Court as an Amended Settlement pursuant to this Court's Order entered October 4, 2005 (Record, Doc. No. 144) and the Order entered October 26, 2006 (Record, Doc. No. 150).

²The original plaintiffs and class representatives were Greta Cazenave, Jeff Brite and William Brice White, III.. On November 24, 2003, additional class representatives were named, i.e., Lionel Nelson, George Wurz, Anthony Pogorzelski, Kendra Spencer, Tony Buchen and Sylvia Brown. (Doc. No. 102). Greta Cazenave was dismissed as a Class Representative on December 15, 2003 and was allowed by the Court to withdraw from these proceedings on May 17, 2004. (Doc. No. 120). Greta Cazenave is no longer a Plaintiff or a Class Representative in these proceedings. Janet Densmore was named in the Original Complaint as one of the Plaintiffs but was removed as a Plaintiff and Class Representative, on May 9, 2000, preserving her right to proceed in CA 00-1268, by order of Judge Morey Sear. (Doc. No. 3).

Representatives on behalf of all of the class members, as defined herein, and the Defendants, Charles C. Foti, Jr. in his individual capacity, Wardens Barbara Acomb, William Short, Joseph Howard, John LaCour, Gary Bordelon and Chief Rudy Belisle, each in their individual and official capacities, and Marlin N. Gusman in his official capacity only as the present Criminal Sheriff of Orleans Parish³, appearing by and through their respective counsel, hereby enter into the following Class Action Settlement Agreement ("Settlement Agreement") pursuant to the terms and conditions set forth below and subject to the approval of the U.S. District Court for the Eastern District of Louisiana.

All of the policies, practices, and searches at issue herein occurred under the administration of former Criminal Sheriff Charles C. Foti, Jr. Sheriff Gusman enters into the Settlement Agreement only in his official capacity as the present Criminal Sheriff of Orleans Parish, in order to carry into effect the obligations of settlement of this case which are the legal obligations of the OPCSO because they were agreed to by his predecessors in office and became binding on the Sheriff's Office prior to Sheriff Gusman's election as Sheriff.

RECITALS

³Sheriff Marlin N. Gusman appears herein in his official capacity only for the purposes set forth below (he is sometimes hereinafter referred to collectively with the named defendants as "Defendants" only to include his office (the Orleans Parish Criminal Sheriff's Office, the "OPCSO") as an entity obligated under the terms of the Settlement Agreement. Defendant Charles C. Foti, Jr. was named in the Original and Amended Complaints as a Defendant individually and officially, in his capacity as the Criminal Sheriff of Orleans Parish. Subsequently Defendant Foti resigned as Criminal Sheriff of Orleans Parish, and on January 26, 2004, William C. Hunter, as Criminal Sheriff of Orleans Parish, inherited the litigation and as such was substituted for Charles C. Foti, Jr., in his official capacity only. Marlin N. Gusman was subsequently elected as Criminal Sheriff of Orleans Parish, took office on November 14, 2004 and inherited this litigation, and as such is substituted for William C. Hunter in his official capacity only, as the current Criminal Sheriff of Orleans Parish. Charles C. Foti, Jr. remains a Defendant in these proceedings, individually (Doc. No. 110). William C. Hunter is no longer a Defendant in any capacity.

A. Plaintiffs' Original and Amended Complaints (Doc. Nos. 1 and 2) allege violations of the First, Fourth, Ninth, and Fourteenth Amendments to the United States Constitution, pursuant to 42 U.S.C. §1983, 42 USC §1988, and also violations of the laws and constitution of the State of Louisiana regarding a blanket policy and practice of the OPCSO of blanket strip and visual body cavity searches by OPCSO deputies of persons arrested for minor offenses only, not involving weapons or drugs, who were processed through the Intake and Processing Center ("IPC") of the Orleans Parish jail and transferred into general population, prior to their first court appearance, without a determination of reasonable, individualized suspicion that the individual was concealing weapons or drugs. These searches resulted in the exposure of the arrestees' private parts (genitalia, buttocks, anal cavity, vaginal cavity and/or female breasts) to OPCSO deputies and/or other detainees and, in the event of visual body cavity searches, to actual visual inspection of those private parts by OPCSO deputies in the presence of others of the same sex.

B. The OPCSO is the law enforcement office for Orleans Parish, Louisiana, which operates the Orleans Parish jail under the control, direction and supervision of the Orleans Parish Criminal Sheriff, who is the OPCSO's final policymaker. The searches at issue in this lawsuit were conducted by individuals acting in the course and scope of their employment by OPCSO and under color of state law.

C. Defendants deny that they have done anything wrong whatsoever, deny all liability to the Class/Sub-classes defined herein, and do not concede any infirmity in the defenses that they have asserted or intend to assert in these proceedings. The individual defendants deny ever personally conducting any strip searches. Defendants assert that all searches were performed only

to detect drugs, weapons and other contraband in order to preserve the safety and lives of detainees, personnel and visitors at OPCSO.

D. The parties have stipulated to the following facts, which are not in dispute in this matter:

1. On April 25, 2000, the Original Complaint was filed. The Amended Complaint was filed on May 16, 2000. On July 25, 2000, the plaintiffs filed a Motion to Certify Class, and the parties began pre-trial discovery.
2. On March 21, 2001, the parties entered into Joint Stipulations conceding that, if certified, this lawsuit met all the prerequisites for certification as a class action as required by Fed. R. Civ. P. 23(a), including numerosity, typicality, commonality, and adequacy of representation. (Doc. No. 36).
3. On January 11, 2002, the parties entered into a Consent Decree, approved by the Court, by which an injunctive class was certified pursuant to Fed. R. Civ. P. 23(b)(2), and a new Strip Search Policy and Arrestee Strip Log was adopted by the OPCSO which was in compliance with constitutional standards. The parties also agreed to continued monitoring by Plaintiffs' counsel (hereafter referred to as "Class Counsel") for purposes of insuring implementation of the new policies and procedures. (Doc. No. 54).
4. On May 16, 2002, the parties entered into a Joint Supplemental Consent Decree, approved by the Court, regarding the "Change-out" procedure, granting further injunctive relief whereby the Defendants agreed to stop the blanket "change-outs" from street clothes to jail uniforms of arrestees

charged with minor offenses only, and further agreed to construct privacy booths to allow these arrestees to change their clothes in private without scrutiny or exposure of their private parts to others. (Doc. No. 62).

5. On September 19, 2002, the parties agreed to the certification of two subclasses, for liability only, pursuant to Fed. R. Civ. P. 23 (c)(4), as follows: (1) those arrestees charged with minor offenses only, not involving weapons or controlled dangerous substances who, prior to their first court appearance, were subjected to a strip and visual body cavity inspection (a/k/a Sub-class A or the "Kelly Class," pursuant to *Kelly v Foti*, 85 F.3d 627 (5th Cir 1996)); and (2) those arrestees charged with minor offenses only, not involving weapons or controlled dangerous substances who, prior to their first court appearance, were required to disrobe in the presence of others in circumstances which exposed their private parts to the view of others (a/k/a Sub-class B or the "Change-Out Class"). (Doc. No. 70).
6. On January 3, 2003, the Court issued a Judgment, pursuant to the consent of the parties and Fed. R. Civ. P. 23(c)(4), certifying a class of individuals, for liability only, based upon the definitions of the two (2) Sub-classes indicated above. (Doc. No. 71).
7. On April 22, 2003, the parties entered into a Joint Stipulation of Findings of Fact regarding Sub-class A – the "Kelly" Class. This Stipulation provided, in pertinent part, the following with regard to the policies and practices of the OPCSO of performing blanket strip and visual body cavity searches on

arrestees charged only with minor offenses not involving weapons or controlled dangerous substances, prior to their first court appearance, from April 25, 1999 through at least January 1, 2001. (Doc. No. 77):

- a. Arrestees charged with minor offenses only are processed through the OPCSO by first going through its Intake and Processing Center (“IPC”), where they are booked. As a general rule, arrestees cannot be released until the booking process is completed, which usually takes several hours. During the booking process, arrestees have access to telephones and bail bond agencies to make arrangements for release on bail. Shortly after booking is completed, the arrestees are transferred into the general population of the jail, to designated tiers. Frequently bail or a release order is already in place or in progress prior to the arrestee’s transfer to general population. Many arrestees charged only with minor offenses are released on bond or a release order shortly after they have been transferred to the general population of the jail, before their initial court appearance.
- b. A strip search required the mandatory removal of the arrestee’s clothing until he or she was naked and subject to inspection by OPCSO deputies of the same sex and others present in the room, all of the same sex. A visual body cavity search required the arrestee to bend over, spread his or her butt cheeks and cough, thereby exposing private body cavities such as the anus and, in the case of females,

vaginal cavity, for inspection. Female members of Sub-Class A were frequently required to squat and cough while naked. Large breasted women were required to lift their breasts. Male members of Sub-Class A were required to move their testicles to facilitate the searches.

- c. Sub-Class A members were subjected to these mandatory blanket strip and visual body cavity searches in the presence of other detainees, all of whom were the same sex, as were the deputies who were performing the searches.
- d. Male trustees, also known as "Yanks" (prisoners already in custody of the OPCSO who were not members of Sub-Class A and who had special privileges and responsibilities in the jail as trustees), were frequently present during the strip and visual body cavity searches of the male members of Sub-Class A.
- e. The strip and visual body cavity searches of Sub-Class A members as described herein took place as the result of a mandatory, blanket policy and practice. At the time these searches were conducted, there was no prior or contemporaneous, individualized inquiry made to determine whether there was any articulable, reasonable suspicion to believe that any individual Sub-Class A class member was concealing contraband or weapons on their persons.

8. On May 6, 2003, the plaintiffs filed a Motion for Partial Summary Judgment on the Issue of Liability Only on behalf of Sub-Class A (a/k/a the "Kelly" Class). (Doc. No. 81). Defendants opposed this Motion. (Doc. No. 88).
9. The parties subsequently entered into a Joint Stipulation of Findings of Fact Regarding Sub-Class B, which reflected that members of Sub-Class B (the "Change-Out" class) went through the same general booking and disrobing procedure as members of Sub-Class A as described herein, with the exception that members of Sub-Class B were not subject to a visual body cavity search by deputies. (Exhibit A to Doc. 85). Before members of Sub-Class B were transferred to general population from IPC, they were required to remove some or all of their clothing, including undergarments, in order to change into OPCSO supplied garments under circumstances which allowed OPCSO deputies of the same sex and other detainees of the same sex the ability to view the arrestees' genital area, anus, buttocks and/or in the case of female arrestees, breasts. This procedure was called a "change-out."
10. On June 26, 2003, the Plaintiffs filed a Motion for Contempt (Doc. No. 84) against defendants Sheriff Foti and Warden Bordelon alleging violation of the Court's consent decrees described above (Docs. Nos. 54 and 62) regarding the blanket practice of Warden Bordelon of requiring male arrestees charged only with minor offenses, prior to their first court appearance, to strip naked and to expose their private parts to the view of male deputies and other males,

upon transfer from the IPC to the receiving tier of Templeman III (an OPCSO male detention facility), after having changed into jail-issued clothing.

11. On June 27, 2003, the Plaintiffs filed a Motion for Partial Summary Judgment on the Issue of Liability Only on behalf of Sub-Class B (a/k/a the "Change-out" Class). (Doc. No. 85). Defendants opposed this Motion. (Doc. No. 95).
12. On September 5, 2003, in a letter agreement, signed by Defendant Sheriff Foti, and approved and entered by the Court, the parties agreed to resolve Plaintiffs' Motion for Contempt described above in ¶ 10. (Doc. No. 84). The settlement terms are set forth in detail in that letter agreement, but in general the agreement provided that the OPCSO would take all necessary and proper steps to ensure that future violations of the Consent Decrees or related orders of the Court do not occur, that OPCSO wardens, deputies and other employees would comply with the letter and the spirit of the injunctive relief provided in the above Consent Decrees, and that the OPCSO would ensure the implementation of new policies adopted as ordered by the Court, pursuant to this litigation. It further provided that the OPCSO would develop and implement training programs for OPCSO wardens, deputies and employees. (See Doc. No. 98, annexed to letter agreement).
13. In addition, on September 5, 2003, the parties joined in a Stipulated Amended Class Definition, approved and ordered by the Court, to certify Sub-Class C in this proceeding (a/k/a the "Contempt" or "Templeman III" Class), as to

liability only. (Doc. No. 98). The parties also annexed to the Definition a Joint Stipulation of Findings of Fact providing, in pertinent part:

- a. Numerous male arrestees charged only with minor offenses, prior to their first court appearance and after having changed into OPCSO supplied clothing (post-“change-out”) were transferred to the receiving tier of Templeman III, a detention facility operated by the OPCSO. At the time of their transfer into Templeman III, many of these arrestees were required to remove or rearrange some or all of their clothing, including the jail supplied uniforms into which they had previously been required to change, under circumstances which allowed OPCSO male deputies and other male detainees the ability to view the arrestees’ genital area, anus and/or buttocks. This procedure was for the sole purpose of searching the arrestee before being received into the holding facilities or receiving tiers of Templeman III. This procedure took place both prior to and after the entry of the consent decrees of January 15, 2002 and May 20, 2002.
- b. The procedure described in the previous paragraph was generally applied to all male arrestees transferred to Templeman III whenever adequate personnel were available to perform it. The number of arrestees on minor offenses only who underwent this procedure since April 25, 1999, cannot be exactly determined but the computerized records of the OPCSO reflect that the number of persons who

underwent this procedure from March 5, 2003 through May 30, 2003, is approximately 6,043.

- c. Male trustees, also known as "Yanks" (prisoners already in custody of the OPCSO who were not members of any of the Sub-Classes herein), were sometimes present during the post—"change-out" blanket procedure described above involving male members of Sub-Class C.
- d. The post—"change-out" procedure involving members of Sub-Class C as described herein was a mandatory, blanket practice or custom of Warden Bordelon, the Warden of Templeman III and a supervisory employee of Sheriff Foti, and of the OPCSO, which was in effect since April 25, 1999, which applied to all arrestees transferred to the receiving tier of Templeman III.
- e. The blanket, post—"change-out" procedure described herein of arrestees entering Templeman III took place at the direction and pursuant to the orders of Warden Bordelon, a named defendant in this lawsuit, who was, at all pertinent times herein, Chief of Security for the OPCSO, warden of Templeman III and a supervisory employee of Sheriff Foti, and of the OPCSO.
- f. At the time the post—"change-out" procedures at Templeman III were conducted on members of Sub-Class C, there was no prior or contemporaneous, individualized inquiry made to determine whether

there was any articulable, reasonable suspicion to believe that any individual member of Sub-Class C was concealing contraband or weapons on their persons.

14. On August 21, 2003, the parties appeared at a status conference with the Court and agreed to explore the possibilities of settlement. (Doc. No. 97). The contempt matter was resolved on August 21, 2003 by agreement of the parties and an Order of the Court reflecting that agreement was entered on Sept 9, 2003. (Doc. No. 98).
15. From August through November 2003, the parties conducted regular, multiple, multi-hour settlement meetings and discussions, but were unable to resolve their dispute. During this period Plaintiffs had access to financial records of the OPCSO and advice and consultation from an expert in government finances to determine the ability of the OPCSO to pay a judgment in this matter.
16. On March 29, 2004, the parties withdrew all their pending motions, reserving the right to re-urge same (Doc. No. 112), and on April 22, 2004, the parties were ordered by the Court to participate in mediation. (Doc. No. 118).
17. On May 18, 2004, after two full days of Court-ordered mediation (preceded by separate meetings with the court-appointed mediator), the parties agreed to settle this matter for the amount of \$9,375,000.00 (Nine Million Three Hundred Seventy-Five Thousand Dollars and No/100ths) plus interest from June 2, 2004, and to propose a joint settlement agreement to the Court for

approval. Subsequent to the parties having agreed on the general terms for settlement of this litigation, the parties engaged in numerous meetings, Court conferences, document drafting sessions, and other efforts to bring this settlement to completion. A status hearing on the settlement was scheduled with the Court on August 29, 2005, the same day Hurricane Katrina hit New Orleans. Obviously, Hurricane Katrina and its devastating impact upon the City of New Orleans put that status hearing and the entire case on hold. Shortly after the City was devastated, Sheriff Gusman filed a motion with the Court seeking a temporary loan and transfer of the money already set aside in a Settlement Fund in the event these funds might have to be used to assist with post-storm recovery efforts. Class Counsel opposed this Motion. The Court held an evidentiary hearing on the Sheriff's motion via telephone, as New Orleans counsel and the Court were displaced as a result of the aftermath of Katrina. At the conclusion of the hearing, the Court granted the Sheriff's motion and set conditions for the temporary (one year) loan to the Sheriff's Office, with which the Sheriff complied. As it turned out, the Sheriff did not have to use this Settlement Fund and at the end of the one year period, the money was returned, with interest earned. Since that time the parties have renewed their efforts to conclude this matter, have continued to meet separately and with the Court, and are now in a position to move forward to finally resolve this lawsuit.

18. The parties agree that one of the main purposes of this lawsuit was institutional reform in the form of injunctive relief, to stop the policies and practices at issue herein of the OPCSO at issue, to prevent the OPCSO from reinstating said policies and practices and to deter the OPCSO and others from pursuing such policies and practices. The monetary relief provided for by this Settlement Agreement is appropriate here because the Class/Sub-Class Member's claims for damages are premised upon the predominating common issues of the blanket visual body cavity, change-out, and contemptuous strip searches policies and procedures of the OPCSO during the class periods defined herein. There is no danger that individual variations in the type or magnitude of damage suffered by individual class members will affect predominance as the class representatives have the same type of damages and seek the same type of relief as members of the proposed class would be seeking. The parties submit that there is no need for individual calculation of damages and that separate damage suits by individual class members are not necessary. This case has been pending before the Court in excess of six (6) years. The parties believe that had there been claims for individual damages beyond those which have been experienced by the class representatives, by this time those individuals would have either contacted Plaintiffs' Class Counsel to pursue individual claims on their behalf, or would have hired separate individual lawyers to do so. To the knowledge of the parties, other than individual suits which have already been concluded,

there are no individual lawsuits for damages pending or contemplated, relating to the issues involved in this class action litigation. The parties submit that the monetary relief herein grants the class members predictable, certain, defined, and prompt relief, which is also a reasonable and fair resolution of this dispute. The settlement of the damages claims as provided by this settlement also provides the Court with a defined administrative procedure to assure due process to each individual claimant, including the right to "opt out." By contrast, if this 23(b)(3) class action settlement were not approved by the Court, the class representatives and the proposed class members would not be able to vindicate their rights because: (a) many individuals would not risk a second public humiliation by having to testify about their arrest and strip search in a public judicial forum; and (b) even if individuals agreed to subject themselves to relating such intimate and embarrassing details in a public forum, there is always a risk of receiving a lesser damage award or none at all in separate, individual trials. Moreover, this settlement would relieve this Court of the judicial burdens that would be caused by repeated adjudications of the same issues in thousands of individual trials against these defendants.

19. The parties accept as a matter of law that punitive damages are not available against the OPCSO as a public entity and are potentially available in this lawsuit only against the individual defendants sued in their individual capacity pursuant to 42 USC §1983.

20. The individual defendants have submitted personal financial statements, *in camera*, to the Court, and, pursuant to a Protective Order, to Class Counsel. Plaintiffs, being aware of the financial resources of the individual defendants, are agreed that the ability of the individual defendants to pay damages in this litigation as awarded in a judgment is highly unlikely to be within their means in comparison to the number of potential claims by class members.
21. The parties acknowledge that the OPCSO is a public entity, dependent upon funds generated mostly from taxpayers, directly and indirectly, through taxes, bonds, and fees; that the needs of the OPCSO for these funds are great; that the financial resources available to the OPCSO to pay the damages in this litigation are greatly restricted due to the expenses associated with providing adequate housing, staffing, welfare and medical care for prisoners, in comparison with the number of potential claims by class members; that the interests of the plaintiffs to recover damages against these defendants in their official capacities must be reasonably and fairly balanced against the significant public interest involved in insuring the viability of the continued operations of the duties and functions of the OPCSO.
22. The parties agree that this settlement provides for a mathematical formula for computation and distribution of monetary relief to Class/Sub-class members which is fair, reasonable and equitable and, as contemplated in this settlement, is well within the range of comparable strip search settlements which have been approved by other courts.

23. The parties submit that this class action meets the criteria of Fed. R. Civ. P. Rule 23(b)(3) with monetary relief, notice and the opportunity to opt out. The questions of law and fact are common to the members of the class and these questions predominate over questions affecting the individual members. Also, the parties agree that the class action is the superior method for the fair and efficient adjudication of the controversy.
24. The parties agree that Sheriff Marlin N. Gusman, as Criminal Sheriff of Orleans Parish, has the legal obligation, created by his predecessors prior to his tenure as Criminal Sheriff, as well as full authority as Criminal Sheriff of Orleans Parish, to execute this Settlement Agreement and that the obligations of settlement created prior to Sheriff Gusman's tenure, by his predecessors in office, as set forth in this Settlement Agreement, are binding not only on Sheriff Gusman as Criminal Sheriff of Orleans Parish, but on all successor Criminal Sheriffs as well.
25. The parties agree that this case has been vigorously litigated by the parties for over six (6) years; and that Class Counsel actively monitored the operations of the OPCSO relative to strip and visual body cavity searches for over two years pursuant to Orders of this Court.
26. The parties agree that the injunctive relief obtained by Plaintiffs has substantially altered the policies, practices and procedures of the OPCSO.
27. The parties agree that the sum to be paid to the Class/Sub-Classes as monetary relief is a fair and reasonable sum, and that this Settlement

Agreement is in the best interest of all parties. The parties have researched and examined other, similar cases around the country and find that the amount of the Settlement Fund established in this case is comparable with those cases. It is also anticipated that the pay-outs to individual Class Members will be in line with the amounts recovered by class members in similar litigation in other jurisdictions. Class Counsel have conferred with, and had the benefit of advice from, attorneys around the United States who have litigated and settled similar strip search class actions. It should also be noted that this settlement was achieved in the context of significant budgetary concerns at OPCSO. It is also submitted that, similarly with the experience of other cases of this nature around the country, Class Members would prefer to have a quick resolution of their claims with a certain monetary payout without delay and without having to present specific proof of damages.

28. The parties agree and stipulate that plaintiffs' counsel typically represent plaintiffs in federal civil rights litigation with forty percent (40%) contingent fee agreements. Class Counsel assert that a contingency fee equal to the sum of thirty-seven (37%) percent of the Settlement Fund (plus interest on such attorneys' fees, costs and expenses at the same rate and for the same periods as earned by the Settlement Fund), constitutes fair and reasonable compensation for Class Counsel given the magnitude of the work performed, the investment of heretofore uncompensated time by Class Counsel over the course of over six (6) years, the risks involved in the litigation, and the

considerable investment of time and energy required to finally complete this matter, especially given the intervening effects of Hurricane Katrina. Defendants do not contest this fee and submit that it is reasonable. It is further agreed that, in the event that Plaintiffs have to incur any additional attorneys fees and costs to seek enforcement or collection of this Settlement Agreement against Defendants because of a default by any Defendant in the timely payment or performance of any Defendant's obligations under the Settlement Agreement, the Defendants acknowledge that plaintiffs have substantially prevailed on the merits, and that Defendants will be responsible for payment of reasonable attorneys fees and costs to plaintiffs, as approved by the Court, pursuant to 42 USC §1983 and §1988 for those additional enforcement and/or collection efforts. The Defendants reserve all other defenses to any such claim for additional attorneys fees and costs.

29. Defendants agree to provide whatever timely assistance and information is necessary and feasible to accommodate and facilitate a reasonable and cost-effective administration of this settlement. The OPCSO has already provided to Class Counsel and the Claims Administrator a useable data base containing pertinent information, such as name, address, Social Security number, date of birth, I.D. number, OPCSO unique identifier number, folder number, date of arrest, offenses charged, booking date, location/transfer information and date and time of first court appearance or release, of every Class/Sub-Class member, in order to facilitate efforts to identify and locate class members and

to confirm arrest, booking, location, transfer and first court appearance or release information, including dates and times of such events. The parties agree to take all reasonable and appropriate steps to minimize costs and fees associated with implementation of this Settlement Agreement.

30. If the parties are unable to agree to the appropriate distribution of any sums which, for whatever reason, remain in the Settlement Fund after completion of the distribution plan, the parties specifically reserve that issue for decision by the Court at a later date, when it becomes appropriate and necessary to resolve it.

BASED UPON THE FOREGOING RECITALS, which are expressly made a part of this Settlement Agreement, the parties stipulate and agree that these proceedings are to be settled and compromised subject to the approval of the U.S. District Court for the Eastern District of Louisiana, pursuant to Rules 23(b)(3) and 23(e) of the Federal Rules of Civil Procedure, upon and subject to the terms set forth herein.

I. SETTLEMENT CLASS/SUB-CLASS DEFINITIONS:

It is stipulated that the following class definitions are agreed to by the parties and adopted in these proceedings:

CLASS: Every person arrested only on "minor offenses" (as defined below) who entered the Intake and Processing Center ("IPC") operated by the Orleans Parish Criminal Sheriff's Office ("OPCSO"), during the time periods set forth below, who was required to submit to any or all of the following procedures, prior to his or her first court appearance or release, whichever came first, pursuant to a blanket policy, practice or custom of the OPCSOS applicable to all arrestees to be admitted to the general population of the jail:

Sub-Class A or the "Kelly" class:

(A) The removal or rearrangement of some or all of the arrestee's clothing, including undergarments, in the presence of OPCSO deputies and/or other detainees, resulting in the exposure of the arrestee's genital area, anus, buttocks, and/or breasts (in the case of female arrestees) and the subsequent visual inspection of the arrestee's private parts by OPCSO deputy or deputies, which occurred from April 25, 1999 through February 14, 2002;

Sub-Class B or the "Change-Out" class:

(B) The removal or rearrangement of some or all of the arrestee's clothing, including undergarments, in order to change into OPCSO supplied garments under circumstances which allowed OPCSO deputies and/or other detainees the ability to view his or her genital area, anus, buttocks and/or (in the case of female arrestees) breasts, which occurred from February 15, 2002 through May 31, 2002;

Sub-Class C or the "Contempt" or "Templeman III" class:

(C) The removal or rearrangement of some or all of a male arrestee's clothing or clothing furnished by OPCSO including undergarments, in the presence of OPCSO deputies and/or other detainees, which resulted in the exposure of the arrestee's genital area, anus, and/or buttocks to others in violation of the Court's Order of May 20, 2002 as the arrestee was being admitted to the receiving tier at Templeman III from the IPC, which occurred from June 1, 2002 through May 31, 2003.

As used herein "minor offenses" includes one or more traffic offenses, misdemeanors, petty offenses, or violations of municipal or parish ordinances, none of which involves weapons or controlled dangerous substances. This definition specifically excludes any and all felonies.

As used herein "visual inspection of the arrestee's private parts" means inspection of the arrestees' genitalia, buttocks, anal cavity, vaginal cavity and/or female breasts by an OPCSO deputy or deputies.

II. PAYMENT INTO AND CUSTODY OF SETTLEMENT FUND:

- A. As a result of the settlement agreement reached after the Court-ordered mediation, the OPCSO deposited Nine Million Three Hundred Seventy-five Thousand Dollars and No/100ths (\$9,375,000.00) together with interest earned since June 2, 2004, into an interest bearing account in the name of "Orleans Parish Strip Search Settlement Fund" (hereafter referred to as the "Settlement Fund") with Hibernia National Bank (hereafter referred to as the "Escrow Agent"). This Settlement Fund was established as a Qualified Settlement Fund under IRS Regulation 1.468B-1, pursuant to the terms and conditions of the Escrow Agreement previously filed with this Court as Exhibit B to Joint Motion for Approval of Escrow Agreement, executed by the Parties on September 17, 2004. (Doc. No.124). The terms of that Agreement provided that no funds shall be withdrawn or disbursed from the Settlement Fund except pursuant to the Court's orders or joint written instructions by the Parties. On Oct. 4, 2005 the Court issued an order permitting the OPCSO to borrow the sums of money in the fund, in response to the emergency conditions which existed following the Hurricane Katrina disaster (Docket No. 144), and setting forth the terms for handling and restoration of those sums. On October 4, 2006, the OPCSO returned to the Settlement Fund the sums borrowed, including interest earned, as per the Court's Order. OPCSO complied with all of the terms in the Court's order for the handling and restoration of the Settlement Fund.
- B. Except as otherwise allowed by the Court's Order of October 4, 2005, described in the previous subparagraph, the Settlement Fund and any earnings therefrom are and

will remain invested in U.S. Treasury AAA rated Money Market Fund, unless and until otherwise ordered by the Court. Class Counsel, Class Representatives, Defendants and Defendants' counsel shall not have any responsibility or liability for the investment of the Settlement Fund.

- C. All interest or income resulting from the investment of the Settlement Fund shall constitute part of the Settlement Fund and shall accrue to the benefit of and be held and administered as part of the Settlement Fund.
- D. The Settlement Fund and all interest income which accrues from the Settlement Fund shall be and remain public funds belonging to OPCSO until disbursement by the Escrow Agent in accordance with this Settlement Agreement; the Escrow Agent shall hold the Settlement Fund at least until such time as a judgment is rendered finally either approving or disapproving this Settlement Agreement and such judgment becomes final and definitive and not subject to further appeal or review, at which time the Settlement Fund shall be managed pursuant to the orders of the Court.
- E. Under the terms of the Escrow Agreement, the Escrow Agent shall cause an accounting to be maintained at all times that sets forth the principal amount of the Settlement Fund and all earnings thereon and fees and expenses paid by the Escrow Agent and shall provide monthly reports of the Settlement Fund to designated counsel for the Plaintiffs and the Defendants. Costs, fees and expenses of the Escrow Agent shall be paid from accrued interest or income to the Settlement Fund or the principal thereof, if accrued interest or income is insufficient.

F. The Parties hereby expressly agree and acknowledge that neither the Defendants or their counsel, Class Counsel, the Class Representatives or the Escrow Agent or its Counsel have provided any legal advice or advice regarding tax consequences, to the parties or to Class Members with respect to the Settlement Fund or interest or income thereon.

III. CLASS ACTION CLAIMS ADMINISTRATOR AND DISTRIBUTION PROCESS:

- A. The Claims Administrator agreed to by the parties, identified in Exhibit D attached hereto, shall act under the supervision of Class Counsel and shall be subject to the continuing jurisdiction of the Court. The Claims Administrator, acting on behalf of and for the benefit of all Class/Sub-Class members, shall administer notice in a manner prescribed herein and approved by the Court; shall accept and docket all Proofs of Claim, Requests for Exclusion ("opt-outs"), Notices of Objections and Notices of Intent to Appear; shall administer the Request for Cure procedure described herein; shall administer and calculate the claims submitted by the Class/Sub-Class Members according to the distribution formulas set forth hereinafter; shall oversee distribution of the Net Settlement Fund as defined in III.C.4 below to Authorized Claimants; and shall report to the Court at all times deemed necessary and appropriate to keep the Court properly informed regarding the status of the case.
- B. Upon preliminary Court approval of this Settlement Agreement, and pursuant to joint written instruction of the parties or further order of the Court, and from time to time as necessary for the proper and timely administration of this Settlement Agreement, distributions from the Settlement Fund may be made as follows:

1. To pay costs of notice, costs of administration and the fees of the Claims Administrator and any and all other experts and/or consultants retained to facilitate implementation of this Settlement Agreement;
 2. To pay costs incurred in the preparation of any tax returns required to be filed on behalf of the Settlement Fund as well as the taxes, interest and penalties, if any, determined to be due thereon, owed by reason of interest and income earned on the Settlement Fund.
- C. Upon final approval of this Settlement Agreement by the Court after the fairness hearing, and after the time for appeal of the Court's rulings has passed or, if appealed, the Court's rulings have been affirmed on appeal and the time for further appeal or review has passed, the remaining sums in the Settlement Fund shall be applied as follows:
1. To pay any remaining costs, taxes, expenses and fees, as set forth in III. B. above.
 2. To pay attorneys' fees to Class Counsel, including reimbursement of costs and expenses, expert and consultant fees, as stipulated in this Settlement Agreement and as approved by the Court;⁴
 3. To pay incentive awards to the Class Representatives for their efforts and activities in representing the interests of the Class/Sub-Classes in this litigation, as contemplated in III. D. below and as approved by the Court.

⁴Plus interest on such attorneys' fees, costs and expenses at the same rate and for the same periods as earned by the Settlement Fund.

4. To distribute the balance of the Settlement Fund after payment of all amounts described above (the "Net Settlement Fund") to Authorized Claimants as approved by the Court.
- D. Class Counsel intend to submit to the Court a request for incentive awards to the individual class representatives varying from \$5,000.00 to \$20,000.00 per person (plus interest at the same rate and for the same periods as earned by the Settlement Fund), based upon the individual class representatives' involvement and participation in representing the Class/Sub-Classes in this litigation. Defendants do not object to this request and find it fair and reasonable under the circumstances of these proceedings.
- E. In accordance with the terms of this Settlement Agreement and such further orders of the Court as may be entered, the Net Settlement Fund shall be distributed to Authorized Claimants, subject to and in accordance with the following:
 1. By the date specified by the Court (the "Claim Date"), each person who wishes to be treated as an Authorized Claimant must submit to the Claims Administrator a completed Proof of Claim and Release ("Proof of Claim") signed under penalty of perjury and supported by such documents as specified in the Proof of Claim. A Proof of Claim shall be deemed timely submitted when received by the Claims Administrator on or before the Claim Date. Facsimile or electronic mail filings are not acceptable and will not be considered.

2. Each Proof of Claim shall be reviewed by the Claims Administrator, with the participation of Class Counsel, who shall determine in accordance with this Agreement whether the claim should be accepted. Whether or not an individual qualifies as a class member will be based upon the records of the OPCSO; if the OPCSO records do not confirm that an individual fits within one of the Sub-class definitions above, the claim will not be allowed. Defendants, through their counsel, reserve and maintain the right to challenge any individual's claim on the basis of fraud or non-compliance with the Proof of Claim procedures specified herein. Defendants' counsel shall have access to all proofs of claim for this purpose, upon request therefor.
3. Any individual whose claim is accepted by the Claims Administrator shall be referred to as an "Authorized Claimant."
4. A Proof of Claim which does not meet the requirements imposed by this Agreement or is otherwise determined to be deficient or untimely by the Claims Administrator will be preliminarily rejected by the Claims Administrator.
5. The Claims Administrator will prepare a list of all preliminarily rejected claims, together with its reasons for rejection. The list of preliminarily rejected claims will be submitted to the Court and counsel for the parties for review, by a date set by the Court, before the Fairness Hearing, and will be supplemented from time to time when additional information or Proofs of Claim are received.

6. After preliminary rejection of a claim, the Claims Administrator will mail a written notice to the claimant that his/her Proof of Claim is defective or untimely, with a request to cure the deficiency or justify the untimely filing ("Request for Cure").
7. If the additional information submitted in response to the Request for Cure is sufficient to cure the deficiency or justify the untimely filing, the claim will be considered accepted and the claimant will be considered an "Authorized Claimant" (if approved by the Court).
8. If the additional information submitted in response to the Request for Cure is insufficient to cure the deficiency, the claim will be rejected by the Claims Administrator.
9. Failure to respond to a Request for Cure will result in the claim being rejected by the Claims Administrator.
10. The Court may either approve or disapprove the Claims Administrator's determinations and issue whatever orders are appropriate or necessary.
11. The Court has the discretion to appoint a special master pursuant to Fed. R. Civ. P., Rule 53, or to otherwise proceed as the Court deems appropriate.
12. Each claimant and any Class Member who chooses to opt-out from or object to the settlement shall be deemed to have submitted to the jurisdiction of the Court with respect to his/her claim and each claim, opt-out, and objection is subject to investigation and discovery pursuant to the Federal Rules of Civil Procedure, provided that such investigation and discovery shall be limited to

the claimant's status as a Class/Sub-class member and the validity of the claimant's claim, opt-out, or objection, and no discovery shall be allowed on the merits of the above numbered and entitled proceedings or the settlement.

13. Prior to any distribution of the Net Settlement Fund to any claimants: (a) the Claims Administrator shall submit a final list of accepted and rejected claims, objections and opt-outs to the Court for its approval or disapproval by the date specified by the Court; (b) all disputes with respect to any rejected Proofs of Claim, Objections, and Requests for Exclusion shall have been withdrawn or resolved by the Court (or the time therefor shall have expired); (c) all matters concerning attorneys' fees, costs, expenses or disbursements shall have been resolved by the Court and all appeals therefrom shall have been resolved (or the time therefor shall have expired); (d) all costs of administration shall have been paid; and (e) the Court shall have approved the report of the Claims Administrator, and payment of its fees and expenses incurred to that date, and shall have directed payment of the Net Settlement Funds to the Authorized Claimants.
14. All Class Members⁵, whether or not they submit a Proof of Claim by the Claim Date and whether or not their Proof of Claim is accepted or rejected, shall be subject to and bound by the provisions of this Settlement Agreement, the judgment, and the releases contained in or contemplated by said

⁵Unless the context otherwise requires, "Class Member" shall mean a putative or actual member of any of the Sub-classes now or hereafter certified in this case.

documents unless that Class Member files a timely and valid Request for Exclusion. Class Members who do not file a timely and valid Request for Exclusion shall be forever barred from receiving any payment from any Defendants for any claims covered by this Settlement Agreement other than as provided herein. A Request for Exclusion must unambiguously state the Class Members' desire to opt out of the settlement, must be personally signed by the Class Member and include his or her name, date of birth, and an address and/or phone number where the individual can be contacted. By filing a Request for Exclusion, an individual is asserting that he or she is a member of at least one of the three Sub-Classes certified in this lawsuit.

- F. In addition to preparing a list of all preliminarily rejected claims, the Claims Administrator will also prepare a separate lists of all Requests for Exclusion, Objections and Notices of Intent to Appear at the Fairness Hearing. These lists, together with copies of any underlying or supporting documents, will be submitted intermittently to Class Counsel for review and consideration and for preparation of a report to the Court and defendants' counsel. These lists and the reports to the Court and defendants' counsel will be supplemented from time to time when additional Requests for Exclusion, Objections and/or Notices of Intent to Appear are received by the Claims Administrator.
- G. The Claims Administrator is responsible for docketing, preserving and producing, as requested by the Court or the parties' counsel, all documents (including envelopes)

received by the Claims Administrator relating to Proofs of Claim, Requests for Exclusion, Objections and Notices of Intent to Appear at the Fairness Hearing.

- H. As a condition to receiving their award from the Net Settlement Fund, each claimant shall be deemed to have released and discharged all the Defendants from any and all claims for damages of any kind and from filing suit or continuing any pending suit against any Defendant released herein in any court, state or federal, on any claim or cause of action covered by this litigation and the settlement thereof. For purposes hereof, the term "Defendants" means not only the named defendants in this litigation, but also any and all other individuals presently or formerly employed by or affiliated with the OPCSO who could have been made defendants individually or in their official capacity in this litigation, and any and all successors or assigns of the OPCSO (including the present Criminal Sheriff Marlin N. Gusman in any capacity) or such other related parties in interest.
- I. Class Counsel and Defendants' Counsel are not providing any tax advice to claimants and the decision of whether an Authorized Claimant is required to report their share of the Net Settlement Fund to tax authorities is the responsibility of each claimant.
- J. Class Counsel, Class Representatives, and Defendants and their counsel shall have no responsibility for or liability whatsoever with respect to the investment of or any distribution from the Settlement Fund, the determination, administration, calculation or payment of claims, the payment or withholding of taxes, or any losses incurred in connection with any of the foregoing.

K. No person shall have any claim against Class Counsel, Class Representatives, Defendants, Defendants' counsel or the Claims Administrator based on any distribution from the Settlement Fund made in accordance with this Settlement Agreement as approved by the Court.

IV. ALLOCATION TO CLASS MEMBERS:

The Net Settlement Fund (as defined in III. C. 4. above) shall be distributed to the Authorized Claimants as follows:

SUB-CLASS	POINT LEVEL
A-The "Kelly" Class ----- Strip and Visual Body Cavity Search April 25, 1999 through Feb. 14, 2002	THREE (3)
B-The "Change Out" Class ----- Strip Search During Change-Out; No Visual Body Cavity Search Feb. 15, 2002 through May 31, 2002	ONE (1)
C-The "Contempt" or "Templeman III" Class ----- Strip Search of Male Arrestee During Transfer to Templeman III From IPC June 1, 2002 through May 31, 2003 No Visual Body Cavity Search	ONE AND ONE-HALF (1.5)

As shown above, each of the Sub-Classes has been given a point level. An individual can be a member of more than one of the Sub-Classes or all of them, but will get paid for only one search at the highest point level. The value of each point is the same for all three Sub-Classes. The amount that any Authorized Claimant will receive cannot be determined at this time because it depends on which Sub-Class an individual qualifies for, and how many valid claims in each Sub-Class are

submitted. Thus, after the Net Settlement Fund is determined, the total number of Authorized Claimants' points will be divided into the Net Settlement Fund to determine the cash value of each point. If, for example, that value is \$100.00 per point, those Authorized Claimants in Sub-Class A would receive \$300.00 (or 3 points x \$100.00 per point = \$300.00). Those Authorized Claimants in Sub-Class B would receive \$100.00 (or 1 point x \$100.00 = \$100.00). Those Authorized Claimants in Sub-Class C would receive \$150.00 (or 1.5 points x \$100.00 = \$150.00).

The following presumptions as to Class/Sub-Class membership shall apply:

1. Membership in Sub-Class "A" a/k/a the "Kelly" Class:

Any individual (male or female) who was arrested for minor offenses only, if transferred from IPC to general population from April 25, 1999 through February 14, 2002, prior to his or her first court appearance or release, whichever came first, will be presumed to have been subjected to a strip and visual body cavity search and will be presumed to be a member of Sub-Class A.

2. Membership in Sub-Class "B" a/k/a the "Change-Out" Class:

Any individual (male or female) who was arrested for minor offenses only, if transferred from IPC to general population from February 15, 2002 through May 31, 2002, prior to his or her first court appearance or release, whichever came first, will be presumed to have been subjected to a strip search only, without a visual body cavity search, and will be presumed to be a member of Sub-Class B.

3. Membership in Sub-Class "C" a/k/a the "Contempt" or "Templeman III" Class

A male individual who was arrested for minor offenses only, if he was transferred from IPC to Templeman III from June 1, 2002 through May 31, 2003, prior to his first

court appearance or release, whichever came first, will be presumed to have been subjected to a strip search in violation of the Court's Order of May 20, 2002 and will be presumed to be a member of Sub-Class C.

The dates provided in the class definitions and these presumptions are based upon the following: April 25, 1999 is the earliest prescriptive date for any claim in this case. February 15, 2002 is the effective date of the first Consent Decree entered by the Court granting injunctive relief which modified OPCSO's blanket strip and visual body cavity search policy, practice and procedure and officially ended the blanket, mass visual body cavity searches. June 1, 2002 is the effective date of the Supplemental Consent Decree entered by the Court granting injunctive relief which modified OPCSO's change-out procedure to require privacy booths. May 31, 2003 is the last date of the Templeman III post-change out blanket, mass strip searches. Whether or not an individual qualifies as a class member will be based upon the records of the OPCSO; if the OPCSO records do not confirm that the individual fits within one of the class definitions above, the claim will not be allowed.

V. NOTICE TO CLASS MEMBERS:

- A. The Claims Administrator shall implement and administer a notice plan, with the assistance of Class Counsel, and pursuant to the continuing jurisdiction of the Court.
- B. The notice plan shall include written notice of this proposed settlement, in substantial conformity with the Class Action Notice (Long Form) attached hereto as Exhibit B, mailed to the individual Class/Sub-Class members by First Class Mail, with a Proof of Claim and Release (Exhibit C). These documents will be sent to all individual Class/Sub-Class members at the last known address according to OPCSO records

- provided by the Defendants in useable, electronic form, as corrected and verified, to the extent possible, through a national locator database or service and whatever additional post-Katrina address locator resources may be necessary and accessible.
- C. If, after the initial mailing, an individual written notice is returned as undeliverable, the Claims Administrator will attempt to locate the Class/Sub-Class member by way of a national locator database or service and, if another viable address is found, re-mail the Long-Form Notice, with its accompanying documents, to that new address.
- D. The Claims Administrator and Class Counsel will develop and provide the Court with a notice plan deemed appropriate and consistent with the requirements of due process which will include media publication to the extent required by due process in New Orleans and other major metropolitan areas identified as having significant numbers of the New Orleans area population displaced by Hurricane Katrina. This will include, but is not necessarily limited to, publication of a legal notice substantially similar to the Class Action Notice (Short Form), attached hereto as Exhibit B1, to be printed and published on a date to be set by the Court, in the New Orleans area and other designated areas identified to have significant numbers of persons displaced from the New Orleans area as a result of Hurricane Katrina. This Notice will also be published and posted on the internet. Any additional mass publication notice shall either be coordinated with Defendants' counsel as to its form, content and placement location, or shall be ordered by the Court.
- E. The Claims Administrator shall provide a copy of the Notices (Short and Long Forms) and Proof of Claim and Release to anyone who requests these documents.

The Claims Administrator can be contacted through a mailing address, through a dedicated internet website, and through a toll-free telephone number to be established by the Claims Administrator.

- F. The Claims Administrator shall provide an affidavit to the Court, with a copy to Class Counsel and Defendants' Counsel, attesting to the measures undertaken to provide notice of settlement to the Class/Sub-Class Members.
- G. The Claims Administrator and its employees, agents and assigns, shall maintain the privacy of the names, addresses, birth dates, Social Security numbers and other information reflected and provided in any records supplied by the Defendants and/or the Class/Sub-Class members themselves, except as to the Court, counsel for the parties, the Escrow Agent, and as further ordered by the Court.
- H. Within (10) days after the Claim Date, the Claims Administrator shall provide to counsel for the parties a list of all claims made and copies of the returned Proofs of Claim and Releases, which list and forms shall be confidential and not disclosed by any party or their counsel except to the Court and as pursuant to Court order.
- I. Within (10) days after the deadline(s) fixed by the Court for filing Requests for Exclusion, Objections and Notices of Intent to Appear, the Claims Administrator shall provide to the Court and counsel for the parties a list of all Requests for Exclusion, Objections and Notices of Intent to Appear, and, upon request, copies of any underlying or supporting documents for same.

VI. CLASS COUNSEL'S ATTORNEYS' FEES AND REIMBURSEMENT OF COSTS, EXPENSES, EXPERT FEES AND CONSULTANTS FEES:

Class Counsel will submit an application(s) for attorneys fees, costs and expenses to the Court, in support of the distribution(s) to them from the Settlement Fund for: (1) an award of Class Counsels' attorneys' fees in the amount of thirty-seven (37%) percent of the Settlement Fund; (2) reimbursement of expenses and costs incurred by Class Counsel, including the fees of any experts and/or consultants, incurred in prosecuting this case; and (3) interest on such attorneys' fees, costs and expenses at the same rate and for the same periods as earned by the Settlement Fund. Upon the order of, and in the amount granted by the Court, all fees, costs, and disbursements of Class Counsel, and all interest thereon, shall be paid from the Settlement Fund. In the event that Plaintiffs incur any additional attorneys' fees and costs to seek enforcement or collection of this Settlement Agreement against Defendants because of a default by any Defendant in the timely payment or performance of any Defendant's obligation under the Settlement Agreement, the Defendants acknowledge that Plaintiffs have substantially prevailed on the merits, and that OPCSO will be responsible for payment of reasonable attorneys fees and costs to plaintiffs, as ordered by the Court, pursuant to 42 USC §1983 and §1988 for those additional enforcement and/or collection efforts. The Defendants reserve all other defenses to any such claim for additional attorney fees and costs.

VII. FILING OF THIS CLASS ACTION SETTLEMENT AGREEMENT AND JOINT MOTION FOR APPROVAL AND REQUEST FOR ORDER TO BE ENTERED:

Promptly after the execution of this Settlement Agreement, the Parties shall submit it to the Court along with all relevant pleadings, including a Joint Motion, Memorandum and Proposed Order with all Exhibits, to apply for a Preliminary Order of Approval of this settlement and for a fairness hearing date.

VIII. QUALIFIED SETTLEMENT FUND:

The Settlement Fund shall be treated as a "Qualified Settlement Fund" within the meaning of Treasury Reg. Sec 1.468B-1. The Claims Administrator, as administrator of the Settlement Fund within the meaning of Treasury. Reg. Sec 1.468B-2(k)(3), shall be responsible for and shall do all things required to qualify the Settlement Fund as such, and shall be responsible to insure that appropriate tax returns for the Settlement Fund are prepared and filed and that any taxes owed with respect to the Settlement Fund are paid from it. The OPCSO will provide promptly to the Claims Administrator, upon request, the statement described in Treasury Reg. Sec 1.458B-3(e).

IX. TERMINATION OF THIS SETTLEMENT AGREEMENT:

The Notices to Class Members described herein will inform Class Members that they have the right to exclude themselves ("opt out") from this Settlement Agreement. Class Members may exercise that right by submitting a written Request for Exclusion as set forth herein with the Claims Administrator by the date specified by the Court. The Court will consider the timeliness and validity of any Request for Exclusion at the Fairness Hearing. If the individual requesting exclusion wishes to be heard at the Fairness Hearing, he or she must provide notice to the Court and counsel of this intention by a date set by the Court.

Should any one or more Class/Sub-class Members file a Request for Exclusion which is found by the Court to be timely and valid, then the Criminal Sheriff in office at the time of such ruling may elect to withdraw from the Settlement Agreement. Should the Criminal Sheriff elect to withdraw, this Settlement Agreement shall be null and void, with full reservation of all rights of all parties herein, and the litigation shall resume as if the proposed settlement never existed. If this Settlement Agreement is terminated or this settlement is not consummated for any other reason

whatsoever, including if a final and definitive order is entered by the Court disapproving the settlement on the terms set forth herein and the time to seek further appeal or review of such order has passed or such order has been affirmed on appeal or review by the highest court having authority to do so, then the entire settlement contemplated hereby shall be null and void and the litigation shall resume as if the proposed settlement never existed. In either such event, all remaining principal and interest in the Settlement Fund shall be returned to OPCSO, except that any expenses, fees, costs or taxes previously paid or incurred at that time shall be non-refundable; OPCSO shall have no claim for reimbursement thereof from Class Counsel, Class Representatives, or any Class Members, none of whom shall have any responsibility or liability of any nature whatsoever for any and all expended or owed amounts.

In the event that this Settlement Agreement is terminated prior to consummation thereof, the releases (if any) in the possession of the Claims Administrator shall be rendered null and void.

This Agreement is intended to settle and dispose of all issues in this case, and shall not be interpreted or enforced so as to settle and dispose of less than all of the issues in these proceedings. In addition, this settlement is made on behalf of and shall inure to the benefit not only of all named individual defendants in this litigation but also on behalf of all other individuals presently or formerly employed by or affiliated with the OPCSO, who could have been made defendants individually or in their official capacity in this litigation and shall be binding on and inure to the benefit of all successors and assigns of the OPCSO (including Sheriff Marlin N. Gusman) or such other related parties in interest.

X. **OTHER PROVISIONS:**

- A. All counsel executing this Settlement Agreement, any of the Exhibits hereto, or any related settlement documents warrant and represent that they have full authority to do so.
- B. It is stipulated by the Defendants that all Consent Decrees and all injunctive orders and relief secured in these proceedings by the Plaintiffs shall remain in full force and effect and be confirmed and recognized, by judgment, in the final order of the Court.
- C. This Settlement Agreement, its exhibits and the other documents referenced herein represent the entire agreement among the parties hereto.
- D. This Settlement Agreement, its exhibits and other documents referenced herein including all dates and deadlines set forth herein, may be amended or modified by the Court upon consent of Class Counsel and Defendants' Counsel, without further notice to the Class/Sub-Class Members unless the Court requires such notice.
- E. This Settlement Agreement shall be binding upon and inure to the benefit of the Class Members and the Defendants.
- F. The Exhibits to this Settlement Agreement are incorporated in and constitute an integral part of the Settlement Agreement.
- G. The parties agree to use their best efforts to obtain all approvals necessary or helpful to effectuate this Settlement Agreement according to its terms, including the execution of all Exhibits or related documents as soon as possible if such execution is necessary.

- H. The present Class Representatives recognized and appointed in this litigation will be confirmed and reappointed as such.
- I. The present Class Counsel recognized and appointed in this litigation will be confirmed and reappointed and will continue as Class Counsel for the purpose of enforcing and implementing this settlement until there is a final and definitive judgment dismissing these proceedings.
- J. Any headings, subheadings, or titles herein are used for the purpose of convenience only and have no other legal force, meaning or effect.

XI. EXHIBITS:

Attached hereto and made a part hereof are the following Exhibits:

- EXHIBIT A:** Proposed Order for Preliminary Approval of Class Action Settlement Agreement;
- EXHIBIT B:** Class Action Notice (Long Form);
- EXHIBIT B1:** Class Action Notice (Short Form);
- EXHIBIT C:** Proof of Claim and Release;
- EXHIBIT D:** C.V., Analytics Inc., Proposed Claims Administrator

XII. RETENTION OF JURISDICTION:

The Court shall retain exclusive and continuing jurisdiction over this litigation, of this Settlement Agreement, and the terms thereof, and of all Counsel, for the purposes of this Agreement and for all related purposes.

The foregoing terms are so stipulated and agreed to between the parties on this 21st day of December, 2006.

USRY, WEEKS & MATTHEWS

BY:

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