

APPENDIX

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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION**

JODIE SMOOK, Individually)	
and on behalf of all other)	
persons similarly situated,)	
)	CIV 00-4202
Plaintiffs,)	
)	Judge Piersol
v.)	
)	
TODD CHEEVER, in his official capacity)	
as the Executive Director of the)	
Minnehaha Juvenile Detention Center, and)	
MINNEHAHA COUNTY, SOUTH)	
DAKOTA;)	
Defendants.)	

SETTLEMENT AGREEMENT

I. INTRODUCTION

Subject to approval by the United States District Court for the District of South Dakota, this Settlement Agreement sets forth the full and final terms by which the Named Plaintiffs, on behalf of themselves and members of the Settlement Class defined herein, and defendant Minnehaha County have settled and resolved all claims that have been raised in the Complaint (filed in November 2000) and the proposed Amended Complaint (filed in June 2007).

II. NATURE AND RESOLUTION OF THE CASE

A. In November 2000, former class representative Jodie Smook filed a Complaint on behalf of herself and a class of individuals who had been arrested for alleged violations of curfew laws or other minor offenses and detained at the Minnehaha

County Juvenile Detention Center (“JDC”) and strip searched and/or questioned about their religious beliefs and practices.

B. On March 20, 2002, this Court certified this case pursuant to Fed. R. Civ. P. 23(b)(2) to proceed on behalf of “all persons seeking injunctive relief in this action who, when they were under the age of eighteen years old, were charged with minor offenses and were, pursuant to JDC policy, strip searched and/or subjected to questioning about their religious beliefs at the Minnehaha County Juvenile Detention Center from June 1, 1999 through September 14, 1999.” This Court also certified a separate class pursuant to Fed. R. Civ. P. 23(b)(3) of all persons who meet the above class definition who were seeking compensatory and/or punitive damages.

C. Following plaintiffs’ motion to amend the class definition, on June 6, 2003, this Court certified four classes comprised of all persons “who, when they under the age of eighteen years, were charged with minor offenses from November 1, 1997 to a date to be set by the court or were charged with non-felony offenses from April 16, 1999 to a date to be set by the Court” who were (1) strip searched at the JDC and were seeking monetary damages; (2) strip searched at the JDC and were seeking injunctive relief; (3) subjected to questioning about their religious beliefs and were seeking monetary damages; and (4) subjected to questioning about their religious beliefs and were seeking injunctive relief.¹

¹ Minor and non-felony offenses include: absconder, bench warrants, child in need of supervision (“CHINS”), CHINS probation violation, CHINS violation court order, contempt

D. On September 27, 2004, this Court ruled that the JDC's strip search policy violated the Fourth Amendment. *Smook v. Minnehaha County*, 340 F. Supp.2d 1037 (D.S.D. 2004)(*"Smook I"*). This Court also held that plaintiffs' claim for declaratory relief regarding JDC's policy of questioning minors being admitted to the JDC about their religious preferences must be dismissed because defendants had discontinued the practice and plaintiffs had withdrawn their claim for monetary damages on that claim. *Id.* at 1049-1050.² On August 9, 2006, the Court of Appeals for the Eighth Circuit reversed this Court's decision, holding that (1) plaintiffs Smook's strip search was reasonable under the Fourth Amendment; (2) the individual defendants were entitled to qualified immunity; and (3) the class lacked standing to seek injunctive relief. *Smook v. Minnehaha County*, 457 F.3d 806 (8th Cir. 2006)(*"Smook III"*).³ On March 26, 2007, the Supreme Court denied plaintiffs' petition for *writ of certiorari*.

of court-CHINS, contempt of court-delinquent, court-ordered detained, court-ordered disposition, curfew violations, damage to private property, damage to public property, delinquent probation violation, delinquent violation court order, disorderly conduct, disturbance of school, driving while revoked, failure to appear, false impersonation, juvenile arrest warrants, liquor violations, petty theft, runaway, tobacco, truancy, unamenable, underage consumption, unlawful occupancy, and window peaking. In addition, individuals brought to the JDC as a courtesy hold, placement contract, or placement contract with the Department of Corrections may qualify as class members if their alleged underlying offense falls within the definition of minor or non-felony offense.

² Minnehaha County requested that this Court reconsider its summary judgment ruling based upon *N.G. v. Connecticut*, 382 F.3d 225 (2d Cir. 2004), which the Court denied on January 20, 2005. *Smook v. Minnehaha County*, 353 F. Supp.2d 1059 (D.S.D. 2005)(*"Smook II"*).

³ On September 27, 2006, the Eighth Circuit declined plaintiffs' petition for rehearing *en banc*.

E. Following the Eighth Circuit's ruling, plaintiffs filed a motion for leave to substitute as class representatives Nicole Stauffacher, Jillian Clark, and Ross Engelbrecht on behalf of a class seeking damages. Each of the proposed class representatives was brought to the JDC during the pertinent time period for a minor or non-felony offense and each of them was required to remove all of his or her clothing and subjected to a strip search by JDC personnel.

F. In an effort to determine whether the parties could settle this dispute prior to litigating the case for a second time at the district and appellate courts, the parties' counsel, all of whom are experienced class action attorneys, participated in extended negotiations. On February 4, 2009, the parties participated in a mediation with Magistrate Judge Veronica Duffy, District of South Dakota. During the mediation, counsel bargained vigorously on behalf of their clients. All negotiations were conducted at arms' length and in good faith.

G. All parties and their counsel recognize that, in the absence of an approved settlement, they would face a long course of continued litigation, including another round of discovery, motions for summary judgment, and appellate proceedings that would consume time and resources and present each of them with ongoing litigation risks and uncertainties. The parties wish to avoid these risks and uncertainties, as well as the consumption of time and resources, through settlement pursuant to the terms and conditions of this Settlement Agreement. Class counsel believe that the terms of the Settlement Agreement are in the best interests of the Class and are fair, reasonable, and

adequate, and Minnehaha County wishes to bring the litigation to a conclusion on the terms set forth in this Settlement Agreement.

III. GENERAL TERMS OF THE SETTLEMENT AGREEMENT

A. **Definitions.** In addition to terms identified and defined elsewhere in this Settlement Agreement, and as used in this Settlement Agreement, the terms below shall have the following meanings.

1. “Action” means the lawsuit described above and the allegations contained in the Complaint filed in November 2000 and Amended Complaint filed in June 2007.

2. “Claims Administrator” means Settlement Services, Inc. (“SSI”) which has been jointly designated by counsel for the parties to administer the Settlement Fund.

3. “Claim Form” means the form agreed to by the parties and attached to the Notice. The Claim Form must be submitted by eligible Class Members to SSI as part of the claims process. The Claim Form is attached as Exhibit A.

4. “Claimant” means a Class Member who has submitted a timely Claim Form.

5. “Class Counsel” means the law firm of Hughes Socol Piers Resnick & Dym, Ltd.

6. “Class Member” means any person who meets the criteria set forth in the definition of “Settlement Class.”

7. "Defendant" means Minnehaha County.
8. "Defendant's Counsel" means Wood Fuller Shultz & Smith, P.C.
9. "Depository Bank" means Capital City Bank (CCB) or another bank jointly selected by counsel for the parties to receive, hold, invest, and disburse the Settlement Fund, subject to the direction of the Claims Administrator.
10. "Final Approval" means the date on which the United States District Court for the District of South Dakota grants final approval of the Settlement.
11. "Local Counsel" means James Abourezk.
12. "Notice" means the notice of class action that is to be mailed directly to Class Members, pending Court approval, substantially in the form attached hereto as Exhibit B.
13. "Named Plaintiffs" or "Class Representatives" mean Nicole Stauffacher, Jillian Clark, and Ross Engelbrecht.
14. "Preliminary Approval" means the Order of the Court preliminarily certifying the Settlement Class and preliminarily approving this Settlement Agreement and the form of Notice to be sent to Class Members.
15. "Settlement," "Agreement," and "Settlement Agreement" each mean the settlement as reflected in this Settlement Agreement.
16. "Settlement Class" or "Class" means the class that the parties seek to have certified, solely for the purposes of this Settlement Agreement, which is defined as "All persons who were charged with minor or non-felony offenses from November 1,

1997 to December 31, 2003, and were strip searched fully naked at the Minnehaha County Juvenile Detention Center.”

17. “Settlement Fund” means the settlement monies paid by the South Dakota Public Assurance Alliance on behalf of Minnehaha County to the Depository Bank, pursuant to this Settlement Agreement, including all interest earned thereon, to be held, invested, administered, and disbursed pursuant to this Settlement Agreement.

18. “Final Approval Hearing” means the hearing at which the Court will consider final approval of this Settlement Agreement and related matters.

B. **Class Certification.** For purposes of this Settlement only, this Action will be certified, pursuant to Fed. R. Civ. P. 23(a) and 23(b)(3), as a class action on behalf of a settlement class (“Settlement Class”) consisting of:

All persons who were charged with minor or non-felony offenses from November 1, 1997 to December 31, 2003, and were strip searched fully naked at the Minnehaha County Juvenile Detention Center.⁴

IV. COURT APPROVAL/NOTICE

A. **Preliminary Approval.**

1. Prior to execution of this Settlement Agreement, the parties have agreed upon a form for written Notice of this Settlement Agreement to Class Members,

⁴ In response to this Action, beginning January 1, 2004, the JDC amended its policy to require that all strip searches conducted upon a juvenile’s admission to the JDC were conducted only if there is reasonable suspicion, the Director or Assistant Director has approved an unclothed search, and a reasonable suspicion form has been completed. *See* Affidavit of Mr. Todd Cheever, Director of the Juvenile Detention Center, attached as Exhibit C. Pursuant to and on reliance of this Affidavit, Plaintiffs agreed to terminate the class period on December 31, 2003, and do not seek any further injunctive relief.

subject to Court approval.

2. Upon execution of this Settlement Agreement, the parties shall promptly file a motion with the Court seeking:

a. Preliminary certification of the Settlement Class; preliminary approval of the Settlement Agreement; appointment of Class Counsel; approval of class representatives; approval of the forms and methods of notice to be sent to Class Members; approval of procedures established for objections and opt-outs; and approval of the Claim Form.

B. Notice to the Settlement Class.

1. Prior to execution of this Settlement Agreement and as part of the Settlement, Minnehaha County has identified electronically “all persons who were charged with minor or non-felony offenses from November 1, 1997 to December 31, 2003” and were brought to the JDC. Specifically, Minnehaha County has provided Class Counsel with the name, social security number, date of birth, last known address, date(s) of admission to the JDC, and alleged offense(s) of each potential Class Member. Minnehaha County does not have record of whether each potential Class Member was strip searched fully naked; therefore, each Claimant will be required to certify that he or she was subjected to a fully naked strip search on the Claim Form.

2. Within twenty (20) days of Preliminary Approval of this Settlement Agreement, preliminary certification of the Settlement Class by the District Court for the District of South Dakota, approval of notice, claim procedures, and appointment of Class

Counsel and Class Representatives, the Claims Administrator will mail Notice and a Claim Form to each Class Member in the form agreed upon by the parties or such other form as approved by the Court, via first class mail, to the last known address of each Class Member. The parties intend to provide actual notice to each Class Member, to the extent practicable.

3. Prior to mailing the Class Notice and Claim Form, the Claims Administrator will run the address list provided by Minnehaha County through the United State's Postal Service's National Change of Address system to update addresses.

4. The Claims Administrator shall provide to Class Counsel a list of those Class Members who have not been located. The Claims Administrator will maintain a log of its efforts to locate Class Members.

C. **Objections to the Settlement.** Class Member objections to this Settlement Agreement must be submitted in writing, and must include a detailed description of the basis of the objection. Objections must be filed with the Court, with copies served on Class Counsel and Defendant's Counsel, within forty-five (45) days after the Notice is mailed to Class Members. No one may appear at the Settlement Hearing for purpose of objecting to the Settlement Agreement without having filed and served his or her objection(s) in writing within forty-five (45) days after the Notice was mailed to Class Members.

D. **Opt out.** Any Class Member who wishes to opt out of the Settlement Class must mail to Class Counsel and Defendant's Counsel a written, signed statement that he

or she is opting out, within forty-five (45) days after the Notice was mailed to Class Members. Specifically, the statement must state, "I understand that I am requesting to be excluded from the class monetary settlement and that I will receive no money from the settlement." The statement must include the Class Member's name and address. Class Counsel shall file with the Court all opt-out statements that are timely received. The Settlement Class will not include those individuals who file and serve a timely opt-out statement, and individuals who opt out are not entitled to any monetary award under this Settlement Agreement.

E. **Motion Final Approval.** The parties will jointly request that, following the dissemination of notice, claims forms, and an explanation of claim procedures, the Court hold a Final Approval hearing to determine whether this Settlement should be finally approved as fair, reasonable, and adequate pursuant to Rule 23(e).

V. **MONETARY RELIEF**

A. **Settlement Fund**

1. No later than ten (10) days after Preliminary Approval of the Settlement Agreement, the South Dakota Public Assurance Alliance, on behalf of Minnehaha County, shall send via overnight delivery a check in the sum of four hundred and fifty thousand dollars (\$450,000) to the Claims Administrator payable to "*Smook v. Minnehaha County* Qualified Settlement Fund." The funds will be placed in an interest-bearing account titled in the name of the "*Smook v. Minnehaha County* Qualified Settlement Fund," which will be established by the Claims Administrator. This payment

is inclusive of all amounts paid to (a) Class Members; (b) incentive awards to the Named Plaintiffs; (c) attorneys' fees and costs; and (d) all costs of administering the Settlement Agreement.

2. If Minnehaha County does not pay all or part of its obligation on time, the amount owed will accrue interest at the rate of 12% per year, compounded daily. Interest will only apply to the unpaid portion of defendant's obligation.

3. The Claims Administrator shall serve as Trustee of the Settlement Fund and shall act as a fiduciary with respect to the handling, management, and distribution of the Settlement Fund.

B. Distribution of Settlement Funds. Subject to Court approval, the Settlement Fund will be distributed as follows (to which Defendant's Counsel has no objection):

1. One hundred and eighty two thousand and five hundred dollars (\$182,500) to be divided equally on a per search basis (i.e., for each fully naked strip search to which each Class Member was subjected upon arrival at the JDC), among Class Members who submit a valid and timely claim for compensation, up to a maximum of \$1,000 per search;⁵

2. Fifteen hundred dollars (\$1,500) to Named Plaintiff Jillian Clark for her services rendered to the class as class representative, including her participation in the

⁵If fewer than one hundred and eighty three (183) valid claims are submitted, the remaining monies will be paid to Class Counsel.

mediation;⁶

3. Two hundred and fifty dollars (\$250) each to Named Plaintiffs Nicole Stauffacher and Ross Engelbrecht for their services rendered to the class as class representatives;

4. Up to forty thousand dollars (\$40,000) for the costs of administering the settlement, payable to the Claims Administrator;⁷

5. Forty-three thousand dollars (\$43,000) to Class Counsel for the costs of litigating this case;

6. One hundred and eighty two thousand and five hundred dollars (\$182,500) to Class Counsel for attorneys' fees, which includes payment to Plaintiffs' Local Counsel.

C. Claims Filing Procedures for and Payments to Class Members

1. In order to be eligible for an award from the Settlement Fund, Class Members, including Named Plaintiffs, must submit a Claim Form which must be postmarked by the date established by the Court. The Claim Form shall be completed in its entirety, to the extent applicable, including a certification as to how many, if any,

⁶Named Plaintiffs Clark, Stauffacher, and Engelbrecht will also be eligible to receive the same relief as that available to all Class Members.

⁷In addition to the \$182,500, the Settlement Class will also receive any monies remaining after payment to the Claims Administrator for costs of administering the settlement and a set-aside for a Court-approved amount to pay for post-distribution administrative costs. However, if the costs of administration exceed \$40,000, such additional monies will payable from the \$182,500 set aside for class recovery.

times that the Class Member was strip searched fully naked (and not permitted to remain in any clothing) at the JDC.

2. Within a reasonable time period after the date specified for receipt of the Claim Forms, the Claims Administrator shall render a determination as to whether any Class Member submitted acceptable documentary evidence as to any additional qualifying strip searches that were not in the JDC's records.

3. Each Class Member's check will be made payable only in his or her name or in the name of his or her estate. The check will be mailed to him or her at the address provided on the Claim Form.

4. If a Class Member is deceased, an authorized representative may file a Settlement Claim Form on his or her behalf. However, the representative must provide to the Claims Administrator documentation that an estate has been established in accordance with the law and that he or she is the duly appointed administrator or executor by one month before the date of distribution or the claim will be denied.

5. Class Members will be informed that all settlement checks must be cashed within 90 days after the date of issue.

6. Any balance in the Settlement Fund at the time the Fund is closed, which will be more than 90 days after the date of the issuance of checks to Class Members, and after attorneys' fees and expenses, costs of administering the settlement, and Named Plaintiff incentive awards have been paid, will be distributed under the *cy pres* doctrine to the Juvenile Law Center in Philadelphia, Pennsylvania, a non-profit

group working on issues of juvenile justice and welfare reform.

7. During the next regular tax-form processing period following the distribution, the Claims Administrator will prepare all 1099-MISC forms for Class Members who received a settlement check. The Claims Administrator will also prepare all other necessary tax forms relating to the Settlement Fund.

D. **The Costs of Administering the Settlement.** Subject to Court approval, the Claims Administrator's fees and expenses will be paid from the interest earned on the Settlement Fund and then from the principal of the Settlement Fund on a monthly basis, after submission of an invoice to and approval by Class Counsel. Any amount remaining from the allocated \$40,000 for the costs of pre- and post-distribution administration will be divided equally among the valid claims by Claimants.

E. **Class Counsel's Attorneys' Fees and Expenses.**

Class Counsel shall request attorneys' fees and expenses in connection with this Settlement.

Subject to Court approval, Class Counsel will receive payment of plaintiffs' attorneys' fees and expenses from the Settlement Fund to be paid at the same time as the distribution of the Settlement Funds to the Class Members.

VI. OTHER PROVISIONS

A. **Release.** If this Settlement Agreement is given Final Approval by the Court, all Settlement Class members will be bound by the relief provisions of this Settlement Agreement, and the Settlement Agreement will operate as a full, complete and

final release of all claims, known or unknown, that have or could have been asserted by Settlement Class Members arising from or related to their (or, in the case of a surviving spouse or child, their spouse's or parent's) the strip searches that were the subject of this lawsuit, except for any Class Members who requested exclusion and file an individual claim within the statute of limitations.

B. This Settlement Agreement does not, and is not intended to constitute, nor shall it be deemed to constitute, an admission by any party as to the merits, validity, or accuracy of any of the allegations, claims, or defenses of any party in this case. The Class Members continue to assert the validity of their claims. Defendant does not admit or concede, expressly or impliedly, that it has violated any law.

C. **Best Efforts.** Plaintiffs and Defendant will use their best efforts to obtain entry of the orders of the Court contemplated herein, final Court approval of the Settlement, dismissal of the Action, and entry of an Order and Final Judgment incorporating the terms of this Agreement, and will defend the Settlement against any objections or collateral attacks by third parties.

D. **Order and Final Judgment.** If the Settlement is finally approved by the Court following the Final Approval Hearing, the parties will jointly request that the Court enter an Order and Final Judgment pursuant to Fed. R. Civ. P. 23(e) as follows:

1. Certifying the class for settlement purposes and finding that the requirements of Rule 23(a) and 23(b)(3) have been met;
2. Finding that notice has been accomplished as directed, met the

requirements of Rule 23 and due process, and was the best notice practicable under the circumstances;

3. Finding that Named Plaintiffs and Class Counsel have fairly and adequately represented and protected the interests of the Settlement Class;

4. Finally approving the Settlement Agreement as fair, reasonable, and adequate;

5. Dismissing the Action by plaintiffs and all members of the Settlement Class with prejudice against the defendant Minnehaha County.

E. **Failure to Obtain Final Approval.** In the event the Settlement does not receive Final Approval from the Court, or does not become effective for any reason other than the failure of any party to perform obligations under this Agreement, this Agreement shall become null and void.

F. **Due Authority of Attorneys.** Each of the attorneys executing this Settlement Agreement on behalf of one of more parties warrants and represents that he or she has been duly authorized and empowered to execute this Settlement Agreement and bind such party or parties.

G. **Entire Agreement.** This Settlement Agreement is an integrated contract and constitutes the entire agreement among the parties with regard to the subject matter hereof and may not be modified or amended except in writing signed by all signatories or their successor(s) in interest.

H. **Execution in Counterparts.** This Settlement Agreement may be executed

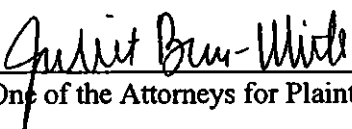
in any number of separate counterparts, each of which will be deemed an original and all of which together will be deemed to be part of this Agreement.

I. **Governing Law.** This Settlement Agreement shall be construed and enforced in accordance with the law of the state of South Dakota.

J. **Notification of Completion of Settlement.** The parties will notify the Court in writing when the processes and payments required herein have been completed.

K. **Retention of Jurisdiction.** The parties will request that the Court retain jurisdiction for purposes of administering, implementing, interpreting and enforcing this Settlement until all notices and processes required herein have been completed, and all payments required hereunder have been made; and that upon certification of completion of these notices and processes, the Court dismiss this Action with prejudice.

Dated: June 25, 2009



One of the Attorneys for Plaintiffs

Matthew J. Piers
Mary M. Rowland
Juliet V. Berger-White
Hughes Socol Piers Resnick & Dym, Ltd.
Three First National Plaza, Suite 4000
Chicago, Illinois 60602
312-580-0100

One of the attorneys for Defendant

Gary Thimsen
Mary Akkerman
Woods, Fuller, Shultz & Smith
300 S. Phillips Avenue, Suite 300
P. O. Box 5027
Sioux Falls, South Dakota 57117-5027

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I. **Governing Law.** This Settlement Agreement shall be construed and enforced in accordance with the law of the state of South Dakota.

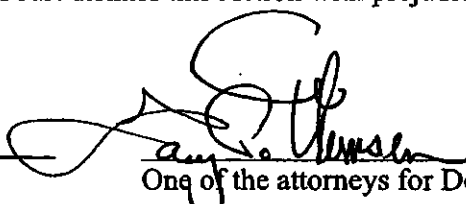
J. **Notification of Completion of Settlement.** The parties will notify the Court in writing when the processes and payments required herein have been completed.

K. **Retention of Jurisdiction.** The parties will request that the Court retain jurisdiction for purposes of administering, implementing, interpreting and enforcing this Settlement until all notices and processes required herein have been completed, and all payments required hereunder have been made; and that upon certification of completion of these notices and processes, the Court dismiss this Action with prejudice.

Dated: June 17, 2009

One of the Attorneys for Plaintiffs

Matthew J. Piers
Mary M. Rowland
Juliet V. Berger-White
Hughes Socol Piers Resnick & Dym, Ltd.
Three First National Plaza, Suite 4000
Chicago, Illinois 60602
312-580-0100



One of the attorneys for Defendant

Gary Thimsen
Mary Akkerman
Woods, Fuller, Shultz & Smith
300 S. Phillips Avenue, Suite 300
P. O. Box 5027
Sioux Falls, South Dakota 57117-5027