

RESOLUTION #

RESOLUTION TO APPROVE FINAL SETTLEMENT AGREEMENT AND GENERAL RELEASE FOR THE DAYTON VS. PLEDGE AND McDONOUGH COUNTY SHERIFF'S DEPARTMENT LAWSUIT, McDONOUGH COUNTY CASE NO.: 2006-L-9

WHEREAS, the County Board held a special meeting on June 13, 2019; and,

WHEREAS, at said meeting the Board members present voted unanimously in open session to approve all of the terms contained in a "Memorandum of Agreement" dated June 10, 2019 (hereinafter "Agreement", a copy of which is attached hereto and made a part of this Resolution as Attachment "A"), that outlines terms of a full and final settlement of all claims related to and Judgments entered against the County in the Dayton v. Pledge and McDonough County Sheriff's Department lawsuit, McDonough County Case Number 2006-L-9 (hereinafter "lawsuit"), and further approved a motion to demand the County's insurance carrier to tender the policy limits and all other judgment interest and costs to the Plaintiffs in the lawsuit; and,

WHEREAS, in accordance with the terms of said Agreement, and after the approval of the same by the Board, the attorneys for McDonough County and for the Plaintiffs in said lawsuit have mutually drafted a comprehensive "Settlement Agreement and General Release" (hereinafter "Settlement", a copy of which is attached hereto and made a part of this Resolution as Attachment "B"); and,

WHEREAS, in accordance with the Agreement, the Plaintiffs in the lawsuit as well as their attorney signed the Settlement on June 25, 2019; and,

WHEREAS, to finalize the Settlement the Board finds it necessary and proper to approve all terms of the same, and further authorize the State's Attorney, County Board Chairman, and one of the attorneys representing the County in the lawsuit to sign the Settlement and bind the County to all terms contained therein, as well as authorize the County Board Chairman and the State's Attorney to act in their official capacities to ensure that all of the County's obligations contained in the Settlement are met.

NOW THEREFORE BE IT RESOLVED:

1. That all oral motions that were voted on and approved in open session by the Board at the Special Meeting held on June 13, 2019, the contents of which are in the official minutes of said meeting, are further confirmed and memorialized by the passing of this Resolution; and
2. The "Memorandum of Agreement" dated June 10, 2019 (Attachment "A") and all of the terms contained therein are approved by the Board; and
3. The "Settlement Agreement and General Release" (Attachment "B") and all of the terms contained therein are approved by the Board; and
4. The State's Attorney, County Board Chairman, and one of the attorneys representing the County in the Dayton vs. Pledge and McDonough County Sheriff's Department lawsuit, McDonough County Case No.: 2006-L-9, are authorized to sign the "Settlement Agreement and General Release" (Attachment "B") that was signed by the Plaintiffs on June 25, 2019, and by doing so shall bind the County to all the terms contained therein; and

5. The County Board Chairman and the State's Attorney are authorized to act in their official capacities to ensure that all of the County's obligations contained in the "Settlement Agreement and General Release" (Attachment "B") are met.

PASSED, ADOPTED, AND APPROVED this _____ day of _____, 20 ____.

George Dixon, Chairman of the McDonough County Board

ATTEST

Gretchen DeJaynes,
McDonough County Clerk

AYE _____
NAY _____
ABSTAIN _____

Attachment

A

IN THE CIRCUIT COURT FOR THE NINTH JUDICIAL CIRCUIT
MCDONOUGH COUNTY, ILLINOIS

MARK LORENZ, GARY LORENZ, AND LESLIE))	
LORENZ; AND BRIAN DAYTON, individually))	
and as the Special Administrator of the Estate of))	
JILL D. DAYTON, deceased; and AMANDA))	
DAYTON NEHRING,))	
)	Case No. 2006-L-9
Plaintiffs,))	
)	
vs.))	
)	
THOMAS PLEDGE; and MCDONOUGH))	
COUNTY SHERIFF'S DEPARTMENT, a local))	
government entity,))	
)	
Defendants.))	

MEMORANDUM OF AGREEMENT

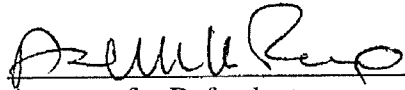
On June 10, 2019, the parties and their counsel assembled at the law offices of Spesia & Taylor, Joliet, Illinois to engage in a mediation conference. Upon completion of the mediation, the parties, as evidenced by their signatures (and the signatures of their counsel) below, have reached the proposed terms of a full and final settlement of their dispute. This settlement proposal is subject to approval of the McDonough County Board and an agreement by GIE to pay the Plaintiffs in accordance with paragraph 3 herein.

The terms and conditions of the proposed settlement are as follows:

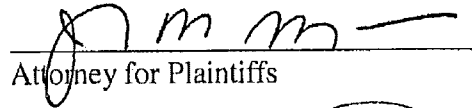
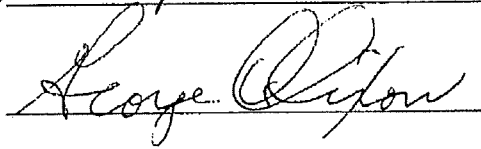
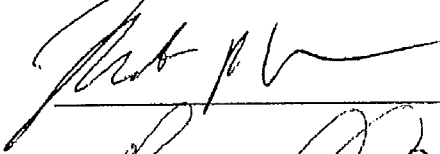
1. The Defendant, McDonough County Sheriff's Department, shall pay the Plaintiffs the total sum of \$1,835,000.00. Said sum shall be paid as follows:
 - a. \$1,000,000.00 to be paid as soon as practical but no later than July 19, 2019;
 - b. \$835,000.00 to be paid within seven days from receipt of proceeds of bonds to be issued by McDonough County, but no later than December 1, 2019; and
2. The McDonough County Board will make a demand that Governmental Interinsurance Exchange ("GIE"), the County's insurance provider pay the amounts described in paragraph 3.
3. Once the demand has been made it is expected that Governmental Interinsurance Exchange ("GIE"), the County's insurance provider, shall pay the following to the Plaintiffs:
 - a. The County's policy limit of \$2,000,000.00;
 - b. \$483.00 in costs; and

- c. Postjudgment interest at a rate of 6% on the full judgment from March 27, 2017 through the date that GIE overnights the check to Spesia & Taylor, which is anticipated to be within 30-days of approval of this proposed agreement by the County Board.
4. The Plaintiffs agree not to discuss the terms of this proposed settlement agreement with the press or make any press releases about said agreement until after the McDonough County Board votes on the agreement on June 19, 2019.
5. The settlement agreement shall provide that in the event Defendant, McDonough County Sheriff's Department fails to pay the settlement amounts reflected herein or otherwise breaches the settlement agreement:
 - a. The Defendant, McDonough County Sheriff's Department, will be responsible for all attorney fees incurred by Plaintiffs in connection with enforcing the terms of this agreement; and
 - b. The Defendant, McDonough County Sheriff's Department, will pay interest on the outstanding balance at a rate of 6% per annum from the date of the failure to pay or breach of the settlement agreement until all settlement amounts are paid in full.
6. The exclusive venue for any dispute arising out of the settlement agreement shall be the Twelfth Judicial Circuit, Will County, Illinois.
7. Once this proposed settlement has been approved by the McDonough County Board and GIE has agreed to make the payment outlined in paragraph 3 above, the Plaintiffs will execute a full and final release of all claims in cause No. 2006 L 9 against Defendants and their agents and insurers. Said release shall contain no mention of liability.
8. As soon as the total amount of post-judgment interest to be paid by GIE is determined, Plaintiffs shall provide Defendants' counsel with an allocation of the payments to be made to Amanda Dayton, individually, and Brian Dayton, as special administrator of the Estate of Jill Dayton.
9. Should the County Board fail to approve this proposed agreement on or before June 19, 2019 or GIE fail to agree to pay the amounts stated in paragraph 3 herein, this proposed agreement shall be null and void.

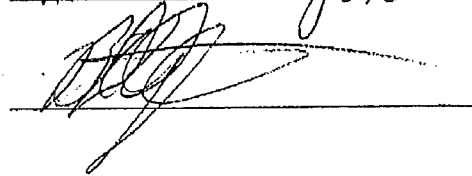
The parties have read and fully understand this agreement and further understand that a settlement agreement will be drafted consistent with the terms herein that will finally and forever resolves this dispute between all of the parties and their insurer(s). The parties further agree to be bound by this agreement.



Attorney for Defendants



Attorney for Plaintiffs



DATE: June 10, 2019

Attachment

B

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT
MCDONOUGH COUNTY, ILLINOIS

BRIAN D. DAYTON, individually and as
the Special Administrator of the Estate of
JILL D. DAYTON, deceased;
and AMANDA DAYTON NEHRING,

Plaintiffs,

v.

THOMAS PLEDGE; and
MCDONOUGH COUNTY SHERIFF'S
DEPARTMENT, a local governmental entity,

Defendants.

Law No. 2006-L-9

SETTLEMENT AGREEMENT AND GENERAL RELEASE

This Settlement Agreement and General Release ("Agreement") is made and entered into between McDonough County on behalf of McDonough County Sheriff's Department and Thomas Pledge ("Defendants") and Plaintiffs Brian Dayton, individually and as the Special Administrator of the Estate of Jill Dayton, deceased, and Amanda Dayton Nehring ("Plaintiffs").

RECITALS

WHEREAS, the above case was filed in the Circuit Court for the Ninth Judicial District ("Lawsuit").

WHEREAS, at the conclusion of the second trial, on March 24, 2017, the jury returned verdicts totaling \$4,070,524.87 as broken down herein and found in favor of: (i) Amanda Dayton-Nehring and awarded her damages in the amount of \$409,556.87 and (ii) the Estate of Jill Dayton and Brian Dayton, individually in the amount of \$3,660,968. On March 27, 2017 the court entered a Judgment on the verdicts.

WHEREAS, on October 6, 2017, the Circuit Court granted Defendants' JNOV and/or Motion for New Trial.

WHEREAS, Plaintiffs appealed the Circuit Court's October 6, 2017 Order to the Third District Appellate Court, Appeal No. 3-17-0698, and on April 19, 2019, the Third District reversed the Circuit Court's October 6, 2017 Order and reinstated the jury verdicts and judgment order in *Dayton v. Pledge*, 2019 IL App (3d) 170698. The Appellate Court also awarded Plaintiffs post-judgment interest from the date of the final judgment (March 27, 2017) to the date of satisfaction. On May 15, 2019 the Appellate Court denied Defendants' Petition for Rehearing.

WHEREAS, prior to June 10, 2019, Defendants expressed an intent to appeal the April

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19, 2019 Third District Opinion to the Illinois Supreme Court.

WHEREAS, a mediation was held on June 10, 2019 in Joliet, Illinois wherein the parties reached a settlement agreement that was contingent upon the McDonough County Board approving its terms and Defendants' insurer agreeing to pay the amounts as outlined in a Memorandum of Agreement dated June 10, 2019. Defendants shall pay all costs and expenses associated with the mediator.

WHEREAS, on June 13, 2019, the McDonough County Board approved the terms outlined in the Memorandum of Agreement and directed counsel to work with Plaintiffs' counsel in drafting a Settlement Agreement in accordance with said terms. At the same meeting, the McDonough County Board directed the State's Attorney to make a written demand to Defendants' insurer, Governmental Interinsurance Exchange ("GIE") to tender the limits of the policy, as well as any costs and post-judgment interest amounts covered under the policy.

WHEREAS, on June 17, 2019, the McDonough County State's Attorney made the aforementioned written demand to Defendants' insurer, GIE, to tender the limits of the applicable policy, as well as any costs and post-judgment interest amounts covered under the policy. Defendants have been informed by GIE that it intends to tender said policy limits, costs, and post-judgment interest as provided by the policy and in accordance with the Memorandum of Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, undertakings, agreements, recitals, definitions, payments, and premises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the Parties agree as follows:

AGREEMENT

1.0 Recitals. The foregoing Recitals are expressly incorporated as part of the Settlement Agreement, and the Parties confirm and represent to one another that said Recitals are true and correct to the best of their knowledge, information, and belief.

2.0 Settlement Payment. In consideration for the Plaintiffs' release of claims and execution of this Settlement Agreement and General Release, and in exchange for the promises, waivers, and releases set forth in this Settlement Agreement and General Release, the Defendants agree to pay within thirty (30) days from June 24, 2019, i.e., by July 24, 2019, through their insurer, Governmental Interinsurance Exchange ("GIE"), the amount of Two Million Dollars (\$2,000,000), which represents the policy limit ("policy limit"), plus costs of four-hundred-eighty-three dollars (\$483.00), and interest in the amount of six-hundred-sixty-nine dollars and twelve cents (\$669.12) per day since the date of the March 27, 2017 jury verdict, with six-hundred-one dollars and eighty cents (\$601.80) representing daily interest for the verdict pertaining to the judgment in favor of the Estate of Jill Dayton and Brian Dayton, and sixty-seven dollars and thirty-two cents (\$67.32) representing daily interest for the verdict pertaining to the judgment in favor of Amanda Dayton. GIE shall issue two checks to the Plaintiffs as set forth below in Paragraphs 2.4 and 2.5.

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2.1 Said interest of \$669.12 will continue to accrue on the entire judgment of \$4,070,524.87 until the date the settlement checks are overnighted by GIE to counsel for Plaintiffs. For sake of reference, as of June 10, 2019, the interest amount due the Estate/Brian Dayton is \$484,451.38, and the interest amount due Amanda Dayton Nehring is \$54,131.18.

2.2 Further, in consideration for the Plaintiffs' release of claims and execution of this Settlement Agreement and General Release, and in exchange for the promises, waivers, and releases set forth in this Settlement Agreement and General Release, McDonough County, on behalf of Defendants, agrees to pay Plaintiffs as soon as is practicable but no later than July 19, 2019, one million dollars (\$1,000,000.00) (the "first installment"). McDonough County, on behalf of Defendants, additionally shall pay Plaintiffs the sum of eight-hundred-thirty-five thousand dollars (\$835,000.00) within seven (7) days from its receipt of bonds to be issued by McDonough County, but in no event shall payment of the \$835,000 be made later than December 1, 2019. These payments (the "first installment" and the "second installment") will be made and broken down as between the Estate/Brian Dayton and Amanda Dayton Nehring as set forth below in Paragraphs 2.4 and 2.5.

2.3 Plaintiffs waive any interest which would otherwise be due them on the McDonough County payment of \$1,835,000 (the first and second installments) after GIE tenders payment of the policy limit, costs, and interest as provided in Paragraph 2.0. However, should McDonough County fail to pay Plaintiffs any portion of the sum of \$1,000,000 by July 19, 2019 or if McDonough County fails to tender payment of any portion of the remaining \$835,000 by December 1, 2019, interest will begin to accrue at a rate of 6% per annum from the deadline(s) for payment until such time as all settlement payments are made in full.

2.4 All checks issued for the judgment in favor of Amanda Dayton Nehring will be made payable to Amanda Dayton Nehring ("Amanda") and her attorneys, Spesia & Taylor. The aggregate total due Amanda under this Settlement is three-hundred eighty-three thousand five hundred dollars (\$383,500), plus any applicable interest. GIE shall issue a check to Amanda for \$200,000 plus interest of \$67.32 per day from March 27, 2017 through the date that GIE overnights the check to Spesia & Taylor. McDonough County's first installment to Amanda will be \$100,000, and its second installment to Amanda shall be \$83,500. As set forth above, provided that McDonough County makes timely payments, no interest will be due on either installment payments to Amanda.

2.5 All checks issued for the judgment in favor of the Estate of Jill Dayton (the "Estate") and Brian Dayton will be made payable to Brian Dayton, as Special Administrator of the Estate of Jill Dayton and their attorneys, Spesia & Taylor. The aggregate total due the Estate and Brian Dayton under this Settlement is three million four hundred fifty one thousand five hundred dollars (\$3,451,500), plus any applicable interest and costs. GIE shall issue a check to the Estate of Jill Dayton and Brian Dayton for \$1,800,000, plus \$483 in costs, plus interest of \$601.80 per day from March 27, 2017 through the date that GIE overnights the check to Spesia & Taylor. McDonough County's first installment to the Estate of Jill Dayton and Brian Dayton will be \$900,000, and its second installment shall be \$751,500. As set forth above, provided that McDonough County makes timely payments, no interest will be due on either installment payment.

A handwritten signature in black ink, appearing to be "JAN" or similar, located in the bottom right corner of the page.

2.6 In the event McDonough County fails to pay the settlement amounts herein or otherwise breaches the Agreement, the Defendants will be responsible for all reasonable attorney's fees incurred by Plaintiffs in enforcing the Agreement. The exclusive venue for any dispute arising out of this Agreement shall be Will County, Illinois.

2.7 All Settlement Payments shall be sent via overnight mail to:

John M. Spesia
Spesia & Taylor
1415 Black Road
Joliet, Illinois 60435

3.0 Post-Trial Matters. Upon final execution of this Settlement Agreement and General Release and the receipt of the Settlement Payment in good and readily available funds by Plaintiff, the Defendants agree to dismiss, vacate, or otherwise discharge all outstanding Post-Trial Matters, if any, including but not limited to any Petition for Leave to Appeal before the Illinois Supreme Court.

4.0 General Release and Discharge. Plaintiffs, to the maximum extent permitted by law, hereby irrevocably and unconditionally hereby remise, release and forever discharge McDonough County Sheriff's Department, Thomas Pledge, McDonough County, Governmental Interinsurance Exchange (GIE) and its Attorney In Fact, Governmental Insurance Managers, Inc. (GIM), and each of their past, present, and future officers, directors, partners, stockholders, attorneys, agents, servants, departments, employers, employees, professional corporations or groups with which they were, are or may be affiliated or employed, representatives, affiliates, parents, subsidiaries, insurers, reinsurers, heirs, executors, administrators, predecessors and successors in interest, and assigns and all other persons, firms, or corporations with whom any of the former have been, are now, or may hereafter be affiliated (collectively, the "Releasees"), from all claims, including McDonough County Case No. 2006-L-9 (the "Lawsuit"), demands, actions, suits, damages, debts, causes of action and liabilities of every name and nature, whether known or unknown, that Plaintiffs may now have or have ever had or may have in the future arising out of or relating to any actual or alleged acts or omission that occurred through the date of this Settlement Agreement and General Release, including but not limited to claims under Illinois state law or federal law, demands, actions, suits, damages, debts, causes of action and liabilities for bodily injury, death, diminished life expectancy, personal injury, conscious pain and suffering, emotional distress, loss of consortium or society, loss of use, loss of enjoyment of life, loss of opportunity, loss of services, lack of informed consent, battery, vicarious liability for the acts or omissions of any servants, employees, or actual or apparent agents, failure to settle, violations of any unfair trade practices or claims settlement practices, compensatory damages, punitive and exemplary damages, fines, legal fees, interest, and costs.

4.1 Plaintiffs understand and affirm that by executing this Settlement Agreement and General Release, that any injuries, damages or effects allegedly suffered by them may become worse in time, that they may have suffered injuries, damages or effects that may not now appear, that may not now be known or suspected and that there is no reason to know or suspect, and that new injuries, damages (including but not limited to medical and other expenses that they may

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incur) or effects may arise after the date of this Settlement Agreement and General Release. Plaintiffs hereby acknowledge that they have received adequate consideration for the release of all such claims, demands, actions, suits, damages, debts, causes of action and liabilities set forth in the preceding paragraph, even if they are unknown or unknowable at the time of the signing of this Settlement Agreement and General Release.

4.2 Plaintiffs agree and represent that they have no other pending legal actions or claims against Defendants or Releasees, including in any court, arbitration forum, governmental or administrative forum or agency, or other dispute resolution forum that are in any way related to the Lawsuit or dispute described herein.

5.0 Tax Consequences. The Parties understand that this Settlement Agreement and General Release is not intended to be construed as tax advice. Each Party acknowledges that no other Party or counsel has provided any tax advice in connection with this Settlement Agreement and General Release. The Parties make no representations regarding the tax consequences of this Settlement Agreement and General Release. Each Party agrees that it will not assert a claim against the other Party for the payment or reimbursement of any tax consequences resulting from any payment made pursuant to this Settlement Agreement and General Release.

6.0 Outstanding Judgment. This Settlement Agreement and General Release does not affect the validity of the outstanding Judgment or the decision by the Third District Appellate Court.

7.0 Satisfaction of Judgment. Within twenty-eight (28) calendar days of the occurrence of all the following events, Plaintiffs shall file a Satisfaction of Judgment in the Circuit Court of McDonough County: a) final execution of this Settlement Agreement and General Release; and b) Plaintiffs' receipt of the full Settlement Payment in good and readily available funds.

8.0 Entire Agreement. The Parties covenant and agree that this Settlement Agreement and General Release sets forth the entire agreement among the Parties and supersedes any written or oral understanding, promise, or agreement directly or indirectly related to it, which is not referred to and incorporated herein. The Parties further covenant and agree that this Settlement Agreement and General Release shall be final and binding upon the Parties and their successors and assigns. Any changes in this Settlement Agreement and General Release, whether by addition, deletion, waiver, amendment, or modification, shall only be made in writing and signed by the Parties.

9.0 Liens and Subrogation. Plaintiffs represent that they have resolved any issues relating to all asserted lienholders of which they are aware and other entities who have or may assert or claim a right of subrogation in the claims of Plaintiffs, including, but not limited to, Medicare and Medicaid, and that they are not aware of any applicable liens of any kind relating to the matters alleged in the Lawsuit. Defendants warrant that they are not aware of any liens or claims or subrogation interests that could be assessed against the Plaintiffs or any part of the moneys received or to be received by Plaintiffs under this Settlement Agreement and General Release.

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10.0 Severability. If any of the provisions, terms, or clauses of this Settlement Agreement and General Release are declared illegal, unenforceable, or ineffective by an authority of competent jurisdiction, those provisions, terms, and clauses shall be deemed severable, such that all other provisions, terms, and clauses of this Settlement Agreement shall remain valid and binding upon both Parties.

11.0 Governing Law. This Settlement Agreement and General Release shall be governed by the laws of the State of Illinois, and any question arising hereunder shall be construed or determined according to such law.

12.0 Counterparts. This Settlement Agreement and General Release may be executed by the Parties in any number of counterparts, including by way of facsimile or PDF, and each of which shall be deemed to be an original and all of which, collectively, shall be deemed to be one and the same instrument.

13.0 Costs and Attorneys' Fees. The Parties shall each bear their own costs, expenses, and attorneys' fees associated with the negotiation and drafting of this Settlement Agreement and General Release and/or the underlying dispute giving rise to this Settlement Agreement and General Release, except as specifically provided herein.

14.0 Further Assurances. The Parties shall take all further and necessary steps to effectuate the terms and intent of this Settlement Agreement and General Release without limitation.

15.0 Collectively Drafted. The drafting and negotiation of this Settlement Agreement and General Release has been undertaken by all Parties hereto and their respective counsel. For all purposes, this Settlement Agreement and General Release shall be deemed to have been drafted collectively by all of the Parties with no presumption in favor of one party over another in the event of any ambiguity.

16.0 Effectiveness. This Settlement Agreement and General Release shall become effective immediately following execution by all of the Parties ("Effective Date").

17.0 Representation of Comprehension of Document. In entering into this Settlement Agreement and General Release, the Parties represent that they have relied upon the advice of their attorneys concerning the legal consequences of this document; that the terms of this Settlement Agreement and General Release have been completely read and explained to the Parties by their attorneys; and that the terms of this Settlement Agreement and General Release are fully understood and voluntarily accepted by the Parties.

18.0 Warranty of Capacity To Execute Agreement. The Parties represent and warrant that no other person or entity has, or has had, any interest in the claims, demands, obligations, or causes of action referred to in this Settlement Agreement and General Release. The Parties have the sole right and exclusive authority to execute this Settlement Agreement and General Release and receive the sums specified in it. The Parties have not sold, assigned, transferred, conveyed, or otherwise disposed of any of the claims, demands, obligations, or

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causes of action referred to in this Settlement Agreement and General Release. McDonough County warrants that prior to its execution by Defendants, this Settlement Agreement and Release will be voted on and approved in an open meeting by the McDonough County Board in accordance with applicable law.

[signature page follows]

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FOR PLAINTIFFS

Amanda Dayton Nehring
Amanda Dayton Nehring

Date: June 25, 2019

Brian Dayton
Brian Dayton

Date: June 25, 2019

Brian Dayton, as Special Administrator of
the Estate of Jill Dayton, deceased

Date: June 25, 2019

John Spesia
John Spesia, attorney for Plaintiffs

Date: June 25, 2019

FOR DEFENDANTS

Matthew Kwacala, McDonough Co. State's
Attorney on behalf of McDonough County
Sheriff's Department and Thomas Pledge

Date: _____

George Dixon, McDonough County Board
President

Date: _____

Attest: Gretchen DeJaynes,
McDonough County Clerk

Date: _____

Andrew M. Ramage, one of Defendants'
attorneys

Date: _____