

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF NEW YORK

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NATHANIEL BRUCE, *et. al.*, both  
individually and on behalf of a class of  
others similarly situated,

Plaintiffs,

v.

THE COUNTY OF RENSSELAER, *et. al.*,

Defendants.

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Index No. 02-CV-0847  
(TJM/DRH)

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PAUL KAHLER, both individually  
and on behalf of a class of others  
similarly situated,

Plaintiffs,

v.

THE COUNTY OF RENSSELAER, *et. al.*,

Defendants.

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Index No. 03-CV-1324  
(TJM/DRH)

**[PROPOSED] ORDER FOR FINAL APPROVAL OF  
SETTLEMENT, AND JUDGMENT, FINAL ORDER AND DECREE**

**THIS CAUSE** coming on for hearing before the undersigned Judge on September 13, 2004 pursuant to this Court's Preliminary Approval Order of April 28, 2004, in order for this Court to conduct a final Fairness Hearing to determine whether the proposed Settlement with Defendants the County of Rensselaer, Daniel Keating, Larry Walraed, Robert Loveridge, Harold Smith, and Kathleen Jimino (hereafter "Defendants") is fair, reasonable and adequate, and the Settlement Class

Members being represented by Class Counsel and Defendants being represented by its attorneys;

**AND THE COURT** having read and considered the Settlement Agreement, including the Notice Program described therein, and Memoranda submitted by Class Counsel, having received evidence at the hearing, having heard arguments from Class Counsel and the Defendants, and having considered the submissions by Class members, and being further advised in the premises, now makes the following Order:

### **FINDINGS OF FACT<sup>1</sup>**

1. These actions were commenced on June 26, 2002 and October 31, 2003, as class actions.

2. After intensive litigation between the parties in these related actions, and several months of intensive, arm's-length negotiations between Class Counsel and Defendants, the parties have reached accord with respect to a Settlement that provides substantial benefits to Settlement Class Members, in return for a release and dismissal of the claims at issue in this case against the Defendants ("Settlement Agreement"). The resulting Settlement Agreement was preliminarily approved by the Court on April 28, 2004.

3. As part of the Order Granting Preliminary Approval, this Court approved a proposed Notice Program and Class Notice, which provided members of the Settlement Class notice of this proposed settlement with Defendants. The Notice Program provided an opportunity for class members to file objections to the Settlement.

4. The settling Parties have filed with the Court a declaration from Kinsella/Novak Communications, Ltd., declaring that the mailing of the Court-approved Notice, consistent with the

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<sup>1</sup> Capitalized terms used in this Order have the meaning assigned to them in the Settlement Agreement, Order of Preliminary Approval of Settlement, Notice of Proposed Settlement of Class Action and this Order.

Notice Program, has been completed.

5. The Court finds that the published, direct notice and Internet posting constitute the best practicable notice of the Fairness Hearing, the proposed Settlement, Class Counsel's application for fees and expenses, and other matters set forth in the Class Notice and the Summary Notice; and that such notice constituted valid, due and sufficient notice to all members of the Settlement Class, and complied fully with the requirements of Rule 23 of the Federal Rules of Civil Procedure, the Constitution of the United States, the laws of New York and any other applicable law.

6. Any persons who wished to be excluded from this Settlement were provided an opportunity to "opt out" pursuant to the Notice. All persons who have validly excluded themselves from this Action have no rights under the Settlement Agreement and shall not be bound by the Settlement Agreement or the final judgment herein.

7. Settlement Class Members are bound by the Settlement, the Settlement Agreement and releases contained therein, and the Final Order and Judgment, and do not have any further opportunity to opt-out of the Action.

8. Any Class member who did not timely file and serve an objection in writing to the Settlement Agreement, to the entry of Final Order and Judgment, or to Class Counsel's application for fees, costs, and expenses, in accordance with the procedure set forth in the Class Notice and mandated in the Order Granting Preliminary Approval of Settlement, is deemed to have waived any such objection by appeal, collateral attack, or otherwise.

9. On the basis of all of the issues in this litigation, and the provisions of the Settlement Agreement, the Court is of the opinion that the Settlement is a fair, reasonable and adequate compromise of the claims against the Defendants in this case, pursuant to Rule 23 of the Federal Rules of Civil Procedure. There are a number of factors which the Court has considered in affirming

this Settlement, including:

a. The liability issues in this case have been vigorously contested.

b. The Court notes that for settlement purposes, this Settlement has the benefit of providing relief to members of the class now, without further litigation, under circumstances where the liability issues are still vigorously contested among the parties to this litigation. This Settlement provides Settlement Class Members with a substantial benefit, which might not have been available were this litigation to continue.

c. This Settlement is clearly a byproduct of hard-fought litigation between the parties, and not a result of any collusion on the part of Class Counsel or Counsel for the Defendants.

10. Class Counsel submitted to the Court and served on the Defendants their application for reasonable attorneys' fees, costs, and expenses consistent with the terms of the Settlement Agreement. This Court has considered Class Counsel's request and hereby grants the request.

11. The claims procedure established under the Settlement Agreement is fair, a simplified process and workable. In any event, the Court will retain jurisdiction to work out any unanticipated problems.

**NOW, THEREFORE, ON THE BASIS OF THE FOREGOING FINDINGS OF FACT AND THE COURT HEREBY MAKES THE FOLLOWING FINDINGS:**

#### **CONCLUSIONS OF LAW**

12. This Court has jurisdiction over the parties and the subject matter of this proceeding.

13. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the following Settlement Class is certified for purposes of final settlement:

All persons who were placed into the custody of the Rensselaer County Jail during the period June 26, 1999, through and including July 1, 2002, after being charged with misdemeanors, violations, violations of probation or parole, traffic infractions or civil court

commitments and were strip searched upon their entry into the Jail. Specifically excluded from the class are Defendants and any and all of their respective affiliates, legal representatives, heirs, successors, employees or assignees.

14. The Court finds that, for the purpose of this Settlement, the requirements of Rule 23 of the Federal Rules of Civil Procedure are satisfied, and that a class action is an appropriate method for resolving the disputes in this litigation. All the prerequisites for Class certification under Rule 23 are present. The Class members are ascertainable and too numerous to be joined. Questions of law and fact common to all Class members predominate over individual issues and should be determined in one proceeding with respect to all Class members. The Class Representatives' claims are typical of those of the Class. The class action mechanism is superior to alternative means for adjudicating and resolving this action.

15. Settlement Class Representatives are entitled to and are hereby awarded a payment of \$66,000, over and above their respective proceeds under the Settlement Agreement and as set forth in the Settlement Agreement, in recognition of the efforts they have undertaken and the risk they have incurred in connection with this Action.

16. The Court grants final approval of the Settlement Agreement, including the distribution of the proceeds of the settlement, as being fair, reasonable and adequate, pursuant to Rule 23 of the Federal Rules of Civil Procedure.

17. The Courts finds that the request for attorneys' fees is reasonable.

**NOW, THEREFORE, ON THE BASIS OF THE FOREGOING FINDINGS OF FACT AND CONCLUSIONS OF LAW, IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:**

18. The Motion for Final Approval of the Proposed Settlement is GRANTED.

19. Settlement Class Representatives are entitled to and are hereby awarded an additional

payment of \$66,000 over and above their claims for damages, in accordance with the Settlement Agreement, in recognition of the efforts they have undertaken and the risk they incurred in connection with this Action.

20. The Class Counsel's application for attorneys' fees and expenses is granted.

21. These Actions and all claims against the Defendants are hereby dismissed with prejudice, but the Court shall retain exclusive and continuing jurisdiction of the Actions, all Parties, and Settlement Class Members, to interpret and enforce the terms, conditions and obligations of this Settlement Agreement.

22. All Class members who have not timely filed a Request For Exclusion are barred and enjoined from commencing and/or prosecuting any settled claim or action against the Defendants. Any Class member who has not timely filed a Request For Exclusion is enjoined from initiating any action, or continuing to prosecute any filed action, in any forum.

This the \_\_\_\_ day of \_\_\_\_\_, 2004.

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The Honorable Thomas J. McAvoy  
Senior United States District Judge