

STATE OF TEXAS

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COUNTY OF WILLIAMSON

SETTLEMENT AGREEMENT AND RELEASE

I. PARTIES

1. The parties to this Settlement Agreement and Release ("the Agreement") are Williamson County, Texas, and its officers, agents and employees, including County Judge Dan Gattis in his official capacity (*the "County"*); the Judges of the County Courts at Law Nos. 1, 2 and 3 of Williamson County, Texas in their official capacities, being the Honorable Suzanne Brooks, Judge of the County Court at Law No. 1, Honorable Tim Wright, Judge of the County Court at Law No. 2, and the Honorable Doug Arnold, Judge of the County Court at Law No. 3 (*the "County Court at Law Judges" or "Judges" or "Courts"*); Williamson County Magistrate, the Honorable William Thomas Eastes, in his official capacity (*the "Magistrate" or "Magistrate's Office"*); and Plaintiffs Kerry Heckman, Sylvia Peterson, Tammy Newberry and Jessica Stempko, on behalf of themselves and all other persons similarly situated (*"Plaintiffs"*); collectively referred to herein as the "Parties".

2. The Parties are engaged as Plaintiffs and Defendants in a suit entitled/styled Cause No. 06-453-C277, *Kerry Heckman, Sylvia Peterson, Tammy Newberry and Jessica Stempko on behalf of themselves and all other persons similarly situated vs. Honorable Dan A. Gattis, Honorable Suzanne Brooks, Honorable Tim Wright, Honorable Doug Arnold and Honorable William Thomas Eastes*, in the 277th Judicial District Court of

Williamson County, Texas (the "Litigation"). The Parties have agreed to compromise and settle this litigation in its entirety on the terms stated in this Agreement.

II. RECITALS AND DEFINITIONS

3. The Parties recognize the importance of the rights granted criminal defendants by the United States Constitution, Texas Constitution, and the law and procedures of the State of Texas.

4. Plaintiffs have asserted certain disputed claims against the County and/or its officers, agents and employees, the Judges and the Magistrate related to their Sixth and Fourteenth Amendment rights under the United States Constitution; Article I, Sections 10 and 13 of the Texas Constitution; and the Texas Fair Defense Act (the "Claim" or "Claims"). The County, Judges and the Magistrate deny such Claims.

5. The County, Judges and Magistrate deny the plaintiffs' allegations but have decided to compromise and settle these disputed claims in order to avoid further conflict, additional costs, and expenses associated with continued litigation at the trial court and any future appeals.

6. The parties recognize that while the Judges and Magistrate are named in the litigation, the suit is brought against them in their official capacities, and thus is effectively a suit against their offices rather than against them as individuals, and includes

actions or omissions that may have been taken by persons who previously occupied the office or by visiting judges assigned while the presiding judges of those courts were not available. Additionally, the three County Courts at Law have different criminal case loads. The fact that the parties have agreed to settle this litigation should not be construed as an admission that any judge or court or combination of judges and courts has engaged in the acts or omissions alleged in the petition.

7. This Agreement addresses administrative policies and practices that the Courts and the Magistrate follow to implement and effect the requirements of the Texas Code of Criminal Procedure and other relevant law. Nothing in this Agreement is intended to prejudice the merits of any individual case or to affect the lawful authority of the Magistrate or the Judges to adjudicate any individual case. In the event there is any conflict between this Agreement on the one hand, and the United States Constitution, the Texas Constitution, the Texas Code of Criminal Procedure, or the Texas Code of Judicial Conduct on the other hand, then the applicable named Constitution(s) and/or Code(s) shall control over this Agreement.

8. The Parties have agreed to compromise and settle the Claims in their entirety on the terms stated in this Agreement so that the Plaintiffs are precluded from pursuing any claims against the County, its officials, the Judges, the Magistrate or their employees for any acts or omissions they allege occurred prior to the date of this Agreement.

9. As used in this Agreement, the term “First Appearance Proceeding” refers to the first appearance setting in the Williamson County Courts at Law for misdemeanor criminal defendants who appear without an attorney. It is also referred to as an arraignment under article 26.02 of the Texas Code of Criminal Procedure.

III. TERMS

10. For the mutual consideration expressed in this Agreement, the Parties agree to the following terms and to those stated in the paragraphs/sections of this Agreement herein below. The County, the Judges, and Magistrate’s Office shall ensure the following:

Public Access

(a) The County Courts at Law shall continue to maintain a policy of public access to all criminal court proceedings. The County Court at Law Judges shall provide space sufficient to accommodate at least ten persons, or the equivalent of one bench row, for public seating during each court session.

(b) If the number of defendants, attorneys, court personnel and members of the public seeking entry into a courtroom exceeds the maximum seating capacity of the courtroom, the relevant court shall admit all defendants, and at least ten members of the public, or the equivalent of one bench row. If additional members of the public desire to enter the courtroom but cannot be accommodated due to the capacity of

the courtroom, the relevant court shall make the proceedings available for viewing by any remaining members of the public via video access with audio. Video access need not be provided if all members of the public who desire entry into the courtroom can be accommodated in the courtroom. Video access shall not be recorded without the approval of the judge of that court.

(c) Should special circumstances require excluding members of the public from criminal proceedings in the County Courts at Law, the presiding judge of the relevant court shall make findings, on the record, that justify any closure or partial closure of the proceedings as outlined in *Presley v. Georgia*, 558 U.S. 209 (2010), *Lilly v. State*, 365 S.W.3d 321 (Tex. Crim. App. 2012), and *Steadman v. State*, 360 S.W.3d 499 (Tex. Crim. App. 2012).

(d) The Magistrates' proceedings or hearings pursuant to Art. 15.17, Texas Code of Criminal Procedure, are currently available for viewing by video-audio access and shall continue to be accessible for viewing by video access with audio on closed-circuit TV at the designated location for video viewing in the Williamson County Jail.

(e) The Magistrate or his designee shall ensure that notice is provided to the public, via the internet and signs in the jail, about how the public may view the Art. 15.17 proceedings.

Public Access: County's Installation of Video-Audio Access for Maximum
Capacity / Overflow Situations

(f) The County shall install video-audio access through closed-circuit TV to accommodate public viewing of County Court at Law proceedings in those circumstances where courtroom capacity for public viewing is insufficient.

Requests for Legal Counsel

(g) The Magistrate shall transmit, or cause to be transmitted, all requests for counsel made by an arrested person at an Art. 15.17 hearing to the appropriate County Court at Law Judge or the Judge's designee in accordance with the Texas Code of Criminal Procedure, which requires transmittal without unnecessary delay, but not later than 24 hours after the person arrested requests appointment of counsel. If the time limits in the Texas Code of Criminal Procedure are amended by the Texas Legislature, the Magistrate shall comply with any new time limits established by the Legislature.

(h) The County Court at Law Judges or their designee shall rule on requests for appointment of counsel received by each Judge in accordance with the Texas Code of Criminal Procedure, which requires counsel to be appointed to defendants who are not financially able to employ counsel not later than the end of the first working day after the date on which the Judge or the Judge's designee receives a defendant's

request for appointment of counsel. If the time limits in the Texas Code of Criminal Procedure are amended by the Texas Legislature, the County Court at Law Judges or their designee shall comply with any new time limits established by the Legislature.

(i) The Magistrate shall furnish written Indigent Defense information during the Article 15.17 hearing to all defendants appearing before the Magistrate who are charged with a Class A or Class B misdemeanor in Williamson County, Texas. The information sheet shall contain the contact phone number for the indigent defense office from which defendants can obtain information regarding pending requests for an attorney, the name of any attorney appointed, information about the process for making an initial request for an appointed attorney and information about how to re-urge a request that has been denied.

(j) All defendants' requests for court-appointed attorneys in misdemeanor cases and all orders/rulings granting or denying a defendant's request for appointed counsel in misdemeanor cases will be delivered to the county clerk's office to be filed in the public court file in the defendant's case, and the defendant shall have access to view or copy said order in the County Clerk's Office.

(k) If an appointment of counsel is made, the appointing court or its designee will provide the attorney appointed to represent a defendant the contact information for the defendant that is provided on the defendant's request for appointed counsel so

that the attorney may make every reasonable effort to contact the defendant no later than the end of the first working day after the date the attorney is appointed, in accordance with Article 26.04(j) of the Texas Code of Criminal Procedure.

Waivers of the Right to Counsel

(l) Given the volume of requests for counsel and unforeseeable circumstances, it is possible that an occasional request for counsel may not be ruled on by the time of a First Appearance Proceeding, or that a defendant may not have received notification of the ruling on his or her request by the time of a First Appearance Proceeding. In accordance with the procedures and instructions set forth in Article 1.051 of the Texas Code of Criminal Procedure, defendants shall not be directed or encouraged to waive the right to counsel or communicate with the attorney representing the State of Texas until pending requests for counsel have been ruled upon. Thereafter, the defendant may submit a written waiver of counsel if he or she desires to do so.

(m) Prior to approving a waiver of the right to counsel submitted by any criminal defendant at a First Appearance Proceeding, or directing or encouraging any defendant to communicate with the attorney representing the State of Texas, the County Court at Law Judges shall inform the defendant of the nature of the charge(s) against the defendant, the range of allowable punishments for the charge(s) if found guilty, the defendant's right to the assistance of counsel in plea

proceedings, and the defendant's right to appointed counsel if the defendant is not financially able to employ counsel.

Intended Beneficiaries

(n) The Parties agree that this Settlement Agreement and Release has as its intended beneficiaries all persons similarly situated to Plaintiffs, that is, defendants in the Williamson County Courts at Law who claim denial of their right to court-appointed counsel while indigent or denial of public access to Magistrate's proceedings or County Court at Law proceedings by court officials, and that such persons shall have the right to enforce this Agreement just as if they were Plaintiffs if the actions or omissions alleged are after the date of execution of this Agreement and prior to the termination of this Agreement. The County and its officials do not stipulate to any evidence or element of any claim that may be asserted by any potential beneficiary and retain the right to assert defenses to any such enforcement proceeding or cause of action.

Enforcement

(o) 1. If Plaintiffs contend that there has been non-compliance with the terms of this Agreement, Plaintiffs shall give defendants notice of the alleged violation prior to seeking to enforce the Agreement in court. Notice of any alleged non-compliance shall be in writing and shall be given to the Williamson County Attorney and to the

Magistrate or Judge(s) whose non-compliance is alleged. When providing notice of any alleged non-compliance with the provisions of this Agreement concerning prompt rulings on requests for counsel, the Plaintiffs shall provide notice subject to the provisions of Paragraph 10 (o) 3 of this Agreement. When providing notice of any alleged non-compliance with other provisions of this Agreement, the notice provided by Plaintiffs shall be given within 90 days of when the alleged non-compliance occurred and shall include the case numbers, defendants, dates, and County Court(s) at Law involved in the alleged noncompliance.

2. After Plaintiffs provide notice under Paragraph 10 (o) 1 of an alleged non-compliance with the terms of the Agreement, Plaintiffs shall give the defendants a period of 60 days subsequent to such notice to cure the alleged non-compliance. To the extent any alleged violation is the result of an action or omission of a visiting judge, the presiding judge of the court in which the alleged non-compliance occurred shall be given the opportunity to review and correct such action or omission. If at the end of the 60-day period, the Plaintiffs believe that the alleged non-compliance has not been cured, the parties agree to submit the issue for mediation to determine if the issue can be resolved prior to additional litigation. The mediator shall be mutually agreed upon, and may be a regional presiding judge from a judicial region other than the one to which Williamson County is assigned, or a professional mediator. The mediator's fee shall be paid by the County.

3. Any alleged non-compliance with the terms of this Agreement that gives rise to an enforcement action must be a sustained pattern and practice rather than an isolated occurrence. In determining whether the Courts are in compliance with the provisions of this Agreement concerning prompt rulings on requests for counsel, the Parties shall use the benchmarks for substantial compliance with the related provisions of the Code of Criminal Procedure that are used by the Texas Indigent Defense Commission and contained in Rule 174.28 of the Texas Administrative Code. To determine substantial compliance pursuant to Rule 174.28, the parties shall measure compliance by examining information from all of the County Courts at Law collectively within a calendar quarter. Any enforcement action, however, shall proceed and be initiated against only the Court or Courts that fail to meet the substantial compliance threshold separately on the basis of actions regarding requests for appointment of counsel in cases assigned to that particular court. Compliance shall be evaluated on a quarterly basis using data from four (4) not necessarily contiguous weeks (7 day periods), provided that if the number of requests for attorneys in those four (4) weeks does not result in at least 350 requests, then another week or weeks shall be counted until the sampling of requests for attorneys reaches the number 350. Actions of visiting judges shall not be counted in the sampling. Any notice of alleged non-compliance regarding prompt rulings on appointment of counsel shall include information regarding the dates and courts included in the sampling.

The Parties acknowledge that it is the burden of the Plaintiffs to monitor and raise issues of compliance with this Agreement. The Parties recognize that data on

which compliance/non-compliance rests comes from many sources including sheriff's arrest records, jail booking records and court records. While the data is available to Plaintiffs on a case by case review of Sheriff, jail and court records, and such records are the only verifiable source of information to support compliance/noncompliance, the Parties further recognize that the Magistrate is in the process of establishing procedures to collect data to facilitate a review of the indigent defense appointment procedures in Williamson County. To the extent possible, the Magistrate or Indigent Defense Coordinator or whomever holds or subsequently assumes the duties of the Indigent Defense Coordinator ("Magistrate /IDC") will provide upon request data available to the Magistrate/IDC that will substantially reflect attorney appointment requests made during the calendar quarter that identifies the names of the requesting defendants, the date of request, the date of transmittal to the appointing authority and the court to which the request was transmitted.

The Parties recognize that the source of the data used is dependent upon the input of multiple persons and agencies, including but not limited to arresting agencies, booking officers, magistrate personnel, indigent defense personnel and court personnel, some of which are not under the control or direction of the Magistrate/IDC. Such being the case, the data provided by the Magistrate/IDC cannot and shall not be relied upon as any final proof of compliance/non-compliance. Any evidence of compliance/non-compliance shall be ultimately ascertained from court records, magistrate records and booking records.

Information regarding the date on which counsel was appointed or the request was denied shall be part of the record as set forth in paragraph (j) and available to Plaintiffs as such.

The Magistrate/IDC will cooperate fully with Plaintiffs with questions and locating documents pertaining to establishing compliance/non-compliance. Where such documents are under the control of the Magistrate/IDC, such documents will be made available to Plaintiffs.

Plaintiffs' counsel shall provide notice of any alleged failure to meet the substantial compliance threshold during a calendar quarter within 35 days of the end of the calendar quarter. This notice shall be in writing, specify which Court or Courts fell below the substantial compliance threshold, and be provided to the County Attorney and to the Judge(s) whose non-compliance is alleged. The Parties agree to meet through counsel in person or via phone conference within 50 days of the end of each calendar quarter to discuss the status of compliance with the standards in Rule 174.28 and other provisions of this Agreement.

4. The Plaintiffs shall seek compliance only through mediation or any enforcement action against the relevant County Court involved in the alleged non-compliance and not all County Court at Law Judges.

5. The County shall be responsible for the attorneys' fees of a Party that is successful in enforcing the terms of this Agreement in mediation or formal judicial proceedings.

6. The enforcement terms contained in Paragraphs 10 (o) 1 through 5 of this Agreement shall terminate four years from the date it is signed, unless sooner terminated pursuant to the provisions of Paragraph 10 (o) 7 herein below.

7. This Agreement shall expire prior to the end of four years as to any County Court at Law that completes eight (8) consecutive quarters in which neither any action for enforcement has been filed against that Court nor any notice of non-compliance has been filed against that Court that resulted in a determination that the court was not in compliance. The Agreement will expire as to the relevant Court at the later of (1) 90 days after the close of the eighth consecutive quarter, if no notice of alleged non-compliance related to that Court is filed by that time, or (2) resolution of any claim of non-compliance related to that Court of which Plaintiffs provide notice within 90 days of the end of the eighth consecutive quarter. The early expiration of this Agreement as to any Court pursuant to the terms of this Paragraph shall not affect the duration of this Agreement as to any other Court or defendant.

(p) Williamson County shall issue a check in the total sum of \$20,000.00 payable to the Texas Fair Defense Project, attorneys for the Plaintiffs, in full and complete satisfaction of any claims for costs and expenses arising from the Litigation or relating to the Claims. This check shall be mailed or otherwise delivered to Plaintiff's attorney Andrea Marsh within thirty (30) business days of the execution of this Agreement. The Parties represent there are no outstanding

taxable costs related to the Claims, and no statutory or common law liens exist to secure payment for any such expenses. Counsel for Plaintiffs are waiving their right to seek attorney's fees for the work performed in litigating this matter up to and including finalizing this Agreement, but do not waive the right to seek reasonable and necessary attorney's fees related to the enforcement of this Agreement if they prevail in any proceeding seeking to enforce the terms of this Agreement.

(q) Plaintiffs, by their signatures below, represent and warrant that they are fully competent to enter into this Agreement and are doing so only after full consultation with counsel regarding the meaning and intent of this Agreement and all of its terms;

(r) Plaintiffs' attorneys, by their signatures below, agree that they shall be solely responsible for any and all federal, state and local tax consequences that result from their receipt of the settlement funds paid in accordance with this Agreement, or any portion thereof, and that they shall indemnify and hold harmless Williamson County, Texas for any and all tax consequences of such payment; and

(s) Plaintiffs, by their signatures below, covenant not to sue the released Parties described below based on any cause of action currently asserted in the Litigation or related to the Claims or that is the subject of this Agreement and/or the release contained herein. This release does not bar any claim that arises based on events that occur after the date of this Settlement Agreement and Release. Nothing in this

Settlement Agreement and Release precludes any Plaintiff from asserting any defense to any criminal charge.

IV. RELEASE

11. This release is executed by the undersigned Plaintiffs. The Parties released are Williamson County and its agents, officers, servants, employees, elected officials, and administrators, including County Judge, Dan Gattis in his official capacity, the County Court at Law Judges and the Magistrate and Magistrate's Office (the "Released Parties").

12. The Plaintiffs, for the consideration stated in this Agreement, have released, acquitted and forever discharged, and by these presents do, for themselves, their heirs, executors, administrators, legal representatives and assigns, release, acquit and forever discharge, indemnify and hold harmless Williamson County, the County Judge, the County Court at law Judges, the Magistrate, Magistrate's Office and its representatives, agents, officers, servants, and employees, from any and all claims, demands and causes of action, of whatsoever nature, whether in contract, tort, constitutional, statutory or common law, which have accrued or may ever accrue to Plaintiffs and their heirs, executors, administrators, legal representatives or assigns, for and on account of and arising from the incidents and claims asserted by Plaintiffs and related to the Litigation and Claims described herein and in the Litigation pleadings. By way of illustration only and not by limitation, Plaintiffs specifically release any and all claims or causes of action based on any alleged violation of rights under the Sixth Amendment or any other claims

under Texas or federal law or constitutional law. This release does not bar any claim that arises based on events that occur after the execution date of this Settlement Agreement and Release. Nothing in this Settlement Agreement and Release precludes any Plaintiff from asserting any defense to any criminal charge.

V. PLAINTIFFS' RECOGNITION OF CONSIDERATION AND ADVICE

13. The consideration hereinabove mentioned is accepted in full compromise and settlement of all claims and causes of action against the Released Parties being asserted and claimed by us or which might have been or could be asserted and claimed now or in the future, whether for injunctive or declaratory relief, damages, personal injury or other loss or damage individually or by way of class action.

14. It is agreed and understood that the agreements and consideration stated herein above and the payment of the above mentioned sum of money to our attorneys (for costs and expenses) is being made by the Parties here released in compromise and settlement of disputed claims, and in order that such Parties may avoid litigation and buy their peace, and such payment is in no way to be construed as an admission of liability on the part of the Parties hereby released or anyone else, all liability being expressly denied.

15. As a further part of the consideration for the agreements mentioned above, we hereby expressly warrant and represent to the Parties released that before executing this instrument, we have fully informed ourselves of its terms, contents, conditions and

effects; that in making this settlement we have had the benefit of advice of an attorney; that no promise or representation of any kind has been made to us by the Parties hereby released or anyone acting for them, except as is expressly stated in this instrument.

16. We further state that as part of the consideration for the agreements mentioned above, we have relied solely and completely upon our own judgment and advice of our attorney in making this settlement and we fully understand that the above agreed actions or consideration and sum of money mentioned above is all the consideration or actions to be taken and money that is ever to be paid as a result of the above described incidents, Litigation and Claims.

VI. GENERAL / MISCELLANEOUS PROVISIONS

17. This contract contains the entire agreement between the Parties hereto and no representation, inducements, promises, agreements, oral or otherwise between the Parties not embodied herein shall be of any force or effect.

18. This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which shall be deemed to for all purposes to be one and the same agreement.

19. The Parties shall move the District Court to enter a Stipulated Order of Dismissal incorporating this Settlement Agreement and Release, and, subject to the provisions of

Paragraphs 10 (o) 1-7, above, the District Court shall have exclusive jurisdiction over enforcement of the terms of this Settlement Agreement and Release.

20. **SIGNED** by all Parties or their representatives this the ____ day of November, 2012.

WILLIAMSON COUNTY, TEXAS

By: _____
COUNTY JUDGE, DAN GATTIS, in his official capacity,
and on behalf of Williamson County, The Honorable Suzanne
Brooks, in her official capacity, The Honorable Tim Wright,
in his official capacity and The Honorable Doug Arnold,
in his official capacity

WILLIAM THOMAS EASTES, in his
official capacity as Magistrate,
Williamson County

KERRY HECKMAN

SYLVIA PETERSON

TAMMY NEWBERRY

JESSICA STEMPO

THE STATE OF TEXAS §
COUNTY OF WILLIAMSON §

I, Andrea Marsh., represent and warrant that I am an attorney for the Plaintiffs, Kerry Heckman, Sylvia Peterson, Tammy Newberry and Jessica Stempko, that the foregoing are their true and genuine signatures, and that I have recommended the above settlement to them. I hereby state that the above instrument has been fully and completely explained to the Plaintiffs. I do hereby approve the foregoing Settlement Agreement and Release.

EXECUTED on this _____ day of November, 2012.

ANDREA MARSH

THE STATE OF TEXAS §
COUNTY OF WILLIAMSON §

I, Harry Williams IV, represent and warrant that I am an attorney for the Plaintiffs, Kerry Heckman, Sylvia Peterson, Tammy Newberry and Jessica Stempko, that the foregoing are their true and genuine signatures, and that I have recommended the above settlement to them. I hereby state that the above instrument has been fully and completely explained to the Plaintiffs. I do hereby approve the foregoing Settlement Agreement and Release.

EXECUTED on this _____ day of November, 2012.

HARRY WILLIAMS IV