

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF NEW YORK

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PHYLLIS A. MITCHELL, et. al.,	:	
	:	
Plaintiffs,	:	
	:	Index No. 06-CV-0254(NAM)(DRH)
-against-	:	
	:	
THE COUNTY OF CLINTON, et. al.,	:	
	:	
Defendants.	:	
	:	

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**SETTLEMENT AGREEMENT**

Plaintiffs, by and through their counsel, and Defendants, by and through their counsel, hereby enter into this Settlement Agreement providing, subject to the approval of the Court, for settlement of the claims herein described against Defendants.

WHEREAS, Plaintiffs filed the above-captioned class action lawsuit against Defendants alleging that Defendants had violated Plaintiffs’ Constitutional rights under color of state law by illegally strip searching them and others similarly situated upon entry into the Clinton County Jail, and the Court certified this case as a class action on July 5, 2007.

WHEREAS, Plaintiffs further allege that, in violation of law and pursuant to the policy of Clinton County, all persons such as Plaintiffs and the members of the class and subclasses they represent, who enter the Clinton County Jail charged with misdemeanors, violations of probation or parole, other violations or minor crimes, or held on civil matters, are strip searched absent any particularized suspicion that they possess weapons or other contraband.

WHEREAS, Defendants have vigorously denied and continue to deny Plaintiffs’ claims, and

Defendants deny any alleged wrongdoing or liability of any kind to Plaintiffs or to any members of the Settlement Class.

WHEREAS, the Parties to this Settlement Agreement have conducted and are continuing to conduct a thorough examination and investigation of the facts and law relating to the matters in this litigation.

WHEREAS, during the course of this litigation, counsel for the Defendants produced to class counsel a spreadsheet of electronic Clinton County Jail inmate data containing, *inter alia*, contact information for a set of inmates which includes potential class members.

WHEREAS, discovery in this action is complete and has not revealed any benefit to the class members to continue the individual capacity claims against Defendants Favro, Maggy or Smith.

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

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

WHEREAS, substantial settlement negotiations have taken place between the Parties, including a mediation conducted by the Honorable David R. Homer, United States Magistrate Judge of the United States District Court for the Northern District of New York, and, as a result, this Settlement Agreement has been reached, subject to the Court approval process set forth herein.

WHEREAS, the undersigned Parties believe that this Settlement Agreement offers significant benefits to Settlement Class Members and is fair, reasonable, adequate and in the best interest of Settlement Class Members.

WHEREAS, this Settlement Agreement is made and entered into by and among Defendants and Plaintiffs, Phyllis Mitchell and Paul Bachmann, individually and on behalf of two subclasses, respectively, defined as:

*Subclass A*

All persons who were placed into the custody of the Clinton County Jail after being charged with misdemeanors, violations, violations of probation or parole, traffic infractions, civil commitments or other minor crimes and were strip searched upon their entry into the Jail pursuant to the policy, custom and practice of the Clinton County Sheriff's Department and the County of Clinton from February 28, 2003 until October 24, 2003. Specifically excluded from the class are Defendants and any and all of their respective affiliates, legal representatives, heirs, successors, employees or assignees.

*Subclass B*

All persons who were placed into the custody of the Clinton County Jail after being charged with misdemeanors, violations, violations of probation or parole, traffic infractions, civil commitments or other minor crimes and were strip searched upon their entry into the Jail pursuant to the policy, custom and practice of the Clinton County Sheriff's Department and the County of Clinton from October 24, 2003 until July 1, 2007. Specifically excluded from the class are Defendants and any and all of their respective affiliates, legal representatives, heirs, successors, employees or assignees.

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.

Both Subclass Distribution Amount: “Both Subclass Distribution Amount” shall mean the Distribution Amount, less the SubSubclass A Supplemental Distribution Amount.

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

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

Class Counsel. “Class Counsel” shall mean: The Law Offices of Elmer Robert Keach, III, Esquire; Beranbaum, Menken Ben-Asher & Bierman, LLP; Cuneo, Gilbert and LaDuca, LLP; and The Mason Law Firm, PLLC.

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

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

County: “County” shall mean the County of Clinton, New York and/or its Insurer.

Court. “Court” shall mean the United States District Court for the Northern District of New York, Magistrate Judge David R. Homer presiding by consent, or his duly appointed or designated successor.

Defendants. “Defendants” shall mean the County of Clinton, David Favro, Jerry Maggy, and Michael Smith, and shall include all employees of the County of Clinton who may have devised,

promulgated or enforced the policy or participated in the conduct that is the subject of this Settlement Agreement.

Defendants' Counsel. "Defendants' Counsel" shall mean Girvin & Ferlazzo, P.C.

Effective Date. "Effective Date" shall mean the date on which this Settlement and the Final Judgment (as defined below) have become "Final" in that all of the following conditions have been satisfied: (1) the Final Judgment has been entered; and (2) (a) if an appeal or review is not sought from the Final Judgment, the thirty-first day after of the entry of the Final Judgment, or (b) if an appeal or review is sought from the Final Judgment, the day after the Final Judgment is affirmed and the Final Judgment is no longer subject to judicial review or the day after the appeal or review is dismissed or denied and the Final Judgment is no longer subject to judicial review.

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.

Final Judgment. "Final Judgment" shall mean that Court order that finally certifies the Settlement Class, approves this Settlement Agreement, approves payment of attorneys' fees and expenses, and makes such other final rulings as are contemplated by this Settlement Agreement, in substantially the same form as Exhibit C.

Gross Distribution Amount. "Gross Distribution Amount" shall mean the amount available from the Settlement Fund after payment of the costs of notice and administration of the Settlement and attorneys' fees and expenses.

Litigation. "Litigation" shall mean the above-captioned lawsuit pending in the United States District Court for the Northern District of New York as No. 06-CV-0254.

Mediator. The "Mediator" shall mean The Honorable David R. Homer, United States Magistrate Judge of the United States District Court for the Northern District of New York.

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.

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

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

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

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.

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

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

Plaintiffs. “Plaintiffs” shall mean Phyllis Mitchell and Paul Bachmann.

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

Putative Settlement Class Members. “Putative Settlement Class Members” shall mean all

persons who are within the scope of the definition of the Settlement Class.

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

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

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.

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

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

Settlement Administrator. “Settlement Administrator” shall mean the qualified party selected by the Plaintiffs and designated and approved by the Court in the Preliminary Approval Order to administer the Settlement, including implementing the Notice Program. Neither Plaintiffs nor any other of the Defendants shall have any responsibility for any acts or omissions of the Settlement Administrator.

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.

Settlement Subclass A: “Settlement Subclass A” shall mean:

All persons who were placed into the custody of the Clinton County

Jail after being charged with misdemeanors, violations, violations of probation or parole, traffic infractions, civil commitments or other minor crimes and were strip searched upon their entry into the Jail pursuant to the policy, custom and practice of the Clinton County Sheriff's Department and the County of Clinton from February 28, 2003 until October 24, 2003. Specifically excluded from the class are Defendants and any and all of their respective affiliates, legal representatives, heirs, successors, employees or assignees.

Settlement Subclass B: "Settlement Subclass B" shall mean:

All persons who were placed into the custody of the Clinton County Jail after being charged with misdemeanors, violations, violations of probation or parole, traffic infractions, civil commitments or other minor crimes and were strip searched upon their entry into the Jail pursuant to the policy, custom and practice of the Clinton County Sheriff's Department and the County of Clinton from October 24, 2003 until July 1, 2007. Specifically excluded from the class are Defendants and any and all of their respective affiliates, legal representatives, heirs, successors, employees or assignees.

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

Settlement Fund. "Settlement Fund" shall mean a fund used to administer the monetary requirements of the Settlement. The Settlement Fund will be established by Class Counsel and entitled the "Clinton County Jail Class Action Settlement Fund" and treated as trust fund monies under relevant New York ethical standards.

Settlement Amount. "Settlement Amount" shall mean the amount of One Million One Hundred Fifty Thousand Dollars (\$1,150,000) to be paid by the Defendants.

Subclass A Supplemental Distribution Amount: "Subclass A Supplemental Distribution Amount" shall mean Seventy Thousand Dollars (\$70,000) allocated from the Gross Distribution Amount.

Summary Notice. "Summary Notice" shall mean a notice in substantially the same form



as that which appears at Exhibit E.

## **II. REQUIRED EVENTS**

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

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

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

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

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

c. Approve the Settlement Administrator; and

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

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

4. In the event that the Court fails to issue the Preliminary Approval Order or fails to issue the Final Judgment, Class Counsel agree to use their best efforts, consistent with this Settlement Agreement, to cure any defect identified by the Court; and Defendants shall cooperate with Class Counsel in this regard, provided, however, that in no event shall Defendant be required to agree to any such cure that would materially increase the burden, or increase the cost of the Settlement Agreement, to any Defendant.

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, shall promptly perform their respective obligations hereunder, and shall promptly take any and all actions and execute and deliver any and all additional documents and all other materials and/or information reasonably necessary or appropriate to carry out the terms of this Settlement Agreement and the transactions contemplated hereby. Any disputes regarding the Parties' obligations under this paragraph shall be submitted for decision by the Mediator and his decision shall be binding on the Parties.

### **III. SETTLEMENT TERMS**

#### **A. Settlement Fund**

1. The County will pay into the Settlement Fund \$1,150,000.
2. Not later than ten (10) business days after entry of the Preliminary Approval Order, the County will pay into the Settlement Fund the amount of \$50,000 (the "Initial Contribution") to be used by the Settlement Administrator to cover the initial costs of Notice and administration of the Settlement. If, at any time, whether by order of any court or otherwise, the Settlement does not become final, then any unspent money remaining from the Initial Contribu-

tion shall be returned to the County. Any future class-wide settlement or class-wide judgment would be offset by the spent, unreturned amount of the Initial Contribution.

3. The County's remaining monetary obligation of \$1,100,000 will be deposited into the Settlement Fund within five days of the Effective date.

4. Nothing in this Agreement nor any attachments shall obligate any Defendant to pay a cumulative amount in excess of \$1,150,000.00.

B. Payments to Class Members

1. Each class member who submits a timely Claim Form will be entitled to receive a *pro rata* share of the Both Subclass Distribution Amount.

2. In addition to the share set forth in part III.B.1, each class member who is a member of Subclass A will be entitled to receive a *pro rata* share of the SubSubclass A Supplemental Distribution Amount.

3. No Class Member shall be entitled to more than his or her *pro rata* share of the Both Subclass Distribution Amount and the Subclass A Supplemental Distribution Amount (if applicable) regardless of the number of times he or she has been booked and/or strip searched and regardless of whether he or she is a member of both Subclasses. Class Members who are members of both subclasses may file a Claim Form as a member of Subclass A.

4. The Defendants have represented to Class Counsel that substantial remedial efforts were made regarding Clinton County Jail strip search policies and practices during the time period of July 1, 2006 to July 1, 2007. Class Counsel suspects that some individuals were strip searched during the time period of July 1, 2006 to July 1, 2007. The parties agree that additional verification efforts will be made by Class Counsel to ascertain whether individuals admitted to the Clinton County Jail during this time period were strip searched. The Defendants

will cooperate in full with these efforts, including providing access to inmate records, with reasonable notice and without charge to the Class or Class Counsel. The decision about whether or not an individual from this time period will be included in this class will rest in the sole discretion of class counsel. In the event that a class member disputes class counsel's determination, they will have the right to apply to the Mediator to contest this decision. The decision of the Mediator in this regard will be final.

5. The Clinton County Department of Social Services, and any other department or subdivision of the County, agree not to serve any lien notices on Class Counsel, the Settlement Administrator, or any financial institution where the Settlement Fund is deposited. This provision will not, however, limit the Clinton County Department of Social Services', or any other department or subdivision of the County's ability to pursue any lawful liens over the funds of individual class members.

6. The Clinton County Department of Social Services, or any other department or subdivision of the County, will take no affirmative steps, except as required by law, to publicize or disseminate the fact that any Class Member has made a claim on the within settlement. The Clinton County Department of Social Services, or any other department or subdivision of the County also agrees not to voluntarily disclose, publicize, or disseminate the list of class members for a period of eighteen (18) months from the date of Final Judgment.

C. Release and Discontinuance of Defendants

1. Upon the execution of this settlement agreement, Plaintiffs shall execute full, unconditional releases and partial Stipulation of Discontinuance (without prejudice) for Defendants Favro, Maggy and Smith, regarding all claims arising out of this case. These releases will be held in escrow until final approval of this Settlement Agreement by the Court, at

which time said releases will be provided to counsel for the Defendants. The Partial Stipulation of Discontinuance (without prejudice) of the individual capacity claims will be filed with the Court immediately upon the disbursement of the payment prescribed by Section III(A)(2).

D. Attorneys Fees and Expenses

1. Class Counsel will petition the Court for an award of attorneys' fees in an amount not to exceed 30% of the Settlement Fund, as well as for an award for litigation expenses incurred prior to the execution of this agreement, in an amount not to exceed fifteen thousand (\$15,000) dollars. Defendants shall not oppose Class Counsel's application for said award of fees and expenses. Should Class Counsel's petition for attorney's fees not be approved by the Court, Defendants shall not oppose an appeal by Class Counsel of such application, and Class Counsel will file all necessary motions and papers to relieve Defendants of the obligation to participate in any appeal. If the Court issues an order granting final approval of the settlement, but without approval of the requested award of attorneys' fees and expenses, Defendants shall fund the portion of the Distribution Amount, less the disputed part of the application for attorneys' fees and expenses, and will pay the remainder into an escrow account to be paid in accordance with the outcome of the appeal.

E. Additional Discovery

1. The Clinton County Department of Social Services ("DSS") shall provide a last known address for any Class Member for whom the initial mailing of the Class Notice was returned as undeliverable. DSS will not be responsible for spending more than 30 employee hours complying with this paragraph. If more than 30 employee hours is required, payment for those hours greater than 30 will be made from the Settlement Fund, at the DSS employee performing the work's regular hourly rate, as well as a supplemental rate of 25% of the em-

ployee's hourly rate to cover benefits to such employee(s). Defendants' counsel will notify Class Counsel as soon as practicable after the 30 hour threshold is reached.

#### **IV. NOTIFICATION TO CLASS MEMBERS**

##### **A. Responsibilities of the Settlement Administrator**

1. The Settlement Administrator shall implement and administer the Notice Program.
2. The Settlement Administrator shall be responsible for, without limitation: (i) mailing the Class Notices; (ii) arranging for the publication of the Summary Notice; (iii) responding to requests for a copy of the Class Notice; and otherwise administering the Notice Program. The Notice Program shall comply with all requirements of applicable law.

##### **B. Notice**

1. Notice will be provided to the Class by direct mailing of Class Notice and a Claim Form to all individuals at their last known or readily ascertainable address and by publication in the Plattsburgh Press-Republican on at least one day per week for three consecutive weeks commencing on the Notice date, and on one occasion during the last ten (10) days of the claims period.
2. The Settlement Administrator shall also provide a copy of the Class Notice and Claim Form to anyone who requests notice through written communication to the Settlement Administrator, through a dedicated internet website, or through a toll-free telephone number to be established by the Settlement Administrator.
3. If, after the initial mailing, the Notice is returned as undeliverable, the Claims Administrator will attempt to locate the Class Member by way of a national locator database or service and, if another address is found, remail the Notice to that new address.

4. The Settlement Administrator shall provide an affidavit to the Court, with a copy to Class Counsel and Defendants' Counsel, attesting to the measures undertaken to provide Notice of the Settlement to Settlement Class Members.

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

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

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

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

C. Not later than three (3) business days after the deadline for submission of Requests for Exclusion, the Settlement Administrator shall provide an Opt-Out List to Class

Counsel and to Defendants' Counsel together with copies of the Request for Exclusion. Class Counsel and Defendants' Counsel shall jointly report the names appearing on the Opt-Out List to the Court no less than three (3) business days prior to the Final Approval Hearing.

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

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

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



be considered by the Court.

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

A. By this Settlement Agreement and the following Release, Defendants, and all of their respective affiliates, predecessors, successor and assigns, officers, agents, representatives, and employees are released from any and all claims or causes of action that were, could have been, or should have been asserted by the named Plaintiffs or any member of the Class against the Released Persons, or any of them, based upon or related to all claims of unlawful searches asserted under either State or Federal law, and/or all claims for searches, strip searches, visual inspections, and/or visual observations of a Plaintiff's or Class Member's body.

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

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

D. Upon the Effective Date: (I) the Settlement Agreement shall be the exclusive remedy for any and all Released Claims of Class Members; (ii) the Released Parties shall not be subject to liability or expense of any kind to any Settlement Class Members or their successors, predecessors or assigns except as set forth herein; and (iii) Class Members and their successors, predecessors and assigns shall be permanently barred from initiating, asserting, or prosecuting

any and all Released Claims against any Released Party in any federal or state court in the United States or any other tribunal.

E. Upon the Effective Date of this Settlement Agreement, this action shall be discontinued with Prejudice as to all Defendants.

**VIII. INCENTIVE AWARDS TO CLASS REPRESENTATIVE**

A. Given the efforts of the named Plaintiffs on behalf of the Settlement Class, Defendants will not oppose total awards by the Court to the Plaintiff and Class Representative as follows:

1. Subject to the Court's approval, Plaintiff and Class Representative Phyllis Mitchell will be awarded \$25,000 from the Settlement Amount, such amount to be paid before distributions to the general Class. It is not disputed by the parties that Ms. Mitchell provided substantial assistance to Class Counsel in their prosecution of this action, and that Ms. Mitchell, as lead plaintiff in this action, was subject to considerable public scrutiny as a result of the filing of his action. Additionally, the parties also recognize that Ms. Mitchell rejected the \$24,000 Rule 68 offer in order to continue representing the then proposed class.

Subject to the Court's approval, Plaintiff and Class Representative Paul Bachmann will be awarded \$10,000 from the Settlement Amount, such amount to be paid before distributions to the general Class. It is not disputed by the parties that Mr. Bachmann provided substantial assistance to Class Counsel in their prosecution of this action.

Subject to the Court's approval, Peter Decicco will be awarded \$2,500 from the Settlement Amount, such amount to be paid before distributions to the general Class. It is not disputed by the parties that Mr. Decicco provided substantial assistance to Class Counsel in their prosecution of this action.

## **IX. MISCELLANEOUS PROVISIONS**

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

B. This Settlement Agreement is entered into only for purposes of Settlement. In the event that the Effective Date does not occur for any reason or the Final Judgment is not entered, then this Settlement Agreement, including any releases or dismissals hereunder, is canceled. In the event this Settlement Agreement is cancelled or deemed cancelled, no term or condition of this Settlement Agreement, or any draft thereof, or of the discussion, negotiation, documentation or other part or aspect of the Parties' settlement discussions shall have any effect, nor shall any such matter be admissible in evidence for any purpose, or used for any purposes whatsoever in the Litigation or in any other litigation, and all Parties shall be restored to their prior rights positions as if the mediation had never occurred and the Settlement Agreement had not been entered into.

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

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

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

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

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

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

I. The Parties to this Settlement Agreement reserve the right, by agreement and subject to the Court's approval, to grant any reasonable extensions of time that might be necessary to carry out any of the provisions of this Settlement Agreement.

J. All applications for Court approval or Court orders required under this Settlement

Agreement shall be made on notice to Plaintiffs and Defendants.

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

L. Integrated Agreement

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

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

M. Notice:

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

If to Defendants to: Gregg T. Johnson, Esq., Girvin & Ferlazzo, P.C., 20  
Corporate Woods Blvd., Albany, NY 12211

If to Class Counsel or Plaintiffs to: Jason Rozger, Esq., Beranbaum Menken Ben-Asher & Bierman LLP, 80 Pine Street, 32<sup>nd</sup> Floor, New York, NY 10005, or Elmer R. Keach III, Esq., 1040 Riverfront Center, P.O. Box 70, Amsterdam, NY 12010.

N. Dispute Resolution

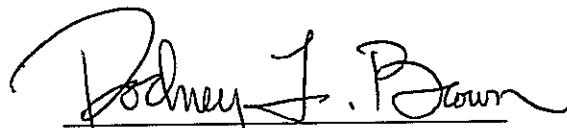
1. The Parties agree that any disputes regarding the terms and conditions of this Agreement, the Parties' rights and obligations under this Settlement Agreement, and/or the manner in which any issue or dispute arising under this Settlement Agreement shall be submitted to the Mediator, who shall attempt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

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

Dated: October 8, 2008

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Elmer R. Keach, III, Esq.  
Class Counsel and Counsel for the Plaintiffs  
1040 Riverfront Center  
P.O. Box 70  
Amsterdam, NY 12010



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Rodney Brown  
Deputy County Administrator  
County of Clinton

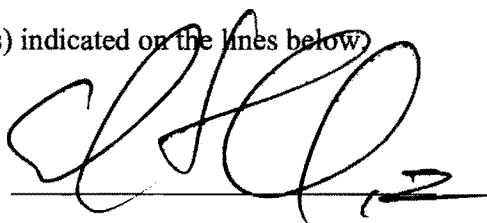
If to Class Counsel or Plaintiffs to: Jason Rozger, Esq., Beranbaum Menken Ben-Asher & Bierman LLP, 80 Pine Street, 32<sup>nd</sup> Floor, New York, NY 10005, or Elmer R. Keach III, Esq., 1040 Riverfront Center, P.O. Box 70, Amsterdam, NY 12010.

N. Dispute Resolution

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

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

Dated: October 8, 2008



Elmer R. Keach, III, Esq.  
Class Counsel and Counsel for the Plaintiffs  
1040 Riverfront Center  
P.O. Box 70  
Amsterdam, NY 12010

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Rodney Brown  
Deputy County Administrator  
County of Clinton

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HEATHER H. DECKER  
PARALEGAL

October 8, 2008

The Honorable David R. Homer  
United States Magistrate Judge  
United States District Court  
for the Northern District of New York  
James T. Foley U.S. Courthouse  
445 Broadway  
Albany, NY 12207

Re: *Mitchell v. County of Clinton*, No. 06-CV-0254 (GLS/DRH)

Dear Judge Homer:

After much consternation, I am pleased to report to the Court that the above-captioned action has been settled by the parties. A copy of the Class Action Settlement Agreement is attached to this letter. The parties are currently working through the attachments to the Settlement Agreement, including the Plan of Distribution and Class Notices, to address some late changes to the Settlement Agreement visited during the past ten days, and will file these attachments with their Motion for Preliminary Approval.

In light of the filing of this Agreement with the Court, I respectfully request that the Court rescind all deadlines in the Uniform Pretrial Scheduling Order, and that the Court set November 10, 2008 as the date for the parties to move for Preliminary Approval of the proposed class action settlement.

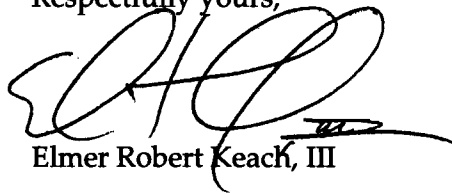
The parties thank the Court for its extensive efforts to assist the parties in resolving this matter, and for its patience as the parties have concluded the Settlement.



The Honorable David R. Homer  
October 8, 2008, Page 2  
Re: *Mitchell v. County of Clinton*

Should Your Honor have any additional questions or concerns in this regard, please do not hesitate to contact me.

Respectfully yours,

A handwritten signature in black ink, appearing to read 'ERK III', with a long horizontal flourish extending to the right.

Elmer Robert Keach, III

Enclosure

cc:

*By ECF*  
All Counsel of Record