

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TENNESSEE  
AT CHATTANOOGA**

DARRELL EDEN; RANDY BACON;  
ESTATE OF CHRISTOPHER BROWN;  
through personal representative Paula Rhea  
Brown; ESTATE OF MARTIN  
CHOUINARD, through administrator *ad*  
*litem* April Hancock; SANDRA  
CULBERTSON; ESTATE OF DENISE  
CULPEPPER, through personal  
representative April Richard; LAURA  
FULLER; ESTATE OF BRANDON GASH,  
b/n/k Harry and Sheryl Gash; BENJAMIN  
NEWTON HANNAH; KRIS HOLDER;  
AMANDA LENNIE; SHELBY LONG;  
TERA MILLER; BRYAN WAMPLER; and  
SHARON WATERS, on behalf of  
themselves and all others similarly situated;  
and AVERY L. SHARP; CHELSEA  
COULTER; KENDRA MICKEL; and  
ZACHARY GUINN, on behalf of themselves  
and all others similarly situated,

Plaintiffs,

vs.

BRADLEY COUNTY, TENNESSEE;  
SHERIFF STEVE LAWSON, in his official  
capacity; CAPTAIN JERRY JOHNSON,  
JR., in his official capacity; ERIC WATSON,  
in his individual capacity; and CAPTAIN  
GABRIEL THOMAS, in his individual  
capacity,

Defendants.

Case No.: 1:18-cv-217-CHS

**CLASS ACTION**

**COMPLAINT PURSUANT TO 42 U.S.C.  
1983**

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**SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release (“Settlement Agreement” or “Agreement”) is made and entered into by and among (1) Putative Class Representatives / Named Plaintiffs Darrell Eden; Randy Bacon; the Estate of Christopher Brown, through personal representative Paula Rhea

Brown; the Estate of Martin Chouinard, through administrator *ad litem* April Hancock; Sandra Culbertson, the Estate of Denise Culpepper, through personal representative April Richard; Laura Fuller, the Estate of Brandon Gash, by next of kin Harry and Sheryl Gash; Benjamin Newton Hannah; Kris Holder; Amanda Lennie; Shelby Long; Tera Miller; Bryan Wampler; Sharon Waters, Avery L. Sharp, Chelsea Coulter, Kendra Mickel, and Zachary Guinn, on behalf of themselves their heirs, executors, administrators, successors and assigns, and of all members of the Damages Class and Injunctive Relief Class (the “Classes”), and (2) Defendants, Bradley County, Tennessee (“Bradley County”); Sheriff Steve Lawson, in his official capacity; Captain Jerry Johnson, Jr., in his official capacity; Eric Watson, in his individual capacity; and Captain Gabriel Thomas, in his individual capacity, all of whom are Parties to the Litigation, as those terms are defined *infra* in Section 2 of this Agreement.<sup>1</sup>

The Agreement, and all exhibits and attachments hereto, are specifically incorporated herein by reference and are made for the sole purpose of settling the Litigation and in compromise of disputed claims. Because the Agreement resolves the Litigation on a class-wide basis, it must receive preliminary and final approval from the Court. Accordingly, the Parties enter into this Agreement on a conditional basis, and, if (a) the Court does not enter the Final Approval Order, (b) the Final Judgment entered by the Court materially alters the Final Approval Order or this Agreement, or (c) appellate rulings materially alter the Final Approval Order or this Agreement,

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<sup>1</sup> The terms included in this Settlement Agreement are defined *infra* in Section 2 or as otherwise indicated herein. All such terms shall be used as defined in Section 2 (or otherwise herein).

this Agreement shall be deemed void *ab initio*<sup>2</sup> such that it has no force or effect and shall not be referred to or used for any purpose.<sup>3</sup>

Defendants deny all claims as to liability, damages, penalties, interest, fees, restitution, injunctive relief, and all other forms of relief. Defendants further deny the class allegations set forth in the pleadings and deny that the claims therein warrant class certification other than for settlement purposes. More specifically, Defendants deny that they have violated the Constitution of the United States or any federal or state laws or statutes, regulations, or guidelines promulgated pursuant to any statute, or any other applicable laws, regulations, or legal requirements, including common law. Neither this Agreement, nor any of its terms or provisions, nor any of the negotiations connected with it, shall be construed as an admission or concession by Defendants of any violations or failures to comply with any applicable duty, obligation, and/or law. Neither this Agreement, nor any of its terms or provisions, nor any of the negotiations connected with it, shall be admissible as evidence in the Litigation, or any other action or legal proceeding, in any manner whatsoever, except as necessary in a proceeding to enforce the terms of this Agreement.

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<sup>2</sup> For purposes of this Agreement, a material alteration means only the following: (1) any increase in the amount of the Settlement Fund above **three million eight hundred thousand (\$3,800,000.00) dollars**; (2) any increase or extension of the Injunctive Relief beyond the terms of this Agreement; (3) any alteration of Section 6(f), *infra*, under which the valid exclusion (“opting-out”) of certain Damages Class Members from membership in the Damages Class voids this Agreement; and/or (4) with respect to all releases contemplated herein, any alteration of the terms and conditions concerning same and the persons and/or entities from whom they will be obtained and to whom they will apply. In the circumstances referenced above, this Agreement shall *not* be deemed void *ab initio* concerning terms already effectuated, namely any funds paid for Settlement Administration.

<sup>3</sup> If this Agreement is deemed void as discussed above, the negotiation, terms, and entry of it shall remain subject to the provisions of Rule 408 of the Federal Rules of Evidence.

## **1. DESCRIPTION OF THE LITIGATION**

On September 18, 2018, plaintiff Darrell Eden filed the initial lawsuit in this Court as a proposed class action (Case No. 1:18-cv-217) against Defendants (a) Bradley County, (b) then-Sheriff Eric Watson of the Bradley County Sheriff's Office ("BCSO"), in his official and individual capacities, (c) Captain Gabriel Thomas of the BCSO, in his official and individual capacities, and (d) "John and Jane Doe" BCSO corrections deputies, in their official and individual capacities. (*See* Class Action Compl. [1].) On July 23, 2021, plaintiff Darrell Eden and the additional Named Plaintiffs listed above filed the First Amended and Supplemental Class Action Complaint [92] ("Amended Complaint"), against Bradley County, Sheriff Steve Lawson (in his official capacity), Captain Jerry Johnson (in his official capacity), Eric Watson (in his individual capacity), and Captain Gabriel Thomas (in his individual capacity).<sup>4</sup> In addition, the Amended Complaint identified and named multiple class claimants in addition to Darrell Eden.

Proceeding pursuant to 28 United States Code section 1983 and the Eighth and Fourteenth Amendments to the United States Constitution, Named Plaintiffs allege that, during the Damages Class Period, Bradley County has knowingly maintained a system of inmate health care at the Bradley County Jail (the "Jail") that falls below the constitutional minimum, which has subjected (and continues to subject) all inmates to a substantial risk of serious harm. In addition, Named Plaintiffs allege that this constitutionally deficient system of health care has, in fact, resulted in Eighth and/or Fourteenth Amendment injuries to them and to an unknown number of additional inmates (and putative Class Members), and that all such injuries are attributable to affirmative

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<sup>4</sup> As noted in the Amended Complaint, pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, with respect to claims against them in their official capacities, Sheriff Lawson and Captain Jerry Johnson are successors of former Sheriff Watson and Captain Gabriel Thomas and were automatically substituted for them as parties. (*See* Am. Compl. 10 n.5.) In the Amended Complaint, Named Plaintiffs abandoned their claims against the John and Jane Doe defendants.

policies or customs of (1) Bradley County and (2) those entities whose affirmative policies or customs they allege are imputable to it, *viz.*, (a) the BCSO and (b) Quality Correctional Health Care, Inc. (“QCHC”) and Fast Access Correctional Healthcare, PLLC (“Fast Access”), the CMSPs that have rendered health care to inmates pursuant to contracts with Bradley County during the Damages Class Period.<sup>5</sup> Defendants are entering into this settlement agreement based on the Litigation referred to herein and doing so independent of any other claims or litigation, including by anyone who is not a party to this Litigation or who opts out of same as described herein and as provided in Rule 23.

On behalf of themselves and the putative Classes, Named Plaintiffs seek class certification pursuant to Rules 23(a), 23(b)(2) and 23(b)(3) of the Federal Rules of Civil Procedure.

## **2. DEFINITIONS**

As used in this Agreement, the following terms have the meanings specified below:

- a. “Adjusted Feinberg Election” means an Approved Feinberg Election adjusted as set forth in Section 8 of this Agreement.
- b. “Adjusted Individual Damages Award” means an Individual Damages Award adjusted as set forth in Section 8 of this Agreement.
- c. “Aggregate Death Award” means the sum of all Individual Death Awards.
- d. “Aggregate Feinberg Elections” means the sum of all Approved Feinberg Elections.
- e. “Aggregate Incentive Award” means the sum of all Incentive Awards.
- f. “Aggregate Damages Award” means the sum of all Individual Damages Awards.

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<sup>5</sup> Named Plaintiffs and the putative Classes also allege state law causes of action pursuant to Tennessee Code Annotated sections 8-8-302 and 8-8-303 (specifically for willful and wanton conduct and/or gross negligence) and for punitive damages.

- g. “Approved Claimant” means a Damages Class Member with one or more Approved Damages Claims.
- h. “Approved Damages Claim” means a Damages Class Claim Form submitted by an Authorized Person that: (i) is a Valid Claim Form; and (ii) sets forth a valid Damages Claim (*i.e.*, receives an affirmative Damages Claim Determination by the Special Master). An Approved Damages Claim includes and can be compensated as: (a) an Approved Feinberg Election, (b) an Individual Damages Award, or (c) an Individual Death Award.
- i. “Approved Feinberg Election” means a Feinberg Election that has been approved pursuant to the limited evaluation of Feinberg Elections by the Special Master described *infra* Section 7(m).
- j. “Attorney’s Fees Amount” means the amount of attorney’s fees to be paid by Defendants to Class Counsel, as specified in Sections 4(d) and 13(g) of this Agreement, subject to approval by the Court.
- k. “Authorized Person” means an individual who is, at the time he or she takes any action described or contemplated within this Agreement, (1) an adult over the age of eighteen (18) years who purports to satisfy the definition of a claimant under the Damages Class definition, undertaking such action on his or her own behalf; or (2) if the claimant is deceased or legally incapacitated, an individual or entity authorized under federal, state, or tribal law to act on behalf of another individual purported to satisfy the definition of a claimant under the Damages Class definition.
- l. “Claims Deadline” means the date by which all Claim Forms must be postmarked or received to be considered timely and shall be one hundred (100) days after the Preliminary Approval Date. The Claims Deadline shall be clearly set forth in the Preliminary Approval Order,

Final Approval Order, Final Judgment, Class Notice, and Claim Forms. Except as otherwise provided herein, no Claim Forms submitted after the Claims Deadline can serve as the basis for compensation under this Agreement, and the Settlement Administrator and Special Master are specifically barred and prohibited from reviewing any such Claim Forms for purposes of any activity related to the Claims Process.

- m. "Claims Period" shall mean the 100-day period during which Claim Forms may be submitted to the Settlement Administrator, except as otherwise provided herein. The Claims Period shall commence upon entry of the Preliminary Approval Order and end on the Claims Deadline, subject to any exceptions otherwise provided herein.
- n. "Claims Process" means the procedures employed by the Settlement Administrator and Special Master to process, evaluate, and assign values to Damages Claims pursuant to this Agreement. The Claims Process is part of the Settlement Administration, defined *infra*.
- o. "Class Counsel" means attorneys C. Scott Johnson, William J. Rieder, and Joseph Alan Jackson II of Spears, Moore, Rebman & Williams, P.C. ("SMRW"); and J. Allen Murphy, Jr. of the Law Firm of J. Allen Murphy, Jr.
- p. "Class Representatives" and/or "Named Plaintiffs" means and refers to the following: Plaintiffs Darrell Eden; Randy Bacon; the Estate of Christopher Brown, through personal representative Paula Rhea Brown; the Estate of Martin Chouinard, through administrator *ad litem* April Hancock; Sandra Culbertson; the Estate of Denise Culpepper, through personal representative April Richard; Laura Fuller, the Estate of Brandon Gash, by next of kin Harry and Sheryl Gash; Benjamin Newton Hannah; Kris Holder; Amanda Lennie; Shelby Long; Tera Miller; Bryan Wampler; Sharon Waters; Avery L. Sharp; Chelsea Coulter; Kendra Mickel; and Zachary Guinn.

- q. “Classes” refers to the Damages Class and Injunctive Relief Class.
- r. “Class Members” refer to the Damages Class Members and Injunctive Relief Class Members, collectively.
- s. “Contract Medical Services Provider” or “CMSP” means any medical company or provider providing onsite health care services to Jail Inmates pursuant to contract or agreement with Bradley County and/or the BCSO.
- t. “Corroborating Medical Evidence” or “Medical Evidence” means information and/or documentation about any illness, injury, or condition that forms the basis of a Damages Claim. It includes, but is not limited to, information supplied by a licensed provider of medical services about the existence, cause, and severity of any illness, condition, or injury that forms the basis for or is otherwise related to a Damages Claim. In addition to information from a licensed provider of medical services (*e.g.*, medical records or a letter from a treating medical provider), such evidence may take other forms, *e.g.*, photographs or reports from third parties, such as family members. Feinberg Elections need not be supported by Corroborating Medical Evidence. Otherwise, as set forth herein and in the Damages Claim Schedule, at least part of the Medical Evidence submitted in support of a Damages Claim shall be from a licensed provider of medical services, except that nothing in this definition or Settlement Agreement shall preclude the Special Master, in the exercise of his reasonable discretion, and in consultation with Class Counsel, from waiving that requirement on a case-by-case basis.
- u. “Court” means the United States District Court for the Eastern District of Tennessee, Southern Division, at Chattanooga, Judge Christopher H. Steger, or any judge who shall succeed him as the Judge in this Litigation, presiding.

- v. “Damages Allocation” means that portion of the Settlement Fund that is specifically and exclusively allocated for the payment of Approved Damages Claims, which amount is **Two Million One Hundred Thirty Thousand, Six Hundred Thirteen Dollars and Fifty-Seven Cents (\$2,130,613.57)**, as discussed in Sections 8 and 9 of this Agreement. In addition, as discussed *infra*, if the Special Master expends less than the maximum \$200,000.00 available for Special Master Fees, the remainder (over the \$50,000.00 minimum Special Master Fees) shall be added to this amount (forming the First Adjusted Damages Allocation) for payment of Approved Damages Claims. As discussed *infra*, to the extent that any person identified in section 6(f) requests exclusion from the Damages Class as described in Section 6(e), the Damages Allocation shall be reduced by the amount identified for such person in Section 6(f).
- w. “Damages Claim” means a claim for any discrete instance of (a) the failure to provide medical care for a diagnosed or obvious medical condition; or despite any medical attention provided for said condition, (b) a worsening of said condition and/or unnecessary pain, suffering, or discomfort. A Damages Claim is specific to a discrete (a) illness, condition, or injury, and (b) period of incarceration. For example, an inmate who did not receive treatment or received deficient treatment for the same diagnosed or obvious condition during two separate instances of incarceration at the Jail would have two Damages Claims. Similarly, an inmate who did not receive treatment or received deficient treatment for two distinct diagnosed or obvious conditions during a single period of incarceration at the Jail would have two Damages Claims. With respect to a discrete illness, condition, or injury, all instances of no or deficient treatment within a given incarceration shall be treated as one Damages Claim. For example, a Damages Claim based on the failure to provide psychiatric medication to an

inmate during a period of incarceration may involve dozens (or even hundreds) of individual instances during that period of incarceration in which that inmate did not receive that medication. Nevertheless, that overall failure would subsume each of those individual failures such that only one Damages Claim would be compensable as to that period of incarceration. The Special Master shall have discretion to determine whether multiple submitted Damages Claims, in fact, present only one cognizable Damages Claim (*e.g.*, where they are inextricably related) and *vice versa, i.e.*, a single submitted Damages Claim constitutes multiple Damages Claims (*e.g.*, where it states medically distinct claims) and combine or sever them as appropriate for purposes of the Claims Process. In cases where an Approved Claimant seeks compensation under this Agreement for a suicide, he or she must establish that the suicide was related to some failure of medical care, specifically.

- x. “Damages Claim Determination” means the determination made by the Special Master pursuant to and consistent with the Damages Claim Schedule and the requirements set forth in this Agreement and, including but not limited to Section 7, (i) that: a submitted Damages Class Claim Form does or does not set forth a valid Damages Claim, based on whether the putative Damages Class Member who submits the Damages Class Claim Form (or on whose behalf it is submitted) meets or does not meet the Damages Class definition and provides the requisite support for a Damages Claim provided for in the Damages Claim Schedule and this Agreement; and (ii) if the Damages Class Claim Form does set forth a valid Damages Claim, the monetary value of said Damages Claim, determined in consultation with the Damages Claim Schedule. Where a Damages Claim Determination is affirmative, that Damages Claim becomes an Approved Damages Claim (and the Damages Class Member an Approved Claimant). Where a Damages Claim Determination is negative, the claimant (or Authorized

Person) will not be entitled to receive any cash award or any other financial benefit pursuant to the Settlement Agreement, but will otherwise be bound together, along with all members of the Damages Class, by all of the terms of the Settlement Agreement, including the terms of the Final Judgment to be entered in the Litigation and the releases provided for in the Agreement, and will be barred from bringing any action against any of the Released Parties concerning any claims occurring within the Damages Class Period.

- y. “Damages Claim Schedule” means the schedule attached hereto as Exhibit 5 and to be consulted by the Special Master in making Damages Claim Determinations. The Damages Claim Schedule contains and describes (a) a list of medical diagnoses, illnesses, conditions, and injuries that may serve as the basis for compensable Damages Claims, (b) corresponding assignments of monetary value, and (c) a list of factors that indicate upward or downward adjustments to the monetary value to be awarded for a given Approved Damages Claim. The list of medical diagnoses and conditions set forth in the Damages Claim Schedule is not exhaustive, and the absence of a given diagnosis or condition thereon shall not limit the authority of the Special Master, in the exercise of his reasonable discretion, from determining that a diagnosis or condition set forth on a Valid Claim Form constitutes a compensable Damages Claim. Further, the factors provided in the Damages Claim Schedule for an upward or downward adjustment of the amount to be awarded for an Approved Damages Claim are meant to operate as a set of advisory guidelines only, and nothing contained therein shall limit the Special Master, in the exercise of his reasonable discretion, from assigning such monetary values to valid Damages Claims as he determines are appropriate, except that, in the instance of an Approved Damages Claim with respect to which the injury is or includes

death (*i.e.*, an Individual Death Award), the minimum award shall be two hundred thousand dollars (\$200,000.00).

- z. “Damages Class Claim Form” or “Claim Form” means the document substantially in the form attached hereto as Exhibit 1, as approved by the Court. The Damages Class Claim Form shall be available in paper and electronic format. To pursue a claim for compensation under this Agreement for a Damages Claim, an Authorized Person must complete and submit a Damages Class Claim Form as provided for in this Agreement. Subject to the parameters described in the Damages Claim Schedule and herein, each timely submitted Damages Class Claim Form can be the basis for one, and only one, Approved Damages Claim. Except as otherwise specified herein, Authorized Persons must submit a separate Damages Class Claim Form for each Damages Claim for which they seek compensation.
- aa. “Damages Class” or “Damages Class Member” means and includes all persons who during the Damages Class Period (a) were inmates at the Jail (*i.e.*, were under arrest and had been transported or were being transported to the Jail in the custody of the BCSO (but not any other law enforcement agency)), and (b) during their period of confinement, suffered from an obvious or diagnosed medical condition (or conditions) and either (i) received no medical care for said condition (or conditions) or (ii) despite any medical attention received, suffered a worsening of said condition (or conditions) and/or unnecessary pain, suffering, or discomfort. For purposes of this Agreement and the releases contemplated herein, the Damages Class includes all persons who are included within this definition, including if such persons: (1) fail to file a claim pursuant to the terms of this Settlement Agreement, and (2) file one or more Damages Claims but receive a negative determination with respect to same.

- bb. “Damages Class Period” means the period of time commencing on September 17, 2017, and continuing through the Claims Deadline.
- cc. “Defendants” means Bradley County; Sheriff Steve Lawson, in his official capacity; Captain Jerry Johnson, Jr., in his official capacity; Eric Watson, in his individual capacity; and Captain Gabriel Thomas, in his individual capacity.
- dd. “Defendants’ Counsel” means B. Thomas Hickey of Spicer Rudstrom, PLLC.
- ee. “Effective Date” means the date three (3) calendar days after the Final Approval Effective Date.
- ff. “Exclusion Deadline” means the date by which a written request for exclusion from the Class Settlement under the terms of this Settlement Agreement, including, but not limited to Section 6(e), must be electronically transmitted through the Website or postmarked for delivery to the Settlement Administrator in order to be timely, except as otherwise provided herein. The Exclusion Deadline shall be sixty (60) calendar days before the date established for the Final Hearing Date.
- gg. “Expenses Amount” means the amount of litigation costs and expenses incurred by Class Counsel in conducting the Litigation, including, but not limited to, expert witness fees, mediation fees, court reporter fees, mileage, and medical records request fees, which amount is **One Hundred Twenty-Four Thousand Three Hundred Eighty-Six Dollars and Forty-Three Cents (\$124,386.43)**. That amount is addressed in Sections 4(e) and 11(b) herein.
- hh. “Feinberg Election” means the election by an Authorized Person who has submitted a Valid Claim Form to proceed only through the limited evaluation of his or her Damages Claim by the Special Master (specified in Section II.d of the Damages Claim Schedule) and accept damages of \$400.00 per Valid Claim Form, in which case (i) the Authorized Person has no

further obligation (*e.g.*, to furnish Corroborating Medical Evidence) in the Claims Process, and (ii) is guaranteed a payment of \$400.00 per Valid Claim Form, except as otherwise specified herein. A Feinberg Election approved by the Special Master (*i.e.*, an Approved Feinberg Election) is a type of Approved Damages Claim. An Authorized Person submitting more than one Valid Claim Form who makes a Feinberg Election (as it may be adjusted) as to one Valid Claim Form is not obligated to make a Feinberg Election as to all Valid Claim Forms he or she submits, and one or more Feinberg Elections may be combined with an Incentive Award and/or one or more Individual Death Awards (as it or they may be adjusted) or Individual Damages Awards in determining the Final Payment Amounts. A claimant who initially requests to undergo full a full review may subsequently change that request and make a Feinberg Election during the Claims Process.

- ii. “Final Approval Effective Date” means three (3) business days following the later of the following events: (i) the date upon which the time expires for filing or noticing any appeal of the Court’s Final Approval Order and Final Judgment; (ii) if there is an appeal or appeals, other than an appeal or appeals solely with respect to the Attorney’s Fees Amount or Incentive Awards, the date of completion, in a manner that finally affirms and leaves in place the Final Approval Order and Final Judgment without any material modification, of all proceedings arising out of the appeal or appeals (including, but not limited to, the expiration of all deadlines for motions for reconsideration or petitions for review and/or certiorari, all proceedings ordered on remand, and all proceedings arising out of any subsequent appeal or appeals following decisions on remand); or (iii) the date of final dismissal of any appeal or the final dismissal of any proceeding on certiorari.

- jj. “Final Approval Hearing” and/ or “Fairness Hearing” means the hearing before the Court where the Parties request the entry of the Final Approval Order approving the terms of the Settlement Agreement and the Final Judgment, including the (i) method of determining payments to the Class Members and Class Representatives; (ii) Injunctive Relief; (iii) method for determining payments to the Special Master; and (iv) payments to Class Counsel of attorney’s fees and for reimbursement of costs and expenses, all of which shall be materially consistent with the terms of the Settlement Agreement.
- kk. “Final Approval Order” means the Order entered by the Court following the Final Approval Hearing / Fairness Hearing approving the Settlement Agreement, including the (i) method of determining payments to the Class Members and Class Representatives; (ii) Injunctive Relief; (iii) method for determining payments to the Special Master; and (iv) payments to Class Counsel of attorney’s fees and for reimbursement of costs and expenses, all of which shall be materially consistent with (1) the terms of the Settlement Agreement and (2) the Final Approval Order attached as Exhibit 2. For purposes of this Settlement Agreement, a “material” alteration includes only those items referenced in Note 2, *supra*.
- ll. “Final Judgment” means the Final Judgment and Order to be entered by the Court approving the Settlement after the Final Approval Hearing that is substantially and materially consistent with (1) the terms of the Settlement Agreement and (2) the Final Approval Order attached as Exhibit 2.
- mm. “Final Payment Amount” means, for a given Authorized Person, the total amount of all Incentive Awards, Individual Death Awards, Adjusted Individual Damages Awards, Approved Feinberg Elections, and/or Adjusted Feinberg Elections to which that person is

entitled, calculated, as set forth in section 8, *infra*, following the conclusion of the Claims Process.

- nn. “First Adjusted Damages Allocation” means the Damages Allocation plus the amount (i) remaining in the Settlement Administration Account (apart from any amount earmarked for but not yet paid to the Settlement Administrator for the Settlement Administrator Fees) after payment of the Special Master Fees and (ii) transferred to the Damages Class Account after such payment.
- oo. “Incentive Award” means the payment, subject to the Court’s approval, of \$5,000.00 to each of the nineteen (19) Named Plaintiffs in recognition of their efforts on behalf of the Classes.
- pp. “Individual Damages Award” means the amount awarded by the Special Master as part of an affirmative Damages Claim Determination for a Damages Claim that the claimant has subjected to the Special Master’s full review, requiring the submission of Corroborating Medical Evidence.
- qq. “Individual Death Award” means the amount awarded for an Approved Damages Claim predicated, in whole or in part, on an inmate’s death. In the event an Authorized Person submits multiple Damages Claims with respect to a deceased Damages Class Member, the Special Master shall have discretion to determine whether they are separately compensable Damages Claims or subsumed within the Individual Death Award. Any amount awarded by the Special Master as an Individual Death Award (whether the \$200,000.00 minimum or more) shall not be reduced under any circumstance, *i.e.*, pursuant to the protocol for the adjustment of Individual Damages Awards or Feinberg Elections set forth in Section 8 of the Settlement Agreement.
- rr. “Injunctive Relief” means the injunctive relief specified in Section 9 of this Agreement.

- ss. “Injunctive Relief Class Member” means all persons who, as of the date that the Preliminary Approval Order is entered, are, or in the future will be, confined at the Jail.
- tt. “Litigation” refers to the above-captioned lawsuit, Case No. 1:18-cv-217.
- uu. “Mediator” means Shelby R. Grubbs, J.D., FCI Arb, of JAMS, One Atlantic Center, 1201 West Peachtree, Suite 2650, Atlanta, GA 30309.
- vv. “Notice” shall mean and refer to the notice describing the Fairness Hearing and the terms of the settlement embodied in this Agreement to be disseminated to the Classes pursuant to the dates and terms described in Section 6, *infra*, the form of which is attached as Exhibit 3, and as approved by the court in the Preliminary Approval Order.
- ww. “Notice Plan” means the proposed plan for disseminating notice of the proposed Settlement Agreement and Final Approval Hearing, as described in Section 6, *infra* to Class Members.
- xx. “Objection Deadline” means, as set forth *infra* in Section 6, the date by which a written objection to the Settlement Agreement must be submitted by a Class Member (or an Authorized Person) to be timely. The Objection Deadline shall be sixty (60) calendar days before the date established for the Final Hearing Date.
- yy. “Parties” means and refers to the Named Plaintiffs, individually and on behalf of the Classes; the Classes; and Defendants.
- zz. “Preliminary Approval Date” means the date on which the Court enters the Preliminary Approval Order.
- aaa. “Preliminary Approval” means the Court’s (i) certification of the Classes for settlement purposes, (ii) preliminary approval of the Settlement Agreement, (iii) approval of the form of the Notice and of the Notice Plan, and (iv) entry of the Preliminary Approval Order.

bbb. “Preliminary Approval Order” means the Agreed Order Preliminarily Approving Class Action Settlement, Preliminarily Certifying Classes for Settlement Purposes, Appointing Class Representatives, Appointing Class Counsel, Approving and Directing Issuance of Class Notice, Appointing Special Master, and Scheduling a Final Fairness Hearing, which preliminarily certifies the classes for settlement purposes, approves the Settlement Agreement, and directs notice thereof to the Classes, to be submitted to the Court in conjunction with the Parties’ Motion for Preliminary Approval of the Settlement Agreement, and consistent with Exhibit 4 or substantially similar form agreed to by the Parties in writing.

ccc. “Released Parties” means (1) Bradley County, Tennessee, its divisions, boards, agencies, and affiliates, predecessors, successors, and/or assigns, together with its past, present and future officials, employees, representatives, officers, directors, department heads, insurers, contractors, agents, and attorneys; (2) any past, present, and future Bradley County Sheriff, together with his/her and his/her office’s past, present, and future deputies, officials, employees, representatives, officers, insurers, contractors, agents, and attorneys (expressly including, but not limited to, former Sheriff Eric Watson, Sheriff Steve Lawson, Captain Gabriel Thomas, and Captain Jerry Johnson); (3) the Bradley County Commission, and any past, present and future County Commissioner, and his/her and his/her office’s past, present and future officials, employees, representatives, officers, insurers, contractors, agents, and attorneys; and (4) the Local Government Insurance Pool, Local Government P&C Fund, Davies-Group, Davies Claim Solutions, and their past, present, and future agents, owners, board members, and representatives.

ddd. “Releasing Parties” means, except for persons who satisfy the requirements for exclusion set forth *infra* Section 6, the Named Plaintiffs and every Class Member (or other Authorized

Person), individually and as a Class, for themselves, their attorneys, parents, spouses, children, executors, representatives, heirs, successors, and assigns. With respect to Damages Class Members, this definition includes those falling within that class who: (1) fail to file a claim pursuant to the terms of this Settlement Agreement, and (2) file one or more Damages Claims but receive a negative determination with respect to same.

eee. “Second Adjusted Damages Allocation” means the First Adjusted Damages Allocation less the (i) Aggregate Incentive Award, (ii) Aggregate Death Award, and (iii) Aggregate Feinberg Elections.

fff. “Second Adjusted Damages Allocation (Alternate)” shall mean the First Adjusted Damages Allocation less (only) the (i) Aggregate Incentive Award and (ii) Aggregate Death Award.

ggg. “Settlement Administrator” means and refers to Settlement Services, Inc., a third-party contractor who is contractually obligated to perform the services of the Settlement Administrator as described in this Agreement.

hhh. “Settlement Administrator Fees” means the amount paid by Defendants to the Settlement Administrator for its services in Settlement Administration, *i.e.*, **Two Hundred and Five Thousand Dollars (\$205,000.00)**.

iii. “Settlement Administration” means the cooperative efforts of the Settlement Administrator, Special Master, and Class Counsel in the administering of the settlement set forth in this Agreement.

jjj. “Settlement Administration Support” means the support provided by the Settlement Administrator and/or Class Counsel during the Claims Period via telephone, email, and fax. Specifically, the Settlement Administrator will obtain a toll-free number that may be used during the claims period by Class Members with inquiries regarding Settlement

Administration, the Claims Process, and any other inquiries (*e.g.*, procedure for settlement of claims of deceased or incompetent class members or issues obtaining Corroborating Medical Evidence). During the Claims Period, the line will be staffed with bilingual (English/Spanish) agents Monday through Friday from 9:00 a.m. to 5:00 p.m. EST. The Settlement Administrator will provide similar support through electronic mail and fax. Class Counsel will provide the Settlement Administrator with guidance as needed and may also be contacted directly by putative claimants.

kkk. “Settlement Fund” means a sum up to and not to exceed **Three Million Eight Hundred Thousand Dollars and 00/100 Cents (\$3,800,000.00)** to be made available by Bradley County for payments consistent with the Settlement Agreement, including but not limited to Section 4 of the Agreement.

lll. “Special Master” means Jeffrey Rufolo (and such additional person or persons as he may designate to assist him), who has been agreed upon by the Parties, and who is or will be contractually obligated to perform services as described in this Agreement and in the Damages Claim Schedule. Consistent with Section 7 of the Agreement, the Special Master will evaluate the Valid Claim Forms in consultation with the Damages Claim Schedule, determining (i) whether said forms set forth compensable Damages Claims (including Feinberg Elections) and, if so, (ii) the amount to be awarded for each Approved Damages Claim, *i.e.*, an Individual Damages Award or Individual Death Award.

mmm. “Special Master Fees” means the fees charged by the Special Master for conducting the Claims Process. The Special Master’s hourly rate (and that of any additional counsel he may enlist in the Claims Process) shall be no more than \$350.00, plus reasonable expenses. The Special Master Fees shall be no less than \$50,000.00 and no more than \$200,000.00. As

set forth in Section 7 of this Agreement, the Special Master shall maintain detailed, contemporaneously logged time records of time in six (6) minute increments, as well as a detailed list of all expenses.

nnn. “Valid Claim Form” means a Damages Class Claim Form submitted by an Authorized Person that the Settlement Administrator determines to have met each of the following requirements: it (1) contains all of the information requested to be filled in by an Authorized Person, and the information provided is legible; (2) is signed by the Authorized Person, under the penalty of perjury; (3) is submitted on or before the Claims Deadline (except as otherwise provided herein); and, (4) unless the putative Damages Class member makes a Feinberg Election as to that Damages Claim, is accompanied by Corroborating Medical Evidence, at least some of which must be evidence from a licensed provider of medical services (unless such requirement is waived by the Special Master, in consultation with Class Counsel, as discussed herein).

ooo. “Website” shall have the meaning set forth in Section 6 of this Agreement and shall have the domain name “bradleycountyjailsettlement.com” (or some materially similar variant).

### **3. NEGOTIATION OF SETTLEMENT AGREEMENT AND POSITIONS OF THE PARTIES**

a. This Settlement Agreement is the result of Court-ordered mediations and communications between the parties taking from February 2022 through October 2022, when an agreement in principle was reached as to all issues, and subsequent discussions in which various related issues were discussed and resolved. During that period, the parties: (a) participated in multiple in-person mediation sessions conducted at the direction of the Court and under the supervision of the Mediator (taking place on February 24, 2022, and July 28, 2022), and (b) engaged in numerous telephonic conferences, exchanges of correspondence, electronic

communications, and in-person discussions and meetings through which they negotiated the terms of the settlement. The Parties and their counsel affirmatively represent that the Settlement Agreement is the result of arm's-length negotiation guided and directed by the Mediator, who engaged with the Parties prior to and throughout the months-long mediation process.

- b.** At all times, Defendants have denied and continue to deny any wrongdoing. They continue to deny that they committed or attempted to commit any wrongful act or violation of law or duty (including, but not limited to, creating and maintaining a constitutionally deficient system of medical care at the Jail that resulted in any actionable claims for deliberate indifference). More specifically, Defendants deny: (1) all claims set forth in any of the pleadings filed in the Litigation (except as specifically admitted in the relevant responsive pleadings); (2) all allegations of wrongdoing against them or their officials, employees, or agents arising out of any conduct, statements, acts, or omissions alleged in the Litigation; and (3) that Named Plaintiffs or the Classes are entitled to any damages or other relief based on the conduct alleged in the Litigation. In addition, Defendants maintain that they have meritorious defenses to all claims alleged in the Litigation and were ready to defend same forcefully to include a lack of policy, custom, or otherwise pursuant to *Monell*. However, as further defense of the Litigation is going to be lengthy, expensive, distracting, and burdensome, Defendants determined that they should fully and finally settle and terminate the Litigation according to the terms set forth in this Agreement. As this Agreement is a compromise, the Agreement itself and all negotiations from which it resulted, including documents generated in connection therewith, shall not be construed as or deemed to be an admission or concession of liability or wrongdoing on the part of Defendants (or evidence

of same) with respect to any claim of wrongdoing, fault, liability, or damage herein asserted or asserted by any other person outside of the Litigation and who is not bound pursuant to the terms of the same.

- c. Named Plaintiffs contend that the claims alleged against Defendants in this Litigation are meritorious, and that they would have ultimately prevailed (i) in adversarial certification of the proposed classes under Rules 23(b)(2)-(3) and/or (c)(4), and (ii) on the merits at summary judgment and/or trial. Nevertheless, Named Plaintiffs and Class Counsel recognize and acknowledge that Defendants have raised factual and legal defenses in the Litigation that present a risk that Named Plaintiffs may not prevail. In addition, Named Plaintiffs and Class Counsel have considered the uncertainty inherent to any litigation—especially complex litigation—as well as the difficulties and delays such litigation presents. Therefore, Named Plaintiffs believe it desirable that this matter be fully and finally compromised and settled, and that such resolution shall bar further claims as set forth herein. Class Counsel have concluded that the terms of this Agreement are fair and reasonable and will result in adequate recompense to the Classes, and that it is in their best interest to resolve all claims raised in the Litigation pursuant to the terms and provisions of this Agreement.
- d. Given the considerations set forth above, and accounting for all other risks and uncertainty of continued litigation, and the settlement, on its merits, the Parties agree that the terms set forth in this Agreement are fair, reasonable, adequate, and in their respective best interests.

#### **4. BENEFIT TO CLASS MEMBERS**

As described above, the Settlement Agreement resolves disputed claims between the Named Plaintiffs, both individually and on behalf of the Classes, and Defendants. In addition, the Settlement Agreement (a) resolves all outstanding disputes between the Parties; (b) obviates the

need for (i) further motion practice regarding class certification and summary judgment and (ii) trial; (c) provides for the agreed certification of Classes for the purposes of settlement only; and (d) provides relief to Class Members in the form of damages and injunctive relief as discussed herein.

**e. Settlement Fund**

Defendants agree to total financial payments under the terms of the Settlement Agreement up to a maximum of, and which in no event shall exceed, **Three Million Eight Hundred Thousand Dollars and 00/100 Cents (\$3,800,000.00)**.

**f. Payments of Approved Claims to Damages Class Members**

As set forth in this Agreement, this settlement provides for a Damages Allocation in the sum of **Two Million One Hundred Thirty Thousand, Six Hundred Thirteen Dollars and Fifty-Seven Cents (\$2,130,613.57)** to pay Incentive Awards and Approved Damages Claims (including all Individual Death Awards, Individual Damages Awards (as they may be adjusted as set forth herein), and Feinberg Elections (as they may be adjusted as set forth herein). In no event shall Defendants' total payments to the Approved Claimants exceed the amount of funds in the First Adjusted Damages Allocation. Therefore, the amount paid to the Approved Claimants will depend on the (i) final amount of Special Master Fees and (ii) final number of Approved Claims, as set forth and provided for in Section 8 of the Agreement.

**g. Settlement Administration Funds**

As more fully set forth in Section 7 below, Defendant shall cause **Four Hundred and Five Thousand dollars and 00/100 Cents (\$405,000.00)** to be deposited into an account for the costs of Settlement Administration ("Settlement Administration Funds"), of which **Two Hundred and Five Thousand Dollars and 00/100 Cents (\$205,000.00)** shall be designated for the Settlement

Administrator Fees and **Two Hundred Thousand Dollars and 00/100 Cents (\$200,000.00)** shall be designated for the Special Master Fees.<sup>6</sup> In no event shall Defendants be responsible for the payment of any additional funds for the administration of the settlement.

**h. Class Counsel's Attorney's Fees.**

The Parties have agreed that, as part of this settlement and subject to approval by the Court, Class Counsel shall receive **One Million, One Hundred Forty Thousand Dollars and 00/100 Cents (\$1,140,000.00)** in attorney's fees, which represents thirty percent (30%) of the Settlement Fund. The Parties agree that, prior to the Final Approval Hearing, Class Counsel will file a separate motion seeking award of the Attorney's Fees Amount. Defendants take no position on the reasonableness of the Attorney's Fees Amount but will not oppose the motion seeking same and agree to pay same if approved by the Court. Class Counsel agrees that in no event will they seek, be entitled to, or accept a fee award that is greater than this Attorney's Fees Amount, except as may reasonably be incurred in proceedings, if any, undertaken or instituted to enforce the terms of this Agreement pertaining to injunctive relief, specifically.

**i. Reimbursement of Expenses Amount.**

The Parties have agreed that, as part of this settlement and subject to approval by the Court, Defendants shall reimburse Class Counsel for costs and expenses incurred in prosecuting the Litigation in the amount of **One Hundred Twenty-Four Thousand Three Hundred Eighty-Six Dollars and 43/100 Cents (\$124,386.43)**. Prior to the Final Approval Hearing, Class Counsel will file a separate motion seeking an award of the costs and expenses. Defendants take no position

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<sup>6</sup> In addition, as set forth herein, if the Special Master expends less than the maximum \$200,000.00 available for Special Master Fees, the remainder (over the \$50,000.00 minimum provided for Special Master Fees) shall be added to the Damages Allocation for payment of Incentive Awards and Approved Damages Claims (which combined amounts shall constitute the First Adjusted Damages Allocation).

on the reasonableness of the Expenses Amount but will not oppose the motion seeking same and agree to pay same if approved by the Court. Class Counsel agrees that in no event will they seek, be entitled to, or accept an award for expenses that is greater than the Expenses Amount.

**j. Incentive Awards to Named Plaintiffs.**

In recognition of their efforts on behalf of the Classes, and in addition to any award to which they may be entitled as Class Members pursuant to Sections 7-8 of the Settlement Agreement, and subject to the approval by the Court, each of the nineteen (19) Named Plaintiffs shall be awarded the Incentive Awards of not less than **Five Thousand Dollars and 00/100 Cents (\$5,000.00)**, for a total of **Ninety-Five Thousand Dollars and 00/100 Cents (\$95,000.00)**. The Incentive Awards shall not be adjusted according to any formula set forth herein and shall be paid from the First Adjusted Damages Allocation.

**k. Injunctive Relief.**

Defendants agree to entry of an order providing for the Injunctive Relief set forth in Section 9 of this Agreement.

**5. CLASS DEFINITIONS**

**1. The Damages Class**

The “Damages Class” shall mean and include all persons who, during the Damages Class Period, (a) were inmates at the Jail (*i.e.*, were under arrest and had been transported or were being transported to the Jail in the custody of the BCSO (but not any other law enforcement agency)); and (b) during their period of confinement, suffered from an obvious or diagnosed medical condition (or conditions) and either (i) received no medical care for said condition (or conditions) or (ii) despite any medical attention received, suffered a worsening of said condition (or conditions) and/or unnecessary pain, suffering, or discomfort.

**m. The Injunctive Relief Class**

The “Injunctive Relief Class” shall mean all persons who, as of the date that the Preliminary Approval Order is entered, are, or in the future will be, confined at the Jail.

**6. NOTICE, REQUEST TO BE EXCLUDED FROM THE CLASS, AND OBJECTIONS**

- a. Upon issuance of the Preliminary Approval Order, the Settlement Administrator shall cause the Notice describing the Fairness Hearing and the terms of the settlement embodied in this Agreement to be disseminated to the Classes, pursuant to the dates and terms described in Section 6(b), *infra*. The Notice shall comport with due process and be effectuated pursuant to the Notice Plan.
- b. The Notice Plan shall include:
  - i. **Newspaper Publication.** Within ten (10) calendar days of the Preliminary Approval Date, the Settlement Administrator shall cause to be published an advertisement that: (i) is designed to inform readers of the general nature of this settlement, (ii) directs readers to the Website, and (iii) describes available Settlement Administration Support (including telephonic support). The advertisement shall be published in the Cleveland Daily Banner (a local Bradley County newspaper). The advertisement shall be published (a) in two (2) hard copy editions of the paper, with one running on a Sunday and the other running on a Wednesday and (b) on the website for the Cleveland Daily Banner for a period of time determined by the Settlement Administrator (in consultation with Class Counsel) to be practical and consistent with its other obligations under the Notice Plan.
  - ii. **Press Release.** Within ten (10) calendar days of the Preliminary Approval Date, the Settlement Administrator will cause to be delivered to print, online, and broadcast

- media in the State of Tennessee a press release that: (i) is designed to inform readers of the general nature of this settlement, (ii) directs readers to the Website, and (iii) describes available Settlement Administration Support (including telephonic support).
- iii. **Internet Publication Notice.** Within ten (10) calendar days of the Preliminary Approval Date, Notice and the Claim Forms shall be provided on the Website, which the Settlement Administrator shall administer. The Notice on the Website shall be substantially in the form of Exhibit 3 attached hereto. In addition, the Website will include the Damages Class Claim Forms and allow for the electronic completion and submission of the Damages Class Claim Forms and Corroborating Medical Evidence. Finally, the Website shall describe available Settlement Administration Support (including telephonic support).
- iv. **Google Display Network Notification.** Within ten (10) calendar days of the Preliminary Approval Date, the Settlement Administrator shall cause to be displayed through the Google Display Network (targeting persons eighteen (18) years old or older in the State of Tennessee and Bradley County, Tennessee) online advertising that: (i) is designed to inform readers of the general nature of this settlement, (ii) directs readers to the Website, and (iii) describes available Settlement Administration Support (including telephonic support). Such advertisement through the Google Display Network Notification shall continue for a period of ninety (90) days.
- v. **Social Media Advertising.** Within ten (10) calendar days of the Preliminary Approval Date, the Settlement Administrator shall cause to be displayed through social media on Facebook, Instagram, Twitter, and Snapchat advertising targeting persons eighteen (18) years old and older in the State of Tennessee and Bradley County, Tennessee online

advertising that: (i) is designed to inform readers of the general nature of this settlement, (ii) directs readers to the Website, and (iii) describes available Settlement Administration Support (including telephonic support) (if feasible given character limitations). Such advertisement through the above-mentioned social media outlets shall continue for a period of ninety (90) days.

- vi. **Search Engine Advertising.** Within ten (10) calendar days of the Preliminary Approval Date, the Settlement Administrator shall cause to be displayed through popular search platforms Google, Bing, and Yahoo! in the State of Tennessee online advertising that: (i) is designed to inform readers of the general nature of this settlement, (ii) directs readers to the Website, and (iii) describes available Settlement Administration Support (including telephonic support) (if feasible given character limitations). Such advertisement through the above-mentioned social media outlets shall continue for a period of ninety (90) days.
- vii. **Radio Advertising.** As soon as is feasible following the Preliminary Approval Date, the Settlement Administrator shall cause thirty-second radio advertisements to run for two weeks over seven to eight radio stations in the Chattanooga, Tennessee radio market that: (i) is designed to inform listeners of the general nature of this settlement, (ii) directs readers to the Website, and (iii) describes available Settlement Administration Support (including telephonic support).
- viii. **Outdoor Advertising.** As soon as is feasible following the Preliminary Approval Date, the Settlement Administrator shall cause to be displayed in Bradley County, Tennessee for a period of four (4) weeks outdoor advertising, which will include a mix of digital and vinyl billboards designed to: (i) inform readers of the general nature of

- this settlement, (ii) direct readers to the Website, and (iii) describe available Settlement Administration Support (including telephonic support).
- ix. **Notice Packet Mailing Upon Request.** Upon request, the Settlement Administrator shall mail to persons who so request notice packets, which shall include (i) the Notice, and (ii) three (3) Damages Class Claim Forms (unless the requesting person expressly requests a different number).
  - x. **Notice Packet Availability to Current Inmates at the Jail.** Defendants agree that they shall take reasonable measures to make notice packets available to current Jail inmates upon request.
  - xi. **CAFA Notice.** Pursuant to 28 U.S.C. § 1715, not later than ten (10) calendar days after the Agreement is filed with the Court, Defendants shall serve upon the Attorney General of the State of Tennessee, the Attorney General of the United States, and other required government officials, notice of the proposed settlement as required by law. Defendants shall separately bear the cost of the initial CAFA Notice mailing. If the CAFA Notice must be provided a second time, the cost of that notice and any subsequent mailings shall be paid from the Settlement Administration Fund unless the subsequent notices were necessitated by Defendants' error.
  - xii. The Parties agree to meet in good faith to discuss, agree to and mutually approve the content of the communications described in Sections 6(b)(i)-(viii).
- c. The Notice Plan shall be conducted jointly with respect to the Classes. The Notice shall advise Class Members of their rights, including the right to (i) submit claims for potential payment from the Damages Class Allocation, and (ii) be excluded from, comment upon, and/or object to the Settlement Agreement or its terms.

- d. The Notice shall specify that any Class Member (or Authorized Person acting on his or her behalf) who intends to object to the Settlement Agreement must comply with the objection requirements set forth in the Notice. To object, a Class Member (or Authorized Person on their behalf) must provide the following information, in writing and bearing his or her signature, to the Court, Class Counsel, and Defendants' Counsel, postmarked on or before the Objection Deadline: (a) his/her name, address, and telephone number; (b) all arguments, citations, and evidence supporting the objection (including copies of any documents relied on); (c) a statement that that he or she (or the person on whose behalf he or she is objecting) is a member of the Damages Class and/or Injunctive Relief Class; (d) and, a statement about whether the objector intends to appear at the Final Approval Hearing with or without counsel. Any Class Member (or Authorized Person acting on his or her behalf) who fails to file a written objection with the Court on or before the Objection Deadline in accordance with the terms of this Section and as detailed in the Notice, and at the same time provide copies to designated counsel for the Parties: shall (i) not be permitted to object to the Settlement Agreement at the Final Approval Hearing; (ii) be foreclosed from seeking any review of the Settlement Agreement by appeal or other means; (iii) be deemed to have waived his or her objections; and (iv) be forever barred from making any such objections in the Litigation or any other action or proceeding. To be valid, the objection must be filed with the Court and sent to Class Counsel and Defendants' Counsel on or before the Objection Deadline, which is specified in the Notice and approved by the Court.
- e. Any person (or Authorized Person acting on his or her behalf) falling within the definition of the Damages Class may request to be excluded from the Damages Class in writing by a request postmarked on or before the Exclusion Deadline approved by the Court and

specified in the Notice. In order to exercise the right to be excluded, a putative Damages Class Member (or Authorized Person on his or her behalf) must timely send a written request for exclusion to the Settlement Administrator. The request shall provide (a) his or her name, address, and telephone number; (b) a signature; (c) the name and number of the case; (d) a description of the basis for membership in the Damages Class; and (e) a statement that he/she wishes to be excluded from the Damages Class. If a request to be excluded does not include all of the foregoing information, is sent to an address other than that designated in the Notice, or is not postmarked within the time specified, it shall be invalid, and the person or entity serving such a request shall be a member of the Damages Class and shall be bound as a Damages Class Member by the Agreement, if approved. Any member of the Damages Class who validly elects to be excluded shall not: (i) be bound by any orders or the Final Judgment; (ii) be entitled to relief under this Settlement Agreement; (iii) gain any rights by virtue of this Settlement Agreement; or (iv) be entitled to object to any aspect of this Settlement Agreement. The request for exclusion must be personally signed by the person requesting exclusion. So called “mass” or “class” opt-outs (requests to be excluded) shall not be allowed. To be valid, a request for exclusion must be postmarked or received by the Exclusion Deadline.

- f. In the event that any of the following persons (or Authorized Persons acting on their behalf) submit a valid request for exclusion from the Damages Class, the Settlement Fund will be reduced by the following amounts, respectively: Martin Chouinard (through administrator *ad litem* April Hancock) - \$400,000.00, Amanda Couch - \$75,000.00, Sandra Culbertson - \$100,000.00, Scott Eleazer - \$50,000.00, Brandon Gash (through next friends Harry and Sheryl Gash) - \$250,000.00, Bryan Wampler - \$75,000.00, and Sharon Waters -

\$150,000.00. If there is any dispute as to who may request an exclusion on behalf of one of the persons identified in this sub-section, such dispute or conflict shall be resolved as provided in Section 12 of this Agreement.

- g. The Settlement Administrator shall receive requests from Class Members to exclude themselves from the Settlement Agreement and promptly provide copies thereof to Class Counsel and Defendants' Counsel upon receipt. If the Settlement Administrator receives any exclusion forms or other requests from putative Damages Class members after the Exclusion Deadline, the Settlement Administrator shall promptly provide copies thereof to Class Counsel and Defendants' Counsel.
- h. Any person purporting to satisfy the definition of the Damages Class (or Authorized Person acting on his or her behalf) who timely submits both (1) a request to be excluded from the Damages Class and (2) a Claim Form (or Claim Forms) for the Damages Class, shall be sent a letter by the Settlement Administrator requesting clarification of the person's/Damages Class Member's intent. The letter shall state that, unless the person falling within the definition of the Damages Class (or Authorized Person on their behalf) clarifies within seven (7) calendar days that he or she intends to be excluded from the Damages Class, the person will be deemed to be within the Damages Class, deemed to have submitted a Claim Form, and will be bound by the Settlement Agreement if the Agreement is approved by the Court.

**7. SETTLEMENT ADMINISTRATION, SUBMISSION AND PROCESSING OF DAMAGES CLASS CLAIM FORMS, AND SUBMISSION OF SPECIAL MASTER FEES TO COURT FOR REVIEW**

- a. The Settlement Administrator and Special Master shall, in coordination with Class Counsel and under the supervision of the Court, administer the relief provided by the Settlement Agreement by processing Damages Class Claim Forms in a rational, responsive, cost

effective, and timely manner. Class Counsel will be available to putative claimants, the Settlement Administrator, and the Special Master to provide support and guidance as needed throughout the Settlement Administration process.

- b. Any person who believes he or she is entitled to compensation as a Damages Class Member may request one or more blank Damages Class Claim Form(s) from the Settlement Administrator by telephone or in writing or will be able to obtain or complete one (or more) through the Website. Damages Class Claim Forms may be submitted online via the Website or by returning a Damages Class Claim Form(s) via U.S. Mail, along with any Corroborating Medical Evidence they may submit in support of one or more Damages Claim(s).
- c. Except as otherwise provided herein, any person who believes he or she is a Damages Class Member (or who is an Authorized Person) must submit to the Settlement Administrator on or before the Claims Deadline a separate Damages Class Claim Form for each Damages Claim for which he or she seeks compensation. Except as otherwise provided herein, each timely submitted Claim Form can be the basis for one, and only one, Approved Damages Claim. Except as otherwise provided herein, no Claim Form will be considered timely, whether valid or not, if (i) postmarked after the Claims Deadline (if mailed or faxed), or (ii) submitted online via the Website after 11:59 p.m. EST on the date of the Claims Deadline.
- d. Unless the putative Damages Class member makes a Feinberg Election, the Claim Form must be accompanied by Corroborating Medical Evidence unless such requirement is delayed or waived by the Special Master, in consultation with Class Counsel, on a case-by-case basis under such circumstances as they determine to be appropriate.
- e. The Settlement Administrator shall maintain a copy of all Claim Forms it receives from any Authorized Person, as well as a record of the date it receives same.

- f. Within five (5) business days of receipt of a timely submitted Claim Form, the Settlement Administrator shall review same to determine whether it is a Valid Claim Form.
- g. If a Claim Form is timely submitted but is determined not to be a Valid Claim Form as defined in this Agreement, the Settlement Administrator will return the Claim Form (or, if deemed necessary, a new Claim Form) to an Authorized Person within eight (8) business days of receipt of the Claim Form with a notice explaining the ways in which the form is deficient and stating that an Authorized Person will have fourteen (14) calendar days from the date of the notice to complete and resubmit the Claim Form (and provide any Corroborating Medical Evidence, if applicable), unless the Settlement Administration, in coordination with Class Counsel, extends that period prior to that deadline's expiration, which extension shall be confirmed in writing with the Authorized Person.
- h. Within two (2) business days of sending a letter to an Authorized Person explaining any deficiency in submitted Claim Form(s), the Settlement Administrator will e-mail copies of the deficient Claim Form(s) to Class Counsel, along with the notice of deficiency sent by the Settlement Administrator to the Authorized Person explaining the deficiency.
- i. If an Authorized Person fails to re-submit a complete Valid Claim Form within the fourteen (14) day period (unless it has been extended as set forth *supra* in Section 7(g)), such Claim Form shall be automatically rejected and shall not be eligible for payment hereunder. No Authorized Person or person shall be allowed to re-submit a Claim Form on more than one occasion.
- j. To the extent that a given Claim Form appears to the Settlement Administrator to set forth more than one Damages Claim, the Settlement Administrator will apprise claimant of same

and furnish an appropriate number of additional Damages Class Claim Forms (and/or direct the person submitting those forms to the Website) to be resubmitted as provided herein.<sup>7</sup>

- k. Any Claim Form, whether it is a Valid Claim Form or not, submitted in the first instance after the Claims Deadline shall in no event be the basis for an Approved Damages Claim.
- l. Upon determining that a submission is a Valid Claim Form, the Settlement Administrator shall promptly, and on a rolling basis as such determinations of validity are made, forward Valid Claim Forms to the Special Master, who shall promptly, on a rolling basis, evaluate them. The Special Master shall maintain copies of all Valid Claim Forms he receives, whether he approves them or not.
- m. With respect to a Valid Claim Form in which a claimant has made a Feinberg Election, the Special Master shall review same and determine whether, if the averments made therein were accepted as true, they would warrant an affirmative Damages Claim Determination (*i.e.*, qualify as an Approved Damages Claim). If they would, the Special Master shall approve the Feinberg Election and make and maintain a record of same. If they would not, or if the Special Master determines that the claimant has made false or fraudulent representations (*i.e.*, if they would be non-compensable damages claims as set forth in Part II.b of the Damages Claim Schedule), the Special Master may reject the Feinberg Election.
- n. With respect to a Valid Claim Form in which a claimant has *not* made a Feinberg Election, the Special Master shall, in consultation with the Damages Claim Schedule, determine whether a Valid Claim Form sets forth a valid Damages Claim compensable through an Individual Death Award or Individual Damages Award. In order to be a valid Damages

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<sup>7</sup> Nothing shall limit the discretion of the Special Master to consolidate or sever Damages Claims during the Claims Process as described elsewhere herein and in the Damages Claim Schedule.

Claim, at least some of the Corroborating Medical Evidence must be from a licensed provider of medical services, unless such requirement is waived by the Special Master, in consultation with Class Counsel, as discussed herein. A claimant who initially asks for full review of his or her claim may abandon that request and instead make a Feinberg Election as to that claim prior to conclusion of the Claims Process. Such abandonment/request shall be submitted by the claimant in writing to the Settlement Administrator and/or Class Counsel.

- o. Where, after determining whether or not to seek additional information or input from a Damages Class Member concerning a Damages Claim (in addition to the Settlement Administrator's attempts to remediate the claim pursuant to section 7(g)), *supra*, if any), the Special Master makes a negative determination (*i.e.*, that the Valid Claim Form does *not* set forth a valid Damages Claim or Feinberg Election), he shall summarize the reasons therefor and provide same to the Settlement Administrator and Class Counsel. Once reviewed and approved by the Court as set forth *infra*, any negative determination shall be final and not subject to review. With respect to a discrete Damages Claim receiving a negative determination, the claimant (or Authorized Person) will not be entitled to receive any cash award or any other financial benefit pursuant to the Settlement Agreement, but will otherwise be bound together, along with all members of the Damages Class, by all of the terms of the Settlement Agreement, including the terms of the Final Judgment to be entered in the Litigation and the releases provided for in the Agreement, and will be barred from bringing any action against any of the Released Parties concerning any claims occurring within the Damages Class Period.

- p. Where the Special Master determines that a Valid Claim Form sets forth a valid Damages Claim, he shall next, in consultation with the Damages Claim Schedule, determine the amount to be awarded for said Damages Claim.
- q. The Damages Claim Schedule shall be advisory, and, subject to Court review and approval, the Special Master shall have final authority to determine: (1) whether a Valid Claim Form sets forth a valid Damages Claim, and (2) the amount to be awarded for said Damages Claim (except for the minimum amount to be awarded for an Individual Death Award).
- r. As described herein, the Settlement Administrator and Special Master shall make and maintain, as required by applicable law and in accordance with their ordinary business practices, reasonably detailed records of their activities under the Settlement Agreement, and such records will be made available to the Court, Class Counsel, and/or Defendants' Counsel as provided herein and otherwise upon request.
- s. The Settlement Administrator shall provide reports and/or summaries to Class Counsel as provided in the contract it enters with the Parties, and, without limitation, reports regarding (i) the number of Claim Forms received, (ii) the number of Claim Forms determined to be valid by the Settlement Administrator, (iii) a categorization and description of Claim Forms rejected, in whole or in part; and (iv) timely reports concerning the status and progress of the processes to remediate invalid Claim Forms set forth *supra* in Section 7(g).
- t. The Settlement Administrator shall (i) upon reasonable notice, make available for inspection by Class Counsel and/or Defendants' Counsel the Claim Forms and any supporting documentation received at any time; and (ii) within thirty (30) days of the expiration of the Claims Deadline, forward to Class Counsel copies of all original documents and other materials received in connection with Settlement Administration.

- u. The Settlement Administrator, Special Master, Class Counsel, and Defendants' Counsel shall also provide to the Court, as it may require, reports and other information summarizing the work performed by the Settlement Administrator and Special Master.
- v. The Settlement Administrator and Special Master shall employ reasonable procedures to screen claims for abuse or fraud, and may reject Damages Class Claim Forms where there is evidence of abuse or fraud, except that nothing shall limit their discretion, in consultation with Class Counsel, to permit putative Damages Class Members and Authorized Persons to provide missing information in accordance with the terms and deadlines in the Agreement.
- w. Any putative Damages Class Member who does not, in accordance with the terms and conditions of this Agreement, *either* (i) seek exclusion from the Damages Class *or* (ii) timely submit a Valid Claim Form or Forms ultimately determined to be the basis for one or more Approved Damages Claims, will not be entitled to receive any cash award or any other financial benefits pursuant to the Settlement Agreement, but will otherwise be bound together, along with all members of the Damages Class, by all of the terms of the Settlement Agreement, including the terms of the Final Judgment to be entered in the Litigation and the releases provided for in the Agreement, and will be barred from bringing any action against any of the Released Parties concerning any claims occurring within the Damages Class Period.
- x. Notwithstanding and in addition to his other obligations set forth herein, promptly upon completing the Claims Process, the Special Master shall submit to the Settlement Administrator and Class Counsel:
  - i. The records of time spent and expenses incurred as set forth in this Section;

- ii. A list, categorized by Approved Claimants, of (a) all Approved Damages Claims (*i.e.*, Individual Damages Awards, Individual Death Awards, and Approved Feinberg Elections) and (b) the amount awarded for each;
  - iii. The aggregate amount of all Individual Damages Awards, *i.e.*, the Aggregate Damages Award;
  - iv. The aggregate amount of all Individual Death Awards, *i.e.*, the Aggregate Death Award; and
  - v. The aggregate amount of all Approved Feinberg Elections, *i.e.*, the Aggregate Feinberg Elections.
- y. The Special Master shall simultaneously (*i.e.*, promptly upon completing the Claims Process) submit his records and claimed Special Master Fees to the Court, which may approve or modify those fees.

## **8. CALCULATION OF PAYMENTS FOR APPROVED DAMAGES CLAIMS**

### **a. General Parameters**

- i. As discussed above, to be entitled to payment pursuant to this Agreement, an Authorized Person must submit one or more claims finally determined to meet the definition of Approved Damages Claim. With respect to Damages Class Members, the purpose of this Agreement is to compensate them in proportion to the severity of their injuries for deficient medical care at the Jail, consistent with the amounts available for such compensation based on the total number of Approved Claims.
- ii. An approved Feinberg Election may be reduced below \$400.00 as discussed *infra* but shall not exceed \$400.00 under any circumstances.

- iii. The amounts to be paid for Incentive Awards (\$5,000.00) and Individual Death Awards (beginning at the \$200,000.00 minimum award for deaths discussed herein and in the Damages Claim Schedule) shall not be reduced under any circumstances.<sup>8</sup>
- iv. Regardless of the number of Approved Damages Claims, the Parties have agreed that the total amount to be paid to all persons for (1) Incentive Awards, (2) Approved Damages Claims (*i.e.*, (a) Individual Death Awards and (b) Individual Damages Awards), and (3) Approved Feinberg Elections (whether or not adjusted) hereunder shall in no event exceed the Damages Allocation (except as it may be augmented in the First Adjusted Damages Allocation).
- v. Subject to the conditions set forth above, the Settlement Administrator shall, in coordination with Class Counsel, employ the calculations and procedures set forth *infra* in subsections (b)-(h) to determine the Final Payment Amounts. Class Counsel shall assist the Settlement Administrator in the interpretation and application of those calculations and procedures as necessary in conformity with the purpose set forth above.

**b. Calculation of the First Adjusted Damages Allocation**

In the event that the Special Master Fees are greater than the minimum \$50,000.00 but less than maximum \$200,000.00 at the time that the Special Master completes the Claims Process and submits to the Court his final fee calculation, and the Court approves or modifies that amount, any excess over the submitted amount but less than \$200,000.00 shall be transferred from the Settlement Administration Account to the Damages Class Account and used to pay Incentive

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<sup>8</sup> The \$200,000.00 minimum award for deaths shall not apply to claims predicated on suicide, even if the Special Master determines that a claim predicated on suicide is compensable based on some failure of medical care.

Awards and Approved Damages Claims. That excess plus the Damages Allocation shall be the First Adjusted Damages Allocation. If there is no excess (*i.e.*, if the Court were to approve the maximum \$200,000.00 fee to the Special Master), the First Adjusted Damages Allocation will equal the Damages Allocation.

**c. Calculation of the Second Adjusted Damages Allocation or Second Adjusted Damages Allocation (Alternate) – Scenario One and Scenario Two**

Following the calculation of aggregate amounts by the Special Master contemplated *supra*, if the Aggregate Feinberg Elections are less than or equal to the Aggregate Damages Award (*i.e.*, 50% or less of their combined amount) (“Scenario One”), then the Second Adjusted Damages Allocation shall be determined by subtracting from the First Adjusted Damages Allocation (i) the Aggregate Incentive Award, (ii) the Aggregate Death Award, and (iii), the Aggregate Feinberg Elections. In that event, the award for an Approved Feinberg Election shall not be subject to adjustment and shall not be less than \$400.00.

By contrast, if the Aggregate Feinberg Elections are greater than the Aggregate Damages Award (*i.e.*, 51% or more of their combined amount) (“Scenario Two”), then the (alternate) Second Adjusted Damages Allocation shall be determined by subtracting from the First Adjusted Damages Allocation *only* (i) the Aggregate Incentive Award and (ii) the Aggregate Death Award. In that event, the award for an Approved Feinberg Election—in addition to an Individual Damages Award—shall be subject to adjustment and may be less than \$400.00.

**d. Scenario One – Determination of Adjusted Individual Damages Awards<sup>9</sup>**

Under Scenario One, if the Aggregate Damages Award is (a) *more* than the Second Adjusted Damages Allocation, the amount of each Individual Damages Award shall, pursuant to the

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<sup>9</sup> In Scenario One, all Approved Feinberg Elections shall be compensated at \$400.00.

following formula, be *reduced* on a *pro rata* basis; or (b) *less* than the Second Adjusted Damages Allocation, the amount of each Approved Damages Claim shall be *increased* on a *pro rata* basis. In other words, the greater the Aggregate Damages Award (relative to the Second Adjusted Damages Allocation), the smaller the Adjusted Individual Damages Award, and *vice versa*, as shown by the formula and examples below:

***[Individual Damages Award***

$$\div \quad \times \textit{Second Adjusted Damages Allocation} = \textit{Adjusted Individual Damages Award}$$

***Aggregate Damages Award]***

Example 1: The Second Adjusted Damages Allocation is \$1,000,000.00. An Authorized Person has a \$10,000.00 Individual Damages Award. The Aggregate Damages Award is \$2,000,000.00 (*i.e.*, greater than the Second Adjusted Damages Allocation). The Adjusted Individual Damages Award is \$5,000.00.

$$(\$10,000.00 \div \$2,000,000.00) \times \$1,000,000.00 = \$5,000.00$$

Example 2: The Second Adjusted Damages Allocation is \$1,000,000.00. An Authorized Person has a \$10,000.00 Individual Damages Award. The Aggregate Damages Award is \$1,000,000.00 (*i.e.*, equal to the Second Adjusted Damages Allocation). The Adjusted Individual Damages Award is \$10,000.00.

$$(\$10,000.00 \div \$1,000,000.00) \times \$1,000,000.00 = \$10,000.00.$$

Example 3: The Second Adjusted Damages Allocation is \$1,000,000.00. An Authorized Person has a \$10,000.00 Individual Damages Award. The Aggregate Damages Award is \$500,000.00 (*i.e.*, less than the Second Adjusted Damages Allocation). The Adjusted Individual Damages Award is \$20,000.00.

$$(\$10,000.00 \div \$500,000.00) \times \$1,000,000.00 = \$20,000.00.$$

**e. Scenario Two – Determination of Adjusted Individual Damages Awards and Adjusted Feinberg Elections**

Under Scenario Two, the calculation of Adjusted Individual Damages Awards and Adjusted Feinberg Elections shall proceed pursuant to the formulas and examples below:

***Adjusted Individual Damages Awards***

***[Individual Damages Award***

$$\div \quad \times \frac{1}{2} * \textit{Second Adjusted Damages Allocation (Alternate)} = \textit{Adjusted Individual Damages Award}$$

***Aggregate Damages Award +  
Aggregate Feinberg Elections]***

Example 1: The Second Adjusted Damages Allocation (Alternate) is \$1,500,000.00. An Authorized Person has a \$10,000.00 Individual Damages Award. The Aggregate Damages Award plus Aggregate Feinberg Elections is \$1,600,000.00 (greater than the Second Adjusted Damages Allocation (Alternate)) (assuming a \$750,000.00 Aggregate Damages Award and \$850,000.00 in Aggregate Feinberg Elections). The Adjusted Individual Damages Award is \$4,687.50.

$$([\$10,000.00 \div [\$750,000.00 + \$850,000.00]] \times [\frac{1}{2} \times \$1,500,000.00]) = \$4,687.50$$

Example 2: The Second Adjusted Damages Allocation (Alternate) is \$1,500,000.00. An Authorized Person has a \$10,000.00 Individual Damages Award. The Aggregate Damages Award plus Aggregate Feinberg Elections is \$1,500,000.00 (equal to the Second Adjusted Damages Allocation (Alternate)) (assuming a \$700,000.00 Aggregate Damages Award and \$800,000.00 in Aggregate Feinberg Elections). The Adjusted Individual Damages Award is \$5,000.00.

$$([\$10,000.00 \div [\$700,000.00 + \$800,000.00]] \times [\frac{1}{2} \times \$1,500,000.00]) = \$5,000.00$$

Example 3: The Second Adjusted Damages Allocation (Alternate) is \$1,500,000.00. An Authorized Person has a \$10,000.00 Individual Damages Award. The Aggregate Damages Award plus Aggregate Feinberg Elections is \$1,400,000.00 (less than the Second Adjusted Damages Allocation (Alternate)) (assuming a \$650,000.00 Aggregate Damages Award and \$750,000.00 in Aggregate Feinberg Elections). The Adjusted Individual Damages Award is \$5,357.14.

$$([\$10,000.00 \div [\$650,000.00 + \$750,000.00]] \times [\frac{1}{2} \times \$1,500,000.00]) = \$5,357.14$$

### *Adjusted Feinberg Elections*

#### *[[Approved Feinberg Election*

$$\div \quad \times \frac{1}{2} * \textit{Second Adjusted Damages Allocation (Alternate)} = \textit{Adjusted Feinberg Election}$$

#### *Aggregate Damages Award + Aggregate Feinberg Elections]*

Example 1: The Second Adjusted Damages Allocation (Alternate) is \$1,500,000.00. An Authorized Person has a \$400.00 Approved Feinberg Election. The Aggregate Damages Award plus Aggregate Feinberg Elections is \$1,600,000.00 (greater than the Second Adjusted Damages Allocation (Alternate)) (assuming a \$750,000.00 Aggregate Damages Award and \$850,000.00 in Aggregate Feinberg Elections). The Adjusted Feinberg Election is \$187.50.

$$([\$400.00 \div [\$750,000.00 + \$850,000.00]] \times [\frac{1}{2} \times \$1,500,000.00] = \$187.50)$$

Example 2: The Second Adjusted Damages Allocation (Alternate) is \$1,500,000.00. An Authorized Person has a \$400.00 Approved Feinberg Election. The Aggregate Damages Award plus Aggregate Feinberg Elections is \$1,500,000.00 (equal to the Second Adjusted Damages Allocation (Alternate)) (assuming a \$700,000.00 Aggregate Damages Award and \$800,000.00 in Aggregate Feinberg Elections). The Adjusted Feinberg Election is \$200.00

$$([\$400.00 \div [\$700,000.00 + \$800,000.00]] \times [\frac{1}{2} \times \$1,500,000.00] = \$200.00)$$

Example 3: The Second Adjusted Damages Allocation (Alternate) is \$1,500,000.00. An Authorized Person has a \$400.00 Approved Feinberg Election. The Aggregate Damages Award plus Aggregate Feinberg Elections is \$1,400,000.00 (less than the Second Adjusted Damages Allocation (Alternate)) (assuming a \$650,00.00 Aggregate Damages Award and \$750,000.00 in Aggregate Feinberg Elections). The Adjusted Feinberg Election is \$214.29

$$([\$400.00 \div [\$650,000.00 + \$750,000.00]] \times [\frac{1}{2} \times \$1,500,000.00] = \$214.29)$$

#### **f. Determining Final Payment Amounts**

- i. The Settlement Administrator, in conjunction with Class Counsel, shall determine Final Payment Amounts due to each Approved Claimant under the provisions of this

Settlement Agreement within twenty (20) calendar days following both (a) the Court's approval or modification of the Special Master Fees and (b) receipt of the information from the Special Master described *supra* in Section 7(y) following the conclusion of the Claims Process.

- ii. Under Scenario 1, the Settlement Administrator shall, for an Approved Claimant, determine the sum of his or her: (i) Incentive Award (if any); (ii) Individual Death Award(s) (if any); (iii) Adjusted Special Master Damages Award(s) (if any); and/or (iv) Approved Feinberg Elections (if any). That sum shall be that Approved Claimant's Final Payment Amount.
  - iii. Under Scenario 2, the Settlement Administrator shall, for an Approved Claimant, determine the sum of his or her: (i) Incentive Award (if any); (ii) Individual Death Award(s) (if any); (iii) Adjusted Special Master Damages Award(s) (if any); and/or (iv) Adjusted Feinberg Elections (if any). That sum shall be that Approved Claimant's Final Payment Amount.
- g. Court Review and Approval of Special Master Fees Final Payment Amounts and Negative Determinations**
- i. Promptly upon determining Final Payment Amounts, the Settlement Administrator shall provide to the Court, Class Counsel, and Defendants' Counsel those amounts in an accessible format and, with respect to negative determinations, the summarized reasons for same provided by the Special Master.
  - ii. The Court may approve and adopt the Special Master's findings or request such additional records and materials from the Special Master as it deems appropriate in reviewing, approving, and/or modifying those findings and may also order such other

proceedings as it deems necessary with respect to one or more Final Payment Amounts or negative Damages Claims Determinations.

**h. Payments and/or Notice of Negative Determination**

- i. Not later than seven (7) business days following the Court's review and final approval (or modification) of Final Payment Amounts as contemplated in section 8(g), the Settlement Administrator shall commence making payments via check to be delivered through United States Postal Service First-Class Mail to the addresses designated by Approved Claimants, unless other arrangements are specifically made between an Approved Claimant and the Settlement Administrator, after consultation with Class Counsel.
- ii. With respect to any Damages Claim or Feinberg Election for which the Special Master renders a receive a negative determination, the Settlement Administrator shall transmit to the claimant the reasons provided by the Special Master for the negative determination.
- iii. If a check to a Class Member entitled to payment pursuant to the terms of the Settlement Agreement is not cashed within three months of its mailing, the Settlement Administrator shall hold the funds for three additional (3) months, during which time it shall make reasonable efforts to contact the person to whom the uncashed check was written to make arrangements for its cashing or reissuance. Any such funds not cashed by a Class Member within such additional three (3) month period shall be forfeited by the Class Member. In that event, Settlement Administrator shall maintain those funds and notify Class Counsel, who shall promptly notify Defendants' Counsel for instruction as to their disbursement.

- iv. If, at the time payments are to be disbursed as described above, any Final Payment Amount remains subject to any dispute contemplated in Section 12, *infra*, the Settlement Administrator shall hold that amount and only disburse same upon the resolution of that dispute.

## 9. INJUNCTIVE RELIEF

- i. Bradley County agrees that as part of the settlement of the Litigation an injunction will be entered by the Court. Specifically, the Final Approval Order will include the following (or a substantially similar) provision providing for the following injunctive relief, which will hereinafter be referred to in this Agreement as the “Injunction”:

As soon as is reasonably practicable, but in no event later than July 1, 2023 (*i.e.*, the commencement of Fiscal Year 2024, as Bradley County marks fiscal years between June 30 and July 1), Bradley County will for a period of at least two (2) years maintain the previously adopted \$275,000.00 increase in the budget for medical staffing at the Jail over and above the amount budgeted for the Jail in 2021 (which such amount was \$1,210,707.00, and which, as of August 3, 2022, was increased to and currently is \$1,532,028.21). Bradley County will consult with Class Counsel regarding the manner in which that additional \$275,000.00 amount will be expended; provided, however, that the final authority regarding medical staffing and the allocation of any funding regarding the same will remain with the Bradley County Sheriff. At the conclusion of the first contract year between Bradley County and its CMSP in which the additional amount contemplated above has been approved and expended, Class Counsel and Bradley County will consult, in good faith, and agree upon a consultant qualified to assess Bradley County and the CMSP’s compliance with the section of the relevant contract requiring adherence to Tennessee Corrections Institute, American Correctional Association and National Commission on Correctional Health Care requirements, if any. Bradley County agrees to pay up to \$30,000.00 for the consultant to conduct that assessment. The agreed-upon consultant will conduct the contemplated assessment, which will be confined to the first contract year between Bradley County and its CMSP following the expenditure of the amount contemplated above. A copy of the assessment will be shared with Class Counsel.

- j. In addition, the Final Approval Order will include with it the following monitoring provision by Class Counsel:

Class Counsel will monitor Bradley County's compliance with the Injunction for a period of two years from the date of entry of the Final Approval Order. Bradley County agrees to furnish Class Counsel with budget documents sufficient to permit them to evaluate compliance with the Injunction. If Class Counsel believes in good faith that Bradley County is violating the terms of same, Class Counsel shall provide written notice to and inform counsel for Bradley County of the basis for that belief, and the parties shall make all reasonable attempts to resolve the issue prior to Class Counsel seeking relief from the Court.

- k. The Parties agree that the injunctive relief contemplated herein complies with the strictures in 18 United States Code section 3626.
- l. The monitoring provision described herein shall expire following that two-year period described *supra*.

#### **10. RELEASE**

- a. **Extent of Release.** Except as otherwise set forth herein with respect to injunctive relief, Releasing Parties affirmatively declare that, upon payment of the amounts contemplated herein, Released Parties have satisfied any and all liability to them related or connected in any way to the Litigation. Accordingly, as of the Effective Date, Releasing Parties release, and the Settlement Agreement fully resolves and releases, Released Parties, from any and all past or present claims, demands, actions, causes of action, rights, suits, debts, damages, losses, costs or expenses, fixed or contingent, direct or indirect, including but not limited to claims for violation of constitutional rights connected with medical care, state law claims for medical malpractice, tort claims, negligence claims, breach of statutory duties, compensatory and punitive damages, injunctive or declaratory relief, attorney's fees, interests, costs, penalties and any other claims, whether known or unknown, alleged or not alleged in the Litigation, suspected or unsuspected, contingent or matured, under federal, state or local law, which any Party had, now has, or may in the future have with respect to

any conduct, act, omissions, facts, matters, or occurrences on or prior to entry of the Preliminary Approval Order arising from or relating in any way to the following:

- i. The Litigation and any claim or allegation set forth therein or that could have been set forth therein;
- ii. Actions or omissions relating to or in connection with any official or unofficial policy or custom of Bradley County, the BCSO, and/or any CMSP with which they have contracted, related to the provision of medical care to inmates;
- iii. any claim that arose out of the conduct, transaction, or occurrence set out—or attempted to be set out—in the Litigation; and/or
- iv. any claim or allegation which was asserted in any communications by Class Members or Class Counsel, to Defendants' Counsel.

**b. Limits of Release.** This Release does not release, protect, or shield the Released Parties from any potential liability that may be made or raised by the following:

- i. Individuals who are not Class Members, or;
- ii. Individuals who are not Class Members because they, or an Authorized Person on their behalf, requested exclusion in conformity with the terms and requirements of the Settlement Agreement (*i.e.*, “opt-outs”).

**11. CLASS COUNSEL’S ATTORNEY’S FEE AWARD AND REIMBURSEMENT OF EXPENSES; NAMED PLAINTIFFS’ INCENTIVE AWARD**

**a. Attorney’s Fees for Class Counsel.** As set forth above, The Parties have agreed that, as part of this settlement, Class Counsel shall receive **One Million, One Hundred Forty Thousand Dollars and 00/100 Cents (\$1,140,000.00)** in attorney’s fees, which represents thirty percent (30%) of the Settlement Fund. Defendants agree that the Fee Award is reasonable and appropriate as part of this settlement. Subject to Court approval, Defendants

agree to pay the Attorney's Fees Amount. Class Counsel agrees that in no event will they seek, be entitled to, or accept a fee award that is greater than the Attorney's Fees Amount.

- b. Reimbursement for Litigation Costs and Expenses.** As set forth above, the Parties have agreed that, as part of this settlement, and subject to Court approval, Defendants shall reimburse Class Counsel for costs and expenses incurred in prosecuting the Litigation in the amount of **One Hundred Twenty-Four Thousand Three Hundred Eighty-Six Dollars and 43/100 Cents (\$124,386.43)**, which Defendants agree is reasonable and appropriate as part of this settlement.
- c. Named Plaintiffs' Incentive Award.** As set forth above, in recognition of their efforts on behalf of the Classes, in addition to any award to which they may otherwise be entitled as Class Members, and subject to the approval by the Court, each of the nineteen (19) Named Plaintiffs shall be awarded an Incentive Award in the amount of **Five Thousand Dollars and 00/100 Cents (\$5,000.00)**, for a total of **Ninety-Five Thousand Dollars and 00/100 Cents (\$95,000.00)**.

## **12. PROCEDURE FOR SETTLEMENT OF CLAIMS OF DECEASED OR INCOMPETENT CLASS MEMBERS**

The Parties anticipate that, at the time of Preliminary Approval, some number of Damages Class Members will be (1) deceased or (2) incompetent (as that term is defined under Tennessee law). Therefore, the Parties agree that the claim of any Damages Class Member or Class Representative must be submitted by Authorized Persons, and that, as part of the Claims Process, the Special Master and Class Counsel shall reasonably satisfy themselves that (a) the person submitting the Damages Class Claim Form (if not a Damages Class Member himself) is otherwise an Authorized Person, and (b) the person designated as the recipient of any Final Payment Amount is, in fact, the person entitled to the proceeds of any such claim in accordance with the applicable

laws of the State of Tennessee. To the extent that one or more persons submit Damages Class Claim Forms regarding the same Damages Class Member, the Special Master and Class Counsel shall resolve that conflict in accordance with the applicable laws of the State of Tennessee and shall provide prompt notice of same to the known parties affected by said determination.

**13. TIMING OF DEFENDANTS' PAYMENTS TO SETTLEMENT ADMINISTRATION ACCOUNT AND DAMAGES CLASS ACCOUNT AND SETTLEMENT ADMINISTRATOR'S PAYMENTS TO ITSELF, CLASS COUNSEL, AND THE SPECIAL MASTER**

- a. Not later than seven (7) business days of entry of the Preliminary Approval Order, the Settlement Administrator shall open a FDIC-insured bank account in which the funds for settlement administration (including the Claims Process) shall be deposited (the "Settlement Administration Account"). Not later than three (3) business days of the entry of the Preliminary Approval Order or confirmation that the Settlement Administration Account has been opened, whichever is later, Defendants shall, with the Settlement Administrator, cause to be transferred into the Settlement Administration Account the Settlement Administration Funds set forth *supra* Section 4(c)), *viz.*, **Four Hundred and Five Thousand Dollars and 00/100 Cents (\$405,000.00)** (of which **Two Hundred and Five Thousand Dollars and 00/100 Cents (\$205,000.00)** shall be designated for the Settlement Administrator Fees and **Two Hundred Thousand Dollars and 00/100 Cents (\$200,000.00)** shall be designated for the Special Master Fees). In no event shall Defendant be responsible for the payment of any additional funds for the administration of the settlement. The Settlement Administration Funds shall be used to pay for all activities undertaken by the Settlement Administrator and Special Master pursuant to the Settlement Agreement and/or any contracts they enter into with one or more of the Parties.

- b. The Settlement Administrator shall be permitted to withdraw funds from the Settlement Administration Account at its discretion during Settlement Administration (while providing itemized invoices as set forth in the terms and conditions of its proposal), except that a 10% retainage of the Settlement Administrator Fees (*i.e.*, \$20,500) shall be maintained in that account until the Settlement Administrator's duties are completed as set forth in this Settlement Agreement and pursuant to any orders entered by the Court in connection with same, at which time the Settlement Administrator may withdraw that amount as its final payment.
- c. Not later than seven (7) calendar days following the Effective Date, the Settlement Administrator shall open a FDIC-insured bank account for the deposit of the Damages Allocation ("Damages Class Account"), from which the Settlement Administrator shall issue payments for Incentive Awards and Approved Damages Claims.
- d. Not later than three (3) business days following the Effective Date or confirmation that the Damages Class Account has been opened, whichever is later, Defendants shall (with the Settlement Administrator) cause to be transferred into the Damages Class Account **two million one hundred thirty thousand, six hundred thirteen dollars and fifty-seven cents (\$2,130,613.57)**.<sup>10</sup>
- e. As set forth *supra*, in the event that the Special Master Fees are greater than the minimum \$50,000.00 but less than maximum \$200,000.00 at the time that the Court approves or modifies the fee to be awarded to the Special Master, any excess over the submitted amount but less than \$200,000.00 shall, at a reasonably practicable time and prior to calculation of

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<sup>10</sup> To the extent that there is any reduction in the Damages Allocation as set forth in section 6, *supra*, Defendants' obligation to fund this account in this amount shall be commensurately reduced.

the First Adjusted Damages Allocation, be transferred from the Settlement Administration Account to the Damages Class Account and used to pay Incentive Awards and Approved Damages Claims.

- f. Not later than three (3) business days after the Court's review and approval or modification of the Special Master's Fee, the Settlement Administrator shall cause to be transferred from the Settlement Administration Account from the amount earmarked for Special Master Fees (i) the approved Special Master Fees to the Special Master, and (ii) the remainder to the Damages Class Account.
- g. Assuming that the Court approves putative Class Counsel's motion for fees and expenses, not later than seven (7) calendar days following the Effective Date, Defendants shall cause to be wired or otherwise transmitted to Class Counsel (as they shall direct) **One Million Two Hundred Sixty-Four Thousand, Three Hundred Eighty-Six Dollars and 43/100 Cents (\$1,264,386.43)**, of which (i) **One Million One Hundred and Forty-Thousand Dollars and 00/100 Cents (\$1,140,000.00)** shall be the Attorney's Fees Amount earmarked for payment to Class Counsel; and (ii) **One Hundred Twenty-Four Thousand Three Hundred Eighty-Six Dollars and 43/100 Cents (\$124,386.43)** shall be the Expenses Amount earmarked for payment to Class Counsel.<sup>11</sup>
- h. The Parties agree that Defendants' obligation to (i) make any payment into the Damages Class Account and/or (ii) transfer the Attorney's Fees Amount and/or Expenses Amount is

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<sup>11</sup> Should the Court award a lower fee to putative Class Counsel, Defendants shall be obligated to pay only that amount. In that event, the difference between the amount listed in the section preceding this footnote and the amount awarded by the Court shall included in the First Adjusted Damages Allocation and deposited in or transferred to the Damages Class Account.

conditioned upon the Court's entry of the Final Approval Order and Final Judgment consistent with the definition of those terms as set forth in Section 2 of this Agreement.

- i. **Total Sum.** The sum of required payments set forth in Section 13(a)-(e) shall constitute the Settlement Fund. Except as otherwise specifically provided herein, in no event shall Defendants have any obligation to pay any additional money to Named Plaintiffs and/or Class Members and/or any of their representatives under this Settlement Agreement.

#### **14. MISCELLANEOUS PROVISIONS**

- j. **Complete Agreement.** The Settlement Agreement shall constitute the entire integrated agreement of the Parties. No prior contemporaneous communications, oral or written, or prior drafts shall be relevant or admissible for purposes of determining the meaning of any provisions here in this litigation or in any other proceeding.
- k. **Cooperation.** Subject to their fiduciary and other legal obligations, the Parties agree to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of this Settlement Agreement and to exercise their reasonable best efforts to accomplish the foregoing terms. Class Counsel and Defendants' Counsel agree to cooperate with one another in seeking Court approval of the Preliminary Approval Order, the Class Settlement Agreement, and the Final Approval Order, and Final Judgment.
- l. **Headings and Rules of Construction.** As used in this Agreement unless otherwise specified, all terms in the singular and plural shall have comparable meaning when used in the plural and vice-versa. All pronouns and variations thereof shall be deemed to refer to the masculine, feminine or neuter, singular or plural, as the context may require. Section and other headings contained in this Agreement are for reference purposes only and are not intended to be relied upon for purpose of interpreting the text of the Agreement.

- m. Amendment of Agreement.** This Class Settlement Agreement may not be amended, modified, altered, or otherwise changed in any manner except by a writing signed by a duly authorized agent of Named Plaintiffs and Defendants and approved by the Court. In the event any exhibit to the Agreement is modified by the district court as part of or during the approval process, the Class Settlement Agreement shall remain in full force and effect unless (1) the modification is material (pursuant to the parameters set forth herein concerning materiality of alterations) and (2) any of the Parties declares in writing, within seven (7) calendar days of the modification, that it considers the modification to be material in nature.
- n. Costs and Expenses.** Except as otherwise specifically provided in the Agreement, each party shall bear their own expenses and costs, including attorney's fees.
- o. Execution in Counterpart.** This Settlement Agreement may be executed in one or more counterparts, exchanged by hand, messenger, facsimile, or PDF as an electronic mail attachment. All executed counterparts and each of them shall be deemed to be one and the same instrument provided that counsel for the Parties to this Class Settlement Agreement all exchange signed counterparts.
- p. Choice of Law.** This Class Settlement Agreement shall be governed by and construed in accordance with the laws of the State of Tennessee.
- q. Venue.** All actions and other proceedings to enforce or otherwise arising out of this Settlement Agreement shall be brought or otherwise submitted in the United States District Court for the Eastern District of Tennessee at Chattanooga.
- r. Notices.** Except as otherwise provided herein, any notice, communication or demand required or permitted hereunder, shall be deemed given: (a) the day deposited with the U.S.

Postal Service, if sent by regular mail; (b) on the day the same is deposited with the commercial carrier if sent by commercial overnight delivery service; (c) on the day sent if sent by electronic mail, text message or other electronic means; and, (d) on the date delivered if sent by personal delivery.

s. **Settlement Agreement Exhibit List.**

**Exhibit 1: Damages Class Claim Form**

**Exhibit 2: Agreed Order Approving Class Action Settlement (*i.e.*, Final Approval Order)**

**Exhibit 3: Class Notice**

**Exhibit 4: Agreed Order Preliminarily Approving Class Action Settlement, Preliminarily Certifying Classes for Settlement Purposes, Appointing Class Representatives, Appointing Class Counsel, Approving and Directing Issuance of Class Notice, Appointing Special Master, and Scheduling a Final Fairness Hearing (*i.e.*, Preliminary Approval Order)**

**Exhibit 5: Damages Claim Schedule**

**Signatures to Follow on Pages**

FOR PLAINTIFFS AND THE CLASSES:

Dated: June 15, 2023.

By: \_\_\_\_\_

C. Scott Johnson  
William J. Rieder  
Joseph Alan Jackson II  
SPEARS, MOORE, REBMAN & WILLIAMS, P.C.  
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1749  
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J. Allen Murphy, Jr.  
LAW FIRM OF J. ALLEN MURPHY, JR.  
3555 Keith Street, Suite 213  
Cleveland, TN 37312

*Attorneys for Plaintiffs and Putative Classes*

FOR BRADLEY COUNTY, TENNESSEE

Dated: June \_\_\_\_, 2023.

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_