

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

MACK BUTLER, DASHAUN SIMS, CLYDE  
LOFTON, PAUL ALVER, KEVIN KING, and  
RICKEY LYNCH, on behalf of themselves and all  
others similarly situated,

Plaintiffs,

- against -

SUFFOLK COUNTY,

Defendant.

**Case No. 11-cv-02602 (AYS)**

**STIPULATED SETTLEMENT AGREEMENT AND [PROPOSED] ORDER**

**WHEREAS**, on April 5, 2012, Mack Butler, Dashaun Sims, Clyde Lofton, Paul Alver, Kevin King, and Rickey Lynch filed a consolidated amended class action complaint (“Complaint”) alleging that the inhumane and unsanitary conditions at the Suffolk County Correctional Facilities (“SCCF”), which is made up of the Riverhead Correctional Facility and the Yaphank Correctional Facility, violated their rights under the Eighth and Fourteenth Amendments to the United States Constitution as well as the Due Process Clause of the New York State Constitution;

**WHEREAS**, Plaintiffs (as defined below) allege that Defendant Suffolk County—responsible for maintaining the SCCF—is liable for exposing them to unconstitutional conditions of confinement by failing to remedy and allowing these conditions to persist;

**WHEREAS**, Suffolk County does not concede any of the alleged conditions;

**WHEREAS**, the Complaint was brought pursuant to 42 U.S.C. § 1983, seeking class-wide injunctive and declaratory relief, as well as money damages to redress Defendant Suffolk County’s alleged violation of Plaintiffs’ constitutional rights;

**WHEREAS**, on March 19, 2013, the Court certified the following classes: (1) an Injunctive Class comprised of all persons who, now or at any time in the future, are or will be detainees or prisoners in the custody of the Suffolk County Sheriff’s Office and housed in the SCCF, with separate subclasses for those persons detained in Riverhead and Yaphank; and (2) a Damages Class comprised of all persons who are or were detainees or prisoners in the custody of the Suffolk County Sheriff’s Office and housed in the SCCF and who were or will be released from the SCCF on or after April 5, 2009, with separate subclasses for those persons detained in Riverhead and Yaphank;

**WHEREAS**, Plaintiffs and Suffolk County (collectively, the “Parties”), share the goal of ensuring safe, humane, and sanitary living conditions in the SCCF in accordance with the Constitution of the United States and the Constitution and laws of the State of New York;

**WHEREAS**, the Parties, desiring to resolve all claims raised in this litigation without further proceedings and without admitting any fault or liability, have in good faith jointly negotiated the terms and agreed to enter this federally enforceable settlement agreement, consistent with the requirements of the Prison Litigation Reform Act, 18 U.S.C. § 3626;

**WHEREAS**, the Court has subject-matter jurisdiction over this Action under 28 U.S.C. §§ 1331, 1343, and 1367, and 42 U.S.C. § 1983; venue is proper in the United States District Court for the Eastern District of New York under 28 U.S.C. § 1391; and

**WHEREAS**, this Agreement (as defined below) is in the public interest, as it avoids further diversion of private and County resources to adversarial action and, subject to the approval of the Court, fully resolves this Action in the manner and upon the terms set forth below;

**NOW, THEREFORE, THE PARTIES HEREBY STIPULATE AND AGREE AS FOLLOWS:**

**I. DEFINITIONS**

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

1. “Action” means the above captioned litigation.
2. “Agreement” means this Settlement Agreement.
3. “Approval Schedule” means the following schedule that the Parties have proposed to the Court for approval of the Agreement:
  - a. Notice disseminated and published to the Class: sixty (60) days after the Preliminary Approval Date;
  - b. Deadline to Object to Settlement/Opt-Out of Damages Class: one hundred five (105) days after the Preliminary Approval Date;
  - c. Final Approval Motion: one hundred thirty-five (135) days after the Preliminary Approval Date;
  - d. Final Approval Hearing: at a day convenient to the Court, and at least one hundred sixty (160) days after the Preliminary Approval Date; and
  - e. Deadline to Submit Damages Claims: one hundred ninety (190) days after the Preliminary Approval Date.

4. “Bar Date” means the date established by the Court by which any presumptive Damages Class Member who wishes to receive payment pursuant to this Agreement must submit a Claim Form. The Parties agree that this date should be the Deadline to Submit Damages Claims.

5. “Class Notice” means the long-form class notice to be disseminated and published as described herein in Section II, and which is attached hereto as **Exhibit A**.

6. “Class Notice Summary” means the short-form class notice to be disseminated and published as described herein in Section II, and which is attached hereto as **Exhibit B**.

7. “Claim Form” means the form that Damages Class Members must complete and timely submit in order to receive payment under this Agreement, and which is attached hereto as **Exhibit C**.

8. “Claims Administrator” means the firm whose duties are defined below, in Paragraphs 63 to 74. The Parties agree to Kroll Settlement Administration LLC as the Claims Administrator for this Settlement.

9. “Claims Award” means the amount to be paid to each class member who timely submits a Claim Form, pursuant to the process set forth in Paragraphs 75 to 80.

10. “Class Counsel” means attorneys from Allen Overy Shearman Sterling US LLP and the New York Civil Liberties Union Foundation, as appointed by the Court on March 19, 2013.

11. “Class Members” means Damages Class Members and Injunctive Class Members.

12. “Correctional Standards” means the most current Standards for Health Services in Correctional Institutions published by the American Public Health Association.

13. “Court” means the United States District Court for the Eastern District of New York.

14. “Damages Class” means all persons who are or were incarcerated in the SCCF during the Damages Class Period.

15. “Damages Class Members” means individuals who satisfy the Damages Class definition.

16. “Damages Class Period” means April 5, 2009 to the Preliminary Approval Date.

17. “Defendant” or “the County” means Suffolk County (also known as the County of Suffolk), which is the municipality located on Long Island in the State of New York. Suffolk County owns and operates the SCCF.

18. “Effective Date” means the entry of an order approving this Agreement on the Final Approval Date by the Court and either: (1) the expiration of the time for filing a direct appeal from the Court’s approval of the Agreement, or (2) if a timely direct appeal is filed, the final resolution

of the appeal (including any requests for rehearing and/or petitions for writ of certiorari), resulting in final judicial approval of the Agreement.

19. “Final Approval Date” of the Agreement means the date of the Court’s issuance of a Final Approval Order, following the Final Approval Hearing, which approves the Agreement.

20. “Final Approval Hearing” means the hearing held by the Court after the Agreement is preliminarily approved, after Notice has been disseminated, and where the Court will consider any argument before issuing any Final Approval Order.

21. “Final Approval Order” means an order entered by the Court, after a Fairness Hearing, granting final approval to the Settlement Agreement.

22. “Final Injunctive Class Notice” means the short-form class notice to be posted at Riverhead and Yaphank following Final Approval as described herein at Paragraph 45, and which is attached hereto as **Exhibit D**.

23. “Incarcerated Individual” or “Incarcerated Individuals” means, construed broadly, one or more individuals detained at, or otherwise housed, held, in the custody of, imprisoned, or confined at the SCCF based on arrests, detainers, criminal charges, civil contempt charges, or convictions.

24. “Injunctive Class” means all persons who are or will be incarcerated within the SCCF up through the date of termination of this Agreement.

25. “Injunctive Class Members” means individuals who satisfy the Injunctive Class definition.

26. “Notice” means the dissemination and publication of the Class Notice, Class Notice Summary, and Final Injunctive Class Notice as provided in Section II of this Agreement.

27. “Additional Lead Plaintiffs” means Plaintiffs Richard McMahon, Daryl Miller, Kenneth Williams, and Jermaine Yates, appointed by the Court as Class Representatives on August 9, 2023.

28. “Original Lead Plaintiffs” means Plaintiffs Paul Alver, Mack Butler, Kevin King, Clyde Lofton, Rickey Lynch, and Dashaun Sims, appointed by the Court as Class Representatives on March 19, 2013.

29. “Lead Plaintiffs” means the Original Lead Plaintiffs and Additional Lead Plaintiffs.

30. “Plaintiffs” means the Lead Plaintiffs and Settlement Class.

31. “Plaintiff Representative Trial Witnesses” means Timothy Butler, Corey Mislin, Kenneth Tatum, Mahki Taylor, and Cory Tibball.

32. “Parties” means Plaintiffs and Defendant, each respectively a “Party.”

33. “Preliminary Approval Date” means the date of the Court’s issuance of an order preliminarily approving this Agreement.

34. “Riverhead” means the Riverhead Correctional Facility located at 100 Center Drive, Riverhead, New York, 11901.

35. “SCCF” means the Suffolk County Correctional Facilities located in Suffolk County, New York; it includes both Riverhead and Yaphank.

36. “Settlement Class” means all Class Members, which are comprised of both the Damages Class and the Injunctive Class, as defined in Paragraphs 14 and 24.

37. “Yaphank” shall mean the Yaphank Correctional Facility located at 69 Yaphank Avenue, Yaphank, New York, 11980, exclusive of the facility at Yaphank that was built in 2013.

## **II. NOTICE**

38. Notice of this Agreement shall be effected pursuant to all the steps outlined in this Section.

39. Direct Mailing. Notice of this Agreement shall be provided to Class Members by mailing the Class Notice Summary to all individuals known to the Parties who satisfy the Settlement Class definition pursuant to the Approval Schedule and pursuant to the mailing process set out in Paragraph 67 below.

40. Website. The Claims Administrator will maintain a website containing information about this Action and settlement, and where anyone can view this Agreement and the Class Notice. At this website, a Class Member may also obtain and submit a Claim Form. The Agreement shall be posted on the website upon execution by the Parties and the Claim Form will be made available on the website consistent with the Notice deadline of the Approval Schedule.

41. Toll-Free Phone Number. The Claims Administrator will operate a toll-free phone number where Class Members can ask, and receive responses to, consistent with the Notice deadline of the Approval Schedule.

42. Publication of Notice. The Claims Administrator will publish the Claim Summary Notice through advertising exchange networks, Google Ads, social media networks, in *Prison Legal News*, and a press release, consistent with the Notice deadline of the Approval Schedule.

43. Distribution of Notice to Class Members Incarcerated at SCCF. The County shall provide a copy of the Class Notice, the Claim Form, and a return envelope in a sealed envelope (“Incarcerated Class Member Notice”) to each Class Member incarcerated at the facility within twenty-one (21) days of the Preliminary Approval Date. The Claims Administrator shall assemble such Incarcerated Class Member Notice in consultation with the County to ensure adequate dissemination.

44. County Posting of Notice. The County shall post the Class Notice at Yaphank and Riverhead in locations where it is most likely to be seen by Class Members, including but not

limited to the law library and common areas, within seven (7) days of the Preliminary Approval Date.

45. **Notice Following Final Approval.** The County shall post the Final Injunctive Class Notice at Yaphank and Riverhead in locations where it is most likely to be seen by Incarcerated Individuals, including but not limited to the law library and common areas, within fourteen (14) days of the Final Approval Date.

### **III. INJUNCTIVE RELIEF PROVISIONS**

46. **Health Professional.** The County will appoint an employee who will be specifically responsible to address environmental health concerns at the SCCF, to be filled by an appropriately qualified person and will serve in the role for a minimum of three (3) years.

47. **Training.** The County shall (taking into account security concerns) separately train, through video and a rulebook, appropriate personnel and all Incarcerated Individuals in environmental health matters and maintain that training (under the supervision of the environmental health employee referenced in Paragraph 46) going forward. The video training for both personnel and Incarcerated Individuals will involve an introductory training course for each facility employee and Incarcerated Individuals with responsibility for overseeing cleaning and sanitation in housing and kitchen areas, as well as an annual refresher course.

48. **Cleaning Supplies.** The County shall ensure cleaning supplies are properly distributed to Incarcerated Individuals and used with appropriate supervision and as part of good housekeeping practices (clean mattresses, proper dissemination of sweatshirts, and blankets to Incarcerated Individuals).

- a. Cleaning supplies to be approved by the environmental health employee referenced in Paragraph 46.
- b. The training referenced in Paragraph 47 will include education on appropriate use of cleaning supplies that are approved for use by the environmental health employee.
- c. The County will provide appropriate protective equipment (including gloves, masks, and footwear) to personnel and Incarcerated Individuals associated with cleaning, and training on use of the same as part of the training course referenced in Paragraph 47.

49. **Physical Repairs.** The County shall identify and repair or otherwise remediate plumbing defects (including ensuring properly functioning toilets and showers and safe drinking water), peeling paint, rust, and other physical defects within the SCCF (including the presence of mold, operation of the SCCF ventilation system, kitchen health code violations, and other issues implicating food safety).

- a. The County will, within no more than ninety (90) days of the Final Approval Date, develop and document a plan to identify and remediate (via cleaning, maintaining, repairing, and/or replacing as appropriate) these conditions wherever they exist

limited to the law library and common areas, within seven (7) days of the Preliminary Approval Date.

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- a. The County will, within no more than ninety (90) days of the Final Approval Date, develop and document a plan to identify and remediate (via cleaning, maintaining, repairing, and/or replacing as appropriate) these conditions wherever they exist



within the SCCF (to the extent the County does not have appropriate internal resources to address the conditions specifically discussed herein, and any other conditions identified during the initial inspection provided for in Paragraph 51 herein, it shall retain qualified external vendors to do so).

- b. Once developed, the County will within no more than ninety (90) days of the date the plan is developed and documented commence implementation of the plan.
- c. The County will log on an ongoing basis the identification of conditions identified in this Paragraph 49 and the repairs and maintenance implemented to address them.
- d. The environmental health employee referenced in Paragraph 46 shall be responsible for ensuring that the plan, implementation, and logging referenced in this Paragraph 49 are timely completed.

50. **Vermin.** The County will ensure a proper vermin/pest control program is implemented and carried out.

- a. The County shall, within no more than ninety (90) days of the Final Approval Date, retain an independent vermin/pest control vendor to develop and implement this program.
- b. The retained vendor shall perform inspections at least annually and revise the program as necessary based on these inspections.

51. **Monitor/Compliance.** The County agrees to (and shall pay for): (i) a County-designated and independent external expert (approved by Class Counsel and the Court) to do annual assessments/reports that go to Class Counsel and the Court (on the public docket) within agreed parameters for a period of three (3) years (i.e., three (3) annual reports); (ii) provide on a semiannual basis for the same period a set of agreed County documents (e.g., floor/pod inspection forms, Suffolk County Department of Public Works maintenance requests/log books) to ensure issues provided for in this Agreement are being addressed; and (iii) unless resolved by the external expert designated in this Paragraph, either Party may bring compliance failures to the Court.

52. **Jurisdiction.** The Court shall retain jurisdiction for the period the County-designated external expert is in place (three (3) years) with the Court having the ability to extend up to two (2) years if the County does not fulfill its obligations and grant any other relief the Court deems necessary.

#### **IV. MONETARY RELIEF PROVISIONS**

53. Subject to the terms and conditions of this Agreement, the County agrees to pay eighteen million dollars (\$18,000,000) (the "Monetary Settlement Amount") which shall be used as described herein to pay Claims Awards to the Damages Class Members, the costs of the notice agreed to by the Parties and/or ordered by the Court, the costs of the Claims Administrator, the Service Awards, any income taxes owed by the Settlement Account, and any other costs or expenses approved and ordered by the Court.



**A. Funding of the Settlement and Administration of the Settlement Account**

54. The Claims Administrator will open and administer an interest-bearing account (“Settlement Account”) designated by Class Counsel, with earned interest to be added to the Settlement Fund.

55. The Claims Administrator will apply for a tax ID number, if necessary, and will take all necessary steps for the timely creation of the Settlement Account prior to the fourteenth (14<sup>th</sup>) day from the Preliminary Approval Date. The Claims Administrator shall provide to the County the Employer Identification Number for the Settlement Account and a completed W-9 Form and bank routing information for the Settlement Account within seven (7) days after the Preliminary Approval Date.

56. No later than thirty (30) days after the Preliminary Approval Date, the County shall deposit or cause to be deposited into the Settlement Account the Monetary Settlement Amount, which shall establish the Settlement Fund. Any interest accrued shall be added to the Settlement Account for the benefit of the Damages Class Members in the event that the Agreement is finally approved and entered as a judgment. Should the Agreement not be finally approved after exhaustion of all appellate avenues, all such funds, including interest earned on them, shall be returned to the County (except for class administration costs already expended by the Claims Administrator).

57. The Claims Administrator shall invest the Monetary Settlement Amount and any interest earned thereon exclusively in instruments backed by the full faith and credit of the United States Government or fully insured by the United States Government or an agency thereof and shall reinvest the proceeds of these instruments as they mature in similar instruments at their then current market rates. All costs and risks related to the investment of the Settlement Fund in accordance with the guidelines set forth in this Paragraph shall be borne by the Settlement Fund.

58. The Claims Administrator shall not disburse the Settlement Fund except: (a) as provided in the Agreement; or (b) by an order of the Court. Subject to further order(s) and/or directions as may be made by the Court, or as provided in the Agreement, the Claims Administrator is authorized to execute such transactions consistent with the terms of the Agreement. The Parties shall have no responsibility for, interest in, or liability whatsoever with respect to the actions of the Claims Administrator or any transaction executed by the Claims Administrator.

59. All funds held in the Settlement Account shall be deemed and considered to be in *custodia legis* of the Court and shall remain subject to the jurisdiction of the Court until such time as such funds shall be distributed in their entirety in accordance with the Agreement and further order(s) of the Court.

60. Prior to the Final Approval Date, Class Counsel, without further approval of the County or the Court, may pay from the Settlement Fund (i) up to \$175,000 in costs for Class Notice and administration of the Settlement Fund (“Class Notice and Administration Expenses”), (ii) Taxes (as defined below), and (iii) Tax Expenses (as defined below).

61. The Parties agree to treat the Settlement Fund as being at all times a Qualified Settlement Fund within the meaning of Treasury Regulation Section 1.468B-1 and agree not to

take any position for tax purposes inconsistent therewith. The Claims Administrator shall timely make such elections as necessary or advisable to carry out the provisions of this paragraph, including the “relation-back election” (as defined in Treasury Regulation Section 1.468B-1) back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the responsibility of the Claims Administrator to timely and properly prepare and deliver, or cause to be prepared and delivered, the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur. For the purpose of Section 468B of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, the “administrator” shall be the Claims Administrator. The Claims Administrator shall timely and properly file, or cause to be filed, all informational and other tax returns necessary or advisable with respect to the Settlement Fund (including, without limitation, the returns described in Treasury Regulation Section 1.468B-2(k)). All (a) taxes (including any estimated taxes, interest, or penalties) arising with respect to the income earned on the Settlement Amount, including any taxes or tax detriments that may be imposed upon the Settling Parties or their counsel with respect to any income earned on the Settlement Amount for any period during which the Settlement Amount does not qualify as a Qualified Settlement Fund for federal or state income tax purposes (“Taxes”), and (b) expenses and costs incurred in connection with the operation and implementation of this paragraph (including, without limitation, expenses of tax attorneys and/or accountants, mailing and distribution costs and expenses relating to filing (or failing to file) the returns described in this paragraph) (“Tax Expenses”), shall be paid out of the Settlement Amount; in all events the Parties and their counsel shall have no liability or responsibility for the Taxes or the Tax Expenses. Further, Taxes and Tax Expenses shall be treated as, and considered to be, a cost of administration of the Settlement Fund and shall be timely paid by the Claims Administrator out of the Settlement Fund without prior approval of the Parties, and the Claims Administrator shall be obligated (notwithstanding anything herein to the contrary) to withhold from distribution to Authorized Claimants any funds necessary to pay such amounts, including the establishment of adequate reserves for any Taxes and Tax Expenses (as well as any amounts that may be required to be withheld under Treasury Regulation Section 1.468B-2(l)(2)). The Parties hereto agree to cooperate with the Claims Administrator, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of this Paragraph.

62. The Claims Administrator will treat Taxes as the first priority for payment, and thereafter, shall, on a quarterly basis, set aside an amount sufficient to pay all Taxes, if any, owed by the Settlement Account on interest earned to date. The Claims Administrator shall pay all Taxes, if any, on a quarterly basis. The Parties will not be responsible for Taxes, Tax Expenses, penalties, or interest incurred on the funds in the Settlement Account.

#### **B. Role of Claims Administrator and Claims Administration**

63. In addition to the role of the Claim Administrator with respect to the administration of the Settlement Account as set forth above, the Claims Administrator shall (1) transmit the Class Notice Summary to Class Members by Direct Mailing; (2) maintain a website and toll-free phone number where information about the settlement will be available to Class Members and where Class Members can ask, and receive responses to, questions; (3) publish the Class Notice by means set forth in the Agreement; (4) respond to questions from Class Members; (5) review and assess the validity of information in the Claims Forms submitted by Class Members; (6) calculate the

amounts of payments to the individual Damages Class Members consistent with this Agreement; (7) arrange for and distribute checks containing payments to Damages Class Members as set forth in this Agreement; (8) create a database of Damages Class Members who have filed timely and valid Claim Forms; (9) create a database of Opt-Outs; and (10) perform any other duties necessary to fulfill the foregoing responsibilities and any other responsibilities set forth in this Agreement.

64. The County agrees to facilitate the work of the Claims Administrator by obtaining and providing to the Claims Administrator information and data in the County's possession which are relevant and appropriate to facilitate the administration of the settlement, including but not limited to the information delineated in Paragraphs 65 and 72.

65. Within thirty (30) days of the Preliminary Approval Date, the County will provide the Claims Administrator with Microsoft Excel spreadsheets containing the full name, date of birth, Department Identification Number, social security number, intake and release dates of incarceration in the SCCF during the Damages Class Period, and last known address to determine the Class Members' last known address and incarceration periods during the Damages Class Period (the "Class List"). Where necessary and/or appropriate, the Parties shall cooperatively seek appropriate court orders to obtain the addresses of the Class Members.

66. Information provided to Class Counsel and the Claims Administrator pursuant to Paragraphs 64 and 65 shall be confidential and may not be disclosed to anyone except Class Counsel, Defendant's Counsel, the Claims Administrator, or the Court under seal.

67. Pursuant to the Approval Schedule, the Claims Administrator shall mail by first class mail, postage prepaid, to all persons on the final Class List for whom an address is available a copy of the Claim Notice Summary. Any Claim Notice Summary returned as undeliverable by the U.S. Postal Service will be date-stamped and recorded in the Claim Administrator's database. Those with forwarding addresses will be re-mailed to the addresses provided, while those returned without forwarding addresses will be skip-traced and re-mailed.

68. At least one week before the Final Approval Hearing, Class Counsel shall file with the Court a declaration confirming that Notice was provided consistent with the Settlement Agreement and any Preliminary Approval Order entered by the Court.

69. Damages Class Members must submit a fully completed Claim Form to the Claims Administrator by the Bar Date unless such date is extended by order of the Court. The Claims Administrator shall reject all claims that are untimely. A Claim Form is deemed submitted (i) upon deposit in a postpaid properly addressed wrapper, in a post office or official depository under the exclusive care and custody of the U.S. Post Office; (ii) when submitted for delivery by a commercial express carrier; (iii) when emailed to the Claims Administrator at the settlement website; or (iv) when actually received by the Claims Administrator, whichever date is earlier.

70. Any eligible Damages Class Member who fails to submit a Claim Form by the Bar Date or any Court mandated extension, shall be forever barred from receiving payments pursuant to this Agreement except with the consent of the Court. Such person shall be bound by all of the terms of the Agreement, and the Judgment entered herein, including but not limited to the releases as set forth in Section V.

71. The Claims Administrator shall mail letters and/or otherwise contact Damages Class Members who by the Bar Date submit partially completed Claim Forms that are deficient to provide them up to thirty (30) additional days to validate their Claim Forms (“Validation Period”). In the event such Claim Forms are not completed and timely returned within the Validation Period or by such other time as ordered by the Court, such claims shall be barred subject to the terms of Paragraph 70.

72. To the extent that the Claims Administrator and/or Class Counsel receive inquiries that they cannot resolve, the Claims Administrator and/or Class Counsel shall group such inquiries and submit them in writing to the County’s counsel on a recurring basis, but not more often than a weekly basis. Results of the investigations of such inquiries will be provided in writing and within fourteen (14) days of the inquiry made to the County’s counsel.

73. Rights and claims hereunder shall survive the death of eligible Damages Class Members. If an eligible Damages Class Member who is eligible to receive monetary relief under this Agreement is deceased, the amount payable to such deceased eligible Damages Class Member shall be paid to the appropriate representative of their estate. The representative of the estate shall provide proof of death and appropriate documentation to show that they are properly a representative of the estate. If the Claims Administrator determines, after reasonable opportunity has been given, that there is insufficient information or proof regarding the deceased person’s estate to permit such payment, the deceased person’s share shall be distributed in accordance with the terms set forth in Paragraph 74 for the distribution of uncashed checks.

74. Class Counsel has the discretion to instruct the Claims Administrator to void checks mailed to eligible Damages Class Members and not cashed within one hundred twenty (120) days of issuance. Notice of this procedure will be provided at the time the checks are issued. Class Counsel, on written notice to the County and the Court, shall have the discretion to direct the Claims Administrator to: (a) reissue the checks; or (b) add the amount of the voided checks back to the Settlement Fund; or (c) issue checks to persons who make late claims for good cause shown. The Claims Administrator is permitted for good cause shown (including proper documentation and proof of authority) to issue checks in the name of a person other than the eligible Damages Class Member.

### **C. Determination of Claims Awards to Damages Class Members**

75. Damages Class Members who timely submit a completed Claim Form (an “Authorized Claimant”) prior to the Bar Date will receive a Claims Award. All Authorized Claimants will receive a pro rata portion of twelve million dollars (\$12,000,000), in an amount equal to the total number of days that they were incarcerated in the SCCF between (a) April 5, 2009, and (b) the Preliminary Approval Date (inclusive of both dates) multiplied by (c) the Per Diem Amount as defined in this Paragraph (the “Per Diem Award”).

76. Damages Class Members may also apply for an award of additional damages from the remainder of the Settlement Fund to account for demonstrated injuries that such Damages Class Members contend arose from their time incarcerated within the SCCF (the “Special Injury

Award”). The Class Administrator shall determine the Per Diem Award and Special Injury Award as set forth in this Paragraph.

- a. The Per Diem Amount shall be calculated by dividing (x) twelve million dollars (\$12,000,000) by (y) the total number of days that Authorized Claimants were incarcerated in the SCCF between April 5, 2009 through the Preliminary Approval Date (inclusive of both dates).
- b. Authorized Claimants (or their estates) that demonstrate (through the submission of medical records or similar documents whose veracity may be readily determined by the Claims Administrator) that they experienced death, dismemberment, or a condition requiring ongoing and significant medical treatment that is connected to the conditions of confinement present within the SCCF (as reflected and opined on, *inter alia*, in the reports of Eugene Pepper, Diane Skipworth, Dr. Joseph Bick, and Dr. Muthusamy Anandkumar) will be eligible to receive an additional damages payment on top of the Per Diem Award, not exceeding \$30,000 (“Tier 1 Special Injury Award”), to be awarded at the discretion of the Claims Administrator, balancing the persuasiveness of the proof provided against the need to maximize the recovery for all Damages Class Members seeking to claim a Tier 1 Special Injury Award.
- c. Authorized Claimants (or their estates) that demonstrate (through the submission of medical records or similar documents whose veracity may be readily determined by the Claims Administrator) that they experienced hospitalization or other temporary significant medical treatment that is connected to the conditions of confinement present within the SCCF (as reflected and opined on, *inter alia*, in the reports of Eugene Pepper, Diane Skipworth, Dr. Joseph Bick, and Dr. Muthusamy Anandkumar) will be eligible to receive an additional damages payment on top of the Per Diem Award, not exceeding \$15,000 (“Tier 2 Special Injury Award”), to be awarded at the discretion of the Claims Administrator, balancing the persuasiveness of the proof provided against the need to maximize the recovery for all Damages Class Members seeking to claim a Tier 2 Special Injury Award.
- d. For the avoidance of doubt, an Authorized Claimant’s Claims Award could constitute one of the following: (i) a Per Diem Award, (ii) a Pier Diem Award and Tier 1 Special Injury Award, or (iii) a Per Diem Award and Tier 2 Special Injury Award.

77. The Claims Administrator will review each Claim Form submitted by Authorized Claimants. The Claims Administrator will determine: (i) whether the Claimant is an eligible Settlement Class Member; (ii) whether the Claim Form is complete and sufficient in accordance with this Agreement and any applicable orders of the Court; and (iii) the extent, if any, to which each claim will be allowed.

78. Claim Forms that do not meet the submission requirements may be rejected in whole or in part. Prior to rejection of a Claim Form, the Claims Administrator will provide the Claimant with a Claim Deficiency Notice. The Claim Deficiency Notice will, in a timely fashion



and in writing, notify all Claimants whose Claim Forms the Claims Administrator proposes to reject, in whole or in part, and set out the reason(s) therefore, and the Claimant will have an opportunity to respond within a reasonable time as determined at the Claims Administrator's discretion. Upon receipt of the response to the Claim Deficiency Notice, the Claims Administrator shall make a final determination as to the Claims Award.

79. The Claims Administrator's determination of any particular Per Diem Award, Tier 1 Special Injury Award, or Tier 2 Special Injury Award, shall be final and unappealable.

80. The Claim Awards shall be paid by the Claims Administrator within ninety (90) days of the Effective Date.

**D. Exclusion from the Damages Class**

81. Any potential Damage Class Member who wishes to be excluded from the Damages Class must, pursuant to the deadlines set forth in the Approval Schedule, mail a request to be excluded from the Damages Class ("Request for Exclusion") to the Claims Administrator. Any Request for Exclusion must be in writing and state the name, date of birth, address, and telephone number (if any) of the person requesting exclusion and contain a clear statement communicating that such person elects to be excluded from the Damages Class. Those potential Damages Class Members that timely submit a Request for Exclusion shall be deemed to have opted-out of the terms of this Agreement (a "Opt-Out"). No Opt-Out shall share in any monetary benefits provided by this Agreement.

82. Originals of all Requests for Exclusion shall be retained by the Claims Administrator. A list of all exclusions, as well as a copy of the written Requests for Exclusions sent to the Claims Administrator, shall be provided to the Parties and the Court.

83. Any eligible Class Member who does not timely file a Request for Exclusion shall conclusively be deemed to have become an eligible Damages Class Member and to be bound by this Agreement and by all subsequent proceedings, orders, and judgments herein.

**E. Class Counsel's Costs, Charges, and Expenses; Lead Plaintiff Service Awards; Plaintiff Representative Trial Witnesses Service Awards**

84. Class Counsel may submit an application for distributions to them from the Settlement Fund (the "Expense Application") for expenses or charges in connection with prosecuting the Action. Any and all such expenses, charges, and costs awarded by the Court (the "Expense Award"), shall be payable solely out of the Settlement Fund. The Expense Award shall be paid to Class Counsel from the Settlement Fund, as ordered, immediately following entry of an order by the Court granting such award. The County shall not have any responsibility for or liability with respect to the Expense Award to Class Counsel. For the avoidance of doubt, Class Counsel has proceeded *pro bono* in its representation of Plaintiffs and will not seek the payment of any fees for its services in connection with this settlement.

85. Class Counsel, on behalf of the Lead Plaintiffs and Plaintiff Representative Trial Witnesses, may submit an application or applications to the Court for an award for the Lead Plaintiffs' time and expense in representing Plaintiffs (the "Lead Plaintiffs' Service Award

Application”). Any such amounts awarded to the Lead Plaintiffs, as approved by the Court (the “Lead Plaintiffs’ Service Award”) and for the time that the Plaintiff Representative Trial Witnesses spent to prepare to provide testimony on behalf of Plaintiffs at trial (the “Plaintiff Representative Trial Witnesses Award,” and with the Lead Plaintiffs’ Service Award, “Services Awards”), shall be payable solely out of the Settlement Fund. The Service Award made to any individual Lead Plaintiff or Plaintiff Representative Trial Witnesses shall be in addition to any Claims Awards otherwise due to that Lead Plaintiff or Plaintiff Representative Trial Witnesses with respect to any individual claim as Damages Class Members. The Service Awards shall be paid from the Settlement Fund, as ordered, fourteen (14) days following the Effective Date.

86. The maximum amount of the Service Awards that Class Counsel shall request shall be as follows:

- a. To an Original Lead Plaintiff, twenty-thousand dollars (\$20,000).
- b. To an Additional Lead Plaintiff, ten-thousand dollars (\$10,000).
- c. To a Plaintiff Representative Trial Witness, two-thousand dollars (\$2,000).

87. In the event that the Effective Date does not occur, or the order making the Expense Award is reversed or modified by final non-appealable order, or if this Agreement is cancelled or terminated for any reason, and in the event any part of the Expense Award has been paid, then Class Counsel, shall, in an amount consistent with such reversal, modification, cancellation, or termination, refund such fees or expenses to the Settlement Fund, plus interest earned thereon at the same rate as earned on the Settlement Fund, within thirty (30) days from receiving notice from the County’s counsel or from a court of competent jurisdiction. Any refunds required pursuant to this Paragraph shall be the sole obligation of Class Counsel as to make appropriate refunds or repayments to the Settlement Fund.

88. The procedure for and the allowance or disallowance by the Court of the Expense Award or Service Award to be paid out of the Settlement Fund is not a material part of the Agreement, and any order or proceeding relating to the Expense Application or Service Awards, or any appeal from any order relating thereto or reversal or modification thereof, shall not operate to terminate or cancel the Agreement or affect or delay the finality of the Judgment (including the releases contained herein).

#### **F. Distribution of Settlement Fund**

89. Claims Awards shall be paid from the Net Settlement Fund. The Net Settlement Fund shall constitute the Settlement Fund less (i) the amount of the Expense Award and Service Awards, if requested, and to the extent allowed by the Court; (ii) Class Notice and Administration Expenses; (iii) Taxes and Tax Expenses; and (iv) any other fees or expenses approved by the Court.

90. If there is any balance remaining in the Net Settlement Fund after a reasonable period of time after the initial date of distribution of the Net Settlement Fund, the Claims Administrator will, if feasible, allocate such balance among Authorized Claimants in an equitable and economic fashion. These redistributions will be repeated until the remaining balance in the Net Settlement Fund is impracticable to distribute equitably and economically to Authorized



Claimants, at which point any remaining balance will be donated to an appropriate 501(c)(3) non-profit selected by Class Counsel and approved by the Court.

**V. RELEASES**

91. Upon the Effective Date, in consideration for the agreements between the Parties and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Injunctive Class Members on behalf of themselves, their heirs, executors, administrators, predecessors, successors and assigns shall hereby release, remise, and forever discharge the County of any and all past or present claims or causes of action (including any suits, petitions, demands or other claims in law, equity or arbitration), and any and all allegations of liability or damages, of whatever kind, nature or description, direct or indirect, in law, equity, or arbitration, absolute or contingent, whether class or individual in nature, including both known and unknown claims, asserted or unasserted, for class-wide injunctive and declaratory relief based on the claims alleging inhumane environmental conditions of confinement that were asserted in this Action against the County and any of its parents, subsidiaries, affiliates, predecessors, successors and/or assigns and in the case of all such entities, their respective past and present representatives, officers, directors, attorneys, agents, employees, privies and insurers. Provided, however, that this release does not prevent an individual member of the Injunctive Class from filing or prosecuting a claim or action on their own behalf seeking equitable relief tailored to the specific circumstances of that individual or prevent Class Counsel from enforcing the terms of this Agreement. The release of the Injunctive Class's claims shall remain in effect until this Agreement is terminated.

92. Upon the Effective Date, in consideration for the agreements between the Parties and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Damages Class Members, on behalf of themselves, their heirs, executors, administrators, predecessors, successors and assigns shall hereby release, remise, and forever discharge the County of any and all past or present claims or causes of action (including any suits, petitions, demands or other claims in law, equity or arbitration), and any and all allegations of liability or damages, of whatever kind, nature or description, direct or indirect, in law, equity, or arbitration, absolute or contingent, whether class or individual in nature, including both known and unknown claims, asserted or unasserted, for monetary and non-monetary relief, alleging inhumane environmental conditions of confinement that were asserted by any Damages Class Member in this Action against the County and any of its parents, subsidiaries, affiliates, predecessors, successors and/or assigns and in the case of all such entities, their respective past and present representatives, officers, directors, attorneys, agents, employees, privies and insurers. Every Damages Class Member, except for those who are Opt-Outs pursuant to Paragraphs 81 to 83 above, shall be deemed to and shall have knowingly and voluntarily waived, released, and discharged the claims described in this Paragraph, with full knowledge of any and all rights they may have, and they hereby assume the risk of any mistake in fact in connection with the true facts involved, or with regard to any facts which are now unknown to them.

93. Nothing in this Agreement shall be construed to bar any claims of any Plaintiff besides the claims set out in this Section. In particular, nothing in this Agreement shall be construed to bar any claims of any Plaintiff based on or arising out of events occurring after the Preliminary Approval Date. Nor shall anything in this Agreement be construed to bar any claims

by any Plaintiff based on or arising out of claims in any certified class action, other than this Action, in which the Plaintiff is a member of the certified class.

## **VI. MISCELLANEOUS PROVISIONS**

### **A. Stipulation Pursuant to the Prison Litigation Reform Act, 18 U.S.C. § 3626**

94. The Parties stipulate and jointly request that the Court find the prospective relief described in this Agreement is narrowly drawn, extends no further than necessary to correct the alleged violations of federal rights, and is the least intrusive means necessary to correct these alleged violations, and thus complies with 18 U.S.C. § 3626(a).

### **B. CAFA Notice, 28 U.S.C. § 1715**

95. Pursuant to the Class Action Fairness Act (“CAFA”), codified at 28 U.S.C. § 1715, no later than ten (10) days after the Agreement is filed with the Court, the County, at its own cost, shall serve proper notice of the Agreement upon those who are entitled to such notice pursuant to CAFA.

### **C. Confidentiality of Documents**

96. All agreements made and orders entered during the course of the Action relating to the confidentiality of documents and information shall survive this Agreement, pursuant to their terms. The County may designate documents it provides to Class Counsel or the independent external expert provided for in Paragraph 51 pursuant to such agreements and orders.

### **D. Mutual Full Cooperation**

97. The Parties agree that they will fully cooperate with each other to effectuate and implement all terms and conditions of this Agreement and exercise good faith efforts to accomplish the terms and conditions of this Agreement.

### **E. Continuing Jurisdiction**

98. The Court, and any appellate court from which appeals of the Court’s decisions may properly be brought, shall retain jurisdiction for the implementation and enforcement of the terms of this Agreement, and all Parties hereto and their counsel shall submit to the exclusive jurisdiction of the Court for purposes of implementing and enforcing the settlement embodied in this Agreement.

99. Class Counsel and the County will take all necessary and appropriate steps to obtain approval of this Agreement. If the Court approves this Agreement, and if there is an appeal from such decision, the County will join in the defense of this Agreement.

100. On or after the Final Approval Date, the Court will enter Judgement without costs, expenses, or fees in excess of the amount authorized by the Court or agreed upon in this Agreement.

101. The terms of the Agreement shall be a full, final, and complete resolution of this Action.

**F. Entirety of Agreement; Modification of the Agreement and Order; Waiver**

102. This Agreement (including its Exhibits) represents the entire agreement among the Parties, and no oral agreement entered into at any time, nor any written agreement entered into prior to the execution of this Agreement, shall be deemed to exist, or to bind the Parties hereto, or to vary the terms and conditions contained herein, or to determine the meaning of any provisions herein. All terms of this Agreement are contractual and not mere recitals.

103. This Agreement can be modified only with the written consent of all the Parties.

104. No waiver of any term or provision of this Agreement, or of any breach or default hereof or hereunder, shall be valid or effective unless in writing and signed by or on behalf of the Parties or their respective successors-in-interest. No waiver of any term or provision of this Agreement, or of any breach or default hereof or hereunder, shall be construed as a waiver of the same or any other term or provision or of any previous or subsequent breach thereof.

**G. Notification of Parties**

105. All notices contemplated by this Agreement, other than notice to the Settlement Class pursuant to Paragraphs 38 to 45 above, shall be delivered by email, to Class Counsel for Plaintiffs, and to the County's undersigned counsel for the County.

**H. Counterparts; Authorization to Enter Into the Agreement**

106. This Agreement may be executed in one or more counterparts, each of which shall be an original and all of which together shall constitute one and the same instrument and will be binding when it has been executed and delivered by the last signatory. A facsimile, scanned signature, or electronic signature is an original signature for purposes of this Agreement.

107. The Parties mutually represent that they are fully authorized to enter into and to execute the terms of this Agreement.

**I. Governing Law**

108. This Agreement shall be governed by and construed and interpreted according to the laws of the State of New York without reference to conflicts of law principles.

**J. Mutual Interpretation; Headings**

109. This Agreement was negotiated on an "arm's length" basis between parties of equal bargaining power and mediated by the Honorable Anne Y. Shields as a third party neutral to resolve a bona fide dispute between the Parties concerning liability and the availability of equitable relief and damages. Also, Class Counsel and counsel for the County jointly drafted this Agreement. Accordingly, this Agreement shall not be construed in favor of or against any of the

Parties. Neither Party shall be considered the drafter of this Agreement for purposes of interpreting the Agreement, or the application of any rule of construct.

110. All headings used in this Agreement are for reference and convenience only and shall not affect the meaning or interpretation of this Agreement.

**K. Binding Upon Successors**

111. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective personal representatives, administrators, heirs, successors, and assigns.

**L. No Appeal**

112. Class Counsel and the County hereby agree not to appeal any aspect of this Agreement, or to otherwise collaterally attack or challenge this Agreement.

113. The Parties reserve their right to appellate review of the Court's decisions concerning compliance under this Agreement, as governed by applicable law.

**M. Nullification**

114. This Agreement is null and void in the event that any of the following do not occur:

- a. Preliminary Approval of this Agreement by the Court; or
- b. Final Approval by the Court.

*[Remainder of Page Intentionally Left Blank]*

CLASS COUNSEL FOR PLAINTIFFS:

/s/ Daniel H.R. Laguardia

Daniel H.R. Laguardia

John Nathanson

Elizabeth J. Stewart

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FOR SUFFOLK COUNTY:

/s/ E. Christopher Murray

E. Christopher Murray

Michelle A. Klein

Elizabeth S. Sy

Caitlyn Gibbons

**RIVKIN RADLER LLP**

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Uniondale, NY 11556-0926

516-357-3000

**SO ORDERED.**

Date: \_\_\_\_\_

\_\_\_\_\_  
Hon. Anne Y. Shields  
United States Magistrate Judge