

SETTLEMENT AGREEMENT & FULL AND FINAL RELEASE

Case Name: *Mary Bull, Jonah Zern, Lisa Giampaoli, Marcy Corneau, Alexis Bronson, Micky Mangosing, Leigh Fleming, Laura Timbrook, And All Others Similarly Situated V. City And County Of San Francisco, San Francisco Sheriff's Department, San Francisco County Sheriff Michael Hennessey, In His Individual And Official Capacity, And San Francisco County Sheriff's Deputies Does 1 Through 150*

Case No.: **C03-1840 CRB (EMC)**

This Settlement Agreement and Full and Final Release ("SETTLEMENT AGREEMENT") is made and entered into by and between Plaintiffs Mary Bull, Lisa Giampaoli, Alexis Bronson, Micky Mangosing, Leigh Fleming, Laura Timbrook, J. Quechan Allen, Diana Smith, Michele De Ranleau, Michael Marron, Steve Noh, Sister Bernie Galvin, and Brian Vowell (hereinafter, the "INDIVIDUAL PLAINTIFFS") on the one hand, and Defendants City and County of San Francisco, San Francisco Sheriff's Department, San Francisco County Sheriff Michael Hennessey, in his individual and official capacity, and San Francisco County Sheriff's Deputies does 1 through 150 (hereinafter, the "DEFENDANTS") on the other hand.

WHEREAS, the INDIVIDUAL PLAINTIFFS have asserted individual claims against DEFENDANTS;

WHEREAS, the INDIVIDUAL PLAINTIFFS have also asserted claims on behalf of a class;

WHEREAS, the federal district court has certified a class defined as "All persons who, during the applicable period of limitations, and continuing to date [from April 23, 2002 to January 23, 2004], were arrested on any charge not involving weapons, controlled substances, or a charge of violence, and not involving a violation of parole or a violation of probation (where consent to search is a condition of such probation), and who were subjected to a blanket visual body strip search by defendants before arraignment at a San Francisco County jail facility without any reasonable suspicion that they were concealing contraband. This class also includes 1) all arrestees who were subjected to subsequent blanket strip search(es) before arraignment after the initial strip search, without any reasonable suspicion; and 2) all persons who, prior to arraignment, were subjected to blanket visual body cavity search(es) incident to placement in a "safety cell" at any of the San Francisco County jails" (hereinafter, the "CLASS");

WHEREAS, claims asserted on behalf of absent class members are hereinafter referred to as "CLASS CLAIMS"; and

WHEREAS, the INDIVIDUAL PLAINTIFFS and the CLASS are represented by Mark E. Merin, the Law Offices of Mark E. Merin, Andrew Charles Schwartz, and Casper, Meadows & Schwartz (hereinafter, "PLAINTIFFS' COUNSEL").

NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, in the amount of \$450,000 (Four-Hundred Fifty-Thousand and 00/100 Dollars) plus the cost of sending notice to the CLASS (estimated at \$10,000 to \$20,000) (Ten-Thousand to Twenty-Thousand and 00/100 Dollars) (the "SETTLEMENT AMOUNT"), the sufficiency of which is hereby admitted and acknowledged, the INDIVIDUAL PLAINTIFFS, individually and on behalf of their heirs, domestic partners, spouses, executors, attorneys, administrators, assigns, and successors, if any, and PLAINTIFFS' COUNSEL, individually and on behalf of their current and former predecessors, successors, partners (both general and limited), affiliates, each of its current and former directors, officers and employees, corporations, partnerships, heirs, domestic partners, spouses, executors, administrators, assigns, and successors, if any (hereinafter referred to

individually and collectively as "RELEASORS"), hereby agree to fully and forever release and discharge the City and County of San Francisco, together with its elective and/or appointive boards, agents, servants, employees, attorneys, consultants, departments, commissioners, officials, officers, assigns and successors (hereinafter referred to individually and collectively as "SAN FRANCISCO"), from any and all claims, actions, causes of action, liabilities, damages, demands, attorneys' fees, expenses and costs (including without limitation court costs) of any kind or nature whatsoever, whether known or unknown, suspected or unsuspected, which have existed or may have existed, or which do exist, or which hereafter shall or may exist, and which (1) are alleged or set forth or attempted to be set forth in the pleadings on file in that certain action entitled "*Mary Bull, et al. vs. City and County of San Francisco, et al.*," being Action No. **C03-1840 CRB (EMC)** on the records of the United States District Court for the Northern District of California (hereinafter referred to as the "ACTION"), (2) arise out of or are in any way related to any of the transactions, occurrences, acts or omissions set forth or alleged in any of the pleadings in the ACTION, or (3) arise out of or relate to any arrest, search or seizure of any individual plaintiff by SAN FRANCISCO at any time prior to the date of this SETTLEMENT AGREEMENT, including but not limited to during the pendency of the ACTION. (hereinafter referred to collectively as the "INDIVIDUAL CLAIMS").

PLAINTIFFS' COUNSEL hereby waives any rights they may have to costs or attorney's fees in the action entitled *Flick v. City and County of San Francisco*, being Action No. C03-4022 CRB on the records of the United States District Court for the Northern District of California.

RELEASORS and SAN FRANCISCO each understand that this settlement is subject to approval of all appropriate departments, boards, agencies, and commissions of the City and County of San Francisco, including, but not limited to, the San Francisco Board of Supervisors. Within fifteen (15) days of approval of the settlement by all appropriate departments, boards, agencies and commissions of the City and County of San Francisco, RELEASORS shall move the District Court for dismissal of the CLASS CLAIMS in the ACTION without prejudice and for approval of the settlement. RELEASORS and SAN FRANCISCO agree to use their best efforts to obtain dismissal of the CLASS CLAIMS in the ACTION without prejudice and to obtain approval of this settlement and entry of the orders contemplated herein, and shall do nothing inconsistent herewith.

RELEASORS and SAN FRANCISCO each understand that this settlement is contingent upon the District Court's dismissal of the CLASS CLAIMS in the ACTION without prejudice and the District Court's approval of the settlement.

On June 10, 2004, the district court in the ACTION granted the INDIVIDUAL PLAINTIFFS' motion to certify a class under Rule 23(b)(3) and defined the class as:

All persons who, during the applicable period of limitations, and continuing to date [from April 23, 2002 to January 23, 2004], were arrested on any charge not involving weapons, controlled substances, or a charge of violence, and not involving a violation of parole or a violation of probation (where consent to search is a condition of such probation), and who were subjected to a blanket visual body strip search by defendants before arraignment at a San Francisco County jail facility without any reasonable suspicion that they were concealing contraband. This class also includes 1) all

arrestees who were subjected to subsequent blanket strip search(es) before arraignment after the initial strip search, without any reasonable suspicion; and 2) all persons who, prior to arraignment, were subjected to blanket visual body cavity search(es) incident to placement in a "safety cell" at any of the San Francisco County jails.

If required by the District Court, SAN FRANCISCO shall provide notice to members of the CLASS, informing them that the CLASS CLAIMS in the ACTION have been dismissed without prejudice and that the statute of limitations on their claims, if any, will begin to run again. The cost of notice is estimated to be \$10,000 to \$20,000. Subject to the District Court's approval, the parties agree that the notice attached hereto as Exhibit A (the "NOTICE") is sufficient and appropriate. SAN FRANCISCO will seek to identify a correct current address for members of the CLASS via a social security number search, an Equifax search, or a Lexis/Nexis search, and will send the NOTICE to any subsequently-obtained address. RELEASORS and SAN FRANCISCO agree that the individual mailing of the NOTICES by first class United States mail to the last updated address of the members of the CLASS is sufficient to satisfy the requirements of due process and the notice requirements under law.

Within five (5) days of the District's Court's dismissal of the CLASS CLAIMS in the ACTION without prejudice, the District Court's approval of the settlement, and the sending of the NOTICES to CLASS members by SAN FRANCISCO, RELEASORS shall file a request for dismissal with prejudice of all remaining INDIVIDUAL CLAIMS in the ACTION.

Within thirty (30) business days after the ACTION has been dismissed with prejudice, SAN FRANCISCO shall pay the SETTLEMENT AMOUNT to RELEASORS. Payment by SAN FRANCISCO is contingent upon the delivery of a fully executed W-9, with a valid federal tax identification number, by RELEASORS to counsel for SAN FRANCISCO. SAN FRANCISCO'S payment to RELEASORS shall be made by check payable to Law Offices of Mark Merin Trust Account.

RELEASORS represent and warrant that they have not assigned or transferred, or agreed to assign or transfer, or attempted to assign or transfer, to any third party or entity (including without limitation any insurer) any interest in any of the INDIVIDUAL CLAIMS. RELEASORS agree to defend, indemnify and hold harmless SAN FRANCISCO against any loss, expense or liability, including without limitation reasonable attorneys' fees, arising from any breach of the foregoing. Furthermore, in the event that SAN FRANCISCO learns that RELEASORS have breached this warranty, SAN FRANCISCO may, at its sole option, elect to rescind this Full and Final Release, in which case RELEASORS shall immediately remit to SAN FRANCISCO the SETTLEMENT AMOUNT, plus interest accruing thereon at a rate of ten (10) percent per year, compounded monthly, from the date of payment thereof.

RELEASORS represent and warrant that either (a) there are no liens, including without limitation any medical reimbursement, unemployment or disability compensation liens, in existence which may attach to the SETTLEMENT AMOUNT or to any recovery paid to RELEASORS pursuant to the ACTION, or (b) to the extent there are any such liens, RELEASORS will pay and retire all such liens out of the SETTLEMENT AMOUNT. RELEASORS agree to defend, indemnify and hold harmless SAN FRANCISCO against any and all claims by any person or entity purporting to hold any

lien, interest, or other claim, whether for medical care, unemployment and/or disability compensation, attorneys' fees, or otherwise, involving RELEASORS and arising in connection with any of the INDIVIDUAL CLAIMS.

In reaching a settlement of the INDIVIDUAL CLAIMS resulting in the execution of this RELEASE, RELEASORS and SAN FRANCISCO have considered and sought to protect the interests of the Centers for Medicare and Medicaid Services ("CMS"), the federal agency that runs Medicare. RELEASORS represent and warrant that RELEASORS are either (1) not Medicare eligible pursuant to 42 U.S.C. 1395c and will not become Medicare eligible within thirty months from the date of this RELEASE, or (2) are Medicare eligible pursuant to 42 U.S.C. 1395c or will be Medicare eligible within thirty months from the date of this RELEASE, in which case (a) RELEASORS further represent and warrant that RELEASORS are not asserting and do not anticipate a need for future medical treatment arising out of or related to the INDIVIDUAL CLAIMS or (b) RELEASORS have asserted a need for future medical treatment arising out of or related to the INDIVIDUAL CLAIMS and RELEASORS will place a portion of the SETTLEMENT AMOUNT in a Medicare Set Aside ("MSA") account which RELEASORS represent and warrant will satisfy the requirements of the Medicare, Medicaid and SCHIP Extension Act of 2007 and which will be used to pay for future medical expenses arising out of or related to the INDIVIDUAL CLAIMS. RELEASORS and RELEASORS' counsel agree to defend, indemnify and hold harmless SAN FRANCISCO against any and all claims arising out of or related to the terms of this paragraph, including without limitation, any claims by CMS.

RELEASORS certify that they have read Section 1542 of the California Civil Code, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

RELEASORS hereby waive application of Section 1542 of the Civil Code. RELEASORS understand and acknowledge that, as a consequence of this waiver of Section 1542, even if RELEASORS should eventually suffer additional or further loss, damages or injury arising out of or in any way related to any of the events which gave rise to the INDIVIDUAL CLAIMS, or any of them, RELEASORS will not be permitted to make any further claims against SAN FRANCISCO to recover for such loss, damages or injury. RELEASORS acknowledge that they intend these consequences even as to claims for personal injury or property damage that may exist as of the date of this Full and Final Release but which RELEASORS do not know exist, and which, if known, would materially affect RELEASORS' decision to execute this Full and Final Release, regardless of whether RELEASORS' lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

RELEASORS acknowledge that, in executing this Full and Final Release, they are acting on their own, independent judgment informed by their legal counsel. RELEASORS acknowledge having read this Full and Final Release and having been advised by their attorneys as to its meaning and effect. RELEASORS acknowledge and warrant that their execution of this Full and Final Release is free and voluntary. RELEASORS further represent and warrant that, at the time they executed this Full and Final Release, they were not in the period of first physical confinement, whether as an inpatient or outpatient, in a clinic or health facility (as defined in Sections 1203 and 1250 of the Health and Safety Code) as a result of the injury alleged to have given rise to any

of the INDIVIDUAL CLAIMS, and that as a result Business and Professions Code section 6152(b) cannot be used to invalidate this Full and Final Release.

RELEASORS acknowledge that this Full and Final Release contains and constitutes the entire agreement between RELEASORS and SAN FRANCISCO with respect to the INDIVIDUAL CLAIMS. The terms of this Full and Final Release are contractual and not a mere recital. RELEASORS acknowledge that SAN FRANCISCO has made no representations, express or implied, to induce RELEASORS to enter into this Full and Final Release, other than as expressly set forth herein.

No aspect of this Full and Final Release or the settlement which led to it is intended to be nor at any time shall be construed, deemed, or treated in any respect as an admission by SAN FRANCISCO of liability for any purpose. It is expressly understood by RELEASORS that this Full and Final Release does not constitute an admission of the truth or accuracy of any of the allegations made in the complaint on file in the ACTION liability for any of the INDIVIDUAL CLAIMS, and that SAN FRANCISCO expressly denies the allegations made in the complaint, as more fully set forth in the answer or other responsive pleadings on file in the ACTION.

If any of the provisions of this Full and Final Release or the application thereof is held to be invalid, its invalidity shall not affect any other provision or application of this Full and Final Release to the extent that such other provision or application can be given effect without the invalid provision or application, and to this end, the provisions of this Full and Final Release are declared and understood to be severable; provided, however, that should a court of competent jurisdiction hold that RELEASORS are entitled to sue SAN FRANCISCO upon any of the INDIVIDUAL CLAIMS, and should RELEASORS bring or join in such a suit, then RELEASORS shall immediately remit to SAN FRANCISCO the SETTLEMENT AMOUNT, plus interest thereon accruing at a rate of ten percent per year, compounded monthly, from the date of payment thereof.

RELEASORS understand and acknowledge that both RELEASORS and SAN FRANCISCO shall bear their own legal expenses, including attorney's fees, and costs incurred in connection with prosecuting or defending against the ACTION and any of the INDIVIDUAL CLAIMS.

RELEASORS and SAN FRANCISCO waive the application of any applicable law, regulation, holding or rule of construction providing that ambiguities in an agreement shall be construed against the party drafting such agreement.

This SETTLEMENT AGREEMENT and the settlement which led to it have been fully negotiated with the assistance of counsel and should not be construed more strictly against one party than another.

This SETTLEMENT AGREEMENT may be executed in two or more counterparts, all of which counterparts shall be deemed originals.

Dated: _____ MARY BULL

Dated: _____ LISA GIAMPAOLI

Dated: _____ ALEXIS BRONSON

Dated: _____ MICKY MANGOSING

Dated: _____ LEIGH FLEMING

Dated: _____ LAURA TIMBROOK

Dated: _____ J. QUECHAN ALLEN

Dated: _____ DIANA SMITH

Dated: _____ MICHELE De RANLEAU

Dated: _____ MICHAEL MARRON

Dated: _____ STEVE NOH

Dated: _____ SISTER BERNIE GALVIN

Dated: _____

BRIAN VOWELL

Dated: _____

MARK E. MERIN
PLAINTIFFS' COUNSEL

Dated: _____

ANDREW CHARLES SCHWARTZ
PLAINTIFFS' COUNSEL

APPROVED AS TO FORM:

**LAW OFFICES OF MARK E. MERIN
2001 P STREET, SUITE 100
SACRAMENTO, CA 95814**

Dated: _____

MARK E. MERIN
Attorney for RELEASORS

APPROVED AS TO FORM:

**CASPER, MEADOWS & SCHWARTZ
2121 N. CALIFORNIA BLVD., SUITE
1020
WALNUT CREEK, CA 94596**

Dated: _____

ANDREW CHARLES SCHWARTZ
Attorney for RELEASORS

APPROVED AS TO FORM:

**CITY ATTORNEY'S OFFICE
1390 MARKET STREET, 7TH FLOOR
SAN FRANCISCO, CA 94102**

Dated: _____

Robert Bonta
Deputy City Attorney