

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

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NICHOLE MARIE McDANIEL and
LESSIE LEE DAVIES, both individually and
on behalf of a class of others similarly situated,

04 Civ. 0757 (GLS)(RFT)

Plaintiffs,

-against-

COUNTY OF SCHENECTADY, et. al.,

NOTICE OF MOTION FOR
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT

Defendants.

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PLEASE TAKE NOTICE, that upon the affirmation of Jason Rozger, Esq., and the attachments thereto, the Plaintiff's Memorandum of Law, the parties' Settlement Agreement, and all prior papers and proceedings in this action, the Plaintiffs will move this Court at a Motion Term to be held at the James T. Foley United States Courthouse, 445 Broadway, Albany, NY, on September 21, 2006 at 9:00 AM, or as soon thereafter as counsel may be heard, for an order:

1. Provisionally certifying this case as a class action, pursuant to Fed. R. Civ. Proc. 23;
2. Approving the settlement of this action as a class action;
3. Approving the class notice plan, deadlines, and other relief as set forth in the accompanying Proposed Preliminary Approval Order;
4. Setting a date for the Final Approval Hearing; and
5. For such additional relief as the Court finds just and proper.

Responsive papers, if any, should be filed within seventeen days prior to the return date.

Dated : August 18, 2006

Respectfully submitted by:

BERANBAUM MENKEN BEN-ASHER & BIERMAN LLP

_____/s/_____

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ATTORNEYS FOR PLAINTIFFS AND CERTIFIED
CLASS

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

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NICHOLE MARIE McDANIEL and
LESSIE LEE DAVIES,
both individually and on behalf of a class of others
similarly situated,

Plaintiffs,

-against-

Index No. 04-CV-0757(GLS)(RFT)

COUNTY OF SCHENECTADY,
HARRY BUFFARDI, both individually and in
His official capacity as Sheriff of the County of
Schenectady, GORDON POLLARD, both
Individually and as Undersheriff of the
County of Schenectady, and ROBERT
ELWELL, both individually and as Major
In the Schenectady County Sheriff's Department,

Defendants.

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SETTLEMENT AGREEMENT

Plaintiffs, by and through their counsel, and Defendants, by and through their counsel, hereby enter into this Settlement Agreement providing, subject to the approval of the Court, for settlement of the claims herein described against Defendants.

WHEREAS, Plaintiff Lessie Lee Davies filed the above-captioned class action lawsuit against Defendants the County of Schenectady, Harry Buffardi, Gordon Pollard, and Robert Elwell alleging that Defendants had violated Plaintiff's constitutional rights under color of state law by illegally strip searching them and others similarly situated upon entry into the Schenectady County Jail.

WHEREAS, Plaintiffs further allege that, in violation of law and pursuant to the policy of Schenectady County, all persons such as Plaintiff and the members of the class she purports to represent, who enter the Schenectady County Jail charged with misdemeanors, violations of probation or parole, other violations or minor crimes, or held on civil matters, are strip searched even absent any particularized suspicion that they possess weapons or other contraband.

WHEREAS, Defendants have vigorously denied and continue to deny Plaintiff's claims, and Defendants deny any wrongdoing or liability of any kind to Plaintiff or to any members of the Settlement Class.

WHEREAS, the Parties to this Settlement Agreement have conducted and are continuing to conduct a thorough examination and investigation of the facts and law relating to the matters in this litigation.

WHEREAS, the Defendants have concluded that settlement is desirable in order to avoid the time, expense, and inherent uncertainties of defending protracted litigation and to resolve finally and completely all pending and potential claims of the Plaintiff and all Settlement Class Members relating to alleged conduct involved in this Litigation.

WHEREAS, Plaintiff and Class Counsel recognize the costs and risks of prosecution of this litigation, and believe that it is in their interest, and the interest of all Settlement Class Members, to resolve this litigation, and any and all claims against Defendants, as well as all employees of the County of Schenectady who may have devised, promulgated or enforced the policy or participated in the conduct that is the subject of this Settlement Agreement.

WHEREAS, substantial, adversarial settlement negotiations have taken place between the Parties, including a mediation conducted by the Honorable Randolph F. Treece, United States Magistrate Judge of the United States District Court for the Northern District of New York, and,

as a result, this Settlement Agreement has been reached, subject to the Court approval process set forth herein.

WHEREAS, the Plaintiff and Class Counsel believes that this Settlement Agreement offers significant benefits to Settlement Class Members and is fair, reasonable, adequate and in the best interest of Settlement Class Members.

WHEREAS, this Settlement Agreement is made and entered into by and among Defendants and Plaintiff Lessie Lee Davies, individually and on behalf of a national class of similarly situated persons defined as:

All persons who were placed into the custody of the Schenectady County Jail during the period June 29, 2001, through and including June 29, 2005, after being charged with misdemeanors, violations, traffic violations, violations of probation or parole, or held on civil matters, and were strip searched upon their entry into the Jail. Specifically excluded from the class are Defendants and any and all of their respective affiliates, legal representatives, heirs, successors, employees or assignees.

NOW, THEREFORE, it is hereby stipulated and agreed, by and between the undersigned as follows:

I. DEFINITIONS

As used in this Settlement Agreement, the following terms shall have the meaning set forth below. Where appropriate, terms used in the singular shall be deemed to include the plural and vice versa.

A. Claim Form. "Claim Form" shall mean a form in substantially the same form as that attached hereto as Exhibit A.

B. Claims Period. "Claims Period" shall mean the time period during which claims may be made by Settlement Class Members, extending from the Notice Date until the date 120

days thereafter, including weekends and holidays, provided that if the last day of the Claims Period falls on a weekend or Federal holiday, then the end of the Claims Period shall be the next following day that is not a weekend or Federal holiday.

C. Class Counsel. “Class Counsel” shall mean: The Law Offices of Elmer Robert Keach, III, Esquire; Beranbaum, Menken Ben-Asher & Bierman, LLP; Cuneo, Gilbert & LaDuca and The Mason Law Firm, PC.

D. Class Notice. “Class Notice” shall mean the Court-approved form of notice in substantially the same form as Exhibit B.

E. Class Settlement. “Class Settlement” shall mean the terms provided in this Settlement Agreement.

F. Court. “Court” shall mean the United States District Court for the Northern District of New York, The Honorable Gary L. Sharpe presiding, or his duly appointed or designated successor.

G. Defendants. “Defendants” shall mean the County of Schenectady, Harry Buffardi, Gordon Pollard, and Robert Elwell, and shall include all employees of the County of Schenectady who may have devised, promulgated or enforced the policy or participated in the conduct that is the subject of this Settlement Agreement.

H. Defendants’ Counsel. “Defendants’ Counsel” shall mean Goldberg Segalla LLP.

I. Distribution Amount. “Distribution Amount” shall mean the amount available from the Settlement Fund after payment of the costs of notice and administration of the Settlement, attorneys’ fees and expenses and incentive awards to class representatives.

J. Effective Date. “Effective Date” shall mean thirty days from the date on which the settlement has been finally approved by the Court.

K. Final Approval Hearing. “Final Approval Hearing” shall mean the hearing at which the Court will consider and finally decide whether to enter the Final Judgment.

L. Final Judgment. “Final Judgment” shall mean that Court order that finally certifies the Settlement Class, approves this Settlement Agreement, approves payment of attorneys’ fees and expenses, and makes such other final rulings as are contemplated by this Settlement Agreement, in substantially the same form as Exhibit C.

M. Litigation. “Litigation” shall mean the above-captioned lawsuit pending in the United States District Court for the Northern District of New York as No. 04-CV-0757.

N. Mediator. The “Mediator” shall mean The Honorable Randolph F. Treece, United States Magistrate Judge of the United States District Court for the Northern District of New York.

O. Notice Program. “Notice Program” shall mean the program for disseminating the Class Notice to Settlement Class Members, including public dissemination of the Summary Notice, in accordance with the terms herein.

P. Notice Date. “Notice Date” shall mean the date upon which Class Notice is mailed to known Class Members in accordance with the terms herein.

Q. Objection Date. “Objection Date” shall mean the date agreed upon by the Parties or otherwise ordered by the Court, by which Settlement Class Members must submit any objection to the Settlement Agreement's terms or provisions and submit any required statements, proof, or other materials and/or argument.

R. Opt-Out Deadline. “Opt-Out Deadline” shall mean the date agreed upon by the Plaintiffs and Defendants or otherwise ordered by the Court, by which any Settlement Class Members who do not wish to be included in the Settlement Class and participate in the

Settlement must complete the acts necessary to properly effect such election to opt out.

S. Opt-Out List. “Opt-Out List” shall mean a written list prepared by the Settlement Administrator of the names of all Settlement Class Members who submit timely Requests for Exclusion or Opt-Out Notices.

T. Opt-Out Notice. “Opt-Out Notice” or “Opt-Out” shall mean a Request for Exclusion.

U. Parties. “Parties” shall mean the Plaintiff and Defendants.

V. Plaintiff. “Plaintiff” shall mean Lessie Lee Davies.

W. Preliminary Approval Order. “Preliminary Approval Order” shall mean the order of the Court preliminarily approving this Settlement Agreement and conditionally certifying a provisional Settlement Class, in substantially the same form as Exhibit D.

X. Putative Settlement Class Members. “Putative Settlement Class Members” shall mean all persons who are within the scope of the definition of the Settlement Class.

Y. Release. “Release” shall mean the release described in Section VII herein.

Z. Released Claims. “Released Claims” shall mean and include any and all claims or causes of action by or on behalf of any and all Settlement Class Members (and their predecessors, successors, heirs, administrators, executors, agents, trustees, representatives, and assigns) that are released by the Release described in Section VII herein.

AA. Released Parties. “Released Parties” shall mean all persons or entities against whom Released Claims will be released pursuant to the Release described in Section VII herein.

BB. Request for Exclusion. “Request for Exclusion” shall mean any request by any Putative Settlement Class Member for exclusion from the Settlement Class in compliance with Section IV herein.

CC. Settlement. “Settlement” shall mean the agreement by the Plaintiff and Defendants to resolve the Litigation, the terms of which have been memorialized in this Settlement Agreement.

DD. Settlement Administrator. “Settlement Administrator” shall mean the qualified party selected by the Plaintiff and Defendants and designated and approved by the Court in the Preliminary Approval Order to administer the Settlement, including implementing the Notice Program. Neither Plaintiff nor any other of the Defendants shall have any responsibility for any acts or omissions of the Settlement Administrator.

EE. Settlement Agreement. “Settlement Agreement” shall mean this Settlement Agreement, including any amendment hereto pursuant to Section X.D hereof, and all the exhibits attached hereto.

FF. Settlement Class. “Settlement Class” shall mean:

All persons who were placed into the custody of the Schenectady County Jail during the period June 29, 2001, through and including June 29, 2005, after being charged with misdemeanors, violations, traffic violations, violations of probation or parole, or held on civil matters, and were strip searched upon their entry into the Jail. Specifically excluded from the class are Defendants and any and all of their respective affiliates, legal representatives, heirs, successors, employees or assignees.

GG. Settlement Class Members. “Settlement Class Members” shall mean all persons in the Settlement Class who do not exclude themselves pursuant to Section IV herein.

HH. Settlement Fund. “Settlement Fund” shall mean a fund, governed by terms to be agreed to between Class Counsel and Defendants’ Counsel which shall be placed in an escrow account and utilized to administer the monetary requirements of the Settlement. The Settlement Fund will be established by Class Counsel and entitled the “Schenectady County Jail Class

Action Settlement Fund” and treated as trust fund monies under relevant New York ethical standards.

II. Settlement Amount. “Settlement Amount” shall mean the amount of Two Million Five Hundred Thousand Dollars (\$2,500,000.00) to be paid by the Defendants.

JJ. Settlement Website: Class Counsel will establish a website to provide information to settlement class members with a world wide web address of www.scjsettlement.com.

KK. 2006 Strip Search Policy. “2006 Strip Search Policy” shall mean the attached written policy, revised by the Defendants as part of this Agreement, to govern the conduct of all strip searches by Defendants, their agents, and employees upon a person’s entry into the Schenectady County Jail.

LL. Summary Notice. “Summary Notice” shall mean a notice in substantially the same form as that which appears at Exhibit E.

MM. Website Administrator: “Website Administrator” shall mean the qualified party selected by the Plaintiff and Defendants and designated and approved by the Court in the Preliminary Approval Order to administer the Settlement Website, including implementing the distribution notice and other settlement documentation via the internet. Neither Plaintiff nor any other of the Defendants shall have any responsibility for any acts or omissions of the Website Administrator. Pending approval of the Court, the parties agree to select I Partners, Amsterdam, New York, as the website administrator.

II. REQUIRED EVENTS

A. Promptly after execution of this Settlement Agreement by all Parties:

1. Class Counsel and Defendants' Counsel shall use their best efforts to cause the Court to enter the Preliminary Approval Order and the Final Judgment in substantially the forms attached hereto as Exhibits D and C, respectively.

2. The Parties to the Settlement Agreement shall jointly move for entry of a Preliminary Approval Order in substantially the same form as Exhibit D, which by its terms shall:

a. Preliminarily approve the terms of the Settlement Agreement, including the certification of the Settlement Class for purposes of this Settlement Agreement only, as within the range of fair, reasonable and adequate settlements for purposes of issuing notice;

b. Approve the contents of the Class Notice and methods in the Notice Plan;

c. Approve the Settlement Administrator; and

d. Schedule a Final Approval Hearing to review comments regarding the proposed Class Settlement and to consider the fairness, reasonableness, and adequacy of the proposed Class Settlement and the application for an award of attorneys' fees and reimbursement of expenses, and to consider whether the Court should issue a Final Judgment (in substantially the same form as Exhibit C) approving the Class Settlement, granting Class Counsel's application for fees and expenses, and dismissing the Litigation with prejudice.

3. Class Counsel and Defendants' Counsel will use their best efforts, consistent with the terms of this Settlement Agreement, to promptly obtain a Final Judgment.

4. In the event that the Court fails to issue the Preliminary Approval Order or fails to issue the Final Judgment, Class Counsel and Defendants' Counsel agree to use their best

efforts, consistent with this Settlement Agreement, to cure any defect identified by the Court; provided, however, that in no event shall any Defendant be required to agree to any such cure that would materially increase the cost or burden of the Settlement Agreement to such Defendant.

5. The Parties acknowledge that prompt approval, consummation, and implementation of the Settlement set forth in this Settlement Agreement are essential. The Parties shall cooperate with each other in good faith to carry out the purposes of and effectuate this Settlement Agreement, shall promptly perform their respective obligations hereunder, and shall promptly take any and all actions and execute and deliver any and all additional documents and all other materials and/or information reasonably necessary or appropriate to carry out the terms of this Settlement Agreement and the transactions contemplated hereby. Any disputes regarding the Parties' obligations under this paragraph shall be submitted for decision by the Mediator and his decision shall be binding on the Parties.

III. SETTLEMENT TERMS

A. Provision of Strip Search Policy and Corrections Officer Training

1. The Defendants have agreed to enact a new strip search policy, a copy of which is attached to this Agreement as Exhibit G.

2. The Schenectady County Correctional Facility Employee Manual will include a copy of the new Strip Search Policy.

3. A summary of the Strip Search Policy shall be posted conspicuously in the booking room and the training room and a copy of the full policy will be readily available to all corrections personnel.

4. Current and new corrections officers will be trained in the new Strip Search Policy and when strip searches may and may not be performed. The training of current officers will be completed within 90 days after preliminary approval. Defendants will present Class Counsel with copies of all training materials, and will further confirm in writing that all Schenectady County Corrections Officers have received the required training.

5. Defendants will take reasonable steps to ensure that all corrections officers abide by the new Strip Search Policy.

6. The Strip Search Policy shall provide, among other things, that all admission strip searches will be conducted only based on reasonable suspicion, in privacy, and only in the presence of corrections officers of the same sex of the detainee to the extent that gender is a bona fide occupational qualification for such searches.

B. Settlement Fund

1. Defendants will pay into the Settlement Fund the sum of \$2,500,000.

2. Not later than ten (10) business days after entry of the Preliminary Approval Order, Defendants will pay into the Settlement Fund the amount of \$ 50,000 (the "Initial Contribution") to be used by the Settlement and Website Administrators to cover the initial costs of Notice and administration of the Settlement. If, at any time, whether by order of any court or because of any Defendant exercising any option to withdraw, the Settlement does not become final, then any unspent money remaining from the Initial Contribution shall be returned to the Defendants with no obligation on the part of Class Counsel to repay any portion of the money actually spent.

3. Defendants' remaining monetary obligation of \$2,450,000 will be provided for deposit into the Settlement Fund within five business days of the Effective Date by either wire

transfer or cashier's check.

4. All administrative expenses, including the costs of settlement administration, website administration and the provision of notice to class members, will be deducted from the Settlement Amount prior to determining the "Distribution Amount," provided above.

C. Payments to Class Members

1. Each Class Member who submits a timely Claim Form will be entitled to receive their proportionate share of the Distribution Amount. This amount will be distributed to the Class based on the Plan of Distribution attached to this agreement as Exhibit F.

2. No Class Member shall be entitled to more than his or her individual share of the Distribution Amount regardless of the number of times he or she has been booked and/or strip searched at the Schenectady County Jail.

3. No portion of the Distribution Amount shall be disbursed before the Effective Date, except as set forth in Section III.D.1., below.

4. Both parties anticipate that late claims may be filed subsequent to the end of the claims period but before the final approval hearing. Late claims may be allowed, if submitted on or before the date of the Final Approval Hearing, under the sole discretion of class counsel for good cause shown. All late claims will be approved by the Court prior to being paid as part of the distribution of the settlement.

5. The County defendants agree not to issue any lien notices pursuant to New York Social Services Law Section 104-b to class counsel, the Settlement Administrator, or any liability insurance carrier insuring or indemnifying any defendant in this action. The County further agrees not to issue any lien notices pursuant to Social Services Law Section 104-b to any class member seeking recovery based upon the settlement in this action. The County expressly

reserves its right to assert a lien against any class member based upon any cause of action possessed by that class member except for claims made in this litigation. Except as otherwise required by law, Schenectady County also agrees not to distribute or disclose the identities of any individual who is a member of the settlement class or who makes a claim on the settlement fund, including disclosing these identities to other County or State Departments of Social Services. This provision does not preclude the enforcement of any liens held by third parties against class members where enforcement efforts are made independent of the Schenectady County Department of Social Services.

D. Attorneys Fees and Expenses

1. Class Counsel will petition the Court for an award of attorneys' fees and expenses in the amount not to exceed 26% of the Settlement Amount. Defendants shall not oppose Class Counsel's application for said award of fees and expenses, nor will they oppose any appeal filed by Class Counsel relative to their application for an award of attorneys' fees.

E. Additional Discovery

1. The parties acknowledge that one of the purposes of the settlement is to give notice to as many class members as possible. The defendants will provide booking records for all non-felony arrests for the relevant time period, redacting health information, to assist in the notification process. The plaintiffs are concerned that the booking record addresses may not be current and will seek leave of Court for an Order directing the Schenectady County Department of Social Services to provide last known addresses for all persons for whom the booking record addresses prove to be inaccurate. The plaintiffs agree that the Settlement Administrator shall pay the reasonable hourly rate for all County staff required to respond to such requests. The plaintiffs agree that should the Court grant their request for an Order, that any such Order will

require that the disclosure be limited to the Class Counsel and the Settlement Administrator solely for the purpose of effecting notice to the members of the settlement class and that all such records or information provided by the County will be returned to it, or destroyed with the consent of the County, within 60 days after the Court provides final approval or when the appeals are exhausted, whichever is later. The defendants believe that all information in possession of the County Department of Social Services is confidential and opposes its disclosure upon this ground. The County will, however, obey all Orders of the District Court.

F. Partial Distribution Pending Appeal

1. In the event that final approval of the settlement is appealed by either party or a third party objector, and if the payment of some portion of the settlement fund is not subject to dispute, that undisputed portion of the settlement fund shall be distributed in accordance with this agreement. If the distribution of some or all of the settlement proceeds are in dispute due to a pending appeal, the disputed amount will be placed in an insured interest bearing escrow account and shall not be distributed during the pendency of the appeal. In the event that final approval of the settlement is overturned on appeal, all funds, including interest, will be refunded to the Defendants with the exception of the Initial Contribution, detailed in § III(B)(2), and any additional notice and administration costs incurred above the Initial Contribution.

IV. NOTIFICATION TO CLASS MEMBERS

A. Responsibilities of the Settlement Administrator and Website Administrator

1. The Settlement Administrator shall implement and administer the Notice Program.
2. The Settlement Administrator shall be responsible for, without limitation: (i)

mailing the Class Notices; (ii) arranging for the publication of the Summary Notice; (iii) responding to requests for a copy of the Class Notice; (iv) distributing payments to class members; and otherwise administering the Notice Program. The Notice Program shall comply with all requirements of applicable law. The Settlement Administrator will maintain an appropriate insurance policy to protect against any violation of their fiduciary duty to the Court, Class Members, or Class Counsel. The Settlement Administrator will provide a copy of this insurance policy to counsel for the Defendants, who will hold it in confidence and return it to the Settlement Administrator upon the successful conclusion of the claims period.

B. Notice

1. Notice will be provided to the Class by direct mailing of Class Notice and a Claim Form to all individuals at their last known or readily ascertainable address and by publication in the Albany Times Union and the Schenectady Daily Gazette on at least one day per week for four consecutive weeks commencing on the Notice date.

2. The Settlement Administrator shall also provide a copy of the Class Notice and Claim Form to anyone who requests notice through written communication to the Settlement Administrator, or through a toll-free telephone number to be established by the Settlement Administrator. The Website Administrator will also provide downloadable copies of notices, claim forms, court decisions and other information to class members through a dedicated internet website, www.scjsettlement.com.

3. Defendants will cooperate in the Notice Program by providing Schenectady County Jail booking sheet(s) for each person believed to fall within the Class Definition, together with any other information (e.g. Social Security Numbers, Dates of Birth) that a third party administrator may need to facilitate proper notice. The Defendants will also provide addresses

for class members that are detailed in Schenectady County Probation Department and/or Department of Social Services records, if this is the last known address, assuming that such information is ordered disclosed by the Court if the booking record information proves to be inaccurate pursuant to Section III E-1. The Defendants will not be responsible to provide these records in an electronic format to the extent that they do not exist in an electronic format. Any expenses associated with converting paper records into an electronic format will be borne by the Plaintiffs as an administrative expense, and these expenses will be paid from the settlement fund.

5. If, after the initial mailing, the Notice is returned as undeliverable, the Claims Administrator will attempt to locate the Class Member by way of a national locator database or service and, if another address is found, remail the Notice to that new address.

6. The Settlement Administrator shall provide an affidavit to the Court, with a copy to Class Counsel and Defendants' Counsel, attesting to the measures undertaken to provide Notice of the Settlement to Settlement Class Members. The Website Administrator will also provide an affidavit attesting to activity on the settlement website, including number of visitors and number of documents downloaded.

7. The Settlement Administrator (and any person retained by the Settlement Administrator) shall sign a confidentiality agreement in a form agreed to by the Parties, which shall provide that the names, addresses and other information about specific Settlement Class Members and/or specific Settlement Class Members that is provided to it by Defendants, Class Counsel, or by individual Settlement Class Members or individual Settlement Class Members, shall all be treated as confidential and shall be used only by the Settlement Administrator as required by this Settlement Agreement.

8. Class Counsel will employ an interpreter on a *per diem* basis to assist class

members whose primary language is Spanish in filing claims under the settlement. The costs of this interpreter will be paid as an administrative cost.

IV. REQUESTS FOR EXCLUSION BY CLASS MEMBERS

A. The provisions of this paragraph shall apply to any Request for Exclusion. Any Settlement Class Member may make a Request for Exclusion by mailing or delivering such request in writing to the Settlement Administrator. Any Request for Exclusion must be postmarked or delivered not later than the Opt-Out Deadline. Any Request for Exclusion shall state the name, address and telephone number of the person requesting exclusion and contain a clear statement communicating that such person elects to be excluded from the Settlement Class, does not wish to be a Settlement Class Member and elects to be excluded from any judgment entered pursuant to this Settlement.

B. Any Putative Settlement Class Member who submits a timely Request for Exclusion or Opt-Out Notice may not file an objection to the Settlement and shall be deemed to have waived any rights or benefits under this Settlement Agreement.

C. Not later than three (3) business days after the deadline for submission of Requests for Exclusion, the Settlement Administrator shall provide an Opt-Out List to Class Counsel and to Defendants' Counsel together with copies of the Request for Exclusion. Class Counsel and Defendants' Counsel shall jointly report the names appearing on the Opt-Out List to the Court no less than three (3) business days prior to the Final Approval Hearing.

D. If Requests for Exclusion have been filed by more than ten (10) percent of the members of the settlement class, then the Defendants shall have the right to terminate this Agreement within five (5) business days after receipt of the opt-out list from the settlement

administrator. The Defendants will be required to notify the Court and Class Counsel in writing in the event they assert their right to terminate the settlement. Any monies expended by Class Counsel, the Settlement Administrator and/or the Website Administrator to provide Notice to Class Members and administer the settlement prior to the Defendants' decision to terminate this Agreement will be paid by the Defendants in the event they exceed the Initial Contribution, or, in the event they do not exceed the Initial Contribution, these costs will not be refunded to the Defendants from the Initial Contribution.

V. OBJECTIONS BY SETTLEMENT CLASS MEMBERS

A. Any Settlement Class Member who wishes to be heard orally at the Final Approval Hearing, or who wishes for any objection to be considered, must file a written notice of objection by the Objection Date. Such objection shall state the name, address and telephone number of the person and provide proof of membership in the Settlement Class, as well as a detailed statement of each objection asserted, including the grounds for objection and reasons for appearing and being heard, together with any documents such person wishes to be considered in support of the objection.

B. The agreed-upon procedures and requirements for filing objections in connection with the Final Approval Hearing are intended to ensure the efficient administration of justice and the orderly presentation of any Settlement Class Members' objections to the Settlement Agreement, in accordance with such Settlement Class Members' due process rights. The Preliminary Approval Order and Class Notice will require all Settlement Class Members who have any objections to file such notice of objection or request to be heard with the Clerk of the Court, and serve by mail or hand delivery such notice of objection or request to be heard,

including all papers or evidence in support thereof, upon Class Counsel and Defendants' Counsel, at the addresses set forth in the Class Notice, no later than the Objection Date. The Preliminary Approval Order will further provide that objectors who fail to properly or timely file their objections with the Clerk of the Court, along with the required information and documentation set forth above, or to serve them as provided above shall not be heard during the Final Approval Hearing, nor shall their objections be considered by the Court.

VII. RELEASE, DISMISSAL OF ACTION, AND JURISDICTION OF COURT

A. By this Settlement Agreement and the following Release, Defendants, and all of their respective affiliates, predecessors, successor and assigns, officers, agents, representatives, and employees are released from any and all claims or causes of action that were, could have been, or should have been asserted by the named Plaintiff or any member of the Settlement Class against the Released Persons, or any of them, based upon or related to the actions that are the subject of this Settlement Agreement.

B. This Settlement Agreement and Release does not affect the rights, if any, of Settlement Class Members who timely and properly exclude themselves from the Settlement.

C. The administration and consummation of the Settlement as embodied in this Settlement Agreement shall be under the authority of the Court. The Court shall retain jurisdiction to protect, preserve, and implement the Settlement Agreement, including, but not limited to, the Release. The Court expressly retains jurisdiction in order to enter such further orders as may be necessary or appropriate in administering and implementing the terms and provisions of the Settlement Agreement, including, but not limited to, orders enjoining Settlement Class Members from prosecuting claims that are released pursuant to the Settlement

Agreement.

D. Upon the Effective Date and the conclusion of any appeals: (i) the Settlement Agreement shall be the exclusive remedy for any and all Released Claims of Settlement Class Members; (ii) the Released Parties shall not be subject to liability or expense of any kind to any Settlement Class Members or their successors, predecessors or assigns except as set forth herein; and (iii) Settlement Class Members and their successors, predecessors and assigns shall be permanently barred from initiating, asserting, or prosecuting any and all Released Claims against any Released Party in any federal or state court in the United States or any other tribunal.

E. Tolling of Statute of Limitations. Defendants agree that, with respect to any claims asserted in the Litigation that are subsequently asserted by any member of the Settlement Class who has properly opted out of the Settlement, that the calculation of any statute of limitations, repose or laches defense in relation to such action shall not include the period from June 29, 2004 through and including the date of the Opt-Out Deadline. Further, in the event that the Court does not approve this Settlement Agreement, or the Court's approval of this Settlement Agreement is terminated pursuant to the provisions of this Settlement Agreement, Defendants agree that, with respect to any claims asserted in the Litigation that are subsequently asserted or maintained in any existing or subsequently filed class action lawsuit, by any member of the Settlement Class, Defendants shall not assert any statute of limitations, repose or laches defense that is premised upon the time period of June 29, 2004 through and including the date of the last of the following events to occur: the entry of the Court's order disapproving this Settlement Agreement, the appellate court's decision reversing the Court's order approving this Settlement Agreement, or the termination of this Settlement Agreement.

VII. INCENTIVE AWARDS TO CLASS REPRESENTATIVE

A. Given the efforts of one named Plaintiff and a proposed intervenor on behalf of the Settlement Class, Defendants will not oppose total awards by the Court to the Plaintiffs and Class Representatives as follows:

1. Subject to the Court's approval, Plaintiff and Class Representative Lessie Lee Davies will be awarded \$12,000 from the Settlement Amount, such amount to be paid before distributions to the general Class. It is agreed between the parties that Ms. Davies provided substantial assistance to Class Counsel in their prosecution of this action, and that Ms. Davies, as lead plaintiff in this action, was subject to considerable public scrutiny as a result of the filing of his action.

2. Subject to the Court's approval, Proposed Intervenor and Proposed Class Representative William Smith will be awarded \$1,500.00 from the settlement fund, such amount to be paid before distributions to the general Class, in addition to Mr. Smith's receipt of his proportionate share of the distribution amount. It is agreed between the parties that Mr. Smith provided assistance to class counsel by agreeing to intervene in this action and serve as a class representative.

3. Former Class Representative Nichole McDaniel will receive no incentive payment, but is eligible to make a claim on the settlement and receive a proportionate settlement payment.

IX. REPRESENTATIONS, WARRANTIES AND COVENANTS

A. Class Counsel, who are signatories hereof, represent and warrant that they have the authority, on behalf of Plaintiffs, to execute, deliver, and perform this Settlement Agreement and to consummate all of the transactions contemplated hereby. This Settlement Agreement has been duly and validly executed and delivered by Class Counsel and Plaintiffs and constitutes their legal valid and binding obligation.

B. Defendants, through their undersigned attorneys, represent and warrant that they have the authority to execute, deliver, and perform this Settlement Agreement and to consummate the transactions contemplated hereby. The execution, delivery and performance by Defendants of this Settlement Agreement and the consummation by them of the actions contemplated hereby have been duly authorized by all necessary corporate action on the part of Defendants. This Settlement Agreement has been duly and validly executed and delivered by Defendants and constitutes their legal, valid, and binding obligation.

X. MISCELLANEOUS PROVISIONS

A. This Settlement Agreement, and the exhibits and related documents hereto, are not, and shall not at any time be construed or deemed to be, or to evidence, any admission against or concession by Defendants with respect to any wrongdoing, fault, or omission of any kind whatsoever, regardless of whether or not this Settlement Agreement results in entry of a Final Judgment as contemplated herein. Any payment of moneys, or any other action taken, by any of the Defendants pursuant to any provision of this Settlement Agreement, shall not at any time be construed or deemed to be, or to evidence, any admission against or concession by

Defendants with respect to any wrongdoing, fault, or omission of any kind whatsoever, regardless of whether or not this Settlement Agreement results in entry of a Final Judgment as contemplated herein. Defendants and each of them deny any liability to Plaintiffs and to all Members of the Settlement Class. This provision shall survive the expiration or voiding of the Settlement Agreement.

B. This Settlement Agreement is entered into only for purposes of Settlement. In the event that the Effective Date does not occur for any reason or the Final Judgment is not entered, then this Settlement Agreement, including any releases or dismissals hereunder, is canceled. In the event this Settlement Agreement is cancelled or deemed cancelled, no term or condition of this Settlement Agreement, or any draft thereof, or of the discussion, negotiation, documentation or other part or aspect of the Parties' settlement discussions shall have any effect, nor shall any such matter be admissible in evidence for any purpose, or used for any purposes whatsoever in the Litigation or in any other litigation, and all Parties shall be restored to their prior rights positions as if the mediation had never occurred and the Settlement Agreement had not been entered into.

C. The headings of the sections and paragraphs of this Settlement Agreement are included for convenience only and shall not be deemed to constitute part of this Settlement Agreement or to affect its construction.

D. This Settlement Agreement, including all exhibits attached hereto, may not be modified or amended except in writing signed by all of the Parties.

E. This Settlement Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

F. This Settlement Agreement shall be governed by and construed in accordance with the substantive laws of the State of New York, without giving effect to any choice or conflict of law provision, or rule that would cause the application of the laws of any other jurisdiction.

G. Except as otherwise provided in this Settlement Agreement, each party to this Settlement Agreement shall bear his or its own costs of the Litigation.

H. If any clause, provision or paragraph of this Settlement Agreement shall, for any reason, be held illegal, invalid, or unenforceable, such illegality, invalidity, or unenforceability shall not affect any other clause, provision or paragraph of this Settlement Agreement, and this Settlement Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable clause, paragraph, or other provisions had not been contained herein.

I. The Parties to this Settlement Agreement reserve the right, by agreement and subject to the Court's approval, to grant any reasonable extensions of time that might be necessary to carry out any of the provisions of this Settlement Agreement.

J. All applications for Court approval or Court orders required under this Settlement Agreement shall be made on notice to Plaintiffs and Defendants.

K. The determination of the terms of, and the drafting of, this Settlement Agreement, including its exhibits, has been by mutual agreement after negotiation, with consideration by and participation of all Parties and their counsel. Since this Settlement Agreement was drafted with the participation of all Parties and their counsel, the presumption that ambiguities shall be construed against the drafter does not apply. Each of the Parties was represented by competent and effective counsel throughout the course of settlement negotiations and in the drafting and execution of this Settlement Agreement, and there was no disparity in bargaining power among

the Parties to this Settlement Agreement. In entering into this Settlement Agreement, none of the Parties relied on advice received from any other Party or any other Party's counsel.

L. Integrated Agreement

1. All of the exhibits to this Settlement Agreement are material and integral parts hereof, and are fully incorporated herein by reference.

2. This Settlement Agreement and the exhibits thereto constitute the entire, fully integrated agreement among the Parties and cancel and supersede all prior written and unwritten agreements and understandings pertaining to the settlement of the Litigation.

M. Notice:

1. Any notice, request or instruction or other document to be given by any party to this Settlement Agreement to any other party to this Settlement Agreement (other than class notification) shall be in writing and delivered personally or sent by registered or certified mail, postage prepaid:

If to Defendants to: William J. Greagan, Esq., Goldberg Segalla LLP, 8 Southwoods Boulevard, Albany, NY 12211.

If to Class Counsel or Plaintiffs to: Elmer Robert Keach, III, Esquire, Law Offices of Elmer Robert Keach, III, PC, 1040 Riverfront Center, P.O. Box 70, Amsterdam, NY 12010.

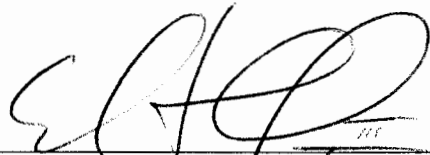
N. Dispute Resolution

The Parties agree that any disputes regarding the terms and conditions of this Agreement, the Parties' rights and obligations under this Settlement Agreement, and/or the manner in which any issue or dispute arising under this Settlement Agreement shall be submitted to the Mediator,

who shall attempt to mediate such dispute, and if such dispute cannot be resolved via mediation, shall decide such dispute. The Mediator's decision shall be final and binding. If for any reason the Mediator becomes unable to serve, the Parties shall attempt to agree on a substitute mediator. If they are unable to do so, any issue or dispute covered by this Section shall be resolved by the Court.

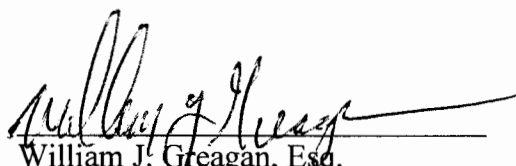
IN WITNESS WHEREOF, Plaintiffs and Defendants and their respective counsel have executed this Settlement Agreement as of the date(s) indicated on the lines below.

Dated: July 31, 2006



Elmer R. Keach, III, Esquire
LAW OFFICES OF ELMER
ROBERT KEACH, III, PC
1040 Riverfront Center
P.O. Box 70
Amsterdam, NY 12010
(518) 434-1718

**ATTORNEY FOR PLAINTIFFS
AND THE SETTLEMENT CLASS**



William J. Greagan, Esq.
GOLDBERG SEGALLA LLP
Southwoods Boulevard
Albany, NY 12211
(518) 463-5400

**ATTORNEY FOR
DEFENDANTS**

Exhibit A

CLAIM FORM AND RELEASE

PLEASE READ THESE INSTRUCTIONS AND CLAIM FORM CAREFULLY

You must fill out and send in the attached Claim Form, postmarked by *[INSERT DATE]* to share in the settlement fund and receive money under the settlement.

I. GENERAL INSTRUCTIONS

A. To get money from the Settlement Fund in this litigation (*McDaniel v. County of Schenectady*), members of the Settlement Class must fill out the Claim Form and Release. The Form is attached at the end of these instructions. The completed and signed Claim Form and Release ***must be postmarked by [insert date]. If you fail to send it in on time, it will be rejected and you will not get any money.*** You must submit it in the enclosed envelope or another properly addressed, postage prepaid envelope to the following address:

Settlement Administrator
[insert address + 800 number]

B. If you have any questions about how the Settlement Fund will be divided up, you should write or call the Settlement Administrator. Their address and phone number is above.

C. All Settlement Class Members who do not exclude themselves are bound by the terms of the judgment. This is true whether you send in a form or not.

D. If you have asked to be excluded, **do not** submit a Proof of Claim and release Form.

II. DEFINITIONS

A. “Settlement Class” are all the people who satisfy ALL the following four conditions:

1. you entered the Schenectady County Jail;
2. you were charged with a misdemeanor, violation, traffic violation, violation of probation or parole, or held on a civil matter such as on a Family Court warrant;
3. you were strip searched at the jail upon entry; AND
4. you were strip searched during the period June 29, 2001 through June 29, 2005.

If you have questions about these requirements, you should review the Class Notice.

B. “Defendants” are to the County of Schenectady and certain employees of the Schenectady County Sheriff’s Department.

C. “Litigation” is the case of *McDaniel v. County of Schenectady*, Index No. 04-CV-0757(GLS)(RFT) in the United States District Court for the Northern District of New York.

III. CLAIM FORM INSTRUCTIONS

A. Please type or neatly print all the information that is asked for.

B. By signing below you are verifying that the information you have included is correct, and that you agree to provide additional information to Class Counsel or the Settlement Administrator to support your claim. They may ask you to do this in the future.

C. By signing below you are also verifying that you have not filed a claim or lawsuit about being strip searched at the jail, and that you did not ask anyone else to file one for you, and you don't know of anyone who might have filed one for you.

D. **Please read the instructions carefully.** Your claim will be checked and verified by the Settlement Administrator. You should keep copies of all documents that support your claim while this is going on.

E. If you want money from the Settlement Fund you must complete Part 1 of the Claim Form and the additional Parts of the Claim Form that apply to you.

F. A Claim Form and Release will be considered submitted to the Settlement Administrator if it is mailed in a first-class envelope that is postmarked by the due date. You may want to send in your claim form by Certified Mail, Return Receipt Requested. If you send the Claim Form and Release to the Settlement Administrator in some way other than first-class mail, the Claim Form and Release will be considered “submitted” when it is received by the Settlement Administrator.

G. The Settlement Administrator will not tell you when they get your form. If you want to make sure the Settlement Administrator gets your form, you should send it by Certified Mail, Return Receipt Requested. It will take some time to process all the forms and send the checks. This work will be done as fast as possible, but each claim must be checked for accuracy and recorded.

H. Please write or call Settlement Administrator if your address changes.

THE CLAIM FORM MUST BE FILLED OUT AND SIGNED IF YOU WANT TO GET MONEY FROM THE SETTLEMENT FUND. THE ENVELOPE MUST BE POSTMARKED NO LATER THAN [INSERT DATE] 2006, AND MUST BE MAILED TO:

SETTLEMENT ADMINISTRATOR [INSERT ADDRESS]

IV. CLAIM FORM

McDANIEL v. COUNTY OF SCHENECTADY

PART 1: CLAIMANT IDENTIFICATION

Claimant's Name:

Mailing Address:

City: _____, State/Country: _____ Zip Code: _____

Date of Birth: _____

Date of Arrest if known, (Please say so if the date you give is an estimate):

____ Actual

____ Estimate

Criminal charges or other reason for arrest, if known (i.e. violation of probation, Family Court warrant):

(If you do not know what the charges against you were, but believe you are still a Class Member, you should file a claim. We will get your arrest record from the County. You may still be asked to provide more information about your case.)

Social Security Number:

(If you fail to include this information, your claim may not be paid)

Telephones: () _____ (day) () _____ (evening)
() _____ (cell)

Person to contact (next of kin, family member, attorney, etc.) if there are questions regarding this claim (make sure to include telephone number):

SUBMISSION TO JURISDICTION OF THE COURT

By signing below, I agree that the United States District Court for the Northern District of New York has the power to rule on my claim as a Settlement Class Member, and that the Court has the power to enforce the Release described below.

RELEASE

By signing below, you acknowledge the release and discharge of the Defendants, and all of their respective parents, subsidiaries, affiliates, predecessors, successors and assigns, officers, agents, representatives, and employees, from any and all claims or causes of action that were, could have been, or should have been asserted by the named Plaintiffs or any member of the Settlement Class against the Released Persons, or any of them, based upon or related to strip searches in the Schenectady County Jail.

VERIFICATION

I declare under penalty of perjury under the laws of the United States that the foregoing information provided by the undersigned is true and correct. I also declare that I was strip searched when I was admitted into the Schenectady County Jail.

I filled out and signed this Proof of Claim and Release form on _____, 2006, in
_____.
(City, State, Country)

(Sign your name here)

(Type/Print your name here)

Exhibit B

Legal Notice
United States District Court for the Northern District of New York

NOTICE OF PROPOSED SETTLEMENT AND HEARING

If You Entered the Schenectady County Jail from June 29, 2001 to June 29, 2005 And Were Strip Searched Upon Arrival, Then Your Rights Could Be Affected By A Proposed Class Action Settlement.

The United States District Court for the Northern District of New York authorized this notice. It is not from a lawyer. You are not being sued.

- This is a proposed settlement of a class action lawsuit alleging that corrections officers employed at the Schenectady County Jail engaged in the practice of illegally strip searching all individuals charged with only misdemeanors or minor offenses upon their entry into the Schenectady County Jail from June 29, 2001 until June 29, 2005. The proposed settlement does not include individuals who were charged with felony offenses at the time of their admission to the Schenectady County Jail, or who were not strip searched when they entered the jail.
- One benefit of the settlement to class members is that each class member will be entitled to an equal share of a \$2.5 million settlement fund, after payment of administrative costs, incentive awards to the representative plaintiff, and attorneys' fees. The Defendants have also agreed to enact a new clothing exchange policy as part of the resolution of this litigation.
- Visit the Settlement website at www.scjsettlement.com for additional details about the settlement. You may also get additional information by calling 1-800 [insert phone #] or by writing to [insert address].
- Your legal rights are affected whether you act or don't act. Read this notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
Submit a Claim Form	You must submit a Claim Form to receive payment under the settlement. You must submit a Claim Form by [insert date] to get any money.
Exclude Yourself	If you exclude yourself from the settlement, you will not be bound by the Settlement or judgment and will not be entitled to a cash payment. You will be free to pursue your claims against the Defendants. This is the only option that allows you to bring or be part of any other lawsuit against the Defendants in this case about the same legal claims that are advanced in this case. You must exclude yourself from the Settlement by [Insert Date].

Object	If you do not exclude yourself, you may write to the Court about why you do not like the Settlement or the request for legal fees and costs. You must send a written objection to the Court postmarked no later than [Insert Date].
Go to a Hearing	You may ask to speak in Court about the fairness of the settlement or the request for fees and costs.
Do Nothing	You get <u>no</u> payment. You give up your right to sue Defendants on these claims later.

These rights and options - **and the deadlines to exercise them** - are explained in this notice.

The Court in charge of this case still must decide whether to give final approval to the Settlement. Likewise, payments to class members will be distributed only if the Court grants final approval of the Settlement and after any appeals are resolved.

I. WHY DID I GET THIS NOTICE PACKAGE?

You or someone in your family may have been admitted to the Schenectady County Jail on a misdemeanor, violation, traffic violation, violation of probation or parole, or on a family or civil court warrant from June 29, 2001 to June 29, 2005 and been subject to a strip search.

The Court sent you this notice because you have the right to know about a proposed settlement of a class action lawsuit, and about your options, before the Court decides whether to approve the settlement. If the Court approves it and after objections and appeals are resolved, an administrator appointed by the Court will make the monetary payments that the settlement allows. You will be informed of the progress of the settlement.

This package explains the lawsuit, the settlement, your legal rights, what benefits are available, who is eligible for them and how to get them.

The Court in charge of this case is the United States District Court for the Northern District of New York, United States District Judge Gary L. Sharpe presiding. The case is called *McDaniel v. County of Schenectady*, Index No. 04-CV-0757 (GLS)(RFT). The people who sued are called Plaintiffs, and the municipality and municipal officials they sued, the County of Schenectady, its correctional employees and elected officials, are called the Defendants.

II. WHAT IS THIS LAWSUIT ABOUT?

Plaintiffs claim in this lawsuit that the County of Schenectady illegally strip searched individuals admitted to the Schenectady County Jail who were charged with minor offenses, in violation of the unreasonable search provisions of the United States Constitution. Defendants deny that they did anything wrong, and contend that even if they did do anything wrong, Plaintiffs are not entitled to any money as a result of being searched.

III. WHY IS THIS A CLASS ACTION?

In a class action, one or more people, called Class Representatives (in this case Nicole McDaniel and Lessie Davies) sue on behalf of all people who have similar claims. All of these people are a Class or Class Members. One Court resolves the issues for all Class Members, except for those who exclude themselves from the Class. United States District Judge Gary L. Sharpe is in charge of this class action.

IV. WHY IS THERE A SETTLEMENT?

The Court did not decide in favor of Plaintiffs or Defendants. Instead, both sides agreed to a settlement. That way, they avoid the costs and risks of a trial, and the people affected will get compensation. The Class Representatives and their attorneys think the settlement is best for everyone who is alleged to have been illegally strip searched.

V. HOW DO I KNOW IF I AM PART OF THE SETTLEMENT?

Judge Sharpe decided that everyone who fits this description is a Class Member: All persons who admitted into the Schenectady County Jail during the period June 29, 2001, through and including June 29, 2005, after being charged with misdemeanors, violations, traffic violations, violations of probation or parole, or held on civil matters, and were strip searched upon their entry into the Jail. Specifically excluded from the class are Defendants and any and all of their respective affiliates, legal representatives, heirs, successors, employees or assignees.

The Settlement does not cover individuals charged with felony offenses at the time of their entry into the Schenectady County Jail, anyone who entered the Jail after being convicted of (as compared to only being charged with) a crime, or anyone who entered the jail but was not strip searched as part of the Schenectady County Jail's booking procedure.

VI. DO I NEED TO PROVE THAT I WAS STRIP-SEARCHED, AND WHAT DOES THAT MEAN?

No, you do not need to prove that you were subjected to such a search. In filling out the Claim Form, you will affirm, under penalty of perjury, that you were strip searched, and Defendants will accept this affirmation. Provided that your name is detailed in booking records maintained by Schenectady County, your affirmation will entitle you to payment. If your name is not contained in Schenectady County's records, you may be asked to provide additional documentation before being allowed to participate in the settlement.

A strip search occurred when you were ordered to take off some or all of your clothes by a Schenectady County employee, with that employee watching you undress. Some members of the Class may also have been forced to bend at the waist or manipulate body parts to allow for a visual inspection. If you were searched in this manner when you were booked into the facility, you are a member of the class and entitled to make a claim. You will need to provide an

affirmation on the Claim Form confirming that one of these searches was conducted on you when you entered the Schenectady County Jail

VII. I WAS STRIP SEARCHED AFTER RECEIVING A VISIT AND ALSO WHEN RETURNING FROM COURT WHEN I WAS IN THE SCHENECTADY COUNTY JAIL. DOES THIS MEAN I CAN ALSO MAKE A CLAIM?

No. Searches of this type are permissible. You can only make a claim if you were subjected to a strip search when you first entered the facility; meaning when your picture and fingerprints were taken and you received the jail uniform.

VIII. HOW DO I KNOW WHETHER THE CRIME FOR WHICH I WAS CHARGED UPON ADMISSION TO THE SCHENECTADY COUNTY JAIL QUALIFIES ME FOR INCLUSION IN THE CLASS?

New York law creates three distinct categories of offenses: Felonies, Misdemeanors and Violations. Felonies are the most serious crimes, and are usually punishable with incarceration in state prison. Felony offenses are usually handled by a County Court Judge, and require indictment by a grand jury. Murder, burglary and rape are examples of felony offenses. Anyone charged with a felony upon admission to the Schenectady County Jail, even if they were also charged with misdemeanors or violations at the same time, is not a member of the class unless they were, on another occasion, admitted to the Schenectady County Jail solely on misdemeanor or violation charges.

Misdemeanors are minor crimes and are, at most, subject to incarceration in a local jail. Misdemeanor offenses are handled by a City, Town or Village Court judge, and do not require indictment. Assault in the Third Degree, Petty Larceny and Unlawful Possession of Fireworks are prostitution are examples of misdemeanor offenses. Anyone charged with a misdemeanor on admission to the Schenectady County Jail is a member of the Class.

Violations are minor infractions, and are not considered criminal conduct. While violations can result in brief incarceration in a local jail, they are generally resolved with a fine. Violations are handled by a City, Town, or Village Court judge, and do not require indictment. Disorderly Conduct, Public Lewdness, Unlawful Possession of Marijuana, traffic violations (Driving While Intoxicated, for example) and city code violations are examples of violations. Anyone charged with a violation on admission to the Schenectady County Jail is a member of the class.

The settlement further allows for individuals to make claims if they were admitted to the Schenectady County Jail for violating the terms of their probation or parole, or if they were subject to a civil commitment. Parole is only assessed if an individual has served time in state prison. If the individual was charged solely with violating parole or probation (for instance, not honoring their conditions of supervision or violating curfew), they are considered to be a member of the class. If an individual is charged with violating probation or parole and is at the

same time charged with a felony, they are not a member of the class. A civil commitment is an order from a non-criminal court, usually the Family Court, committing that individual to the Schenectady County Jail. Individuals admitted to the Schenectady County Jail on a civil commitment, for example, a commitment for failure to pay child support, are members of the Class.

IX. I WAS ADMITTED TO THE SCHENECTADY COUNTY JAIL BUT I CAN'T REMEMBER WHAT MY CRIMINAL CHARGES WERE. HOW CAN I FIND THIS OUT, AND HOW DO I KNOW IF THE CHARGE WAS A MISDEMEANOR OR VIOLATION?

There are several ways for potential class members to determine the nature of their criminal charges. First, you can review your charging documents, which should reflect both your actual charges and whether the charges were a misdemeanor or violation. For instance, the criminal complaint filed against you may state "Assault in the Third Degree," a "Class A Misdemeanor," or something similar for each separate charge. If you do not have your charging document and remember the local court where you were prosecuted, the court clerk will be able to help you find these documents.

If you need additional help determining whether you are a class member, or if you have other questions, you can contact the Settlement Administrator at **[insert number]**.

You can still make a claim if you do not remember your criminal charges if you believe you are a member of the Class, but you may be asked for additional information.

X. I PLED GUILTY TO A CRIME. HOW DOES THIS AFFECT BY RIGHT TO PARTICIPATE IN THE SETTLEMENT?

If you were admitted to the Schenectady County Jail solely on misdemeanor or other minor charges, as defined above, you can participate in the settlement regardless of how you resolved your criminal charges, including if you pled guilty to those charges, provided that you were admitted to the Jail before being sentenced by a court. For most class members, this would mean that they were committed to the Schenectady County Jail after they were arraigned before a Judge. If you were sentenced before admission to the jail, meaning you were committed after pleading guilty or being convicted at trial, you are not a class member.

XI. WHAT IF I WAS ADMITTED TO THE SCHENECTADY COUNTY JAIL ON MORE THAN ONE OCCASION? CAN I STILL PARTICIPATE IN THE SETTLEMENT?

Yes. Individuals who were admitted to the Schenectady County Jail on more than one occasion during the class period can be members of the class and can recover money. They can only recover one payment, however, meaning that you will not be provided with extra payments

if you were admitted to the Schenectady County Jail more than one time.

XII. I AM STILL NOT SURE IF I AM INCLUDED.

If you are still not sure if you are included, you can ask for help. You can call **[insert number]** and the settlement administrator or class counsel may help answer your questions. For more information, you can also visit the website **[insert address]** Or you can just fill out the Claim Form and return it to the Settlement Administrator to see if you qualify.

THE SETTLEMENT BENEFITS - WHAT YOU GET

XIII. WHAT DOES THE SETTLEMENT PROVIDE?

Defendants have agreed to pay \$2,500,000 to resolve this litigation. That money will be used to: 1) compensate Class Members who have been illegally strip searched; 2) pay for notifying Class Members and administering the settlement; 3) pay incentive awards to the named Plaintiff, Lessie Davies, and a proposed intervenor, William Smith; and 4) pay attorneys' fees and expenses. Defendants have also agreed to alter their search policies for new detainees entering the Schenectady County Jail. A complete description of the settlement is provided in the Settlement Agreement. You can get a copy of the Settlement Agreement by visiting **[enter website address]** or by calling **[enter administrator phone number]**.

XIV. WHAT CAN I GET FROM THE SETTLEMENT?

The settlement provides that all class members who make claims will receive an equal share of \$2,500,000, minus the costs of notice and administration, an incentive award for the named Plaintiff, attorneys' fees, and expenses. Class counsel anticipates, based on claims rates from other settlements, that all individuals who make a claim on the settlement will receive between \$750.00 and \$1,250.00 as a settlement payments. These amounts are dependent on how many claims are received by the Claims Administrator during the claims period, and are subject to change based the number of claims received.

If you have any liens in place from the Schenectady County Department of Social Services, Schenectady County has agreed not to assert those liens as it relates to payments from this settlement.

HOW YOU GET A PAYMENT - SUBMITTING A CLAIM FORM

XV. HOW CAN I GET A PAYMENT?

To qualify for a payment, you **MUST** send in a Claim Form. A claim form is attached to this Notice. You can also get a claim form on the Internet at **[insert web address]**. Read the instructions carefully, fill out the form, sign it, and mail it postmarked no later than **[insert date]**.

You may be asked for additional documents, and will be contacted in writing. You may want to send in your claim form by Certified Mail, Return Receipt Requested, to ensure that it is received by the Settlement Administrator.

XVI. WHEN WOULD I GET MY PAYMENT?

The court will hold a hearing on **[insert date]** to decide whether to approve the settlement. If Judge Sharpe approves the settlement, there may be appeals. It is always uncertain whether those appeals can be resolved, and resolving them can take time, perhaps more than a year. Everyone who sends in a claim form will be informed of the progress of the settlement. Please be patient.

XVII. WHAT AM I GIVING UP TO GET A PAYMENT OR STAY IN THE CLASS?

Unless you exclude yourself, you are staying in the Class, and that means you can't sue, continue to sue, or be part of any other lawsuit against Schenectady County, its employees, or its elected officials about the legal issues in *this* case. It also means that all the Court's orders will apply to you and legally bind you. If you sign the claim form, you will agree to release all claims that you have relating to having been strip searched.

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you do not want a payment from this settlement, but you want to keep the right to sue or continue to sue Schenectady County on your own about the legal issues in this case, then you must take steps to preserve these rights. This is called excluding yourself - or is sometimes referred to as "opting out" of the Settlement Class.

XVIII. HOW DO I GET OUT OF THE SETTLEMENT?

To exclude yourself from the settlement, you must send a letter by mail saying that you want to be excluded from *McDaniel v. County of Schenectady*. Be sure to include your name, address, telephone number and your signature. You must mail your exclusion request postmarked no later than **[insert date]** to **[insert address]**.

You can't exclude yourself on the phone or by email. If you ask to be excluded, you will not get any settlement payment, and you cannot object to the settlement. You will not be legally bound by anything that happens in this lawsuit. You may be able to sue (or continue to sue) Schenectady County in the future.

XIX. IF I DO NOT EXCLUDE MYSELF, CAN I SUE SCHENECTADY COUNTY FOR THE SAME THING LATER?

No. Unless you exclude yourself, you give up the right to sue Schenectady County for the claims that this settlement involves. If you have a pending lawsuit, speak to your lawyer in that lawsuit immediately. You must exclude yourself from *this* class action to continue your own lawsuit. Remember, the exclusion deadline is [insert date].

XX. IF I EXCLUDE MYSELF, CAN I GET MONEY FROM THE SETTLEMENT?

No. If you exclude yourself, do not send in a claim form to ask for money. But, you may sue, continue to sue, or be part of a different lawsuit against Schenectady County.

THE LAWYERS REPRESENTING YOU

XXI. DO I HAVE A LAWYER IN THIS CASE?

The Court approved the Law Offices of Elmer Robert Keach, III PC, Amsterdam, New York, Beranbaum Menken Ben-Asher & Bierman LLP, New York, New York, Cuneo, Gilbert & LaDuca, Washington, DC, and the Mason Law Firm, PLLC, Washington, DC to represent you and other Class Members. Together, the lawyers are called Class Counsel. You will not be charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

XXII. HOW WILL THE LAWYERS BE PAID?

Class Counsel will ask the Court for attorneys' fees and expenses as a percentage of the \$2,500,000 settlement, and a payment of \$12,000.00 for Class Representative Lessie Davies, who provided substantial assistance to Class Counsel in the prosecution of this action, and the payment of \$1,500.00 to William Smith, a class member who agreed to intervene in this action and provided assistance to class counsel. The Settlement Agreement provides that twenty-six percent of the settlement fund (\$650,000.00) will be paid to class counsel as an award of attorneys' fees and for the reimbursement of expenses. These amounts will be deducted from the settlement fund before payments are made to Class Members. The costs of administering the settlement will also be deducted from the settlement fund.

OBJECTING TO THE SETTLEMENT

You can tell the Court that you do not agree with the settlement or some part of it.

XXIII. HOW DO I TELL THE COURT THAT I DO NOT LIKE THE SETTLEMENT?

If you are a Class Member, you can object to the settlement if you don't like any part of it. You can give objections why you think the Court should not approve it. The Court will consider your views. To object, you must send a letter saying that you object to *McDaniel v. Schenectady County*. Be sure to include your name, address, telephone number, your signature, and the reasons why you object to this settlement. Mail the objection to these three different places postmarked no later than **[insert date]**.

COURT

Clerk of the Court
U.S. District Court for the Northern District of New York
James T. Foley U.S. Courthouse
445 Broadway
Albany, NY 12207

CLASS COUNSEL

Elmer R. Keach, III, Esquire
Law Offices of Elmer Robert Keach, III, PC
1040 Riverfront Center
P.O. Box 70
Amsterdam, NY 12010

DEFENSE COUNSEL

William J. Greagan, Esquire
Goldberg Segalla LLP
8 Southwoods Boulevard
Albany, NY 12211

XXIV. WHAT IS THE DIFFERENCE BETWEEN OBJECTING AND EXCLUDING MYSELF?

Objecting is simply telling the Court that you do not like something about the settlement. You can object only if you stay in the Class. Excluding yourself is telling the Court that you do not want to be a part of the class. If you exclude yourself, you have no basis to object because the case no longer affects you.

THE COURT'S FAIRNESS HEARING

The Court will hold a hearing to decide whether to approve the settlement. You may attend and you may ask to speak, but you do not have to do so.

XXV. WHEN AND WHERE WILL THE COURT DECIDE WHETHER TO APPROVE THE SETTLEMENT?

On **[insert date]** the United States District Court for the Northern District of New York will hold a fairness hearing in the James T. Foley United States Court House, 445 Broadway, Albany, New York in courtroom **[insert courtroom]** to determine whether the Class was properly certified and whether the proposed Settlement is fair, adequate, and reasonable. The Court will listen to people who have asked to speak at the hearing. The Court may also decide how much to pay Class Counsel. This hearing may be continued or rescheduled by the Court without further notice. We do not know how long it will take the Court to give its decision.

XXVI. DO I HAVE TO COME TO THE HEARING?

No. Class Counsel will answer questions Judge Sharpe may have. But you are welcome to come at your own expense. If you send an objection, you do not have to come to Court to talk about it. As long as you mailed your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not required.

XXVII. MAY I SPEAK AT THE HEARING?

You may ask the Court for permission to speak at the Fairness Hearing. To do so, you must send a letter saying that it is your "Notice of Intention to Appear in *McDaniel v. County of Schenectady*." Be sure to include your name, address, telephone number and your signature. Your Notice of Intention to Appear must be postmarked no later than **[insert date]** and be sent to the Clerk of the Court, Class Counsel, and Defense Counsel, at the three addresses in question XXIV. You cannot speak at this hearing if you excluded yourself.

IF YOU DO NOTHING

XXVIII. WHAT HAPPENS IF I DO NOTHING AT ALL?

If you do nothing, you will get no money from the settlement. But, unless you exclude yourself, you will not be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against Schenectady County about the legal issues in this case, ever again. Unless you exclude yourself, you need to file a claim to receive a monetary payment under the settlement.

GETTING MORE INFORMATION

XXIX. ARE THERE MORE DETAILS ABOUT THE SETTLEMENT?

This Notice summarizes the proposed settlement. More details are in a Settlement Agreement. You can get a copy of the Settlement Agreement by writing to the Settlement Administrator at **[insert address]** or by visiting **[insert web address]**.

XXX. HOW DO I GET MORE INFORMATION?

You can call **[insert number]**, write to the Settlement Administrator at **[insert address]**, or visit the website at www.scjsettlement.com, where you will find answers to common questions about the settlement, a claim form, plus other information to help you determine whether you are a Class Member and whether you are eligible for payment.

Exhibit C

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

-----X

NICHOLE MARIE McDANIEL, and
LESSIE LEE DAVIES,
both individually and on behalf of a class of others
similarly situated,

-against-

Index No. 04-CV-0757(GLS)(RFT)

COUNTY OF SCHENECTADY,
HARRY BUFFARDI, both individually and in
His official capacity as Sheriff of the County of
Schenectady, GORDON POLLARD, both
Individually and as Undersheriff of the
County of Schenectady, and ROBERT
ELWELL, both individually and as Major
In the Schenectady County Sheriff's Department,

Defendants.

-----X

**ORDER GRANTING FINAL APPROVAL OF CLASS ACTION SETTLEMENT
AND JUDGMENT**

THIS CASE coming on for hearing before the undersigned Judge on

_____, 2006, pursuant to this Court's Order of _____ in order for this Court
to conduct a final fairness hearing to determine whether the proposed Settlement Agreement
between the parties is fair, reasonable and adequate, and to address Class Counsel's application
for an award of attorney's fees and costs; and the Settlement Class Members being represented
by Class Counsel and Defendants being represented by their attorney;

AND THE COURT having read and considered the Settlement Agreement, the Notice Plan, and
Memoranda of Law submitted by Class Counsel, having received evidence at the hearing, having
heard arguments from Class Counsel and the Defendants, and having considered the submissions
by Class members, now makes the following:

Exhibit C

FINDINGS OF FACT

i. This action was commenced on June 29, 2004, as a class action.

ii. After many months of intensive litigation, including extensive discovery and motion practice before this Court, and as a result of intensive, arm's length negotiations between Class Counsel and Defendants, including a daylong settlement conference before Magistrate Judge Randolph F. Treece on May 17, 2005, the parties have reached accord with respect to a Settlement that provides substantial benefits to Settlement Class Members, in return for a release and dismissal of the claims at issue in this case against the Defendants ("Settlement Agreement"). The resulting Settlement Agreement was preliminarily approved by the Court on _____.

iii. As part of the Order Granting Preliminary Approval, this Court approved a proposed Notice Plan and Class Notice, which provided Settlement Class Members notice of the proposed settlement. The Notice Plan provided an opportunity for class members to file objections to the Settlement.

iv. As of the deadline for the filing of objections, only _____ objections were filed. Given the size of this Settlement, and the notice plan described above, this Court finds that the comparatively low number of objections is indicative of the fairness, reasonableness and adequacy of the Settlement with the Defendants.

v. The settling Parties have filed with the Court an affidavit from _____ declaring that the mailing of the Court-approved notice, consistent with the Notice Plan, has been completed.

vi. The Court finds that the published notice, mailed notice and Internet posting constitute the best practicable notice of the Fairness Hearing, the proposed Settlement,

Class Counsel's application for fees and expenses, and other matters set forth in the Class Notice and the Short Form Notice; and that such notice constituted valid, due and sufficient notice to all members of the Settlement Class, and complied fully with the requirements of Rule 23 of the Federal Rules of Civil Procedure, the Constitution of the United States, the laws of New York and any other applicable law.

vii. Any persons who wished to be excluded from this Action were provided an opportunity to "opt out" pursuant to the Notice. All persons who have validly excluded themselves from this Action have no rights under the Settlement Agreement and shall not be bound by the Settlement Agreement or the final judgment herein. **[List attached]**

viii. Settlement Class Members are bound by the Settlement, the Settlement Agreement and releases contained therein, and the Final Order and Judgment, and do not have any further opportunity to opt-out of the Action.

ix. Any class member who did not timely file and serve an objection in writing to the Settlement Agreement, to the entry of Final Order and Judgment, or to Plaintiffs' Class Counsel's application for fees, costs, and expenses, in accordance with the procedure set forth in the Class Notice and mandated in the Order Granting Preliminary Approval of Settlement, is deemed to have waived any such objection by appeal, collateral attack, or otherwise.

x. On the basis of all of the issues in this litigation, and the provisions of the Settlement Agreement, the Court is of the opinion that the Settlement is a fair, reasonable and adequate compromise of the claims against the Defendant in this case, pursuant to Rule 23 of the Federal Rules of Civil Procedure. There are a number of factors which the Court has considered in affirming this Settlement, including:

a. The liability issues in this case have been vigorously contested.

b. The Court notes that for settlement purposes, this Settlement has the benefit of providing relief to Class Members now, without further litigation, under circumstances where the liability issues are still vigorously contested among the parties to this litigation and among the parties to the individual litigation. This Settlement provides Class Members with a substantial monetary benefit.

c. This Settlement is clearly a byproduct of hard-fought litigation between the parties, and not a result of any collusion on the part of Class Counsel or Counsel for the Defendants.

xi. Class Counsel submitted to the Court and served on the Defendants their application for reasonable attorneys' fees, costs, and expenses consistent with the terms of the Settlement Agreement. This Court has considered Class Counsel's request and hereby grants the request.

xii. The claims procedure established under the Settlement Agreement is fair, a simplified process, and workable. In any event, the Court will retain jurisdiction to work out any unanticipated problems.

NOW, THEREFORE, ON THE BASIS OF THE FOREGOING FINDINGS OF FACT AND THE COURT HEREBY MAKES THE FOLLOWING:

CONCLUSIONS OF LAW

xiii. This Court has jurisdiction over the parties and the subject matter of this proceeding.

xiv. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the following Settlement Class is certified for purposes of final settlement:

All persons who were placed into the custody of the Schenectady County Jail during the period June 29, 2001, through and including June 29, 2005, after being charged with misdemeanors, violations, violations of probation or parole, or held on civil matters, and claim that they were strip searched upon their entry into the Jail. Specifically excluded from the class are Defendants and any and all of their respective affiliates, legal representatives, heirs, successors, employees or assignees.

xv. The Court finds that, for the purpose of this Settlement, the requirements of Rule 23 of the Federal Rules of Civil Procedure are satisfied, and that a Class Action is an appropriate method for resolving the disputes in this litigation. All the prerequisites for Class certification under Rule 23 are present. The Class members are ascertainable and too numerous to be joined. Questions of law *and* fact common to all Class members predominate over individual issues and should be determined in one proceeding with respect to all Class members. The Class Representatives' claims are typical of those of the Class. The Class action mechanism is superior to alternative means for adjudicating and resolving this action.

xvi. The Settlement Class Representative, Lessie Davies, is entitled to and is hereby awarded a payment of \$12,000.00, in recognition of the efforts she undertook in connection with this lawsuit. William Davis, an individual who had planned to intervene in this action to assist class counsel, is hereby awarded an incentive award of \$1,500.00 in addition to his *pro rata* share of the settlement fund. Former Class Representative Nichole McDaniel will receive no incentive award. All class members who have made claims on the settlement are entitled to receive their *pro rata* share of the settlement fund after administrative expenses, attorneys' fees and expenses, and incentive awards are deducted from the fund.

xvii. The Court grants final approval of the Settlement Agreement, as being fair, reasonable and adequate, pursuant to Rule 23 of the Federal Rules of Civil Procedure.

xviii. The Courts finds that the request for attorneys' fees is reasonable.

NOW, THEREFORE, ON THE BASIS OF THE FOREGOING FINDINGS OF FACT AND CONCLUSIONS OF LAW, IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

xix. The Motion for Final Approval of the Proposed Settlement is GRANTED.

xx. The Settlement Class Representative, Lessie Davies, is entitled to and is hereby awarded a payment of \$12,000.00, in recognition of the efforts she undertook in connection with this lawsuit. William Davis, an individual who had planned to intervene in this action to assist class counsel, is hereby awarded an incentive award of \$1,500.00 in addition to his *pro rata* share of the settlement fund. Former Class Representative Nichole McDaniel will receive no incentive award. All class members who have made claims on the settlement are entitled to receive their *pro rata* share of the settlement fund after administrative expenses, attorneys' fees and expenses, and incentive awards are deducted from the fund.

xxi. The Class Counsels' application for attorneys' fees and expenses is granted.

xxii. This Action and all claims against the Settling Defendant are hereby dismissed with prejudice, but the Court shall retain exclusive and continuing jurisdiction of the Action, all Parties, and Settlement Class Members, to interpret and enforce the terms, conditions and obligations of this Settlement Agreement.

xxiii. All Class members who have not timely filed an opt-out request are barred and enjoined from commencing and/or prosecuting any claim or action against the Defendant. Any Class member who has not timely filed a request to exclude themselves shall be enjoined from initiating and/or proceeding as a class action in any forum.

IT IS SO ORDERED.

Dated:

Hon. Gary L. Sharpe
United States District Judge

Exhibit D

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

-----X

NICHOLE MARIE McDANIEL, and
LESSIE LEE DAVIES,
both individually and on behalf of a class of others
similarly situated,

-against-

Index No. 04-CV-0757(GLS)(RFT)

COUNTY OF SCHENECTADY,
HARRY BUFFARDI, both individually and in
His official capacity as Sheriff of the County of
Schenectady, GORDON POLLARD, both
Individually and as Undersheriff of the
County of Schenectady, and ROBERT
ELWELL, both individually and as Major
In the Schenectady County Sheriff's Department,

Defendants.

-----X

ORDER PRELIMINARILY APPROVING SETTLEMENT

WHEREAS, the Plaintiffs and Defendants have entered into a Settlement Agreement
intended to resolve the litigation pending in this Court; and

WHEREAS, the Settlement Agreement, together with supporting materials, sets forth the
terms and conditions for a proposed settlement and dismissal with prejudice of these actions
against the Defendants; and

WHEREAS, the Court has before it the parties' Motion for Preliminary Approval of
Settlement and Memorandum in Support of Motion for Preliminary Approval of Settlement,
together with the Settlement Agreement and supporting materials; and

WHEREAS, the Court is satisfied that the terms and conditions set forth in the Settlement
Agreement were the result of good faith, arm's length settlement negotiations between

competent and experienced counsel for both Plaintiffs and Defendants,

IT IS HEREBY ORDERED AS FOLLOWS:

1. Capitalized terms used in this Order have the meanings assigned to them in the Settlement Agreement and this Order.
2. The terms of the parties' Settlement Agreement are hereby conditionally approved, subject to further consideration thereof at the Final Approval Hearing provided for below. The Court finds that said settlement is sufficiently within the range of reasonableness and that notice of the proposed settlement should be given as provided in this Order.
3. Pursuant to Fed R. Civ. P. 34 the Court conditionally certifies the following settlement class:

All persons who were placed into the custody of the Schenectady County Jail during the period June 29, 2001, through and including June 29, 2005, after being charged with misdemeanors, violations, traffic violations, violations of probation or parole, or held on civil matters, and were strip searched upon their entry into the Jail. Specifically excluded from the class are Defendants and any and all of their respective affiliates, legal representatives, heirs, successors, employees or assignees.
4. The Court further conditionally finds that Plaintiff Lessie Davies is an adequate class representative for the Settlement Class.
5. The Court further finds that Plaintiffs' Counsel are adequate Class Counsel.
6. The Court approves the Class Notice of Settlement attached hereto as Exhibit A and the Summary Notice for Publication attached hereto as Exhibit B. The Court also approves the Notice Program as set forth in Paragraph IV of the Settlement Agreement.
7. If the Settlement Agreement is terminated or not consummated for any reason whatsoever, the conditional certification of the Settlement Class shall be void, the Defendants shall have reserved all their rights to oppose any and all class certification motions, to contest the

adequacy of Plaintiffs as representatives of any putative class, and to contest the adequacy of Class Counsel as adequate Class Counsel. Additionally, Plaintiffs have reserved all of their rights, including their right to continue with the litigation pending at the time of the settlement.

Notice to Settlement Class and Appointment of Settlement Administrator

8. Counsel for the Class (“Class Counsel”) are as follows:

Elmer R. Keach, III, Esquire
LAW OFFICES OF ELMER ROBERT KEACH, III, PC
1040 Riverfront Center
P.O. Box 70
Amsterdam, NY 12010
Telephone (518) 434-1718
Facsimile (518) 770-1558

Bruce E. Menken, Esq.
Jason J. Rozger, Esq.
BERANBAUM MENKEN BEN-ASHER & BIERMAN LLP
80 Pine Street, 32nd Floor
New York, NY 10005
Telephone (212) 509-1616
Facsimile (212) 509-8088

Gary Mason, Esquire
THE MASON LAW FIRM, PLLC
1225 19th Street, NW
Suite 600
Washington, DC 20036
Telephone (202) 429-2290
Facsimile (202) 429-2294

Charles LaDuca, Esquire
CUNEO, GILBERT & LaDUCA, LLP
507 C Street NE
Washington, DC 20002

9. Beginning no later than **[insert date]**, 2006, Class Counsel shall cause to be disseminated the notices, substantially in the form attached as Exhibits A and B hereto, in the manner set forth in Paragraph IV of the Settlement Agreement. Such Notice Program will be completed expeditiously pursuant to the terms of the Settlement Agreement. Class members will have sixty

(60) days from the Notice Date to opt out and one-hundred twenty (120) days from the Notice Date to file claims. Prior to the Final Approval Hearing, Plaintiffs and/or the Claims Administrator shall serve and file a sworn statement attesting to compliance with the provisions of this paragraph.

10. The notice to be provided as set forth in the Settlement Agreement is hereby found to be the best practicable means of providing notice under the circumstances and, when completed, shall constitute due and sufficient notice of the proposed settlement and the Final Approval Hearing to all persons and entities affected by and/or entitled to participate in the settlement, in full compliance with the notice requirements of Fed R. Civ. P. 23, due process, the Constitution of the United States, the laws of New York and all other applicable laws. The Notices are accurate, objective, informative and provide Class members with all of the information necessary to make an informed decision regarding their participation in the Settlement and its fairness.

11. Class Counsel are authorized to retain _____ in accordance with the terms of the Settlement Agreement and this Order.

Requests for Exclusion from the Settlement Class

12. Any member of the Settlement Class that wishes to be excluded (“opt out”) from the Settlement Class must send a written Request for Exclusion to the Claims Administrator, so that it is received by the Claims Administrator at the address indicated in the Notice on or before the close of the opt out period. The Request for Exclusion shall fully comply with the requirements set forth in the Settlement Agreement. Members of the Settlement Class may not exclude themselves by filing Requests for Exclusion as a group or class, but must in each instance individually and personally execute a Request for Exclusion and timely transmit it to the Claims Administrator.

13. Any member of the Settlement Class who does not properly and timely request exclusion from the Settlement Class shall be bound by all the terms and provisions of the Settlement Agreement, whether or not such person objected to the Settlement and whether or not such person made a claim upon, or participated in, the Settlement Fund pursuant to the Settlement Agreement.

The Final Approval Hearing

14. A hearing on final settlement approval (the “Final Approval Hearing”) is hereby scheduled to be held before this Court on no later than one hundred fifty (150) days from the Notice Date, to consider the fairness, the reasonableness, and adequacy of the proposed settlement, the dismissal with prejudice of this class action with respect to the Released Parties that are Defendants herein, and the entry of final judgment in this class action. Class Counsel’s application for award of attorney’s fees and costs shall be heard at the time of the fairness hearing.

15. The date and time of the Fairness Hearing shall be set forth in the Notice, but the Fairness Hearing shall be subject to adjournment by the Court without further notice to the members of the Settlement Class other than that which may be posted by the Court. Class Counsel will advise members of the settlement class of any scheduling issues by way of the settlement website.

16. Any person or entity that does not elect to be excluded from the Settlement Class may, but need not, enter an appearance through his or her own attorney. Settlement Class members who do not enter an appearance through their own attorneys will be represented by Class Counsel.

17. Any person who does not elect to be excluded from the Settlement Class may, but need

not, submit comments or objections to the proposed Settlement. Any Class member may object to the proposed Settlement, entry of Final Order and Judgment approving the settlement, and Class Counsel's application for fees and expenses by serving a written objection.

18. Any Class member making the objection (an "objector") must sign the objection personally. An objection must state why the objector objects to the proposed Settlement and provide the basis to support such position. If an objector intends to appear personally at the Fairness Hearing, the objector must include with the objection a notice of the objector's intent to appear at the hearing.

19. Objections, along with any notices of intent to appear, must be filed no later than sixty (60) days from the Notice Date. If counsel is appearing on behalf of more than one Class Member, counsel must identify each such Class Member and each Class Member must have complied with the requirements of this Order. These documents must be filed with the Clerk of the Court at the following address:

Clerk of the Court
U.S. District Court for the Northern District of New York
James T. Foley U.S. Courthouse
445 Broadway
Albany, NY 12207

20. Objections, along with any notices of intent to appear, must also be mailed to Class Counsel and counsel for Defendant at the address listed below:

CLASS COUNSEL

Elmer R. Keach, III, Esquire
Law Offices of Elmer Robert Keach, III, PC
1040 Riverfront Center
P.O. Box 70
Amsterdam, NY 12010

DEFENSE COUNSEL

William J. Greagan, Esquire

Goldberg Segalla LLP
8 Southwoods Boulevard
Albany, NY 12211

21. Only Class Members who have filed and served valid and timely notices of objection shall be entitled to be heard at the Fairness Hearing. Any Class Member who does not timely file and serve an objection in writing to the Settlement, entry of Final Judgment, or to Class Counsel's application for fees, costs, and expenses, in accordance with the procedure set forth in the Class Notice and mandated in this Order, shall be deemed to have waived any such objection by appeal, collateral attack, or otherwise.

22. Persons wishing to be heard at the Fairness Hearing are required to file written comments or objections and indicate in their written comments or objections their intention to appear at the Fairness Hearing. Settlement Class members need not appear at the hearing or take any other action to indicate their approval.

23. All members of the Settlement Class who do not personally and timely request to be excluded from the Class are enjoined from proceeding against the Defendants for the claims made in the Complaint.

Other Provisions

24. Upon approval of the settlement provided for in this Settlement Agreement, each and every time period and provision thereof shall be deemed incorporated herein as if expressly set forth and shall have the full force and effect of an Order of this Court.

25. All reasonable costs incurred in notifying members of the Settlement Class, as well as administering the Settlement Agreement, shall be paid as set forth in the Settlement Agreement.

IT IS SO ORDERED.

Dated:

Hon. Gary L. Sharpe
United States District Judge

Exhibit E

COURT ORDERED LEGAL NOTICE

If you were admitted into the Schenectady County Jail between June 29, 2001 and June 29, 2005 and were strip searched, you could get a payment from a class action settlement.

A settlement has been proposed in a class action lawsuit about the strip search policies of the Schenectady County Jail ("SCJ"). The settlement will provide \$2,500,000 to pay claims to individuals who were admitted into the SCJ and charged with misdemeanors, violations, traffic violations, violations of probation or parole, or held on civil matters, and were strip searched upon their entry into the Jail.

The United States District Court for the Northern District of New York authorized this notice. The Court will have a hearing to decide whether to approve the settlement, so that the benefits may be paid.

Who's Included?

You are a Class Member and could get benefits if you were admitted into the SCJ from June 29, 2001, through and including June 29, 2005, and you were charged with a misdemeanor, violation, traffic violation, violation of probation or parole, or held on a civil matter, and you were strip searched upon your entry into the Jail.

What's This About?

The lawsuit claimed that Defendant Schenectady County and its Corrections Officers had an unlawful practice of strip searching everyone who was admitted into the Jail. Defendants deny they did anything wrong. The Court did not decide which side was right, but both sides agreed to the settlement to ensure a resolution and to provide benefits to the Class Members.

What Does the Settlement Provide?

Defendants agreed to pay a total of \$2,500,000 to pay claims to Class Members, pay administrative costs of the settlement, pay an incentive award to the named Plaintiff, and pay attorneys' fees and expenses. Each Class Member who makes a claim will receive an equal share of the portion of the Settlement Fund allocated to pay claims to Class Members, which, after deducting administrative costs, incentive awards and attorneys' fees, will be approximately \$1,750,000.00. There are believed to be approximately 6,000 Class Members. You can only make one Claim, even if you were strip searched more than once.

How Do You Ask For A Payment?

A detailed Notice and Claim Form package contains everything you need. Just call or visit the settlement website, www.scjsettlement.com, to get one. To qualify for a payment, you must send in a Claim Form. **Claim forms are due by [insert date], 2006.**

What Are Your Other Options?

If you don't want the settlement benefits or don't want to be legally bound by the settlement, you must exclude yourself by **[insert date] 2006** or you won't be able to sue, or continue to sue, the Defendants about the claims in this case. If you exclude yourself, you can't get any benefits from this settlement. If you stay in the settlement, you may object to it by **[insert date] 2006**. The detailed notice, available by calling or visiting the website below, explains how to exclude yourself or object.

The court will hold a hearing in this case (*McDaniel, et. al. v. County of Schenectady, et. al.* case no. 04-CV-0757) on **[insert date]**, to consider whether to approve the settlement and a request by the lawyers representing all Class Members (The Law Offices of Elmer Robert Keach, III, PC Albany, NY, Beranbaum Menken Ben-Asher & Bierman LLP, New York, NY, Cuneo, Gilbert & Laduca, Washington, DC and The Mason Law Firm, Washington, DC) for attorneys' fees and costs. You may ask to appear at the hearing, but you don't have to. For more information, call toll free 1-800-000-0000, visit the settlement website www.scjsettlement.com, or write to Settlement, P.O Box X, City, State, 00000.

Exhibit F

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

NICHOLE MARIE McDANIEL and
LESSIE LEE DAVIES, both individually
and on behalf of a class of others similarly
situated,

Plaintiffs,

No. 04-CV-0757 (GLS/RFT)

THE COUNTY OF SCHENECTADY,
et. al.,

Defendants.

PLAN OF DISTRIBUTION

Defendants County of Schenectady, Harry Buffardi, Gordon Pollard and Robert Elwell (the "Defendants") have agreed to settle this class action by, among other things, paying \$2.5 million into a Settlement Fund for the benefit of class members and named plaintiffs in this litigation. Subject to Court approval, Class Counsel intend to distribute the Settlement Fund as set forth below. As more fully set forth in the Settlement Agreement and the Class Notices, class members have the right to submit to the Court objections for its consideration to the Settlement and/or this Plan of Distribution.

Attorneys' Fees, Costs, Administrative Expenses and Incentive Awards

Pursuant to the Settlement Agreement and applicable law, Class Counsel intend to seek from the Settlement Fund reimbursement for the costs advanced in the prosecution of this litigation and an award of attorney's fees. Plaintiffs' counsel will apply to the Court for an award of costs and attorney's fees of no more than twenty-six percent (26 %)

of the settlement fund, or \$650,000. Additionally, Class Counsel proposes to allocate up to \$13,500 of the settlement fund to pay incentive awards to class representative Lessie Davies (\$12,000) and proposed intervenor William Smith (\$1,500), who Class Counsel maintain provided assistance to them during the prosecution of this litigation. Deducting for estimated administrative expenses of \$85,000 and for attorney's fees, costs and incentive awards, class counsel estimates that there will be approximately \$1,750,000 in the settlement fund for distribution to class members.

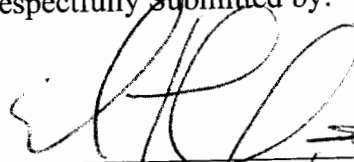
Distribution to Class Members

Class Counsel proposes that approximately \$1.75 million of the settlement fund be allocated to pay claims by class members, and that each class member who files a valid claim will receive their *pro rata* share of the settlement fund when the fund is distributed after final approval. Based on data received from Schenectady County, Class Counsel estimates the class size here to be 6,000 individuals. Individuals who were admitted to the Schenectady County Jail on more than one occasion will only be allowed to file one claim against the settlement fund. When considering the claims rates achieved in similar settlements, Class Counsel estimates that each member of the settlement class that files a claim will receive between \$750 and \$1,250 as a settlement payment.

Court Approval

At the time of the final approval hearing, Class Counsel will detail to the Court the final distribution to be made to settlement claimants and the amount to be paid per claim. Subject to the Court's approval, all proceeds to class members will then be paid based on the final distribution amounts provided at the time of the final approval hearing.

Respectfully Submitted by:



Dated: August 1, 2006
Amsterdam, New York

Elmer Robert Keach, III, Esquire
LAW OFFICE OF ELMER ROBERT
KEACH, III, PC
1040 Riverfront Center
Post Office Box 70
Amsterdam, NY 12010
Telephone: 518.434.1718
Telecopier: 518.770.1558
Electronic Mail:
bobkeach@keachlawfirm.com

LEAD COUNSEL FOR PLAINTIFFS

Exhibit G

2006 Strip Search Policy

POLICY:

The decision to strip search an individual at the time of admission, must be based on reasonable suspicion that the person may be concealing weapons or other contraband. Reasonable suspicion may be based on:

1. The nature of the offense (e.g., drug possession, weapon possession etc.);
2. The characteristics of the defendant (e.g., behavior, appearance, prior record, prior custodial information);
3. The circumstances of the arrest and other relevant information provided by the arresting or transporting officer.

The booking officer should not limit themselves to one of the above factors but should consider all three so that an informed decision can be made based on all of the relevant circumstances and information.

If reasonable suspicion to conduct a strip search does not exist, the subject must be afforded privacy to change into a jail uniform. In the absence of reasonable suspicion, the Processing Officer must consciously avoid any visual inspection of the subject's unclothed genital or anal areas.

Additionally, all inmates shall be strip searched following contact visits; upon being identified as suicide risks, prior to placement in a mental health observation setting or placement in the Restricted Housing Unit, upon return to the facility from outside court appearances, hospital trips, doctor appointments or other locations outside the facility where the prisoner may have the opportunity to obtain and secret contraband.

PURPOSE:

To safeguard the Constitutional Rights of inmates and ensure the safety of prisoners, staff and visitors through the detection and recovery of contraband that threatens the integrity of facility security.

CASE LAW:

The Second Circuit Court of Appeals, which governs New York State, has determined that the 4th Amendment prohibits strip/body cavity searches of arrestees unless the officials have a reasonable suspicion that the arrestee is concealing weapons or other contraband. The Court stated that reasonable suspicion may be based on the crime charged, the particular characteristics of the arrestee and/or the circumstances of the arrest. (*Weber v. Dell* - 1986) , (*Shain v. Ellison* - 2001).

Therefore, a decision to strip-search anyone admitted to our facility must be based upon reasonable suspicion, with due consideration given to the nature of the offense involved, characteristics and knowledge of the subject and the circumstances of the arrest.

DEFINITIONS:

1. Reasonable Suspicion:

"REASONABLE SUSPICION" means a legitimate reason to believe that someone may be concealing contraband, based upon the officer's training, experience and specific factual information. "REASONABLE SUSPICION" may be based on:

- the nature of the current charge;
- information provided by the delivering officer concerning the arrestee;
- statements of the arrestee;
- prior criminal history or prior custodial information;
- observable/detectable drug impairment
- violent or threatening behavior (belligerent verbal conduct toward a staff member will not by itself create reasonable suspicion);
- uncooperative or evasive conduct;
- failure to adequately clear contraband detection equipment or submit to a pat search;
- suicidal history; or
- expressions or other evidence of suicidal intent.

The decision to strip search, at the time of admission, shall be made by the Property Officer. Authorization to Strip Search must be obtained from the ~~Watch Commander~~ ^{Four Unit Supervisor} and must be documented in a report which is submitted to the ~~Operational Lieutenant~~ ^{Captain} (See: "Strip Search Justification Sheet").

Furthermore, observation and detection of bruises or other physical injuries and/or unexplained loss of consciousness may require a visual examination of the unclothed subject, etc. Identifying marks, tattoos, scars or birthmarks should be documented via photograph and booking sheet. However, a strip search may not be conducted solely to locate or identify such markings. Markings on the intimate parts of the body should be documented in writing only, based upon the arrestee's admissions, responses and dialogue. Transportation of multiple prisoners may, under certain circumstances, give rise to reasonable suspicion if the exchange or transference of contraband between riders in a common carrier is probable or likely.

2. Contraband: Any illegal or unauthorized item not issued by Sheriff's personnel, any item which is in excess of the limits authorized, any item not sold by the commissary, or any item that has been altered from its original state to be used for some inappropriate purpose that may compromise the safety, security and/or good order of the facility. Unauthorized items include, but are not limited to; money, jewelry, cigarettes, tobacco products, keys, clothing items and clothing of specific colors, etc.

3. Pat Search: A search of a subject's person and his/her clothing while the subject is clothed, except that the subject may be required to remove his/her coat, hat, shoes and socks and empty the contents of their pockets and turn them inside out. The process shall include searching the subject's clothing. A pat search is done to determine whether the subject is in possession of concealed weapons or contraband secreted under or within the subject's clothing or on their person. All arrestees shall receive a cursory pat search prior to the removal of restraints. Once restraints are removed a more thorough pat search shall be conducted. A staff member of the same gender will conduct the search. However, a female

officer may pat search a male prisoner when a male officer is not immediately available and a delay to search may compromise safety.

4. **Contraband Detection Equipment:** Any device used to detect contraband, such as metal items being under the clothing. All arrestees shall be required to clear available contraband detection equipment prior to leaving the admission area of the facility. Examples include; Hand Held Wand,
5. **Strip Search:**
The visual inspection of a subject's body, including the mouth, nose and ears and the genital and anal areas. After clothing is removed and inspected, the subject is directed to stand with legs spread while bending at the waist to provide an unobstructed visual inspection. The search shall not include touching of the subject's person, except to check the hair. A staff member of the same gender shall conduct the search. A strip search shall take place in an area that affords privacy & protects the subject's dignity. It is performed as a "one on one" process, unless the prisoner has demonstrated or created a security risk and/or safety threat, thereby requiring additional supervision.
6. **Body Cavity Search:**
Is a search conducted by qualified medical personnel pursuant to a Court Order authorizing the inspection and physical probing of a subject's anal and/or vaginal cavity. The need for a Body Cavity Search shall immediately be brought to the attention of the Administration. The authorization to request a Court Order to conduct a Cavity Search shall be made by the Facility Superintendent or his designee.

PROCEDURAL GUIDELINES:

"Contraband Detection and Elimination is the Responsibility of All Correctional Staff Members."

All Searches, regardless of the type, should be Systematic, Thorough, Professional and Objective.

1. **New Admissions:**
Admission personnel perform an essential function of preventing the introduction of contraband into the facility. Staff members are responsible for ensuring that all subjects are properly identified, adequately interviewed and thoroughly cleared of contraband prior to cell assignment. Staff should always make decisions and take actions that ensure & safeguard the well being of inmates, employees and visitors within the correctional facility and at the same time protect and respect the rights of those incarcerated.
2. **Parole and/or Probation Violators:**
The same standard of "reasonable suspicion" applies to Parole or Probation Violators. The nature of the underlying charge(s) which lead to the original sentence, the facts and circumstances surrounding the current violation, as well as the characteristics of the arrestee, may be considered in determining whether, reasonable suspicion exists.

PROCEDURES:

1. **Strip Searches At Admission:**
 - A. At the time of intake, the Admissions/Property Officer shall:
 1. Review the commitment paperwork;
 2. Verify the charge;
 3. Inquire of arresting/transport officer re: circumstances of arrest & identity, condition, behavior and known history of arrestee;
 4. Conduct a cursory pat search;
 5. Remove restraints;
 6. Require arrestee to clear contraband detection devices;
 7. Conduct a thorough pat search;

8. Inspect, inventory and receipt personal property;
9. Document prescribed medications, if any, and inform medical staff;
10. Interview arrestee regarding prior arrests and incarcerations;
11. Review available information and records relating to prior arrests and incarcerations;
12. Determine if strip search is appropriate, based upon reasonable suspicion;
 - a. If strip search is deemed appropriate, complete "Strip Search Justification Sheet" and request authorization from ~~Watch Commander~~. Conduct strip search, and change of uniform;
 - b. If reasonable suspicion to conduct a strip search does not exist, the subject must be afforded privacy to change into a jail uniform. The Officer must consciously avoid any visual inspection of the subject's unclothed genital and anal area.
13. Complete booking process.

Unit Supervisor

Note:

If the subject is intoxicated (alcohol or drugs), injured or determined to be at risk, the information shall be documented on the Inmate's Medical Screening Form and, if applicable, on the Inmate Suicide Prevention Form, with explanations (e.g.: Inmate told arresting officer that he "will kill himself in jail"). The ~~Watch Commander~~ shall be notified and the inmate shall be monitored, if necessary, until seen by medical and/or mental health staff. The ~~Watch Commander~~ may determine that a strip search is necessary for the protection of the inmate. Especially if they are thought to be in possession of concealable contraband and/or the need to use the "Safety Smock Garment" is in order. The request to use the garment will be made by contacting the Mental Health Coordinator, Lieutenant or higher authority. Attempts to contact these officials and any conversation content shall be documented. Inability to contact may necessitate "Use of Garment" prior to formal authorization. (Record facts and actions taken).

Unit Supervisor

2. Strip Searches During Custody:

A. Contact Visits:

All inmates shall be strip-searched following contact visits:

The privacy curtain in the contact visit strip search room shall be utilized so that no inmate is strip-searched in the view of other inmates or other staff, then those needed to conduct the search.

B. Mental Health Observation:

All inmates will be strip searched prior to placement in any Mental Health Unit or Cell for the purpose of observation. *NOTE* Specific units may change, however this component of the procedure is targeted at any housing unit or cell dedicated for the housing of persons who are on special status and who are presently or scheduled to be interacting with the Facility's Forensic/Mental Health Coordinator.

C. Supervised Leave:

Some inmates may be strip searched prior to transport outside the facility for reasons associated with heightened security, i.e.: escape risks, assaultive behavior, prior incidents of concealed contraband, etc. This determination should be made on a case-by-case basis. Inmates reentering the facility from any court appearances, hospital trips, doctor appointments, etc. may be strip searched if remaining in the custody of the Sheriff.

D. Unsupervised Leave:

Inmates returning from temporary release, furlough, work release, intermittent sentences (i.e.; week-enders) shall be strip-searched.

E. Shakedown/Tactical Area Searches:

A component of any tactical operation or random shakedown may include the search of an inmate's living quarters. Each inmate may undergo a strip search to ensure that the inmate is not concealing contraband on his/her person.

Inmates assigned to cells will be searched inside their cells (or other area that provides privacy) when a housing area is being searched.

F. Disciplinary Segregation:

Inmates confined to the Restricted Housing Unit (RHU) shall be strip searched as a component of the initial admission process to the unit.

G. Other Occasions For Strip Searching During Custody:

Any time a staff member has reasonable suspicion to support a desired strip search, the ~~Watch Commander~~ *Unit Supervisor* must be notified. The ~~Watch Commander~~ will base his/her justification on available criteria. A "Strip Search Justification Sheet" shall be required.

Unit Supervisor

3. General Rules:

- A. All searches must be conducted in a place and in a manner that protects the subject's dignity to the extent possible and affords the subject the maximum amount of privacy available. Staff conducting strip searches should ensure that the area being used provides privacy and is secluded from the view of others. Searches shall never be conducted as punishment or for the purpose of harassment.
- B. All searches must be done in a systematic and orderly manner. Do not allow for distractions or interruptions while conducting a search.
- C. Staff shall wear personal protective equipment, i.e. gloves when performing searches. Disposable gloves will be discarded in a safe and sanitary manner.
- D. Staff shall conduct themselves in a professional and dignified manner. The officer conducting a search will explain to the subject the purpose and necessity for the search to avoid any misunderstanding of the officer's actions by the subject.
- E. Only female officers shall pat search and/or strip search female subjects. Either male or female officers may pat search male subjects. Only male officers will strip-search male subjects.
- F. Only during an emergency, will staff of the opposite gender be present when a strip-search is conducted. For example, a suicidal subject refuses to disrobe and suddenly attacks the officer(s) and back up is called and the closest officers (male or female) respond. Whenever an officer of the opposite gender is present, during a strip search under emergency circumstances, the supervisor will be notified and they will make that fact a part of the incident report detailing the situation.
- G. If force is necessary to accomplish the search, the force shall be used according to sections 137.5, 500k of the N.Y.S. Correction Law, Article 35 of the NYS Penal Law and other applicable laws, rules & regulations. The *Unit Supervisor* shall also complete a "Use of Force" report.
- H. When contraband is recovered, the circumstances and facts surrounding its discovery shall be documented in an "Incident Report" and/or "Strip Search Justification Sheet". The report & contraband shall be forwarded to the *Unit Supervisor* or secured in the evidence container in Visitation Control. *Unit Supervisor* shall also document facts and circumstances in their Log.

4. Search Methods:

- A. Contraband Detection Equipment - shall be used whenever available to assist in performing a thorough search.
- B. Pat Search - Officers will Pat Search all arrestees entering the confines of the Sheriff's facilities and whenever it appears evident that the opportunity existed for a subject to have access to contraband. Staff members are encouraged to conduct frequent pat searches.

Pat-Search Techniques:

1. Instruct the subject to remove all items from his/her pockets and turn the pockets inside out and remove outer garments, i.e.: shoes, socks, hat, jacket, coat and sweater. If applicable, hair curlers, wig, removable hairpieces or other hair ornaments, should be removed as well. These items should be checked and placed out of reach of the inmate;
 2. Instruct subject to raise arms above head – examine the area of their armpits;
 3. Show the palms and backs of their hands - closely examine between the fingers;
 4. Slowly turn in a complete circle – visually inspect the covered surface of the torso and legs;
 5. Lean forward and run his/her fingers through their hair. The officer should then run his/her fingers through the subject's hair, looking for any hidden contraband;
 6. Have the subject open their mouth, lift tongue, and remove false teeth or bridgework. Look inside the mouth, ears and nose. Use a flashlight, if additional illumination is needed;
 7. Instruct the subject to stand still, (facing away from you) with his/her feet apart and arms extended forward. Have the subject lean forward against an object, i.e.; wall, desk, counter, etc., so that he/she is mainly supported by the strength of their own arms. Their hands and feet should be equally distanced apart (beyond the shoulders) and their body should be approximately three feet from the wall/object so as to keep them off balance;
 8. Instruct the subject to raise one foot then the other - so that the soles of the feet may be viewed;
 9. Blade the subject at a 45 degree angle, keeping your strong side away from the subject. Begin a pat search of the subject, occasionally squeezing firmly with your fingers. Begin conducting a systematic search carefully feeling the collar of the shirt/blouse/sweater, etc. and then move down the sleeves, shoulders, armpits, chest, back, rib area, waistline, buttocks, crotch, legs, trouser cuffs and/or hems, footwear, and socks. Avoid placing your hands into any area that cannot be visually inspected.
 10. If the subject has a removable splint, cast, prosthesis, or artificial eye, the following steps will be taken:
 - a. Removable splints – Instruct subject to remove the splint, check the area and splint and return splint to the subject. (Notify the Medical Staff).
 - b. Cast – use a hand held metal detector to scan the cast area. A tongue depressor may be used to check a short distance down the cast, if necessary. If more than one finger can be placed between the cast and the skin of the subject, the subject will be taken to Medical for evaluation. If an item is detected in the cast while conducting the search, the subject will be taken to Medical immediately after the search is completed. Medical staff will determine if the subject should be sent for an X-ray of the cast and/or removal of the item.
 - c. Prosthesis – have the subject remove the prosthesis, check for contraband, and return prosthesis to the subject. (Notify Medical Staff).
 - d. artificial eye – if the subject has an artificial eye, the subject will be escorted to Medical where only medical staff will examine for contraband.
 11. Upon completion of the pat search, direct/escort the subject to an area where he/she cannot commingle with other subjects who have not been pat searched. Note: Any contraband discovered or confiscated shall be secured as evidence, documented in a report and turned over to the Operational Lieutenant or secured in the evidence container in Visitation Control. The Watch Commander's Log shall also be used.
- C. Strip-Search: – Subjects will be strip-searched one at a time to avoid passing or disposing of contraband. All strip-searches will be conducted in an area designated for this purpose or in an area that provides maximum privacy for the subject. Prior to the strip-search, the area will be checked for contraband. There will be no physical contact with the subject during any routine strip-search, except to check the hair. The subject must not be allowed to move from place to place during the strip-search process.

A Strip Search is divided into two major areas of concern;

1. The visual inspection of the body and
2. The thorough inspection of all clothing items.
 - a. The body search requires the visual inspection of the anterior and posterior of the body, including the visual inspection of the bottom of the feet and a visual inspection of body cavities. (During a routine strip search, there should be no need to make physical contact with the subject).
 - b. The clothing items including pants cuffs, waistbands of trousers, underwear, shoes, etc.

Strip-Search Techniques: ** Specific Steps - Male Subjects

1. While standing more than an arm's length from the officer, the subject will be instructed to remove all clothing including socks, shoes, etc
2. All clothing will be inspected by feeling every item. All contents shall be removed from pockets. All clothing items including; shoes, shoe linings, heels, soles, etc., will be checked for contraband and placed out of reach of the subject.
3. The subject will be instructed to bend forward and vigorously run his fingers through his hair, which should dislodge any matter that may be hidden there. If necessary, officer may closely examine hair.
4. The subject will be instructed to stand facing the officer and raise his arms above his head so that the officer can check the armpits and palms of his hands.
5. The subject will be instructed to open his mouth, raise his tongue, and tilt his head back so that his nostrils can be checked. He will then be instructed to turn his head from side to side affording the officer the ability to check the subject's ears for the purpose of detecting contraband. The entire front surface of the subject will be visually checked for any item. Subject will be instructed to lift any flaps/rolls of skin to expose areas underneath.
6. The subject will be instructed to lift his genitals in such a way that the officer can check this area for concealed contraband.
7. The subject will be instructed to turn around and the entire back surface of the subject will be visually checked for any item that may be taped to the back.
8. The subject will be instructed to bend forward at the waist as far as he can without falling over. He will then be told to reach behind himself with both hands and separate his buttocks for the purpose of exposing any items he may have placed there.
9. After returning to a standing position and while still facing away from the officer, the subject will be instructed to lift each foot independently to display the soles of his feet. He will be instructed to spread his toes so that a visual check can be made.
10. The subject will then be instructed to turn around and face the officer. He will then be instructed to place his hands in such a manner that both sides of the hands, as well as between the fingers, can be inspected.
11. The subject will be instructed to put his authorized clothing back on and will be escorted out of the strip-search area to an area where he cannot commingle with other subjects.
12. If this search is a component of the admission process, the inmate shall be provided with a uniform.
13. The officer will check the area for any contraband, which might have been disposed of by the subject.

Strip-Search Techniques: ** Specific Steps - Female Subjects:

1. While standing more than an arm's length from the officer, the subject will be instructed to remove all clothing including socks, shoes, etc.
2. All clothing will be inspected by feeling every item. All contents shall be removed from pockets. All clothing items including; shoes, shoe linings, heels, soles, etc. will be checked for contraband and placed out of reach of the subject.
3. The subject will be instructed to bend forward and vigorously run her fingers through her hair, which should dislodge any matter that may be hidden there.
4. The subject will be instructed to stand facing the officer and raise her arms above her head so that the officer can check the armpits and palms of her hands.

5. The subject will be instructed to open her mouth, raise her tongue, and tilt her head back so that her nostrils can be checked. She will be instructed to turn her head from side to side affording the officer the ability to check the subject's ears for the purpose of detecting contraband. The entire front surface of the subject will be checked for any item. The subject will be instructed to lift flaps/folds of skin to expose the area underneath.
6. The subject will be instructed to lift her breasts so that the area under her breasts is exposed.
7. Still facing the officer, the subject will squat with her legs spread apart so that the officer can visually check the area for any contraband that the subject may have attempted to conceal there.
8. The subject will be instructed to turn around and the entire back surface of the subject will be visually checked for any item that may be taped to the back.
9. The subject will be instructed to squat with the legs apart. She will be instructed to cough several times to dislodge any hidden contraband. When returning to the standing position, the subject will be asked to bend forward at the waist as far as she can without falling over, reach behind herself with both hands and separate her buttocks for the purpose of exposing any item that she may have placed there.
10. After returning to a standing position and while still facing away from the officer, the subject will be instructed to lift each foot independently to display the soles of her feet. The subject will be instructed to spread her toes so that a visual check can be made.
11. The subject will be instructed to turn around and face the officer. She will be instructed to place her hands in such a manner that both sides of the hands, as well as between the fingers, can be inspected.
12. The subject will be instructed to put her authorized clothing back on and will be escorted out of the strip-search area to an area where she cannot commingle with other subjects.
13. If this search is a component of the admission process, the inmate shall be provided with a uniform.
14. The officer will check the area for contraband that might have been disposed of by the subject.

Remember, all searches shall be conducted in a systematic, thorough, professional and objective manner. Any questions should be directed to a supervisor for clarification and/or explanation.

Strip Search Justification Sheet

INMATE'S

NAME: _____ BOOKING #: _____

DATE: _____ TIME: _____ (OF SEARCH)

SEARCH OFFICER'S

NAME: _____ BADGE #: _____

EXPLANATION OF THE GROUNDS OR REASONS FOR CONDUCTING A STRIP
SEARCH: _____

FINDING/RESULT OF SEARCH:

SEARCH COMMANDER'S SIGNATURE	BADGE #	DATE	TIME
<i>For Unit Supervisor</i>			

COMMENTS: _____

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

-----X

NICHOLE MARIE McDANIEL, and
LESSIE LEE DAVIES,
both individually and on behalf of a class of others
similarly situated,

-against-

Index No. 04-CV-0757(GLS)(RFT)

COUNTY OF SCHENECTADY,
HARRY BUFFARDI, both individually and in
His official capacity as Sheriff of the County of
Schenectady, GORDON POLLARD, both
Individually and as Undersheriff of the
County of Schenectady, and ROBERT
ELWELL, both individually and as Major
In the Schenectady County Sheriff's Department,

Defendants.

-----X

ORDER PRELIMINARILY APPROVING SETTLEMENT

WHEREAS, the Plaintiffs and Defendants have entered into a Settlement Agreement
intended to resolve the litigation pending in this Court; and

WHEREAS, the Settlement Agreement, together with supporting materials, sets forth the
terms and conditions for a proposed settlement and dismissal with prejudice of these actions
against the Defendants; and

WHEREAS, the Court has before it the parties' Motion for Preliminary Approval of
Settlement and Memorandum in Support of Motion for Preliminary Approval of Settlement,
together with the Settlement Agreement and supporting materials; and

WHEREAS, the Court is satisfied that the terms and conditions set forth in the Settlement
Agreement were the result of good faith, arm's length settlement negotiations between

competent and experienced counsel for both Plaintiffs and Defendants,

IT IS HEREBY ORDERED AS FOLLOWS:

1. Capitalized terms used in this Order have the meanings assigned to them in the Settlement Agreement and this Order.
2. The terms of the parties' Settlement Agreement are hereby conditionally approved, subject to further consideration thereof at the Final Approval Hearing provided for below. The Court finds that said settlement is sufficiently within the range of reasonableness and that notice of the proposed settlement should be given as provided in this Order.
3. Pursuant to Fed R. Civ. P. 34 the Court conditionally certifies the following settlement class:

All persons who were placed into the custody of the Schenectady County Jail during the period June 29, 2001, through and including June 29, 2005, after being charged with misdemeanors, violations, traffic violations, violations of probation or parole, or held on civil matters, and were strip searched upon their entry into the Jail. Specifically excluded from the class are Defendants and any and all of their respective affiliates, legal representatives, heirs, successors, employees or assignees.
4. The Court further conditionally finds that Plaintiff Lessie Davies is an adequate class representative for the Settlement Class.
5. The Court further finds that Plaintiffs' Counsel are adequate Class Counsel.
6. The Court approves the Class Notice of Settlement attached hereto as Exhibit A and the Summary Notice for Publication attached hereto as Exhibit B. The Court also approves the Notice Program as set forth in Paragraph IV of the Settlement Agreement.
7. If the Settlement Agreement is terminated or not consummated for any reason whatsoever, the conditional certification of the Settlement Class shall be void, the Defendants shall have reserved all their rights to oppose any and all class certification motions, to contest the

adequacy of Plaintiffs as representatives of any putative class, and to contest the adequacy of Class Counsel as adequate Class Counsel. Additionally, Plaintiffs have reserved all of their rights, including their right to continue with the litigation pending at the time of the settlement.

Notice to Settlement Class and Appointment of Settlement Administrator

8. Counsel for the Class (“Class Counsel”) are as follows:

Elmer R. Keach, III, Esquire
LAW OFFICES OF ELMER ROBERT KEACH, III, PC
1040 Riverfront Center
P.O. Box 70
Amsterdam, NY 12010
Telephone (518) 434-1718
Facsimile (518) 770-1558

Bruce E. Menken, Esq.
Jason J. Rozger, Esq.
BERANBAUM MENKEN BEN-ASHER & BIERMAN LLP
80 Pine Street, 32nd Floor
New York, NY 10005
Telephone (212) 509-1616
Facsimile (212) 509-8088

Gary Mason, Esquire
THE MASON LAW FIRM, PLLC
1225 19th Street, NW
Suite 600
Washington, DC 20036
Telephone (202) 429-2290
Facsimile (202) 429-2294

Charles LaDuca, Esquire
CUNEO, GILBERT & LaDUCA, LLP
507 C Street NE
Washington, DC 20002

9. Beginning no later than **[insert date]**, 2006, Class Counsel shall cause to be disseminated the notices, substantially in the form attached as Exhibits A and B hereto, in the manner set forth in Paragraph IV of the Settlement Agreement. Such Notice Program will be completed expeditiously pursuant to the terms of the Settlement Agreement. Class members will have sixty

(60) days from the Notice Date to opt out and one-hundred twenty (120) days from the Notice Date to file claims. Prior to the Final Approval Hearing, Plaintiffs and/or the Claims Administrator shall serve and file a sworn statement attesting to compliance with the provisions of this paragraph.

10. The notice to be provided as set forth in the Settlement Agreement is hereby found to be the best practicable means of providing notice under the circumstances and, when completed, shall constitute due and sufficient notice of the proposed settlement and the Final Approval Hearing to all persons and entities affected by and/or entitled to participate in the settlement, in full compliance with the notice requirements of Fed R. Civ. P. 23, due process, the Constitution of the United States, the laws of New York and all other applicable laws. The Notices are accurate, objective, informative and provide Class members with all of the information necessary to make an informed decision regarding their participation in the Settlement and its fairness.

11. Class Counsel are authorized to retain _____ in accordance with the terms of the Settlement Agreement and this Order.

Requests for Exclusion from the Settlement Class

12. Any member of the Settlement Class that wishes to be excluded (“opt out”) from the Settlement Class must send a written Request for Exclusion to the Claims Administrator, so that it is received by the Claims Administrator at the address indicated in the Notice on or before the close of the opt out period. The Request for Exclusion shall fully comply with the requirements set forth in the Settlement Agreement. Members of the Settlement Class may not exclude themselves by filing Requests for Exclusion as a group or class, but must in each instance individually and personally execute a Request for Exclusion and timely transmit it to the Claims Administrator.

13. Any member of the Settlement Class who does not properly and timely request exclusion from the Settlement Class shall be bound by all the terms and provisions of the Settlement Agreement, whether or not such person objected to the Settlement and whether or not such person made a claim upon, or participated in, the Settlement Fund pursuant to the Settlement Agreement.

The Final Approval Hearing

14. A hearing on final settlement approval (the “Final Approval Hearing”) is hereby scheduled to be held before this Court on no later than one hundred fifty (150) days from the Notice Date, to consider the fairness, the reasonableness, and adequacy of the proposed settlement, the dismissal with prejudice of this class action with respect to the Released Parties that are Defendants herein, and the entry of final judgment in this class action. Class Counsel’s application for award of attorney’s fees and costs shall be heard at the time of the fairness hearing.

15. The date and time of the Fairness Hearing shall be set forth in the Notice, but the Fairness Hearing shall be subject to adjournment by the Court without further notice to the members of the Settlement Class other than that which may be posted by the Court. Class Counsel will advise members of the settlement class of any scheduling issues by way of the settlement website.

16. Any person or entity that does not elect to be excluded from the Settlement Class may, but need not, enter an appearance through his or her own attorney. Settlement Class members who do not enter an appearance through their own attorneys will be represented by Class Counsel.

17. Any person who does not elect to be excluded from the Settlement Class may, but need

not, submit comments or objections to the proposed Settlement. Any Class member may object to the proposed Settlement, entry of Final Order and Judgment approving the settlement, and Class Counsel's application for fees and expenses by serving a written objection.

18. Any Class member making the objection (an "objector") must sign the objection personally. An objection must state why the objector objects to the proposed Settlement and provide the basis to support such position. If an objector intends to appear personally at the Fairness Hearing, the objector must include with the objection a notice of the objector's intent to appear at the hearing.

19. Objections, along with any notices of intent to appear, must be filed no later than sixty (60) days from the Notice Date. If counsel is appearing on behalf of more than one Class Member, counsel must identify each such Class Member and each Class Member must have complied with the requirements of this Order. These documents must be filed with the Clerk of the Court at the following address:

Clerk of the Court
U.S. District Court for the Northern District of New York
James T. Foley U.S. Courthouse
445 Broadway
Albany, NY 12207

20. Objections, along with any notices of intent to appear, must also be mailed to Class Counsel and counsel for Defendant at the address listed below:

CLASS COUNSEL

Elmer R. Keach, III, Esquire
Law Offices of Elmer Robert Keach, III, PC
1040 Riverfront Center
P.O. Box 70
Amsterdam, NY 12010

DEFENSE COUNSEL

William J. Greagan, Esquire

Goldberg Segalla LLP
8 Southwoods Boulevard
Albany, NY 12211

21. Only Class Members who have filed and served valid and timely notices of objection shall be entitled to be heard at the Fairness Hearing. Any Class Member who does not timely file and serve an objection in writing to the Settlement, entry of Final Judgment, or to Class Counsel's application for fees, costs, and expenses, in accordance with the procedure set forth in the Class Notice and mandated in this Order, shall be deemed to have waived any such objection by appeal, collateral attack, or otherwise.

22. Persons wishing to be heard at the Fairness Hearing are required to file written comments or objections and indicate in their written comments or objections their intention to appear at the Fairness Hearing. Settlement Class members need not appear at the hearing or take any other action to indicate their approval.

23. All members of the Settlement Class who do not personally and timely request to be excluded from the Class are enjoined from proceeding against the Defendants for the claims made in the Complaint.

Other Provisions

24. Upon approval of the settlement provided for in this Settlement Agreement, each and every time period and provision thereof shall be deemed incorporated herein as if expressly set forth and shall have the full force and effect of an Order of this Court.

25. All reasonable costs incurred in notifying members of the Settlement Class, as well as administering the Settlement Agreement, shall be paid as set forth in the Settlement Agreement.

IT IS SO ORDERED.

Dated:

Hon. Gary L. Sharpe
United States District Judge