

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

ELECTRONICALLY FILED

TABITHA GENTRY, ET AL.)	
)	
PLAINTIFFS)	
)	
vs.)	CIVIL ACTION NO.
)	
FLOYD COUNTY, INDIANA, ET AL.)	4:14-CV-00054-RLY-TAB
)	
DEFENDANTS)	

* * * * *

SETTLEMENT AGREEMENT

Plaintiffs, by and through their counsel, and Defendants Floyd County, Indiana, Darrell Mills, Tiffany Frans, Megan Atherton, Ryan Rainey, and Officers John/Jane Doe, by and through their counsel, hereby enter into this Settlement Agreement providing, subject to the approval of the Court, for the Settlement of the claims herein described;

WHEREAS, Plaintiffs filed the above-captioned class action lawsuit ("Litigation") against Defendants alleging that Defendants violated Plaintiffs' constitutional rights under color of state law by incarcerating them and others similarly situated in the padded cells of the Floyd County Jail, where they claim to have been subjected to inhumane conditions of confinement;

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

WHEREAS, the Parties to this Settlement Agreement have conducted and continue to conduct a thorough examination and investigation of the facts and law relating to the matters in this Litigation;

WHEREAS, Plaintiffs and Defendants have concluded that Settlement is desirable in order to avoid the time, expense, and inherent uncertainties of prolonged litigation and to resolve finally and completely all pending and potential claims of the Plaintiffs and all Class Members relating to the alleged conduct involved in this Litigation;

WHEREAS, Plaintiffs and Class Counsel (as defined hereinafter) 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 county employees or officials who may have devised, promulgated or enforced the policy (as defined hereinafter) 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 United States Magistrate Judge Tim A. Baker, 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 Class Members and is fair, reasonable, adequate and in the best interest of Class Members;

WHEREAS, this Settlement Agreement is made and entered into by and among Defendants Floyd County, Indiana, Darrell Mills, Tiffany Frans, Megan Atherton, Ryan Rainey, and Officers John/Jane Doe and Plaintiffs Tabitha Gentry, Vincent Minton, Michael Herron, Adam Walker, Anna Chastain, and Janelle South, individually and on behalf of a class of similarly situated persons (the "Class") for purposes of settlement. The Class Members are defined as:

All inmates confined from June 12, 2012, to present in the Floyd County Jail who were not on a suicide watch, but were housed in a padded cell where they were deprived of clothing, bedding, and hygiene products

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. Class Counsel. "Class Counsel" shall mean: Laura E. Landenwich, Theodore W. Walton, and Daniel J. Canon of Clay Daniel Walton & Adams PLC, 462 South Fourth Street, Suite 101, Louisville, Kentucky 40202.

B. Claim Form. "Claim Form" shall mean a form in substantially the same form as that attached hereto as Exhibit A.

C. Class Members. "Class Members" refers to all persons who, during the Class Period, who were not identified as suicidal, but who were confined in a padded cell and deprived of clothing, bedding and hygiene products in the Floyd County Jail pursuant to the "Combative Subjects" policy, as identified in the summary attached as Exhibit B. Individuals not identified in Exhibit B, but who, during the Claims Period, are identified through Jail records as individuals held pursuant to the Combative Subjects policy are also Class Members.

D. Claims Period. "Claims Period" shall mean the time period during which claims may be made by Settlement Class Members, extending from the Notice Date (defined below) until the date 45 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.

E. Class Period. "Class Period" refers to the period between June 12, 2012 and the date this Settlement Agreement is approved by the Court.

F. Class List. "Class List" shall be a list of the names and last known mailing addresses of all members of the Settlement Class as identified in the summary attached as Exhibit B.

G. Class Notice. "Class Notice" shall mean the Court-approved form of notice in substantially the same form as Exhibit C.

H. Class Representatives. "Class Representatives" shall mean Plaintiffs Tabitha Gentry, Vincent Minton, Michael Herron, Adam Walker, Anna Chastain, and Janelle South.

I. Class Settlement. "Class Settlement" shall mean the terms provided in this Settlement Agreement.

J. Court. "Court" shall mean the United States District Court for the Southern District of Indiana, New Albany Division, The Honorable Richard L. Young, or his duly appointed or designated successor.

K. Defendants. "Defendants" shall mean Floyd County, Indiana, Darrell Mills, Tiffany Frans, Megan Atherton, Ryan Rainey, and Officers John/Jane Doe, as well as all county employees or officials who may have devised, promulgated or enforced the Combative Subjects Policy (as defined hereinafter) or participated in the conduct that is the subject of this Settlement Agreement.

L. Defendants' Counsel. "Defendants' Counsel" shall mean R. Jeffrey Lowe, Kightlinger & Gray, LLP, Bonterra Building, Suite 200, 3620 Blackiston

Blvd., New Albany, IN 47150.

M. Distribution Amount. "Distribution Amount" shall mean the amount available from the Settlement Fund after payment of attorneys' fees and expenses and incentive awards to Class Representatives.

N. Effective Date. "Effective Date" shall mean thirty (30) days from the date on which the settlement has finally been approved by the Court, and/or the date on which any appeals from final approval are resolved, whichever is later.

O. 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.

P. Final Judgment. "Final Judgment" shall mean the Court order that ultimately certifies the Class, approves this Settlement Agreement, approves payment of attorneys' fees and expenses, approves incentive awards to Class Representatives and the distribution amount, and makes such other final rulings as are contemplated by this Settlement Agreement.

Q. Jail. "Jail" shall mean the Floyd County Jail in New Albany, Indiana.

R. Litigation. "Litigation" shall mean the above captioned lawsuit pending in the United States District Court for the Southern District of Indiana, New Albany Division as No. 4:14-CV-00054-RLY-TAB.

S. Magistrate Judge. The "Magistrate Judge" shall mean United States Magistrate Judge for the Southern District of Indiana Tim A. Baker.

T. Medicare. "Medicare" means the Centers for Medicare and Medicaid Program, the Medicare Program, and any Medicare Advantage Program

U. Medicare Secondary Payer Act. "Medicare Secondary Payer Act" means the terms and conditions set forth in 42 U.S.C. S. 1395y(b) et seq.

V. 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.

W. Notice Date. Notice Date shall mean the date upon which Class Notice is mailed to known Class Members in accordance with the terms herein.

X. 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

require statements, proof, or other materials and/or argument.

Y. Opt-Out Deadline. "Opt-Out Deadline" shall mean the date agreed upon by the Plaintiffs and Defendant 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.

Z. 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.

AA. Opt-Out Notice. Opt-Out Notice or an Opt-Out Form shall mean a Request for Exclusion from the Settlement Class by a Settlement Class Member.

BB. Parties. "Parties" shall mean the Plaintiffs and Defendants in this case.

CC. Plaintiffs. "Plaintiffs" shall mean Tabitha Gentry, Vincent Minton, Michael Herron, Adam Walker, Anna Chastain, and Janelle South, individually and on behalf of the Class Members.

DD. Policy. "Policy" shall mean the Combative Subjects policy attached as Exhibit D.

EE. Preliminary Approval Order. "Preliminary Approval Order" shall mean the Order of the Court initially approving this Settlement Agreement and conditionally certifying a provisional Settlement Class in notably the same form as Exhibit F.

FF. Release. "Release" shall mean the release described in Section VII herein.

GG. Released Claims. "Released Claims" shall mean and include any and all claims or causes of action by or on behalf of any and all Plaintiffs and Settlement Class Members (and their predecessors, successors, heirs, administrators, executors, agents, trustees, representatives, and assignees) that are released from bringing any claim or cause of action by the Release described in Section VII herein.

HH. 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.

II. Request for Exclusion. "Request for Exclusion" shall mean any request by any Settlement Class Member for exclusion from or to opt-out from the Class in compliance with Section V herein.

JJ. Settlement. "Settlement" shall mean the agreement by the Plaintiffs, individually and on behalf of the Class and Defendants to resolve the Litigation, the terms

of which have been memorialized and agreed upon in this Settlement Agreement.

KK. Settlement Administrator. "Settlement Administrator" shall mean the qualified person or entity selected by the Parties and designated in the Preliminary Approval Order to administer the Settlement, including implementing the Notice Program. Neither Plaintiffs nor Defendants shall have any responsibility for any acts of omissions of the Settlement Administrator. The Parties have agreed to select Dahl Administration as the Settlement Administrator.

LL. 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.

MM. Settlement Class Members. "Settlement Class Members" shall mean all persons in the Class who do not exclude themselves pursuant to Section V herein and who make a claim to receive a portion of the Distribution Amount.

NN. Settlement Fund. "Settlement Fund" shall mean a fund or funds, governed by terms to be agreed to between Class Counsel and Defendant's Counsel which shall be reserved specifically for this case and be deposited in an account at a bank opened by the Settlement Administrator within seven (7) days from entry of the Final Judgment. Defendant shall provide documentation verifying that the Settlement Amount is available for distribution to the Settlement Class Members, has been specifically reserved for the sole purpose of this case, and will not be utilized for any other payments or purposes.

OO. Settlement Amount. "Settlement Amount" shall mean the amount of One Million Two Hundred Thirty Thousand and 00/100 Dollars (\$1,230,000.00) to be paid by or on behalf of Defendants.

II. REQUIRED EVENTS

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.

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

- (a) Preliminarily approve the terms of the Settlement Agreement as within the range of fair, reasonable, and adequate Settlement for purposes of issuing notice;
- (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 acceptance of attorneys' fees and reimbursement of expenses, and to consider whether the Court should issue a Final Judgment approving the Class Settlement, granting Class Counsel's request for fees and expenses, granting the incentive awards application by the Class Representatives, and dismissing the Litigation with prejudice;

and

(d) Make the proper distribution to all Class members by means of delivering payment in the form of checks.

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 Defendant's Counsel agree to use their best efforts, consistent with this Settlement Agreement, to cure any defect identified by the Court.

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 the purposes of and effectuate this Settlement Agreement and shall promptly perform their respective obligations set forth herein. Any disputes regarding the Parties' obligations under this paragraph shall be submitted for decision by Judge Richard Young or his designated representative and his decision shall be binding on the Parties.

6. Neither this Settlement Agreement nor any negotiations shall be construed, offered, received as, or deemed to be, evidence of an admission or concession by Plaintiffs or the Class of lack of merit, or by Defendants of any liability or wrongdoing.

7. In the event that the Court does not approve any part of this Settlement Agreement and settlement, then this entire Settlement Agreement and settlement shall become null and void except that Plaintiffs, Class Counsel, and Defendant may agree in writing to proceed with a modified settlement and apply for Court approval of that modified settlement. In the event the Settlement Agreement shall become null and void for any reason, the provisions of Rule 408 of the Federal Rules of Evidence will apply to it and all negotiations surrounding it. No admission of law or fact, or combination thereof, will be found to exist as a result of this Settlement Agreement. If this Settlement Agreement fails to be approved or otherwise fails to be consummated in accordance with its terms:

(a) Plaintiffs shall be entitled to continue this action on behalf of themselves and the Class in accordance with the rulings, circumstances, and procedural posture that existed in this case on December 30, 2016, the date on which Plaintiffs, Class Counsel, and Defendants agreed to the terms of this settlement.

(b) Defendants shall retain all rights to continue its defense to this case in accordance with the rulings, circumstances, and procedural posture that existed in this case on December 30, 2016, the date on which Plaintiffs, Class Counsel, and Defendants agreed to the terms of this settlement.

III. SETTLEMENT TERMS

A. **Settlement Fund**

1. Upon entry of the Final Judgment Order, the Settlement creates a Settlement Fund of One Million Two Hundred Thirty Thousand and 00/100 Dollars (\$1,230,000.00). Before distribution to the individual Class Members, 37% of the Settlement Fund will be utilized to pay any and all attorneys' fees, plus costs (currently estimated to be \$45,000), subject to Court approval. After attorneys' fees and costs have been paid by the Settlement Fund, subject to Court approval, an additional Fifteen Thousand and 00/100 Dollars (\$15,000.00) will be distributed to each of the six (6) Class Representatives as incentive awards for being the faces of this Litigation and for the time and energy spent in assisting with the investigation, drafting, and negotiation of this litigation.

2. The Settlement Fund shall only be used to pay any and all attorneys' fees and costs, to pay each of the six (6) Class Representatives their earned incentive, and distributed to the remaining class members utilizing the method set out below.

B. **Payments to Class Members**

1. The Settlement Fund will be distributed as follows: Following the distribution of attorney fees, costs, and incentive awards, the remaining amount will be paid to the Class Members who submit a valid claim based on the following calculations:

(a) Class Members who are not Medicare eligible and who submit a valid claim and were subjected to the deployment of tasers or pepper spray while held under the Combative Subjects Policy shall receive Three Thousand Dollars (\$3,000.00) plus the amount they receive as a class member as identified in subparagraph (d) below. The Parties agree to use the records maintained by the Floyd County Jail to determine those individuals, as summarized in Exhibit B.

- (b) Class Members who are Medicare eligible but for whom it is determined Medicare does not have a lien, and who submit a valid claim and were subjected to the deployment of tasers or pepper spray while held under the Combative Subjects Policy shall receive Three Thousand Dollars (\$3,000.00) plus the amount they receive as a class member as identified in subparagraph (d) below. Payment will be released after the Defendants have confirmed that Medicare has no lien and have so informed the Settlement Administrator. The Parties agree to use the records maintained by the Floyd County Jail to determine those individuals, as summarized in Exhibit B.
- (c) Class Members who are Medicare eligible and for whom it is determined Medicare has a lien, and who submit a valid claim and were subjected to the deployment of tasers or pepper spray while held under the Combative Subjects Policy shall receive Three Thousand Dollars (\$3,000.00) plus the amount they receive as a class member as identified in subparagraph (d) below minus any amount due Medicare. Payment will be released after the Defendants have confirmed the amount of the lien and have so informed the Settlement Administrator of the amount due the Class Member and the amount due Medicare. The Parties agree to use the records maintained by the Floyd County Jail to determine those individuals, as summarized in Exhibit B.
- (d) The total amount remaining in the Settlement Fund after deduction of attorneys' fees, costs, incentive awards, and payments pursuant to Paragraph 1(a) will be divided by the total number of Class Members who submit a valid claim.
- (e) If the award described in Paragraph 1(d) exceeds Twenty Five Thousand Dollars (\$25,000.00) per Class Member, the amount in excess of such award shall be refunded to Defendants.
- (f) If any checks are not cashed within three (3) months of the distribution, the Settlement Administrator will notify the Parties of the identities of those Claimants who failed to cash their check. If there is money remaining in the Settlement Fund three (3) months after the payment to the Class Members who make valid claims, then that money will be redistributed pursuant to Paragraphs 1(d) and (e) above. However, if money is to be redistributed because there are unclaimed funds, no class member shall be entitled to more than \$25,000.00 (excluding incentive awards and payments made under paragraph 1(a) above) and if all class members receive that amount and unclaimed funds still exist, the unclaimed funds will revert to the Defendants.

2. Records have been provided by Defendants in order to acquire the name and address of each Class Member. The Parties will cause to be mailed to each Class Member the Class Notice and Claim Form with return envelopes for Class Members to mail back. Upon completion of their Claim Form, the Class Members will insert their completed Claim Form into the provided return envelope to mail to the Settlement Administrator.

3. The Settlement Administrator shall compile a list of class members submitting claims to be provided to all Parties.

4. The Parties recognize the possibility that Class Members may attempt to file late claims subsequent to the end of the claims period. Late claims may be allowed, if submitted on or before 30 days after the end of the claims period, for good cause shown as agreed by the Parties. However any claims submitted more than thirty (30) days after the end of the claim period shall not be allowed. To the extent that the Parties cannot agree that good cause is shown, the Settlement Administrator shall make the final decision regarding whether to allow a late claim. All late claims will be approved by the Court prior to being paid as part of the distribution of the Settlement.

5. After the Final Approval Hearing described below, the Settlement Administrator shall send checks to each Claimant who submits a valid claim pursuant to the distribution calculated in Section III(B) within fourteen (14) days of the Effective Date. If after three (3) months a check remains uncashed and money remains in what is left of the Settlement Fund, the remainder shall be redistributed among Claimants as provided under Section III(B) with no Class Member receiving more than \$25,000.00.

6. The Parties expressly agree that the funds paid herein are not intended to be payment for economic damages or for punitive damages, but are intended to be payment for damages on account of alleged personal injuries, including, but not limited to, bodily injury, mental and emotional distress, and pain and suffering, arising from an occurrence, within the meaning of Section 104(a)(2) of the Internal Revenue Code of 1986, as amended. Despite the Parties' intentions, the Plaintiffs, Class Counsel, Defendants' Counsel, and Defendants make no representations regarding the taxability or non-taxability of any payments made hereunder, and the Parties agree that Defendants, the Settlement Administrator, and Defendants' insurers shall not be responsible for payment of any taxes on the amounts paid hereunder to Plaintiffs, Class Representatives, Class Members, or Class Counsel. All payment of taxes or other assessments to the state or federal authorities on the amounts paid under this Settlement Agreement, if any, shall be the sole responsibility of Plaintiffs, Class Representatives, Class Members, and Class Counsel with respect to their portion of the Settlement Funds.

C. Attorneys' Fees and Expenses

Class Counsel will petition the Court for an award of attorneys' fees in the amount of 37% of the entire Settlement Amount. The Plaintiffs and Class Counsel assert such an amount is reasonable in light of the effort expended in litigating this case, the

significance of the relief obtained for the Class Members, and the efficiency with which negotiation of equitable and compensatory relief was obtained. Class Counsel also will request reimbursement from the Settlement Fund for out-of-pocket expenses incurred in litigating these claims and administering the settlement distribution. Class Counsel estimates this amount to be approximately \$45,000.00. Defendants and Defendants' counsel do not object to these requests. In the event that the Court does not approve the requested amount of attorneys' fees and costs, and approves some lesser amount, that fact will not void this Settlement Agreement; provided, however, that Class Counsel reserves the right to appeal any such decision. The Parties agree the Settlement will proceed as specified in this Agreement regardless of the amount of attorneys' fees and costs approved and awarded by the Court. Class Counsel will be paid from the Settlement Fund for their attorneys' fees and costs approved by the Court within ten (10) days of the Effective Date.

D. Policy and Training.

1. As part of the consideration for this Settlement Agreement, Defendants affirmatively represent that the Combative Subjects policy, as described in Exhibit D is no longer in effect at the Floyd County Jail, and will not be reinstated.

2. In addition to the payments described above, Defendants agree to the following:

- (a) Field Training Officers employed by the Floyd County Sheriff's Department will be independently certified;
- (b) All new jail employees with responsibility for inmate supervision will undergo employee orientation and receive training for handling inmates before working with inmates;
- (c) The Jail's Facility Supervisor, Security Supervisor, and Classifications Officer will attend Inmate Behavior Management Training conducted by the National Institute of Corrections in May or July, 2017.

IV. NOTIFICATION TO CLASS MEMBERS

A. Responsibilities of the Settlement Administrator

1. The Parties shall appoint Dahl Administration to serve as the Settlement Administrator who will fulfill various duties described more in detail below including implementing the terms set out in this Settlement Agreement and the Notice Program.

2. The Settlement Administrator shall be responsible for: mailing Class Notice to every Class Member, mailing a Claim Form to every Class Member, publishing the Class Notice in appropriate public forums, distributing payments to the Settlement Class Members, and otherwise administering the Notice Program. The

Settlement Administrator will maintain an appropriate insurance policy to protect against any violation of its fiduciary duty to the Court, Class Members, Class Counsel, and Defendants' Counsel. The Notice Program shall comply with all requirements of applicable law.

B. Notice

1. Beginning no later than fourteen (14) days from the date of the Preliminary Order Approving Settlement ("Notice Date"), the Settlement Administrator shall initiate the Notice Program. Such Notice Program will be completed with immediacy in accordance with the terms of the Settlement Agreement. Prior to the Final Approval Hearing, Class Counsel and/or the Settlement Administrator shall serve and file a sworn statement attesting to compliance with the provisions of this section.

2. Notice will be provided to the Class by direct mailing of Class Notice and a Claim Form to all potential Class Members at their last known or readily ascertainable address.

3. Additional notice shall also be posted by Class Counsel on a website dedicated to providing information to Class Members.

4. The Settlement Administrator shall also provide a copy of the Class Notice and Claim Form to any person who inquires through means of written communication, by way of the toll-free telephone number established by the Settlement Administrator, and by way of e-mail communication also established by the Settlement Administrator.

5. Class Counsel will further upload downloadable and printable copies of notices, Claim Forms, court decisions, the Settlement Agreement, and information to Class Members through the Settlement Website.

6. If, after the initial mailing, any Class Notices are returned as undeliverable, the Settlement Administrator will make reasonable efforts to attempt to locate the relevant Settlement Class Members by way of national locator database. In the event a new address is located, the Settlement Administrator will ensure another Class Notice and Claim Form is mailed to the new address.

7. Prior to the Final Approval Hearing, the Settlement Administrator shall provide an affidavit to the Court, with a copy to Class Counsel and Defendants' Counsel, recounting all actions taken to provide Notice of the Settlement. The Settlement Administrator will further provide an affidavit recounting any and all activity on the Settlement Website, including number of visitors and number of documents downloaded, and any and all activity through correspondence of e-mail or the toll-free telephone number between the Settlement Administrator and the potential Class Members.

8. The Settlement Administrator (and any person retained by the Settlement

Administrator) shall sign a confidentiality agreement in a form agreed upon 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 Defendant, Class Counsel, or by individual Class Members, shall be treated as confidential and shall be used only the Settlement Administrator as required by this Settlement Agreement.

9. Claim Forms must be postmarked on or before the 45th day from the Notice Date in order to be considered timely submitted, however, Claim Forms postmarked after this date shall be accepted by the Parties if received before the Final Approval Hearing and submitted in good faith within thirty (30) days after the 45th day from the Notice Date and the Settlement Administrator finds good cause exists to accept the late Claim Form.

10. The Settlement Administrator will advise Class Counsel and Defendants' Counsel with information regarding who has filed Claim Forms within five (5) business days after the end of the Claim Period. If information on a submitted Claim Form is insufficient, unreadable, incomplete, or left blank, the Settlement Administrator shall contact the person who submitted the Claim Form and aid the person in completing the information.

11. The Settlement Administrator shall have final authority to determine whether individuals who have submitted Claims Forms qualify as Settlement Class Members. The Parties shall have the right to challenge the Settlement Administrator's determination of class eligibility at the Final Fairness Hearing.

V. REQUESTS FOR EXCLUSION BY SETTLEMENT CLASS MEMBERS

A. The provisions of this paragraph shall apply to any Request for Exclusion. Any Settlement Class Member may make a Request for Exclusion by mailing or delivering such request in writing to the Settlement Administrator within forty-five (45) days from the Notice Date. Any Request for Exclusion must be postmarked no later than the Opt-Out Deadline. Any Request for Exclusion shall include the name, address, and telephone number of the person requesting exclusion and include a clear statement indicating that person chooses to be excluded from the Settlement, does not wish be a Settlement Class Member and chooses to be excluded from any judgment entered pursuant to the Settlement.

B. Any Settlement 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 each 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 individual who opts out from the Settlement in asserting claims against Defendants that are the subject of this Agreement.

VI. OBJECTIONS BY SETTLEMENT CLASS MEMBERS

A. After the Settlement Class has been determined and certified, a period of time will be established in order to allow for approved Settlement Class Members to make Objections to the Settlement. 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. Any Objection must be postmarked no later than the Objection Date. Such objection shall state the name, address and telephone number of the person, 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 said person wishes to be considered in support of the objection.

B. No objecting Class Member will be permitted to appear and object at the Final Approval Hearing unless he or she has timely filed and served a written objection and filed a Notice of Intention to Appear with the Court. Class Members or their attorneys intending to make an appearance at the Final Approval Hearing must, no later than fifteen (15) days prior to the Final Approval Hearing, file with the Court and serve Class Counsel and Defendants' counsel with a Notice of Intention to Appear that (i) states how much time the Class Member and/or his/her attorney anticipates needing to present his or her objection; (ii) identifies by name, address, and telephone number the Class Member making the objection, and a summary of the testimony supporting the objection; (iii) identifies by name, address, and telephone number all witnesses the Class Member and/or his/her attorney intends to present testimony from, including a summary of the testimony; (iv) identifies all exhibits the Class Member and/or his/her attorney intends to offer in support of the objection(s) and attaches complete copies of all exhibits; and (v) contains the signature of the Class Member making the objection and a statement under penalty of perjury that the individual is a member of the Class, *i.e.* that the individual was placed and/or kept in the custody of the Floyd County Jail pursuant to the Combative Subjects Policy during the relevant timeperiod.

C. 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. Upon such filing, the Clerk of the Court shall provide notice of objection or request to be heard, including all papers or evidence in support thereof, upon the Class Counsel and Defendants' Counsel. The Preliminary Approval Order will further provide that objectors who fail to properly or timely file their objections with the Clerk of the Court shall not be heard during the Final Approval Hearing, nor shall the Court consider their Objections.

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

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

A. By this Settlement Agreement and specifically as provided in this Paragraph, Defendants, and all of its respective affiliates, predecessors, operating units, related corporations, successors and assigns, officers, agents, representatives, insurers, and all of their past, present, and future employees, supervisors, officers, directors, agents, elected and appointed officials, county administrators, correction officers, county judges, jailers, attorneys and any person or entity which can be held jointly and severally liable with any of them ("Released Parties"), are released from any and all claims, causes of action, liabilities, demands, and causes of action, fixed or contingent, that were, could have been, or should have been asserted by the Plaintiffs or any member of the Class against the Released Parties based upon or related in any way to the conditions of confinement in the Floyd County Jail that are the subject of the Litigation and for any claim asserted, or that could have been asserted in the Litigation and the Complaint in Case No. 4:14-CV-00054-RLY-TAB arising out of conditions of confinement in the Floyd County Jail ("Released Claims").

B. This Settlement Agreement does not affect the rights of Settlement Class Members who timely and properly exclude themselves from the Settlement.

C. The administration and implementation of the Settlement as exemplified 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 have been released pursuant to the Settlement Agreement.

D. Said Release as explained above shall be in effect upon the Effective Date of this Settlement. Further, Class Counsel shall be paid their Court-approved attorneys' fees and costs from the Settlement Fund within ten (10) days of the Effective Date.

E. Upon the Effective Date and the conclusion of any appeals:

- (i) The Settlement Agreement shall be 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;
- (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; and
- (iv) Plaintiffs and Defendants shall file a Stipulation of Dismissal of the lawsuit with prejudice with each Party to be responsible for and pay their own costs and attorney fees.

F. Medicare. Plaintiffs agree to protect Medicare's interests as set forth in "Exhibit C".

G. Tolling of Statute of Limitations. Defendants agrees 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 shall not assert any statute of Limitations, repose, or laches defense unless such defense (i) existed as of June 12, 2014, the date this class action was filed, or (ii) arose after a Request for Exclusion was effected pursuant to Section V, or (iii) a combination thereof.

VIII. INCENTIVE AWARDS TO CLASS REPRESENTATIVES

Given the efforts of the named Plaintiffs for being the faces of this Litigation on behalf of the Class, Defendants will not oppose an application for awards of Fifteen Thousand and 00/100 Dollars (\$15,000.00) each on behalf of the Class Representatives. It is agreed between the Parties that the Class Representatives provided considerable assistance to Class Counsel in their prosecution of this action. Class Representatives are also eligible for payment through the distribution of the Settlement Fund once attorneys' fees and costs and their incentive awards have been allocated.

IX. REPRESENTATIONS, WARRANTIES AND COVENANTS

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

B. Defendants, through their undersigned attorney, represent and warrant that they have the authority to execute, deliver, and perform this Settlement Agreement and to perform all of this Settlement Agreement and performance by them of the actions contemplated hereby have been duly authorized by all necessary corporate action on part of Defendants. This Settlement Agreement has been validly executed and delivered by Defendants and constitutes their legal, valid, and binding obligation.

X. MISCELLANEOUS PROVISIONS

A. The heading 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 interpretation.

B. 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.

C. 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.

D. This Settlement Agreement shall be governed by and construed in accordance with the substantive laws of Indiana, 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.

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

F. Named Plaintiffs, Tabitha Gentry, Janelle South, Anna Chastain, Adam Walker, Vincent Minton and Michael Herron agree not to publicly disclose the terms of the agreement or comment publicly on the settlement reached in this matter. Class counsel agrees not to solicit media attention to discuss the resolution of this matter. However, if requested to comment by the media, media comments regarding the resolution of this matter will be restricted to information contained in the Class Notice. Class Counsel will not offer opinions in any media comments. If Class Counsel is asked

questions about matters outside the information contained in the Class Notice, Class Counsel will advise the requesting media they cannot answer that question. Class Counsel will not discuss other past or future litigation against any of the Released Parties. Class Counsel will not advertise or otherwise promote itself during media comments regarding the resolution of this matter. Also, in media comments, Class Counsel will not address the Defendants' insurance company by name or provide who is providing the settlement funds for the settlement. Nothing in this paragraph shall prohibit Class Counsel or the Settlement Administrator from distributing notices to local media outlets as described in Paragraph IV(A)(2) or providing a link to www.FloydCountyJailClassAction.com for the purpose of advising potential class members of their rights in this matter.

G. If any clause, provision or paragraph of this Settlement Agreement is deemed illegal, invalid, or unenforceable, such illegality, invalidity, or unenforceability shall not affect the remaining clauses, provisions, or paragraphs of this Settlement Agreement, and this Settlement Agreement shall be construed and enforced as if such illegality, invalidity, or unenforceability had not been included herein.

H. The Parties to this Settlement Agreement reserve the right, by agreement and subject to the Court's approval, to grant any reasonable time extensions that may be necessary to fully implement any of the provisions of this Settlement Agreement.

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

J. The determination of the terms of, and the drafting of, this Settlement Agreement, including its exhibits, has been by mutual agreement after mediation, with consideration by and participation of all Parties and their counsel. Since this Settlement Agreement was drafted with the participation of both 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 outside party or their counsel.

K. All of the exhibits to this Settlement Agreement are material and integral parts hereof, and are fully incorporated. This Settlement Agreement and exhibits hereto constitute the entire, fully integrated agreement among the Parties and cancel and supersede prior written and unwritten agreements and understandings pertaining to the Settlement of this Litigation.

L. Notice:

1. Any notice, request, 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 Notice) shall be in writing and delivered personally or sent by registered or certified mail, postage prepaid:

If to Defendants: R. Jeffrey Lowe
Kightlinger & Gray, LLP
Bonterra Building, Suite 200
3620 Blackiston Blvd.
New Albany, IN 47150.

If to Class Counsel: Laura E. Landenwich
Theodore W. Walton
Daniel J. Canon
Clay Daniel Walton & Adams PLC
462 South Fourth Street, Suite 101
Louisville, Kentucky 40202.

Dispute Resolution. The Parties agree that any disputes regarding the terms and conditions of this Settlement Agreement shall be submitted to Hon. Tim A. Baker, who shall attempt to mediate such dispute, and if such dispute cannot be resolved via mediation, the Honorable Richard Young shall decide such dispute.

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

I hereby certify that I have read all of this settlement agreement and fully understand the same, and in witness whereof, I have executed this settlement agreement this ____ day of _____, 2017 at _____, Kentucky.

TABITHA GENTRY

APPROVED BY:

Laura Landenwich
Attorney for Plaintiff

STATE OF KENTUCKY]
 :SS
COUNTY OF JEFFERSON]

BEFORE ME, the undersigned Notary Public, in and for said county and state, personally appeared **Tabitha Gentry**, who acknowledged execution of the foregoing Settlement Agreement.

WITNESS my hand and Notarial Seal this _____ day of _____, 2017.

Notary Public (Signature)

Notary Public (Printed)

My Commission Expires: _____

My County of Residence is: _____

I hereby certify that I have read all of this settlement agreement and fully understand the same, and in witness whereof, I have executed this settlement agreement this ____ day of _____, 2017 at _____, Kentucky.

JANELLE SOUTH

APPROVED BY:

Laura Landenwich
Attorney for Plaintiff

STATE OF KENTUCKY]
 :SS
COUNTY OF JEFFERSON]

BEFORE ME, the undersigned Notary Public, in and for said county and state, personally appeared **Janelle South**, who acknowledged execution of the foregoing Settlement Agreement.

WITNESS my hand and Notarial Seal this _____ day of _____, 2017.

Notary Public (Signature)

Notary Public (Printed)

My Commission Expires: _____

My County of Residence is: _____

I hereby certify that I have read all of this settlement agreement and fully understand the same, and in witness whereof, I have executed this settlement agreement this ____ day of _____, 2017 at _____, Kentucky.

ADAM WALKER

APPROVED BY:

Laura Landenwich
Attorney for Plaintiff

STATE OF KENTUCKY]
 :SS
COUNTY OF JEFFERSON]

BEFORE ME, the undersigned Notary Public, in and for said county and state, personally appeared **Adam Walker**, who acknowledged execution of the foregoing Settlement Agreement.

WITNESS my hand and Notarial Seal this _____ day of _____, 2017.

Notary Public (Signature)

Notary Public (Printed)

My Commission Expires: _____

My County of Residence is: _____

I hereby certify that I have read all of this settlement agreement and fully understand the same, and in witness whereof, I have executed this settlement agreement this ____ day of _____, 2017 at _____, Kentucky.

ANNA CHASTAIN

APPROVED BY:

Laura Landenwisch
Attorney for Plaintiff

STATE OF KENTUCKY]
 :SS
COUNTY OF JEFFERSON]

BEFORE ME, the undersigned Notary Public, in and for said county and state, personally appeared **Anna Chastain**, who acknowledged execution of the foregoing Settlement Agreement.

WITNESS my hand and Notarial Seal this _____ day of _____, 2017.

Notary Public (Signature)

Notary Public (Printed)

My Commission Expires: _____

My County of Residence is: _____

I hereby certify that I have read all of this settlement agreement and fully understand the same, and in witness whereof, I have executed this settlement agreement this ____ day of _____, 2017 at _____, Kentucky.

MICHAEL HERRON

APPROVED BY:

Laura Landenwich
Attorney for Plaintiff

STATE OF KENTUCKY]
 :SS
COUNTY OF JEFFERSON]

BEFORE ME, the undersigned Notary Public, in and for said county and state, personally appeared **Michael Herron**, who acknowledged execution of the foregoing Settlement Agreement.

WITNESS my hand and Notarial Seal this _____ day of _____, 2017.

Notary Public (Signature)

Notary Public (Printed)

My Commission Expires: _____

My County of Residence is: _____

I hereby certify that I have read all of this settlement agreement and fully understand the same, and in witness whereof, I have executed this settlement agreement this ____ day of _____, 2017 at _____, Kentucky.

VINCENT MINTON

APPROVED BY:

Laura Landenwich
Attorney for Plaintiff

STATE OF KENTUCKY]
 :SS
COUNTY OF JEFFERSON]

BEFORE ME, the undersigned Notary Public, in and for said county and state, personally appeared **Vincent Minton**, who acknowledged execution of the foregoing Settlement Agreement.

WITNESS my hand and Notarial Seal this _____ day of _____, 2017.

Notary Public (Signature)

Notary Public (Printed)

My Commission Expires: _____

My County of Residence is: _____