

Settlement Agreement, Release and Waiver of Claims

This Settlement Agreement, Release and Waiver of Claims ("Agreement") is made and entered into this 12th day of July, 2012 by and between Cynthia Jane Barnard and Jackson County, Missouri, Thomas Phillips and Bobby Joe Kreidler.

WITNESSETH:

WHEREAS, there is now pending in the United States District Court for the Western District of Missouri the case of Barnard v. Burgess, et al., Case No. 4:11-cv-00870-FJG, and,

WHEREAS, in this case, Cynthia Jane Barnard ("Plaintiff") has alleged that the defendants, former Deputy Steven Wayne Burgess, former Sheriff Thomas Phillips, former Undersheriff Bobby Joe Kreidler, and Jackson County, violated her civil rights when defendant Burgess assaulted in on or about July 24, 2007, and

WHEREAS, Plaintiff alleged that defendant Burgess caused her to suffer "bodily injury and soreness" and that he did the following things to her:

- He handcuffed her. ...
- Deputy Burgess used his hands to squeeze and fondle the then-minor female plaintiff's breasts (inside her bra) while reaching under and inside her clothing.
- He grabbed her buttocks.
- He rubbed her vaginal area.
- He directed the 15-year old minor plaintiff to sit down in the front passenger seat of the aforementioned law enforcement vehicle, entrapping her therein. He thereby used that automobile in the course of inflicting damages upon the 15-year-old minor plaintiff, specifically by causing the 15-year-old minor plaintiff to place her mouth on his penis and thereby perform oral sex on him. He ejaculated in her presence.

Plaintiff contends that the money being mentioned herein and being received by her is not taxable under any circumstances. However, she further acknowledges that this issue is solely between her and taxing officials, that the persons and the entity being released have made no representations to her about tax issues and will not be responsible under any circumstances for any monies beyond or in addition to the \$415,380 which is discussed herein.

WHEREAS, Jackson County is not defending defendant Burgess in the above referenced case or providing him with indemnification in the event a judgment is entered against him, and,

WHEREAS, Plaintiff alleges that this assault was in furtherance of a Jackson County policy and that defendants Phillips and Kreidler enabled the assault to occur through inadequate training and/or supervision, and

WHEREAS, defendants Jackson County, Phillips and Kreidler admit that an assault did occur but deny that it was in any way the result of a County policy or inadequate training and/or supervision on the part of defendants Phillips and/or Kreidler and/or any of their subordinates, affiliates, officers, agents, servants, representatives, and current and former employees, and,

WHEREAS, Jackson County, Phillips and Kreidler desire, without admitting any liability, any such liability being expressly denied, and in order to avoid further litigation in connection with the case referenced above, to enter into an agreement to resolve any and all claims, known or unknown, and disputes Plaintiff has or could have had against Jackson County, Phillips and Kreidler and against any of their parents, subsidiary and affiliated companies and all of its current and/or former insurers, current and/or former directors, current and/or former shareholders, current and/or former officers, current and/or former fiduciaries, current and/or former employees, current and/or former agents, current and/or former successors, current and/or former assigns, current and/or former related corporations, current and/or former related entities, and any and all other entities currently and/or formerly affiliated with or related to the parties,

WHEREAS, Plaintiff and defendants Jackson County, Phillips and Kreidler have agreed to finally and completely resolve the controversy between them in total resolution of this dispute between these parties now and forever,

WHEREAS, Plaintiff does not intend by signing this Agreement to release any claims now pending against defendant Burgess,

NOW THEREFORE, in consideration of the premises and mutual promises contained herein, the receipt of which is hereby acknowledged by the respective parties' signatures hereto, Plaintiff and Jackson County, Phillips and Kreidler, intending to be legally bound hereby, have agreed as follows:

In consideration of the agreements set out by Plaintiff set out in the paragraphs below, the parties shall, upon execution of this Agreement, take the action and make the agreements set out as follows:

1. Jackson County will provide Plaintiff with a payment of \$415,380.00 contemporaneous with Plaintiff's execution of this Agreement with payment to be made in accordance with the 6-

paragraph **STRUCTURED SETTLEMENT ADDENDUM** which is attached hereto as

EXHIBIT A.

2. Plaintiff agrees that no future legal claim relating to the injuries allegedly sustained by Plaintiff on July 24, 2007 will be brought against Jackson County, Phillips or Kreitler.

3. Plaintiff agrees that she will not seek to recover any judgment entered against defendant Burgess from Jackson County, Phillips or Kreitler, or any current or former Jackson County employee, officer except defendant Burgess, and that she will hold defendant Burgess solely liable for payment of any judgment entered against him, whether such judgment is entered following trial or pursuant to settlement.

4. In consideration of, among other things, the payment references in ¶1, Plaintiff agrees to FOREVER RELEASE AND DISCHARGE Jackson County, Missouri, Phillips and Kreitler and their respective heirs, executors, administrators, predecessors, successors, representative, and all present and former officials and servants, employees, officers, directors and principals, insurers, and all other persons, firms and corporations whomsoever, or and from any and all manner of claims, demands, suits, proceedings and causes of action, known or unknown, suspected or unsuspected by Plaintiff, that Plaintiff now holds or owns or has at any time before this far held or owned against Jackson County. Such claims, demands, suits, proceedings and causes of action necessarily include, but are not limited to, claims for attorneys' fees and/or claims under the U.S. Constitution, the Missouri Constitution, and public policy, 42 U.S.C. §1983, 42 U.S.C. §1981, as well as any other federal, state, or local law arising out of the facts alleged by Plaintiff.

5. By execution of this Agreement, Plaintiff specifically acknowledges and represents that she is aware of each and all of her legal rights in this matter and the advisability of entering into this Settlement Agreement, Release and Waiver of Claims. Plaintiff specifically warrants, represents, and agrees that she is not relying on Jackson County, Missouri or any of its agents or anyone associated with Jackson County, Missouri as to the legal and income tax or other consequences of this agreement.

6. Plaintiff understands that no representations, agreements or promises to do any act or thing not herein set forth have been made, that this Settlement Agreement, Release and Waiver of Claims is in full settlement and satisfaction of any and all manners of action, causes of action, suits, proceedings, claims and demands of every kind and nature, whether known or unknown, in any way arising out of the facts alleged by Plaintiff, and that the consideration expressed herein is the sole and only consideration for the execution of this Settlement Agreement, Release and Waiver of Claims.

7. In executing this Settlement Agreement, Release and Waiver of Claims, Plaintiff understands that the terms hereof are contractual and not a mere recital. Plaintiff agrees that she is not relying on any statements or representations made by the parties released or any other agents concerning the nature, extent or duration of the damages claimed, or concerning any other thing or matter, but is relying wholly upon her own individual judgment.

8. It is further understood and agreed by the parties that this Settlement Agreement, Release and Waiver of Claims shall be binding upon and inure to the benefit of the officers, directors, representative, agents employees, heirs, administrators, personal representatives, legatees, successors, and assignees of each of the parties hereto.

9. Plaintiff and Jackson County, Phillips and Kreitler agree that provisions of the Settlement Agreement, Release and Waiver of Claims are severable, and that if any part of it is found to be unenforceable or inoperable, the other paragraphs shall remain fully valid and enforceable.

10. Plaintiff acknowledges that she has read this Settlement Agreement, Release and Waiver of Claims, understands its terms, and signs the Agreement voluntarily of her own free will, without coercion or duress, and with full understanding of the significance and binding effect of the Agreement. Plaintiff further acknowledges that she has consulted with an attorney and has had an opportunity to discuss this agreement with an attorney.

11. Plaintiff represents and warrants that there are no existing or outstanding attorneys' liens or other liens that are not extinguished or satisfied by the execution of this Agreement. Plaintiff agrees to indemnify and hold harmless Jackson County and any of its Departments and its individual employees, including Jackson County Sheriff's Office, for any liability in connection with such liens.

12. The parties expressly agree and understand neither the existence of this Agreement nor anything contained in this Agreement shall constitute an admission of any liability on the part of

Jackson County and any of its Departments, nor does it constitute an admission of any liability on the part of Phillips and/or Kreidler. Any and all such liability is expressly denied. Neither the existence of this Agreement nor anything contained in this Agreement shall be construed as rendering Plaintiff a "prevailing party" for purposes of awarding attorneys' fees or costs under any applicable law.

13. Each party to this Settlement Agreement, Release and Waiver of Claims shall bear all attorney's fees and costs arising from the actions of its own counsel in connection with Agreement, the matters and documents referred to herein, and all related matters.

14. This Settlement Agreement, Release and Waiver of Claims contain the entire agreement between Plaintiff and Jackson County, Phillips and Kreidler with respect to the matter contemplated hereby. No modification or waiver of any provision of this Agreement will be valid unless in writing and signed by Plaintiff and Jackson County, Phillips and Kreidler.

15. This Agreement shall be construed in accordance with the laws of the State of Missouri.

16. This Agreement may be executed in any number of counterparts (including copies and facsimiles), each of which shall be deemed an original and all of which shall constitute together one and the same Agreement. Any party to this Agreement may execute this Agreement by signing any such counterpart.

STRUCTURED SETTLEMENT ADDENDUM

EXHIBIT A

1.0 Payments

Included as part of the consideration of the release set forth above, the following periodic payments (the "Periodic Payments") shall be made:

TO PAYEE: Cynthia Jane Barnard

\$ 391.70	Paid monthly beginning on 09/01/2012 and payable for 20 years (240 payments) guaranteed. The last payment will be made on 08/01/2032.
\$ 18,000.00	Lump Sum Payment on 01/31/2019
\$ 191,000.00	Lump Sum Payment on 09/01/2032

All sums set forth herein constitute damages on account of personal physical injuries within the meaning of Section 104(a)(2) of the Internal Revenue Code of 1986, as amended.

2.0 Rights to Payments

Plaintiff acknowledges that the Periodic Payments cannot be accelerated, deferred, increased or decreased by the Plaintiff; nor shall the Plaintiff have the power to sell, mortgage, encumber, or anticipate the Periodic Payments, or any part thereof, by assignment or otherwise.

3.0 Beneficiaries

Any payments to be made after the death of any Payee pursuant to the terms of this Settlement Agreement shall be made to such person or entity as shall be designated in writing by Plaintiff to the Assignee (as defined herein). If no person or entity is so designated by Plaintiff, or if the person designated is not living at the time of the Payee's death, such payments shall be made to the estate of the Payee. No such designation, nor any revocation thereof, shall be effective unless it is in writing and delivered to the Assignee. The designation must be in a form acceptable to the Assignee before such payments are made.

4.0 Consent to Qualified Assignment

4.1 Plaintiff acknowledges and agrees that the Defendant and/or the Insurer shall make a "qualified assignment", within the meaning of Section 130(c) of the Internal Revenue Code of 1986, as amended, of the Defendant's and/or the Insurer's liability to make the Periodic Payments set forth in Section 1 to **Prudential Assigned Settlement Services Inc. ("PASSCorp")** (hereinafter referred to as "Assignee"). The Assignee's obligation for payment of the Periodic Payments shall be no greater than that of Defendant and/or the Insurer (whether by judgment or agreement) immediately preceding the assignment of the Periodic Payments obligation.

4.2 Any such assignment, if made, shall be accepted by the Plaintiff without right of rejection and shall completely release and discharge the Defendant and the Insurer from the Periodic Payments obligation assigned to the Assignee. The Plaintiff recognizes that, in the event of such an assignment, the Assignee shall be the sole obligor with respect to the Periodic Payments obligation, and that all other releases with respect to the Periodic Payments obligation that pertain to the liability of the Defendant and the Insurer shall thereupon become final, irrevocable and absolute.

5.0 Right to Purchase an Annuity

The Defendant and/or the Insurer, itself or through its Assignee, reserve the right to fund the liability to make the Periodic Payments through the purchase of an annuity policy from **The Prudential Insurance Company of America** (hereinafter referred to as

"Annuity Issuer"). The Assignee shall be the sole owner of the annuity policy and shall have all rights of ownership. The Assignee may have Annuity Issuer mail payments directly to the Payees. The Plaintiff shall be responsible for maintaining a current mailing address for Payees with the Assignee.

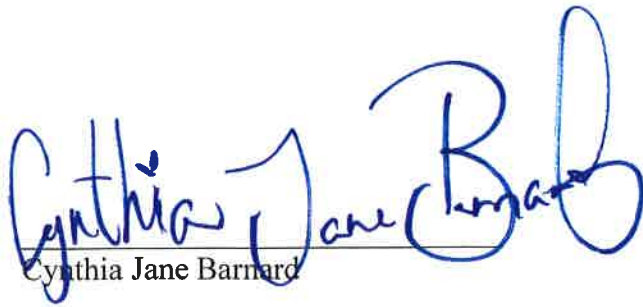
6.0 Discharge of Obligation

The obligation of the Assignee to make each Periodic Payment shall be discharged upon the mailing of a valid check in the amount of such payment to the designated address of the Payees named in Section 1 of this Settlement Agreement.

IN WITNESS WHEREOF, the undersigned have caused this Settlement Agreement, Release and Waiver of Claims to be executed the day and year first above written.

Plaintiff:

Date: 6-29-12


Cynthia Jane Barnard

STATE OF Missouri
COUNTY OF Jackson ss.

Subscribed before me this 29th day of June, 2012.


Notary Public

My commission expires:

PATRICIA A. IRVIN
Notary Public-Notary Seal
STATE OF MISSOURI
Jackson County
My Commission Expires Nov. 23, 2014
Commission # 10417933

Defendant:

Date: 6/25/12

Thomas Phillips
Thomas Phillips

STATE OF Missouri
COUNTY OF Jackson ss.

Subscribed before me this 25th day of June, 2012.

Christina L. Kupka
Notary Public

My commission expires:



CHRISTINA L. KUPKA
My Commission Expires
June 1, 2015
Jackson County
Commission #11194935

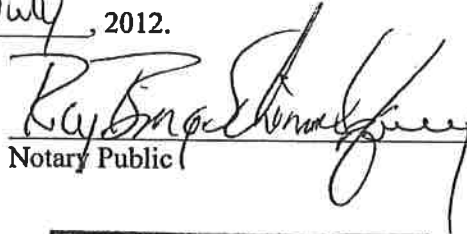
Defendant:

Date: 07/06/12


Bobby Joe Kreitler

STATE OF Missouri)
COUNTY OF CASS) ss.

Subscribed before me this 6th day of July, 2012.

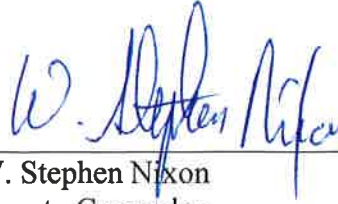

Notary Public

My commission expires:
7.1.2013



Defendant:

Date: 7/10/2012



W. Stephen Nixon
County Counselor
Jackson County, Missouri

STATE OF Missouri)
COUNTY OF Jackson) ss.

Subscribed before me this 10 day of July, 2012.



Notary Public

My commission expires:



PATRICIA MARIE MURILLO
My Commission Expires
September 16, 2012
Clay County
Commission #08483001