

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

	:	
KRISTEN McDONALD, both individually	:	No: 2:13-CV-0503
and on behalf of a Certified Class of Other	:	
Similarly Situated Plaintiff,	:	Judge Watson
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
FRANKLIN COUNTY, OHIO,	:	
	:	
Defendant.	:	
	:	

SETTLEMENT AGREEMENT

Plaintiff Kristen McDonald (“Named Plaintiff”) (individually and on behalf of herself and the members of the class certified in this action (hereinafter “Plaintiffs”)), and Defendant Franklin County, Ohio (hereinafter “Defendant”) (collectively the “Parties”), by and through their respective counsel, hereby enter into this Settlement Agreement (“Settlement Agreement”).

I. RECITALS

1. Named Plaintiff and the members of the certified class are former misdemeanor detainees that were slated, photographed and processed following their arrest while in the custody of the Franklin County Sheriff’s Office at the Franklin County Corrections Center II (“FCCCII”) facility in Franklin County, Ohio. Named plaintiff initiated this action on May 23, 2013, in the United States District Court for the Southern District of Ohio (the “Lawsuit”) alleging, on behalf of herself and others similarly situated, constitutional violations that occurred at the FCCCII from May 23, 2011, to April 31, 2014.

2. Plaintiffs' claims arose from the Franklin County Sheriff's Office's ("FCSO") policy of photographing all tattoos, even those in private areas, and maintaining an electronic record of those photographs.

3. Plaintiffs asserted causes of action alleging violations of the Fourth and Fourteenth Amendments to the United States Constitution pursuant to 42 U.S.C. § 1983, as well as claims for declaratory judgment and injunctive relief. The Lawsuit also sought recovery of attorney's fees and costs, pursuant to 42 U.S.C. §1988 and Fed. Civ. R. 23.4. On April 14, 2015, the Court issued an Order granting Plaintiff's Motion for Class Certification related to their Photography Class ("Class") claims. The certified Class approved by the Court is defined as follows:

"All female detainees who have been placed into the custody of the Franklin County Correctional Center Two ("Jackson Pike"), after being charged with misdemeanors, minor misdemeanors, violations of probation, traffic infractions, civil commitments, city code violations or other minor crimes, including failure to pay fines, and had photographs taken of their breasts, hypogastric region, genitals, and/or buttocks upon their entry into the Jackson Pike facility prior to being arraigned before a judicial officer, pursuant to the policy, custom and practice of the County of Franklin. Detainees who are members of the class had photographs taken of their genitals, their hypogastric region, the lobes of their buttocks and/or the lobes of their breasts at the Jackson Pike facility. The class period commences on May 23, 2011, and extends until April 30, 2014. Specifically excluded from the class are Defendant and any and all of its respective affiliates, legal representatives, heirs, successors, employees or assignees." (ECF No. 92)

4. Following the Court's denial of Plaintiffs' and Defendant's Motions for Summary Judgment relating to the certified Class claims, the Parties entered into an arms-length mediation process with the assistance of mediator Frank A. Ray, Esq., and reached a proposed Settlement of the Lawsuit subject to the approval of the Franklin County Board of Commissioners ("Board"), and thereafter this Court.

5. By entering into this Settlement, Defendant denies any wrongdoing or liability of any kind to the Named Plaintiff and members of the Class)and does not concede any infirmity in the defenses it has asserted or could present during these proceedings or any potential future appeal.

6. By entering into this Settlement, Plaintiffs and Class Counsel recognize the costs and risks of prosecuting 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 Defendant, as well as any and all employees of Defendant who may have devised, promulgated or enforced the policy or participated in the conduct that is the subject of this Settlement Agreement.

7. In the interest of avoiding further expense, delay and inconvenience of further litigation and appeal of issues raised in this Lawsuit, in resolution of all pending and potential claims of Named Plaintiff and all members of the Class and without any admission of liability by Defendant, and in reliance upon the representations contained herein and in consideration of the mutual promises, covenants, and obligations in this Settlement Agreement, and for good and valuable consideration, Plaintiffs and Defendant, through their undersigned counsel, enter into this Settlement Agreement, subject to the approval of the Board and this Court.

8. This Settlement Agreement provides for the dismissal of the Lawsuit with prejudice and a full and complete waiver of liability and release of all claims and causes of action, whether known or unknown, arising from and/or relating to the allegations, claims and causes of action asserted in the Lawsuit in exchange for payment of Two Million Five Hundred Thousand Dollars (\$2,500,000.00) (“Settlement Fund”), with payment to be made in one lump sum. All fees, costs, attorneys’ fees, litigation expenses, and administration expenses, including the employment of private investigators, will be deducted from the Settlement Fund.

9. The remainder of the Class Fund will be distributed to members of the Class, identified and approved by this Court and the Parties, who timely file claims, subject to the requirements established by this Settlement Agreement and/or Settlement Administrator for a *pro rata* distribution and recovery. Any unclaimed funds will be redistributed to the members of the Class. No unclaimed funds are to be returned to Defendant and no *cy pres* distributions have been agreed upon by the Parties and/or to be paid.

10. The parties have engaged in substantial adversarial settlement negotiations prior to reaching this Settlement Agreement, including participating in two full day mediation sessions with Attorney Frank Ray, in addition to informal discussions, which led to this agreement, for which Court approval is sought,

NOW, THEREFORE, it is hereby stipulated and agreed, by and between the undersigned as follows:

II. 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.

- A. Notice Period. “Notice Period” shall mean the time period during which Class Members may object or opt-out of the settlement, extending from the Notice Date until the date 60 days thereafter, including weekends and holidays, provided that if the last day of the Notice Period falls on a weekend or Federal holiday, then the end of the Notice Period shall be the next following day that is not a weekend or Federal holiday.
- B. Class Counsel. “Class Counsel” shall mean: Andrew Baker, Esquire, Baker Law Group, Columbus, Ohio, Elmer Robert Keach, III, Law Offices of Elmer Robert Keach, III, P.C., Albany, New York, Nicholas A. Migliaccio, Esquire and Jason S. Rathod, Esquire,

Migliaccio & Rathod LLP, Washington, District of Columbia, and D. Aaron Rihn and Sara J. Watkins of Robert Pierce & Associates, P.C., Pittsburgh, Pennsylvania.

- C. Class List. The names and last known residence addresses of the approximately 682 Class Members provided to Plaintiff's Counsel following approval by the Court and agreement of the Parties.
- D. Class Members. The Class Members are the approximately 682 female misdemeanor detainees that had photographs taken of their genitals, hypogastric region, the lobes of their buttocks, and/or the lobes of their breasts while in custody at the FCCCII, from March 23, 2011, to April 31, 2014, that were identified and either included in the Class by order of the Court or by agreement of the Parties.
- E. Class Notice. "Class Notice" shall mean the Court-approved form of notice in substantially the same form as Exhibit A attached hereto, or as otherwise approved by the Court, and such other summary notice to be published in accordance with the terms of the Settlement Agreement.
- F. Class Representative: "Class Representative" shall mean Plaintiff Kristen McDonald.
- G. Class Settlement. "Class Settlement" shall mean the terms provided in this Settlement Agreement.
- H. Court. "Court" shall mean the United States District Court for the Southern District of Ohio, The Honorable Judge Michael H. Watson presiding, or his duly appointed or designated successor.
- I. Defendant. "Defendant" shall mean Franklin County, Ohio, and shall include all employees of Franklin County who may have devised, promulgated or enforced the policy or participated in the conduct that is the subject of this Settlement Agreement.

- J. Defendant's Counsel. "Defendant's Counsel" shall mean Jeanine A. Hummer, Esquire, Amy L. Hiers, Esquire, Jesse W. Armstrong, Esquire, and John A. Zervas, Esquire, Franklin County Prosecutor's Office, Columbus, Ohio.
- K. Distribution Amount. "Distribution Amount" shall mean the amount available from the Settlement Fund after payment of the costs of Class Notice and administration of the Settlement, attorneys' fees and expenses, and incentive award to the Class Representative.
- L. Effective Date. "Effective Date" shall mean thirty days from the date on which the Settlement has been finally approved by the Court, and/or the date on which any appeals from final approval are resolved, whichever is later.
- M. 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.
- N. 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.
- O. Litigation or Lawsuit. "Litigation" or "Lawsuit" shall mean the above-captioned lawsuit pending in the United States District Court for the Southern District of Ohio as Case No. 2:13-CV-0503.
- P. Mediator. The Mediator shall mean Frank A. Ray, Esquire.
- Q. Notice Program. "Notice Program" shall mean the program for disseminating the Class Notice to the Settlement Class.
- R. Notice Date. "Notice Date" shall mean the date upon which Class Notice is mailed to the known Settlement Class in accordance with the terms herein.

- S. Objection Date. “Objection Date” shall mean 60 days after the Notice Date, or as otherwise ordered by the Court, by which the Settlement Class must submit any objection to the Settlement Agreement's terms or provisions and submit any required statements, proof, or other materials and/or argument.
- T. Opt-Out Deadline. “Opt-Out Deadline” shall mean 60 days after the Notice Date, or as otherwise ordered by the Court, by which Settlement Class 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.
- U. Opt-Out List. “Opt-Out List” shall mean a written list prepared by the Settlement Administrator of the names of Settlement Class who submit timely Requests for Exclusion or Opt-Out Notices
- V. Opt-Out Notice. “Opt-Out Notice” or “Opt-Out” shall mean a Request for Exclusion.
- W. Parties. “Parties” shall mean the Plaintiff Kristen McDonald individually, the Class Members, and Defendant.
- X. Named Plaintiff. “Named Plaintiff” shall mean Kristen McDonald.
- Y. 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.
- Z. Release. “Release” shall mean the release described in Section X herein.
- AA. Released Claims. “Released Claims” shall mean and include any and all claims or causes of action by or on behalf of the Named Plaintiff and 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 X herein.

BB. Released Parties. “Released Parties” shall mean all persons or entities against whom Released Claims will be released pursuant to the Release described in Section X herein.

CC. Request for Exclusion. “Request for Exclusion” shall mean any request by anyone in the Settlement Class for exclusion from the Settlement Class in compliance with Section VIII herein.

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

EE. Settlement Administrator. “Settlement Administrator” shall mean the qualified party selected by the Parties and designated in the Preliminary Approval Order to administer the Settlement, including implementing the Notice Program. Neither Plaintiffs nor Defendant shall have any responsibility or liability for any acts or omissions of the Settlement Administrator. The Parties have agreed to select RG/2 Claims Administration, LLC as the Settlement Administrator.

FF. Settlement Agreement. “Settlement Agreement” shall mean this Settlement Agreement, and all the exhibits attached hereto.

GG. Settlement Class. “Settlement Class” shall mean: “All female detainees who have been placed into the custody of the Franklin County Correctional Center Two (“Jackson Pike”), after being charged with misdemeanors, minor misdemeanors, violations of probation, traffic infractions, civil commitments, city code violations or other minor crimes, including failure to pay fines, and had photographs taken of their breasts, hypogastric region, genitals, and/or buttocks upon their entry into the Jackson Pike facility prior to being arraigned before a judicial officer, pursuant to the policy, custom and practice of the County of Franklin. Detainees who are members of the class had photographs taken of

their genitals, hypogastric region, the lobes of their buttocks, and/or the lobes of their breasts at the Jackson Pike facility. The class period commences on May 23, 2011 and extends until April 30, 2014.”

HH. Settlement Class Members. “Settlement Class Members” shall mean all persons in the Settlement Class who do not exclude themselves pursuant to Section VIII herein.

II. Settlement Fund. “Settlement Fund” means the qualified settlement fund this Settlement Agreement obligates Defendant to fund in the amount of Two Million and Five Hundred Thousand Dollars (\$2,500,000.00), which is in the form of a non-reversionary common fund and will be established in accordance with 26 C.F.R. §§ 1.468B-1(c) and (e)(1).

JJ. Settlement Amount. “Settlement Amount” shall mean the amount of Two Million and Five Hundred Thousand Dollars (\$2,500,000.00) to be paid by or on behalf of the Defendant.

KK. Settlement Website. “Settlement Website” means a website established by Class Counsel to provide information about the Settlement with a World Wide Web address of [www. Jacksonpikeselement.com](http://www.Jacksonpikeselement.com)

LL. . Summary Notice. “Summary Notice” shall mean a notice in substantially the same form as that which appears at Exhibit B.

III. IDENTIFICATION OF CLASS MEMBERS

The Parties acknowledge and agree that there are approximately 682 Class Members.

IV. REQUIRED EVENTS

Promptly after execution of this Settlement Agreement by all Parties:

1. Class Counsel and Defendant's Counsel shall use their best efforts to cause the Court to enter the Preliminary Approval Order and the Final Judgment in substantially the forms attached hereto as Exhibits D and C, respectively.

2. The Parties to the Settlement Agreement shall jointly move by November 30, 2021 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, including the certification of the Settlement Class for purposes of this Settlement Agreement only, as within the range of fair, reasonable and adequate Settlement for purposes of issuing notice;
- b. Approve the contents of the Class Notice and methods in the Notice Plan;
- c. 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, granting the incentive award application by the Class Representative, and dismissing the Litigation with prejudice.

3. Class Counsel and Defendant's Counsel will use their best efforts, consistent with the terms of this Settlement Agreement, to promptly obtain a Final Judgment.

4. In the event that the Court fails to issue the Preliminary Approval Order or fails to issue the Final Judgment, Class Counsel and Defendant's Counsel agree to use their best efforts, consistent with this Settlement Agreement, to cure any defect identified by the Court; provided,

however, that in no event shall Defendant be required to agree to any such cure that would increase the cost or burden of the Settlement Agreement to the 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.

6. Any disputes regarding the Parties' obligations under this paragraph shall be first submitted to the Court for a referral for mediation to mediator Frank A. Ray or other agreed upon mediator. If such dispute cannot be resolved via mediation, the Court shall decide such dispute. The Court's decision shall be final and binding.

V. DISCLAIMER OF LIABILITY

1. The Parties acknowledge and agree that all undertakings and agreements contained in this Settlement Agreement have been agreed to solely for the purpose of finally compromising, settling and resolving all questions, disputes, claims and issues, whether known or unknown, between them relating to or arising from the allegations in the Lawsuit. This Settlement Agreement and any proceedings taken pursuant hereto shall not in any event be construed as, interpreted as, or deemed to be evidence of an admission or concession by either party for any purpose, or deemed to constitute a waiver of any legal position or any defenses or other rights which either of the Parties might otherwise assert in any context. Neither this Settlement Agreement nor any provision contained therein, nor any documents related hereto or attached hereto, nor any negotiations, statements or testimony taken in connection herewith may be offered

or received as evidence, or used for any other purpose, or in any suit, action or legal proceeding which either of them have or in the future may have with any other person, as an admission or concession of liability or wrongdoing on the part of either party, except in connection with any action or legal proceeding to enforce this Settlement Agreement.

2. The Parties have reached this Settlement through arms-length negotiations and to avoid the costs and delays of further disputes, litigation, and negotiations among them, and after extensive negotiations with an independent mediator, subject to approval by the Board and the Court.

3. This Settlement Agreement has been entered into without any concession of liability or nonliability whatsoever and has no precedential or evidentiary value whatsoever.

VI. SETTLEMENT TERMS

A. Settlement Fund

1. Within fifteen (15) calendar days of the entry of the Preliminary Approval Order, or within 30 days of the Board approving the Settlement Agreement by resolution, whichever is later, Defendant shall pay the amount of Two Million and Five Hundred Thousand Dollars (\$2,500,000.00), into the Settlement Fund established by the Settlement Administrator.

2. All administrative expenses, including the costs of Settlement administration, website administration and the provision of notice to class members, as well as the amounts awarded by the Court for attorneys' fees and costs, and incentive award to the Class Representative, will be deducted from the Settlement Fund prior to determining the "Distribution Amount."

B. Distribution of Settlement Fund

1. Class counsel will petition the Court for an incentive award for the Named Plaintiff Kristin in the amount of \$50,000 for her willingness to step forward and file suit, and

otherwise commit time and effort as a Class Representative, including providing deposition testimony and other crucial information to support the prosecution of the litigation. This amount was determined to be appropriate only after an agreement had been reached on the award to the Class Members and other terms of this Agreement. In the event the incentive award is not finally approved by the Court, the rest of this Agreement shall remain in full force and effect subject to the approval of the Court. Named Plaintiff will not receive any payments other than the incentive award should such a payment be approved by the Court and exceed her expected settlement payment.

2. This Settlement Agreement was arrived at after extensive arm's length negotiations conducted in good faith by counsel for the Parties. The Parties did not discuss or negotiate attorneys' fees until after relief had been fashioned for the Class. Class Counsel will petition the Court for an award of attorneys' fees equating to 33 ¹/₃% (one-third) of the entire Settlement Fund, or \$833,333.33. Class Counsel will also petition the Court for an award of costs and expenses, which were reasonably incurred in the prosecution of this litigation.

3. Defendant shall not oppose Class Counsel's application for said award of fees and costs, nor will it oppose any appeal filed by Class Counsel relative to their application for an award of attorneys' fees. The Parties acknowledge that Class Counsel spent a significant amount of time litigating this matter and would be entitled to fees should they file an application as representatives of a prevailing party under 42 U.S.C. § 1988 or Fed. R. Civ. Proc. Rule 23. In the event the attorneys' fees and costs are not finally approved by the Court, the rest of this Agreement shall remain in full force and effect subject to the approval of the Court.

4. The remaining portion of the Settlement Fund will be distributed to Settlement Class Members on a *pro rata* basis. No Settlement Class Member shall be entitled to more than

his or her individual share of the Settlement Fund. Defendant will not unreasonably withhold consent to the plan of distribution developed by Class Counsel.

5. Either the Settlement Administrator or Class Counsel will provide Defendant the most up-to-date class list that was used to provide notice to the certified class. Defendant will then provide Class Counsel with a revised Class List on or before the date of preliminary approval reflecting any new contact information for Class Members in the possession of the Franklin County Sheriff's Office.

6. All payments to be made under this Settlement, including to Settlement Class Members, the Named Plaintiff, and Class Counsel will be made within twenty-one (21) days of the Effective Date. Each mailed check shall become void one-hundred eighty (180) days after issuance. Any funds from uncashed checks will be held by the Claims Administrator for an additional ninety (90) days during which time additional efforts will be made to reach any Settlement Class Members who have not cashed their checks. If any funds remain at the conclusion of this 90-day period, they will be redistributed via a supplemental pro rata payment to identified Settlement Class Members. No funds will revert to the Defendant.

7. Any funds payable to Settlement Class Members who are deceased will be paid to their Estate and/or legal beneficiaries, pursuant to the terms of Ohio law.

C. Injunctive Relief

1. Upon the Effective Date, Defendant will enact a policy forbidding photographing the tattoos of misdemeanor detainees as asserted in this Lawsuit absent extraordinary circumstances, and will train its employees about the new policy in due course. Extraordinary circumstances include developments in the law with respect to misdemeanor detainees.

2. Upon the Effective Date, all photographs of the tattoos of class members will be sealed by Court Order. If necessary, and, upon notice to Plaintiff, Defendant shall petition the

Court for access to the photographs. Plaintiff will not unreasonably withhold consent to Defendant's request. The County will destroy these photographs within five years after the date of the Settlement Agreement.

VII. NOTIFICATION TO CLASS MEMBERS

A. Responsibilities of the Settlement Administrator

1. The Settlement Administrator shall implement and administer the Notice. The Settlement Administrator shall be responsible for, without limitation: (i) mailing the Class Notices; (ii) responding to requests for a copy of the Class Notice; (iii) otherwise administering the Notice Program, (iv) distributing payments to the Settlement Class Members including any associated tax reporting, return and filing requirements, (v) and performing such additional duties as the Parties may mutually direct. The Notice Program shall comply with all requirements of applicable law. The Settlement Administrator will maintain an appropriate insurance policy to protect against any violation of its fiduciary duty to the Court, the Settlement Class, Defendant or Class Counsel.

2. The Settlement Website will provide information about the Settlement to the Settlement Class, including notice and claims documents, court documents, and a copy of the Settlement Agreement.

B. Notice

1. Notice will be provided to the Settlement Class by direct mailing and emailing of Class Notice to all individuals at their last known or readily ascertainable addresses. The published notice and mailed notice will be provided in English, and will provide instruction that a Spanish copy of either notice will be provided upon request. Additional notice will be provided to the Settlement Class by way of posting of the Class Notice in the Jackson Pike facility. The

Notice will be posted within one week of the Preliminary Approval Order and will remain posted through entry of the Final Judgment.

2. The Settlement Administrator shall also provide a copy of the Class Notice to anyone who requests notice through written communication to the Settlement Administrator, or through a toll-free telephone number to be established by the Settlement Administrator. Class Counsel will also provide downloadable copies of notices, court decisions and other information to the Settlement Class through a dedicated internet website, www.jacksonpikeselement.com.

3. Defendant will cooperate in the Notice Program by providing Class Counsel and/or the Settlement Administrator with information necessary to effect notice to the Settlement Class, including providing to Class Counsel and/or the Settlement Administrator information sufficient to determine all last known addresses; and, if available, telephone numbers and email addresses; and Social Security numbers for all Class Members.

4. If, after the initial mailing, any Class Notices are returned as undeliverable, the Settlement Administrator will attempt to locate the relevant Settlement Class Members by way of a national locator database or service and, if another address is found, re-mail the Notice to that new address. If any notices continue to be undeliverable after address locator efforts are exhausted, Class Counsel and/or the Settlement Administrator will direct a private investigator to track down addresses for any such Class Members. Any private investigators' fees will be deducted from the Settlement Fund. The Settlement Administrator and Class Counsel will also work to identify class members on social media for purpose of providing them with notice.

5. The Settlement Administrator shall provide a declaration to the Court, with a copy to Class Counsel and Defendant's Counsel, attesting to the measures undertaken to provide Notice of the Settlement.

6. 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 Defendant, Class Counsel, or by individual Settlement Class Members, shall be treated as confidential and shall be used only by the Settlement Administrator as required by this Settlement Agreement.

7. Class Counsel and/or the Settlement Administrator will employ an interpreter on a per diem basis to assist Settlement Class Members whose primary language is Spanish in filing claims under the Settlement. Any costs of this interpreter will be paid out of the Settlement Fund.

VIII. REQUESTS FOR EXCLUSION BY THE SETTLEMENT CLASS

1. Any person in the Settlement Class 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, does not wish to be a Settlement Class Member and elects to be excluded from any judgment entered pursuant to the Settlement.

2. Any person in the Settlement Class who submits a timely Request for Exclusion may not file an objection to the Settlement and shall be deemed to have waived any rights or benefits under this Settlement Agreement.

3. Not later than three (3) business days after the Opt-out deadline for submission of Requests for Exclusion, the Settlement Administrator shall provide an Opt-Out List to Class Counsel and to Defendant's Counsel together with copies of each Request for Exclusion. Class

Counsel and Defendant's Counsel shall jointly report the names appearing on the Opt-Out List to the Court at the time of the Final Approval Hearing.

4. Class Counsel agrees that they will not represent any individuals who opt out from the Settlement in asserting claims against the Defendant that are the subject of this Settlement Agreement.

IX. OBJECTIONS BY SETTLEMENT CLASS MEMBERS

1. Any Settlement 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 that the person is a Settlement Class Member, 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.

2. 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 Settlement Class Members' objections to the Settlement Agreement, in accordance with such Settlement Class Members' due process rights. The Preliminary Approval Order and Class Notice will require all Settlement 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 one of the Class Counsel and Defendant's 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.

3. In accordance with law, only Settlement Class Members who have objected to the Settlement pursuant to the terms immediately above may appeal any Final Judgment. The proposed Final Judgment shall provide that any Settlement Class Member who wishes to appeal the Final Judgment, which appeal will delay the distribution of the Settlement to Settlement Class Members, shall post a bond with this Court in an amount to be determined by the Court as a condition of prosecuting such appeal.

X. RELEASE, DISMISSAL OF ACTION, AND JURISDICTION OF COURT

1. By this Settlement Agreement and specifically as provided in this section, Defendant, and all of its respective affiliates, predecessors, successors and assigns, officers, agents, representatives, attorneys, insurers and employees (the “Released Parties”) are released from any and all claims or causes of action that were, could have been, or should have been asserted by the Named Plaintiff and/or any Settlement Class Member, whether known or unknown (“Released Claims”), against the Released Parties, based upon or related to the actions or omissions that are the subject of Plaintiff’s Complaint and/or this Settlement Agreement.

2. When the Settlement Agreement is final, as of the Effective Date, all Settlement Class Members, including the Named Plaintiff, waive all rights to any and all claims relating to damages or reimbursement of any kind for the Released Claims. This waiver and release shall include a full release and waiver of any unknown rights regarding the Released Claims that may exist as of the Effective Date.

3. As of the Effective Date, the Settlement Class Members, including the Named Plaintiff, 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 regarding any acts or omissions by the Released Persons with respect to the Released Claims.

4. Each Settlement Class Member shall be deemed to have submitted to the jurisdiction of the Court. This Settlement Agreement is subject to and conditioned on a Final Approval Hearing conducted by the Court and entry of a Final Order of Approval of Settlement by the Court, providing the specified relief as set forth below, which relief shall be pursuant to the terms and conditions of this Settlement Agreement and the Parties' performance of their continuing rights and obligations hereunder.

5. The Final Order of Approval of Settlement shall be deemed final on the Effective Date as defined previously. Such Final Order of Approval of Settlement shall:

- a. Dismiss with prejudice all claims in the action as to the Released Parties, including all claims for monetary damages, declaratory relief, and injunctive relief, each side to bear its own costs and fees except as otherwise provided for in this Settlement Agreement;
- b. Order that all Settlement Class Members are enjoined from asserting against any Released Parties any and all claims that any Settlement Class Member had, has or may have in the future arising out of or based on the Released Claims;
- c. Release all Released Parties from the claims that any Settlement Class Members has, had or may have in the future against such Released Parties arising out of or based on the Released Claims;
- d. Determine that this Settlement Agreement is entered into in good faith, is reasonable, fair and adequate, and in the best interest of the Class; and
- e. Reserve the Court's continuing and exclusive jurisdiction over the Parties to this Settlement Agreement, including Defendant and Settlement Class Members, to administer, supervise, construe and enforce the Settlement Agreement in accordance with its terms for the mutual benefit of all Parties.

6. The Parties will take all necessary and appropriate steps to obtain Preliminary and Final approvals of the Settlement Agreement, and dismissal of the action with prejudice, with all Parties bearing their own fees and costs unless otherwise set forth in this Settlement Agreement.

7. This Settlement Agreement does not affect the rights, if any, of a person in the Settlement Class who timely and properly excludes herself from the Settlement; such person shall be deemed to have submitted to the jurisdiction of the Court with respect to those rights, if any.

8. 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 Settlement Class Members from prosecuting claims that are released pursuant to the Settlement Agreement.

9. Upon the Effective Date: (i) the Settlement Agreement shall be the exclusive remedy for any and all Released Claims of Settlement 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) Settlement Class Members and their successors, predecessors and assigns shall not initiate, assert, or prosecute any and all Released Claims against any Released Parties in any federal or state court in the United States or any other tribunal.

10. Except as otherwise provided under the terms of this Settlement Agreement, the Parties enter into this agreement solely for the purposes of this Settlement and implementation of the Settlement. If the Settlement fails to be approved or otherwise fails consummation, then this Settlement Agreement is hereby withdrawn.

XI. REPRESENTATIONS, WARRANTIES, AND COVENANTS

1. Class Counsel, who are signatories hereof, represent and warrant that they have the authority, on behalf of Plaintiffs, to execute, deliver, and perform this Settlement Agreement

and to consummate all of the transactions contemplated hereby. This Settlement Agreement has been duly and validly executed and delivered by Class Counsel and Plaintiffs and constitutes their legal, valid, and binding obligation.

2. Defendant, through its undersigned attorneys, represent and warrant that it has the authority to execute, deliver, and perform this Settlement Agreement and to consummate the transactions contemplated hereby.

3. The Parties agree that the Settlement Agreement must be approved by adoption of a resolution of the Franklin County Board of Commissioners before it constitutes a legal, valid, and binding obligation.

XII. MISCELLANEOUS PROVISIONS

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

2. 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 and positions as if the mediation had never occurred and the Settlement Agreement had not been entered into.

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

4. 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 provision had not been contained herein.

5. 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.

6. Any liens to be asserted by Defendant against any members of the class who file claims on the settlement will be asserted against that class member individually. No liens will be served by the County on Class Counsel or the Settlement Administrator.

7. 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.

8. The Parties agree that any disputes regarding the terms and conditions of this Settlement Agreement shall be submitted to mediator Frank A. Ray, Esquire, who shall attempt to mediate any such dispute. If such dispute cannot be resolved via mediation, the Court shall decide such dispute. The Court's decision shall be final and binding.

9. This Settlement Agreement, together with its exhibits, contains all the terms and conditions agreed upon by the Parties 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 Settlement Agreement shall be deemed to exist, or to bind the Parties, or to vary the terms and conditions contained herein, except as expressly provided herein.

10. This Settlement Agreement supersedes all prior communications regarding the matters contained herein between the Parties or their representatives. This Settlement Agreement is an integrated agreement and contains the entire agreement regarding the matters herein between the Parties, and no representations, warranties or promises have been made or relied on by any party hereto other than as set forth herein. This Settlement Agreement was drafted by counsel for the Parties hereto, and there shall be no presumption or construction against any party.

11. This Settlement Agreement may be signed in counterparts.

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

AGREED AND ACCEPTED:

Plaintiff Kristen McDonald

Date: _____

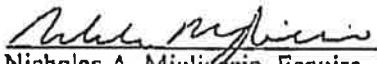


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Date: 11/3/2021

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Date: _____


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Date: 11/3/2021


AGREED AND ACCEPTED:

Defendant Franklin County, Ohio



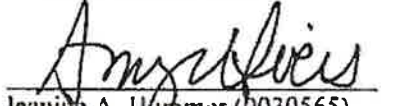
Kenneth W. Wilson, Administrator
Franklin County

Date: 11/23/21


Dallas Baldwin, Sheriff, Franklin
County

Date: 11-23-21

G. Gary Tyack
Prosecuting Attorney
Franklin County, Ohio


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Date: 11/22/21

AGREED AND ACCEPTED:



Plaintiff Kristen McDonald

Date: 11/03/21

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Date: _____

AGREED AND ACCEPTED:

Defendant Franklin County, Ohio

Kenneth Wilson, Administrator
Franklin County

Date: _____

Dallas Baldwin, Sheriff, Franklin
County

Date: _____

G. Gary Tyack
Prosecuting Attorney
Franklin County, Ohio

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Date: 11/13/21