

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

Catherine Zaborowski and	)	
Simone Jackson, individually and on	)	
behalf of a class, et al.	)	
	)	
<i>Plaintiffs,</i>	)	
	)	No. 08 CV 6946
<i>-vs-</i>	)	
	)	
Sheriff of Cook County and	)	<i>(Judge St. Eve)</i>
Cook County, Illinois	)	
	)	
<i>Defendants.</i>	)	

**MOTION FOR PRELIMINARY APPROVAL OF  
CLASS ACTION SETTLEMENT**

Plaintiffs, with the agreement of defendants, move the Court to grant preliminary approval to the class settlement agreement attached to this motion as Exhibit 1.

Grounds for this motion are as follows:

1. The parties, with the assistance of Magistrate Judge Valdez, have agreed to a settlement of this class action. The proposed settlement allocates two million seven hundred and twenty thousand dollars (\$2,720,000) for distribution to members of the class. Class counsel estimate that each class member will receive an award ranging between five thousand dollars and forty-five thousand dollars. The size of the award to an individual class member will be determined by counsel in accordance

with a formula that weighs the nature and extent of the restraints employed. The Magistrate Judge will resolve any dispute about the appropriate point-count; to discourage meritless appeals, the point-count of any class member who is unsuccessful in her challenge will be reduced. The settlement also incorporates an agreement that class counsel will be paid attorneys' fees in the amount of 25% of the total settlement fund of four million one hundred thousand dollars (\$4,100,000). Class counsel will not receive any additional compensation from members of the class, and waive their right to recover under contingent fee agreement they entered into with many class members before the Court allowed the case to proceed as a class action.

2. Plaintiffs believe that class notice can be mailed within 21 days and suggests that the fairness hearing be set for an early date in August of 2012.

3. Attached as Exhibits 2 and 3 are proposed forms of class notice. Exhibit 2 is the proposed notice for potential class members who have not had an opportunity to opt out; Exhibit 3 is the proposed notice for those who have been provided with that opportunity. The proposed opt-out form is attached as Exhibit 4 and the proposed claim form is attached as Exhibit 5. Counsel for the parties will agree on appropriate dates for the

return of opt-out forms and submission of claim forms after the Court has scheduled the fairness hearing.

It is therefore respectfully requested that the Court grant preliminary approval to the proposed settlement set a date and time for a fairness hearing, and authorize the parties to provide notice by first class mail in the forms attached as exhibits 2 and 3.

Respectfully submitted,

/s/ Kenneth N. Flaxman  
*Kenneth N. Flaxman*  
ARDC 830399  
200 S Michigan Ave, Ste 1240  
Chicago, Illinois 60604  
(312) 427-3200

Thomas G. Morrissey, Ltd.  
10249 S Western Ave.  
Chicago, IL. 60643  
(773) 233-7900  
*attorneys for the plaintiff class*

## **Exhibit 1**

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

Catherine Zaborowski and	)	
Simone Jackson, individually and on	)	
behalf of a class, et al.	)	
	)	
<i>Plaintiffs,</i>	)	
	)	No. 08 CV 6946
<i>-vs-</i>	)	
	)	
Sheriff of Cook County and	)	<i>(Judge St. Eve)</i>
Cook County, Illinois	)	
	)	
<i>Defendants.</i>	)	

**CLASS SETTLEMENT AGREEMENT**

This settlement agreement is entered into by all parties to this action through their respective undersigned counsel to resolve all matters at issue in this action.

**I. RECITALS**

1. **Nature of litigation.** Plaintiffs filed the above captioned action, for themselves and all others similarly situated, in the United States District Court for the Northern District of Illinois alleging violations of 42 U.S.C. § 1983 and 730 ILCS 125/17.5.

2. **Class Certification.** Pursuant to the Court's order of June 22, 2010, this case is proceeding as a class action for:

All women in the custody of defendant Sheriff on and after December 4, 2006 who have been or who will be shackled during labor, delivery, or recovery following delivery.

3. **Important Rulings.** On December 20, 2011, the Court granted Sheriff Dart's motion for summary judgment on plaintiffs' individual capacity claim and denied cross motions for summary judgment on the official capacity claims. The Court denied defendants' motion to reconsider on January 19, 2012.

4. **Settlement Process.** Counsel for the parties met with Magistrate Judge Valdez on May 11, 2010, November 16, 2010, and again on February 3, 2012 to explore the possibility of settlement. The final settlement conference resulted in a settlement in principle, subject to approval by the Cook County Board. The proposed settlement takes into account the risks, delay and difficulties involved in establishing a right to recovery in excess of that offered by this settlement and the likelihood that the litigation will be further protracted.

5. **Certification by Class Counsel:** Class Counsel have investigated the facts and the applicable law and believes that the number of class members is less than one hundred persons. Based on the foregoing, and on an analysis of the benefits that this Settlement Agreement affords the class, Class Counsel considers it to be in the best interest of the class to enter into this Settlement Agreement.

6. **Denial of Liability:** Cook County and Sheriff vigorously contests each and every claim in this action. Cook County and Sheriff maintain that they have consistently acted in accordance with governing laws at all times. Cook County and Sheriff vigorously deny all the material allegations set forth in the Action. Cook County and Sheriff nonetheless have

concluded that it is in its best interest that the Action be settled on the terms and conditions set forth in this agreement. Cook County reached this conclusion after considering the factual and legal issues in the Action, the substantial benefits of a final resolution of the Action, the expense that would be necessary to defend the Action through trial and any appeals that might be taken, the benefits of disposing of protracted and complex litigation, and the desire of Cook County to conduct its business unhampered by the distractions of continued litigation.

7. As a result of the foregoing, Cook County and Sheriff enter into this Stipulation without in any way acknowledging any fault, liability, or wrongdoing of any kind. Neither this Stipulation, nor any of its terms or provisions, nor any of the negotiations or proceedings connected with it, shall be construed as an admission or concession by Cook County and Sheriff of the truth of any of the allegations made in the Action, or of any liability, fault, or wrongdoing of any kind whatsoever on the part of Cook County or Sheriff, or shall be used as precedent in the future against Cook County and Sheriff in any way.

8. To the extent permitted by law, neither this Stipulation, nor any of its terms or provisions, nor any of the negotiations or proceedings connected with it, shall be offered as evidence or received in evidence in any pending or future civil, criminal, or administrative action or proceeding, to establish any liability or admission by Cook County and/or Sheriff, except in any proceedings brought to enforce the Stipulation.

9. Neither this Stipulation, nor any pleading or other paper related in any way to this Stipulation, nor any act or communication in the course of negotiating, implementing or seeking approval of this Stipulation, shall be deemed an admission by Cook County or Sheriff that certification of a class or subclass is appropriate in any other litigation, or otherwise shall preclude Cook County or Sheriff from opposing or asserting any argument it may have with respect to certification of any class(es) or subclass(es) in any proceeding or this Action, or shall be used as precedent in any way as to any subsequent conduct of Cook County or Sheriff except as set forth herein.

## **II. DEFINITIONS**

10. In addition to the foregoing, the following terms shall have the meanings set forth below:

- a. "Cook County" means the County of Cook and/or any other successors, assigns or legal representatives thereof.
- b. "Sheriff" means the Sheriff of Cook County and/or any other successors, assigns or legal representatives thereof.
- c. "Class Counsel" means Thomas G. Morrissey, 10249 South Western Avenue, Chicago, Illinois, 60643, and Kenneth N. Flaxman, 200 South Michigan Avenue, Suite 1240, Chicago, Illinois 60604.
- d. "Class Member" means any person who is included within the definition of the Class (and that person's heirs, executors, ad-

ministrators, successors, and assigns), and who has not timely requested exclusion from the case.

- e. "Class Period" means the period commencing December 4, 2006 and continuing through February 14, 2011.
- f. "Effective Date" means that date on which the Court grants final approval of this proposed settlement.
- g. "Final Settlement Hearing" means the hearing at which the Court considers whether to grant final approval of this proposed settlement.
- h. "Administrator" means class counsel.
- i. "Class Members" means all persons who qualify as part of the Class who have not sought to opt-out from this action.
- j. "Released Claims" means and includes any and all Unknown Claims, known claims, and rights, demands, actions, causes of action, suits, debts, liens, contracts, liabilities, agreements, interest, costs, expenses or losses, for the acts alleged or which are or could have been alleged by the Named Plaintiffs, Class Members, or their unborn children alleging any past, present or future physical or emotional damages as a result of this Action, or relate in any way whatsoever to this Action regarding shackling of pregnant prisoners at the Cook County Jail. This release does not limit or otherwise bar any potential class member from participating as an unnamed class member in any cause of action or claim, whether or not filed to date in a

court of law known or unknown on or before the date of this settlement that arose out of her incarceration at the jail.

- k. "Released Persons" means Cook County, Cook County's counsel, Sheriff of Cook County, Sheriff's counsel, and any of Sheriff's and Cook County's past, present or future officers, agents, employees and/or independent contractors, and/or any other successors, assigns, or legal representatives thereof.
- l. "Class" means all women in the custody of defendant Sheriff who were shackled during labor, delivery, or recovery following delivery during the class period of December 4, 2006 through February 14, 2011.
- m. "Valid Claim Form" means a Claim Form includes an affirmation under penalties of perjury stating that the Class Member: (1) was or is in the custody of the Sheriff of Cook County on and after December 4, 2006; (2) was transported while in the custody of the Sheriff to a hospital for the purpose of delivering her child, and/or (3) was shackled during labor, delivery, or recovery following delivery.

11. **Class Closure Date.** As of February 15, 2011, the date of class closure, pregnant detainees at the Cook County Jail are not shackled during labor, delivery, or recovery following delivery.

12. **Total Monetary Relief.** To resolve all claims at issue in this case involving monetary relief to class members, attorneys' fees, expert and consulting witness fees, litigation costs, and expenses involved in the

administration of the settlement, the parties have agreed that, as part of the consideration for this Agreement, Defendants will establish a fund (the "Settlement Fund") in the amount of four million one hundred thousand dollars (\$4,100,000). The parties further agree, as set out below with greater specificity, that no less than the sum of two million seven hundred and twenty thousand dollars (\$2,720,000) shall be distributed to class members.

13. **Payments to Class Members.** The parties, while recognizing that each class member with a valid claim has a distinct claim for damages, agree that the expense, uncertainty, and delay of providing each class member with an individual determination of damages outweighs the benefits of a categorical distribution. Counsel for the parties also recognize that most class members would benefit from counseling provided in conjunction with a monetary award. Accordingly, the parties agree that class counsel shall assign "points" to each class member and that the payment to each class member shall be computed by dividing two million seven hundred and twenty thousand dollars (\$2,720,000) by the total number of points to obtain the dollar value of each point, and that each class member shall receive, subject to the payout procedures set out below, the number of points multiplied by the dollar value per point. Counsel estimate that payments to class members will range from five thousand dollars to forty-five thousand dollars.

14. **Assignment of "Points" to Class Members.** Class counsel, with the advice of Defense counsel, and subject to challenge by a class

member, shall assign to each class member a “point score” in accordance with the following rating system:

- a. One point to each class member who, while in the custody of the Sheriff and appearing to be in labor, was restrained while being transported to a hospital, did not give birth during this hospital admission, and whose claim is not contrary to hospital or jail records .
- b. One point to each class member in category “a” above who gave birth after being transported to a hospital and whose claim is not contrary to hospital or jail records.
- c. One point to each class member who, while in labor, was restrained for thirty minutes or more after arriving at a hospital and before delivery and whose claim is not contrary to hospital or jail records.
- d. Two points to each class member who was restrained while giving birth and whose claim is not contrary to hospital or jail records.
- e. One point to each class member who was restrained during post-delivery recovery and whose claim is not contrary to hospital or jail records.
- f. One point to each class member who is a named party in this action.
- g. One additional point to class representatives Catherine Zaborowski and Simone Jackson.

Any challenge by a class member to her point total shall be resolved by the Magistrate Judge, whose decision shall be final and not subject to review by the Court. At the discretion of the Magistrate Judge, the lesser of ten thousand dollars (\$10,000) or two points may be deducted from the final award of any class member whose challenge is unsuccessful.

15. **Counseling Procedure:** The parties agree that most class members would benefit from counseling on issues relating to employment, education, housing, personal needs and family relations. In addition, the parties agree that most class members would benefit from family counseling, anger management, substance abuse treatment, job training and financial responsibility programs. Accordingly, the parties agree that one hundred thousand dollars (\$100,000) shall be reserved from the settlement fund for the sole and exclusive purpose of providing such services. The parties will agree in advance of the final settlement hearing on the identity of the program providers for these services. The program providers shall provide to counsel for the parties an accounting of its expenses in accordance with generally accepted standards for reporting this type of grant expenditures.

16. **Payout Procedure.** Payments shall be made to class members in three installments. All payments shall be subject to any state, federal, or other valid liens, including but not limited to Medicaid liens. The first installment shall be forty percent (40%) of the class member's projected share of the settlement (as estimated by class counsel with the advice of

defense counsel), and shall be made by Cook County within 60 days following the Court's final approval of this agreement. The class member's interest in her second and third installments shall be inalienable and may not be pledged, hypothecated, sold, or otherwise transferred. The second installment shall also be forty percent (40%) of the classmember's projected share of the settlement (as estimated by class counsel with the advice of defense counsel), and shall be paid after the class member has successfully completed the counseling program referred to above. The parties shall submit to the Magistrate Judge any issue concerning payment of the second installment to a class member who is physically or otherwise unable to complete the above referred counseling program. The third installment shall be paid on the one year anniversary of the final approval of this settlement. If a class member fails or is otherwise unable to complete a counseling program, she shall receive the remainder of her settlement on the one year anniversary of the final approval of this settlement. If the sum of the claims exceeds two million seven hundred and twenty thousand dollars (\$2,720,000), each claim shall be reduced by a proportionate amount. If the sum of the claims is less than two million seven hundred and twenty thousand dollars (\$2,720,000), the remainder shall be held by the Cook County Comptroller until the one year anniversary of the final approval of this settlement to allow payment of any claim submitted late with good cause shown. Any funds remaining at the expiration of this one year period shall revert to the Maternal Objectives Management ("MOMS") program provided by the Sheriff's Women's Justice Program and Haymarket Center.

None of the reverted funds may be used by Cook County or the Sheriff of Cook County for any other purposes.

17. **Administration of the Settlement.** An Administration Fund in the amount of \$175,000 shall be established. The Fund shall be administered by class counsel and shall include all aspects of the class settlement, other than the issuance of checks. The cost of administration of the settlement, including but not limited to notice to the class, website setup and maintenance costs, locating class members who cannot be reached by first class mail, establishing class membership, processing of claim forms, and the cost of mailing of settlement checks, shall be paid from the Administration Fund in an amount not to exceed one hundred seventy-five thousand dollars. For purposes of performing ministerial work in the administration of this settlement only, class counsel agrees to be compensated a rate of \$200 per hour and \$100 per hour for the time of legal assistants. Cook County shall reimburse counsel for administrative costs upon receipt of itemized statements, with payments to be made within 30 days of receipt of said statement with a maximum amount not to exceed the Administration Fund of \$175,000. Any portion of the \$175,000 not expended by the one year anniversary of the final approval of the settlement shall be distributed to class members as part of the third installment referred to in paragraph 16 above.

18. **Attorneys' Fees and Expenses:** Attorneys' fees and costs were not finally negotiated by Class Counsel and counsel for the Released Parties until after full agreement was reached on the monetary relief for

the class. Class counsel represented that, before the case had been allowed to proceed as a class action, they had entered into written contingent fee agreements with many class members, and that the total amount of attorneys' fees and expenses incurred to date was in excess of One Million Two Hundred Thousand Dollars (\$1,200,000). Class counsel agreed to waive their right to receive any compensation from individual class members, and to reduce their fee claim to \$1,025,000 (one million twenty five thousand dollars), or twenty five percent of the total amount of the settlement. Cook County has agreed that this amount of attorneys' fees is fair and reasonable and will pay this amount as attorneys' fees. Cook County has also agreed to reimburse class counsel for their costs and litigation expenses in an amount not to exceed eighty thousand dollars (\$80,000). Cook County agrees that it will pay attorneys' fees and expenses in two installments: the first shall be made within 35 days following the Court's final approval of the settlement and shall be in the amount of half of the fees awarded and the entirety of the costs awarded; the second installment shall be made on January 15, 2013 for the remaining balance. The precise dates are subject to the feasibility of the Cook County Comptroller.

19. **Notice and Claims Procedure:** Within twenty-one days after the Court has given its preliminary approval to this proposed settlement, notice of the proposed settlement, information about the date and time of the fairness hearing, will be sent by first class mail to the last ascertainable address of each class member. "Ascertainable" means the last known address as enhanced by the United States Postal Service change of address

database. In the event that this settlement obtains final approval from the Court, the cost of notice shall be deducted from the sum reserved for payment of administration expenses. Potential class members who entered the Cook County Jail before August 1, 2010 have received an opportunity to opt-out with notice of the pendency of the class action; potential class members who entered the Cook County Jail after August 1, 2010 shall receive notice of this settlement and an opportunity to opt-out of the settlement.

20. To participate in this settlement, each Class Member must submit a sworn Claim Form postmarked no later than \_\_\_\_\_, 2012. The Claim Form must provide the information specified in Section 10(m) above and an affirmation under penalty of perjury that the information set forth is true and correct.

21. The Class Notice will include a forwarding and return address, which will be a Post Office Box controlled by Class Counsel. Class Counsel shall provide Cook County and Sheriff with copies of all claim forms received.

22. Within 60 days of receipt of a claim form, class counsel shall determine whether the claimant appears to be a class member. Class counsel shall inform any claimant deemed by counsel not to be a class member of the reason for this determination and of the claimant's right to petition the Court for a review of this determination.

23. Class counsel shall promptly notify Cook County and Sheriff of any determination that a claimant appears to be a class member. The

first installment of all such claims shall be paid by Cook County unless, within 45 days of receipt of any such certification, Cook County or Sheriff provides class counsel with written notice of its challenge that a particular claimant is a member of the class. Counsel for the parties shall meet and attempt to resolve any such challenges. Upon counsel failing to reach an agreement, the dispute shall be submitted to the Magistrate Judge for resolution. The Court specifically reserves jurisdiction for the Magistrate Judge to resolve any challenges to class membership. The determination by the Magistrate Judge will be final and non-appealable. Neither Cook County nor the Sheriff shall be entitled to any costs, fees, or expenses associated with resolving any challenges to class membership. Class counsel shall be compensated from the administrative fund for their non-duplicative services in this regard at the rate set out in paragraph 17 above.

### **III. DECEASED, DISSOLVED, BANKRUPT, OR INCAPACITATED CLASS MEMBERS**

24. Where a Class Member is deceased and a payment is due to that Class Member, upon receipt of a proper notification and documentation, the settlement payment shall be made in accordance with Illinois law.

25. Where a Class Member has been declared bankrupt, or is the subject of an open and ongoing bankruptcy proceeding, and a payment is due to the Class Member, upon receipt of proper notification and documentation, the settlement payment shall be made to such Class Member in accordance with applicable United States Bankruptcy Code laws.

#### **IV. COMMUNICATIONS WITH THE CLASS**

26. The Class Notice shall list Class Counsels' addresses and phone numbers. Other than as provided for in this Stipulation, communications relating to the Action or this Settlement with persons receiving Class Notices and Potential Class Members shall be through Class Counsel. Nothing in this Stipulation shall be construed to prevent Cook County, Sheriff, their employees, agents or representatives from communicating with Potential Class Members or Class Members in the normal course of its operations.

#### **V. CONDITIONS OF SETTLEMENT AND EFFECT OF DISAPPROVAL, CANCELLATION OR TERMINATION OF STIPULATION**

27. If the Court disapproves this Stipulation or fails to rule, or if the Court enters the Final Judgment but it is reversed or vacated on appeal, this Stipulation shall be null and void and of no force and effect. If the Court materially modifies any provision of the Stipulation or proposed Final Judgment, or if either is materially modified on appeal or remanded to the Court for modification, with Cook County and Sheriff determining what is "material" in the use of its reasonable discretion, Cook County, Sheriff or Class Counsel shall have the option of terminating this Stipulation and withdrawing this consent to the entry of the Final Judgment, in which case this Stipulation shall be null and void and of no force and effect.

28. If any financial obligation is imposed upon Cook County in addition to or greater than those specifically set out in this Stipulation, Cook County may withdraw its consent to the entry of the Final Judgment, in which case this Stipulation shall be null and void and of no force and effect.

In addition, Cook County or Sheriff, at their option, may withdraw its consent to the entry of the Final Judgment if more than twenty (20%) percent of the qualified class members opt out of this litigation.

## **VI. OBJECTIONS AND REQUESTS FOR EXCLUSION**

29. Any class member may file a notice of intent to object to the proposed settlement. The written notice of intent to object must be filed with the Clerk of the Court not later than July 15, 2012.

30. Class Counsel and their respective firms, agree not to represent, encourage, or solicit any person to request exclusion from the Settlement Class or to benefit financially from a referral of any such person. In addition, Class Counsel and their respective firms agree not to represent, encourage, solicit or otherwise assist any person who requests exclusion from the Settlement Class, or seek to represent any form of opt-out class from this Settlement, or any other person, in any subsequent litigation that person may bring against Cook County, Sheriff of Cook County, or their employees regarding the Released Claims or any related claims of this settlement.

## **VII. REPRESENTATIONS AND WARRANTIES**

31. Plaintiffs and Class Counsel warrant and represent that no promise or inducement has been offered or made for the Release in paragraph 10(j) except as set forth herein, that the Release is executed without any reliance whatsoever on any statements or representations not contained herein, including but not limited to any statements, conduct, disclosure or non-disclosure or representations regarding discovery in the Ac-

tion, and that the Release reflects the entire agreement among the parties with respect to the terms of the Release. The warranties and representations made herein shall survive the execution and delivering of the Release and shall be binding upon the parties' heirs, representatives, successors and assigns.

## **VIII. RELEASES**

32. Upon the Effective Date, Plaintiffs, all Class Members, and their heirs, trustees, executors, administrators, principals, beneficiaries, assigns and successors will be bound by the Final Judgment and conclusively deemed to have fully released, acquitted and forever discharged, as defined in paragraph 10(j) above.

33. All people and entities who meet the Class Definition and who have not timely filed "opt out" forms shall be forever barred from prosecuting their own lawsuit asserting any of the claims at issue in this litigation and they and their heirs, executors, administrators, representatives, agents, partners, successors and assigns shall be deemed to have fully released and forever discharged the Released Persons (defined below) from all Released Claims (defined below). "Released Persons" means County of Cook and the Sheriff of Cook County each of their past or present directors, officers, employees, agents, Board members, attorneys, advisors, consultants, representatives, partners, affiliates, parents, subsidiaries, related companies, and divisions, and each of their predecessors, successors, heirs and assigns.

## **IX. MISCELLANEOUS PROVISIONS**

34. The parties hereto and their undersigned counsel agree to undertake their best efforts and mutually cooperate to effectuate this Stipulation and the terms of the proposed settlement set forth herein, including taking all steps and efforts contemplated by this Stipulation, and any other steps and efforts which may become necessary by order of the Court or otherwise. The parties hereto further agree to defend this Stipulation against objections made to final approval of the Settlement or in any appeal of the Final Judgment or collateral attack on the Stipulation or Final Judgment. Class Counsel will not seek from Cook County any additional compensation, including attorney fees, cost, expenses or reimbursements for any work that may be involved in defending this agreement.

35. The undersigned counsel represent that they are fully authorized to execute and enter into the terms and conditions of this Stipulation on behalf of their respective clients. This agreement has been approved by the Litigation Subcommittee of the Cook County Board.

36. Except as otherwise provided between the parties, this Stipulation contains the entire agreement between the parties hereto, and supersedes any prior agreements or understandings between them. All terms of this Stipulation are contractual and not mere recitals, and shall be construed as if drafted by all parties hereto. The terms of this Stipulation are and shall be binding upon each of the parties hereto, their agents, attorneys, employees, successors and assigns, and upon all other persons claiming any interest in the subject matter hereof through any of the parties hereto, including any Class Member.

37. To the extent permitted by law, this Stipulation may be pleaded as a full and complete defense to, and may be used as the basis for an injunction against, any action, suit or other proceeding which may be instituted, prosecuted or attempted in breach of this Stipulation.

38. **Enforcement and Reservation of Jurisdiction:** The parties agree that the Court will reserve jurisdiction to enforce the provisions of this agreement and that the Court may, for good cause, adjust and reset the dates set out in paragraph 20 above for a reasonable period following final approval of this settlement. If the Court approves the settlement, it will enter an order that will dismiss the litigation with prejudice as to all Class Members, except as to those persons who have timely filed “opt-out” forms.

Agreed to, this \_\_\_th day of May, by the party representatives below who have affixed their signatures showing their assent to the above Class Settlement Agreement.

*Plaintiffs' Counsel:*

/s/ <u>Kenneth N. Flaxman</u> Kenneth N. Flaxman 200 S. Michigan Ave Suite 1240 Chicago, IL 60604-2430 (312) 427-3200	/s/ <u>Thomas G. Morrissey</u> Thomas G. Morrissey 10249 S. Western Ave Chicago, IL 60643 (773) 233-7900
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*Defendants are represented in the litigation by:*

/s/ Michael Gallagher, ASA (with consent)  
Michael Gallagher, ASA  
Cook County State's Attorney's Office  
50 W. Washington Room 500  
Chicago, IL 60602  
(312) 603-6572

## **Exhibit 2**

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

Catherine Zaborowski and	)	
Simone Jackson, individually and on	)	
behalf of a class, et al.	)	
	)	
<i>Plaintiffs,</i>	)	
	)	No. 08 CV 6946
-vs-	)	
	)	
Sheriff of Cook County and	)	<i>(Judge St. Eve)</i>
Cook County, Illinois	)	
	)	
<i>Defendants.</i>	)	

**NOTICE OF HEARING ON SETTLEMENT OF CLASS ACTION**

TO: All women who were shackled during labor, delivery, or recovery following delivery while in the custody of the Sheriff of Cook County between December 4, 2006 and February 14, 2011.

A proposed settlement of this case has been submitted to the Court for approval. This document describes the proposed settlement and gives instructions about what you must do if you are a class member and a) wish to participate in the settlement or b) exclude yourself from this case, or c) if you believe that the proposed settlement should not be approved.

**PLEASE READ THIS NOTICE CAREFULLY  
THIS IS NOT A NOTICE OF A LAWSUIT AGAINST YOU.  
YOU MAY BENEFIT FROM READING THIS NOTICE**

**WHAT THIS CASE IS ABOUT**

The plaintiffs in this action are the class of persons identified above. The defendants are the Sheriff of Cook County and Cook County, Illinois. The named plaintiffs filed this action, for themselves and others similarly situated, in the United States District Court for the Northern District of Illinois alleging violations of rights secured by the federal and state law.

On June 22, 2010, United States District Judge Amy J. St. Eve ordered that the case may proceed as a class action. Thereafter, after the parties had fully prepared for trial, counsel for the parties were able to negotiate a settlement.

**THE PROPOSED SETTLEMENT**

Counsel for the parties have agreed to a settlement of all claims at issue in this case. Defendants have agreed to pay \$4,100,000 to cover damages for class members, incentive awards for the named plaintiffs, fees and costs of counsel, and administrative expenses.

Two million seven hundred and twenty thousand dollars (\$2,720,000) is allocated in the settlement for payment to class members. If the Court approves the proposed settlement, each class member will receive an award determined by the nature and extent of restraint during labor and post-delivery recovery. Each class member will be assigned a number of points, ranging from one to a maximum of nine. Class counsel estimates that class members will receive an award of more than five thousand dollars per point, or awards ranging from five to forty-five thousand dollars:

Restrained while being transported to a hospital while in labor, but did not give birth	One point
Restrained while being transported to a hospital while in labor and gave birth	One point
Restrained for thirty minutes or more while in labor at a hospital	Two point
Shackled while giving birth	Two point
Restrained during post-delivery recovery	One point
A named party	One point
A class representative	One point

Payments to class members are subject to any state, federal, or other valid liens, including Medicaid liens and will be made in three installments. The first payment will be made within 60 days following the Court's approval of the settlement, and will be 40% of the class member's projected share of the settlement. The second installment shall be in the same amount as the first installment, and will be paid after completion of a counseling program (described below), or with the third and final installment on the one-year anniversary of the date the Court approves this settlement,

One hundred thousand dollars (\$100,000) of the settlement is allocated for counseling class members on issues relating to employment, education, housing, personal needs and family relations. Attorneys' fees and costs, which were negotiated after full agreement had been reached on the monetary relief for the class, will be paid by defendants in the amount of \$1,025,000, or 25% of the settlement fund.

## **RELEASE**

If you participate in this settlement, you will give the Defendants a "release" which means that you cannot sue about anything not pending in court that arises out of your incarceration at the Cook County Jail.

## **CLASS COUNSEL'S OPINIONS**

The class is represented by attorneys Thomas G. Morrissey, 12049 South Western Avenue, Chicago, Illinois, 60643 (773) 238-4235 and Kenneth N. Flaxman, 200 South Michigan Avenue, Suite 1240, Chicago, Illinois 60604 (312) 698-9084. Class Counsel has investigated the facts and the applicable law and consider this settlement to be in the best interest of the class.

## **NO ADMISSION OF LIABILITY**

By settling this lawsuit, Defendants are not admitting that they have done anything wrong. Defendants expressly deny any wrongdoing.

**NOW, THEREFORE, NOTICE:**

A hearing will be held before this Court in Courtroom 1241, United States Courthouse, 219 South Dearborn Street, Chicago, Illinois 60604, on \_\_\_\_\_, 2012 at \_\_:\_\_ .m., or as soon thereafter as counsel can be heard. The hearing shall be for the purpose of determining whether the terms of the proposed class settlement are fair, reasonable, and adequate, and whether the proposed settlement should be approved by the Court. This hearing may be adjourned from time to time without further written notice to the class.

Any class member who wishes to be heard either in support or in opposition to the proposed settlement must file his or her written objection or comment with the Clerk of the United States District Court for the Northern District of Illinois, 219 South Dearborn Street, Chicago, Illinois 60604 on or before \_\_\_\_\_, 2012. Written objections or comments will be considered whether or not the class member attends the hearing.

**YOUR OPTIONS**

If you are an eligible class member and wish to receive a portion of the settlement proceeds, you **must** return the claim form at the end of this notice by \_\_\_\_\_, 2012. If the settlement is finally approved by the Court, and if you are an eligible class member, you will receive a check in an amount calculated in the manner explained above.

If you do not wish to participate in this case, you have the right to opt-out, which means to exclude yourself from both the class action and the settlement. To opt-out, you must return the opt-out form to one of the attorneys for plaintiff, Kenneth N. Flaxman, 200 South Michigan Avenue, Suite 1240, Chicago, Illinois 60604. **The form must be received by \_\_\_\_\_, 2012.**

The foregoing references to the lawsuit and the settlement agreement are only summaries. The settlement agreement and all other papers filed in this action may be examined and copied in the Office of the Clerk, 219 South Dearborn Street, 20th floor, Chicago, Illinois between the hours of 9:00 a.m. and 4:30 p.m. Monday through Friday.

Do not call either the Office of the Clerk or Judge St. Eve for information about the case.

Thomas G. Bruton  
Clerk, United States District Court

## **Exhibit 3**

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

Catherine Zaborowski and	)	
Simone Jackson, individually and on	)	
behalf of a class, et al.	)	
	)	
<i>Plaintiffs,</i>	)	
	)	No. 08 CV 6946
-vs-	)	
	)	
Sheriff of Cook County and	)	<i>(Judge St. Eve)</i>
Cook County, Illinois	)	
	)	
<i>Defendants.</i>	)	

**NOTICE OF HEARING ON SETTLEMENT OF CLASS ACTION**

TO: All women who were shackled during labor, delivery, or recovery following delivery while in the custody of the Sheriff of Cook County between December 4, 2006 and February 14, 2011.

A proposed settlement of this case has been submitted to the Court for approval. This document describes the proposed settlement and gives instructions about what you must do if you are a class member and a) wish to participate in the settlement or b) exclude yourself from this case, or c) if you believe that the proposed settlement should not be approved.

**PLEASE READ THIS NOTICE CAREFULLY  
THIS IS NOT A NOTICE OF A LAWSUIT AGAINST YOU.  
YOU MAY BENEFIT FROM READING THIS NOTICE**

**WHAT THIS CASE IS ABOUT**

The plaintiffs in this action are the class of persons identified above. The defendants are the Sheriff of Cook County and Cook County, Illinois. The named plaintiffs filed this action, for themselves and others similarly situated, in the United States District Court for the Northern District of Illinois alleging violations of rights secured by the federal and state law.

On June 22, 2010, United States District Judge Amy J. St. Eve ordered that the case may proceed as a class action. Thereafter, after the parties had fully prepared for trial, counsel for the parties were able to negotiate a settlement.

**THE PROPOSED SETTLEMENT**

Counsel for the parties have agreed to a settlement of all claims at issue in this case. Defendants have agreed to pay \$4,100,000 to cover damages for class members, incentive awards for the named plaintiffs, fees and costs of counsel, and administrative expenses.

Two million seven hundred and twenty thousand dollars (\$2,720,000) is allocated in the settlement for payment to class members. If the Court approves the proposed settlement, each class member will receive an award determined by the nature and extent of restraint during labor and post-delivery recovery. Each class member will be assigned a number of points, ranging from one to a maximum of nine. Class counsel estimates that class members will receive an award of more than five thousand dollars per point, or awards ranging from five to forty-five thousand dollars:

Restrained while being transported to a hospital while in labor, but did not give birth	One point
Restrained while being transported to a hospital while in labor and gave birth	One point
Restrained for thirty minutes or more while in labor at a hospital	Two point
Shackled while giving birth	Two point
Restrained during post-delivery recovery	One point
A named party	One point
A class representative	One point

Payments to class members are subject to any state, federal, or other valid liens, including Medicaid liens and will be made in three installments. The first payment will be made within 60 days following the Court's approval of the settlement, and will be 40% of the class member's projected share of the settlement. The second installment shall be in the same amount as the first installment, and will be paid after completion of a counseling program (described below), or with the third and final installment on the one-year anniversary of the date the Court approves this settlement,

One hundred thousand dollars (\$100,000) of the settlement is allocated for counseling class members on issues relating to employment, education, housing, personal needs and family relations. Attorneys' fees and costs, which were negotiated after full agreement had been reached on the monetary relief for the class, will be paid by defendants in the amount of \$1,025,000, or 25% of the settlement fund.

## **RELEASE**

If you participate in this settlement, you will give the Defendants a "release" which means that you cannot sue about anything not pending in court that arises out of your incarceration at the Cook County Jail.

## **CLASS COUNSEL'S OPINIONS**

The class is represented by attorneys Thomas G. Morrissey, 12049 South Western Avenue, Chicago, Illinois, 60643 (773) 238-4235 and Kenneth N. Flaxman, 200 South Michigan Avenue, Suite 1240, Chicago, Illinois 60604 (312) 698-9084. Class Counsel has investigated the facts and the applicable law and consider this settlement to be in the best interest of the class.

## **NO ADMISSION OF LIABILITY**

By settling this lawsuit, Defendants are not admitting that they have done anything wrong. Defendants expressly deny any wrongdoing.

**NOW, THEREFORE, NOTICE:**

A hearing will be held before this Court in Courtroom 1241, United States Courthouse, 219 South Dearborn Street, Chicago, Illinois 60604, on \_\_\_\_\_, 2012 at \_\_:\_\_ a.m., or as soon thereafter as counsel can be heard. The hearing shall be for the purpose of determining whether the terms of the proposed class settlement are fair, reasonable, and adequate, and whether the proposed settlement should be approved by the Court. This hearing may be adjourned from time to time without further written notice to the class.

Any class member who wishes to be heard either in support or in opposition to the proposed settlement must file his or her written objection or comment with the Clerk of the United States District Court for the Northern District of Illinois, 219 South Dearborn Street, Chicago, Illinois 60604 on or before \_\_\_\_\_, 2012. Written objections or comments will be considered whether or not the class member attends the hearing.

**YOUR OPTIONS**

If you are an eligible class member and wish to receive a portion of the settlement proceeds, you **must** return the claim form at the end of this notice by \_\_\_\_\_, 2012. If the settlement is finally approved by the Court, and if you are an eligible class member, you will receive a check in an amount calculated in the manner explained above.

The foregoing references to the lawsuit and the settlement agreement are only summaries. The settlement agreement and all other papers filed in this action may be examined and copied in the Office of the Clerk, 219 South Dearborn Street, 20th floor, Chicago, Illinois between the hours of 9:00 a.m. and 4:30 p.m. Monday through Friday.

Do not call either the Office of the Clerk or Judge St. Eve for information about the case.

Thomas G. Bruton  
Clerk, United States District Court

## **Exhibit 4**

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

CATHERINE ZABOROWSKI and	)
SIMONE JACKSON, individually	)
and on behalf of a class,	)
	)
<i>Plaintiffs,</i>	)
	) No. 08 CV 6946
-vs-	)
	) ( <i>Judge St. Eve</i> )
SHERIFF OF COOK COUNTY,	)
and COOK COUNTY, ILLINOIS	)
	)
<i>Defendants.</i>	)

**OPT OUT FORM**

I have read the notice which came with this opt-out form and I do not desire to participate as a member of the class in the above named case. I understand that by signing this form, I will not be represented by class counsel, but must proceed on my own.

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

\_\_\_\_\_  
*name*

\_\_\_\_\_  
*address*

\_\_\_\_\_  
*city*                      *state*                      *zip*

If you do not wish to participate in this case, you must return this "opt out" form to the Law Offices of Kenneth N. Flaxman, 200 South Michigan Avenue, Suite 1240, Chicago, Illinois 60604 by \_\_\_\_\_ --, 2012. *This means that the form must be received at the office of class counsel by \_\_\_\_\_, 2012 (not simply put in the mail by then).*

## **Exhibit 5**

preprinted name  
preprinted address  
preprinted city, state zip

MAKE ADDRESS CORRECTIONS BELOW

\_\_\_\_\_  
*Address*

\_\_\_\_\_  
*City*

\_\_\_\_\_  
*State and Zip*

**THIS CLAIM FORM MUST BE RETURNED BY \_\_\_\_\_, 2012 TO  
Claims Administrator  
P.O. Box 4602  
Oak Park, Illinois 60303  
(773) 896-9016**

**YOU MUST FILL OUT THIS FORM IF YOU WERE  
SHACKLED DURING LABOR, DELIVERY, OR  
RECOVERY FOLLOWING DELIVERY WHILE IN THE  
CUSTODY OF THE SHERIFF OF COOK COUNTY  
BETWEEN DECEMBER 4, 2006 AND FEBRUARY 14,  
2011 AND YOU WANT TO PARTICIPATE IN THE  
SETTLEMENT IN *Zaborowski v. Sheriff***

I certify under penalties of perjury as provided by law that I was shackled during labor, delivery, or recovery following delivery while in the custody of the Sheriff of Cook County between December 6, 2006 and February 14, 2011.

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

\_\_\_\_\_  
*signature*

## **CERTIFICATE OF SERVICE**

I hereby certify that on the 17th day of May, 2012, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following: Michael Gallagher, ASA, 500 Daley Center, Chicago, IL 60602, and I hereby certify that I have mailed by United States Postal Service the document to the following non CM/ECF participants: none.

/s/ Kenneth N. Flaxman

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Kenneth N. Flaxman  
ARDC Number 08830399  
200 S Michigan Ave, Ste 1240  
Chicago, IL 60604-2430  
(312) 427-3200 (phone)  
(312) 427-3930 (fax)  
knf@kenlaw.com (email)