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Dated: March 13, 2003



Diabetes Association, which has agreed to monitor the City's compliance with the Injunctive Settlement Agreement. Together, these procedures, training, and monitoring provisions will help ensure that the express intent of all parties – that persons with diabetes receive medically appropriate and timely treatment and care while in the custody of the Philadelphia Police Department – will be realized.

**I. THE HISTORY OF THE PROCEEDINGS AND NEGOTIATIONS LEADING TO THIS SETTLEMENT**

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On February 11, 2000, plaintiff Rosen filed the first complaint in this class action. An amended complaint was filed on March 21, 2000, which included additional plaintiffs. In these complaints, the individual plaintiffs, each of whom has diabetes, alleged facts and circumstances relating to their separate arrests by the Philadelphia Police Department and their ability to manage their diabetes while in police custody. The individual plaintiffs alleged that the City failed to provide food and/or medication (including plaintiffs' own insulin), resulting in injury and, for several individuals, emergency hospitalization. The individual plaintiffs alleged that the City's policies, including its alleged failure to respond to plaintiffs' medical needs and adequately train police personnel, were unconstitutional and violated the civil rights of the plaintiffs and those of a class of people with diabetes arrested in the City. Plaintiffs sought both injunctive relief and damages. The City denies each and every allegation contained in plaintiffs' amended complaint.

On June 23, 2000, plaintiffs filed a second amended complaint in which they were joined by the American Diabetes Association ("ADA"), a national organization of over 434,000 general members and 17,000 health professional members that strives to prevent and cure diabetes and to improve the lives of all people affected by diabetes. The ADA did not seek damages but only a change in the policies of the City through prospective injunctive relief. On July 13, 2000, the City answered plaintiffs' second amended complaint, denying all plaintiffs' allegations of

constitutional violations and disputing all plaintiffs' entitlement to any damages or injunctive relief.

On July 27, 2000, plaintiffs filed a motion for class certification pursuant to Federal Rules of Civil Procedure 23(b)(2) and 23(b)(3), seeking certification of two classes, one for injunctive relief and one for damages. The City responded, opposing certification of any damages class. On March 6, 2001, after the filing of a third amended complaint and after a hearing, the Court entered an opinion and order certifying two classes: (1) an injunctive class pursuant to Rule 23(b)(2) consisting of all persons with diabetes who are or will be in police custody; and (2) a damages class pursuant to Rule 23(b)(3) consisting of all persons with diabetes who have been denied timely and appropriate medical care and diet while in police custody since February 11, 1998. *See Rosen, et al. v. City of Philadelphia*, 2001 WL 484114 (E.D. Pa. March 6, 2001) ("*Rosen Certification*").

During and following class certification, counsel for the plaintiffs conducted written discovery, in the course of which the City produced computerized records relating to the treatment of people with diabetes who were arrested. Counsel for plaintiffs also had access to other written material produced by the City in earlier litigation. Subsequently, the parties engaged in extensive settlement negotiations to resolve both the class injunctive claims and the class damages claims, and met with the Court. On June 26, 2002, after extensive negotiations, the parties were unable to resolve the issues. The Court thereupon issued a scheduling order on July 3, 2002, establishing a discovery period ending on October 25, 2002, and entry in the Court's trial pool on March 3, 2003. The ADA engaged additional counsel to assist in preparation of the case for trial and any subsequent settlement negotiations, and also served responses to written interrogatories and document requests propounded by the City.

Shortly afterwards, on July 24, 2002, the parties held another meeting with the Court regarding the possibility of settlement. As a result of that meeting, the parties engaged in further negotiations on the scope of monitoring provisions of a settlement agreement. Subsequently, the parties were unable to resolve several substantive issues regarding the City's policies, and the City proposed an additional meeting with the Court at which representatives of the Philadelphia Police Department would attend. Following that meeting, the parties were able to proceed with further negotiations and reach agreement on the terms of the Injunctive Settlement Agreement.

## **II. SUMMARY OF THE INJUNCTIVE SETTLEMENT AGREEMENT**

The Injunctive Settlement Agreement is divided into several sections, which set forth the policies for people with diabetes who are arrested, the monitoring provisions contained in the Injunctive Settlement Agreement, and the training materials the City will produce. The significant provisions of the Injunctive Settlement Agreement include:

- Centralized Processing and Medical Transportation. All adult detainees with diabetes, whether or not they use insulin, will be transported to the Main Offender Processing Unit ("MOPU") and will undergo an evaluation by medically trained personnel. If a detainee requests medical care or exhibits symptoms of diabetic illness, the detainee will be transported to the nearest hospital (and to the MOPU upon discharge from the hospital). Detainees who are detained only for a short time (e.g., investigation purposes) will also be transported to the nearest hospital under the same guidelines.
- Medical Services at the MOPU. Upon arrival at the MOPU, each detainee with diabetes will have blood glucose testing performed, and such testing will also be performed when requested by the detainee or when deemed medically necessary by the medical provider's staff. When deemed medically necessary by the medical provider's staff at the MOPU, people with diabetes will also receive from the City's medical provider's staff glucose or glucagon for treatment of low blood sugar levels, prescription medication (including insulin), medically appropriate food, and, if the medical provider is unable to care for the individual or if the individual exhibits symptoms of diabetic illness, immediate transportation to the nearest hospital.

- Source of Sugar in all Police Districts and Units. The City will make a source of sugar available for people with diabetes, in the form of soft drinks, in all Police Districts and Units.
- Monitoring Provisions. For eighteen months following the approval of the Injunctive Settlement Agreement by the Court, the City will provide computer data and other records relating to people with diabetes who are arrested to the ADA for review. Data will also be provided by the City’s medical services provider. The Court retains jurisdiction over enforcement of the monitoring provisions.
- Training Video and Diabetes Poster. The City and the ADA will co-produce a training video on the needs of people with diabetes in custody, which will be incorporated into Philadelphia police training. The Association, in consultation with the Philadelphia Police Department, will also design a poster describing diabetes, its symptoms and appropriate treatment, which shall be placed and maintained in each area where prisoners are detained. The Philadelphia Police Department will also recommend the inclusion of the video and its contents in statewide training of Pennsylvania municipal police officers.

**III. THE PROPOSED SETTLEMENT IS FAIR, REASONABLE AND ADEQUATE AND SHOULD BE PRELIMINARILY APPROVED BY THE COURT**

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A. The Requirements For Preliminary Approval Of A Class Action Settlement Under Fed. R. Civ. P. 23(e)

Rule 23(e) of the Federal Rules of Civil Procedure provides that:

A class action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs.

“In determining whether a settlement should be approved, the court must decide whether it is fair, reasonable, and adequate under the circumstances and whether the interests of the class as a whole are being served if the litigation is resolved by settlement rather than pursued.” MANUAL FOR COMPLEX LITIGATION, § 30.42, at 238 (3d ed. 1995). Approval of a proposed class action settlement is within the discretion of the court. *In re Prudential Ins. Co. of Am. Sales Litig.*, 148 F.3d 283, 299 (3d Cir. 1998) (“*Prudential*”). In exercising that discretion, courts have emphasized that “[t]he law favors settlement, particularly in class actions and other complex cases where substantial judicial resources can be conserved by avoiding formal litigation.” *In re*

*General Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 784 (3d Cir.) (citations omitted), *cert. denied*, 516 U.S. 824 (1995) (“*In re General Motors*”).

The United States Court of Appeals for the Third Circuit has explained that “the evaluating court must, of course, guard against demanding too large a settlement based on its view of the merits of the litigation; after all, settlement is a compromise, a yielding of the highest hopes in exchange for certainty and resolution.” *Prudential*, 148 F.3d at 316-17 (quoting *In Re General Motors*, 55 F.3d at 806). In evaluating a settlement, courts have given significant weight to the judgment of experienced counsel. *See, e.g., Fisher Bros. v. Phelps Dodge Industries, Inc.*, 604 F. Supp. 446, 452 (E.D. Pa. 1985). “[A] presumption of fairness, adequacy and reasonableness may attach to a class settlement reached in arms-length negotiations between experienced, capable counsel after meaningful discovery.” MANUAL FOR COMPLEX LITIGATION, ¶ 30.42, at 240. Furthermore, a court may approve a settlement even if the parties have agreed upon relief that the court might have lacked the authority to order if there had been a trial. *Local Number 93, Int’l Ass’n of Firefighters v. Cleveland*, 478 U.S. 501 (1986).

Ultimately, in order to give approval to a class action settlement (where the class has already been certified in a contested proceeding),<sup>1</sup> the Court must determine that the terms of the settlement are “fair, adequate, and reasonable,” and that the notice requirements of Rule 23 are satisfied. *In Re General Motors*, 55 F.3d at 785; *Walsh v. Great Atlantic and Pacific Tea Co.*, 726 F.2d 956, 962-65 (3d Cir. 1983). As explained below, each of these requirements is satisfied here.

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<sup>1</sup> As explained above, the Court has previously certified the injunctive class pursuant to Rule 23(b)(2) consisting of all persons with diabetes who are or will be in police custody. *See Rosen Certification*, at \*1.

B. The Terms of the Settlement Are Fair, Reasonable, and Adequate

The Third Circuit has established a list of factors for consideration in whether a class action settlement is fair, reasonable and adequate. These factors are: (1) the complexity, expense, and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class action through the trial; (7) the ability of defendants to withstand a greater settlement; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; and (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation. *Girsh v. Jepsen*, 521 F.2d 153, 157 (3d Cir. 1975) (internal citations omitted); *accord In re General Motors*, 55 F.3d at 785.

While the parties will address all of the *Girsh* factors relevant to approval of an injunctive class, the Third Circuit has explained that in order to give preliminary approval to a settlement, the district court need only find that “(1) the negotiations occurred at arm’s length; (2) there was sufficient discovery; (3) the proponents of the settlement are experienced in similar litigation; and (4) only a small fraction of the class objected.” *In Re General Motors*, 55 F.3d at 785. Here, these requirements are also satisfied. The Court is already familiar with the difficult negotiations between the parties over many substantive issues of the Injunctive Settlement Agreement, as well as the plaintiffs’ extensive understanding (developed in part through plaintiffs’ discovery) of both the theoretical and practical aspects of the City’s policies towards people with diabetes who are arrested. The Court is also familiar with the extensive experience of several of plaintiffs’ counsel in national and local civil rights litigation as well as significant class action litigation. Finally, while the named plaintiffs have no objection to the injunctive relief, the prospective nature of the injunctive relief precludes assessment of the views of those individuals who will

benefit from the Injunctive Settlement Agreement upon their arrest. However, it is significant that the American Diabetes Association, the nation's leading organization involved in diabetes research and nationwide advocacy (including litigation) has participated in the settlement process and fully endorses the proposed injunctive relief.

The proposed settlement similarly satisfies the relevant *Girsh* factors:

- Factor 1 -- Complexity, expense, and likely duration. This litigation presents complex issues of both law and medicine as well as law enforcement procedures. Absent settlement, the parties would be obligated to conduct significant additional fact discovery through depositions as well as complete preparation of expert reports addressing medical issues relating to diabetes and adequate police procedures. If the matter were to go to trial, any such proceeding would involve extensive presentation of both fact and expert testimony, resulting in additional expenditures by the City and the ADA (which is a non-profit organization), as well as individual plaintiffs.
- Factor 2 -- The reaction of the class to the settlement. As noted above, the prospective nature of the injunctive relief precludes assessment of the views of individuals who will actually benefit from the proposed relief. However, the ADA, a plaintiff and membership organization with hundreds of thousands of members, has accepted the Injunctive Settlement Agreement. In addition, as discussed in further detail below, the parties have agreed to include notice of the settlement of the injunctive class as part of the extensive notice proceedings relating to the damages class.
- Factor 3 -- The stage of proceedings and the amount of discovery completed. The Court has already certified the plaintiff class which now seeks approval of the Injunctive Settlement Agreement. Although the parties have not completed discovery in light of their Injunctive Settlement Agreement, the amount of discovery obtained by plaintiffs has provided counsel for plaintiffs with substantial understanding of the treatment of people with diabetes by the City as well as the extent to which certain police procedures can be improved upon.
- Factor 4 -- The risks of establishing liability. Counsel for the plaintiff class recognize that there is some risk in being able to establish liability of the City for purposes of prospective injunctive relief, in part due to the complexity of the legal and medical issues noted above. In addition, the City has represented that it has implemented or is in the process of implementing many of the policies and procedures relating to persons with diabetes set forth in the Injunctive Settlement Agreement, which may complicate both the ability of plaintiffs to obtain the same relief obtained through the Agreement in a trial and the right to monitor the City's implementation of that relief.

- Factor 6 -- The ability of maintaining the class action through trial. There is little risk of decertification of the Rule 23(b)(2) injunctive class previously determined by the Court, which the City did not contest. *See Rosen Certification, at \*1.*
- Factor 7 -- The ability of defendants to withstand a greater settlement. After extensive negotiations, the City has represented that it cannot accept any additional obligations, particularly obligations that may impose further costs or personnel obligations and will not agree to any settlement agreement that includes extension of the Agreement beyond the eighteen-month monitoring period.

While the remaining *Girsh* factors relating to damages and the range of reasonableness of a settlement fund are not strictly relevant to an injunctive settlement, counsel for the plaintiff class note (looking to the eighth *Girsh* factor) that the Injunctive Settlement Agreement negotiated by the parties certainly appears reasonable absent any showing of a likelihood of greater injunctive relief if liability were established at trial. Thus, pursuant to the *Girsh* factors, the Court should conclude that the Injunctive Settlement Agreement is fair, adequate, and reasonable.

C. The Notice Requirements of Rule 23 Will Be Satisfied

In addition to finding that the Injunctive Settlement Agreement satisfies the requirements of fairness, adequacy, and reasonableness, the Court must also consider what notice is required to satisfy the provisions of Rule 23. Although the notice following certification of a Rule 23(b)(3) class must be “the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable efforts,” *see* Fed.R.Civ.P. 23(c)(2), this provision does not apply to a (b)(2) class. Rule 23(e), regarding settlement, requires only that “notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs.” Fed.R.Civ.P. 23(e). The Rule plainly gives the Court substantial latitude with respect to notice of dismissal or compromise (particularly in a (b)(1) or (b)(2) action, where the Rule does not otherwise require notice of class certification or any judgment that might be entered in a class action).

In this case, because the benefits of the policies implemented by the City as set forth in the Injunctive Relief Settlement will benefit those people with diabetes who will be arrested by the City in the future, actual notice to those individuals is plainly impossible. However, plaintiffs and the City have agreed to include notice of the settlement of the Rule 23(b)(2) class in notice to the Rule 23(b)(3) damages class and permit objections in accordance with the written notice of objection provisions applicable to the damages class. A copy of the Summary Notice that will be published is attached as Exhibit “B”, and a copy of the full printed notice with the provisions relating to the Rule 23(b)(2) class that will be sent to all known damages class members and others who seek additional information in response to the Summary Notice is attached as Exhibit “C”.

**IV. CONCLUSION**

For the reasons set forth in this Memorandum of Law, the Court should grant preliminary approval to the Injunctive Settlement Agreement. A proposed Order is attached as Exhibit "D".

Respectfully submitted,

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*Counsel to the American Diabetes Association*

Dated: March 13, 2003

# **EXHIBIT A**

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

STEVEN ROSEN, et al	:	Civil Action No. 2000-CV-764
	:	
v.	:	
	:	
CITY of PHILADELPHIA	:	HON. PETRESE B. TUCKER
Defendant	:	

**SETTLEMENT AGREEMENT FOR INJUNCTIVE RELIEF**

A. Procedural Provisions

1. Plaintiffs and defendant City of Philadelphia, by and through their undersigned counsel, having met and conferred, do hereby agree to settle under the terms and conditions of this Agreement all claims for injunctive relief only that were or could have been asserted by plaintiffs in the instant case.

2. Plaintiffs and the City of Philadelphia agree that the Rule 23(b)(2) plaintiff class, for purposes of this Agreement, consists of all persons with diabetes who are or will be in police custody in the time period commencing from the date of approval of this Agreement by the Court until termination of the eighteen (18) month period set forth in paragraph 21 of the Agreement.

3. It is the express intent of the parties that persons with diabetes in Philadelphia Police custody receive medically appropriate and timely treatment and care. The City of Philadelphia and the Philadelphia Police Department have implemented, or are in the process of implementing, many of the policies and procedures relating to persons with diabetes set forth in this Agreement.

4. This Agreement is entered into by the City of Philadelphia without admission of liability or wrongdoing.

5. Nothing in this Agreement shall be deemed a waiver of any defense, which the City of Philadelphia or its employees may have to any claim now pending, including claims for damages, or any claim that may be brought in the future.

6. Nothing in this Agreement shall serve as a bar to prevent plaintiffs or any member of the class from instituting suit for injunctive or other relief at the close of the monitoring period.

7. Nothing in this Agreement shall be deemed to govern the rights of plaintiffs or any member of the Rule 23(b)(2) class to pursue damages as a member of the damages class or otherwise or to seek related fees and costs.

8. The parties enter into this Agreement for the Settlement of the Rule 23(b)(2) class with the intent to be bound by the terms and conditions hereof. This Agreement is not, nor is it to be construed as or enforced as, a Consent Decree and does not operate as an adjudication on the merits of this case.

9. The parties agree that, upon discontinuance of this lawsuit, the plaintiff class and their attorneys shall not seek any form of relief grounded in this litigation or this Agreement, other than as described in paragraph 6 or paragraph 10. If, in the future, the plaintiff class or their attorneys believe plaintiffs' legal rights are being violated, their sole enforcement remedy will be the filing of a new lawsuit alleging constitutional violations in a court of competent jurisdiction, separate and apart from this litigation or Agreement.

10. Upon approval of the Agreement, the United States District Court for the Eastern District of Pennsylvania shall retain jurisdiction over the enforcement of this Agreement for the sole purpose of enforcing Sections D, E and F of this Agreement. The parties agree not to seek enforcement of this Agreement by instituting any contempt proceeding. Relief in the form

of an order compelling performance of the terms set forth in Sections D, E and F of this Agreement will be appropriate.

11. Upon approval of this Agreement by the Court, plaintiffs' counsel shall sign a stipulation dismissing all claims for injunctive relief, with prejudice, pursuant to the terms and conditions of this Agreement.

B. Philadelphia Police Department Policy

12. Pursuant to Directive 82-Appendix "C", Directive 128 ("Directive") all adult detainees with diabetes, whether or not they use insulin, will be transported to the Main Offender Processing Unit (MOPU) for Processing and will undergo a medical evaluation by medically trained personnel, unless the detainee requests medical care or exhibits symptoms of diabetic illness (hypoglycemia or hyperglycemia). In such case, the detainee will be transported to the nearest hospital, and then upon discharge, be transported to the MOPU.

13. Pursuant to the Directives, any adult detainee with diabetes who is arrested for a summary offense or who is detained for a short period of time for investigation purposes will be transported to the nearest hospital for treatment by a physician if the detainee requests medical care or exhibits symptoms of diabetic illness (hypoglycemia or hyperglycemia).

14. Pursuant to the Directive, the City of Philadelphia shall complete a Detainee's Medical Checklist (75-605) for each adult detainee with diabetes, which shall accompany the detainee to any facility in which the detainee is held in the custody of the City of Philadelphia. The City of Philadelphia shall continue to maintain a list of all Detainees' Medical Checklists that indicate diabetes until this Agreement is terminated.

15. Pursuant to Directive 82, Appendix D, Section I.B.: "Any person taken into police custody, who states a medical need for nourishment, will be provided food as nearly as consistent as possible, in content and timing, with his/her prescribed diet." The City shall

ensure that the medical services provider's staff in the MOPU are informed of the presence of any individual with diabetes who is awaiting a breathalyzer examination, and the medical services provider's staff shall conduct blood glucose testing of that individual (promptly and without awaiting results of the breathalyzer examination) and provide all medical services deemed medically necessary by the medical services provider's staff, including but not limited to immediate transportation by the City of Philadelphia to the nearest hospital if the individual exhibits symptoms of diabetic illness (hypoglycemia or hyperglycemia) and the medical service provider's staff is unable to provide the care needed to alleviate these symptoms.

16. The City of Philadelphia agrees to make a source of sugar in the form of soft drinks available in the MOPU and in all Police Districts and Units. Any person with diabetes who requests a source of sugar to treat his/her diabetes will be permitted to purchase such soft drinks and, where the person is unable to purchase soft drinks, the soft drinks will be provided without charge. All such requests shall be documented on the detainee's Computerized Detainee Medical Checklist (75-605) where feasible.

C. Health Services Provisions

17. As part of the City of Philadelphia's efforts to improve the delivery of services to persons with diabetes who are in the custody of the Philadelphia Police Department the City of Philadelphia has contracted with Prison Health Services (PHS) to provide medical treatment to persons who are in the custody of the Philadelphia Police Department, and specifically those prisoners who are located in the MOPU.

18. Pursuant to the contract between the City of Philadelphia and PHS, PHS is required to provide medical triage and evaluation staff, on-call physician response, and the regular administration of medication (including but not limited to, insulin or other prescription

medication for the treatment of diabetes), by a registered nurse to detainees with diabetes located in the MOPU.

19. Pursuant to the contract between the City of Philadelphia and PHS, each detainee with diabetes at the MOPU shall be provided the following by the medical services provider's staff: (1) blood glucose testing upon arrival at the MOPU, and also if requested by the detainee or when deemed medically necessary by the medical services provider's staff; (2) medically appropriate sources of glucose for treatment of low blood sugar levels, including, in the case of emergencies, glucagon, when deemed medically necessary by the medical services provider's staff; (3) prescription medication including insulin and oral medication for the treatment of diabetes, when deemed medically necessary by the medical services provider's staff; (4) medically appropriate food, when deemed medically necessary by the medical provider's staff; and (5) immediate transportation to the nearest hospital if the detainee with diabetes exhibits symptoms of diabetic illness (hypoglycemia or hyperglycemia) and PHS staff is unable to provide the care needed to alleviate these symptoms.

20. In the event that the contractual relationship between the City of Philadelphia and PHS is terminated, the provisions contained in paragraphs 17-19 of this Agreement shall remain in full force and effect and applicable to any other health provider providing services in the MOPU, unless prohibited by federal law.

D. Monitoring Provisions

21. The parties agree to an eighteen (18) month monitoring period commencing on the first day of the second month following approval of this Agreement by the Court.

22. During the eighteen (18) month monitoring period the Philadelphia Police Department agrees to provide, on a monthly basis, the following documents to the American Diabetes Association:

a. Computer data exported from the PARS database for all persons in police custody who are identified as having diabetes. The data shall be provided in a computerized form and shall contain the following:

i. Computerized Detainee Medical Checklists (75-605) for all detainees with diabetes (including, without limitation, the checklists for all individuals detained for investigation or summary offenses);

ii. Location information from arrest through release or transfer to prison, including times of transfer, for all detainees with diabetes;

iii. Names, addresses, phone numbers and police photo numbers (PPN/PID) for all detainees with diabetes.

b. Hospital Case Database records (including names, addresses, phone numbers, and police photo numbers (PPN/PID)) in electronic format for all detainees with diabetes that appear in the Hospital Case Database.

c. Copies of any Internal Affairs investigations involving care and treatment of persons with diabetes and/or violations of Directive 82 involving persons with diabetes completed during the monitoring period.

d. Documents evidencing all specially ordered meals provided detainees with diabetes pursuant to § 1B. of Appendix "D" to Directive 82.

e. All diabetes related training materials, Directives, Commissioner's Memoranda, Teletype Messages, Assist officers or other similar documents relating to the care and treatment of persons with diabetes.

f. In the event counsel for plaintiffs require hard copies of computerized Detainee Medical Checklists (75-605), or Incident Reports (75-48) on transportation of detained persons with diabetes to hospitals and/or the MOPU, counsel for plaintiffs shall confer in good faith with counsel for the City and set forth (1) the need for the information; and (2) the provision of this Agreement being monitored for which the information is required. In the event that counsel for the City is unable to resolve the monitoring issues identified by counsel for plaintiffs, the City shall provide the requested information within fourteen days of the request.

g. The City shall request its medical services provider to provide the City with all Medical Administration Records of all detained persons with diabetes (or any equivalent record documenting the administration of food and medicine to detained persons with diabetes) each month of the term of this Agreement, and the City shall produce such records to counsel for plaintiffs. If the City enters into a new contract or amends its current contract with its medical services provider, the City shall impose a requirement that these records be provided to the City upon request. In the event the medical services provider refuses to provide such records to the City as provided in this paragraph, plaintiffs may request the Court to issue a subpoena or other order directed to the medical services provider, which the City shall not oppose, requiring the production of such records directly to counsel for the plaintiffs.

E. Training Provisions

23. Representatives of the American Diabetes Association, upon request, may observe training or view Police Department practices and procedures in any other area covered by this Agreement. The City of Philadelphia reserves the right to limit access if compliance with the request would undermine security.

24. The American Diabetes Association, in consultation with the Philadelphia Police Department, agrees to design a poster to be paid for by the City of Philadelphia describing diabetes, its symptoms and appropriate treatment, which shall be placed and maintained in each area where prisoners are detained.

25. The American Diabetes Association, in consultation with the Philadelphia Police Department and the Philadelphia Health Department, agrees to co-produce a video to be paid for by the City of Philadelphia on diabetes and the needs of people with diabetes in custody. The Philadelphia Police Department agrees to incorporate the video into Police Recruit training. The Philadelphia Police Department agrees to make reasonable efforts to ensure that the video is viewed by all police officers on a biannual basis, through roll-call training or other training identified by the City. Detention Unit personnel and officers designated as “turnkeys” shall view the video on an annual basis.

26. The Philadelphia Police Department agrees to recommend to the Pennsylvania Municipal Police Officers Training and Education Commission the inclusion of the video and its contents in the Pennsylvania Municipal Police Officers Training and Education Commission Basic Curriculum and Annual In-Service Training.

F. Fees and Costs Provisions

27. The City of Philadelphia agrees to pay plaintiffs’ counsel fees and costs accrued at the time of the Court’s approval of this Agreement in the amount of \$42,500.00. The

plaintiffs hereby specifically waive any claim for attorneys' fees and costs during the eighteen-month monitoring period relating to the City's performance of the monitoring and training provisions of this Agreement (sections D and E).

G. Termination and Dismissal

28. This Agreement shall expire eighteen (18) months from the first day of the second month following approval of this Agreement by the Court. Upon expiration of this Agreement, the Court will automatically enter an Order dismissing all injunctive relief claims asserted against the City under the Rule 23(b)(2) Class from the *Rosen, et al. v. City of Philadelphia* case. The parties agree that the United District Court for the Eastern District of Pennsylvania shall retain jurisdiction over the enforcement of this agreement for the sole purpose of enforcing Sections D, E and F of this Agreement.

H. Release

29. Subject only to the final approval of the Agreement by the Court, plaintiffs, individually and on behalf of each member of the Rule 23(b)(2) class, and on behalf of the respective heirs, executors, administrators, personal representatives, successors and assigns of each of themselves and each of the members of the Rule 23(b)(2) class ("Settling Plaintiffs"), hereby jointly and severally acquit and forever discharge on the merits and with prejudice City, present or former directors, officers and employees of City, and present or former counsel, auditors, accountants, agents and consultants of City, and their respective heirs, executors, administrators, personal representatives, transferees, successors and assigns (collectively "Settling Defendant"), and each of them, of and from any and all manner of equitable actions, costs, expenses and attorneys' fees and expert fees (except as provided in Section F, herein), whether known or unknown, foreseen or unforeseen, matured or unmatured, accrued or not accrued, direct or indirect, that plaintiffs and the members of the Rule 23(b)(2) class, and each of

them, in their individual or class representative capacities, ever had, now has, or have, or can, shall or may hereafter have against City, or any of them, either alone or in combination with others, for, by reason of, involving, concerning, arising from or in any way relating to any equitable claim which is or could have been stated against City in the Complaint and Third Amended Complaint filed in this Action arising from the facts alleged in the Complaint and Third Amended Complaint.

30. In addition to the provisions of paragraph 29, Settling Plaintiffs further release Settling Defendant from any and all claims based solely upon the provision of individual identifying information (names, addresses, and/or telephone numbers) of class members to the American Diabetes Association (or its counsel) required by Section D of this Agreement.

I. Use Of Data

31. The plaintiffs and their counsel agree that any and all data produced by the City of Philadelphia is the property of the City of Philadelphia and the Philadelphia Police Department. The plaintiffs and their counsel agree that the data cannot be used in a study or publication without the express permission of the City of Philadelphia and the Philadelphia Police Department, except to the extent such data may be used in any report by plaintiffs and their counsel to the Court. In the event that plaintiffs and their counsel intend to use any data in any report to the Court, counsel for plaintiffs shall inform the City of their intent and identify the data plaintiffs intend to use no later than seven (7) business days before any such report. Within five (5) business days of such notice, the City may request in writing to counsel for plaintiffs that the data be filed with the Court under seal. Nothing in this paragraph precludes use of the data in any hearing before the Court, or any motion by plaintiffs to file data publicly or to remove any seal for previously filed data.

32. If one or more plaintiffs initiate any litigation relating to the treatment of detained persons with diabetes by the City of Philadelphia within six months after the expiration of this Agreement, those plaintiffs may use any and all data produced by the City of Philadelphia and the Philadelphia Police Department pursuant to this Agreement without restriction. If no plaintiff initiates any such litigation within six months after the expiration of this Agreement, all data supplied by the City of Philadelphia and the Philadelphia Police Department during the monitoring period shall be returned to the City of Philadelphia in its original form promptly after the expiration of this Agreement, and upon return of such information, the plaintiffs and/or their counsel further agree that they shall certify in writing that they have not disseminated the data to any person, organization or entity not subject to the terms of this Agreement.

J. Amendment and Modification

33. This Agreement may only be amended, modified or supplemented by an agreement in writing signed by both the City and counsel for plaintiffs.

WHEREFORE, intending to be legally bound, the parties have executed this Agreement.

**NELSON A. DIAZ**  
**CITY SOLICITOR**

---

Alan L. Yatvin, Esquire  
Popper & Yatvin  
230 South Broad Street, Suite 503  
Philadelphia, PA 19102  
(215) 546-5700  
*Counsel to the plaintiff class  
and the American Diabetes Association*

---

William R. Thompson  
Litigation Chair  
*Counsel to the City of Philadelphia*

---

Carlton L. Johnson  
Chief Deputy City Solicitor  
*Counsel to the City of Philadelphia*

---

David Rudovsky, Esq.  
Kairys Rudovsky Epstein & Messing, LLP  
924 Cherry Street, Suite 500  
Philadelphia, PA 19107  
(215) 925-4400

*Counsel to the plaintiff class  
and the American Diabetes Association*

---

Jeffrey M. Scott  
Divisional Deputy City Solicitor  
1515 Arch Street, 14<sup>th</sup> Floor  
City of Philadelphia Law Department  
Philadelphia, PA 19102  
(215) 683-5439

*Counsel to the City of Philadelphia*

---

Joseph B.G. Fay, Esq.  
Kenneth M. Kulak, Esq.  
Joseph P. Dever, Esq.  
Morgan, Lewis & Bockius LLP  
1701 Market Street  
Philadelphia, PA 19103  
(215) 963-5000

*Counsel to the American Diabetes Association*

Dated: March 13, 2003

# **EXHIBIT B**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<b>STEVEN ROSEN, et al.,</b>	:	
Plaintiffs	:	<b>Civil Action No. 2000-CV-764</b>
	:	
vs.	:	<b>HON. PETRESE TUCKER</b>
	:	
<b>CITY OF PHILADELPHIA ,</b>	:	<b>CERTIFIED CLASS ACTION</b>
<i>Defendant</i>	:	

**SUMMARY NOTICE OF PENDENCY OF CLASS ACTION,  
HEARING ON PROPOSED SETTLEMENT AND ATTORNEY'S FEE PETITION,  
RIGHT TO SHARE IN SETTLEMENT FUND  
AND  
RIGHT TO EXCLUSION**

**IMPORTANT**

**TO: ALL PERSONS WITH DIABETES WHO WERE IN THE CUSTODY OF THE PHILADELPHIA POLICE DEPARTMENT BETWEEN FEBRUARY 11, 1998 AND MARCH 31, 2001, AND CLAIM THEY WERE DENIED TIMELY AND APPROPRIATE MEDICAL CARE OR DIET.**

You are hereby notified, pursuant to Rule 23 of the Federal Rules of Civil Procedure and an Order of the Court, that the above Captioned action has been certified as a class action and that a settlement for \$206,000 has been proposed. A hearing will be held before the Honorable Petrese B. Tucker in the United States Courthouse, 601 Market Street, Philadelphia Pennsylvania 19106, at \_\_\_\_\_, on \_\_\_\_\_, 2003, to determine whether the proposed settlement should be approved by the Court as fair, reasonable and adequate, and to consider the application of Plaintiffs' Counsel for attorneys' fees and reimbursement of expenses.

If you are a member of the class described above, your rights will be affected and you may be entitled to share in the settlement fund. If you have not received the full printed Notice of Pendency of Class Action, Hearing on Proposed Settlement and Attorneys' Fee Petition and Right to Share in Settlement Fund and a Proof of Claim form, you may obtain copies of these documents by identifying yourself as a member of the Class and by calling or writing to:

**CLAIMS ADMINISTRATOR**

Inquiries, other than requests for the forms of Notice and Proof of Claim, may be made to Plaintiffs' Lead Counsel:

Alan L. Yatvin,  
POPPER & YATVIN  
230 South Broad Street  
Suite 503  
Philadelphia, PA 19102

To participate in the Settlement, you must submit a Proof of Claim no later than , 2003. If you are a Class Member and do not exclude yourself from the Class, you will be bound by the Order and Final Judgment of the Court. To exclude yourself from the Class, you must submit a request for exclusion postmarked no later than , 2003. If you are a Class Member and do not submit a proper Proof of Claim, you will not share in the Settlement but you will nevertheless be bound by the Order and Final Judgment of the Court. Further information may be obtained by directing your inquiry in writing to the Claims Administrator. If you remain in the Class, you have the right to object to the proposed Settlement or any aspect of it. If you wish to object, you must file your objections with the Court no later than , 2003, and provide copies to the parties' counsel, as set forth more fully in the printed Notice described above.

In addition to this Settlement, a separate settlement agreement with the City of Philadelphia has been proposed to benefit a class of all persons with diabetes who may be in the custody of the Philadelphia Police Department during a period of eighteen months following court approval of the agreement. This separate agreement sets forth a set of policies and procedures relating to persons with diabetes, including provision of appropriate food and medical care by the City's medical services provider, and additional training for Philadelphia police on the needs of people with diabetes in custody. The City has also agreed to provide information to the American Diabetes Association regarding its treatment of people with diabetes for the eighteen-month period. You do not need to take any action to participate in this separate agreement to receive such appropriate food and medical care related to diabetes in the future after an arrest, and your right to participate in the Settlement and submit a Proof of Claim is unaffected by this separate agreement. At the hearing scheduled for \_\_\_\_\_, the Court will also determine whether this separate agreement should be approved by the Court as fair, reasonable and adequate, and to consider the application of Plaintiffs' Counsel for attorneys' fees and reimbursement of expenses relating to the separate agreement. Further information regarding this separate agreement may be obtained by contacting Plaintiffs' Lead Counsel.

Dated:

BY ORDER OF THE UNITED STATES DISTRICT  
COURT, EASTERN DISTRICT OF PENNSYLVANIA

HONORABLE PETRESE B. TUCKER,  
U.S. DISTRICT JUDGE

# **EXHIBIT C**

**NOTICE OF PENDENCY OF CLASS ACTION,  
HEARING ON PROPOSED SETTLEMENT AND ATTORNEY'S FEE PETITION,  
RIGHT TO SHARE IN SETTLEMENT FUND  
AND  
RIGHT TO EXCLUSION**

**IMPORTANT**

**PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY  
THIS NOTICE RELATES TO THE PENDENCY OF  
THIS CLASS LITIGATION AND IF YOU ARE  
A CLASS MEMBER CONTAINS IMPORTANT  
INFORMATION AS TO YOUR RIGHTS.  
IF YOU ARE A CLASS MEMBER,  
YOU ULTIMATELY MAY BE ENTITLED TO  
RECEIVE BENEFITS PURSUANT TO  
THE PROPOSED SETTLEMENT DESCRIBED HEREIN**

**CLAIMS DEADLINE: CLAIMANT MUST SUBMIT PROOF OF CLAIM, ON THE  
FORM ACCOMPANYING THIS NOTICE, POSTMARKED ON OR BEFORE  
[REDACTED], 2003**

**EXCLUSION DEADLINE: REQUEST FOR EXCLUSION MUST BE SUBMITTED  
POSTMARKED ON OR BEFORE [REDACTED], 2003.**

**To: All persons with diabetes who were in the custody of the Philadelphia Police Department  
between February 11, 1998 and March 31, 2001, and claim they were denied timely and  
appropriate medical care or diet.**

Read this notice carefully. You may be entitled to share in the proceeds of a class action lawsuit. Your rights to money and other benefits may be affected. This is **not** a lawsuit against you. You are **not** being sued. This is a notice of a certified class action and proposed settlement. In the following notice, you are being asked to decide whether you would like to participate in the proposed settlement of this class action.

**THE LITIGATION**

Plaintiffs (the class) have filed a class action lawsuit against defendant City of Philadelphia, alleging that the City of Philadelphia denied timely and appropriate medical care or diet to persons with diabetes in the custody of the Philadelphia Police Department. On March 6, 2001, The Honorable Petrese B. Tucker, Judge of the United States District Court for the Eastern District of Pennsylvania ordered that:

the Motion for Class Certification is GRANTED and the following two classes are certified: an injunctive class is certified pursuant to F.R.CIV.P. 23(b)(2)

consisting of all persons with diabetes who are or will be in police custody; a damage class is certified pursuant to F.R.CIV.P. 23(b)(3) consisting of all persons with diabetes who have been denied timely and appropriate medical care and diet while in the custody of the Philadelphia Police Department since 2/11/98, as a result of defendant's customs and policies denying timely and appropriate medical care and diet to persons with diabetes in police custody.

This notice is not intended to be, and should not be construed as, an expression of any opinion by the Court with respect to the truth of the allegations in the litigation or the merits of the claims or defenses asserted. This notice is sent to advise you of the pendency of this action and proposed settlement and of your rights with respect to this action.

### **SUMMARY OF SETTLEMENT AND RELATED MATTERS**

#### **I. Purpose of this Notice**

This Notice is given pursuant to Rule 23 of the Federal Rules of Civil Procedure and an Order of the Court dated [REDACTED], 2003. The purpose of this Notice is to inform you that this Action, and the proposed Settlement, will affect all Class Members' rights. This Notice describes rights you may have under the proposed Settlement and what steps you may take in relation to this Action. This Notice is not an expression of any opinion by the Court as to the merits of any claims or any defenses asserted by any party in this Action, or the fairness or adequacy of the proposed Settlement.

#### **II. Statement of Class Recovery**

Defendant City of Philadelphia agrees to allocate Two Hundred Six Thousand Dollars (\$206,000) as the Gross Settlement Fund. One Thousand Dollars of the Gross Settlement Fund shall be paid to plaintiff, [REDACTED], as an incentive for his serving as class representative. The balance of the Gross Settlement Fund, in the amount of Two Hundred Five Thousand (\$205,000), shall be distributed to the Authorized Claimants as provided in paragraphs [REDACTED] - [REDACTED] hereof.

Defendant City has allocated Forty Two Thousand Five Hundred Dollars (\$42,500.00) to pay the compromised fees and costs claims of plaintiffs' counsel in connection with settlement of the damages class.

All other costs associated with implementing the Settlement, including the actual costs of identifying Class members, Notice, Publication and Administration of the Settlement shall be borne by Defendant City of Philadelphia, and shall be paid for with funds outside of the Gross Settlement Fund. Such amounts shall include, without limitation, the actual costs of publication, printing and mailing the Notice, publication of the Notice, and the administrative expenses incurred and the fees charged by the Claims Administrator in connection with providing notice and processing the submitted claims, including processing requests for exclusion.

III. Statement of Potential Outcome of Case

The parties disagree on both liability and damages and do not agree on the average amount of damages that would be recoverable if Plaintiffs were to have prevailed on each claim alleged.

Plaintiffs' Counsel consider that there was a substantial risk that Plaintiffs and the Class might not have prevailed on all their claims and that there were risks that damages would have been less than available under the settlement.

Therefore, Plaintiffs could have recovered nothing or substantially less than the amount of the Settlement Fund. In addition, Plaintiffs faced significant uncertainties concerning the outcome of the Action if it were ultimately tried.

The Defendant denies that it is liable to the Plaintiffs or the Class and denies that Plaintiffs or the Class have suffered any damages.

IV. Statement of Attorneys' Fees and Costs Sought

Plaintiffs' Counsel intend to apply to the Court for approval of payment of compromised fees. Plaintiffs' Counsel have expended considerable time and effort in the prosecution of this litigation on a contingent fee basis, and have advanced the expenses of the litigation, in the expectation that if they were successful in obtaining a recovery for the Class they would be paid from such recovery. Because this action was brought under the Civil Rights Act, 42 U.S.C. § 1983, plaintiffs' counsel fees are available directly from the defendant if plaintiff is the

prevailing party. Here, Defendant City of Philadelphia has agreed to pay plaintiffs' counsel a fee of Forty Two Thousand Five Hundred Dollars (\$42,500.00), which amount includes costs expended by Plaintiffs' counsel in pursuit of this litigation, and further, which amount represents a compromise of the fair and reasonable fees which have been and will be earned by Plaintiffs' Counsel in the prosecution of this matter, and oversight of this Settlement.

V. Further Information

Further information regarding the Action and this Notice may be obtained by contacting Plaintiffs' Lead Counsel: Alan L. Yatvin, Esquire, Suite 503, 230 South Broad Street, Philadelphia, Pennsylvania 19102, Telephone (215) 546-5700.

VI. Reasons for the Settlement

The principal reason for the Settlement is the benefit to be provided to the Class now. This benefit must be compared to the risk that no recovery might be achieved, or that any recovery achieved would be delayed until after a contested trial and likely appeals, possibly years into the future. Among other things, significant disagreement exists as to whether Defendant's conduct rose to the level of a constitutional violation and whether the individual class members' claims could be proven.

**NOTICE OF SETTLEMENT FAIRNESS HEARING**

**NOTICE IS HEREBY GIVEN**, pursuant to Rule 23 of the Federal Rules of Civil Procedure and an Order of the United States District Court for the Eastern District of Pennsylvania (the "Court") dated [REDACTED], 2003, that a hearing will be held before the Honorable Petrese B. Tucker in the United States Courthouse, 601 Market Street, Philadelphia, Pennsylvania 19106, at [REDACTED] A/P.M., on [REDACTED], 2003 (the "Settlement Fairness Hearing") to determine whether a proposed settlement (the "Settlement") of the above-captioned Action (the "Action") as set forth in the Stipulation and Agreement of Settlement dated [REDACTED]

(the “Stipulation”), is fair, reasonable and adequate and to consider the proposed Plan of Allocation for the Settlement proceeds and the application of Plaintiffs’ Counsel for attorneys’ fees and reimbursement of expenses.

### **BACKGROUND TO THE SETTLEMENT**

1. The parties have now agreed to settle all aspects of the Action, subject to approval of the Court.
2. Prior to entering into the Stipulation, Plaintiffs’ Counsel conducted an investigation relating to the events and transactions underlying Plaintiffs’ claims and conducted pretrial discovery on the merits.
3. Plaintiffs’ Counsel’s decision to enter into this Settlement was made with knowledge of the facts and circumstances underlying Plaintiffs’ claims and the strengths and weaknesses of those claims. In determining to settle the Action, they have evaluated the pre-trial investigation and discovery taken in the Action and taken into account the substantial expense and length of time necessary to prosecute the Action through trial, post-trial motions, and likely appeals, taking into consideration the significant uncertainties in predicting the outcome of this complex litigation. Counsel for Plaintiffs believe that the Settlement described herein confers very substantial benefits upon the Class. Based upon their consideration of all of these factors, Plaintiffs and their counsel have concluded that it is in the best interest of Plaintiffs and the Class to settle the Action on the terms described herein.
4. Plaintiffs recognized the uncertainty and the risk of the outcome of any litigation, especially complex litigation such as this, and the difficulties and risks inherent in the trial of such an Action. Plaintiffs desired to settle the claims of the Class against Defendant on the terms and condition described herein which provide substantial benefits to the Class. Plaintiffs’ Counsel deem such settlement to be fair, reasonable and adequate, and in the best interests of the members of the Class.
5. The Defendant, while continuing to deny all allegations of wrongdoing or liability

whatsoever, desired to settle and terminate all existing or potential claims against it, without in any way acknowledging any fault or liability.

6. The amount of damages, if any, that Plaintiffs could prove was also a matter of serious dispute, and the Settlement's use of a Recognized Claim Proposed Plan of Allocation for distributing the Settlement proceeds does not constitute a finding, admission or concession that provable damages could be measured by the Recognized Claim formula. No determination has been made by the Court as to liability or the amount, if any, of damages suffered by the Class, nor on the proper measure of such damages. The determination of damages, like the determination of liability, is a complicated and uncertain process, typically involving conflicting expert opinions. During the course of the Action, Defendants, in addition to denying any liability, disputed that Plaintiffs and the Class were damaged by any wrongful conduct on the part of Defendants. The Settlement herein provides an immediate and substantial cash benefit and avoids the risks that liability or damages might not have been proven at trial.

7. The Court has not determined the merits of the Plaintiffs' claims or the defenses thereto. This Notice does not imply that there has been or would be any finding of violation of the law or that recovery could be had in an amount if the Action were not settled.

#### **TERMS OF THE SETTLEMENT**

8. Upon the Effective Date of this Settlement, Plaintiffs and members of the Class on behalf of themselves and each of their heirs, executors, administrators, successors and assigns, and any persons they represent, shall, with respect to each and every Settled Claim, release and forever discharge, and shall forever be enjoined from prosecution, any Settled Claims against any of the Released Parties. Upon the Effective Date of this Settlement, the Defendant, on behalf of itself and the Released Parties, shall release and forever discharge each and every of the Settled Defendant's Claims, and shall forever be enjoined from prosecuting the Settled Defendant's Claims.

#### **THE SETTLEMENT CONSIDERATION**

9. Defendant City of Philadelphia agrees to allocate Two Hundred Six Thousand Dollars (\$206,000) as the Gross Settlement Fund.

10. One Thousand Dollars of the Gross Settlement Fund shall be paid to plaintiff, \_\_\_\_\_, as an incentive for his serving as class representative. The balance of the Gross Settlement Fund, in the amount of Two Hundred Five Thousand (\$205,000), shall be distributed to the Authorized Claimants as provided in paragraphs \_\_\_\_\_ - \_\_\_\_\_ hereof.

11. Defendant City has allocated Forty Two Thousand Five Hundred Dollars (\$42,500.00) to pay the compromised fees and costs claims of plaintiffs' counsel.

12. All other costs associated with implementing the Settlement, including the actual costs of identifying Class members, Notice, Publication and Administration of the Settlement shall be borne by Defendant City of Philadelphia, and shall be paid for with funds outside of the Gross Settlement Fund. Such amounts shall include, without limitation, the actual costs of publication, printing and mailing the Notice, publication of the Notice, and the administrative expenses incurred and the fees charged by the Claims Administrator in connection with providing notice and processing the submitted claims, including processing requests for exclusion.

13. If the Settlement is approved by the Court, all claims which have or could have been asserted in the Action will be dismissed on the merits and with prejudice as to all Class Members and all Class Members shall be forever barred from prosecuting a class Action or any other Action raising any Settled Claims against any Released Party.

14. The Stipulation provides that Defendant may withdraw from and terminate the Settlement in the event that in excess of a certain amount of claimants exclude themselves from the Class.

15. The Settlement will become effective at such time as an Order entered by the Court approving the Settlement shall become final and not subject to appeal (the "Effective Date").

16. If the Settlement is approved by the Court, all claims which have or could have been asserted in the Action will be dismissed on the merits and with prejudice as to all Class Members and all Class Members shall be forever barred from prosecuting a class Action or any other

Action raising any Settled Claims against any Released Party.

**PLAN OF ALLOCATION OF SETTLEMENT PROCEEDS AMONG CLASS**

**MEMBERS**

17. The Cash Settlement Amount shall be the Gross Settlement Fund. The Gross Settlement Fund, shall be distributed to members of the Class who submit acceptable Proofs of Claim (“Authorized Claimants”) in accordance with the following Plan Of Allocation, if approved by the Court.

18. The amount to paid each Authorized Claimant shall be determined by the Claims Administrator, according to the proposed Plan of Allocation, as set forth in full below.

19. The proposed Plan of Allocation is designed to fairly allocate the settlement proceeds by recognizing the damages suffered by each Authorized Claimant. To do this the proposed Plan of Allocation starts by providing for allocation of the net settlement fund in proportion to each class members’ Recognized Claim.

20. An Authorized Claimant’s “Recognized Claim” will be calculated for the purposes of the settlement as follows:

- a. A value will be assigned to each Recognized Claim by the Claims Administrator, based on a point system. Points will be assigned to the Recognized Claim in various categories of damages, based upon information provided in the Proof of Claim form. The Categories and Points available are as follows:

<b>CATEGORIES</b>	<b>POINTS AVAILABLE</b>
Denial of Timely and Appropriate Diet	1-5
Denial of Timely and Appropriate Medication	1-10
Out-Patient Hospital Treatment While in Police Custody (other than for routine receipt of diabetes medication)	1-5

Diabetic Ketoacidosis	5
Other Complicating Medical Conditions	1-5
In-Patient Hospitalization While in Police Custody	5-10
Related Medical Treatment After Release from Police Custody	1-5
Other Aggravating Factors	1-5

b. As long as the total value of the Recognized Claims do not exceed the Net Settlement Fund, each point shall equal \$100 and each Authorized Claimant shall receive not less than \$250 and not more than \$5000 for each incarceration during the Class period.

21. In the event the aggregate value of the Recognized Claims, as calculated under the foregoing formula (paragraph), exceeds the amount of the Settlement Fund, the payment due each Authorized Claimant shall be reduced proportionally, by way of a reduction in the value of each point from \$100 to such amount as will permit payment of all Recognized Claims from the Settlement Fund. In the event the Settlement Fund is not exhausted, all monies remaining in the Settlement Fund shall revert back to the City of Philadelphia.

22. Class Members who do not submit acceptable Proofs of Claim will not share in the settlement proceeds. Class Members who do not either submit a request for exclusion or submit an acceptable Proof of Claim will nevertheless be bound by the Settlement and the Order and Final Judgment of the Court dismissing this Action.

23. Checks will be distributed to Authorized Claimants after the Effective Date, as defined in the Stipulation.

24. The Court has certified this Action to proceed as a class Action. Class Members have the following options pursuant to Rule 23(c)(2) of the Federal Rules of Civil Procedure:

(a) If you wish to remain a member of the Class, you may share in the proceeds of the Settlement, provided that you submit an acceptable Proof of Claim. Class Members will be represented by the Plaintiffs and their counsel, unless you enter an appearance through counsel of your own choice at your own expense. You are not required to retain your own counsel, but if you choose to do so, such counsel must file an appearance on your behalf on or before \_\_\_\_\_, 2003, and must serve copies of such appearance on the attorneys listed in paragraph below.

(b) If you do not wish to remain a member of the Class, you may exclude yourself from the Class by following the instructions in paragraph below. Persons who exclude themselves from the Class will **NOT** receive any share of the Settlement proceeds and will not be bound by the Settlement.

(c) If you object to the Settlement or any of its terms, or to Plaintiffs' Counsel's application for fees and expenses, and if you do not exclude yourself from the Class, you may present your objections by following the instructions in paragraph below.

#### **SUBMISSION AND PROCESSING OF PROOFS OF CLAIM**

25. In order to be eligible to receive any distribution from the Settlement Fund, you must complete and sign the attached Proof of Claim and Release form and send it by first class mail postmarked on or before \_\_\_\_\_, 2003, addressed as follows:

**Claims Administrator**

26. If you do not submit a proper Proof of Claim form, you will not be entitled to any share of the Settlement Fund.

27. If you are a Class Member and you do not properly exclude yourself from the Class, you will be bound by the Settlement and the Order and Final Judgment of the Court dismissing this

Action, even if you do not submit a Proof of Claim. If you exclude yourself from the Class, you will not be bound by the judgment but you will not be entitled to any share of the Settlement Fund.

28. All Proofs of Claim must be submitted by the date specified in this Notice unless such period is extended by Order of the Court.

29. Each Claimant shall be deemed to have submitted to the jurisdiction of the United States District Court for the Eastern District of Pennsylvania with respect to his, her or its Proof of Claim.

### **EXCLUSION FROM THE SETTLEMENT**

30. Each Member of the Class shall be bound by all determinations and judgments in this Action concerning the settlement, whether favorable or unfavorable, unless such person shall mail, by first class mail, a written request for exclusion from the Class, postmarked on or before , 2003, addressed as follows:

**Claims Administrator**

31. No person may exclude himself from the Class after the date specified in paragraph . In order to be valid, each such **request for exclusion must appear on the REQUEST FOR EXCLUSION** form which is attached hereto as Exhibit "F". The Request for Exclusion form must be completed in its entirety and must be signed by the person or entity seeking exclusion, or their counsel.

32. The request for exclusion shall not be effective unless the request for exclusion provides the required information and is made within the time stated above, or the exclusion is otherwise accepted by the Court.

### **SETTLEMENT FAIRNESS HEARING**

33. At the Settlement Fairness Hearing, the Court will determine whether to finally approve this Settlement and dismiss the Action and the claims of the Class Members. The Court will also

determine whether the Plan of Allocation for the Settlement proceeds is fair and reasonable. The Settlement Fairness Hearing may be adjourned from time to time by the Court without further written notice to the Class. If the Settlement is approved, the Court will also consider the application of Plaintiffs' Counsel for attorneys' fees.

34. At the Settlement Fairness Hearing, any Class Member who has not submitted a Request for Exclusion from the Class may appear in person or by counsel and be heard to the extent allowed by the Court in opposition to the fairness, reasonableness and adequacy of the Settlement, the Plan of Allocation, or the application for an award of attorneys' fees and reimbursement of expenses, provided, however, that in no event shall any person be heard in opposition to the Settlement, the Plan of Allocation, or Plaintiffs' Counsel's application for attorneys' fees and expenses and in no event shall any paper or brief submitted by any such person be accepted or considered by the Court, unless, on or before [REDACTED], 2003, such person (a) files with the Clerk of the Court notice of such person's intention to appear, showing proof of such person's membership in the Class, and providing a statement that indicates the basis for such opposition, along with any documentation in support of such objection, and (b) simultaneously serves copies of such notice, proof, statement and documentation, together with copies of any other papers or brief such person files with the Court, in person or by mail upon Plaintiffs' Lead Counsel:

Alan L. Yatvin, Esquire  
Popper & Yatvin  
Suite 503  
230 South Broad Street  
Philadelphia, PA 19102  
(215) 546-5700

and upon Defendants' Counsel:

Jeffrey M. Scott, Esquire  
Divisional Deputy City Solicitor  
City of Philadelphia  
Law Department - Civil Rights Division  
14<sup>th</sup> Floor  
1515 Arch Street  
Philadelphia, PA 19103-1595  
(215) 683-5439

**ATTORNEYS' FEES AND DISBURSEMENTS**

35. At the Settlement Fairness Hearing or at such other time as the Court may direct, Plaintiffs' Counsel intend to apply to the Court for approval of payment of attorneys' fees and expenses from the Defendant City in the amount of Forty Two Thousand Five Hundred Dollars (\$42,500.00), as a compromise of a counsel fee in connection with the damages action, which is in all respects fair and reasonable, and the actual out-of-pocket costs advanced by plaintiffs' counsel.

36. Defendant City agrees that this amount is the compromise of a counsel fee which is in all respects fair and reasonable, and the actual out-of-pocket costs advanced by plaintiffs' counsel.

**SETTLEMENT FOR FUTURE TREATMENT OF PEOPLE WITH DIABETES**

37. In addition to the Settlement described above, the City has also entered into a separate settlement agreement to benefit a class of all persons with diabetes who may be in the custody of the Philadelphia Police Department during a period of eighteen months after the Court approves the agreement. The Court has preliminarily approved this separate agreement. This separate agreement sets forth a set of policies and procedures relating to persons with diabetes, including provision of appropriate food and medical care by the City's medical services provider, and additional training for Philadelphia police on the needs of people with diabetes in custody. The City has also agreed to provide information to the American Diabetes Association regarding its treatment of people with diabetes for the eighteen-month period. The Background to the Settlement and the risks identified in the Statement of Potential Outcome discussed above are

applicable to this separate agreement. The separate agreement confers substantial benefits for people with diabetes who may be arrested by the City in the future, and Plaintiffs' counsel determined that it was in the best interest of those individuals to enter into this separate agreement based upon an evaluation of the uncertainty of litigation and the difficulties and risks of obtaining equivalent or additional changes in City policies.

38. This separate agreement does not provide for or foreclose any payment to people with diabetes who may be arrested in the future, but it does provide that individuals who may be arrested (and each of their heirs, executors, administrators, successors, and assigns, and any person they represent) may not seek other related changes in the City's policies or other non-monetary benefits for others who may be arrested during the eighteen-month monitoring period from any of the Released Parties which could have been sought in this case. The people with diabetes who may be arrested during the eighteen-month period may not exclude themselves from this separate agreement.

39. At the Settlement Fairness Hearing scheduled for \_\_\_\_\_, the Court will also determine whether this separate agreement should be approved by the Court as fair, reasonable and adequate. At that time or at such other time as the Court may direct, Plaintiffs' counsel intend to apply to the Court for approval of a separate payment of attorneys' fees and expenses for this separate settlement of injunctive claims from the Defendant City in the amount of Forty Two Thousand Five Hundred Dollars (\$42,500.00), as a compromise of a counsel fee which is in all respects fair and reasonable, and the actual out-of-pocket costs advanced by plaintiffs' counsel. Defendant City has agreed that this amount is the compromise of a counsel fee which is in all respects fair and reasonable, and the actual out-of-pocket costs advanced by plaintiffs' counsel. The plaintiffs hereby specifically waive any claim for attorneys' fees and costs during the eighteen-month monitoring period relating to the City's performance of the monitoring and training provisions of the Settlement Agreement for Injunctive Relief.<sup>2</sup>

<sup>2</sup> The law firm of Morgan, Lewis & Bockius LLP, which also represented the American Diabetes Association with Plaintiffs' counsel, is not seeking fees or costs in this action.

40. You do not need to take any action to participate in this separate agreement to receive appropriate food and medical care relating to diabetes in the future after an arrest, and your right to participate in the damages Settlement described above and submit a Proof of Claim is unaffected by this separate agreement. However, you may seek to object to this separate agreement by following the procedures described above for opposing the Settlement.

**FURTHER INFORMATION**

41. For a more detailed statement of the matters involved in this Action, reference is made to the pleadings, to the Stipulation, to the Orders entered by the Court and to the other papers filed in the Action, which may be inspected at the Office of the Clerk of the United States District Court for the Eastern District of Pennsylvania, United States Courthouse, 601 Market Street, Room 2609, Philadelphia, Pennsylvania 19106-1797, during regular business hours.

42. ALL INQUIRIES CONCERNING THIS NOTICE OR THE PROOF OF CLAIM FORM BY CLASS MEMBERS SHOULD BE MADE TO THE CLAIMS ADMINISTRATOR IN WRITING AT THE ADDRESS INDICATED BELOW.

Claims Administrator

Lead Counsel for the Plaintiff Class are:

Alan L. Yatvin, and  
Howard D. Popper  
*Popper & Yatvin*  
230 South Broad Street  
Suite 503  
Philadelphia, PA 19102

David Rudovsky  
*Kairys Rudovsky Epstein and Messing, LLP*  
Cherry Street, 5<sup>th</sup> Floor  
Philadelphia, PA 19107

Counsel for Defendant City of Philadelphia is:

Jeffrey M. Scott,  
Divisional Deputy City Solicitor  
City of Philadelphia Law Department,  
Civil Rights Unit  
1515 Arch Street, 14<sup>th</sup> Floor  
Philadelphia, PA 19102

Dated:

BY ORDER OF THE UNITED STATES DISTRICT  
COURT, EASTERN DISTRICT OF PENNSYLVANIA

HONORABLE PETRESE B. TUCKER,  
U.S. DISTRICT JUDGE

# **EXHIBIT D**

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

STEVEN ROSEN, et al	:	Civil Action No. 2000-CV-764
	:	
v.	:	
	:	
CITY of PHILADELPHIA	:	HON. PETRESE B. TUCKER
Defendant	:	

**ORDER**

And now, this \_\_\_ day of \_\_\_\_\_, 2003, having reviewed the settlement agreement between plaintiffs and defendant, the City of Philadelphia on behalf of the Rule 23(b)(2) class previously certified by the Court, and the accompanying joint motion and memorandum of law seeking preliminary approval of the settlement, the Court now hereby PRELIMINARY APPROVES the settlement, with plaintiffs and defendant to provide notice as set forth in the memorandum of law and attached exhibits.

\_\_\_\_\_  
TUCKER, J.