

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

BRONWYN FORD, KATRINA MACK, et al., Plaintiffs	)	
	)	
v.	)	Civil Action No. 98-11346-NG
	)	
SUFFOLK COUNTY, et al., Defendants	)	
	)	

**SETTLEMENT AGREEMENT**

**I. INTRODUCTION**

1. The parties to this action, Katrina Mack and the additional class representatives (“Plaintiffs”), and Suffolk County and the City of Boston (“Defendants”), by counsel, have entered into this Settlement Agreement.

**II. BACKGROUND**

2. The plaintiff Katrina Mack filed this action on December 10, 1998, challenging the constitutionality of strip-searches at the Suffolk County Jail.

3. On February 16, 2000, this Court certified this case as a class action pursuant to Fed.R.Civ.P. 23 (b)(2) and (b)(3) for all women who, between December 10, 1995 and September 20, 1999, were:

- a. taken into custody by the Boston Police Department and transferred to the Suffolk County Jail pursuant to Boston Police Department rules regarding the custody of female prisoners to be held pending a first court appearance, or after an arrest on a default warrant; and
- b. subjected to a routine strip-search and visual body cavity search at the Suffolk County Jail pursuant to the policy, practice or custom of the Suffolk County Sheriff.

4. An approved class action notice was sent to all potential class members at their last known addresses in September 2000.

5. All class members are bound by this Settlement Agreement except for ten women who sent a timely Notice of Exclusion.

6. On July 31, 2001, this Court granted plaintiffs' motion for summary judgment establishing the defendants' liability.

### **III. TERMS OF SETTLEMENT**

7. The defendants will pay the sum of Ten Million Dollars (\$10,000,000.00) into a settlement fund to settle all claims brought by the plaintiffs in this action, including attorney's fees and costs ("Settlement Amount").

8. Class counsel recommends Blackman Kallick Bartelstein LLP, 300 South Riverside Plaza, Suite 660, Chicago IL, to be approved by the Court as claims administrator for this settlement. Class counsel will oversee the settlement administration process and distribution phases and will provide direction to the claims administrator as needed.

9. The claims administrator will arrange for an escrow agent to maintain an interest bearing settlement fund account.

10. The County agrees that it will make its best effort to pay \$5 million into the settlement fund account no later than 12:00 noon on September 6, 2002. If the County, despite its best efforts to obtain funding, is unable to make its payment by 12:00 noon on

September 6, 2002, the County will make its payment as soon as possible thereafter. In any event, the County agrees that it will make its payment of \$5 million into the settlement fund account no later than 12:00 noon on November 29, 2002. If the County fails to make its full payment by 12:00 noon on November 29, 2002, then the County shall pay in addition interest at twelve percent (12%) per annum, compounded daily, on all unpaid amounts until all of such unpaid amount and accrued interest have been paid.

11. The City agrees to pay \$5 million into the settlement fund account no later than 12:00 noon on September 6, 2002, provided that the County also pays \$5 million by that time. If the County, despite its best efforts to obtain funding, is unable to make its payment by 12:00 noon on September 6, 2002, the City will be permitted to hold its payment until the day the County makes its payment. In any event, the City agrees that it will make its payment of \$5 million into the settlement fund account no later than 12:00 noon on November 29, 2002. If the City fails to make its full payment on the same day as the County or by 12:00 noon on November 29, 2002, whichever is applicable, then the City shall pay in addition interest at twelve percent (12%) per annum, compounded daily, on all unpaid amounts until all of such unpaid amount and accrued interest have been paid.

12. The settlement amount and any interest earned in the settlement fund account until the date of distribution shall belong to the plaintiffs. If there is any balance in the settlement fund account from additional interest earned after all of the settlement

checks have been distributed and all expenses, bonuses and attorney's fees have been paid, the plaintiff will petition the Court for instructions on the distribution of the remaining funds.

13. A hearing by the Court to approve the settlement will take place on Thursday, September 26, 2002 at 2:30 p.m. Any objections to the proposed settlement will be heard by the Court at that time as provided below.

#### **IV. CLAIMS PROCEDURES AND SETTLEMENT FUND DISTRIBUTION**

14. A Notice of Class Action Settlement and of the Hearing to Approve the Settlement will be sent by first class mail postage prepaid to all potential class members with good addresses within 15 days of the Court's Order granting preliminary approval of settlement. The notice will include the following:

- a. Terms of the settlement;
- b. The class member's right to contest the settlement by first filing a written objection within the time period for filing a claim form and then by appearing in person or through counsel at the fairness hearing on September 26, 2002 at 2:30 p.m.; and
- c. A Settlement Claim Form, which must be submitted by class members in order to share in the settlement fund.

A copy of the notice is attached as Exhibit A. Notice will also be made by publication for two days in the *Boston Herald*, copy attached as Exhibit B.

15. The claims administrator will establish a Claims Hotline with a toll free number staffed live two days a week, from the day after the mailing the Notice of Class

Action Settlement through the deadline by which class members must submit a Settlement Claim Form, to answer questions from class members about the notice, the Settlement Claim Form or the fairness hearing. On days when the Claims Hotline is not staffed live, the claims administrator will run a tape recording that will provide the class members with information about the class action and times to call the Claims Hotline to speak to a person. Under the supervision and direction of class counsel, the claims administrator will also answer any questions posed in letters from class members.

16. Class members must submit a valid and complete Settlement Claim Form postmarked no later than September 20, 2002 (at least 45 days from the date of mailing of the Notice of Class Action Settlement) in order to share in the settlement fund. A copy of the claim form is attached as Exhibit C.

17. If a class member objects to the proposed settlement, she must submit a letter of objection, in addition to the Settlement Claim Form, postmarked no later than September 20, 2002 (at least 45 days from the date of mailing of the Notice of Class Action Settlement). She must also appear in person or through counsel at the September 26, 2002 fairness hearing to have her objection considered by the Court. The claims administrator will forward all letters of objection to the Court and to counsel for all parties.

18. The claims administrator will verify that a person who submits a valid Settlement Claim Form postmarked on or before September 20, 2002 (“Claimant”) is a

class member by reviewing the information provided by the claimant in the Settlement Claim Form and checking it against the electronic booking data used by Suffolk County which has been provided to plaintiffs' counsel ("Data"). This information will include the claimant's name, social security number, date of birth and any alias information.

19. If a claimant cannot be verified as a class member, the claims administrator will send a Notice of Claim Denial to the claimant within 14 days of the deadline for submitting Settlement Claim Forms. A copy of the notice is attached as Exhibit D. Any claimant who disagrees with the determination that she is not a class member may appeal to a special master to be appointed by the Court within 14 days from the date the claims administrator sends the claimant the Notice of Claim Denial. The claimant must submit a written statement with supporting documentary evidence which shows that the data is incorrect or incomplete. The evidence may include a notarized letter from the County, criminal offender's record information (CORI), or certified court documents from the criminal case. The special master will make a determination of class membership within 30 days of the claimant's appeal of claim denial and will report his findings to the claims administrator and class counsel. Rulings by the special master shall be final and binding.

20. Rose King, attorney for Suffolk County, has also agreed to accept telephone calls from claimants to verify the data. If attorney King is able to verify that a claimant is a class member, she will forward the verified class member's booking information to the

claims administrator and class counsel. The verified class member will need not appeal to the special master.

21. If claimant is verified as a class member, the claims administrator will identify all of the class member's booking admissions into the Jail during the class period by reviewing the name, Suffolk County unique identification number, social security number and date of birth of the class member.

22. To determine each participating class member's share in the settlement, the claims administrator will place the class member into one of four settlement categories in accordance with the Distribution Formula attached to and made part of this Settlement Agreement. Each of the four settlement categories has received a point rating to determine the pro rata settlement amount for each participating class member.

23. A Notice of Claim Approval and Membership in a Settlement Category will be sent by first class mail postage-prepaid to all participating class members at the address provided by the class member on the Settlement Claim Form within 30 days of the Court's final approval of the settlement. The notice will include the following:

- a. Membership in a settlement category.
- b. An estimate of the disbursement amount for the settlement category.
- c. The participating class member's right to contest her membership in the settlement category by appealing to a special master.

A copy of the notice is attached as Exhibit E.

24. A participating class member may contest the determination of her membership in a settlement category by filing an appeal with the special master postmarked within 45 days from the date of mailing of the Notice of Claim Approval and Membership in a Settlement Category. The special master will notify the claims administrator and class counsel of those class members who have appealed.

25. To successfully contest the determination of her membership in a settlement category, a class member must move up at least one category (i.e, from category IV to category III, etc.). If the error sought to be corrected would not change the claimant's category, the appeal will be denied without a hearing. If a participating class member unsuccessfully contests the determination of her membership in a settlement category, she will be penalized by deducting 20% of the point rating she would otherwise have been entitled to.

26. The special master will decide all appeals regarding membership in a settlement category. Within 15 days of the deadline for class members to file appeals, the special master will notify those who appeal to appear at a hearing at a time and place and in a format determined by the special master. All appeals will be resolved within 60 days of the deadline for class members to file appeals. The special master's decision will be final and binding on all parties.



27. The special master will report his decisions to the claims administrator and class counsel. The claims administrator will send notice to the class member of the special master's final decision.

28. The claims administrator will make a final calculation of distribution amounts in accordance with the Distribution Formula after all Settlement Claim Forms have been submitted, the deadline for class members to appeal their membership in a settlement category has passed and all appeals have been resolved.

29. The settlement fund will be distributed among participating class members (after approval and payment of attorney's fees, expenses and class member bonuses) within 30 days after the claims administrator begins to make final calculation of distribution amounts.

30. Bonuses will be paid to compensate class representatives and class members who spent time working with class counsel to achieve the settlement. These checks will be paid at the same time as payments to class members. Class members will receive a bonus for each of the following activities as follows:

- a. Serving as a class representatives - \$15,000.
- b. Being the subject of a deposition - \$5,000.
- c. Being selected for a damages trial and preparing to testify - \$4,000.
- d. Providing an affidavit in support of the plaintiffs' motion for summary judgment - \$500.

- e. Speaking with newspaper, radio or television reporters about the case before the case was settled - \$1,500.

Class counsel will provide the class administrator with a list of class members who are entitled to bonuses.

31. Class counsel will request that the Court approve an attorney's fee of 30% of the settlement amount with a partial payment of attorney's fees to be paid within 30 days of the Court granting final approval of the settlement and with the remainder to be paid on the day the settlement fund is distributed to class members.

32. Expenses, including the cost of the claims administrator, the special master and other costs of administration of this settlement, will be paid from the settlement fund subject to approval by the Court. Class counsel will provide an itemization of all expenses for approval by the Court on the day the special master resolves all appeals.

33. The claims administrator will make distributions from the settlement fund to all participating class members within 30 days after the claims administrator begins to make the final determination of settlement fund distribution amounts. The settlement checks will be made payable only in the name of the participating class member and will be sent to the address provided by the participating class member on the Settlement Claim Form.

34. If a participating class member does not provide a mailing address or if the settlement check is returned as undeliverable, the class member will be required to appear

in person before the special master at a time and place determined by the special master to present verification of her identity in order to receive her settlement check.

35. Participating class members who make a personal appearance must present one of the following forms of identification to establish their identity: (a) a driver's license or a state identification card, (b) a passport or a green card, or (c) some other photographic identification card not readily subject to forgery such as a military or student identification card. Other forms of reliable identification may be considered by the special master.

36. If a participating class member is deceased at the time of the distribution of settlement funds, the settlement check will be sent to the class member's estate if an executor or administrator has been appointed in accordance with law. Payments will not be made to agents of participating class members other than court appointed legal representatives. The representative must provide the necessary documentation to the claims administrator.

37. A participating class member who is confined in a prison, hospital or other institution and who has provided an address for such an institution for payment, will be sent payment to that address.

38. If any settlement check to a participating class member is not cashed or is not claimed, it will be sent to the State Treasury in accordance with the Massachusetts Abandoned Property Act so that the participating class member may claim it in the future.

39. The claims administrator will prepare all necessary tax forms relating to the settlement fund account and 1099's for class members who received a settlement check within 6 months of making distributions from the settlement fund.

40. The claims administrator will provide a report to the Court and counsel for all parties accounting for the distribution of the settlement fund including attorney's fees and expenses.

41. Class counsel shall make final payment to the claims administrator within 30 days after the claims administrator completes the administration of the settlement for fees and expenses not already paid in administrating the settlement.

42. Any deadlines or other dates in this Settlement Agreement may be changed by the Court on a showing of good cause.

## **V. RELEASE**

43. In exchange for payment of the settlement amount, the defendants will be released from liability for the strip-searches of class members at the Nashua Street Jail that were part of this law suit unless the class member exercised her right to be excluded from this class action.

## **VI. SUPERVISION OF THIS AGREEMENT**

44. The Court shall retain jurisdiction over the settlement of this case and may enter orders as appropriate to enforce the settlement, to adjudicate the rights and

responsibilities of the parties and to effectuate the fair and orderly administration of the settlement.

For the plaintiffs,  
By their attorneys,

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