IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

SHARON ALLISON, on behalf of herself and the class of similarly situated persons,

Plaintiffs,

vs. **NO. CIV-05-0881 WPJ/WDS**

LINCOLN COUNTY BOARD OF COMMISSIONERS; CORNELL COMPANIES, INC., a Delaware Corporation; CORRECTIONAL SYSTEMS, INC., a Delaware Corporation; MIKE HOLM, individually and in his official capacity; ROGER JEFFERS, individually and in his official capacity; PETER MORALES, individually and in his official capacity; LUCY VEGA, individually and in her official capacity; LINCOLN COUNTY DETENTION CENTER CORRECTIONS OFFICERS DOES 1 THROUGH 50 and ROES 1 THROUGH 20, inclusive;

Defendants.

JOINT MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

I. INTRODUCTION

Plaintiff Sharon Allison, representing herself and all others similarly situated in an action filed as a class action, and Defendants LINCOLN COUNTY BOARD OF COMMISSIONERS, CORNELL COMPANIES, INC., CORRECTIONAL SYSTEMS, INC., MIKE HOLM, ROGER JEFFERS, PETER MORALES, and LUCY VEGA, (the Plaintiff and Defendants are referred to collectively as "the Parties"), by and through their respective counsel, jointly move the Court for preliminary approval of their agreement to settle this case.

The Parties specifically request that this Court enter an Order (1) preliminarily approving the Parties' Stipulation of Settlement (attached as Exhibit A) (2) conditionally certifying the proposed Settlement Class, (3) appointing the named Plaintiff as Class Representative, (4) appointing counsel for Plaintiff as Class Counsel, (5) approving the form and manner of Notice to be sent to Settlement Class Members and the Summary Notice to be published in various media, (6) approving the Claim Form, (7) setting deadlines with respect to, claims, opt outs and objections, and (8) setting a date for a final fairness hearing. Judicial preliminary approval is appropriate where a case settles as a class action before certification. (Manual for Complex Litigation, 4th Ed., ¶ 21.132.)

II. STATEMENT OF FACTS/HISTORY OF LITIGATION

A. <u>Facts</u>

On August 22, 2005, Plaintiff Sharon Allison, on behalf of herself and all persons similarly situated, filed a Complaint in the above-captioned matter in which she challenged, pursuant to 42 U.S.C. § 1983 and New Mexico state law, certain practices of Defendants including the strip search of certain detainees at the Lincoln County Detention Center, prior to arraignment, and sought damages and declaratory and injunctive relief. The Complaint was subsequently amended to add additional named Defendants discovered following the filing of the initial Complaint. The First Amended Complaint was filed on June 28, 2006.

As a result of discovery initiated by the Parties which included exchange of documents, interrogatories, and depositions, it was discovered that, until Defendant Cornell issued revised policies for the Lincoln County Detention Center on August 31, 2005, correctional officers working at the Lincoln County Detention Center routinely strip searched all pre-arraignment detainees before admitting those detainees to the secure portion of the facility. From a statistical sampling of the files of approximately 3,000 persons booked at Lincoln County Detention Center during the period from August 22, 2002, until August 31, 2005, the Parties estimate that approximately 1,200 persons who were arrested on charges not involving violence, drugs or weapons, were strip searched prior to arraignment during their booking at the Lincoln County Detention Center

On July 12 and 13, 2006, the Parties participated in a mediation, presided over by Paul Bardacke of the firm Sutin, Thayer & Browne, PC, and, following mediation, arrived at an agreed Stipulation of Settlement, a copy of which is attached hereto as Exhibit A. That Stipulation of Settlement defines the "Settlement Class" and provides a method to notify members of the class of the terms of the proposed settlement and their entitlement to receive compensation under the settlement, to object to the settlement at a fairness hearing before this Court, or to opt out of the settlement.

B. <u>Terms Of The Settlement</u>

The terms of the settlement, fully described in the Stipulation of Settlement attached hereto as Exhibit A, are summarized as follows.

1. *Certification Of The Class*

The Settlement Class is defined in the Stipulation of Settlement as "all persons arrested on charges not involving violence, drugs or weapons, on or between August 22, 2002, and August 31, 2005, who were strip searched at the Lincoln County Detention Center prior to arraignment." The Parties estimate that there are approximately 1,200 Settlement Class Members ("SCMs"). The Parties agree that the action should be conditionally certified as a class action under Federal Rules of Civil Procedure 23.

2. Monetary Relief To Settlement Class Members (SCMs)

a. Payment to the Settlement Class

The Stipulation of Settlement provides that Defendants will deposit a settlement fund of $1,600,000.00 into an interest earning qualified settlement fund account within 30 days of the date of this Court's preliminary approval. At least $750,000.00 will be available for distribution to qualified claimants with the possibility that additional funds will be added to those available for distribution if the cost of claims administration is less than the $150,000.00 allocated to cover the costs of such administration. The Claims Administrator will pay out of the Settlement Fund to each SCM who submits a valid and timely Claim Form a pro-rata share of the amount of the Settlement Fund available for payment of claims, determined by the Claims Administrator after the submission of all qualified claims. If 25% of those persons eligible for payment submit a Claim Form, each claimant will receive approximately $2,300.00.

b. Incentive Payment

Under the Stipulation of Settlement, the Class Representative will receive $100,000.00 for her contribution to the investigation and prosecution of this case which also includes payment for the particular emotional distress she experienced as a result of being strip searched at the Lincoln County Detention Center. Defendants have agreed not to oppose this request.

c. Equitable Relief

The Parties have agreed that the strip search policies at the Lincoln County Detention Center were changed after Plaintiff filed this lawsuit and, therefore, Plaintiff's request for equitable relief is moot. (A copy of the revised strip search policies is attached as Exhibit 1 to the Stipulation of Settlement).

d. Attorneys' Fees & Costs

Under the Stipulation of Settlement, $600,000.00 of the Settlement Fund will be allocated to pay Plaintiffs' attorneys' fees, gross receipts tax on fees and litigation expenses, subject to approval of the Court. Defendants have agreed not to oppose this request.

e. Release of Claims

The Plaintiff and SCMs who do not opt out of the settlement will release the Defendants from any and all claims which are based upon or could be based upon or arise from the facts alleged in this lawsuit. The full terms of the release are set forth in paragraph 19 of the Stipulation of Settlement.

f. Notice and Opt Out Procedures

The Stipulation of Settlement provides for a detailed Notice to be sent by mail to all SCMs informing them (in English and Spanish) of their rights under the Stipulation of Settlement and for a summary Notice (in English and Spanish) to be published in local newspapers informing SCMs of the settlement and directing them to sources of additional information. In addition, announcements summarizing the settlement are to be made in English and Spanish on local radio stations.

The Stipulation of Settlement provides that SCMs have two options for responding to the Notice. An SCM may (1) remain an SCM and be eligible to submit a Claim Form or (2) request exclusion from the Settlement Class and opt out. SCMs who request exclusion from the Settlement Class and opt out will not be deemed to have released the Defendants from any claims and may pursue any claims they have against the Defendants, but will not receive any payments from the Settlement Fund. SCMs who do nothing will be deemed to have released their claims but will receive no payment from the Settlement Fund. SCMs who submit claims will be eligible to receive payments from the Settlement Fund as specified in the Stipulation of Settlement and as calculated by the Claims Administrator. SCMs who do not elect to opt out may also present objections to the Court at the final fairness hearing.

g. Claims Administration

Up to $150,000.00 will be allocated to cover the costs of claims administration, including locating members of the class, providing notice to the class, and processing/paying the SCMs' claims. Any unused amount of this $150,000.00 shall revert to the Settlement Fund benefiting SCMs and be distributed to them, pro-rata.

III. ARGUMENT

A. <u>Settlement Agreement Merits Preliminary Approval</u>

Preliminary approval of a proposed settlement is part of a two-step process required before a class action can be settled. *Manual for Complex Litigation Fourth* (hereinafter "*Manual*") § 21.632 (Fed. Jud. Ctr. 2004). In considering preliminary approval, courts make a preliminary evaluation of the fairness of the settlement. "Where the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, has no oblivious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class and falls within the range of possible approval, preliminary approval is granted." *In re NASDAQ Market-Makers Antitrust Litig.,* 176 F.R.D. 99, 102 (S.D.N.Y. 1997); *see also Manual* § 21.632. "Once preliminary approval is bestowed, the second step of the process ensues: notice is given to the class members [of the terms of the proposed settlement and of a hearing] at which class members and the settling parties may be heard with respect to final court approval." *NASDAQ,* 176 F.R.D. at 102; *Manual* at §§ 21.633-34.

In considering whether to grant a motion for preliminary approval of a proposed settlement agreement, the Court utilizes a "threshold inquiry" intended merely to reveal conspicuous defects. *In re Inter-Op Hip Prosthesis Liability Litig.*, 204 F.R.D. 330, 337-38 (N.D. Ohio 2001). Ultimately, of course, before a settlement can be fully approved, the Court must determine that a settlement is fair, reasonable and adequate. *Jones v. Nuclear Pharmacy,* *Inc.*, 741 F.2d 332, 324 (10^{th} Cir. 1984). At the preliminary approval stage, however, the Court should evaluate, based on the terms of the Stipulation of Settlement, the contents of the record, and the controlling legal authority whether "the proposed settlement is sufficiently reasonable, adequate, fair and consistent with the requirements of Fed.R.Civ.P. 23 to warrant notice . . . to the class members and a fairness hearing." *Marcus v. Kan. Dep't of Revenue*, 206 F.R.D. 509, 513 (D. Kan. 2002).

Considering the issues, evidence, and nature of the settlement negotiations, preliminary approval is appropriate in this case. First, the proposed settlement was the culmination of a series of informed, non-collusive negotiations. Settlement discussions began during the discovery process, were adversarial in nature, and involved all of the parties with varying interests. After the matter was referred to mediation, the parties prepared mediation briefs and spent two days negotiating settlement with the assistance of a very experienced mediator, Paul Bardacke of the firm Sutin, Thayer and Brown, P.C. Following mediation, the parties and their representatives continued negotiations until they arrived at the agreed Stipulation of Settlement. The course of settlement negotiations rises well above the threshold for preliminary approval.

Second, the terms of the Stipulation of Settlement are fair, reasonable, and adequate to resolve the dispute. Liability was serious contested. Both sides developed evidence to support their claims and defenses. Plaintiff believes her class would have been certified. Defendants believe they would have defeated class certification and, in any event, would have been permitted to defend claims on an individual basis. All Parties predicted protracted litigation. Most courts, in considering approval of a class action settlement, note the advantages of avoiding lengthy and expensive litigation. *See, e.g., Class Plaintiffs v. City of Seattle,* 955 F.2d 1268, 1276 (9th Cir. 1992) (recognizing "the strong judicial policy that favors settlements, particularly where complex class action litigation is concerned"); *Wald v. Wolfsom (In re United States Oil and Gas Litig.),* 967 F.2d 489, 493 (11th Cir. 1992) ("Complex litigation . . . can occupy a court's docket for years on end, depleting the resources of the parties and the taxpayers while rendering meaningful relief increasingly elusive"). The Parties here recognized the advantages of settlement over continued litigation.

The Settlement Fund established here is a meaningful benefit to SCMs. Plaintiffs' counsel, who are experienced in this type of litigation, believe the Class Members' chances of obtaining better results by continuing the litigation or by pursuing separate claims are uncertain at best. (Exhibit B, Merin Affidavit.) *Duhaime v. John Hancock Mut. Life Ins. Co.,* 177 F.R.D. 54, 69 (D. Mass 1997) (approving settlement agreement and noting that settlement "provides class members with timely relief without having to risk the uncertainty of outcome, duration, and expense inherent in continuing the litigation").

Finally, the Stipulation of Settlement does not grant unduly preferential treatment to the Class Representative or segments of the class. *NASDAQ*, 176 F.R.D. at 102. In this instance, through non-collusive negotiation, the Stipulation of Settlement includes an incentive award of $100,000 to the Class Representative. Plaintiff submits that the proposed incentive award is reasonable and is intended to recognize the significant time and efforts expended by Plaintiff Sharon Allison on behalf of the Class and the risks she undertook in bringing this lawsuit. *Ingram v. The Coca Cola Co.,* 200 F.R.D. 685, 694 (N.D. Ga. 2001) ("Courts routinely approve incentive awards to compensate named plaintiffs for the services they provide and the risks they incurred during the course of the class action litigation", *quoting In re Southern Ohio Correctional Facility*, 175 F.R.D. 270, 272 (S.D. Ohio 1997)). The Class Representative contributed substantial time and energy in support of the action, including extensive participation in discovery, case strategy, case management, and mediation. *Van Vranken v. Atlantic Richfield Co.,* 901 F.Supp 294, 299 (N.D. Cal. 1995) (in considering an incentive award, the court may consider the risk to the class representatives, both financial and otherwise: the personal difficulties encountered by the class representatives; the amount of time and effort spent on litigation; the duration of the litigation; and the personal benefit – or lack thereof – enjoyed by the class representative as a result of the litigation). Given her contribution throughout this litigation, Plaintiff contends that the individual payment to Sharon Allison of $100,000 is not excessive. *Cf. Ingram,* 200 F.R.D. at 694 (approving $300,000 incentive award to each named plaintiff). The Defendants have agreed not to oppose the amount proposed to be paid to Plaintiff Allison as an incentive.

B. The Court Should Appoint Class Representative And Class Counsel And Conditionally Certify The Class

The instant case, which alleges that the Defendants' practices affected a large group of individual detainees in the Lincoln County Detention Center is exactly the sort of dispute that Fed.R.Civ.P. 23 is designed to remedy. For that reason, the Parties urge the Court to appoint Class Representative and Class Counsel, and to conditionally certify the Class under Rule 23. Courts have regularly certified classes of a similar nature. *See, e.g., Tardiff v. Knox County*, 365

F.3d 1 (1st Cir. 2004) (upholding certification of class of arrestees challenging counties' alleged policies of conducting routine strip searches of all pre-arraignment detainees); *Blihovde v. St. Croix County, Wis.*, 219 F.R.D. 607 (W.D. Wis. 2003) (certifying class of persons strip searched at county jail); *Mack v. Suffolk County,* 191 F.R.D. 16 (D. Mass. 2000) (certifying class of pre-arraignment detainees to strip searches without individualized reasonable suspicion); *Bull v. San Francisco*, USDC, N.D. C 03-1840 CRB (Order of 6/10/04) (certifying class of persons strip searched and/or placed in safety cells at county jail); *Gallagher v. San Mateo*, USDC, N.D. C 04-0448 SBA (Order of 10/31/05) (certifying class of persons strip searched at county jail); *Leyba v. Santa Fe County Board of Commissioners,* USDC, D.N.M. CIV-05-0036 BB/ACT (Order of 7/24/06) (certifying class of persons strip searched prior to arraignment at county jail). Because Plaintiff meets all of the technical requirements of Rule 23, and because it is fair and efficient to resolve all claims together, the Court should conditionally certify the Class in this case.

1. The Court Should Appoint The Class Representative And Class Counsel

This Motion seeks appointment of named Plaintiff Sharon Allison as the Class Representative. She is an appropriate representative because she was subjected to the same policy and practices that allegedly violated the rights of all of the other Class members. Furthermore, Plaintiff has acted in the best interest of the Class and has no conflict of interest which would preclude her from serving as the Class Representative.

The Motion also seeks appointment of Mark E. Merin of the Law Office of Mark E. Merin, Andrew C. Schwartz of the law firm of Casper, Meadows, Schwartz & Cook, and Robert R. Rothstein of the firm Rothstein, Donatelli, Hughes, Dahlstrom, Schoenburg & Bienvenu, LLP, as Class Counsel. These lawyers are all experienced in the areas of civil rights law and class action litigation of strip search cases, and none has any conflict of interest which would preclude him from serving as Class Counsel. All of these lawyers have been involved in this litigation from the time the lawsuit was filed, and all have participated in the negotiations that led to the Stipulation of Settlement. (Exhibit B, Affidavit of Mark Merin; Exhibit C, Affidavit of Andrew C. Schwartz; Exhibit D, Affidavit of Robert R. Rothstein.)

2. The Proposed Settlement Class Meets The Requirements Of Rule 23(A)

A class must have the following prerequisites in order to be certified under Fed.R.Civ.P. 23(a): "(1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class." *Lopez v. City of Santa Fe,* 206 F.R.D. 285, 288 (D.N.M. 2002) (certifying settlement class); Fed.R.Civ.P. 23(a). Here the proposed Class clearly satisfies all of the Rule 23(a) requirements.

a. The Class Is So Numerous That Joinder Is Impracticable

The Settlement Class in this case is estimated to include approximately 1,200 individuals. (See Exhibit B, Merin Affidavit.) Joinder of so many individual members would be impracticable, and accordingly, this Court should find that the numerosity requirement of Rule 23(a) is satisfied in this case. See 1 H. Newberg & A. Conte, *Newberg on Class Actions* § 3.5, at 246 (4th ed. 2002) (in most cases where class size numbers in the hundreds, numerosity is not an issue).

b. There Are Questions Of Law And Fact Common To The Class

The commonality requirement is met if putative class members' grievances share a common question of law or fact. *Lopez,* 206 F.R.D. at 288. "Commonality requires only a single issue common to the class, and the fact that the claims of individual class members may differ factually should not preclude certification under Rule 23(b)(2) of a claim seeking the application of a common policy." *Id*. at 289 (internal quotations marks & citations omitted); *see also Adamson v. Bowen,* 855 F.2d 668, 676 (10th Cir. 1988).

The claims on behalf of the Class before the Court share numerous common questions of fact and law. Most importantly, the case is dominated by the factual and legal questions of whether the Defendants' policies and procedures with respect to strip searches of pre-arraignment detainees violated the rights of the SCMs. Resolving these questions would depend in large part upon evidence that would apply to the Settlement Class as a whole. Thus, the Rule 23(a)(2) commonality requirement is satisfied.

c. Plaintiffs' Claims Are Typical Of The Settlement Class And There Are No Conflicts

The proposed Class Representative presents claims that are typical of those of the Settlement Class. "A . . . plaintiff's claim is typical if it arises from the same event or practice or course of conduct that gives rise to the claims of other class members and if his or her claims are based on the same legal theory." *Lopez*, 206 F.R.D. at 289 (internal quotation marks & citations omitted); *see also In re American Medical Systems, Inc.*, 75 F.3d 1069, 1082 (6th Cir. 1996) *(citing Newberg on Class Actions* § 3.13, at 3-76 (3d. ed 1992).

In this case, the proposed Class Representative claims that she was strip searched in violation of her rights. (Amended Complaint ¶ 18.) These claims are also brought on behalf of the Settlement Class. (Amended Complaint ¶¶ 24-26.) The Amended Complaint alleges that named Plaintiff Sharon Allison's claims arise out of the same events, practices and course of conduct that give rise to the alleged class-wide injury at issue. (Amended Complaint at ¶¶ 28-30.) As such, it is manifest that the typicality requirement is met.

d. The Class Representative Has Fairly And Adequately Protected The Interests Of The Settlement Class

The purpose of the adequacy of representation requirement is to "protect the legal rights of absent class members." *Lopez*, 206 F.R.D. at 289 (internal quotation marks & citations omitted); *see also Kirkpatrick v. J.C. Bradford & Co.,* 827 F.2d 718, 721 (11th Cir. 1987). "In order to adequately represent the class, two requirements must be met: (1) the class representative must not have interests antagonistic to those of the class, and (2) the attorneys representing the class must be qualified, experienced, and generally able to conduct the proposed litigation." *Lopez*, 206 F.R.D. at 289-9; *see also Retired Chicago Police Ass'n v. City of Chicago*, 7 F.3d 584, 598 (7th Cir. 1993); *Cross v. Nat'l Trust Life Ins. Co.,* 553 F.2d 1026, 1031 (6th Cir. 1977).

The first requirement, an absence of any conflict between the Class Representative and the Settlement Class, is satisfied because both the Class Representative and the SCMs allege they have been harmed by the Defendants' allegedly unlawful practices. Because the Class Representative and the SCMs have allegedly suffered harm as a result of the Defendants' practices, there are no antagonistic or conflicting interests that would prevent the Class Representatives from safeguarding the rights of absent SCMs.

The second requirement is also met. Counsel for the Plaintiffs are qualified and experienced in class action and civil rights litigation. (Exhibits B, C & D, Merin, Schwartz & Rothstein Affidavits.) Class Counsel have diligently pursued this case on behalf of the Named Plaintiff and absent SCMs and are continuing to do so. Thus, the adequacy requirement is met.

3. The Proposed Settlement Class Satisfied The Rule 23(B) Requirements

Once the Court finds that the prerequisites of Rule 23(a) are satisfied, the Court must determine whether or not the action is maintainable as a class action under one or more provisions of Rule 23(b). *See, e.g., Senter v. Gen. Motors Corp.,* 532 F.2d 511, 525 (6th Cir. 1976).) Class certification under Rule 23(b)(3) is appropriate when "questions of law or fact common to the members of the class predominate" and "a class action is superior to other available methods" of adjudicating the controversy. Fed.R.Civ.P. 23(b)(3); *Wilfong v. Rent A Center, Inc.,* 2001 WL 1795093 (S.D. Ill. 2001) at *7-8. Here, Plaintiff's claim is properly certified under Rule 23(b)(3) because Plaintiff satisfies both the "predominance" and the "superiority" requirements. To satisfy the predominance requirements. Plaintiff must show that one or more common issues predominate over individual issues and that one trial of common issues is superior to conducting literally hundreds or thousands of separate trials. Fed.R.Civ.P. 23(b)(3). The primary purpose of Rule 23(b)(3) is to promote efficiency and to take advantage of the economy that results from jointly adjudicating a large number of claims that share one or more common questions. Fed.R.Civ.P. 23 Advisory Committee Notes, 1966 Amendments; *see* *also Sterling v. Velsicol Chemical Corp.*, 855 F.2d 1188, 1196 (6th Cir. 1988) (goal of Rule 23(b)(3) is "to achieve the economies of time, effort, and expense").

"Common issues predominate within the meaning of Rule 23(b)(3) when they constitute a significant part of the litigation." *Wilfong,* 2001 WL 1795093 at *8; *see also Jenkins v. Raymark Industries, Inc.,* 782 F.2d 468, 472 (5th Cir. 1986). The predominance requirement addresses efficiency by making certain that class wide issues outweigh individual issues. *See Sterling,* 855 F.2d at 1197. The claims in the present case are based on what Plaintiff alleges to be a single course of conduct: the Defendants' policy of strip searching all pre-arraignment detainees without individualized reasonable suspicion. Thus, Plaintiffs face a common set of factual and legal issues and a common cause of injury that predominates over individual questions.

Moreover, since all SCMs have the right to opt out of the settlement, there is nothing that prevents any Plaintiff from continuing to prosecute his or her claim for monetary relief individually. *See, e.g., In re Inter-Op Hip Prosthesis Liab. Litig.*, 204 F.R.D. 330, 347 (N.D. Ohio 2001); Fed.R.Civ.P. 23(b)(3)(A). Further, the relief provided in the Stipulation of Settlement would not be available in the absence of the class treatment. *See Hip Prosthesis*, 204 F.R.D. at 347-48.

C. The Court Should Approve The Proposed Settlement Notices And Authorize Their Dissemination

"[I]n any proceeding [that] is to be accorded finality," due process requires that interested parties be provided with "notice reasonably calculated, under . . . the circumstances, to apprise

[them] of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Cent. Hanover Bank & Trust Co.,* 339 U.S. 306, 314 (1950). The notice must be reasonably calculated to reach interested parties and where the names and addresses of the interested parties are known, due process requires mailed notices. *Id*. at 318-19; *Dejulius v. Sprint Corp*., 429 F.3d 935 (10th Cir. 2005).

The contents of class notice must "fairly apprise the . . . members of the class of the terms of the proposed settlement and of the options that are open to them in connection with [the] proceedings." *Maywalt v. Parker & Parsley Petroleum Co.,* 67 F.3d 1072, 1079 (2d Cir. 1995) (quoting *Weinberger v. Kendrick*, 698 F.2d 61, 70 (2d Cir. 1982)). Class notice is sufficient if it "may be understood by the average . . . class member." *In re Nissan Motor Corp. Antitrust Litig.,* 552 F.2d 1088, 1104 (5th Cir. 1997); *see also Churchill Village LLC v. Gen. Elec.,* 361 F.3d 566, 575 (9th Cir. 2004) ("notice is satisfactory if it generally describes the terms of the settlement in sufficient detail to alert those with adverse viewpoints to investigate and to come forward and be heard.") (internal quotation marks & citation omitted).

Here, the proposed notices (Exhibits 3 and 4 to the Stipulation of Settlement attached hereto as Exhibit A) and their method of dissemination provided in paragraphs 6, 49, 50 and 51 of the Stipulation of Settlement meet these requirements. The proposed notices clearly and concisely inform SCMs of all the relevant aspects of the litigation: (a) the Class definition and statement of claims; (b) the litigation history; (c) the terms of the Stipulation of Settlement; (d) the binding effect of any judgment approving the Settlement on those who do not opt out; (e) the right to object to the Settlement and the procedure for doing so; (g) whom to contact to obtain additional information regarding the Settlement or the litigation; (h) the amount of compensation requested for the Class Representative to compensate her for her services to the Class; and (i) the amount requested for reasonable attorneys' fees and costs. Thus, the notices provide all the information necessary for SCMs to make an informed decision with respect to whether to remain in or opt out of the Settlement Class or whether to object to the proposed Settlement. Further, delivery by first class mail to the SCMs' last known addresses is designed to reach the members in the most expeditious and economical way. In addition, summary notice of the Settlement will be published in local newspapers and will be broadcast on three radio stations in order to notify SCMs who are not notified of the Settlement through other means.

D. The Court Should Schedule A Fairness Hearing And Approve The Proposed Schedule For The Mailing Of Settlement Notices, The Return Of Opt Outs, And The Filing Of Objections

The Parties propose the following sequence of events and deadlines, assuming the Court grants this Motion for Preliminary Approval:

Publications and Mailing of Notice Package to Class:	Within thirty (30) days after preliminary approval of the Stipulation of Settlement
Opt Out Deadline:	120 days after preliminary approval of the Stipulation of Settlement
Objections to Settlement:	120 days after preliminary approval of the Stipulation of Settlement
Claims Deadline:	120 days after preliminary approval of the Stipulation of Settlement
Fairness Hearing:	At least 150 days after preliminary approval of the Stipulation of Settlement

IV. CONCLUSION

For the foregoing reasons, the Parties respectfully request that the Court issue its Order, substantially in the form attached hereto as Exhibit E.

(1) Preliminarily approving the Stipulation of Settlement;

(2) Conditionally certifying the proposed Settlement Class;

(3) Appointing Named Plaintiff as Class Representative;

(4) Appointing counsel for Named Plaintiff herein as Class Counsel;

(5) Approving the form and manner of Notice to be sent to SCMs and Summary Notice to be published in various media in accordance with the Stipulation of Settlement;

(6) Approving the Claim Form and setting deadlines with respect to, claims, opt outs, and objections; and

(7) Setting a date for a formal fairness hearing.

DATED: October 25, 2006 Respectfully submitted,

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DATED: October 25, 2006 Respectfully submitted,

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