

## **SETTLEMENT AGREEMENT**

### **INTRODUCTION**

This agreement (the “Settlement Agreement”) is made and entered into by and among Richard Robinson, Matthew Herbert, Andre Holt, David Freeze, Kelly Brown, David Nelson and Richard Holston (“Plaintiffs”), individually and on behalf of the class of persons on whose behalf the named plaintiffs initiated this action, except for those who opt out of class membership, (the “Class Members”), and the County of Ramsey (the “County”), by and through their duly authorized counsel in the above-captioned action (the “Action”). The Class Members and the County are hereinafter referred to collectively as the “Settling Parties.”

### **BACKGROUND OF THE ACTION**

On October 20, 2008, Plaintiffs filed a Class Action Complaint against Ramsey County and others in their individual and official capacities, pursuant to 42 U.S.C. § 1983 for violation of their constitutional rights, and seeking damages on behalf of inmates at the Ramsey County Workhouse who were exposed to tuberculosis while at the Workhouse between April 2008 and June 2008. Plaintiffs asserted violations of the Eighth and Fourteenth Amendments, civil rights violations, and claims for state law negligence. Plaintiffs filed an Amended Class Action Complaint on December 8, 2008.

The County and individual defendants filed their Answer to the Amended Class Action Complaint on January 26, 2009, denying the allegations and asserting affirmative defenses including Plaintiffs’ failure to mitigate their alleged damages.

The Settling Parties engaged in limited discovery and engaged in a court-sponsored settlement conference in September 2009.

Plaintiffs served a Second Amended Class Action Complaint adding additional defendants on November 25, 2009. Defendants filed their Answer to the Second Amended Class Action Complaint on January 5, 2010. The County is the only remaining defendant.

Plaintiffs filed a motion for class certification on December 10, 2009, and a memorandum of law in support of their motion on January 22, 2010. Defendants filed their opposition to the motion for class certification on February 24, 2010. A hearing on Plaintiffs' motion for class certification was held before the Honorable Judge Richard H. Kyle on March 15, 2010.

Prior to and during the briefing on Plaintiffs' motion for class certification, the Settling Parties engaged in discovery, including 52 depositions. After a second court-sponsored settlement conference in March 2010, and while Plaintiffs' motion for class certification was pending, the Settling Parties entered into the following stipulation to settle all claims in the case.

Plaintiffs believe that the Action has substantial merit. However, Plaintiffs and their counsel recognize and acknowledge the expense and length of continued proceedings necessary to prosecute the Action against the County through trial and through appeal. Plaintiffs and their counsel have also taken into account the uncertain outcome, risk and delay inherent in any litigation, especially in complex actions such as

this one, the strengths and weaknesses of the claims and defenses asserted in the Action, and the benefits conferred on the Class Members by the expeditious settlement set forth in this Settlement Agreement. Plaintiffs' Counsel have determined that the settlement set forth in this Settlement Agreement is in the best interests of the Plaintiffs and the proposed Class Members.

The County believes that the Action lacks substantial merit and that defenses may defeat any claims in the Action. However, the County recognizes and acknowledges the expense and length of continued proceedings necessary to defend the Action through trial and through appeal. The County and its counsel have also taken into account the uncertain outcome, risk and delay inherent in any litigation, especially in complex actions such as this one, the strengths and weaknesses of the claims and defenses asserted in the Action, and the public interest benefits available with the expeditious settlement set forth in this Settlement Agreement. This Settlement Agreement shall not be construed or deemed to be evidence or an admission or concession by the County of any fault or liability for damages whatsoever. The County, upon advice of counsel, has determined that it is desirable that the Action be settled in the manner and upon the terms and conditions set forth herein.

As defined and under the terms and conditions spelled out here, the County is agreeing to make monetary payments in varying amounts for various stages and complications of tuberculosis for eligible class members and to provide or fund medically

necessary diagnostic procedures, care and treatment to eligible class members related to tuberculosis or its complications.

### **GENERAL PROVISIONS**

The Settling Parties hereby agree to the following terms and conditions:

#### **I. Class Certification for Settlement Purposes**

1. The Settling Parties agree that they will promptly and jointly move the Court for an order preliminarily certifying this case as a class action for purposes of this proposed settlement, to be maintained by the named plaintiffs as class representatives through their counsel, Robert Bennett and Andrew J. Noel, Flynn, Gaskins & Bennett, L.L.P., 333 South Seventh Street, Suite 2900, Minneapolis, MN 55402 and Jeffrey M. Montpetit, Sieben, Gross, Von Holtum & Carey, Ltd., 800 Marquette Avenue, Suite 900, Minneapolis, MN 55402. The class shall be defined as:

**Former inmates of the Ramsey County Correctional Facility who were housed in Dorms 100, 200, or 400 or worked in the kitchen and served meals to Dorm 200 inmates between April 17, 2008, and June 9, 2008, and, for any individual who has not been tested in the contact investigation prior to April 30, 2010, who is still living as of April 30, 2010.**

The Class does not include any individuals who have previously released claims against Ramsey County who would otherwise be covered by the class definition. The Class does not include persons who had TB prior to April 17, 2008. Presumed class members are identified in Exhibit 2.

2. The Settling Parties agree, solely for the purpose of this settlement and its implementation, that the action may proceed as a class action in accordance with Rule

23(e). However, if such settlement fails to be approved or otherwise fails of consummation, then the temporary class shall be decertified and the Court shall decide the pending class certification motion that is presently under advisement without waiver or admission by virtue of this Settlement Agreement or any of its terms or conditions.

3. In the event that the settlement receives preliminary approval by the court, the Settling Parties agree to move jointly for permanent certification as a class action for purposes of settlement in conjunction with their motion for final approval of the settlement.

## **II. Class Notice Regarding Proposed Class Settlement**

4. The Settling Parties agree that they shall jointly request the Court to approve forms and procedure for providing notice to members of the class regarding the preliminary class certification and the proposed class settlement.

5. **Mailed notice to class members.** The Settling Parties will promptly and jointly provide notice to class members other than the named plaintiffs by first class mail to be mailed at the County's expense within 30 days after Court approval of the procedure and forms. The notice to be mailed to class members shall be substantially in the form contained in Exhibit 1. The addresses for presumed class members who are to receive this notice are listed in Exhibit 7, a document that is to be filed under seal. Notice shall be mailed to the most recent address available from the Ramsey County Community Corrections records unless plaintiffs' counsel or the County's counsel are aware of more current or accurate information, in which case the more current or accurate information shall be used for the address.

6. **Published notice.** The Settling Parties shall propose that the Settling Parties will jointly publish notice, at the County's expense, of the preliminary class certification and proposed settlement one time within 30 days after Court approval of form and procedure in each of the following publications: the Star-Tribune and the St. Paul Pioneer Press. The published notice shall be substantially in the form contained in Exhibit 3.

7. Plaintiffs' counsel have authority to employ reasonable efforts to contact class members as part of their representation of the Class. Plaintiffs' counsel also have authority to employ reasonable efforts to contact class members who are not reachable by mail in order to provide copies of the notices approved by the Court.

### **III. OPT-OUT OPPORTUNITY**

8. If a Class Member does not request exclusion from the Class, he or she will be bound by the settlement.

9. Any person who is named or otherwise eligible to be a Class Member has the right to opt out of this settlement. Participation in this settlement is not mandatory. Any individual who opts out of this settlement will not be bound by or subject to the settlement. Any individual who opts out of this settlement will not receive the benefits under the settlement.

10. Any person who chooses to opt out must submit a written, signed request to opt out, stating (1) name, address, and telephone number, (2) a reference to the litigation, and (3) a statement that he or she chooses to opt out of the Class. Exhibit 5 provides a form that can be used to document the opt-out. Requests to opt out must be sent to:

Steven J. Kirsch, Esq.  
MURNAN BRANDT  
30 East Seventh Street  
Suite 3200  
St. Paul, Minnesota 55101-5199

The deadline for opting out of the settlement will be July 26, 2010.

#### **IV. COUNTY'S RIGHT OF WITHDRAWAL**

11. After the deadline for opting out, the County will have 21 days in which to decide whether it will confirm its participation in the settlement or withdraw from the settlement. If the County chooses to withdraw, notice will be sent to all those who were given notice pursuant to paragraphs 5 and 6. In such event, no payments will be made hereunder, other than the County's obligation to cover the costs of notice, and this agreement will be rendered void.

#### **V. CLASS MEMBER RIGHT TO INTERVENE OR OBJECT TO SETTLEMENT**

12. Any Class Member who does not opt out will have the right to intervene in the litigation and to comment on or object to the settlement, the award of attorneys' fees and costs, or other terms of this Settlement Agreement.

#### **VI. APPROVAL OF THE SETTLEMENT**

13. Promptly after the execution of this Settlement Agreement, the Settling Parties shall jointly apply to the Court for an order (the "Preliminary Approval Order") substantially in the form attached as Exhibit 4 hereto, for, and among other things, preliminary approval of the Settlement and Notice to the Class Members of the Settlement.

## **VII. SETTLEMENT AWARD TO CLASS MEMBERS**

14. The Settling Parties agree to the establishment of four subclasses for purposes of awarding settlement proceeds. One subclass will include those class members who have developed active tuberculosis of the same Genotype as the Index Case (MN\_087) and will be referred to herein as Subclass for Active TB Disease. Another subclass will include those class members who tested positive for LTBI and who did not have a positive TB test prior to April 17, 2008 and will be referred to herein as Subclass for LTBI. Another subclass will include those class members who tested negative for LTBI prior to the date of this Settlement Agreement and will be referred to herein as Subclass for Negative Results. The fourth subclass will include those class members who have not been tested as of the date of this Settlement Agreement and will be referred to herein as Subclass for Individuals to Be Tested.

### **A. Subclass for Active TB Disease**

15. The Subclass for Active TB Disease consists of inmates of the Ramsey County Correctional Facility who were housed in Dorms 100, 200, or 400 or worked in the kitchen and served meals to Dorm 200 inmates between April 17, 2008, and June 9, 2008, and who developed active tuberculosis of the same Genotype as the Index Case (MN\_087) as of the date of this Settlement Agreement. The Subclass for Active TB Disease does not include any individuals who have previously released claims against Ramsey County. The presumed members of this subclass are listed in Confidential Exhibit 8, a document that is to be filed under seal.

**1. Base Payment for Subclass for Active TB Disease**

16. Each member of the Subclass for Active TB Disease will be awarded a one-time cash payment of \$250,000 to be made by the deadline specified in paragraph 49 or 90 days after the member identifies all providers who have provided treatment for Active TB Disease and provides authorizations or releases for the disclosure of medical information from those providers for data related to treatment for Active TB Disease, whichever date is later. The claim form attached as Exhibit 6 may be used for submission of claims for the base payment. In addition, the County shall provide payment or reimbursement, including those required under 42 U.S.C. § 1395y(b) or 42 CFR § 411, for expenses incurred in the treatment of Active TB Disease for the member.

**2. Annual Check-Ups and TB-Related Care**

17. In addition to the one-time cash payment, the County will reimburse each class member of the Subclass for Active TB Disease for the costs of an annual check-up by a physician related to the monitoring or assessment of TB. Each class member shall be obligated to certify such a check-up with a physician of their choice once every 12 months (with a 60-day cure period). The County will be obligated to provide reimbursement for the reasonable costs of such exam and any medically necessary diagnostic measures, care or treatment related to TB within sixty days after submission of invoices and supporting documents. The County shall not be obligated to provide notice to each class member concerning the 12-month deadline, or any failure to meet such a deadline. Plaintiffs' counsel shall have the authority to advise class members of their responsibilities under this paragraph.

### **3. Potential Secondary Payments**

18. If any member of the Subclass for Active TB Disease redevelops Active TB of the same Genotype as the Index Case (MN\_087) (“Active Reconversion”), the County will reimburse that member (or any payor such as Medicare or other insurer or similar program) for all associated, reasonable TB-related medical costs and treatment. Reimbursement for medical costs and treatment in the event of Active Reconversion shall be made under this paragraph and are not to be included within or limited by the provisions of paragraph 19.

19. If Active Reconversion (a) necessitates treatments for significant symptoms such as hepatitis, renal disease, neuropathy or other comparably serious side-effects due to complications of Active TB, (b) entails a treatment regimen consisting of more than an initial 2-month treatment phase followed by a 4-month continuation phase, (c) requires treatment for cavitory pulmonary TB read by chest radiograph or positive sputum cultures at completion of the six-month phase, or (d) causes death, then the member (or, in the event of death, his heirs or representatives of his estate) may submit a claim for additional compensation for the complications, pain and suffering, death, loss of income or other damages caused by the Active Reconversion apart from the costs of medical care. A condition precedent to any such claim for additional compensation is that the member must have visited a physician once every twelve months (with a 60-day cure period) from the time of this Settlement Agreement until the time of the claim for the additional compensation associated with Active Reconversion. If the class member has not satisfied the condition precedent, the member will still be eligible for reimbursement of TB-related Settlement Agreement

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medical costs and treatments, but not for additional compensation under this paragraph. If the County reasonably deems an application for additional compensation to be insufficiently documented or justified, the County may, so long as any requests are promptly made, (1) request additional medical documentation or responses to written questions (2) conduct an interview of the member, provided that the member may request the presence of counsel at the member's expense, and, if either side so requests, the interview may be conducted and transcribed in the manner and under arrangements suitable for civil depositions, or (3) require the member to submit to a new medical examination. In the event the class member and the County agree upon the amount of additional compensation under this paragraph, the member shall be entitled to such compensation within 60 days after submitting the claim with complete information. If the member and the County do not agree upon the amount of additional compensation under this paragraph, either side may demand alternative dispute resolution (ADR) to determine appropriate compensation. ADR shall be handled in accordance with the procedures set forth in paragraph 50. The class member shall have the burden of proof by the greater weight of the evidence as to the necessity and amount of additional compensation for Active Reconversion. The maximum additional compensation payable under this paragraph is \$250,000. The Settling Parties or the decision-maker under the ADR process may determine that additional compensation shall be set at any appropriate level from zero to \$250,000. Class members will be entitled to submit a claim for additional compensation or a demand for ADR only once under this Settlement. No additional

payments and no additional ADR will be required for additional reconversions or complications from TB. In the event that any member chooses to retain counsel to assist in the submission of an application for additional payment under this paragraph, counsel shall be entitled to a fifteen percent share of the member's recovery of any additional payment as a contingent fee payment if the County makes an agreed-upon payment without the necessity of ADR or a twenty-five percent share of the member's recovery of any additional payment as a contingent fee payment if the payment follows the initiation of ADR. The County has no obligation to pay fees recovered by counsel under this paragraph.

**B. Subclass for LTBI**

20. The Subclass for LTBI consists of inmates of the Ramsey County Correctional Facility who were housed in Dorms 100, 200, or 400 or worked in the kitchen and served meals to Dorm 200 inmates between April 17, 2008, and June 9, 2008, and who have been determined as of the date of this Settlement Agreement to have contracted LTBI without any prior history of TB. Individuals who had a negative reaction (less than 10 mm induration) to a Mantoux skin test or a negative reaction to a QuantiFERON blood test during the contact investigation do not qualify as members of this subclass. Individuals who had a positive reaction to a Mantoux skin test or a positive reaction to a QuantiFERON blood test prior to April 17, 2008, do not qualify as class members or members of this subclass. Individuals who had Active TB do not qualify as members of this subclass. The presumed members of this subclass are listed in Confidential Exhibit 9, a document that is to be filed under seal. Any person listed on Settlement Agreement  
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Exhibit 9 who submits any claim for compensation pursuant to this Settlement Agreement shall be required to identify prior medical providers or others who may have tested the individual for TB prior to April 17, 2008, and to execute appropriate authorizations and releases as reasonably requested by the County in order to obtain information needed to verify eligibility. The County shall have 90 days after receipt of signed authorizations to complete its investigations as to eligibility. The burden shall be on the County to demonstrate grounds to disqualify any person listed on Exhibit 9 for reasons stated under this paragraph.

**1. Base Payment for Subclass for LTBI**

21. Each verified member of the Subclass for LTBI will be awarded a one-time cash payment as specified below, to be made by the deadline specified in paragraph 49 or 90 days after the member identifies all providers who have provided treatment for LTBI and provides authorizations or releases for the disclosure of medical information from those providers for data related to treatment for LTBI, whichever is later. With the foregoing conditions, the one-time cash payment will be made as follows:

- Each member of the Subclass for LTBI will be entitled to a payment of \$54,347.83 upon a demonstration that the member has completed the drug therapy treatment for LTBI prescribed by his treating physician.
- Any member of the Subclass for LTBI who has not completed the recommended drug therapy treatment for LTBI, but who can demonstrate a bona fide medical or religious reason for not taking the drug therapy, will be entitled to a payment of \$54,347.83.

- Any member of the Subclass for LTBI who has not completed the recommended drug therapy treatment for LTBI and who does not demonstrate a bona fide medical or religious reason for not taking the drug therapy will be entitled to a payment of \$44,347.83. If such member elects to begin drug therapy treatment prior to receipt of payment, and so notifies the County, and completes that treatment in accordance with medical recommendations, such member will be entitled to an additional payment of \$10,000.

The claim form attached as Exhibit 5 may be used for submission of claims for the base payment. Any disputes about the eligibility of the member of the Subclass for LTBI for the one-time payment under this paragraph or about the timing of the payment are subject to resolution in accordance with Paragraph 49. In addition, the County shall provide payment or reimbursement, including those required under 42 U.S.C. § 1395y(b) or 42 CFR § 411, for expenses incurred in the treatment of LTBI for the member.

## **2. Annual Check-Ups and TB-Related Care**

22. In addition to the one-time cash payment, the County will reimburse each class member of the Subclass for LTBI for the costs of an annual check-up by a physician related to the monitoring or assessment of TB. Each class member shall be obligated to certify such a check-up with a physician once every 12 months (with a 60-day cure period). The County will be obligated to provide reimbursement for the reasonable costs of such exam and any medically necessary diagnostic measures, care or treatment related to TB within sixty days after submission of invoices and supporting documents. The County shall not be obligated to provide notice to each class member concerning the 12-Settlement Agreement

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month deadline, or any failure to meet such a deadline. Plaintiffs' counsel shall have the authority to advise class members of their responsibilities under this paragraph.

### **3. Potential Additional Payments**

23. If a member of the Subclass for LTBI develops active TB disease that is of the same Genotype as the Index Case (MN\_087) ("Activation"), the County will reimburse that member (or any payor such as Medicare or other insurer or similar program) for all associated, reasonable TB-related medical costs and treatment. Reimbursement for medical costs and treatment in the event of Activation shall be made under this paragraph and are not to be included within or limited by the provisions of paragraphs 24 or 25.

24. In addition to the reimbursement of medical costs and treatment, the County will pay to any member of the Subclass for LTBI who suffers Activation the sum of \$200,000.

25. In addition to the payments to be made under paragraphs 23 and 24, if Activation (a) necessitates treatments for significant symptoms such as hepatitis, renal disease, neuropathy or other comparably serious side-effect due to complications of Active TB, (b) entails a treatment regimen consisting of more than an initial 2-month treatment phase followed by a 4-month continuation phase, (c) treatment for cavitary pulmonary TB read by chest radiograph or positive sputum cultures at completion of the six-month phase, or (d) causes death, then the member or, in the event of death, his heirs or representatives of his estate may submit a claim for additional compensation for the complications, pain and suffering, loss of income or other damages caused by the Settlement Agreement

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Activation apart from the costs of medical care. A condition precedent to any such claim for additional compensation is that the member must have visited a physician once every twelve months (with a 60-day cure period) from the time of this Settlement Agreement until the time of the claim for the additional compensation associated with Activation. If the member has not satisfied the condition precedent, the member will still be eligible for reimbursement of TB-related medical costs and treatments under paragraph 23 and will still be eligible for payment under paragraph 24, but not for additional compensation under this paragraph. If the County reasonably deems an application for additional compensation to be insufficiently documented or justified, the County may, so long as any requests are promptly made, (1) request additional medical documentation or responses to written questions (2) conduct an interview of the member, provided that the member may request the presence of counsel at the member's expense, and, if either side so requests, the interview may be conducted and transcribed in the manner and under arrangements suitable for civil depositions, or (3) require the member to submit to a new medical examination. In the event the member and the County agree upon the amount of additional compensation under this paragraph, the member shall be entitled to such compensation within 60 days after submitting the claim with complete information. If the member and the County do not agree upon the amount of additional compensation under this paragraph, either side may demand alternative dispute resolution (ADR) to determine appropriate compensation. ADR shall be handled in accordance with the procedures set forth in paragraph 49. The class member shall have the burden of proof by the greater

weight of the evidence as to the necessity and amount of additional compensation for Activation. The maximum additional compensation payable under this paragraph is \$250,000. The Settling Parties or the decision-maker under the ADR process may determine that additional compensation shall be set at any appropriate level from zero to \$250,000. Class members will be entitled to submit a claim for additional compensation or a demand for ADR only once under this Settlement. No additional payments and no additional ADR will be required for additional reconversions or complications from TB. In the event that any member chooses to retain counsel to assist in the submission of an application for additional payment under this paragraph, counsel shall be entitled to a fifteen percent share of the member's recovery of any additional payment as a contingent fee payment if the County makes an agreed-upon payment without the necessity of ADR or a twenty-five percent share of the member's recovery of any additional payment as a contingent fee payment if the payment follows the initiation of ADR. The County has no obligation to pay fees recovered by counsel under this paragraph.

**C. Subclass for Negative Results**

26. The Subclass for Negative Results consists of inmates of the Ramsey County Correctional Facility who were housed in Dorms 100, 200, or 400 or worked in the kitchen and served meals to Dorm 200 inmates between April 17, 2008, and June 9, 2008, and who had a negative reaction (less than 10 mm induration) to a Mantoux skin test or a negative reaction to a QuantiFERON blood test during the contact investigation. The presumed members of this subclass are listed in Confidential Exhibit 10, a document

that is to be filed under seal.

27. The members of the Subclass for Negative Results shall receive no compensation.

**D. Subclass for Individuals to Be Tested**

28. The Subclass for Individuals to Be Tested consists of inmates of the Ramsey County Correctional Facility who were housed in Dorms 100, 200, or 400 or worked in the kitchen and served meals to Dorm 200 inmates between April 17, 2008, and June 9, 2008, and who have not been tested as of the date of this Settlement Agreement. The presumed members of this subclass are listed in Confidential Exhibit 11, a document that is to be filed under seal. Any individual who was tested during the contact investigation after June 9, 2008, but prior to the date of this Settlement Agreement is not a member of this subclass and not eligible for retesting under this Settlement Agreement. Any individual within the Subclass for Individuals to Be Tested may present himself for testing at the expense of Ramsey County at any date prior to February 11, 2011. Any such individual will become eligible for compensation under this Settlement Agreement if he has a positive reaction (10 mm or more induration) to a Mantoux skin test or a positive reaction to a QuantiFERON blood test when first tested pursuant to this Settlement Agreement or during any on-going contact investigation directly related to this Action that continues after the date of this Settlement Agreement as long as the date of testing is prior to February 11, 2011. Any individual who fails to present himself for testing prior to February 11, 2011, or who has a negative reaction (less than 10 mm induration) to a Mantoux skin test or a negative reaction to a QuantiFERON blood test during the contact investigation and prior to the date of this Settlement Agreement

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Settlement Agreement is not eligible to become part of the Subclass for Active TB or the Subclass for LTBI. Any individual who had a positive reaction to a Mantoux skin test or a positive reaction to a QuantiFERON blood test prior to April 17, 2008, does not qualify as a class member or a member of this subclass. Any person listed on Exhibit 11 who provides evidence of a positive reaction as defined herein shall be required to provide a complete listing of all residences (including correctional facilities) since April 2008 and shall be required to identify prior medical providers or others who may have tested the individual for TB either prior to or after April 17, 2008, and to execute appropriate authorizations and releases as reasonably requested by the County in order to obtain information needed to verify eligibility. The burden shall be on the County to demonstrate grounds to disqualify any person listed on Exhibit 11 who has a positive reaction on a TB test pursuant to this Settlement Agreement.

29. In the event that a member of the Subclass for Individuals to Be Tested presents himself for testing and the test result is a positive reaction without any positive TB test prior to April 17, 2008, then such individual will be entitled to compensation as a member of either the Subclass for Active TB or the Subclass for LTBI, as applicable, with the clarification that the initial payment would be due no sooner than February 11, 2011, or 90 days after all required information has been provided as called for herein and with the clarification that for any individual who starts treatment prior to the base payment for LTBI will, if the treatment is completed in accordance with medical recommendations will be eligible to receive the additional \$10,000 increment 90 days

after treatment is complete and appropriate documentation is provided. In the event that a member of the Subclass for Individuals to Be Tested presents himself for testing and the test result is a negative reaction, then such individual will be deemed to be a member of the Subclass for Negative Results and shall receive no compensation. Any disputes concerning the eligibility of any member of the Subclass for Individuals to Be Tested shall be handled in accordance with Paragraph 49.

### **VIII. REIMBURSEMENT FOR MEDICAL EXPENSES**

30. This Settlement Agreement addresses, among other things, reimbursement of reasonable medical expenses associated with LTBI or TB. To the extent that any payments made or to be made by the County pertain to medical expenses in which Medicare or any other statutory or contractual claim providing subrogation rights to those who have advanced or paid any such medical expenses, nothing herein is intended to avoid or interfere with the rights and obligations of the County to make payment directly to the subrogor for any such medical expenses that may have been advanced or paid.

31. The Settling Parties intend that this document shall be implemented and construed as necessary to ensure that payments for any medical expenses that have been or will be incurred by Class Members for LTBI or TB-related conditions will be paid to the appropriate parties and that Class Members are not entitled to double recoveries for payments that are owed to medical providers. Nothing in this document is intended to require double payment by the County. If the County has already provided treatment, payment or reimbursement, the County shall have no obligation to pay again a second time for the same treatment, expense or procedure.

32. Any Class Member who anticipates medical expenses may ask the County to make direct payment of such expenses, rather than to reimburse the Class Member. Upon reasonable notice, the County may agree to make direct payment. The County may not rely upon insolvency or inability to pay by any Class Member as a basis to avoid reimbursing the Class Member and his medical providers for qualifying medical expenses.

33. Nothing in this agreement shall obligate the County to make either payments or reimbursement for medical expenses, conditions, or any other matters unless they are TB-related. In the event that medical providers or insurers who have provided or paid for any treatment to any Class Member for conditions unrelated to LTBI or TB make claims for subrogation or reimbursement from the County, the County may set-off against any payments owed to that Class Member any amounts reasonably needed to avoid double payment. The County will cooperate with any such Class Member in demonstrating to the medical provider that there is no valid obligation hereunder for payments or reimbursement unrelated to LTBI or TB, but the burden shall be on the Class Member to obtain releases or written consents from any medical providers or insurers who give notice to the County of claims for conditions unrelated to LTBI or TB before the County shall be obligated to release the set-off.

34. Any disputes about payments or reimbursements relating to medical expenses shall be addressed in ADR under paragraph 49.

**IX. RELEASE**

35. Upon this Court's entry of a Final Order and Judgment approving the Settlement, each Class Member, and all of his respective heirs, executors and administrators, successors and assigns, shall be deemed to have released and forever discharged the County and its past, present and future divisions, board members, elected officials, appointed officials, officers, agents, employees, contractors, or representatives, as well as all suppliers, distributors, pharmacies, medical providers, and other persons or entities, and also including all insurers and counsel for each of the foregoing as well as their predecessors and successors, from any and all claims, actions, suits, obligations, demands, promises, liabilities, costs, expenses and attorneys' fees whatsoever (whether individual or class-wide in nature), whether based on any federal or state law or right of action, in law or in equity or otherwise, which the Class Members or any of them ever had, now have, or can have, or shall or may hereafter have, arising out of any acts, failures to act, omissions, representations, facts, events, transactions or occurrences set forth or alleged in the Action or in any way related, directly or indirectly, to the subject matter of the Action (the "Released Transactions"). The Settlement includes but is not limited to, a full resolution and discharge of claims for attorneys' fees, costs, prejudgment and post-judgment interest, of all Class Members who have not effectively opted out. The terms of such final judgment have the same effect as if such persons had executed appropriate releases.

**X. ATTORNEYS' FEES**

36. Class counsel has represented that it has incurred \$1.325 million in attorneys' fees based upon a calculation of time spent at rates appropriate for consideration under 42 U.S.C. § 1988, plus \$123,000 in costs and expenses, in connection with this action. Additional attorney time and expenses have been incurred since the settlement conference and will be incurred in the future. As a product of negotiation at a settlement conference, the County agreed to pay class counsel the sum of \$2.6 million in reasonable attorney fees and costs without objection, subject to approval by the Court, which determination shall be binding on both the County and Class counsel, as well as the Class Members. The County's obligation to pay fees and costs as set by the Court is separate and independent of the County's obligation to pay the class members as outlined herein. This payment shall be due and payable within 21 days after final approval of the settlement by the Court.

37. There is no right to attorneys' fees from the County beyond those covered in the preceding paragraph for any applications or requests for compensation, ADR, communications, disputes, or any other procedures under this Settlement Agreement.

**XI. CLAIMS PROCEDURE**

38. Any Class Member who makes a request for payment or reimbursement may be required to verify and document identity.

39. In order for a Class Member to receive any of the payments provided hereunder, the Class Member must make application for such payment, must identify all medical providers who have provided TB-related testing, diagnosis, care or treatment and

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must execute appropriate authorizations for the release of medical information as reasonably needed to verify information related to LTBI or TB. The County will not be obligated to make any payment to any Class Member who does not provide such application and related documents.

40. Payment or reimbursement of medical expenses under this Settlement Agreement are payable for diagnostic measures, care or treatment related to TB that are provided in any state or territory of the United States.

41. If a Class Member is eligible for a payment at the time of the Court's approval of this Settlement Agreement and fails to make application for such payment prior to June 9, 2012, the claim shall be waived and the County shall have no further obligation to make such payment and the County shall be entitled to retain any such payment for its own use.

42. If a member of the Subclass for Individuals to Be Tested fails to present himself for testing prior to February 11, 2011, any claim for compensation shall be waived and the County shall have no further obligation to make payment to that member and the County shall be entitled to retain any such payment for its own use. Any individual who waives the up-front payment shall be deemed to have waived any further claims for reimbursement or compensation.

43. If a Class Member becomes eligible in the future, after the Court's approval of this Settlement Agreement, for any payment not covered by the preceding two paragraphs, the Class Member shall be required to make application for such payment

within two years after the triggering event. If the Class Member fails to make application for any such future payment within two years after the triggering event, the claim shall be waived and the County shall have no further obligation to make payment for such payment and the County shall be entitled to retain any such payment for its own use. Waiver of any particular future payment other than the up-front payment shall not be deemed to be a waiver of any additional payments.

44. If a Class Member makes timely application for any payment, either an up-front payment applicable at the time of the Court's approval or a future payment, the Class Member shall be obligated to provide an address or contact information where the Class Member can be reached, and shall be obligated to respond to requests for information reasonably needed to verify eligibility and to provide authorizations reasonably needed for the County to verify eligibility. If the Class Member fails to provide such information and authorizations within 60 days after written request from the County, the claim shall be waived and the County shall have no further obligation to make payment for such payment and the County shall be entitled to retain any such payment for its own use.

45. All deadlines for payment by the County that are conditioned upon the receipt of information and authorizations from the Class Member are subject to extension, so long as the County promptly processes the authorizations and requests any information that must be obtained from third parties, if the Class Member or third parties delay their responses for reasons beyond the control of the County. Any disputes

concerning any extension are subject to dispute resolution procedures under either paragraph 48 if that paragraph applies to the payment in question or paragraph 49 if that paragraph applies to the payment in question.

46. Unless deadlines are extended pursuant to the preceding paragraph, if the County does not make payment when due, simple interest shall accrue from the applicable deadline at the rate of 6% per year.

47. At the time of any payment to any Class Member, if requested by the County, the Class Member shall sign a receipt acknowledging the delivery of that payment to the Class Member and acceptance of that payment in satisfaction of the particular obligation for which payment is made. Satisfaction of any one payment obligation shall not be construed as satisfaction of any obligation for additional payments.

## **XII. DISPUTE RESOLUTION PROCESS**

48. From time to time, during the implementation of this Settlement Agreement, there may be disputes between the Settling Parties, or between a Class Member and the County. Except for those portions of the Settlement Agreement that refers disputes for ADR in accordance with paragraph 49, the Settling Parties hereby agree that any dispute shall be presented to the Magistrate Judge for this case in accordance with the local rules applicable for the presentation and consideration of non-dispositive motions. The Magistrate Judge shall be expected to implement this Settlement Agreement in accordance with its terms and shall otherwise have discretion to enter into judgment as needed to resolve any disputes presented for resolution in accordance Settlement Agreement  
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herewith. Appeals would be allowed only in the event of an abuse of discretion. Each side shall bear their own fees and costs in connection with any disputes presented to the Magistrate Judge.

49. From time to time, during the implementation of this Settlement Agreement, there may be disputes between a Class Member and the County of a sort or at a time during which the Settling Parties have agreed that binding arbitration would be the appropriate means of resolving the disputes. This paragraph is intended to provide the parameters for the ADR resolution.

a. Either a Class Member or the County may initiate ADR by mailing a demand for ADR to the other side.

b. If notice is given to the County, it shall be addressed to

Ramsey County Attorney's Office  
Civil Division – Claims Department  
560 Government Center West  
50 West Kellogg Boulevard  
St. Paul, Minnesota 55102-1657

If notice is given to a Class Member, it shall be addressed to that individual at his or her last known address. Notice shall be reasonable under the circumstances, both in timing and the then-applicable means of providing notice or communications.

c. The form of ADR shall be binding arbitration.

d. If either a Class Member or the County demands ADR, the parties will endeavor to agree upon a neutral arbitrator from the list of ADR neutrals in the State of Minnesota. If the parties cannot agree upon a name within 30 days after demand for ADR

by either side, the parties shall jointly or may unilaterally make application to the United States District Court, District of Minnesota, for the appointment of a suitable arbitrator from the same list.

e. The Class Member or the County shall be entitled to conduct discovery as specified in the Settlement Agreement or as reasonably needed for the development of facts pertinent to the disputed issues. Any disputes about the discovery shall be decided by the selected arbitrator.

f. The parties to the ADR dispute and the arbitrator shall endeavor to resolve such disputes within 90 days after the date of the demand. The parties may stipulate or the arbitrator may decide in his discretion to extend the time needed for resolution of the dispute.

g. Ramsey County shall bear the fees and costs for the arbitrator unless the arbitrator denies the claimant's application and also finds that the application was either frivolous or presented without a good faith belief that the claimant qualified, in which case the arbitrator may require the claimant to pay the arbitrator's fees.

h. Each party is responsible for its, his or her attorneys' fees and costs other than the arbitrator's fees.

### **XIII. CONFIDENTIALITY OF INDIVIDUAL MEDICAL INFORMATION**

50. The identification of presumed Class Members in Exhibit 2 is intended to represent information that is already public and is not confidential. However, addresses for presumed class members presented in Exhibit 7, and the identification of members of the four subclasses specified in Exhibits 8, 9, 10 and 11, include or could be construed to

Settlement Agreement  
Page 28 of 36

constitute or to indicate private or confidential data. Accordingly, the Settling Parties will file this Settlement Agreement and all exhibits other than Exhibits 7, 8, 9, 10 and 11 and related documents as a public filing and shall make copies of those public documents available upon request for class members or other interested persons. However, the Settling Parties agree that the identification of members of the four subclasses specified in Exhibits 7, 8, 9, 10 and 11 shall be filed under seal for Court review, shall not be considered public filings, and shall not be made available to class members or other interested persons. Representatives of the Settling Parties shall be authorized to confirm for any given Class Member the specific subclass into which that individual is categorized. However, representatives of the Settling Parties shall not advise any given Class Member the classification applicable to the other Class Members. The Settling Parties shall ask the Court to confirm the general parameters for confidentiality for the categorization of Class Members consistent with this paragraph.

#### **XIV. ADMINISTRATION AND EXPENSES OF SETTLEMENT**

51. The Settling Parties agree that the County shall cover the expenses of providing the notices required under paragraphs 5, 6 and 54 and that the County shall be responsible for all costs incurred by the County in connection with processing claims and payments under section XI. The County will bear the costs of the decision-maker for the ADR process under paragraph 49. However, the County shall not be obligated to pay counsel to assist Class Members in presenting claims or documents required to submit claims or to address verification of claims and the County shall not be responsible for the

costs that Class Members may incur in demonstrating their eligibility for compensation or the amount of such compensation.

**XV. CONTACT INFORMATION**

52. For any questions concerning this Settlement Agreement, eligibility, claims or any related questions, all Class Members are encouraged to contact Class Counsel, specified herein:

**SIEBEN, GROSE, VON HOLTUM & CAREY, LTD.**  
Jeffrey M. Montpetit, Esq.  
800 Marquette Avenue, Suite 900  
Minneapolis, MN 55402  
612-333-4500  
1-800-328-4529  
[Jeffrey.Montpetit@knowyourrights.com](mailto:Jeffrey.Montpetit@knowyourrights.com)

**FLYNN, GASKINS, & BENNETT, LLP**  
Robert Bennett, Esq.  
Andrew J. Noel, Esq.  
333 South 7th Street, Suite 2900  
Minneapolis, MN 55402  
612-333-9500  
1-866-397-4497  
[Rbennett@flynngaskins.com](mailto:Rbennett@flynngaskins.com)  
[Anoel@flynngaskins.com](mailto:Anoel@flynngaskins.com)

Any questions of contacts needed with Ramsey County up to and through the date of confirmation of the final settlement may be made with:

**GREENE ESPEL P.L.L.P.**  
Clifford M. Greene, Reg. No. 37436  
Larry D. Espel, Reg. No. 27595  
200 S. Sixth Street, Suite 1200  
Minneapolis, MN 55402  
(612) 373-0830

53. All submittal of claims, requests for reimbursement, and other communications with Ramsey County following confirmation of final settlement shall be addressed to:

Ramsey County Attorney's Office  
Civil Division – Claims Department  
50 W. Kellogg Blvd, Suite 560  
St. Paul, MN 55102-1657

**XVI. NOTICE OF FINAL SETTLEMENT APPROVAL AND CLAIMS PROCEDURE**

54. After the Court's final approval of the settlement after hearing, the County agrees to provide to Class Members, within 21 days after receipt, a copy of the order approving the settlement and notice of the procedure for claiming payments. This notice will be provided by first class mail and publication to the addresses specified in Exhibit 7, except for opt-outs, and any updated addresses provided by Class Counsel or the Class Members themselves. No claims may be considered submitted sooner than the date for final approval. No payments will be due prior to February 11, 2011, or 90 days after complete information and authorizations have been submitted to the County, whichever is later with respect to any particular payment. The County's obligation to request information, medical authorizations, or otherwise process applications or requests for payments, reimbursement or other matters covered by this Settlement Agreement shall not begin prior to 21 days after the order approving the settlement, even if a class member submits an application and supporting documents at any earlier date.

**XVII. REASONABLENESS OF SETTLEMENT**

55. Counsel for the Settling Parties agree and represent to the Court that the settlement described herein is a reasonable compromise of the claims raised in this action

and is fair to all parties and class members. Counsel will provide the Court with a full explanation of the basis for this settlement in support of their motion for final approval. For purposes of preliminary approval, counsel represent to the Court that given the risks to both plaintiffs and the County in litigating these claims through trial, the enormous costs in dollars and time the trial of this action would require, it is in the best interests of all parties and class members to settle this case at this time and the amount of the settlement is reasonable.

#### **XVIII. ENTRY OF JUDGMENT AND CONTINUING JURISDICTION**

56. The Settling Parties agree that they will jointly move for entry of judgment in the above-captioned action, to be entered in conjunction with the Court's final approval of the class settlement, dismissing all claims of the class members with prejudice.

57. The Settling Parties will ask the Court to retain jurisdiction over this matter for purposes of resolving disputes as they may arise in the future and be subject to submission to the Court under paragraph 48 or to appoint arbitrators as required under paragraph 49.

#### **XIX. NO ADMISSION OF LIABILITY**

58. This Settlement Agreement is not intended to be and shall not operate as an admission of liability or wrongdoing on the part of The County or any of its agents, employees, or representatives with respect to the underlying action or any allegations or claims therein.

**XX. EXHIBITS INCORPORATED**

59. The following exhibits are incorporated herein by reference as if fully restated:

Exhibit 1 – Form of Notice to Class Members

Exhibit 2 – Class Members

Exhibit 3 – Form for Published Notice

Exhibit 4 – Draft Preliminary Approval Order

Exhibit 5 – Opt-Out Form

Exhibit 6 – Claim Form Exhibit 7 – Class Members with Addresses

(Confidential Document Filed Under Seal and Not for Public Release)

Exhibit 8 – Subclass for Active TB Disease (Confidential Document Filed Under Seal and Not for Public Release)

Exhibit 9 – Subclass for LTBI (Confidential Document Filed Under Seal and Not for Public Release)

Exhibit 10 – Subclass for Negative Results (Confidential Document Filed Under Seal and Not for Public Release)

Exhibit 11 – Subclass for Individuals to Be Tested (Confidential Document Filed Under Seal and Not for Public Release)

This Settlement Agreement has 36 pages, counting signatures and not counting exhibits.

This Settlement Agreement has 107 pages counting both the Settlement Agreement and

its exhibits. The footer for the Settlement Agreement refers to the 36-page total in the Settlement Agreement

agreement itself. The footers for the exhibits refer to the 107-page total for the page count counting both the Settlement Agreement and its exhibits. The public portion of the Settlement Agreement without the confidential exhibits totals 80 pages. The remaining 27 pages are confidential and filed under seal.

**For Ramsey County:**

Dated: May 10, 2010.

s/Darwin J. Lookingbill

Darwin J. Lookingbill  
Civil Division Director

**GREENE ESPEL P.L.L.P.**

Dated: May 10, 2010.

s/Clifford M. Greene

Clifford M. Greene, Reg. No. 37436  
Larry D. Espel, Reg. No. 27595  
200 S. Sixth Street, Suite 1200  
Minneapolis, MN 55402  
612-373-0830

Attorneys for Ramsey County

**For Plaintiffs:**

**SIEBEN, GROSE, VON HOLTUM & CAREY,  
LTD.**

Dated: May 10, 2010.

s/Jeffrey M. Montpetit

Jeffrey M. Montpetit, Esq., Reg. 291249

800 Marquette Avenue, Suite 900

Minneapolis, MN 55402

612-333-4500

1-800-328-4529

[Jeffrey.Montpetit@knowyourrights.com](mailto:Jeffrey.Montpetit@knowyourrights.com)

**FLYNN, GASKINS, & BENNETT, LLP**

Dated: May 10, 2010.

s/Robert Bennett

Robert Bennett, Esq., Reg. 6713

Andrew J. Noel, Esq., Reg. 322118

333 South 7th Street, Suite 2900

Minneapolis, MN 55402

612-333-9500

1-866-397-4497

[Rbennett@flynngaskins.com](mailto:Rbennett@flynngaskins.com)

[Anoel@flynngaskins.com](mailto:Anoel@flynngaskins.com)

**REQUEST FOR EXCLUSION (OPT-OUT FORM)**

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

Robinson, et al. v. County of Ramsey, et al.

Case No. 08-CV-05779 (RHK/AJB)

**IMPORTANT NOTICE: You will not be allowed to opt out of the settlement if your signed Request for Exclusion form is not post marked (first class postage prepaid) by July 26, 2010.**

(Print or type)  
My full name is

\_\_\_\_\_

first middle last

I reside at

\_\_\_\_\_

number street city state zip

I do not wish to be a Member of the Class Action. I have read either the Summary Publication Notice or the mailed Notice regarding the class action litigation of the above-referenced case. I am sufficiently advised of my rights to remain in the Class and be bound by any judgment rendered therein. By opting out, I am excluding myself from the binding effect of judgment and from all consideration available to Class Members. I also realize that, if I exclude myself from the Class Action by opting out and subsequently choosing to bring an independent action, I will be responsible for choosing and compensating my own attorney(s) and that the statute of limitations for bringing claims set forth in this litigation will again begin to run from the date of my request for exclusion.

Signature: \_\_\_\_\_

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

Mail to: Steven J. Kirsch, Esq., MURNANE BRANDT, 30 East Seventh Street, Suite 3200St. Paul, Minnesota 55101-5199

**CLAIM FORM**

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

Robinson, et al. v. County of Ramsey, et al.  
Case No. 08-CV-05779 (RHK/AJB)

**IMPORTANT NOTICE: Please fill out this form (type or print all information except signature), use extra pages if necessary.**

1. Name: \_\_\_\_\_

2. Date of Birth: \_\_\_\_\_

3. Current Address:

\_\_\_\_\_ (street)

\_\_\_\_\_ (city/state/zip)

4. Telephone: \_\_\_\_\_

5. Name & Address of Medical Providers who have provided TB-related testing, diagnosis, care or treatment:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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By submission of this proof of claim, I agree to be bound by all of the provisions of the Settlement Agreement entered in the matter entitled *Robinson, et al. v. County of Ramsey, et al.* No. 08-CV-05779, United States District Court, District of Minnesota (the "Settlement Agreement"), including granting to the County of Ramsey a full and complete release of all claims as defined and set forth in the Settlement Agreement and final order and judgment entered pursuant to the Settlement Agreement; I agree that I submit to the jurisdiction of the United States District Court, District of Minnesota, for the purpose of enforcing the Settlement Agreement; and I certify that the foregoing is true and correct under the penalty of perjury.

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Signature

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Date

Return this form (must be completed & signed) by mail to:

Ramsey County Attorney's Office  
Civil Division – Claims Department  
560 Government Center West  
50 West Kellogg Boulevard  
St. Paul, Minnesota 55102-1657