

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DANNI TYSON, IRIS ZIMMERMAN, DANIEL JACKSON, CARLOS MORALES, VIVIAN WILLIAMS, MAYRA SORONDO, LINA ORTIZ, and ERIC ROBERTSON individually and on behalf of all others similarly stated,

Plaintiffs,

-against-

THE CITY OF NEW YORK; RUDOLPH W. GIULIANI, Mayor of the City of New York; NEW YORK CITY POLICE DEPARTMENT; HOWARD SAFIR, Police Commissioner; NEW YORK CITY DEPARTMENT OF CORRECTION; MICHAEL P. JACOBSON, Commissioner of Correction; ALONZO DAVIS, Executive Officer MNCT; and JANE/JOHN DOES## 1-200.

Defendants.

**SUBMISSION OF
PROPOSED
STIPULATION OF
SETTLEMENT**

97 Civ. 3762 (JSM)

x

The parties hereto respectfully submit the following proposed stipulation of settlement for consideration and approval by the Court.

Dated: New York, NY
January 5, 2000

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DANNI TYSON, IRIS ZIMMERMAN, DANIEL JACKSON, CARLOS MORALES, VIVIAN WILLIAMS, MAYRA SORONDO, LINA ORTIZ, and ERIC ROBERTSON individually and on behalf of all others similarly situated,

STIPULATION OF SETTLEMENT

97 Civ. 3762 (JSM)

Plaintiffs,

-against-

THE CITY OF NEW YORK; RUDOLPH W. GIULIANI Mayor of the City of New York; NEW YORK CITY POLICE DEPARTMENT; HOWARD SAFIR, Police Commissioner; NEW YORK CITY DEPARTMENT OF CORRECTION; MICHAEL P. JACOBSON, Commissioner of Correction; ALONZO DAVIS, Executive Officer MNCT; and JANE/JOHN DOES ## 1-200,

Defendants.

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I

BACKGROUND

WHEREAS, on May 22, 1997, plaintiffs filed a complaint in which they challenged, pursuant to 42 U.S.C. § 1983, the constitutionality of the practice of the New York City Department of Correction ("DOC") of strip searching pre-arraignment non-felony arrestees, and asked the Court to enjoin the practice; and

WHEREAS, on May 27, 1997, DOC issued instructions to the Manhattan and Queens pre-arraignment detention facilities that strip searches of these pre-arraignment arrestees would be permitted only where there was a reasonable suspicion that the arrestee was concealing a weapon or other contraband, based on the crime charged, particular characteristics of the detainee or the circumstances of the arrest; and

WHEREAS, on April 8, 1998, the Court ordered, pursuant to Fed. R. Civ. P.

23(a) and (b)(3), that the matter proceed as a class action on behalf of:

all persons arrested for misdemeanors or non-criminal offenses in New York and Queens Counties who, before arraignment, were strip searched in facilities operated by the Department of Correction pursuant to defendants' policy, practice and/or custom requiring that all pre-arraignment arrestees be strip-searched; and

WHEREAS, the court appointed the law firm of Emery Cuti Brinckerhoff & Abady PC, 545 Madison Avenue, New York, New York 10022 as counsel for the plaintiff class; and

WHEREAS, although plaintiffs filed a motion for summary judgment and defendants opposed that motion, the Court has not made any determination regarding the merits of this lawsuit; and

WHEREAS, effective May 27, 1997, defendants discontinued the search policy at issue, and will not reinstate it; and

WHEREAS, the parties have engaged in extensive discussions in order to resolve this action in order to avoid the time and expense of contested litigation; and

WHEREAS, the discussions have resulted in this Stipulation of Settlement, which, subject to the approval of the Court, settles this action in the manner and upon the terms set forth below,

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned, as follows:

I

DEFINITIONS

1. "The Settlement Class" means those persons who, during the class period identified in ¶ "7" below, were arrested for misdemeanors or non-criminal offenses in New York

and Queens Counties and who, before arraignment, were strip-searched in facilities operated by the New York City Department of Correction ("DOC"). The Settlement Class shall not include persons who were simultaneously arrested for felonies. The Settlement Class shall not include any individual in the Police Department On-Line Booking System data base with top arrest charges designated as FOA9000001; FOA9000002; FOA9000009; FOA9000011; FOA9000012; FOA9000015; FOA9000016; FOA9000029; FOA9000035; and FOA9000049 unless Department of Correction logbooks show that the individual went through DOC pre-arraignment facilities (hereafter, "Central Booking") following his/her arrest and unless the basis for any warrant issued for the arrest of the individual was a misdemeanor or a non felony offense as defined in Penal Law 10(1). The Settlement Class shall not include any individuals in the New York City Police Department On-Line Booking System with charges designated as AM 9999900; AC 9000011; AC 9000016; and AC 9001600. The Settlement Class shall not include any individual who has previously commenced any civil litigation challenging any arrest(s) which resulted in his/her detention in Central Booking in Manhattan and Queens during the class period and has prevailed, settled or had his/her complaint dismissed on the merits.

2. "Class Counsel" means Emery Cuti Brinckerhoff & Abady, PC, 545 Madison Avenue, New York, NY 10022.

3. A "Settlement Class Member" ("SCM") means any member of the Settlement Class who does not file a valid and timely Request for Exclusion as provided in ¶ "68" of this Stipulation.

4. An "Opt-Out" is any potential Class Member who files a timely Request for Exclusion as specified in ¶ "68".

5. The "Bar Date" is the date established by the Court by which any SCM who wishes to receive payments pursuant to the Stipulation of Settlement must file his/her claim form(s).

6. The "Class Notice" means notices in the form annexed hereto as Exhibits A and B (Notice by Mail) and such other comparable notice by publication approved by the Court.

7. The "Class Period" is July 1, 1996 through May 27, 1997 for all individuals arrested for misdemeanors and non-criminal offenses in Queens. The class period is October 18, 1996 through May 27, 1997 for women arrested for misdemeanors and non-criminal offenses in Manhattan. The class period for men arrested for misdemeanors and non-criminal offenses in Manhattan is July 8, 1996 through May 27, 1997. Notwithstanding, plaintiffs may move the Court to extend the class period to June 13, 1997. Any such motion shall be filed by plaintiffs and opposed by defendants on dates set by the Court.

8. The "Effective Date" means the date upon which a judgment entered by the Court approving the Stipulation of Settlement becomes final. The judgment will be deemed final only upon expiration of the time to appeal, or if an appeal is filed, upon exhaustion of all appeals and petitions for certorari.

9. "Released Persons" means the defendants and their predecessors, successors, or assigns, together with past, present, and future officials, employees, representatives and agents of the New York City Police Department, The New York City Department of Correction and the City of New York.

10. "Claim Forms" means forms "1", "2" and "3", including authorizations, in the form annexed hereto as Exhibit C.

11. "Administrator" means the firm of KPMG, LLP, 345 Park Avenue, New York, NY 10154, to be appointed by the Court to review and determine the validity and amount of claims submitted by SCMs, according to the procedures set forth herein.

12. "Expert Panel" means the psychiatrist and psychologist retained by plaintiffs and defendants to devise the criteria for determining Step 3 emotional distress payments, except if the parties' experts are unable to agree on the criteria, a third psychiatrist or psychologist will be selected by both parties or, if necessary, appointed by the Court in order to devise the criteria.

13. "Step 3 Examiner" is the psychologist or psychiatrist appointed by the Court to review and determine SCMs' Step 3 claims.

II

TERMS AND EFFECT OF STIPULATION OF SETTLEMENT

14. On the Effective Date, the above-referenced action will be dismissed, with prejudice, and without costs, expenses, or fees in excess of the amount authorized by ¶ "23" below.

15. Defendant City of New York hereby agrees to pay SCMs who comply with the requirements set forth in this stipulation of settlement the sums of money determined by the procedures set forth herein in full satisfaction of all claims.

16. The Stipulation of Settlement, as of the Effective Date, resolves in full all claims against the Released Persons by the SCMs, including the named plaintiffs, involving violation of their Fourth Amendment rights or any other federal, state or local law or regulation, which is based upon or could be based upon or arise from their strip-searches. When the Stipulation of Settlement is final, as of the Effective Date, SCMs, including the named plaintiffs, hereby release all such claims.

17. This Stipulation of Settlement does not and shall not be deemed to constitute any admission by the defendants as to the validity or accuracy of any of the allegations, assertions or claims made herein by the plaintiffs. No findings of any kind have been issued by the Court concerning the merit or lack of merit of the allegations made by plaintiffs herein.

18. This Stipulation of Settlement contains all the terms and conditions agreed upon by the parties hereto regarding the subject matter of the instant proceeding, and no oral agreement entered into at any time nor any written agreement entered into prior to the execution of this Stipulation shall be deemed to exist, or to bind the parties hereto, or to vary the terms and conditions contained herein.

19. As of the Effective Date of this Stipulation of Settlement, the SCMs, including the named plaintiffs, hereby waive any and all rights to pursue, initiate, prosecute or commence any action or proceeding before any court, administrative agency or other tribunal, or to file any complaint with regard to acts of commission or omission by the Released Persons respecting such class members with respect to their strip search by DOC personnel during the pre-arraignment process during the Class Period.

20. Each SCM shall be deemed to have submitted to the jurisdiction of the Court.

21. No Opt-Out shall share in any monetary benefits provided by this Stipulation of Settlement.

22. Plaintiffs will take all necessary and appropriate steps to obtain approval of the Stipulation of Settlement and dismissal of the action with prejudice. If the District Court

approves this Stipulation of Settlement, and if there is an appeal from such decision, the defendants will join the plaintiffs in defense of the Stipulation of Settlement.

III

FUNDING AND RESOLUTION OF CLAIMS FOR DAMAGES

23. The Settlement Amount which shall be used to pay all claims of SCMs, administrative costs and attorneys fees shall not be less than \$20,000,000, subject to the terms of ¶ “70” below, and shall not be more than \$50,000,000. If the minimum is not disbursed by payment of all valid claims, administrative costs and attorneys fees, the difference between the minimum and the actual amount disbursed shall not be returned to defendants, but shall be disbursed in a manner determined by the Court after consultation with the parties. If the total of all valid claims, administrative costs and attorneys fees exceeds \$50,000,000, the amount payable to SCMs for each claim shall be reduced proportionately.

24. No payment shall be made to eligible SCMs before the Effective Date. Claims may be processed between the date of initial District Court approval and the Effective Date. Upon the Effective Date any Step 1 processed claims may be paid. If, upon the Effective Date, it appears beyond any reasonable doubt that the entire fund will not be depleted, then either party may make an application to the Court for permission to pay Step 2 or Step 3 claims.

25. No payments shall be paid to Class Counsel for fees and costs before the Effective Date except that upon signing of the Stipulation of Settlement, Class Counsel may make application to the Court for interim fees and costs, and defendants are entitled to oppose as appropriate. Payments to SCMs and final payments to Class Counsel for payment of fees and costs will be made after calculation of the total payment to SCMs, Attorneys Fees and Administrative Costs to ensure that such payments, collectively, do not exceed \$50,000,000.

Nothing contained in this paragraph shall preclude Class Counsel from making applications for interim fees and costs at any time pursuant to ¶ “71” below.

26. Each SCM shall have the right to have his/her compensation determined individually by the Court. Prior to exercising such right, SCM's shall receive a settlement offer determined by the three-step Alternative Dispute Resolution (“ADR”) procedure, as described below. SCM's who are dissatisfied with the proposed compensation after the three-step ADR procedure may apply to the Court for a different amount, according to the procedures set forth herein. SCM's must participate in each step of the ADR procedure before exercising their right to an individualized determination of compensation by the Court pursuant to ¶ “58” below

27. The parties agree to make an application to the Court to appoint the Expert Panel, the Step 3 Examiner and the Administrator as Officers of the Court for the purposes of implementing the terms of the Stipulation of Settlement. The Expert Panel, the Step 3 Examiner and the Administrator shall be subject to judicial immunity to the fullest extent permitted by law.

IV

PROCEDURES FOR RECEIVING PAYMENT OF \$250 (“STEP 1”)

28. SCMs, upon timely filing of a completed and executed Form 1 whether or not accompanied by any other documentation or executed authorizations, shall become entitled to payment of the sum of \$250 in full satisfaction of all claims.

29. The Administrator shall determine whether or not a person who has submitted Form 1 is a SCM and shall reject claims by persons who are not SCMs.

30. Step 1 SCMs who claim by submitting only Form 1 will receive no more than \$250 no matter how many times they were arrested and arraigned during the class period. The City of New York will not exercise its right to reduce this amount by exercising its right of recovery of public assistance payments made to claimant, unpaid City taxes including personal

income tax, real estate and real estate related taxes, tax for City employees who are not residents pursuant to § 1127 of the New York City Charter, unpaid parking tickets, unpaid Environmental Control Board ("ECB") fines or unpaid bills from the New York City Health and Hospitals Corporation and/or delinquent child support payments. SCMs who submit a Form 1 will do so with the understanding that the City of New York must report all payments made to claimants to the Internal Revenue Service.

31. To participate in the distribution of the \$250 Step 1 Payment, a SCM shall be provided by mail at his/her last known address, Forms 1, 2 and 3 ("Form C"). The SCM must submit Form 1 to the Administrator in accordance with the instructions provided therein, and execute the certification contained therein in order to obtain payment.

32. Any SCM who fails to submit Form 1 completed in accordance with the instructions contained therein by the Bar Date or any court-mandated extension, shall be forever barred from receiving any payments pursuant to the Stipulation of Settlement. Such SCM shall in all other respects be bound by all of the terms of the Stipulation of Settlement, and the Judgment entered herein, including but not limited to the release of all Released Persons of all claims resolved herein.

V

**PROCEDURES GOVERNING CLAIMS OF SETTLEMENT
CLASS MEMBERS WHO SEEK MORE THAN \$250
(STEPS 2 AND 3)**

33. SCMs who seek more than \$250 shall have their claims determined in accordance with the criteria set forth in Steps 2, 3 and 4.

Requirements for Being Considered for Step 2 Payments

34. Step 2 payments will range from \$0 to \$9750. In order to be considered for a Step 2 award, the SCM must complete and execute Form 1 and Form 2, including an

executed authorization for the release of New York City Police, Correction and Health Department records and New York State Office of Court Administration records relating to their arrest(s) and arraignment(s) during the class period; New York City and New York State Department of Correction records; New York City Department of Juvenile Justice records; New York State Office of Children and Family Services records; and Federal Bureau of Investigation records. If the SCM fails to execute the Form 2 authorization in its entirety, his/her Step 2 claim will be denied. The Administrator may communicate with SCMs in order to obtain all required authorizations and records.

35. An SCM may also provide an "Optional Narrative Statement" as part of the Step 2 process. An "Optional Narrative Statement", if submitted, may be used to describe the SCM's search. If an SCM provides an "Optional Narrative Statement," s/he may be subject to a deposition if a challenge is made to the veracity of any part of such statement.

36. The Administrator will determine amount of each Step 2 payment based upon a point allocation resulting from the Administrator's review of the Step 2 claimant's Police Department, Correction Department, Department of Health and New York State Office of Court Administration records; records of prior incarceration in New York City, New York State or federal prisons and/or City and State secure detention facilities for juvenile offenders as described in ¶ "45" below; the SCM's responses to the executed Form 1 and the Optional Narrative Statement provided for on Form 2.

37. Points as designated below will be awarded if an SCM's records show the following:

- Multiple searches (i.e. multiple arrests) (2 or 3) 1 point
- Multiple searches (4 or more) 2 "

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|--|---|---|
| • Non-private search | 2 | " |
| • Arrest solely for non searchable offense(s) | 8 | " |
| • Acquitted of all charges | 8 | " |
| • Menstruation at time of search | 4 | " |
| • Abusive Correction Officer Conduct: Offer of Deposition Testimony | 8 | " |
| • Abusive Correction Officer Conduct: Supported by Narrative Statement only | 4 | " |

38. "Multiple searches" means that the SCM was arrested on more than one occasion for misdemeanor(s) and non-criminal offense(s) and not simultaneously for any felonies, and strip-searched in Central Booking in Manhattan and/or Queens more than one time during the class period. One point will be awarded if there were two or three strip searches; two points will be awarded if there were four or more searches.

39. A "Non-private" search is a pre-arraignment strip-search conducted at Central Booking in a cell, holding pen or corridor where other arrestees were actually present during the search. Two points will be awarded if at least one search was non-private. All males arrested in Manhattan will receive two points pursuant to paragraph 36 whether or not they allege a non-private search. Any other SCM who alleges a non-private search will receive two points unless the allegation of a non private search is challenged by defendants, in which case the SCM will be subject to a deposition. Under such circumstances, the issue will be determined by the Special Master.

40. "Menstruating" means that the SCM was menstruating as documented by Department of Health pre-screening medical forms. The SCM may provide independent medical evidence of menstruation or other contemporaneous documentation. If defendants challenge the

SCM's evidence that she was menstruating during at least one search, she shall be subject to a deposition. Under such circumstances, the issue will be determined by the Special Master. Four points will be awarded if an SCM was menstruating during at least one search.

41. "Non-searchable offenses" mean misdemeanors or non criminal offenses other than Administrative Code Sections 10-131, 10-133, 10-134, Penal Law Sections 205.20, 220.03, 220.45, 220.50, 221.05, 221.10, 221.15, 221.35, 221.40, 240.36, 265.01, 265.06 and Vehicle and Traffic Law section 1192 (4). The following designations in the Police Department On-Line Booking System data base represent Administrative Code sections 10-131; 10-133 and 10-134: AC 0101310; AC 010131B; AC 0101330; AC 010133B; AC 0101340; AC 0101341; AC 0103300; AC 1013301; AC 1013306; AC 1013100; AC 101310G; AC 1013161; AC 1013300; AC 1013302; AC 1013303; AC 101330B; AC 101331B; AC 10133B2; AC 10133C0; AC 1013400; AC 1013401; AC 101341E; and AC 101343E. In the case of a single search, eight points will be awarded if all charges giving rise to the arrest were for non-searchable offenses. If there were multiple searches, eight points will be awarded notwithstanding subsequent arrest(s) for searchable offenses if all charges giving rise to the first arrest were for non-searchable offenses.

42. "Acquittal" means that the SCM was acquitted of all charges following all arraignments during the Class Period, and/or all charges for which the SCM was arrested during the Class Period were dismissed. Acquittal does not include or mean Adjournment in Contemplation of Dismissal ("ACD"). In the case of a single search, eight points will be awarded for Acquittal. If there were multiple searches, eight points will be awarded notwithstanding subsequent unfavorable disposition(s) if the SCM was acquitted of all charges giving rise to the first arrest.

43. "Abusive Correction Officer Conduct" means debasing conduct or language by a corrections officer, directed to the SCM, which had no reasonable law enforcement or corrections purpose. Abusive conduct does not include, without more, treating the SCM in a stern manner or in a loud tone of voice. The SCM complies with the procedure for determining whether this factor is satisfied as follows:

a. Identification of Claims: In order to receive points for "Abusive Correction Officer Conduct," the SCM's Optional Narrative Statement must describe the alleged abusive conduct with particularity. The Administrator will review all Optional Narrative Statements and determine which statements allege abusive conduct. The Administrator shall make no credibility determinations, but shall identify all statements making the requisite allegations. The Optional Narrative Statement will also ask the SCM whether he desires to volunteer for a deposition to verify his/her claim.

b. Challenge: Class Counsel and Defendants will be provided an opportunity to review all Optional Narrative Statements identified by the Administrator as having sufficiently alleged or not alleged abusive conduct. Within a time period to be specified by the Court, Class Counsel and Defendants shall submit a memorandum setting forth each determination by the Administrator they believe should be challenged, and the reasons therefor. Class Counsel's challenge may be based on a contention that abusive conduct is sufficiently alleged in the Optional Narrative Statement. Defendants' challenge may be based on a contention that the conduct did not occur and/or a contention that the conduct, even if it occurred, was not abusive as defined herein. Defendants' memorandum shall also specify whether a deposition of the SCM before a Special Master is requested. Class counsel and the SCM shall have an opportunity to respond to the other's memoranda within a time period to be specified by the Court. Class

Counsel and Defendants shall then meet and confer, and attempt to resolve as many disputed claims as possible.

c. Resolution: The Court shall review all unresolved challenges. The Court may either accept or reject the claim on the basis of the papers submitted, or may order the SCM to appear for deposition before a Special Master to determine the claim. If the SCM appears for deposition, defendants may produce the correction officer for deposition to rebut the claim. The Court or Special Master may consider, in evaluating the SCM's credibility, criminal history admissible under FRE 609. The fact that a SCM did not volunteer for a deposition will not be considered on the issue of credibility, except as to the number of points awarded, as set forth below; provided, however, that the claim for an award of points for abusive conduct will be rejected if, without good cause shown, the SCM refuses to appear for deposition after previously volunteering to appear or after being ordered to appear. Defendants reserve the right to submit other evidence with respect to the SCM's credibility, and Class Counsel reserves the right to oppose consideration of such evidence. The Court's or Special Master's determination may not be appealed, except as provided in Step 4. The Court or Special Master's determination shall be admissible, but not conclusive, in any Step 4 proceeding.

d. Points: Eight points will be awarded if the SCM appears for deposition and, based on all the facts and circumstances, it appears from the record more probable than not that the abusive conduct occurred. If the SCM volunteered to appear for deposition, and his/her statement is not challenged, the SCM will receive eight points. If the SCM did not volunteer to appear for deposition, but is nonetheless ordered to appear for deposition, his/her claim will be awarded eight points if the claim is found to be substantiated. Four points will be awarded if SCM does not volunteer for deposition, but the Optional Narrative Statement describes the

abusive conduct with particularity, and based on all the facts and circumstances, it appears from the record more probable than not that the abusive conduct occurred. If the SCM was arrested on more than one occasion, the SCM will receive "Abusive Conduct" points if the SCM complied with the requirements of this subparagraph as to at least one search.

44. If a SCM, who is subject to a Step 2 deposition for seeking compensation for "Non-Private Search", "Menstruating" or "Abusive Conduct by a Correction Officer" also seeks compensation under Step 3, the Step 2 deposition will be deferred until other Step 3 procedures have been completed, and the Step 2 and Step 3 deposition will be combined into a single deposition.

45. The total number of Step 2 points will be reduced by half if, within five years prior to his/her first pre-arraignment strip search, the SCM was subjected to a strip search following sentencing or remand under circumstances set forth hereafter. Such a determination will be made by the Administrator if City, State or Federal criminal history or prison records document that an SCM was imprisoned in any facility after conviction of a crime, or on remand after arraignment to a New York City Department of Correction facility. Such a determination will also be made if New York City Department of Juvenile Justice and/or New York State Office of Children and Family Services records identify an SCM as having been an adjudicated Juvenile Offender, or document that the SCM, after any arraignment as a Juvenile Offender, was remanded to a secure detention facility.

46. Points awarded in Step 2 will have the following values:

Points 1-5 \$250 per point

Points 6-22 \$500 per point, starting with point 6

47. There will be no additional Step 2 compensation for more than 22 points.

No Step 2 SCM will receive more than \$9,750.

48. Step 2 awards will be added to the basic \$250 award.

Requirements for Obtaining Step 3 Payments

49. SCMs participating in Step 3, must complete and execute Form 1, Form 2 and Form 3, including Step 3 authorizations for release of all applicable medical, psychiatric, school and employment records, and social security insurance records, if applicable. Step 3 awards will be determined based upon the Expert Panel's agreed upon criteria for evaluating all of the following which are available: (i) the claimant's complete certified or authentic medical, psychological, employment, school and/or Social Security Insurance ("SSI") records for the period from January 1, 1996 through the date of submission; (ii) the SCM's deposition transcripts, and/or the results of a psychological examination of the SCM by a court appointed psychologist or psychiatrist. The Step 3 Examiner will review the records, deposition transcript and psychological examination results.

50. No SCM will be eligible to appear for a Step 3 deposition or psychological examination unless s/he, reasonably in advance of such deposition or examination, identifies all medical and/or psychological providers and all his/her employers and schools from January 1, 1996 through the date of submission, known to him/her, states whether or not s/he has applied for or received Social Security Insurance ("SSI") benefits during the period from January 1, 1996 through the date of submission, and authorizes the release of such records to the Administrator, Class Counsel and Defendants. The SCM must state, subject to the penalties of perjury, that s/he has identified all such records to the best of his/her ability. In addition, the Step 3 Examiner will have available all the Step 3 SCM's police records stemming from his/her arrest(s) prior to the examination and all records of prior incarcerations.

51. The Step 3 Examiner shall determine, based upon application of the Expert Panel's pre-determined criteria, whether the SCM's certified records, deposition

testimony, psychological examination, available arrest and incarceration information and the Claim Administrator's record of the Step 2 determination show that it is more likely than not that the Step 3 claimant suffered emotional distress that was proximately caused by the strip search. The demonstrated emotional distress must be greater or last longer than would be normally expected for persons exposed to the factors identified in Step 2 (§ "37" above).

52. If expert analysis of the certified medical, psychological, employment or school records and/or the deposition shows that the SCM has not experienced the requisite psychological injury, the SCM will receive no Step 3 payment. Based upon application of the Expert Panel's criteria, the Step 3 claimant may receive a payment of up to \$4250 for moderate emotional distress; up to \$8,500 for serious additional emotional distress; and up to \$12,500 for severe additional emotional distress.

53. A SCM who claims loss of time from work or that the strip search affected his/her work performance, but who does not execute an authorization for the release of his/her employment records from 1996 to the present will be deemed not to have missed any days of work due to the effects of the search and it will be found that his/her work performance was not affected by the search. If a SCM claims that the strip search affected his/her school performance, and does not execute an authorization for the release of any school records, it will be found that the search did not affect the SCM's school performance in any way.

54. If records, depositions or interview rebut, by a preponderance of evidence, the presence of any of the Step 2 factors, the total payment may be reduced by the value of the Step 2 criteria shown not to be present.

55. If the SCM fails without good cause shown to provide all required records and/or authorizations, fails to appear for a scheduled deposition or psychological examination, or

otherwise fails to comply with orders of the Special Master, s/he will receive no Step 3 payment. The Administrator on its own initiative or upon the request of the Step 3 Examiner may communicate with SCMs to obtain all authorizations and records and to schedule psychological examinations and depositions.

56. Step 3 payments will be in addition to any payments awarded pursuant to Steps 1 and 2. In order to be considered for a Step 3 payment, the SCM must complete the requirements for Step 2.

57. Step 1-3 awards may be combined for a maximum award of \$22,500.

Requirements for Obtaining Step 4 Payments

58. Within 45 days after receiving written notification of the Administrator's award, a SCM shall have the right to make a motion to the Court to increase the award. The motion shall specify the total amount claimed by the SCM and shall attach all evidence in support of the request for an increased payment. In the case of the representative plaintiffs, a Step 4 appeal may include an application for monetary compensation for a plaintiff's time, effort and expense in connection with representing the class. Upon receipt of all such motions, the Court will establish a schedule for defendants to respond. Defendants shall have the right to take the SCM's deposition if not already taken; to obtain medical, psychological, employment and school records if not already obtained; and to seek an order pursuant to Fed. R. Civ. P. 35 for a mental examination of the SCM in order to oppose such a motion. Defendants shall have both the right to oppose any such motions, and, in addition, to cross move to decrease the Administrator's award. All such motions shall be determined by the Court without a jury. The Court may determine the motions on papers or, in its discretion, hold such proceedings as it deems necessary and proper. The Court may increase or decrease the amount determined by the

Administrator if the party seeking to alter the award proves (1) by a preponderance of the evidence, that the Administrator made a mathematical error, or (2) by a preponderance of the evidence, that the Administrator's award is too low or too high in light of the proven damages. The Court will determine all timely filed motions and cross motions for adjusted payments simultaneously and will assure that, after any adjustments pursuant to this provision, the total payments to all SCMs and Administrative Costs and Attorneys' Fees do not exceed \$50,000,000. Attorneys' fees incurred in prosecuting Step 4 claims shall be governed by 42 U.S.C. 1983; however, the SCM will be considered the prevailing party only if the amount received by the Step 4 claimant exceeds the total amount offered for Steps 1, 2 and 3. Attorneys fees for frivolous claims shall be governed by application of the standards set forth in Christiansburg Garment Co. v. EEOC, 434 U.S. 412 (1978).

VI

GENERAL CLAIM PROCEDURES

59. All medical, psychiatric, psychological, school, and employment records, records protected by CPL 160.60 and/or Executive Law 502(c) obtained or generated in order to evaluate SCMs' claims will be confidential and will be used for no purpose other than evaluating SCMs' claims for this settlement.

60. To receive payment, a SCM shall be required to submit to the Administrator, an executed Form 1. In order to receive a Step 2 payment, the SCM must complete Form 2 including an Optional Narrative Statement if desired, in accordance with the instructions provided. In order to receive a Step 3 payment, the SCM must complete Form 3 in accordance with the instructions provided. All forms must be submitted by the Bar Date unless such period is extended by order of the Court.

61. Form 1, Form 2, and Form 3, accompanying documentation and authorizations shall be mailed by first class mail and shall be deemed submitted upon deposit in a postpaid properly addressed wrapper, in a post office or official depository under the exclusive care and custody of the United States Post Office or when received by mail or personal delivery to the Administrator.

62. If a SCM fails to provide authorizations and information in the manner required by the Court, this failure may result in the denial of the corresponding part of the claim.

63. The City will exercise its right to reduce the amount of any Step 2, 3, and/or 4 payment by exercising its right of recovery of public assistance payments made to the claimant, unpaid City taxes, including personal income tax, real estate and real estate related taxes, tax for City employees who are not residents pursuant to § 1127 of the New York City Charter, unpaid parking tickets, unpaid Environmental Control Board ("ECB") fines, unpaid bills from the New York City Health and Hospitals Corporation and/or delinquent child support payments. SCMs who submit Step 2, 3, and/or 4 claims do so with the understanding that the City of New York must report all payments made to claimants to the Internal Revenue Service.

64. Payments will be made to SCMs in accordance with the foregoing criteria whether or not the claimants are subject to outstanding warrants. However, the foregoing representation in no way affects the validity of any outstanding warrants against SCMs.

65. SCMs who submit claims and whose mailed notice was not returned will be paid by mail and will not be required to make a personal appearance in order to verify their identities unless good cause is shown to the Court to require a personal appearance. SCMs for whom there was no address or whose mailed notice was returned must personally appear before a designee of the Administrator at a time and place to be determined by the Administrator to

verify their identities. Those whose identities are verified by the Administrator will receive payment by mail. Payments will not be made to agents for SCMs other than Court appointed legal representatives. SCMs who prove that they are confined in prisons, hospitals or other institutions will not be required to report to the designated location.

66. SCMs who make a personal appearance as set forth in ¶ “65” must present one of the following forms of identification to establish their identity: (a) driver’s license; (b) passport or visa; (c) green card or other identification issued by the Immigration and Naturalization Service; or (d) other photographic identification card not readily subject to forgery. Other forms of reliable identification may be considered. Defendants retain the right to request additional proof or to dispute any form of identification where it appears there is a reasonable basis to believe the form of identification is fraudulent or where the SCM is unable to produce other satisfactory documentation or information. In such event, notice will be provided to Plaintiffs’ counsel within five (5) business days after discovering the basis to dispute any such form of identification. If the dispute cannot be resolved among counsel, the SCM may make application to the Court.

67. In the event an SCM for whom there was no address or whose mailed notice was returned can prove that s/he resides more than 50 miles from the closest border of New York City or can prove that s/he is a disabled person unable to appear in person in order to verify his/her identity, counsel will attempt to reach an agreement as to an appropriate method for verifying the SCM’s identity without a personal appearance, except that SCMs who have previously been arrested for fingerprintable offenses as defined in section 110-05 of the New York City Police Department Patrol Guide and whose records are not sealed pursuant to CPL 160.60 and/or Executive Law 502(c) may be required to provide fingerprints and a photograph in

order to verify his/her identity, in a manner directed by the Administrator. If no agreement is reached, the SCM may make application to the Court.

VII

EXCLUSION FROM THE SETTLEMENT CLASS

68. Any potential SCM who wishes to be excluded from the Settlement Class must file with the Clerk of the Court, by mail received at least forty-five (45) days before the Fairness Hearing, or as the Court may otherwise direct, in the post office box designated for that purpose, a Request for Exclusion. Originals of all Requests for Exclusion shall be retained by Class Counsel unless and until such originals are filed with the Court. Named plaintiffs will not request exclusion pursuant to this paragraph.

69. Any potential SCM who does not timely file a Request for Exclusion shall conclusively be deemed to have become a SCM and to be bound by this Stipulation of Settlement and by all subsequent proceedings, orders, and judgments herein.

70. The defendants may, in their sole discretion, withdraw from the Stipulation of Settlement if the number of Opt-Outs exceeds 150. Defendants will advise the Court of their election within 30 days after receiving written notice of the final number of Opt-Outs. If from 50 to 149 potential SCMs opt out of the Stipulation of Settlement, the minimum Settlement Amount will be reduced by the product of \$5,000 times the number of opt-outs exceeding 50. If 150 or more potential SCMs opt out of the settlement and defendants elect to proceed with the Settlement, the minimum Settlement Amount will be reduced by \$500,000. If defendants withdraw pursuant to this provision of the Stipulation, the Stipulation of Settlement will be null and void.

VIII

ATTORNEYS FEES

71. Pursuant to applicable law, Class Counsel will make application to the Court for approval of an award of reasonable fees and disbursements, including the reasonable fees and costs of Dr. Grassian based upon the legal standards applicable to such awards. Subject to the provisions of ¶ "23", any amounts paid pursuant to this section shall be paid in addition to any amounts paid in claims to SCM.

IX

NOTICE

72. Notice to the class and notice to individuals arrested for misdemeanors and non-felony offenses in Manhattan and Queens during the period from May 28, 1997 through June 13, 1997 shall be by first class mail, postage prepaid, to all individuals whose addresses are on record in the On-Line Booking System of the New York City Police Department. Both parties and the Administrator will exercise their best efforts to update and verify addresses, including but not limited to addresses of SCMs who are incarcerated. This paragraph shall not limit further appropriate efforts to provide notice.

73. The Administrator shall cause to be published a notice in a form and manner agreed to by the parties. If the parties cannot agree, the Court will determine the content, distribution and frequency of the published notice.

IX

ADMINISTRATIVE COSTS

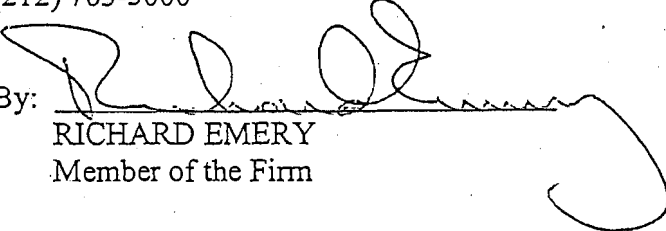
74. All reasonable costs incurred in the administration of this Stipulation of Settlement including, but not limited to, the fees of the Step 3 Examiner, the fees of the Special Master, the fees of the Administrator, costs of disseminating notice to class members, by mail,

publication, or other means agreed to by the parties, receiving and evaluating claims, including deposition costs and the cost of distribution of the monetary payments to the class members will be paid from the Settlement Amount set forth in ¶ “23” above. Following preliminary Court approval of the Stipulation of Settlement, the Administrator may submit, monthly, invoices to the defendants for services rendered and/or for expense reimbursement. All invoices will indicate the dates upon which services were performed, the titles of the employees performing the services, the number of hours of work performed by each title on each date, the hourly rate for each such title, and the total fee for the services performed. The hourly rates shall be \$430 per hour for partner/principal; \$332 per hour for Senior Manager; \$316 per hour for Manager; \$200 per hour Senior Associate and \$120 per hour for Experienced Staff. The City of New York, in consultation with plaintiff’s counsel, will review and approve the Administrator’s reasonable hours and costs for payment. All payments made by defendants, even if disbursed prior to Final Approval of the Settlement, are chargeable to the Settlement Amount described in ¶ “23” above. Either party may contest the reasonableness of the hours and costs. If a dispute cannot be resolved among the parties and

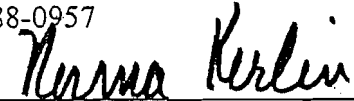
the Administrator, the Court shall make a final determination. The Court shall resolve any disputes regarding the fees of the Step 3 Examiner and Special Master.

Dated: New York, NY
December , 2000

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SO ORDERED:

U.S.D.J.