

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

_____	:	
TRAFFORD BOISSELLE,	:	
	:	
Plaintiff(s),	:	Civil Action No. 3:06-2065 (GEB)
	:	
- vs -	:	
	:	
COUNTY OF MERCER, et al.,	:	
	:	
Defendant(s).	:	
_____	:	

**SETTLEMENT AGREEMENT**

The plaintiff, Trafford Boisselle (“Plaintiff”), by and through his counsel, and the defendants (the plaintiff and the defendants together, the “Parties”), by and through their counsel, hereby enter into this Settlement Agreement providing, subject to the approval of the Court, for settlement of the claims herein described against the defendants.

WHEREAS, Plaintiff filed the above-captioned class action lawsuit against the defendants, the County of Mercer, Mercer County Department of Sheriff, Kevin C. Larkin, Michael D. Gerasimowicz, Dennis J. Tobolski, Michael B. Gerald, John A. Kemler, John J. McEwan, Mercer County Department of Corrections, Shirley Tyler, and Roy Hendrick (together, “Defendants”), alleging that Defendants had violated Plaintiff’s constitutional rights under color of state law by illegally strip searching him and others similarly situated upon entry into the Mercer County Correctional Facility.

WHEREAS, Plaintiff further alleges that, in violation of law and pursuant to the policy of the County of Mercer, all persons such as Plaintiff and the members of the class he purports to represent, who entered the Mercer County Correctional Facility charged with disorderly person’s

offenses, violations of Title 39 (traffic offenses), Municipal Ordinance infractions and other non-indictable offenses, were strip searched absent any particularized suspicion that they possessed weapons or other contraband.

WHEREAS, Defendants, subsequent to the filing of this action, substantially altered their practice to address the claims raised in this litigation on or about August 17, 2006.

WHEREAS, Defendants have denied and continue to deny Plaintiff's claims, and Defendants deny any wrongdoing or liability of any kind to Plaintiff or to any members of the class (as defined hereinafter).

WHEREAS, the Parties to this Settlement Agreement have conducted a thorough examination and investigation of the facts and law relating to the matters in this litigation and that such examination included documentary and deposition discovery in the course of the litigation.

WHEREAS, the Defendants have concluded that settlement is desirable in order to avoid the time, expense, and inherent uncertainties of defending protracted litigation and to resolve finally and completely all pending and potential claims of the Plaintiff and all members of the proposed class relating to alleged conduct involved in this litigation; and do so without admission of fault or liability.

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

WHEREAS, substantial, adversarial settlement negotiations have taken place between the

Parties, including mediation conducted by former United States Magistrate Judge Joel B. Rosen, and, as a result, this Settlement Agreement has been reached, subject to the Court approval process set forth herein.

WHEREAS, the Parties believe that this Settlement Agreement offers significant benefits to members of the proposed class and is fair, reasonable, adequate and in the best interest of putative class members.

WHEREAS, this Settlement Agreement is made and entered into by and among Defendants and Plaintiff Trafford Boiselle, individually and on behalf of a class (the "Class") of similarly situated persons (the "Class Members") defined as:

All persons who were initially placed into the custody of the Mercer County Correctional Facility after being charged disorderly person's offenses, violations of Title 39 (traffic offenses), Municipal Ordinance infractions and other non-indictable offenses, and were strip searched upon their entry into the Mercer County Correctional Facility pursuant to the custom and practice of the Mercer County Sheriff's Department and the County of Mercer. The class period commences on May 5, 2004 and extends until August 17, 2006. Specifically excluded from the class are Defendants and any and all of their respective affiliates, legal representatives, heirs, successors, employees or assignees. For purposes of class definition multiple entries into the Facility shall be viewed as a single entry.

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

#### **I. DEFINITIONS**

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

- A. Claim Form. "Claim Form" shall mean a form in substantially the same form as that attached hereto as Exhibit A.
- B. Claims Period. "Claims Period" shall mean the time period during which claims may be

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

C. Class Counsel. “Class Counsel” shall mean: Cuneo Gilbert & LaDuca, LLP, Washington, DC; Klafter Olsen & Lesser LLP, Haddonfield, New Jersey and White Plains, New York; The Law Offices of Elmer Robert Keach, III, PC, Amsterdam, New York; and William Riback, LLC, Haddonfield, New Jersey.

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

E. Class Representative: “Class Representative” shall mean Plaintiff Trafford Boiselle.

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

G. Court. “Court” shall mean the United States District Court for the District of New Jersey, the Honorable Tonianne J. Bongiovanni presiding, or her duly appointed or designated successor.

H. Defendants. “Defendants” shall mean the County of Mercer, Mercer County Department of Sheriff, Kevin C. Larkin, Michael D. Gerasimowicz, Dennis J. Tobolski, Michael B. Gerald, John A. Kemler, John J. McEwan, Mercer County Department of Corrections, Shirley Tyler, and Roy Hendrick, and shall include all employees of the County of Mercer who may have devised, promulgated or enforced the policy or participated in the conduct that is the subject of this Settlement Agreement.

- I. Defendants' Counsel. "Defendants' Counsel" shall mean Gregory Giordano, Esquire, Lenox, Socey, Wilgus, Formidoni, Brown, Giordano & Casey LLC, 3131 Princeton Pike, Lawrenceville, NJ 08648.
- J. Distribution Amount. "Distribution Amount" shall mean the amount available to the Class Members from the Settlement Fund after payment of the costs of notice and administration of the Settlement, attorneys' fees and expenses, and incentive award to the Class Representative.
- K. Effective Date. "Effective Date" shall mean thirty days from the date on which the Settlement has been finally approved by the Court, and/or thirty days from the date on which any appeals from final approval are resolved.
- L. Final Approval Hearing. "Final Approval Hearing" shall mean the hearing at which the Court will consider and finally decide whether to enter the Final Judgment.
- M. Final Judgment. "Final Judgment" shall mean that Court order that finally certifies the Settlement Class, approves this Settlement Agreement, approves payment of attorneys' fees and expenses, and makes such other final rulings as are contemplated by this Settlement Agreement, in substantially the same form as Exhibit C.
- N. Litigation. "Litigation" shall mean the above-captioned lawsuit pending in the United States District Court for the District of New Jersey as No. 3:06-cv-2065 (GEB) (TJB).
- O. Mediator. The "Mediator" shall mean The Honorable Joel B. Rosen, former United States Magistrate Judge of the United States District Court for the District of New Jersey.
- P. Notice Program. "Notice Program" shall mean the program for disseminating the Class Notice to Settlement Class Members, including public dissemination of the Summary Notice, in accordance with the terms herein.
- Q. Notice Date. "Notice Date" shall mean the date upon which Class Notice is mailed to

known Class Members in accordance with the terms herein.

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

S. Opt-Out Deadline. “Opt-Out Deadline” shall mean the date agreed upon by the Plaintiff and Defendants or otherwise ordered by the Court by which any Settlement Class Members who do not wish to be included in the Settlement Class and participate in the Settlement must complete the acts necessary to properly effect such election to opt out.

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

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

V. Parties. “Parties” shall mean the Plaintiff and Defendants.

W. Plaintiff. “Plaintiff” shall mean Trafford Boiselle.

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

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

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

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

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

CC. Reverter. “Reverter” shall mean the funds that Defendants shall receive, after administrative expenses, attorneys’ fees, notice costs, and Class Representative incentive payments are paid, if less than 5% of Class Members make claims upon the Settlement Fund. In that event, the maximum payment to each Class Member will be \$5,000, and Defendants will receive a reverter of 50% of any remaining funds. The rest of the reverter will be allocated to improvements at the Mercer County Correction Center.

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

EE. Settlement Administrator. “Settlement Administrator” shall mean the qualified party selected by the Plaintiff and Defendants and designated in the Preliminary Approval Order to administer the Settlement, including implementing the Notice Program. Neither Plaintiff nor any other of the Defendants shall have any responsibility for any acts or omissions of the Settlement Administrator. The parties have agreed to select the Garden City Group as the Settlement Administrator.

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

GG. Settlement Class. “Settlement Class” shall mean:

All persons who were placed into the custody of the Mercer County Correctional Facility after being charged with non-indictable offenses such as misdemeanors, violations, violations of probation or parole, traffic infractions, civil commitments, warrants for child support, or other non-indictable offenses and were strip searched upon their entry into the Mercer County Correctional Facility pursuant to the custom and practice of the Mercer County Sheriff's Department and the County of Mercer. The class period commences on May 5, 2004 and extends until August 17, 2006. Specifically excluded from the class are Defendants and any and all of their respective affiliates, legal representatives, heirs, successors, employees or assignees.

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

II. Settlement Fund. "Settlement Fund" shall mean a fund, governed by terms to be agreed to between Class Counsel and Defendants' Counsel, which shall be placed in an escrow account and utilized to administer the monetary requirements of the Settlement. The Settlement Fund will be established by Class Counsel and entitled the "Mercer County Qualified Settlement Fund" and treated as trust fund monies under relevant New Jersey ethical standards.

JJ. Settlement Amount. "Settlement Amount" shall mean the amount of One Million Eight Hundred Thousand Dollars (\$1,800,000.00) to be paid by or on behalf of the Defendants.

KK. Settlement Website: Class Counsel will establish a website to provide information about the settlement with a World Wide Web address of [www.mercercountystripsearch.com](http://www.mercercountystripsearch.com), or something substantially similar.

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

MM. Website Administrator: "Website Administrator" shall mean the qualified party selected by the Plaintiff and Defendants and designated in the Preliminary Approval Order to administer the Settlement Website. Neither Plaintiff nor any of the Defendants shall have any responsibility for any acts or omissions of the Website Administrator. The parties agree to select I Partners,



Inc. Fonda, New York, as the website administrator.

## **II. REQUIRED EVENTS**

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

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

2. The Parties to the Settlement Agreement shall jointly move for entry of a Preliminary Approval Order in substantially the same form as Exhibit D, which by its terms shall:

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

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

c. Schedule a Final Approval Hearing to review comments regarding the proposed Class Settlement and to consider the fairness, reasonableness, and adequacy of the proposed Class Settlement and the application for an award of attorneys' fees and reimbursement of expenses, and to consider whether the Court should issue a Final Judgment (in substantially the same form as Exhibit C) approving the Class Settlement, granting Class Counsel's application for fees and expenses, granting the Incentive Bonus application by the Class Representative, and dismissing the Litigation with prejudice.

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

4. In the event that the Court fails to issue the Preliminary Approval Order or fails to

issue the Final Judgment, Class Counsel and Defendants' Counsel agree to use their best efforts, consistent with this Settlement Agreement, to cure any defect identified by the Court; provided, however, that in no event shall any Defendants be required to agree to any such cure that would increase the cost or burden of the Settlement Agreement to such Defendants or diminish the agreed upon settlement.

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

### **III. SETTLEMENT TERMS**

#### **A. Provision of New Policies and Corrections Officer Training**

1. The Defendants affirmatively state that, effective August 17, 2006, Mercer County stopped strip searching detainees admitted to the Mercer County Correctional Facility on a blanket basis, and also stopped strip searching non-indictable detainees in the absence of reasonable suspicion. Mercer County acknowledges that its change in practice was undertaken because of the institution of this litigation by Plaintiff and proposed Class Counsel.

2. The Defendants revised their written strip search policy and maintain that their current strip search policy, with an effective date of August 17, 2006, is constitutional.

3. Mercer County represents, by executing this agreement, that all current corrections officers who work in the Mercer County Correctional Facility Admission and Intake Units have been trained regarding the new strip search policy and in particular on when strip searches may and may not be performed.

4. Defendants will take reasonable steps to ensure that all corrections officers abide by the revised strip search policy.

5. The parties acknowledge the possible need for limited confirmatory discovery regarding the corrections officer training and class size.

B. Settlement Fund

1. Defendants will cause to be paid into the Settlement Fund the sum of \$1,800,000 (one million eight hundred thousand dollars).

2. Upon entry of the Preliminary Approval Order, Mercer County will pay into the Settlement Fund the amount of \$200,000 (two hundred thousand dollars) (the “Initial Contribution”) to be used by the Settlement and Website Administrators to cover the initial costs of Notice and administration of the Settlement. If, at any time, whether by order of any court or because of any Defendant exercising any option to withdraw, the Settlement does not become final, then any unspent money remaining from the Initial Contribution shall be returned to Mercer County with no obligation on the part of any party to repay any portion of the money actually spent.

3. Defendants’ remaining monetary obligation of \$1,600,000 (one million six hundred thousand dollars) will be provided for deposit into the Settlement Fund by the Effective Date by either wire transfer or check.

4. All administrative expenses, including the costs of Settlement administration,

website administration and the provision of notice to Class Members, as well as the amounts awarded by the Court for attorneys' fees and costs, and incentive awards to the Class Representative, will be deducted from the Settlement Amount prior to determining the "Distribution Amount."

C. Payments to Class Members

1. Each Class Member who submits a timely Claim Form will be entitled to receive their proportionate share of the Distribution Amount, subject to the provisions of Paragraph III.C.3. This amount will be distributed to the Class based on the Plan of Distribution attached to this agreement as Exhibit F.

2. No Class Member shall be entitled to more than his or her individual pro-rata share of the Distribution Amount regardless of the number of times he or she has been booked and/or strip searched at the Mercer County Correctional Facility.

3. In the event that less than 5% of Class Members make claims upon the Settlement Fund, the maximum payment to each Class Member will be \$5,000, and Defendants will receive a reverter of 50% of any remaining funds. The rest of the reverter will be allocated to improvements at the Mercer County Correctional Facility.

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

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

6. The Parties acknowledge that Class Members have an important interest in being able to maintain their privacy in filing a claim on this class action settlement. Accordingly, the Class list and list of claimants on this Settlement will be compiled and exclusively maintained by the Class Counsel. Class Counsel will keep the list of claimants confidential and will protect this list from public disclosure. The Defendants may, upon request, inspect any such lists at the offices of Class Counsel William Riback, LLC, Haddonfield, New Jersey.

D. Attorneys Fees and Expenses

1. Class Counsel will petition the Court for an award of attorneys' fees in the amount not to exceed 30% of the Settlement Fund. Class Counsel will also petition the Court for an award of pre-settlement cost and expenses, in an amount not to exceed \$20,000, which will be deducted from the Settlement Fund. Defendants shall not oppose Class Counsel's application for said award of fees and expenses, nor will they oppose any appeal filed by Class Counsel relative to their application for an award of attorneys' fees, so long as such application for attorneys' fees and expenses conforms with the Settlement Agreement. All class counsel attorney's fees will be drawn from the settlement fund.

E. Additional Discovery

1. Defendants will continue to cooperate in a timely and reasonable manner in discovery to determine class size and Class Members' names and addresses. The Defendants have provided Class Counsel or their agents with access to the computerized booking records of the Mercer County Correctional Facility for the purposes of assembling a class list. Defendants will continue to provide such cooperation to Class Counsel. Subject to applicable law, the Defendants will not object to providing social security numbers or dates of birth for the purposes of verifying the identity of individuals who make a claim.

F. Partial Distribution Pending Appeal

1. In the event that Final Approval of the Settlement is appealed by either party or a third party objector, and if the payment of some portion of the Settlement Fund is not subject to dispute, that undisputed portion of the Settlement Fund shall be distributed in accordance with this agreement. If the distribution of some or all of the Settlement proceeds is in dispute due to a pending appeal, the disputed amount will be placed in an insured interest bearing escrow account and shall not be distributed during the pendency of the appeal. In the event that Final Approval of the Settlement is overturned on appeal, all funds, including interest, will be refunded to the Defendants and/or their insurers, as per their respective contributions to the Settlement Fund, with the exception of the Initial Contribution, detailed in § III(B)(2), and any additional notice and administration costs incurred above the Initial Contribution.

**IV. NOTIFICATION TO CLASS MEMBERS**

A. Responsibilities of the Settlement Administrator and Website Administrator

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

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

3. The Website Administrator will maintain the settlement website,

www.mercercountystripsearch.com, or something substantially similar, which will provide information about the settlement to Class Members, including notice and claims documents, court documents, and a copy of the Settlement Agreement.

B. Notice

1. Notice will be provided to the Class by direct mailing of Class Notice and a Claim Form to all individuals at their last known or readily ascertainable address and by publication in the Trenton Times and the Trentonian on at least one day per week for three consecutive weeks commencing on the Notice date, and on one occasions during the last ten days of the Claims Period. The mailed notice will be provided in Spanish and English, and newspaper advertisements will provide instruction that a Spanish copy of the notice will be provided upon request.

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

3. Defendants will cooperate in the Notice Program by providing Class Counsel and/or the Settlement Administrator with information necessary to affect notice to the Class including, but not limited to, cooperating with efforts to obtain the last known address of Class Members from County records. The Defendants will provide access to their computer database regarding all intakes into the Mercer County Corrections Facility during the Class period.

4. If, after the initial mailing, the Notice is returned as undeliverable, the

Claims Administrator will attempt to locate the Class Members by way of a national locator database or service and, if another address is found, remail the Notice to that new address.

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

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

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

#### **V. REQUESTS FOR EXCLUSION BY CLASS MEMBERS**

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



Settlement Class Member, and elects to be excluded from any judgment entered pursuant to the Settlement.

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

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

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

#### **VI. OBJECTIONS BY SETTLEMENT CLASS MEMBERS**

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

B. The agreed-upon procedures and requirements for filing objections in connection with the Final Approval Hearing are intended to ensure the efficient administration of justice and the orderly presentation of any Settlement Class Members' objections to the Settlement

Agreement, in accordance with such Settlement Class Members' due process rights. The Preliminary Approval Order and Class Notice will require all Settlement Class Members who have any objections to file such notice of objection or request to be heard with the Clerk of the Court, and serve by mail or hand delivery such notice of objection or request to be heard, including all papers or evidence in support thereof, upon one of the Class Counsel and Defendants' Counsel, at the addresses set forth in the Class Notice, no later than the Objection Date. The Preliminary Approval Order will further provide that objectors who fail to properly or timely file their objections with the Clerk of the Court, along with the required information and documentation set forth above, or to serve them as provided above shall not be heard during the Final Approval Hearing, nor shall their objections be considered by the Court.

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

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

A. By this Settlement Agreement and the following Release, Defendants, and all of their respective affiliates, predecessors, successors and assigns, officers, agents, representatives, insurers and employees, are released from any and all claims or causes of action that were, could have been, or should have been asserted by the named Plaintiff or any member of the Class against the Released Persons, or any of them, based upon or related to the actions that are the subject of this Settlement Agreement.

B. This Settlement Agreement and Release does not affect the rights, if any, of Class

Members who timely and properly exclude themselves from the Settlement.

C. The administration and consummation of the Settlement as embodied in this Settlement Agreement shall be under the authority of the Court. The Court shall retain jurisdiction to protect, preserve, and implement the Settlement Agreement, including, but not limited to, the Release. The Court expressly retains jurisdiction in order to enter such further orders as may be necessary or appropriate in administering and implementing the terms and provisions of the Settlement Agreement, including, but not limited to, orders enjoining Settlement Class Members from prosecuting claims that are released pursuant to the Settlement Agreement.

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

E. Tolling of Statute of Limitations. Defendants agree that, with respect to any claims asserted in the Litigation that are subsequently asserted by any member of the Class who has properly opted out of the Settlement, Defendants agree that any statute of limitations, repose, or laches defense was tolled from May 5, 2004 until the Court provides Final Approval of this Settlement Agreement. Further, in the event that the Court does not approve this Settlement Agreement, or the Court's approval of this Settlement Agreement is terminated pursuant to the provisions of this Settlement Agreement (e.g. on the Effective Date), Defendants agree that, with

respect to any claims asserted in the Litigation that are subsequently asserted or maintained in any existing or subsequently filed class action lawsuit, or by any member of the Class, Defendants shall not assert any statute of limitations, repose or laches defense that is premised upon the time period of May 5, 2004, through and including the date of the last of the following events to occur: the entry of the Court's order disapproving this Settlement Agreement, the appellate court's decision reversing the Court's order approving this Settlement Agreement, or the Effective Date, as defined above. This tolling will cease thirty days after one of the events detailed in the preceding sentence comes to pass.

#### **VIII. INCENTIVE AWARDS TO CLASS REPRESENTATIVE**

A. Given the efforts of the named Plaintiff on behalf of the Class, Defendants will not oppose an application for an incentive award of \$20,000 (twenty thousand dollars) on behalf of Class Representative Trafford Boiselle, such amount to be paid before distribution to the general Class. It is agreed between the Parties that Mr. Boiselle provided substantial assistance to Class Counsel in the prosecution of this action.

#### **IX. REPRESENTATIONS, WARRANTIES AND COVENANTS**

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

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

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

#### **X. MISCELLANEOUS PROVISIONS**

A. This Settlement Agreement, and the exhibits and related documents hereto, are not, and shall not at any time be construed or deemed to be, or to evidence, any admission against or concession by Defendants with respect to any wrongdoing, fault, or omission of any kind whatsoever, regardless of whether or not this Settlement Agreement results in entry of a Final Judgment as contemplated herein. Any payment of moneys, or any other action taken, by any of the Defendants pursuant to any provision of this Settlement Agreement, shall not at any time be construed or deemed to be, or to evidence, any admission against or concession by Defendants with respect to any wrongdoing, fault, or omission of any kind whatsoever, regardless of whether or not this Settlement Agreement results in entry of a Final Judgment as contemplated herein. Defendants deny any liability to Plaintiff and to all Members of the Class. This provision shall survive the expiration or voiding of the Settlement Agreement.

B. This Settlement Agreement is entered into only for purposes of Settlement. In the event that the Effective Date does not occur for any reason or the Final Judgment is not entered, then this Settlement Agreement, including any releases or dismissals hereunder, is cancelled. In the event this Settlement Agreement is cancelled or deemed cancelled, no term or condition of this Settlement Agreement, or any draft thereof, or of the discussion, negotiation, documentation or other part or aspect of the Parties' settlement discussions shall have any effect, nor shall any such matter be admissible in evidence for any purpose, or used for any purposes whatsoever in

the Litigation or in any other litigation, and all Parties shall be restored to their prior rights positions as if the mediation had never occurred and the Settlement Agreement had not been entered into.

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

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

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

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

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

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

I. The Parties to this Settlement Agreement reserve the right, by agreement and

subject to the Court's approval, to grant any reasonable extensions of time that might be necessary to carry out any of the provisions of this Settlement Agreement.

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

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

L. Integrated Agreement:

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

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

M. Notice:

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

mail, postage prepaid:

- If to Defendants to: Gregory Giordano, Esq., Lenox, Socey, Wilgus, Formidoni, Brown, Giordano & Casey LLC, 3131 Princeton Pike, Lawrenceville, NJ 08648.
- If to Class Counsel or Plaintiff to: Seth R. Lesser, Esq., Klafter Olsen & Lesser LLP, 1311 Mamaroneck Avenue, Suite 220, White Plains, NY 10605.

N. Dispute Resolution:

1. Except as otherwise provided herein, the Parties agree that any disputes regarding the terms and conditions of this Agreement, the Parties' rights and obligations under this Settlement Agreement, and/or the manner in which any issue or dispute arising under this Settlement Agreement, shall be submitted to the Mediator, who shall attempt to mediate such dispute, and if such dispute cannot be resolved via mediation, shall decide such dispute. The Mediator's decision shall be final and binding. If for any reason the Mediator becomes unable to serve, the Parties shall attempt to agree on a substitute mediator. If they are unable to do so, any issue or dispute covered by this Section shall be resolved by the Court.

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

Dated: October 27, 2008

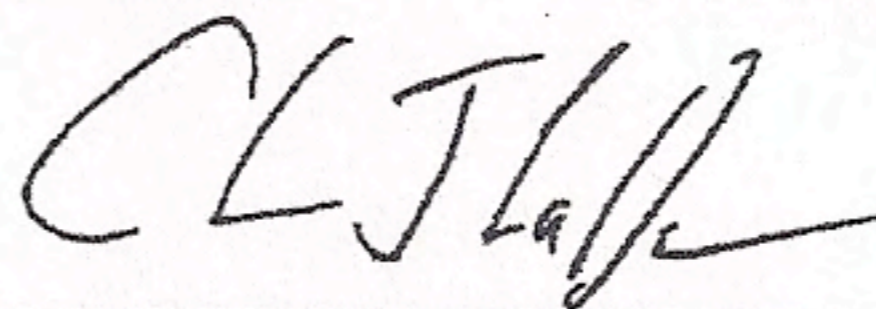


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Seth Lesser  
Fran Rudich  
**Klafter Olsen & Lesser LLP**  
1311 Mamaroneck Avenue, Suite 220  
White Plains, NY 10605  
Telephone: 914-997-5656

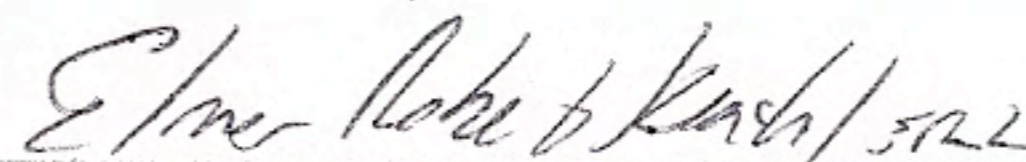


Telecopier: 914-997-2444



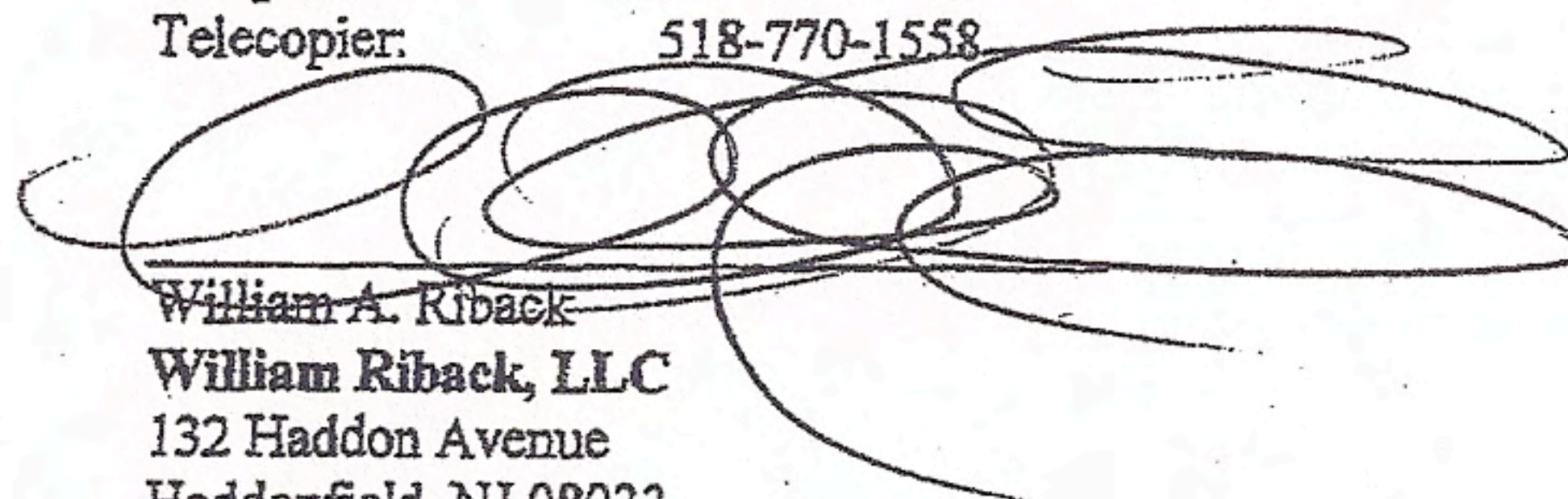
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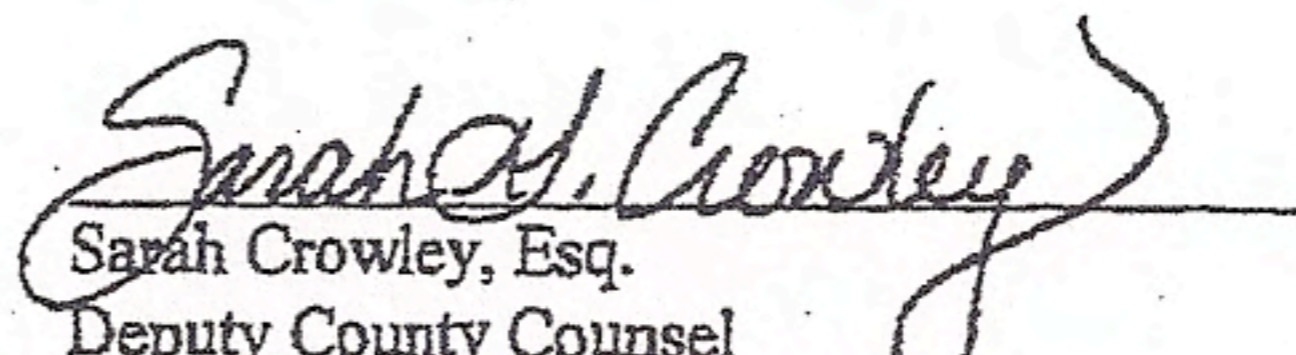


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~~William A. Riback~~  
William Riback, LLC  
132 Haddon Avenue  
Haddonfield, NJ 08033  
Telephone: 856-857-0008  
Telecopier: 856-857-0028

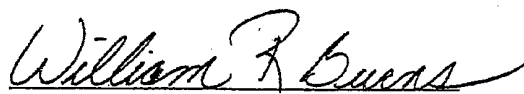
**ATTORNEYS FOR PLAINTIFF AND  
THE PROPOSED CLASS**

Dated: October \_\_, 2008



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Sarah Crowley, Esq.  
Deputy County Counsel  
Office of Mercer County Counsel  
640 South Broad Street  
Trenton, New Jersey 08611



Gregory J. Giordano, Esq.  
**Lenox, Socey, Wilgus, Formidoni,  
Brown, Giordano & Casey LLC**  
3131 Princeton Pike  
Lawrenceville, NJ 08648.

**ATTORNEY FOR THE DEFENDANTS**

BY: William R. Burns, Esq.