UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CHARLES V. RYAN IV, on behalf of himself and on behalf of others similarly situated, Plaintiffs v. ROBERT J. GARVEY, and PATRICK J. CAHILLANE in their individual capacities, Defendants	)	Civil Action No. 05-30017-MAP

PLAINTIFFS' CONSENT MOTION FOR PRELIMINARY APPROVAL OF CLASS SETTLEMENT

I. INTRODUCTION

The parties have reached a settlement whereby the defendants will maintain a policy protecting the privacy of pre-trial detainees at the Hampshire County Jail and will pay $205,000 to an estimated class of 90 people to resolve all of the plaintiffs' claims.[1] The settlement is the product of intensive negotiations during the months from June through December 2006. Counsel for the parties believe that the settlement is fair, reasonable and adequate, and should be approved by the Court.[2] Plaintiffs request that this Court grant the plaintiffs' motion for preliminary approval of the settlement, approve the notice forms and the notice plan, appoint Analytics, Inc. as the claims administrator, set a date for the final fairness hearing and a date for filing motions to approve the settlement and for attorney's fees and costs.

[1] The defendants' consent to this motion does not encompass an endorsement of all statements in the incorporated supporting memorandum, but the defendants do join fully with plaintiffs in requesting that the Court approve the written settlement agreement of the parties attached as Exhibit 1 and the other relief requested in the motion.

[2] Ex. 2 at ¶22 (Affidavit of Howard Friedman).

II. CASE BACKGROUND

Plaintiff Charles V. Ryan IV alleged that the Hampshire Jail and House of Correction unconstitutionally required every person who was admitted into the jail to be strip searched without individualized suspicion. On July 14, 2006, the Court certified this case as a class action under Fed.R.Civ.P. 23(b)(3). The class was defined as follows:

> All persons who were illegally strip searched at the Hampshire Jail and House of Correction from January 18, 2002 to November 7, 2002, under a policy of conducting strip searches without evaluating for individualized reasonable suspicion:
>
> (1) while waiting for bail to be set or for a first court appearance after being arrested on charges that did not involve a weapon or drugs or contraband or a violent felony; or
>
> (2) while waiting for a first court appearance after being arrested on a default or other warrant (for example, those issued by the State Parole Board) on charges that did not involve a weapon or drugs or contraband or a violent felony; or
>
> (3) while held after a finding of civil contempt of court for failure to pay child or spousal support, a judgment, or a fine.

The parties began negotiating a settlement in June 2006. After the Court certified the case as a class action, and the parties agreed that the class consisted of approximately 90 people, plaintiffs made a detailed settlement proposal on August 2, 2006. The parties, through counsel, signed the Settlement Agreement, attached to this motion as Exhibit 1, on December 27, 2006.

III. SUMMARY OF THE PROPOSED SETTLEMENT

The Defendants have agreed to pay $205,000 to settle all claims brought by the plaintiff in this action, including attorney's fees and costs. The agreement provides for a cash payment to every person who meets the class definition. The parties estimate that there are approximately 90 class members. Only one payment will be made no matter how many times a person was admitted into the

jail during the class period and strip searched. Class counsel recommends an incentive payment of $10,000 to the named plaintiff Charles V. Ryan IV to compensate him for his loss of privacy as a result of bringing this case and for the time he spent in responding to discovery and working with counsel to bring about the favorable result for the class. While the parties have no agreement with regard to attorney's fees, counsel will request that the Court award a fee of 33.3% of the gross settlement amount. Fees and expenses, including the cost of administering the settlement, will be deducted from the settlement amount before calculating the distribution amounts to class members.

IV. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT AND NOTICE PLAN AND SET A DATE FOR A FAIRNESS HEARING

In deciding whether to approve a proposed settlement of a class action, the Court must hold a hearing and determine if the settlement is "fair, reasonable and adequate."[3] Before the final fairness hearing, this Court should conduct a review of the settlement and make a "preliminary determination of the fairness, reasonableness and adequacy of the settlement terms."[4] This Court should be satisfied that the settlement is in the range of possible approval before the settlement proceeds.

At this stage, the Court should also review the proposed notices, attached to the Settlement Agreement as Exhibits A, C and D, before permitting counsel to send notice to potential class members. This provisional approval is subject to a more searching inquiry at the fairness hearing.

A. Benefit to Class Members

Class members who submit a qualifying claim form will receive a check. The proposed claim form is attached to the Settlement Agreement as Exhibit B. The precise amount will depend on the total number of claims submitted. It is difficult to predict the participation rate in this case because

[3] Fed. R.Civ.P. 23(e); *See* Durrett v. Housing Authority of Providence, 896 F.2d 600, 604 (1st Cir. 1990).

[4] Fed. R.Civ.P. 23 *Manual for Complex Litigation*, *Fourth*, (Federal Judicial Center 2004) §21.632.

of the very small size of the class. However, it is clear that each class member would receive a significant amount.[5] If 30% of the potential class of 90 members were to submit claim forms, payments would be $3,666. Should 50% of the potential class members submit claims, each would receive $2,444.

By any measure, this is more than a token recovery. Participating class members will receive a significant cash payment for filling out a short form, affixing a $.39 cent stamp to an envelope and mailing it to the claims administrator. These class members will obtain money without having to find and hire their own lawyers, pay litigation expenses, endure the anxiety of litigation, respond to interrogatories or requests for documents, testify at depositions, and prepare for trials. Instead of giving up their privacy by filing suit, they will benefit from the anonymity provided by their membership in the class.

B. Courts Favor Settlements Particularly in Class Actions

Courts consistently favor the settlement of disputed claims.[6] In the class action context, "there is an overriding public interest in favor of settlement."[7] Settlement of this class action will prevent substantial litigation expenses, delayed payment to the plaintiffs and the strain on court resources that would result from nearly a hundred individual damages trials.[8] Furthermore, settlement will increase the number of class members who are able to participate in this case, class members whose rights would otherwise not be vindicated.

---

[5] Support for this statement and the rest of this paragraph is found in Ex. 2 at ¶27 (Affidavit of Howard Friedman).

[6] *See* Durrett, 896 F.2d at 604.

[7] Cotton v. Hinton, 559 F.2d 1326, 1331 (5th Cir. 1977).

[8] Id. at 1331.

By reaching a compromise, both sides avoid the risks they faced by proceeding to trial. If damages claims were decided individually, some class members may have received only one dollar.[9] Of course, the defendant also faced the risk that many plaintiffs would obtain larger damages awards ranging from $5,000 to $40,000, and that some might recover more than $40,000.[10] The wide range of verdicts in strip search cases shows that, absent a settlement, both the plaintiffs and the defendants faced significant uncertainty.

Even if plaintiffs were able to win large verdicts, collecting the amounts from the defendants would have presented additional problems. First, the defendants would have been likely to appeal, further delaying payment. Then, plaintiffs would have had to pursue collection against the individual defendants who may not have had the means to pay, again delaying payment. The defendants also had compelling reasons to settle. They could have lost the trial on liability based on their admitted policy of requiring strip searching class members without individualized suspicion. The defendants would then have been facing close to a hundred damages trials. Even if the damages in individual cases were not large, the defendants would be liable for reasonable attorney's fees to the plaintiffs pursuant to 42 U.S.C. § 1988. The costs of pursuing this litigation could have been large. Thus, both sides had good reasons to settle.

---

[9] Nominal damage verdicts have been awarded in individual strip search cases. *See* Foote v. Spiegel, 118 F.3d 1416 (10th Cir. 2001) (after two appeals, plaintiff awarded $1 for an admittedly illegal strip search); Stewart v. Lubbock County 767 F.2d 153, 154, n.2. (5th Cir. 1985)(one plaintiff awarded $1 and the other awarded $15,000); Sorenson v. City of New York, 2000 U.S.Dist. LEXIS 15090 (S.D.N.Y. 2000)(two plaintiffs awarded $1each); Polk v. Montgomery County, 689 F.Supp. 556 (D. Md. 1988) (plaintiff awarded $1after rejecting a settlement offer of $31,000).

[10] Verdicts in Massachusetts courts for women alleging an illegal strip search have ranged from $45,000 to $177,000. Blackburn v. Snow, 771 F.2d 556 (lst Cir. 1985)(award of $177,040); Denkv. Santos, 98-11963-NG (jury award of $135,000); Rodriguez v. Silva and City of New Bedford, June 17,1996, (award of $45,000 for plaintiff who was deceased at time of trial and $150,000 for another); Adams v. Town of Wareham, 94-11446-DPW (award of $50,000). In Joan W. v. City of Chicago, 771 F.2d 1020 (7th Cir. 1985), the Seventh Circuit addressed the question whether a verdict of $112,000 was excessive. In ordering that the case be remanded for a new trial unless the plaintiff accepted a reduction of the award to $75,000, the Court looked to verdicts in nine other strip search suits against the City of Chicago in which the juries returned awards of $3,300, $15,000, $15,000, $25,000, $25,000, $30,000, $45,000, $50,000 (reduced as excessive to $25,000), and $60,000. *See* id. at 1023–24.

C. Procedural Considerations Support Approval of the Settlement

"When sufficient discovery has been provided and the parties have bargained at arms-length, there is a presumption in favor of the settlement."[11] In assessing a proposed settlement, a court is entitled to rely upon the views of experienced trial counsel.[12]

1. Stage of proceedings and discovery

"The stage of the proceedings at which settlement is reached is important because it indicates how fully the district court and counsel are able to evaluate the merits of plaintiffs' claims."[13]

The defendants admitted that the County had a written policy requiring strip searches of class members without individualized suspicion. Therefore, counsel for the parties recognized very early in the case that the critical issue would be the size of the class.[14] Plaintiff served a set of interrogatories and requests for documents in June 2005. In response, defendants produced multiple sets of electronic booking information relating to more than 900 bookings. The data was analyzed to determine the size and composition of the class. Because the Jail did not record in its booking computer system why or how a prisoner was brought to the Jail, a determination whether the individuals were pre-arraignment or pretrial detainees could not be made from examining the booking data alone. Class counsel visited the Jail to personally review 266 inmate booking files to determine class membership. It took a full year to determine class size. A class had been certified. The parties entered settlement negotiations with a full understanding of the strengths and weaknesses of their positions on liability and potential damage awards.

---

[11] City Partnership Co. v. Atlantic Acquisition Ltd. Partnership, 100 F.3d 1041, 1043 (1st Cir. 1996).

[12] *See* Cotton, 559 F.2d at 1330.

[13] Duhaime, 177 F.R.D. at 67 (quoting Armstrong v. Bd. of School Directors of Milwaukee, 616 F.2d 305, 325 (7th Cir. 1980)).

[14] Ex. 2 at ¶23 (Affidavit of Howard Friedman).

2. Arm's length negotiations

The case settled after months of negotiations by counsel.[15] The parties began negotiating a settlement in June 2006. After the Court certified the case as a class action, plaintiffs made a detailed settlement proposal on August 2, 2006. In late August, the parties reached agreement in principle on the terms of the settlement. It took another four months to agree on the details contained in the Settlement Agreement. This settlement is the result of very vigorous negotiations.

D. The Amount of the Settlement is Fair, Reasonable and Adequate

The Court should examine the amount of recovery as well as the plan for distributing the recovery to class members in order to determine whether the proposed monetary settlement is fair, reasonable and adequate. "[I]n any case, there is a range of reasonableness with respect to a settlement . . . ."[16] The settlement in this case is well within that range.

In the two prior Massachusetts strip search class action cases, Judge Nancy Gertner approved a $10 million settlement for approximately 5,400 women in Mack v. Suffolk County and Magistrate Judge Robert Collings approved a $1.35 million settlement for approximately 700 women in Connor v. Plymouth County. In Mack, 1,500 women filed claims while 113 did in Connor.[17]

District courts in other jurisdictions have approved comparable lump-sum settlements in similar strip search class actions.[18] In Eddleman v. Jefferson County, the court approved a settlement of $11.5 million for a class of about 50,000 class members - more than 4,000 made claims. In Tyson

---

[15] Support for this statement and the rest of this paragraph is found in Ex. 2 at ¶22 (Affidavit of Howard Friedman).

[16] Newman, 464 F.2d at 693.

[17] Ex. 2 at ¶¶14-15 (Affidavit of Howard Friedman).

[18] Support for this statement and the rest of this paragraph is found in Ex. 2 at ¶¶18, 17 and 16 (Affidavit of Howard Friedman).

v. City of New York, the court approved a $50 million settlement for a class of over 50,000 - approximately 6,000 made claims. In Nilsen, the court approved a $3.3 million settlement for more than 7,000 people - approximately 1,400 made claims. The settlement in this case of $205,000 to a potential class of 90 people falls comfortably within the "range of reasonableness" established by prior settlements approved by courts here in Massachusetts and elsewhere.

E. The Distribution Formula is Fair, Reasonable and Adequate

Plaintiffs' counsel approached settlement with the helpful experience of having settled, with court approval, two similar strip search class action case in Massachusetts, Mack v. Suffolk County and Connor v. Plymouth County, and one in Maine, Nilsen v. York County.[19] Plaintiffs' counsel had the additional benefit of advice from lawyers who had settled similar strip search class actions in other states. Some of those settlements required individualized determinations of each class member's subjective experience to determine his or her share of the settlement. This method proved to be so time consuming and expensive that it harmed the class as a whole. For example, in the Tyson case the claims administrator was paid an amount that nearly equaled the amount distributed to the class. In that case, a claimant could only obtain a payment of $250 without providing answers to a detailed claim form and releases for medical, employment, social security and educational records. A settlement that attempted to decide damages individually would require spending much more money to administer the fact finding process. Counsel felt that given the limited funds available to settle this case, a proposal that limited administrative expenses in favor of payments to class members would be more beneficial to the class.

[19] Support for this statement and the rest of this paragraph is found in Ex. 2 at ¶¶13 and 21 (Affidavit of Howard Friedman).

Therefore, plaintiffs' counsel agreed to a settlement that provides one payment to every person who was subjected to the defendants' policy. Those people who were arrested more than once during the class period do not receive additional payments because it is unlikely that a jury would reward a person for being arrested several times. Rather, it is more likely that a jury would feel the strip search was much less traumatic when the detainee had been through the search previously and would not be surprised by it the second or third time. Similarly, in administering the 9/11 Victim Compensation Fund, Kenneth Fineberg decided to award every family the same amount for non-economic damages, recognizing how difficult it would be for him to attempt to make fine distinctions between the pain and suffering of the families.[20]

F. The Attorney's Fees and Expenses are Reasonable

Class counsel will request an attorney's fee of 33.3% of the common fund plus litigation and claims administration expenses as provided for in the fee agreement between class counsel and the class representative.[21] This is consistent with the fees awarded to counsel in other similar strip search class action cases. In Mack, class counsel was awarded fees of 30% of a $10 million settlement fund. In Connor, class counsel was awarded a fee of 33% of a $1.35 million settlement fund. In Eddleman v. Jefferson County, class counsel was awarded 33.3% of a $11.5 million settlement fund. In Moser v. Anderson, class counsel was awarded 33.3% of the $3 million settlement fund.

The fee is justified by the amount of work, skill, and expertise needed to settle this case with the results achieved. Counsel will file a motion for attorney's fees and expenses under Fed. R.Civ.P. 23(h) to be heard at the time of the fairness hearing. Counsel will provide the Court with a lodestar figure for attorney's fees as a method to verify the reasonableness of the percent of fund method.

[20] http://www.cbsnews.com/stories/2003/11/07/60minutes/main582529.shtml.

[21] Ex. 2 at ¶25 (Affidavit of Howard Friedman).

G. Bonus Should Be Paid to Compensate the Named Class Representative

Class counsel requests an incentive payment of $10,000 for named class representative Charles V. Ryan IV.[22] The purpose of the bonus is to compensate him for his loss of privacy as a result of bringing this case and for the time he spent in responding to discovery and working with counsel to benefit the entire class. Mr. Ryan spent significant time on this case: not only was he deposed, he also answered individual discovery requests, and he consulted with counsel throughout the litigation. Mr. Ryan endured a loss of his personal privacy by revealing his name to bring this lawsuit on behalf of the class.

"Courts routinely approve incentive awards to compensate named plaintiffs for the services they provided and the risks they incurred during the course of the class action litigation."[23] In Eddleman, the court approved bonuses of $5,000, $10,000 and $15,000 to the class representatives and other class members who assisted class counsel in litigating the case.[24] In Mack, the court approved bonuses in the amount of $15,000 for acting as a class representative and $5,000 for being the subject of a deposition. In Brecher v. St. Croix County, the two named plaintiffs shared an incentive award of $35,000.

Bonuses are particularly proper for the named class representative here because he agreed to sacrifice his privacy in the embarrassing context of admitting that he was arrested and forced to strip naked as part of his detention in jail. It would be unfair not to compensate him for efforts that helped achieve a benefit for the entire class.

---

[22] Support for this statement and the rest of this paragraph is found in Ex.2 at ¶24 (Affidavit of Howard Friedman).

[23] In re Southern Ohio Correctional Facility, 175 F.R.D. 270, 272-273 (S.D.Ohio 1997)(citing 10 other courts where incentive awards were approved); Spicer v. Chicago Bd. Options Exchange, Inc., 844 F.Supp. 1226, 1266-68 (N.D.Ill. 1993)(citing 17 courts where incentive awards were approved). *See also*, Thorton v. Texas Motor Freight, 497 F.2d 416 (6th Cir. 1974).

[24] Support for this statement and the rest of this paragraph is found in Ex. 2 at ¶¶18-19, 15 and 20 (Affidavit of Howard Friedman).

H. The Notice to Class Members Satisfies Due Process Requirements and the Federal Rules of Civil Procedure 23

Fed.R.Civ.P. 23(e) requires that notice of the proposed settlement be sent to all members of the class "in such manner as the court directs."

"An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections."[25] "Where the name and last known address of a class member or individual party is known or is capable of being readily identified," individual notice must be given.[26] Plaintiffs propose sending individual notice to each class member based on the mailing addresses provided at booking unless updated by the class member.

The Notice of Class Action and Proposed Settlement is attached to the Settlement Agreement as Exhibit A. The Notice summarizes the terms of the settlement, describes the options of each class member, discloses the bonus to the class representative, discloses the proposed amount of attorney's fees and expenses and that this issue will be decided by the Court at the fairness hearing, gives the date, time and place of the fairness hearing, and provides contact information for any questions about the settlement.[27] The notice is drafted in plain English. This notice will be sent by first class mail, postage-prepaid, to all potential class members at their last known addresses within three weeks of the court's order granting preliminary approval of the settlement.

---

[25] Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950).

[26] In Re Domestic Air Transp. Antitrust Litigation, 141 F.R.D. 534, 539 (N.D.Ga. 1992).

[27] See Notice, attached as Ex 3A; Manual for Complex Litigation §30.212.

In order to reach as many class members as possible, the notice plan includes several additional notices. First, because some class members may have moved without leaving a forwarding address, and to account for any errors in the class list, the notice plan also includes publication of a settlement notice in three local newspapers. A notice, attached to the Settlement Agreement as Exhibit C, will be published in the *Springfield Republican,* the *Daily Hampshire Gazette* and the *Greenfield Recorder*. Second, the press will be notified of the settlement, through a release which is attached as Exhibit E, which is likely to result in news coverage of the settlement. Class members are more likely to learn of this settlement through news coverage than through paid notices in a newspaper. Third, the defendants have agreed to post a notice, attached as Exhibit D, in the Booking Room of the Hampshire Jail. Finally, a website will be established to provide additional information. The notices, forms and other information on the case will be posted to the website. The notice plan is designed to reach as many class members as possible, not to simply meet minimum due process requirements.

V. ADMINISTRATION OF THE SETTLEMENT

Class counsel recommend that this Court appoint Analytics, Inc. as the claims administrator. Documents regarding Analytics are attached to the Settlement Agreement as Exhibit F. Analytics is the oldest class action consulting firm in the country.[28] They have experience in processing settlements in strip search class actions, having handled the administration of the Bilovde case in Wisconsin, the Nilsen case in Maine and distribution of the settlement proceeds of the Connor case in Massachusetts. Class members will be able to fill out a simple claim form, a copy of which is attached to the Settlement Agreement as Exhibit B.

[28] Support for this statement and the rest of this paragraph is found in Ex. 2 at ¶26 (Affidavit of Howard Friedman) and Exhibit F to the Settlement Agreement (Affidavit of Richard W. Simmons).

VI. PROPOSED SCHEDULE

Class counsel proposes the following schedule based on the time periods in the Settlement Agreement. Assuming that there are no unforseen circumstances and that this Court approves the settlement, the schedule provides for distribution before the end of 2007. Based on this schedule, the fairness hearing would take place in June 2007, although it could be a few weeks earlier if the Court grants preliminary approval in February 2007.

Chronology of Anticipated Dates for Completing the Settlement Process

EVENT NUMBER	DATE CALCULATION	DESCRIPTION OF EVENT	ESTIMATED DATE
1		**Preliminary Hearing held.**	**1/19/2007**
2	**To be determined by the Court**	**Court issues Order granting preliminary approval of settlement.**	**2/16/2007**
3	3 weeks after 2	Mail the Notice of Class Action Settlement and Settlement Claim Form. Also, print notice in newspapers and post notice at the jail.	3/9/2007
4	2 weeks before 8	Postmark date for class members to submit written objections to the settlement.	5/25/2007
5	2 weeks before 8	Postmark date for class members to submit Notice of Exclusion to opt.	5/25/2007
6	**To be determined by the Court**	**Settlement Fairness Hearing held.**	**6/8/2007**
7	2 weeks after 6	Postmark date for class members to submit Settlement Claim Forms.	6/22/2007
8	1 week before 7	One week amnesty ends.	6/29/2007
9	**To be determined by the Court**	**Court issues Order granting final approval of settlement.**	**7/13/2007**
10	1 week after 9	Claims administrator will send a Notice of Claim Approval to all participating class members.	7/20/2007
11	1 week after 9	Claims administrator will send a Notice of Claim Denial to claimants who are not verified as class members.	7/20/2007
12	2 weeks after 11	Claimants must appeal all claim denials to claims administrator by this date.	8/3/2007
13	1 week after 12	Claims administrator will resolve all appeals regarding class membership and send notices to claimants regarding final decision approving or denying appeals.	8/10/2007
14	2 weeks after 13	Deadline for claimants to appeal to Court regarding claim's administrator's final decision denying claim.	8/24/2007
15	**To be determined by the Court**	**Court willl decide all appeals.**	**9/7/2007**
16	1 week after 15	Claims administrator will make final calculation of distributions of the settlement funds. Claims administrator will prepare for the MA Comptroller's Office a distribution spreadsheet.	9/14/2007
17	60 days after 16	Comptroller's Office will mail settlement checks to class members, then make payment to class counsel for fees and expenses.	11/13/2007
18	60 days after 17	Attorney General's Office will obtain settlement distribution report.	1/12/2008
19		Comptroller's Office will send 1099's to class members.	1/15/2008
20	90 days after 18	Attorney General's Office will obtain settlement distribution report.	4/11/2008
21	90 days after 20	Attorney General's Office will obtain settlement distribution report.	7/10/2008
22	90 days after 21	Attorney General's Office will obtain settlement distribution report.	10/8/2008
23	90 days after 22	Attorney General's Office will obtain final settlement distribution report.	1/6/2009

VII. CONCLUSION

Plaintiffs request that this Court grant the plaintiffs' motion for preliminary approval of the settlement, approve the notice forms and the notice plan, appoint Analytics, Inc. as the claims administrator, set a date for the final fairness hearing and a date for filing motions to approve the settlement and for attorney's fees and costs.

RESPECTFULLY SUBMITTED,
For the plaintiff, and the class,

Date: December 29, 2006

/s/ Myong J. Joun

Howard Friedman
BBO #180080
Myong J. Joun
BBO #645099
Law Offices of Howard Friedman, P.C.
90 Canal Street, Fifth floor
Boston, MA 02114-2022
T (617) 742-4100
F (617) 742-5858
hfriedman@civil-rights-law.com
mjjoun@civil-rights-law.com