

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

JAVAR CALVIN, et al.,	)	
	)	
<i>Plaintiff,</i>	)	
	)	No. 03 CV 3086
-vs-	)	
	)	<i>(Judge Kendall)</i>
SHERIFF OF WILL COUNTY, et al.,	)	
	)	
<i>Defendant.</i>	)	

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

The parties to this lawsuit, by counsel, respectfully request that the Court grant preliminary approval to the proposed settlement of this class action.

Grounds for this motion are as follows:

1. Following the grant of permission to appeal by the Seventh Circuit from the order granting summary judgment on liability, the parties, with the invaluable assistance of Joel N. Shapiro, Senior Conference Attorney of the United States Court of Appeals for the Seventh Circuit, have entered into a "class settlement agreement," a copy of which is attached to this motion.
2. The "class settlement agreement" requires defendants to pay two million one hundred and fifty thousand dollars to resolve all claims at issue. The amount that each unnamed member of the plaintiff class will receive cannot be computed until there has been a final determination of the number of class members who timely return a claim form; based on experience in other, similar cases, counsel estimate that each unnamed member of the class will receive between four hundred and one thousand dollars.
3. Pursuant to Rule 23(e)(1)(B), the parties requires that the Court direct that notice of this proposed settlement be sent by first class mail to the last

"ascertainable" address of each member of subclass one and subclass two, where "ascertainable" means the last known address as enhanced by the United States Postal Service change of address database. The parties also request that the Court direct that for any notice which is returned as undeliverable, reasonable efforts shall be made by the class action administrator to locate the class member using industry standard address correction procedures. Finally, the parties request that the Court approve the engagement as class action administrator of Analytics, Incorporated, who has provided these services in similar cases and who has previously been engaged by class counsel in this case for the mailing of class notice.

Respectfully submitted,

*/s/ Kenneth N. Flaxman*

---

KENNETH N. FLAXMAN  
ARDC No. 830399  
200 South Michigan Avenue  
Suite 1240  
Chicago, Illinois 60604-2430  
(312) 427-3200 (phone)  
(312) 427-3930 (fax)  
knf@kenlaw.com (email)

*attorney for the plaintiff class*

*/s/ Kevin Clancy (with consent)*

---

Kevin Clancy  
Lowis & Gellen, LLP  
200 W Adams St., Ste 1900  
Chicago, IL 60606  
(312) 364-2500

*one of the attorneys for defendants*

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

JAVAR CALVIN, WILLIAM VIRBLE	)	
MOORE AND CHARLES DAVIS,	)	
	)	<i>Plaintiffs,</i>
-vs-	)	No. 03 CV 3086
	)	
SHERIFF OF WILL COUNTY AND	)	<i>(Judge Kendall)</i>
WILL 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.

**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 their Fourth Amendment rights under the U.S. Constitution pursuant to 42 U.S.C. § 1983, resulting from strip searches conducted of them at the Will County Adult Detention Facility (“WCADF”).

2. **Class Certification.** Pursuant to the Court's order of May 12, 2004, this case is proceeding as a class action for two subclasses defined as follows:

Any person who, from May 8, 2001, to the date of entry of judgment has been, is, or will be arrested on a warrant issued for failure to appear in a misdemeanor or traffic case and, following arrival at the Will County Adult Detention Facility, is or was strip searched without any individualized finding of reasonable suspicion

or probable cause that he or she was concealing contraband or weapons. (“Subclass I”)

and

Any person who, from May 8, 2001, to the date of entry of judgment has been, is, or will be in the custody of the Sheriff of Will County on a traffic or misdemeanor charge (or on a warrant issued for failure to appear on a traffic or misdemeanor charge), taken to court from the Will County Adult Detention Facility, ordered released by the court, or otherwise became entitled to immediate release, was returned to the Will County Adult Detention Facility to be processed out of the custody of the Sheriff of Will County, and was strip searched without any individualized finding of reasonable suspicion that he or she was concealing contraband or weapons. (“Subclass II”).

3. **Important Rulings.** On December 16, 2005, the Court granted plaintiffs' motion for summary judgment and entered a finding of liability against defendant Sheriff of Cook County and in favor of Subclass One and Subclass Two. Thereafter, on April 14, 2006, the Court granted defendants' motion to certify the order granting summary judgment for an interlocutory appeal pursuant to 28 U.S.C. §1292(b). The Court of Appeals granted permission to appeal on May 18, 2006.

4. **Settlement Conference.** In accordance with Seventh Circuit Rule 33, the parties participated in a Settlement Conference with Joel N. Shapiro, Senior Conference Attorney of the United States Court of Appeals for the Seventh Circuit. With the invaluable assistance of Mr. Shapiro, the parties have agreed to a resolution of their disputes in this action. The class members desire to settle their claims against Defendant, having taken into account through their counsel 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 and expensive. Class Counsel has investigated the facts and the applicable law. Based on the foregoing, and upon 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.

5. **No Admission of Liability.** Defendants deny liability to Plaintiffs and the class for the claims alleged, but consider it desirable that the action and the claims alleged therein be settled upon the terms and conditions set forth in this Agreement, in order to avoid further expense and burdensome, protracted litigation, and to put to rest all claims, known or unknown, that have been or might be asserted by Plaintiffs or the class members against Defendant.

In consideration of the foregoing, Plaintiffs, Class Counsel and Defendants stipulate and agree that the claims of the named Plaintiffs and the class against Defendants should be and are hereby compromised and settled, subject to the approval of the court, upon the following terms and conditions.

## **TERMS**

6. **Relief to the Class.** To resolve all claims at issue in this case, including but not limited to claims for compensatory damages and claims for attorneys' fees and expenses, the parties have agreed that, as part of the consideration for this Agreement, including the releases contained herein, Defendants agree to pay a total amount of \$2,150,000 (Two Million One Hundred

and Fifty Thousand Dollars) (“Settlement Fund”) in full settlement of all claims by all members of both subclasses. With respect to all claims asserted on behalf of each subclass, plaintiffs have agreed to waive their right to individual damage trials. The defendants have agreed to waive their right to appeal from the district court's finding of liability.

7. **Incentive Payments.** Each of the named plaintiffs will receive, subject to the approval of the court, an incentive award of \$25,000 to be paid from the Settlement Fund. Defendants agree not to oppose Plaintiffs’ petition for such incentive awards. Such awards shall be in lieu of, and not in addition to, any other awards to which the named plaintiffs may be entitled under this settlement.

8. **Administration, Attorneys’ Fees and Expenses.** The cost of administration of the settlement will be paid from the Settlement Fund, as will attorneys’ fees and expenses. These costs include, but are not limited to, notice to the class, attempting to locate class members who are not reached by first class mail to their last known address, processing of claim forms and 1099 forms, issuance of settlement checks, and mailing (by certified mail, return reply requested) of settlement shares to class members. The settlement will be administered by Analytics, Incorporated, who has provided these services in similar cases and who has previously been engaged by class counsel in this case for the mailing of class notice. The total amount of attorneys' fees and reimbursed expenses will not exceed 40% of the total Settlement Fund, in an amount to be set by the Court. Defendants have agreed not to challenge any such request for fees

and reimbursement of expenses that may be made by class counsel. Class counsel intends to seek a total award of fees and reimbursement of expenses in an amount not to exceed forty percent of the total settlement in accord with the standard in the community of contingent fees ranging between one-third and 40% of the total recovery, with the higher percentage applying in risky cases and in those with a likelihood of a small recovery. The parties are in agreement that, subject to the approval of the Court, one-third of the total settlement plus reimbursement for the actual cost of class notice and the actual cost of notice of this proposed settlement shall be paid to class counsel as fees and reimbursable expenses and that any balance remaining in the "Reserve Fund" (as described below) on December 1, 2007 shall be paid to class counsel as additional fees.

9. **Payments to Class Members.** The parties, while recognizing that each class member 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 distribution on a pro rata basis. After the deduction of attorney's fees and reimbursable expenses, the costs of administration of this settlement, and the incentive awards to the named Plaintiffs, the remainder of the Settlement Fund (hereinafter the "Net Settlement") will be distributed to each class member who has not excluded him or herself, and who timely returns a claim form. Each class member who submits a timely claim form will receive a payment from the balance of the Settlement Fund based upon the procedures described below. The amount that each unnamed member of the

plaintiff class will receive cannot be computed until there has been a final determination of the number of class members who timely return a claim form; based on experience in other, similar cases, counsel for the parties estimate that each class member will receive an award greater than four hundred dollars (\$400) and less than one thousand dollars (\$1,000).

**10. Notice and Claims Procedures.**

a. Within seven 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, and notice of a right to opt-out (for those members that have not previously received such opportunity) will be sent by first class mail to the last ascertainable address of each member of subclass one and subclass two. As used herein, “ascertainable” means the last known address as enhanced by the United States Postal Service change of address database. For any notice which is returned as undeliverable, reasonable efforts will be made to locate the class member using industry standard address correction procedures. The cost of this notice will be paid in the first instance by Plaintiffs and, assuming that this settlement obtains final approval from the Court, will be reimbursed from the total amount of the settlement.

b. The notice of the proposed settlement will be accompanied by a 1099 form and a claim form that includes the release described below. Class members will be required to return the executed forms to the class action

administrator on or before December 1, 2006. Late claimants may receive payment under the provisions of subparagraph (e) below.

c. Within 7 days of the “Final Approval Date,” as defined below, the total amount of the settlement shall be transferred by defendants to an IOLTA client trust fund account maintained within the State of Illinois by class counsel. As used herein, “Final Approval Date” means the 31<sup>st</sup> day following entry of the order approving the settlement or, if there is an appeal, when the Court's order approving the settlement reaches a final adjudication.

d. Efforts to locate class members will continue through the date of the fairness hearing.

e. On or before December 18, 2006, payments will be made to each class member who has timely returned the 1099 form and claim form. A claim form shall be deemed timely if it is received by the class action administrator on or before December 1, 2006. The amount of these payments will be computed by dividing the “Net Settlement” less a “Reserve Fund” by the number of timely claimants. One fifteenth (1/15) of the “Net Settlement” shall be set aside as the “Reserve Fund” and will be maintained by class counsel in an IOLTA account within the State of Illinois.

f. The “Reserve Fund” will be used to pay claims of class members who submit claim forms and 1099 form to the class action administrator on or before the earlier of December 1, 2007 or the date that the reserve fund is

exhausted. Each such claimant will be paid in the same collar amount as the claims paid pursuant to subparagraph (e) above. In the event that the reserve fund is insufficient to pay the full amount to each claimant whose claim form and 1099 form is received on the day on which the fund is exhausted, each such claimant will receive an aliquot share of the balancing remaining in the fund.

g. No part of the "Reserve Fund" will be returned to defendants.

h. Any balance remaining in the "Reserve Fund" on December 1, 2007 shall be paid to class counsel as additional fees.

12. **Release.** Plaintiffs and the members of the class will grant Defendants the following release:

Plaintiffs and each class member do hereby release and forever discharge the Defendants, and their present or former parents, officers, directors, partners, members, principals, insurers, insureds, representatives, employees, agents, servants, predecessors, successors, subsidiaries, affiliates, shareholders, and assigns ("Released Parties") of and from all causes of action, suits, claims and demands, whatsoever, for anything that occurred from the beginning of time up through and including the date the Court gives final approval to this settlement agreement, in law or in equity, known or unknown at this time, arising out of all of the factual allegations made in the above-captioned action, under any legal theory. This release is conditioned on the final approval of the Settlement Agreement by the Court and Defendant meeting its obligations therein.

13. **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 10 above.

Agreed to, this 15th day of September, 2006.

/s/ Kenneth N. Flaxman

/s/ Kevin J. Clancy (with consent)

---

Kenneth N. Flaxman  
200 South Michigan Avenue, Ste 1240  
Chicago, IL 60604  
(312) 427-3200

---

Kevin J. Clancy  
Lowis & Gellen, LLP  
200 W. Adams, Suite 1900  
Chicago, Illinois 60606  
(312) 364-2500

*Attorney for the Plaintiff Class*

*Attorneys for the Defendants*

## CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of September, 2006, 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: Kevin J. Clancy, Esq., Lewis & Gellen, 200 West Adams, Ste 1900, Chicago, Illinois 60606, 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

---

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)