

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WASHINGTON

SHAWN HUSS, a single man, and others  
similarly situated,

Plaintiff,

vs.

SPOKANE COUNTY, a municipal  
corporation,

Defendant.

No. CV 05-180-FVS

CLASS ACTION SETTLEMENT  
AGREEMENT

This Class Action Settlement Agreement and Release ("*Settlement Agreement*") is entered into by and between *Representative Plaintiff*, Shawn Huss, and *All Others Similarly Situated*, and *Defendant*, Spokane County, by and through their respective counsel in the class action lawsuit entitled *Shawn Huss v. Spokane County*, Case No. CV-05-180-FVS (the "*Litigation*"). Italicized and capitalized terms and phrases have the meanings provided in Section 1 below.

**RECITALS**

WHEREAS, in May of 1999 the Washington State Legislature enacted RCW 70.48.390, authorizing city, county, and regional jails to charge a \$10.00 booking fee to each individual booked into jail, and in May of 2003 this statute was amended, allowing jails to require each person booked into jail to pay a fee based on jail's actual booking costs or one hundred dollars (\$100.00), whichever is less.

WHEREAS, the current version of the applicable statute, RCW 70.48.390, states as follows:

"A governing unit may require that each person who is booked at a city, county, or regional jail pay a fee based on the jail's

actual booking costs or one hundred dollars, whichever is less, to the sheriff's department of the county or police chief of the city in which the jail is located. The fee is payable immediately from any money then possessed by the person being booked, or any money deposited with the sheriff's department or city jail administration on the person's behalf. If the person has no funds at the time of booking or during the period of incarceration, the sheriff or police chief may notify the court in the county or city where the charges related to the booking are pending, and may request the assessment of the fee. Unless the person is held on other criminal matters, if the person is not charged, is acquitted, or if all charges are dismissed, the sheriff or police chief shall return the fee to the person at the last known address listed in the booking records.”

WHEREAS, *Representative Plaintiff*, Shawn Huss, filed a Complaint on behalf of himself and *All Others Similarly Situated*, in the United States District Court for the Eastern District of Washington, alleging violations of 42 U.S.C. §§ 1983 and 1988.

WHEREAS, this matter is currently before the Honorable Fred Van Sickle in the United States District Court for the Eastern District of Washington (the “*Court*”) for purposes of settlement approval.

WHEREAS on October 12, 2007 a decision was entered by the *Court* finding that the application of Spokane County Jail’s booking fee policy to *Representative Plaintiff*, Shawn Huss, and *All Others Similarly Situated*, deprived them of due process of law.

WHEREAS, on August 25, 2008, a class was defined by the Court as:

“The class of all individuals from May 5, 2004 to December 20, 2006, who were deprived of their property pursuant to the booking fee policy of the Spokane County Jail without being provided the constitutionally guaranteed due process of law.”

WHEREAS, to the best knowledge of the parties, no other court has ruled to date on the constitutionality of RCW 70.48.390.

WHEREAS, the Defendant, Spokane County, petitioned the Ninth Circuit Court of Appeals for interlocutory review of the October 12, 2007 decision, and review was granted on January 23, 2009.

WHEREAS, the *Settling Parties* are desirous of a prompt, full, and final resolution of this Litigation and any future claims that may result from the Spokane County Jail Booking Fee Policy from May 5, 2004 through December 20, 2006. The *Settling Parties*, therefore, agreed to participate in mediation with the Ninth Circuit Mediation Office, which took place on June 11, 2009.

WHEREAS, the *Settling Parties* reached a settlement by and through their respective undersigned counsel on the terms and conditions set forth in this *Settlement Agreement*.

WHEREAS, this matter is currently on a stay in the Ninth Circuit Court of Appeals while settlement approval by the District Court is pending.

WHEREAS, the pending Ninth Circuit Appeal will be voluntarily dismissed if and when an “*Order of Final Judgment and Dismissal*” is entered by the *District Court*.

NOW, THEREFORE, the *Settling Parties*, in consideration of the promises, covenants and agreements herein described and for other good and valuable consideration acknowledged by each of them to be satisfactory and adequate, and intending to be legally bound, do hereby mutually agree as follows:

**1. DEFINITIONS**

As used in this *Settlement Agreement*, italicized and capitalized terms and phrases not otherwise defined have the meanings provided below:

1.1 “*Agreement Execution Date*” shall mean: the date on which this *Settlement Agreement* is fully executed, as provided in Section 10.14 below.

1.2 “*All Others Similarly Situated*” shall have the meaning set forth in Section 1.5

1.3 “*Complaint*” shall mean: the Second Amended Class Action Complaint filed on December 21, 2005 alleging violations of 42 U.S.C. §§ 1983 and 1988.

1.4 “*Claims*” shall have the meaning set forth in Section 3.2.

1.5 “*Class*” or “*Class Member(s)*” shall mean: all individuals who fall under the class definition defined by the District Court on August 25, 2008. The class was defined as follows:

“The class of all individuals from May 5, 2004 to December 20, 2006, who were deprived of their property pursuant to the booking fee policy of the Spokane County Jail without being provided the constitutionally guaranteed due process of law.”

Individuals deprived of their due process include only those individuals who were charged a booking fee, and who actually paid money towards that fee.

1.6 “*Class Benefit*” shall mean a potential benefit to a class member from the *Settlement Fund*, depending on their status as *Non-Convicted* or *Convicted* individual, and as described in the *Plan of Allocation*, under Section 4 of this *Settlement Agreement*.

1.7 “*Class Counsel*” shall mean: Breean Beggs and Jeffry Finer of the Center for Justice in Spokane, Washington.

1.8 “*Class Notice*” shall mean: the *Class Notice Form* and the *Publication Notice*.

1.9 “*Class Notice Form*” shall mean the document annexed hereto as Exhibit A and entitled “Official Notice of Class Action and Proposed Settlement”

1.10 “*Class Period*” shall mean: the period from May 5, 2004 through December 20, 2006.

1.11 “*Class Claim Form*” shall mean the class questionnaire form which will accompany the *Class Notice Form*. Any class member who does not complete the *Class Claim Form* by December 16, 2009, will not be eligible to receive any Class Benefit. The *Class Claim Form* is annexed to the *Class Notice Form* under Exhibit A.

1.12 “*Convicted*” shall mean: any individual who was booked into Spokane County Jail during the *Class Period*, who was found guilty on any charge, convicted on any charge, or entered into a guilty plea on any charge (including a plea of no contest or an Alford plea).

1.13 “*County*” shall mean Spokane County.

1.14 “*Defendant*” shall mean Spokane County.

1.15 “*Effective Date*” shall mean: the date, established pursuant to Section 8.1, on which all of the conditions to settlement set forth in Section 2 of this *Settlement Agreement* have been fully satisfied or waived and the *Settlement* shall have become *Unconditional*.

1.16 “*Jail*” shall mean the Spokane County Jail.

1.17 “*Fairness Hearing*” shall have the meaning set forth in Section 2.2.3.

1.18 “*Final*” shall mean: with respect to any judicial ruling or order, that the period for any appeals, petitions, motions for reconsideration, rehearing or certiorari or any other proceedings for review (“*Review Proceeding*”) has expired without the initiation of a *Review Proceeding*, or, if a *Review Proceeding* has been timely initiated, that there has occurred a full and final disposition of any such *Review Proceeding* without a reversal or any material modification, including the exhaustion of proceedings in any remand and/or subsequent appeal after remand.

1.19 “*Final Order*,” or *Order of Final Judgment and Dismissal*, shall have the meaning set forth in Section 2.2.4.

1.20 “*Huss v. Spokane County Action*” shall mean: the case captioned: *Shawn Huss, a single man, and others similarly situated vs. Spokane County, a municipal Corporation*, Case No. CV 05-180-FVS.

1.21 “*Incentive Award*” shall mean: an amount from the *Settlement Fund* determined by *Class Counsel* to the *Named Plaintiff*.

1.22 “*Mailed Notice*” shall mean: the Notice of Settlement of Class Action, to be approved by the *Court* in the *Preliminary Approval Order* and mailed to the last known address of all *Settlement Class* members.

1.23 “*Named Plaintiff*” shall mean: the following person, as plaintiff on behalf of himself and on behalf of all members of the *Settlement Class*: Shawn Huss. All rights and obligations that are binding on *Named Plaintiff* under this *Settlement Agreement*, including each and every covenant, and agreement, also shall be binding on all members of the *Class*.

1.24 “*Net Settlement Amount*” shall mean the total of \$491,668.00, which is the maximum amount Defendants must pay under this *Settlement Agreement*.

1.25 “*Non-Convicted Individual*” shall mean any individual who was booked into Spokane County Jail during the *Class Period*, and the individual was not charged, was acquitted on all charges, or all charges were dismissed.

1.26 “*Order of Final Judgment and Dismissal*,” or “*Final Order*,” shall have the meaning set forth in Section 2.2.4.

1.27 “*Plan of Allocation*” shall mean: the plan or formula of allocation of the *Settlement Amount*, described in Section 4, whereby the *Settlement Amount* shall be distributed after the *Effective Date*, and after all conditions of settlement set forth in Section 2 of this *Settlement Agreement* have been fully satisfied.

1.28 “*Preliminary Approval Order*” shall have the meaning set forth in Section 2.3.1.

1.29 “*Preliminary Motion*” shall have the meaning set forth in Section 2.2.1.

1.30 “*Publication Notice*” shall mean: the notice, to be approved by the Court, to be published in the Spokesman Review. This notice is annexed hereto as Exhibit B.

1.31 “*Released Claims*” shall have the meaning set forth in Section 3.2.

1.32 “*Releases*” shall mean the releases set forth in Section 3.2.

1.33 “*Releasees*” shall mean Defendants and each of their past or present elected officials, officers, directors, employees, agents, designees servants, sureties, attorneys,

associates, insurers, assigns or legal representatives, or predecessors or successors in interest from

1.34 “*Represented Plaintiff*” shall mean: Shawn Huss.

1.35 “*Settlement*” shall mean: the settlement to be consummated under this *Settlement Agreement* pursuant to the Final Order.

1.36 “*Settlement Amount*” shall mean the total not-to-exceed amount of \$491,668.00, which is split into two payment categories as follows: Class Fund #1: \$231,668.00, and Class Fund #2: \$260,000.00.

1.37 “*Settlement Agreement*” or “*Agreement*” means this Class Action Settlement Agreement.

1.38 “*Settlement Fund*” shall have the meaning set forth in Section 1.34 above.

1.39 “*Settling Parties*” shall mean: the Named Plaintiff and the Defendant.

1.40 “*Stipulated Dismissal*” shall mean the stipulated dismissal of the *Huss v. Spokane County Action*.

1.41 “*Unconditional*” shall have the meaning set forth in Section 2 below.

## **2. CONDITIONS TO FINALITY OF THE SETTLEMENT**

2.1 Final and Unconditional Settlement. The *Settlement* provided for in this *Settlement Agreement* shall be final and unconditional (“*Unconditional*”) when each of the following conditions has been satisfied or waived:

2.2 Court Approval. The *Settlement* shall have been approved by the *Court*, as provided for in this Section 2. *The Settling Parties* shall move the *Court* for a *Final Order* approving this *Settlement Agreement* and the *Settlement* contemplated hereunder. *The Settling Parties* agree to recommend to the *Court* that such order and judgment be entered, and to cooperate in good faith, including by taking all steps and efforts contemplated by this *Settlement*

*Agreement* and any other steps or efforts which may become necessary by order of the *Court* (unless such order materially modifies the terms of this *Settlement Agreement*), to carry out this *Settlement Agreement*, including the following:

2.2.1 Motion for Preliminary Approval of Settlement and of Notices. By close of business (COB) on September 4, 2009, *Settling Parties* will jointly file a motion (“*Preliminary Motion*”) with the *Court* for an order approving preliminarily the *Class Notice* and this *Settlement Agreement*.

2.2.2 Issuance of Class Notice. On the date and in the manner set by the *Court* in its *Preliminary Approval Order*, the *Settling Parties* shall cause the *Class Notice* to be (a) transmitted in the form and manner approved by the *Court* to the Persons as directed by the *Court* in the *Preliminary Approval Order*, and (b) published as directed by the *Court* in the *Preliminary Approval Order*.

2.2.3 The Fairness Hearing. On or after the date set by the *Court* for the hearing (the “*Fairness Hearing*”) the *Court* will determine: (i) whether to enter judgment finally approving the *Settlement* substantially in the form proposed by the Parties in their “*Proposed Order of Final Judgment and Dismissal*” or herein as the “*Final Order*”; (ii) whether the distribution of the *Net Settlement Amount* as provided in the *Plan of Allocation* should be approved; (iii) whether and in what amount the *Named Plaintiff* should receive *Incentive Awards* as contemplated by Section 4 of this *Agreement*; and (iv) what legal fees and expenses should be awarded to *Class Counsel* as contemplated by Section 4 of this *Agreement*. The *Settling Parties* agree to support entry of the *Final Order* as contemplated by this Section 2. The *Settling Parties* covenant and agree that they will reasonably cooperate with one another in obtaining the *Final Order* as contemplated hereby at the *Fairness Hearing* and will not do anything inconsistent with obtaining the *Final Order*.

2.2.4 Finality of Order of Final Approval of Settlement. The *Court* shall have issued the *Final Order* and the *Final Order* shall have become *Final*.

2.2.5 Dismissals of Claims. The *Huss v. Spokane County Action* and all *Released Claims* shall have been dismissed with prejudice as against the *Defendant*.

2.3 Funding of Settlement Fund. The *Defendant*, after these conditions to finality of settlement have been satisfied, will distribute funds to qualified class members who submitted a claim form within the required time period set forth in the *Plan of Allocation* under Section 4.3. All other *Settlement Funds* will be distributed per the *Plan of Allocation*.

### **3. RELEASES AND COVENANT NOT TO SUE**

3.1 Releases. Effective upon the entry of the *Final Order* by the *Court*, *Named Plaintiff*, on behalf of himself, and on behalf of the *Settlement Class*, absolutely and unconditionally release and forever discharge the *Defendant* from *Released Claims* that *Named Plaintiff* or the *Settlement Class* directly, indirectly, derivatively, or in any other capacity ever had, now have or hereafter may have for *Released Claims* arising up to the *Agreement Execution Date*.

3.2 Released Claims. *Released Claims* shall be: any and all claims and causes of action of any nature whatsoever (including claims and causes of action for any and all losses, damages, injuries, violations, unjust enrichment, attorneys' fees, litigation costs, injunction, declaration, contribution, indemnification or any other type or nature of legal or equitable relief), whether known or unknown, suspected or unsuspected, vested or contingent, in law or equity, brought by way of demand, complaint, cross-claim, counterclaim, third-party claim, administrative or arbitration proceeding, or otherwise, (collectively, "*Claims*") which were or could have been asserted in the *Complaint* or that would be barred by principles of *res judicata*

had the claims asserted in the *Complaint* been fully litigated and resulted in a *Final* judgment or order, including those claims arising up to the *Agreement Execution Date*.

Notwithstanding any provisions, rights and benefits conferred by any law, rule, regulation or common law doctrine in any federal, state or local jurisdiction, the *Settling Parties* understand and agree that the releases to be given pursuant to this *Settlement Agreement* shall include *Released Claims* that are not known or suspected to exist at the time such releases are given.

3.3 All *Class Members* who do not validly and timely request to be excluded from the proposed settlement shall be forever barred from prosecuting their own lawsuits and shall be deemed to have fully, finally, and forever irrevocably released *Defendants* and each of their past or present elected officials, officers, directors, employees, agents, designees servants, sureties, attorneys, associates, insurers, assigns or legal representatives, or predecessors or successors in interest from any and all liabilities, claims, cross-claims, causes of action, rights, actions, suits, debts, liens, agreements, damages, restitution, disgorgement, costs, attorneys' fees, losses, expenses, obligations, or demands of any kind whatsoever, whether in arbitration, administrative, or judicial proceedings, whether as individual claims or as claims asserted on a class basis, whether known or unknown, suspected or unsuspected, threatened, asserted or unasserted, actual or contingent, liquidated or unliquidated, whether under federal statutory law, federal common law or federal regulation, or whether under the statutory or common laws or regulations of the State of Washington, that any *Class Member* has or may claim to have against such persons which are based upon, arise out of, or in any way relate to any of the acts, omissions or other conduct that has been alleged or could have been alleged or is otherwise referred to in the Litigation, including, but not limited to all past, current, and future claims relating to a state or federal claim of a constitutional deprivation based on booking fee policies established by the Spokane County Jail under RCW 70.48.390.

3.4 Covenants Not to Sue. *Named Plaintiff* covenants and agrees on his own behalf, and on behalf of the *Settlement Class*: (a) not to file against any *Claim* based on or arising from any *Released Claims*; and (b) that the foregoing covenants and agreements shall be a complete defense to any such *Claims* against any of the respective *Releasees*.

The *Settling Parties* covenant and agree as follows:

3.5 Identification of Class Members and Distribution of Net Settlement Fund. Defendants agree to identify *Class Members*. The identification of *Class Members* and the distribution of the *Net Settlement Amount* is the responsibility of the *Defendant* subject to the approval of the *Court*.

3.6 Request for Costs and Attorneys' Fees. *Class Counsel* will request that their reasonable costs and attorneys' fees, pursuant to their representation agree with the Class Representative, be paid out of the *Settlement Amount*, subject to *Court* approval, as set forth in Section 5 herein. *Defendants* will take no position with respect to *Class Counsel's* request for fees and costs.

#### **4. PLAN OF ALLOCATION AND ADMINISTRATION OF SETTLEMENT FUNDS**

4.1 The parties have agreed to settle the class for a not-to-exceed gross amount of \$491,668.00. This amount is the *Net Settlement Amount*, and will be divided into two payment categories. The first payment category, containing \$231,668.00, will be used to compensate *Non-Convicted* class members and to provide enhanced mental health services to inmates in the Spokane County Jail. (Class Fund #1). The second payment category, containing \$260,000.00, will be used to pay attorney fees and costs, compensate the class representative, and to make a donation to the Washington Legal Foundation to provide future legal services in Spokane County

available to all class members. (Class Fund #2). Recovery for class members shall be permitted as follows:

4.1.1 Any *Class Member* who was charged a booking fee by the Spokane County Jail during the period of May 5, 2004 to December 20, 2006, and was later acquitted, charges were dismissed or charges were never filed, shall be refunded 137% of any money paid towards the fee so long as they have not previously received a refund for the applicable booking fee. This *Class Benefit* will be paid from Class Fund #1.

4.1.2 Any *Class Member* who was charged a booking fee by the Spokane County Jail during the period of May 5, 2004 to December 20, 2006, and was later acquitted, charges were dismissed or charges were never filed, and who already received a refund of their booking fee, shall receive an additional refund of 37% of their previously refunded booking fee. This *Class Benefit* will be paid from Class Fund #1.

4.1.3 Any and all funds that remain of Class Fund #1, after the time period expires to file a claim and after all *Class Benefits* have been paid, shall go to Spokane County Jail to be used for inmate mental health services. These funds must be dedicated to a new or enhanced program and not used to repay costs or expenses from existing mental health services. "Within sixty days after the conditions of finality in Section 2 have been satisfied, the claims administrator shall inform Class Counsel and the Chair of the Jail Mental Health Committee ("JMHC") the amount of residual money available in Fund #1 for mental health enhancements at the Spokane County Jail. The JMHC will make proposals to the Board of

Commissioners for Spokane County ("BCSC") on how best to use these funds. The funds can only be spent on new and/or enhanced mental health services for jail inmates, and may not be used to fund existing levels of service that exist at the time this settlement is approved. Prior to the JMHC making a recommendation to the BCSC, the JMHC shall first obtain written certification from Class Counsel that the recommendations for spending meet the terms of the settlement agreement. Only those recommendations approved by Class Counsel are eligible to be funded from Fund #1. Class Counsel shall not withhold approval for any reason other than the recommendation does not meet the terms of the settlement agreement. The claims administrator shall reimburse Spokane County for approved mental health enhancement expenditures upon submission of GAAP compliant documentation. The claims administrator shall provide at least annual reports to the JMHC and Class Counsel as to the amount of money remaining in Fund #1 and a description of any funds reimbursed to Spokane County from Fund #1. Any funds remaining in Fund #1 as of December 31, 2013 shall be donated to the Legal Foundation of Washington to be spent on providing legal services in Spokane County to *Class Members*.

- 4.1.4 Any *Class Member* who was charged a booking fee by the Spokane County Jail during the period of May 5, 2004 to December 20, 2006, and was later *Convicted*, will not be reimbursed their booking fee as RCW § 70.48.390 does not permit refunds to individuals who were *Convicted* on the charges for which they were required to pay a booking fee. To

compensate these members of the class, a donation will be made to an organization that is committed to providing legal services to former jail inmates. The amount of the donation will be the money remaining from the Class Fund #2 after attorneys' fees and costs have been deducted, as well as any court approved payment to the *Representative Plaintiff*.

4.1.5 In no case, should funds that are provided to the Legal Foundation of Washington be used to fund lawsuits related to jail issues against Spokane County.

4.2 Spokane County will act as the trustee for settlement funds and administer the claims procedure in this matter. Spokane County will be subject to audit, while performing these duties, at the request of *Class Counsel*.

4.3. Individuals who do not complete a *Class Claim Form* ninety (90) prior to the *Fairness Hearing*, by December 16, 2009, **will NOT** be eligible to receive any *Class Benefit*.

## **5. REPRESENTATIONS AND WARRANTIES**

5.1. Settling Parties' Representations and Warranties. The *Settling Parties*, and each of them, represent and warrant:

5.2 That they have carefully read the contents of this *Settlement Agreement*, and this *Settlement Agreement* is signed freely by each individual executing this *Settlement Agreement* on behalf of each of the *Settling Parties*. The *Settling Parties*, and each of them, further represent and warrant to each other that he, she or it has made such investigation of the facts pertaining to the *Settlement*, this *Settlement Agreement* and all of the matters pertaining thereto, as he, she or it deems necessary.

5.3 Signatories' Representations and Warranties. Each individual executing this *Settlement Agreement* on behalf of any *Settling Party* does hereby personally represent and

warrant to the other *Settling Parties* that he or she has the authority to execute this *Settlement Agreement* on behalf of, and fully bind, each principal which such individual represents or purports to represent.

## **6. NO ADMISSION OF LIABILITY**

6.1 The *Settling Parties* understand and agree that this *Settlement Agreement* embodies a compromise settlement of disputed claims, and nothing in this *Settlement Agreement*, including the furnishing of consideration for this *Settlement Agreement*, shall be deemed to constitute any finding of wrongdoing by the *Defendant*, or give rise to any inference of wrongdoing or admission of wrongdoing or liability in this or any other proceeding. This *Settlement Agreement* and the payments made hereunder are made in compromise of disputed claims and are not admissions of liability of any kind, whether legal or factual. Moreover, the *Settling Defendant* specifically deny any such liability or wrongdoing. Neither the fact nor the terms of this *Settlement Agreement* shall be offered or received in evidence in any action or proceeding for any purpose, except in an action or proceeding to enforce this *Settlement Agreement* or arising out of or relating to the *Final Order*.

## **7. EFFECTIVE DATE OF SETTLEMENT; DISTRIBUTION OF THE SETTLEMENT FUND**

7.1 The *Effective Date* of the Settlement occurs when each and every condition in Section 2 has been satisfied.

7.2 No distribution of any part, or all, of the *Settlement Fund*, shall be made from the *Settlement Fund* until the *Effective Date* has occurred.

7.3 The distribution of the *Net Settlement Amount* shall be subject to the *Plan of Allocation*, to be approved by the *Court*.

7.4 Upon the *Effective Date*, *Class Counsel* may (a) distribute the *Net Settlement Amount* and (b) disburse attorneys' fees and expenses and *Named Plaintiffs' Incentive Awards* as determined by the *Court*.

## **8. TERMINATION OF THE SETTLEMENT AGREEMENT**

8.1 Termination. This *Settlement Agreement* may automatically terminate or be terminated by the *Settling Parties*, and thereupon become null and void, in the following circumstances:

8.1.1 If the *Court* declines to enter the *Final Order*, then this *Settlement Agreement* shall automatically terminate, and thereupon become null and void.

8.1.2 If any *Settling Party* concludes that the *Final Order* does not satisfy the terms and conditions of this *Settlement Agreement* in any material respect, such *Settling Party* may, within ten (10) days after the *Court's* entry of the *Final Order*, give the *Settling Parties* written notice thereof. If, within fourteen (14) days after the giving of such written notice, the *Settling Parties* have not agreed in writing to proceed with all or part of the *Settlement Agreement* pursuant to the *Final Order*, then the *Settlement Agreement* will be null and void, and this matter will be remanded back to the Ninth Circuit Court of Appeals.

8.1.3 If the *Final Order* entered by the *Court* is reversed or modified in any material respect on appeal, and if within thirty-one (31) days after the date when such reversal or modification becomes *Final*, the *Settling Parties* have not agreed in writing to proceed with all or part of the *Settlement Agreement* in light of such ruling, then this *Settlement Agreement* shall automatically terminate, and thereupon become null and void.

8.2 Consequences of Termination of the Settlement Agreement. If the *Settlement Agreement* is terminated and rendered null and void for any reason specified in Section 8.1 above, the following shall occur:

8.2.1 The *Huss v. Spokane County* action shall for all purposes revert to its status as of the day immediately before the *Agreement Execution Date*;

8.2.2 All *Releases* given under or pursuant to this *Settlement Agreement*, and all *Stipulated Dismissals*, shall be null and void; none of the terms of the *Settlement Agreement* shall be effective or enforceable, except Section 8 and Section 6; neither the facts nor the terms of this *Settlement Agreement* shall be offered or received in evidence in the *Huss v. Spokane County Action* or in any other action or proceeding for any purpose; except in an action or proceeding arising under this *Settlement Agreement* or arising out of or relating to the *Final Order*.

**9. ATTORNEYS' FEES AND EXPENSES; INCENTIVE AWARDS FOR NAMED PLAINTIFFS**

9.1 Application for Attorneys' Fees and Expenses: *Class Counsel* may apply to the *Court* at the *Fairness Hearing* for an award to *Class Counsel* of attorneys' fees, and for reimbursement of expenses, to be paid from the Settlement Fund, Payment Category #2.

9.2 Application for Incentive Awards: The *Named Plaintiff* may apply to the *Court* for *Incentive Awards*, payable solely from the *Settlement Fund*, Payment Category #2, and shall be entitled to receive such compensation from the *Settlement Fund* to the extent awarded by the *Court*.

9.3 Defendants Take No Position: The Defendants will take no position with respect to the *Named Plaintiffs'* application for *Incentive Awards* or *Class Counsel's* application for an award of fees and costs, except that in no case may the total amount of attorneys' fees and costs and the *Incentive Award* exceed \$260,000.00.

9.4 Disbursement of Attorneys' Fees and Expenses and Named Plaintiffs' Incentive Awards: Upon the *Effective Date*, attorneys' fees and expenses and *Named Plaintiffs' Incentive Awards* may be distributed.

## 10. MISCELLANEOUS PROVISIONS

10.1 Governing Law. This *Settlement Agreement* shall be governed by the laws of the State of Washington without giving effect to the conflict of laws or choice of law provisions thereof, except to the extent that the law of the United States governs any matter set forth herein.

10.2 Severability. The provisions of this *Settlement Agreement* are not severable.

10.3 Amendment. Before entry of the *Final Order*, the *Settlement Agreement* may be modified or amended only by written agreement signed by or on behalf of all *Settling Parties*.

Following entry of the *Final Order*, the *Settlement Agreement* may be modified or amended only by written agreement signed on behalf of all *Settling Parties*, and approved by the *Court*.

10.4 Waiver. The provisions of this *Settlement Agreement* may be waived only by an instrument in writing executed by the waiving party. The waiver by any party of any breach of this *Settlement Agreement* shall not be deemed to be or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, of this *Settlement Agreement*.

10.5 Construction. None of the *Settling Parties* hereto shall be considered to be the drafter of this *Settlement Agreement* or any provision hereof for the purpose of any statute, case law or rule of interpretation or construction that would or might cause any provision to be construed against the drafter hereof.

10.6 Further Assurances. Each of the *Settling Parties* agrees, without further consideration, and as part of finalizing the *Settlement* hereunder, that they will in good faith

execute and deliver such other documents and take such other actions as may be necessary to consummate and effectuate the subject matter and purpose of this *Settlement Agreement*.

10.7 Notices. Any notice, demand or other communication under this *Settlement Agreement* (other than the *Class Notice*, or other notices given at the direction of the *Court*) shall be in writing and shall be deemed duly given upon receipt if it is addressed to each of the intended recipients as set forth below and personally delivered, sent by registered or certified mail (postage prepaid), sent by confirmed facsimile, or delivered by reputable express overnight courier:

IF TO NAMED PLAINTIFFS:

Breean L. Beggs  
Chief Catalyst  
Center for Justice  
35 West Main, Suite 300  
Spokane, WA 99201  
(509) 835-5211  
[breean@cforjustice.org](mailto:breean@cforjustice.org)

Jeffrey K. Finer  
Senior Litigator  
Center for Justice  
35 West Main, Suite 300  
Spokane, WA 99201  
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[jfiner@cforjustice.org](mailto:jfiner@cforjustice.org)

IF TO SPOKANE COUNTY DEFENDANTS:

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Patterson Buchanan Fobes Leitch &  
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2112 Third Avenue, Suite 500  
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10.8 Any *Settling Party* may change the address at which it is to receive notice by written notice delivered to the other *Settling Parties* in the manner described above.

10.9 Entire Agreement. This *Settlement Agreement* contains the entire agreement among the *Settling Parties* relating to this *Settlement*. It specifically supersedes any settlement terms or settlement agreements relating to the *Settling Defendants* that were previously agreed upon orally or in writing by any of the *Settling Parties*.

10.10 Counterparts. This *Settlement Agreement* may be executed by exchange of faxed executed signature pages, and any signature transmitted by facsimile for the purpose of executing this *Settlement Agreement* shall be deemed an original signature for purposes of this *Settlement Agreement*. This *Settlement Agreement* may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same instrument.

10.11 Binding Effect. This *Settlement Agreement* binds and inures to the benefit of the parties hereto, their assigns, heirs, administrators, executors and successors.

10.12 Agreement Execution Date. The date on which the final signature is affixed below shall be the *Agreement Execution Date*.

IN WITNESS WHEREOF, the *Settling Parties* have executed this *Settlement Agreement* on the dates set forth below.

Attorneys for Defendant Spokane County:

PATERSON BUCHANAN FOBES LEITCH  
& KALZER, INC., P.S.

By: 

Michael A. Patterson, WSBA 7976  
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SPOKANE COUNTY PROSECUTOR'S  
OFFICE

By: 

James Henry Kaufman #7836  
Email: JKaufman@spokanecounty.org

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

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DATE: \_\_\_\_\_

DATE: Spt \_\_\_\_\_