UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JENNIFER REYNOLDS, *et al.*,	:	Civil Action No. 1:07-CV-01688
	:	Judge Thomas I. Vanaskie
Plaintiffs,	:	
- vs -	:	(Complaint Filed 9/16/07)
THE COUNTY OF DAUPHIN	:	CIVIL ACTION - LAW
Defendant.	:	JURY TRIAL DEMANDED

MEMORANDUM OF LAW IN SUPPORT OF JOINT MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT, FOR AN AWARD OF EXPENSES AND ATTORNEYS' FEES, AND FOR APPROVAL OF INCENTIVE AWARD TO THE CLASS REPRESENTATIVES

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I. Introduction

On behalf of the Settlement Class certified for settlement purposes by the Court on April 8, 2009, Plaintiffs Jennifer Reynolds, Ashley McCormick, and Devon Shepard and Class Counsel hereby move, together with Defendant, Dauphin County, for final approval of the class action settlement, including an award of counsel fees, expenses, and incentive payments to the Class Representatives. Class Counsel respectfully suggests to the Court that the $2,160,500.00 settlement of the Class Members' claims against Dauphin County provides Class Members with excellent relief for this case and should be approved by the Court.

II. Procedural Background

This case was commenced in September 2007 by the filing of a complaint. The parties engaged in extensive discovery, including serving and responding to interrogatories and document requests, reviewing hundreds of documents, conducting numerous depositions, and interviewing fact witnesses. After the completion of discovery but before a class certification motion was filed, the parties agreed to enter into settlement discussions. Settlement negotiations began in July 2008, when the parties met for a mediation session conducted by Judith Meyer, Esquire. The Settlement Agreement was executed January 26, 2009.

Plaintiffs moved for preliminary approval on January 28, 2009 and the Court provided preliminary approval of the Settlement Agreement on April 8, 2009. Notice was then mailed to the Class Members and notice was published in accordance with the Settlement Agreement. Additional notice efforts were also undertaken. *See* LaDuca Cert. ¶4; LaDuca Cert. Ex. A (Affidavit of Jose C. Fraga) at ¶¶3-4, 6-7. Class Members had until September 29, 2009 to file claims. A total of 2,288 claims have been received

(of which 527 appear to have been from individuals not preliminarily identified as being valid Class Members). LaDuca Cert. Ex. A at ¶9. Also, there has not been a single request for exclusion from the Settlement and only one objection was received. LaDuca Cert. at ¶13. Plaintiffs now move for final approval of the Settlement and all its constituent parts.

III. Terms of the Settlement and Settlement Administration

The proposed Settlement Class consists of all persons brought to the County Prison after being charged with misdemeanor offenses (or other minor crimes) and were subsequently strip searched upon their entry into the Prison pursuant to the policy, custom and practice of the County of Dauphin (the "Settlement Class"):

> All persons who have been or will be placed into the custody of the Dauphin County Prison after being charged with misdemeanors, summary offenses, violations of probation or parole or intermediate punishment, civil commitments, or minor crimes who were strip searched upon their entry into the Dauphin County Prison pursuant to the policy, custom and practice of the County of Dauphin. The class period commences on September 16, 2005 and extends to March 12, 2008. Specifically excluded from the class is Defendant and any and all of its respective affiliates, legal representatives, heirs, successors, employees or assignees.

The settlement creates a fund of $2,160,500.00 (the "Settlement Fund"). All administrative expenses, including the costs of settlement administration, website administration and the provision of notice to Class Members, as well as the amounts awarded by the Court for attorneys' fees and costs and incentive award to the Class Representatives (in the requested amount of $15,000 to Reynolds and McCormick, and $10,000 to Shepard), will be deducted from the Settlement Fund prior to determining the amount of distribution for Class Members.[1] In the event that the *pro rata* share of the

[1] The precise recovery from the Settlement Fund to Class Members, and the timing of distributions, will be determined by the Plan of Distribution. Members of the Settlement Class will then receive their *pro rata*

settlement paid to Class Members would be greater than $1,400.00, the Defendant's insurance company, States Self-Insurers Risk Retention Group, Inc., will receive a reverter of all remaining funds.

Pursuant to the Court's preliminary approval order, the Settlement Administrator (1) mailed notice of the settlement (the "long form notice") to all members of the Settlement Class, (2) placed a summary of the long-form notice (the "short-form notice") in the Harrisburg Patriot News at least one day per week for three consecutive weeks and on one occasion during the last ten days of the claims period. Advertisements were also broadcast on television on four separate weeks. *See* LaDuca Certification Exhibit A (Fraga Affidavit) ¶4. In addition, at Class Counsel's request, Garden City also established an Interactive Voice Response system which received 2,483 calls. All told, 8,779 Claim Packets were mailed (including reminder and duplicate mailings). *See* LaDuca Certification Exhibit A (Fraga Affidavit) ¶8.

Class Counsel made supplemental efforts to increase the claims rate. Individuals who had not responded to the initial mailing for whom Garden City was able to obtain valid telephone numbers received a pre-recorded message reminder, *see* LaDuca Cert. Exhibit A (Fraga Affidavit) ¶6), and a reminder mailing was sent to Class Members with deliverable addresses that included a reminder of the upcoming claims deadline, as well as another set of claims forms. *See* LaDuca Cert. Exhibit A (Fraga Affidavit) ¶7.

The claims period concluded on September 29, 2009. A total of 2,288 Claim Forms have been received (527 of which have been identified as not being from valid Class Members – that is, from individuals for whom there is not a Dauphin County Jail

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share of the distribution amount which counsel believes, based on claims data set forth in the Affidavit of Jose C. Fraga, will be less than the $1,400 maximum amount permitted under the Settlement Agreement, *see* SA at III(C)(1), (3).

booking sheet showing that individual is a class member). LaDuca Cert. Ex. A (Fraga Affidavit) ¶9. This is a claims rate of 34%, *id.*, which is within the typical rate of return of claims in strip search class actions.[2]

Notably, not a single individual has opted-out of the settlement and only one person has objected to it. Based on the number of claims received, Settlement Class Members will receive approximately $680 as their *pro rata* share of the Settlement Fund. *See* LaDuca Cert. ¶5. As a consequence, Class Counsel believes that there will be no reverter arising from this Settlement.

IV. Standards and Procedures for Final Approval of Class Action Settlements

"Compromises of disputed claims are favored by the courts." *Williams v. First Nat'l Bank*, 216 U.S. 582, 595 (1910); *In re Prudential Ins. Co. of Am. Sales Practices Litig.*, 148 F.3d 283, 317 (3d Cir. 1998) ("*Prudential II*"). Settlement spares the litigants the uncertainty, delay and expense of a trial, while simultaneously reducing the burden on judicial resources.

Federal Rule of Civil Procedure 23(e) of the Federal Rules of Civil Procedure mandates that a class action cannot be settled without court approval:

> A class action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs.

See Amchem Prods. Inc. v. Windsor, 521 U.S. 591, 617 (1997); *Prudential II*, 148 F.3d at 316. In a class action, the "court plays the important role of protector of the [absent members'] interests, in a sort of fiduciary capacity." *In re Gen. Motors Corp. Pick-up*

[2] Plaintiffs' initial estimate of the class size was 5,721. A thorough review of the class size data revealed, however, that the Settlement Class actually consists of 6, 618 individuals. Considering only the valid claims received to date, the claims rate is approximately 27%.

Truck Fuel Tank Prods. Liab. Litig., 55 F.3d 768, 785 (3d Cir. 1995). The ultimate determination whether a proposed class action settlement warrants approval resides in the court's discretion. *Protective Comm. For Indep. S'holders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-25 (1968); Approval of a settlement is warranted if the settlement is fair, reasonable, and adequate. *Fry v. Hayt, Hayt & Landau*, 198 F.R.D. 461, 470 (E.D. Pa. 2000); *In re Cendant Corp. Litig.*, 264 F.3d 201, 231 (3d Cir. 2001).

While the Court has discretion in determining whether to approve a settlement, it should be hesitant to substitute its judgment for that of the parties who negotiated the settlement. *Fisher Bros. v. Phelps Dodge Indus., Inc.*, 604 F. Supp. 446, 452 (E.D. Pa. 1985). "Courts judge the fairness of a proposed compromise by weighing the plaintiff's likelihood of success on the merits against the amount and form of the relief offered in the settlement. They do not decide the merits of the case or resolve unsettled legal questions." *Carson v. Am. Brands, Inc.*, 450 U.S. 79, 88 n.14 (1981) (citation omitted). The court may rely on the judgment of experienced counsel and should avoid transforming the hearing on the settlement into a trial on the merits. *Bryan v. Pittsburgh Plate Glass Co.*, 494 F.2d 799, 804 (3d Cir. 1974).

The procedure of providing notice to the class, followed by a hearing to consider approving a class settlement, is now standard practice in this Circuit, as well as throughout the Country. *Prudential II*, 148 F.3d at 326-27; *see also Bronson v. Board of Education of the City School District of the City of Cincinnati*, 604 F. Supp. 68 (S.D. Ohio 1984).

This Court previously granted preliminary approval of the Settlement, signifying that the Settlement was in the range of possible approval. However, the ultimate Rule

23(e) determination is reserved pending the completion of the notice and initial opt-out process, so the Court can consider input from the Class Members who will be bound by the final approval Order. *See General Motors,* 55 F.3d 768; *In re Corrugated Container Antitrust Litigation,* 643 F.2d 195 (5th Cir. 1981); *Armstrong v. Board of School Directors of the City of Milwaukee*, 616 F.2d 305 (7th Cir. 1980). Now that a full plan of notice has been effectuated and the deadline for objections and opt-outs period has passed, the Court may consider final approval of the Settlement.

The Third Circuit has identified nine factors – the *Girsh* factors – that a district court should consider when determining whether a proposed class action settlement warrants approval. *In re Datatec Systems*, 2007 WL 4225828, *2 (*citing Girsh*, 521 F.2d at 157). These include:

> (1) the complexity, expense and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class action through the trial; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.

See also In re Rite Aid Corp. Sec. Litig., 396 F.3d 294, 301 (3d Cir. 2005).[3] The

[3] The *Girsh* factors are not exhaustive, however, and the Third Circuit has advised that the District court may consider other relevant factors in determining whether final approval should be granted. *In re AT & T Corp.*, 455 F.3d 160, 165 (3d Cir.2006) (*citing In re Prudential Ins. Co. America Sales Practice Litigation Agent Actions,* 148 F.3d 283, 323 (3d Cir.1998)).These may include, *e.g.:*

> [T]he maturity of the underlying substantive issues, as measured by the experience in adjudicating individual actions, the development of scientific knowledge, the extent of discovery on the merits, and other factors that bear on the ability to assess the probable outcome of a trial on the merits of liability and individual damages; the existence and probable outcome of claims by other classes and subclasses; the comparison between the results achieved by the settlement for individual class or subclass members and the results achieved-or likely to be achieved-for other claimants; whether class or subclass

Settlement before the Court in this case falls well within the range of possible approval, taking into consideration all relevant factors, and, therefore, final approval of the Settlement should be granted.

A. Application of the *Girsh* Factors

1. Complexity, Expense and Likely Duration of the Litigation

If this litigation were to proceed, significant expense and delay would result which likely would not benefit Class Members. As stated above, the discovery conducted in this case has been significant. If Plaintiffs were to continue to trial, the remaining discovery would be complex and expensive. Moreover, there would be full briefing on a motion for class certification and, potentially, dispositive motions that would take more time. Even beyond the dispositive motions, pretrial activities would take additional time and, should it be reached, a trial in this action would last for weeks, with multiple jail employees being examined about the practices of the Dauphin County Jail in an effort to establish municipal liability. The Settlement removes the overwhelming and redundant costs of individual trials. Indeed, if certification is not granted, even having a small proportion of Class Members have duplicative trials on this issue would be an enormous waste of judicial resources, and would not be the superior and appropriate way to resolve this controversy.

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members are accorded the right to opt out of the settlement; whether any provisions for attorneys' fees are reasonable; and whether the procedure for processing individual claims under the settlement is fair and reasonable.

Prudential II, 148 F.3d at 323.

2. The Absence of Objections is Evidence of the Reasonableness of the Settlement

It is clear that a *pro rata* share of the distribution amount, which is approximately $680 per Settlement Class member for the indignity at issue, is quite fair and reasonable, given the inherent risks of litigation and consistent with the awards in similar cases.

As described above, the notice has been given to the Class. One objection was received and no individuals excluded themselves from the Settlement. When determining the measure of the class's reaction to a settlement, the court must look to the number and "vociferousness" of the objectors. *General Motors*, 55 F.3d at 812. Here, the response of the Class represents a reliable barometer of the overall fairness of the Settlement itself. *See Bell Atlantic Corp. v. Bolger*, 2 F.3d 1304, 1313 n.15 (3d Cir. 1993).

Additionally, the number of claims filed on the Settlement is, as noted, commensurate with, or greater, than claims rates in other strip search cases. Here, the current claims rate is 34% (or, approximately 27% considering only those claims which the claims administrator has identified as being valid), *see* LaDuca Cert. Exhibit A (Fraga Affidavit) ¶9, a rate within the range of strip search settlements. *See* Chart of Strip Search Settlements, attached hereto as Exhibit A. The fact that the Class Members responded and made claims at such a rate, coupled with the fact that there have been no opt-outs and only one objector, shows that the reaction of the Class to the proposed settlement has been overwhelmingly positive. *See, e.g. In re Datatec Systems*, 2007 WL 4225828, *3 (*citing Stoetzner v. U.S. Steel Corp.*, 897 F.2d 115, 118-19 (3d Cir. 1990) (finding that 29 objectors out of 281 Class Members "strongly favors settlement"); *In re SmithKline Beckman Corp. Sec. Litig.*, 751 F. Supp. 525, 530 (E.D. Pa. 1990) ("Both the utter absence of objections and the nominal number of shareholders who have exercised

their right to opt out of this litigation militate strongly in favor of approval of the settlement.").

3. Stage of the Proceedings and the Amount of Discovery Completed

This factor requires the Court to analyze the stage of the proceedings to determine "the degree of case development that... counsel have accomplished prior to the settlement. *General Motors*, 55 F.3d at 813. Essentially, the Court must ensure that the Settlement is not the product of a quick and uniformed decision making process. It has been generally understood by the Third Circuit that settlements made after discovery reflect the true value of the claim. *Bell Atlantic Corp. v. Bolger*, 2 F.3d 1304, 1314 (3d Cir. 1993). Here, Class Counsel took numerous depositions and reviewed hundreds of documents. Thus, this factor likewise weighs in favor of approval.

4. Risks of Establishing Liability and Establishing Damages

The Court must determine whether the proposed Settlement is within a range which experienced attorneys could accept in light of the relevant risks of the litigation. *General Motors*, 55 F.3d at 806. Here, as noted, the settlement range is well within that obtained in other, similar cases and was, as set forth below, obtained by attorneys experienced in this particular area of practice.

In addition, there has been the creation of some uncertainty in the law regarding whether visual strip searches violate the United States Constitution and while district courts in this Circuit have found such liability to exist, attempts are being made to take the issue to the Third Circuit. *See Florence v. County of Burlington*, Civ. Action No. 05-3619 (D.N.J.). Further, given the credibility jurors often give to law enforcement testimony and the fact that it would have been difficult for Plaintiff to prove and recover

damages for harms that were often dignitary rather than pecuniary, Class Counsel faced a risk of a low damage award. There are risks associated with trying this case before a jury in that there would be "no guarantee whom the jury would believe." *In re Cendant Corp. Litig.*, 264 F.3d 201, 239 (3d Cir. 2001). Thus, this factor also weighs in favor of approval of the settlement.

5. Risk of Maintaining the Class Action Through the Trial

After the Supreme Court's opinion in *Amchem*, 521 U.S. 591 (1997), this factor "may not be significant to a court's determination of the approval of a settlement. *Prudential II*, 148 F.3d at 321. Particularly because this is a settlement class, this factor adds little to the consideration of the fairness of the settlement." *In re Safety Components Inc. Sec. Litig.*, 166 F. Supp. 2d 72, 91 (D.N.J. 2001). Here, in any event, the Class was not certified for litigation purposes, only for settlement, though the risk of obtaining certification and maintaining it, however, was real. *See In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 537 (3d Cir. 2004).

6. Ability of the Defendants to Withstand Greater Judgment

This *Girsh* factor "is concerned with whether the defendants could withstand a judgment for an amount significantly greater than the settlement." *Cendant*, 264 F.3d at 240. Plaintiffs believe that the Settlement constitutes the limits of Defendant's ability to pay and could only have been concluded with the use of insurance money Dauphin County.

7. Range of Reasonableness of the Settlement Fund in Light of the Best Possible Recovery and the Attendant Risks of Litigation

The fairness of the settlement process and of the Settlement Agreement itself also

was shaped by the experience and reputation of counsel, an important factor in final approval of class action settlements. *See General Motors*, 55 F.3d at 787-88; *Cotton v. Hinton*, 559 F.2d 1326 (5th Cir. 1977); *In re Coordinated Pretrial Proceedings in Antibiotic Antitrust Actions*, 410 F. Supp. 659 (D. Minn.1974) ("The recommendation of experienced antitrust counsel is entitled to great weight."); *Fisher Brothers v. Phelps Dodge Industries, Inc.*, 604 F. Supp. 446 (E.D. Pa. 1985) ("The professional judgment of counsel involved in the litigation is entitled to significant weight."). This Settlement was specifically negotiated by experienced counsel to meet all the requirements of Rule 23 as discussed in *Amchem*, and specifically to provide administrative procedures to assure all Class Members equal and sufficient due process rights. Accordingly, the Settlement was not the product of collusive dealings, but, rather, was informed by the vigorous prosecution of the case by the experienced and qualified counsel. Further, continued litigation would be long, complex and expensive, and a burden to court dockets. *Lake v. First National Bank*, 900 F. Supp. 726 (E.D. Pa. 1995) (expense and duration of litigation are factors to be considered in evaluating the reasonableness of a settlement).

There is no reason to doubt the fairness of the proposed Settlement Agreement. The Settlement Agreement was the result of months of good faith, arm's length negotiations between experienced and informed counsel on both sides. The proposed Settlement Agreement does not unduly grant preferential treatment to the Class Representatives or to segments of the Settlement Class, and it does not provide excessive compensation to Counsel. Moreover, as noted, courts have approved class action settlements paying victims of illegal strip searches in the range likely to be paid here. Thus, the Settlement Agreement gives Class Members the benefit of a significant amount

of compensation, comparable to analogous cases, without having to prove particular emotional distress or the particular circumstances of a search. Those who believed they would have been entitled to significantly more could, of course, have opted out and pursed an independent remedy – and none chose that alternative. The Settlement here is fair and on par with other settlements in similar cases.

B. The Plan of Distribution of the Settlement Fund is Fair

The "[a]pproval of a plan of allocation of a settlement fund in a class action is 'governed by the same standards of review applicable to approval of the settlement as a whole: the distribution plan must be fair, reasonable and adequate.'" *In re Ikon Office Solutions, Inc. Sec. Litig.,* 194 F.R.D. 166, 184 (E.D. Pa. 2000) (citations omitted); *see also Walsh v. Great Atl. & Pac. Tea Co.,* 726 F.2d 956, 964 (3d Cir.1983) ("The Court's principal obligation is simply to ensure that the fund distribution is fair and reasonable as to all participants in the fund.").

The Plan of Distribution (Exhibit C to LaDuca Cert.) provides that Class Counsel will seek to be reimbursed for costs and attorneys' fees of no more than thirty percent of the Settlement Fund. Class Counsel proposes that $40,000 be allocated to pay an incentive award to Class Representatives Jennifer Reynolds, Ashley McCormick, and Devon Shepard. After these costs and the costs of notice and claims administration, approximately $1,198,650 will be available to distribution on a *pro rata* basis to the class, which will, based upon claims to date, most likely be an amount of approximately $680 per class member. *See* LaDuca Cert. ¶ 5; LaDuca Cert. Ex. C.

Class Counsel believes that the Plan of Distribution is eminently fair, reasonable, and adequate.

C. Class Counsels' Request for Reimbursement of Expenses Should Be Approved

"Counsel for a class action is entitled to reimbursement of expenses that were adequately documented and reasonably and appropriately incurred in the prosecution of the class action." *In re Datatec Systems*, 2007 WL 4225828, *9 (*quoting In re Safety Components, Inc. Sec. Litig.*, 166 F. Supp. 2d 72, 108 (D.N.J. 2001)); *In re Rent-Way Sec. Litig.*, 305 F. Supp. 2d 491, 519 (W.D. Pa. 2003) ("There is no doubt that an attorney who has created a common fund for the benefit of the class is entitled to reimbursement of... reasonable litigation expenses from that fund.").

Class Counsel requests reimbursement of expenses in the amount of $18,700 to cover costs associated with legal research, travel, mediation, meals, transportation, court fees, mailing, postage, and telephone. These reasonable expenses are documented on the books of Class Counsel and are reasonable in relation to the Settlement Fund and should be awarded. LaDuca Cert. at ¶5, 18. *See Lan v. Ludrof*, 2008 WL 763763 (W.D. Pa. March 21, 2008) (reimbursement of expenses in the amount of $66,080.81); *Rent-Way*, 305 F. Supp. 2d at 519 ($283,907 awarded in expenses); *Lazy Oil Co. v. Witco Corp.*, 95 F. Supp. 2d 290, 324 (W.D. Pa. 1997) ($486,165).

D. The Incentive Award to the Class Representatives Should Be Approved

The Settlement Agreement provides for an incentive award for Class Representatives Reynolds and McCormick of $15,000, and for Class Representative Shepard of $10,000. The Class Representatives provided support to this litigation by agreeing to step forward to serve as the Class Representatives, providing responses to discovery requests, and making themselves available to be deposed. The awards to the

Class Representatives are exceedingly modest, reasonable and should be approved. The law recognizes that it is appropriate to make modest awards in the range of $1,000 to $20,000 in recognition of the services that such plaintiffs perform in a successful class action. *See In re Insurance Brokerage Antitrust Litig.*, 2007 WL 2916472, *8 ($10,000 incentive award to each plaintiff, resulting in total payment of $250,000); *Lazy Oil,* 95 F. Supp. 2d at 345, 324-25 (incentive awards of $5,000 to $20,000 awarded); *Godshall v. Franklin Mint Co.*, 2004 WL 2745890, *4 (E.D. Pa. Dec. 1, 2004) ($20,000 to each named plaintiff); *In re Linerboard Antitrust Litig.*, 2004 WL 1221350, *18-19 (E.D. Pa. June 2, 2004) (granting award of $25,000 to each of the five class representatives); *Roberts* v. *Texaco,* 979 F. Supp. 185, 205 (S.D.N.Y. 1997); *Genden* v. *Merrill Lynch,* 700 F. Supp. 208, 210 (S.D.N.Y. 1998) (granting incentive awards of $20,085 for each class representative).

Class Counsel respectfully requests that the incentive award be approved.

E. Class Counsels' Request for Attorneys' Fees Is Reasonable and Should be Approved by the Court

Pursuant to Rule 23(h) and Rule 54(d)(2), Class Counsel seeks an award of attorneys' fees and costs in the amount of $648,150.00, or 30% of the common fund created by the Settlement. After extensive negotiation, Defendant agreed to pay this amount of the fund as attorneys' fees and not oppose Class Counsel's application.

This Court uses the "percentage-of-recovery" method in determining attorneys' fee awards in common fund cases, subject to a "lodestar/multiplier" cross-check. *General Motors,* 55 F.3d at 821; *Rite Aid,* 396 F.3d at 300; *Cendant,* 264 F.3d at 256; *Rent-Way,* 305 F. Supp. 2d at 512-13, 516-17; *Erie County Retirees' Ass'n v. County of Erie,* 192 F. Supp. 2d 369, 377-78 (W.D. Pa. 2002); *Lazy Oil,* 95 F. Supp. 2d at 322-23; *Lan*, 2008

WL 763763, *18; *In re Datatec System*, 2007 WL 4225828, *6. The Third Circuit has identified several factors that a district court should consider in determining an award of attorneys' fees. These factors include:

> (1) the size of the fund created and the number of persons benefitted; (2) the presence or absence of substantial objections by members of the class to the settlement terms and/or fees requested by counsel; (3) the skill and efficiency of the attorneys involved; (4) the complexity and duration of the litigation; (5) the risk of nonpayment; (6) the amount of time devoted to the case by plaintiff's counsel; and (7) the awards in similar cases.

Rite Aid, 396 F.3d at 301 (*citing Gunter v. Ridgewood Energy Corp.*, 223 F.3d 190, 195 n. 1 (3d Cir. 2000). Each of these factors favors the requested award of attorneys' fees.

First, the fund created by the Settlement is $2,160,500.00 and the Settlement Class consists of 6,618 individuals. LaDuca Cert. Ex. A (Fraga Affidavit) at ¶5, 9. The Settlement is fair, reasonable, and adequate, and the Settlement Class is large. This factor therefore weights in favor of granting the fee request. *See, e.g., Erie County Retirees' Ass'n.*, 192 F. Supp. 2d at 381 ("Fee awards ranging from thirty to forty-three percent have been awarded in cases with funds ranging from $400,000 to $6.5 million…").

Second, as noted above, Class Members received notice of the Settlement terms and the amount of attorneys' fees that Class Counsel would be applying for. Only one objection has been filed with respect to the reverter in particular and, as noted previously, in light of the high claims rate, it is believed that no reverter will take effect. Further, no Class Members have opted out of the Settlement. Accordingly, this factor too favors the requested attorneys' fee award. *See, e.g., In re AT&T Corp.*, 455 F.3d at 170 (district court did not abuse discretion in finding that second factor weighed strongly in favor of approval where there were 8 objections out of one million potential class members).

Third, the Class is represented by experienced counsel who have invested time and resources into the prosecution of this action and have served as Class Counsel in numerous class actions including strip search class actions. "The fact that not a single objection has been filed to the Settlement... is strong evidence that counsel for the Class have achieved a very good result for the Class." *Lan*, 2008 WL 763763, *23.

Fourth, the duration of this litigation also weighs in favor of the award of attorneys' fees. Counsel have litigated this case for over two years. There is no doubt that "[t]he Settlement saves the parties substantial time and money." *In re Datatec Systems*, 2007 WL 4225828, *7.

Fifth, the risk of nonpayment is significant. Class Counsel "undertook this action on a contingent fee basis, assuming a substantial risk that they might not be compensated for their efforts. Courts recognize the risk of non-payment as a factor in considering an award of attorneys' fees." *In re Datatec Systems*, 2007 WL 4225828, *7 (citation omitted).

Sixth, Class Counsel have committed approximately 1,252.45 hours through the course of this litigation to date, all of which was devoted on a contingency basis with no guarantee of repayment. LaDuca Cert. at ¶15.

Lastly, the requested percentage of the Settlement Fund of 30% is commensurate with other settlements. For example, the fee request approved in *Suggs v. Cumberland County*, 1:06-CV-00087 (D.N.J.), was 30% of the $4.5 million in that case and also 30% in *Boiselle v. Mercer County*, 3:06-CV-2065, ($1.8 million settlement). *See also, Hicks v. County of Camden*, 1:05-CV-1857 (D.N.J.) (27.5% of a $7.5 million settlement); *In re Vicuron Pharmaceuticals, Inc. Securities Litig.*, 2007 WL 1575003 (E.D. Pa. May 31,

2007) (approving counsel fees equal to 25% of the $12.75 million settlement); *Smith v. Dominion Bridge Corp.*, 2007 WL 1101272 (E.D. Pa. April 11, 2007) (approving fee award equal to 33.3% of $750,000 settlement fund); *Lenahan v. Sears, Roebuck and Co.*, 2006 WL 2085282 (D.N.J. July 24, 2006) (fees award equaled 30% of $15 million fund), *aff'd,* 2008 WL 466471 (3d Cir. Feb 21, 2008); *In re Ravisent Tech., Inc. Securities Litig.*, 2005 WL 906361 at *10-12 (E.D. Pa. Apr. 18, 2005) (fee award equaled 33% of $7 million settlement); *In re Remeron Direct Purchaser Antitrust Litig.*, No. 03-0085, 2005 U.S. Dist. Lexis 27013, *44 (D. N.J. Nov. 9, 2005); *Rite Aid*, 396 F.3d at 306-07 (review of 289 settlements demonstrates "average attorney's fees percentage [of] 31.71% with a median value that turns out to be one-third"); *In re Corel Corp. Inc. Securities Litig.*, 293 F. Supp. 2d 484 (E.D. Pa. 2003) (awarding fees equal to 33.3% of $7 million fund); *Erie Forge and Steel, Inc. v. Cyprus Minerals Co.,* Civ. Action No. 94-404 (W.D. Pa. 1996) (awarding 33.3% fee from $3.6 million recovery); *Fox v. Integra Financial Corp.,* Civ. Action No. 90-1504 (W.D. Pa. 1996) (33.3% awarded where class recovery was $6.5 million); *General Motors Co*, 55 F.3d at 822 (in common fund cases "fee awards have ranged from nineteen percent to forty-five percent of the settlement fund"); *In re Greenwich Pharmaceutical Securities Litig.,* 1995 WL 251293 (W.D. Pa. Apr. 26, 1995) (approving award equal to 33.3% of the $4.375 million settlement fund and noting that "cases with smaller settlement funds often include attorneys' fee awards that exceed the median of 25 percent"). "The fact that the requested fee represents a percentage of recovery at or below the traditional range for similarly situated settlements… supports the conclusion that it is reasonable." *Lan*, 2008 WL 763763, *25.

Courts confirm the reasonableness of an award based on a percentage of recovery

by using the lodestar method. *Rite Aid*, 396 F.3d at 305-06. The lodestar analysis is performed by "multiplying the number of hours reasonably worked on a client's case by a reasonable hourly billing rate for such services based on the given geographical area, the nature of the services provided, and the experience of the attorneys." *Id.* at 305. The Court "should apply blended billing rates that approximate the fee structure of all the attorneys who worked on the matter." *Id.* at 306. If the lodestar multiplier, which is equal to the proposed fee award divided by the produce of the total hours and the billing rate, is large, the award calculated under the percentage-of-recovery method may be deemed unreasonable, and the Court may consider reducing the award. *Id.* The lodestar multiplier, however, "need not fall within any pre-defined range, provided that the [d]istrict [c]ourt's analysis justifies the award." *Id.* at 307. "The court is not required to scrutinize every billing record but may, instead, rely on summaries submitted by the attorneys, and is not required to scrutinize every billing record. *Id.*, 396 F.3d at 306-07.

"Multiples ranging from one to four are frequently awarded in common fund cases when the lodestar method is applied." *Prudential II*, 148 F.3d at 341 (*quoting* 3 Herbert Newberg & Alba Conte, *Newberg on Class Actions*, §14.03 at 14-5 (3d ed. 1992); *In re Vicuron Pharmaceuticals, Inc. Sec. Litig.*, 512 F. Supp. 2d at 287; *In re Corel Corp. Inc.*, 293 F. Supp. 2d at 497; *Rentway*, 305 F. Supp. 2d at 517; *In Re NASDAQ Market-Makers Antitrust Litig.*, 187 F.R.D. 465, 489 (S.D.N.Y. 1998). Here, considering the approximate hourly attorneys' fees to date, Class Counsel seeks a multiplier of approximately 1.25 based upon the total lodestar time to date of $518,112.5, *see* LaDuca Cert. at ¶¶15, 17, which is, as shown, is in the lower to middle range of typical awards. However, in all likelihood there will be extensive additional time in order

to oversee the settlement and to handle a significant volume of calls from class members that will add at least 10% to the current lodestar, which will reduce the multiplier to 1.11, *id.,* a number well within the range of reasonability, and particularly for a case in which the class's reaction has been overwhelmingly positive.

Class Counsel respectfully suggests that the counsel fee requested is reasonable in light of the time and labor expended by counsel, the magnitude of the litigation, the risks taken in the litigation, the monetary results achieved for the class, and the amount of the fee in proportion to the monetary settlement and injunctive relief achieved. It is particularly reasonable because Class Counsel should be rewarded, not penalized, for recognizing the strengths and weaknesses of the case and for being able to settle it quickly so as to obtain recompense for the Class, sooner rather than later.

V. Certification of the Proposed Settlement Class is Appropriate to Resolve All Strip Search Claims Against Defendants

The benefits of settlement classes are well-recognized. *See Amchem*, 521 U.S. 591; *Prudential II,* 148 F.3d 283; *Hanlon v. Chrysler Corp.,* 150 F.3d 1011 (9th Cir. 1998). The Third Circuit has a clear preference for class certification: "The interests of justice require that in a doubtful case . . . any error, if there is to be one, should be committed in favor of allowing a class action." *Eisenberg v. Gagnon,* 766 F.2d 770 (3d Cir. 1985)*; see also Walsh v. Pittsburgh Press Co.,* 160 F.R.D. 527 (W.D. Pa. 1994).

While the elements of Rule 23 are set forth below *seriatim*, it is worth noting that this Court, and other federal courts, in considering the situation where cities or counties have employed blanket search policies have consistently recognized the propriety of certifying such cases as class actions and the decisions certifying such cases are legion.[4]

[4] *See Delandro v. County of Allegheny*, Civ. No. 06-927 (W.D. Pa. Aug. 8, 2008) (class certification in strip

A. The Elements of Rule 23(a) are Satisfied in the Present Case

In order for a lawsuit to be maintained as a class action under Rule 23 of the Federal Rules of Civil Procedure, the named plaintiff or plaintiffs must establish each of the four threshold requirements of subsection (a) of the Rule, which provides:

> One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class.

Fed. R. Civ. P. 23(a). *See e.g. Barnes v. American Tobacco Co.*, 161 F.3d 127 (3d Cir. 1998); *Prudential II*, 148 F.3d at 308-09; *Wetzel v. Liberty Mut. Ins. Co.*, 508 F.2d 239 (3d Cir. 1975). Here, all four elements easily are satisfied.

1. Numerosity Under Rule 23(a)(1)

Rule 23(a)(1) requires that the class be "so numerous that joinder of all members is impracticable." A plaintiff is not required to come before the Court and detail, to the person, the exact size of the class or to demonstrate that joinder of all Class Members is impossible. "Impracticability does not mean impossibility." *Liberty Lincoln Mercury,*

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search class action against county); *Wilson v. The County of Gloucester*, 2009 U.S. Dist. LEXIS 25336 (D.N.J. March 30, 2009) (class certification in strip search class action against county); *Florence v. Board of Chosen Freeholders of the County of Burlington*, 2008 U.S. Dist. Lexis 22152 (D.N.J. March 20, 2008) (class certification in strip search class action against county); *Bizzarro v. Ocean County*, 2009 WL 1617887 (D.N.J. June 9, 2009); *Williams v. County of Niagara*, 2008 WL 4501918 (W.D.N.Y. Sept. 29, 2008); *Mitchell v. County of Clinton*, 2007 WL 1988716 (N.D.N.Y. July 5, 2007); *Marriott v. County of Montgomery,* 227 F.R.D. 159 (N.D.N.Y. 2005), *aff'd*, 2005 WL 3117194 (2d Cir. 2005) (class certification, preliminary injunction in strip search class action litigated by present Class Counsel); *Marriott v. County of Montgomery*, 426 F. Supp. 2d 1 (N.D.N.Y. 2006) (grant of summary judgment, permanent injunction and interim award of attorneys' fees); *Kahler v. County of Rensselaer*, No. 03-CV-1324 (N.D.N.Y. 2004) (preliminary approval order in strip search class action settlement, litigated by present Class Counsel); *Dodge v. County of Orange,* 209 F.R.D. 65 (S.D.N.Y. 2002); *Dodge v. County of Orange,* 226 F.R.D. 117 (S.D.N.Y. 2005); *Calvin v. Sheriff of Will County,* 2004 WL 1125922 (N.D. Ill. May 17, 2004); *Blihovde v. St. Croix County, Wis.,* 219 F.R.D. 607 (W.D. Wis. 2003); *Tardiff v. Knox County,* 218 F.R.D. 332 (D. Me. 2003), *aff'd*, 365 F.3d 1 (2004).

Inc. v. Ford Mktg. Corp., 149 F.R.D. 65, 73 (D.N.J. 1993) ("precise enumeration of the members of a class is not necessary."); *Zinberg v. Washington Bancorp, Inc.,* 138 F.R.D. 397, 405 (D.N.J. 1990) ("It is proper for the court to accept common sense assumptions in order to support a finding of numerosity."); *Moskowitz v. Lopp,* 128 F.R.D. 624, 628 (E.D. Pa. 1989). Numerosity is indisputable here. During the course of the case, Defendants produced booking records for individuals charged with misdemeanor or other minor offenses during the Class period. Notice was mailed to thousands of individuals and numerosity is thus not at issue. *See e.g. Bowers v. City of Philadelphia,* 2006 WL 2818501, *2-3 (E.D. Pa. Sept. 28, 2006) (numerosity exists where over 300 individuals had allegedly been subjected to unconstitutional conditions at PPS facilities and where the proposed class, which includes future detainees, could include thousands of people); *Marriott,* 227 F.R.D. at 171 (numerosity found in strip search class action where class numbered over 2,000).

2. Commonality Under Rule 23(a)(2)

Rule 23(a)(2) requires that there be "questions of law or fact common to the class." The commonality requirement is met if Plaintiff's grievance shares a common question of law or of fact. *Baby Neal v. Casey,* 43 F.3d 48, 56 (3d Cir. 1994). Rather than requiring that all questions of law or fact be common, Rule 23 only requires that "the questions of law or fact common to the members of the class predominate over any questions affecting only individual members." Fed. R. Civ. P. 23(b)(3). A plaintiff is not required to show that all Class Members' claims are identical to each other as long as there are common questions at the heart of the case; "factual differences among the claims of the putative Class Members do not defeat certification." *Baby Neal,* 43 F.3d at

56; *Prudential II,* 148 F.3d 283. Indeed, a single common question is sufficient to satisfy the requirements of Rule 23(a)(2). *See H. Newberg & A. Conte,* 1 Newberg on Class Actions § 3.10, at 3-50 (1992); *accord Baby Neal,* 43 F.3d at 56. A party is entitled to certification where the class claims arise "from a 'common nucleus of operative fact' regardless of whether the underlying facts fluctuate over the class period and vary as to individual claimants." *In re Asbestos Sch. Litig.,* 104 F.R.D. 422, 429 (E.D. Pa. 1984).

Applying these principles, it becomes manifest that the commonality requirement of subsection (a)(2) is easily met here. The central issues posed by this litigation are: a) did Defendant have an blanket strip search policy and/or practice during the class period; b) did that policy rise to the level of violating the United States Constitution; and, if so, c) is Defendant responsible for the constitutional violations? Given the presence of these common questions central to this litigation, Rule 23(a)(2)'s requirement for the existence of common questions of fact or law has been met here. *See Florence, supra*; *Wilson, supra.*[5]

3. Typicality Under Rule 23(a)(3)

Rule 23(a)(3) requires that the representative plaintiff's claims be "typical" of those of other Class Members. The commonality and typicality requirements of Rule 23(a) "tend to merge" *Gen. Tel. Co. of Southwest v. Falcon*, 457 U.S. 147, 157 n.13 (1982). The requirement of this subdivision of the rule, along with the adequacy of

[5] *See also, e.g., Dodge*, 226 F.R.D. at 180-181 (commonality exists where all members of the class contend that a blanket strip search policy exists, where all members contend that the policy is illegal, and where all members of the class claim they were searched pursuant to the policy which was uniformly applied to all detainees); *Marriott*, 227 F.R.D. at 172 (finding commonality where the representative parties and the members of the proposed class had the same legal claims based upon the same official procedure); *see also Sutton v. Hopkins County*, 2007 WL 119892, *4 (W.D. Ky. Jan. 11, 2007) ("Plaintiffs have alleged that the Defendants had a policy, custom, or practice of strip-searching persons on admission to and/or just prior to release from the Hopkins County Jail without regard to whether there existed the requisite individual, reasonable suspicion required by law. Given this allegation, the existence and constitutionality of the county's policy, custom or practice are common questions.").

representation requirement set forth in subsection (a)(4), is designed to assure that the interests of unnamed class members will be protected adequately by the named class representative. *Id.*; *Prudential II*, 148 F.3d at 311; *Bogosian v. Gulf Oil Corp.*, 561 F.2d 434 (3d Cir. 1977); *Asbestos School Litigation*, 104 F.R.D. at 429-30. The typicality requirement "is satisfied when each class member's claim arises from the same course of events, and each class member makes similar legal arguments to prove the defendant's liability." *Marisol A. v. Giuliani*, 126 F.3d 372 (2d Cir.1997). "Factual differences will not render a claim atypical if the claim arises from the same event or practice of course of conduct that gives rise to the claims of the Class Members, and it is based on the same legal theory." *Hayworth v. Blondery Robinson & Co.*, 980 F.2d 912, 923 (3d Cir. 1992). Typicality is demonstrated where the plaintiff can "show that two issues of law or fact he or she shares in common with the class occupy the same degree of centrality to his or her claims as to those of unnamed Class Members." *Weiss v. York Hosp.*, 745 F.2d 786, 809-10 (3d Cir. 1984); *see also Blihovde*, 219 F.R.D. at 617 (applying this principle to a strip search class action). The typicality requirement has been liberally construed by the federal courts. *Scholes v. Stone, McGuire & Benjamin,* 143 F.R.D. 181, 185 (N.D. Ill. 1992).

Here, the Representative Plaintiffs' claims are typical of the claims of the Class. These claims arise from the same course of events and the Representative Plaintiffs would have to make the same or effectively the same arguments to prosecute his claim as would be made by members of the proposed Class. Typicality is satisfied because the "[D]efendants acted pursuant to a policy that called for indiscriminate searches. If this allegation is true, then the named [P]laintiffs would be similarly situated to the other

members of the class." *Blihovde*, 219 F.R.D. at 617. Thus, typicality is easily satisfied by this proposed class action. *See Bowers*, 2006 WL 2818501, *2-3 ("A plaintiff's claim is typical if it arises from the same event or course of conduct that gives rise to the claims of other Class Members and is based on the same legal theory."); *see also Weisfeld v Sun Chem. Corp.*, 210 F.R.D. 136, 140 (D.N.J. 2002) ("[I]n instances wherein it is alleged that the defendants engaged in a common scheme relative to all members of the class there is a strong assumption that the claims of the representative parties will be typical of the absent Class Members.") (citation omitted); *Marriott*, 227 F.R.D. at 172 (finding typicality even where the claims of the representative parties involved a more detailed search than other Class Members, because they were conducted pursuant to the same policy); *Sutton,* 2007 WL 117892, at *4 ("Because each named Plaintiff alleges an unconstitutional strip search after arrest for a minor violation or before release from jail, the claims of the representatives are typical of the class as a whole.").

4. Adequacy Under Rule 23(a)(4)

The final requirement of Rule 23(a) is set forth in subsection (a)(4), which requires that "the representative parties will fairly and adequately protect the interests of the class." The Third Circuit consistently has ruled that:

> Adequate representation depends on two factors: (a) the plaintiff's attorney must be qualified, experienced and generally able to conduct the proposed litigation; and (b) the plaintiff must not have interests antagonistic to those of the class.

Weiss, 745 F.2d at 811, *quoting Wetzel v. Liberty Mutual Insurance Co.*, 508 F.2d at 247; *see also Prudential II*, 148 F.3d at 312. These two components are designed to ensure that absentee Class Members' interests are fully pursued. The existence of the elements

of adequate representation are presumed and "the burden is on the defendant to demonstrate that the representation will be inadequate." *Asbestos School Litigation*, 104 F.R.D. at 430, *citing Lewis v. Curtis*, 671 F.2d 779 (3d Cir. 1982); *Cook v. Rockwell Int'l Corp.*, 151 F.R.D. 378 (D. Colo. 1993) (quoting 2 Newburg, §7.24 at pp. 7-81, 2-82).

Plaintiffs and Class Counsel have fairly and adequately represented the Class here, especially judging by the excellent settlement achieved in this litigation. Indeed, in the present case, the presumption of adequate representation cannot be rebutted. With respect to the issue of adequacy of counsel, the Court may take judicial notice of the fact that Plaintiffs' attorneys have substantial experience in litigating complex civil rights actions. *See* LaDuca Cert. ¶19. The Class is represented by competent and experienced counsel who have invested considerable time and resources into the prosecution of this action. Additionally, counsel in this action has served as Class Counsel in numerous strip search class actions, and have been held to be adequate counsel repeatedly, Inasmuch as Class Counsel are adequate under Rule 23(a)(4), the effectively parallel requirements of Rule 23(g) are also met for the same reasons as those set forth immediately above.

Counsel have taken significant discovery that has enabled them to negotiate an advantageous settlement on behalf of the Class. Class Counsel negotiated the proposed settlement from a position of knowledge and strength, and as advocates for the entirety of the class. They have satisfied this requirement for certification.

As to the second issue, there is nothing to suggest that the Representative Plaintiffs have significant interests antagonistic to those of the absent Class Members in the vigorous pursuit of the class claims against Defendant. *See Dietrich v. Bauer,* 192 F.R.D. 119, 126 (S.D.N.Y. 2000) ("gauging the adequacy of representation requires an

assessment whether the class representatives have interests antagonistic to those of the class they seek to represent"). The Representative Plaintiffs have come forward to represent the Class under great personal pressure – as being subject to a situation as humiliating as a strip search and then being forced to relive it would be difficult for anyone. Plaintiffs' "interests in this case coincide with those of the potential Class Members in that [Plaintiffs seek] a declaration that the practices, policies, and conditions complained of in the [Class Action] Complaint are unconstitutional and seek injunctive relief prohibiting the continuation of those" policies. *Bowers*, 2006 WL 2818501, *6-8. Indeed, Plaintiffs have obtained an advantageous settlement that treats all Class Members in the same fashion, and provides real value to all. .

Having demonstrated that each of the mandatory requirements of Rule 23(a) are satisfied here, Plaintiffs now turn to consideration of the factors which, independently, justify class treatment of this action under subdivision 23(b)(3) of the rule.

B. The Requirements of Rule 23(b)(3) Are Met in the Settlement Context

Plaintiffs' proposed class also meet the requirements of Rule 23(b)(3). Under 23(b)(3) a class action may be maintained if:

> the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include: (A) the interest of members of the class in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; (D) the difficulties likely to be encountered in the management of a class action.

Fed. R. Civ. P. 23(b)(3).

"The Rule 23(b)(3) predominance inquiry tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation." *Amchem*, 521 U.S. at 623. Although Rule 23(b)(3) requires that common issues of law and fact predominate, it does not require that there be an absence of any individual issues. *In re Sugar Industry Antitrust Litig.*, 73 F.R.D. 322, 344 (E.D. Pa. 1976). The Court must find that "the group for which certification is sought seeks to remedy a common legal grievance." *Hochschuler v. G.D. Searle & Co.*, 82 F.R.D. 339 (N.D. Ill. 1978); *Dietrich,* 192 F.R.D. 119 (in determining whether common issues of fact predominate, "a court's inquiry is directed primarily toward whether the issue of liability is common to members of the class"). Rule 23(b)(3) does not require that all questions of law or fact be common. *See In re Telectronics Pacing Systems, Inc.*, 172 F.R.D. 271, 287-88 (S.D. Ohio 1997). In this regard, courts generally focus on the liability issues and if these issues are common to the class, common questions are held to predominate over individual questions. *See id.*

Here, the proposed Class Members' claims involve one central legal question: was the strip searching of every pretrial detainee admitted to the Dauphin County Jail without regard to the crime charged or the circumstances of arrest, constitutional? Plaintiffs' claims also share common factual issues – did this practice exist during the class period and is the Defendant legally responsible for such practices? Proof of these issues, with a goal to answering the two core legal questions, would be the undoubted focus of any trial. Clearly, legal and factual issues in this litigation predominate over any of the Plaintiff's individual issues.

Given the nature of this action and the fact that a substantial proportion of the

Class membership is comprised of economically disenfranchised individuals, a class action is also the superior method by which to adjudicate claims of individual Class Members. Poor and marginalized Class Members are unlikely to be able to litigate their cases individually. *See Mack v. Suffolk County,* 191 F.R.D. 16, 25 (D. Mass. 2000); *In re Nassau County Strip Search Cases*, 461 F.3d 219, 230 (2d Cir. 2006); *Tardiff,* 365 F.3d at 7 ("class status here is not only the superior means, but probably the only feasible one ... to establish liability and perhaps damages"). The class action device is designed for the situation where an individual seeks to vindicate "the rights of groups of people who individually would be without effective strength to bring their opponents into court at all." *Amchem,* 521 U.S. at 617. "The policy at the very core of the class action mechanism is to overcome the problem that small recoveries do not provide the incentive for any individual to bring a solo action prosecuting his or her rights. A class action solves this problem by aggregating the relatively paltry potential recoveries into something worth someone's (usually an attorney's) labor." *Mack,* 191 F.R.D. at 25 (internal citations omitted); *Yang v. Odum*, 392 F.3d 97, 106 (3d Cir. 2004); *Marriott*, 227 F.R.D. at 173; *Sutton*, 2007 WL 119892, *9 ("litigating the existence of a uniform policy for the class as a whole would both reduce the range of issues and promote judicial economy.")(internal quotation marks and citations omitted).

Considerations of judicial economy underscore the superiority of the class action mechanism in this case. The prosecution of this case as a class action is superior to thousands of individual cases being filed in this Court, each of which would be repetitious and possibly yield inconsistent adjudications. *See Califano v. Yamaski,* 42 U.S. 682, 700-701 (1979); *Dodge*, 226 F.R.D. at 183 ("Where a single issue (such as the

existence of a uniform policy) is guaranteed to come up time and time again, issues of judicial economy strongly militate in favor of resolving that issue via a techniques that will bind as many persons as possible."); *Sutton*, 2007 WL 119892, *9 (holding that "a class action provides the most feasible and efficient method of determining liability" where suit alleges existence if a uniform unconstitutional strip search policy). The trial in this action would last for weeks, with scores of jail employees being examined about the practices of the Dauphin County Correctional Facility in an effort to establish municipal liability. Even having a small proportion of Class Members have duplicative trials on this issue would be an enormous waste of judicial resources, and would not be the superior and appropriate way to resolve this controversy.

Settlement on a class basis also is superior to individual litigation and adjudication because settlement provides Class Members with prompt compensation for their damages, whether those damages exist now or manifest themselves sometime in the future. By contrast, compensation resulting from litigation is highly uncertain and may not be received before lengthy trial and appellate proceedings are complete. In addition, the Settlement obviously removes the overwhelming and redundant costs of individual trials.

Accordingly, the Settlement Agreement renders a class action superior to other potential avenues of recovery for Plaintiffs and the Class. Therefore, this case presents the paradigmatic example of a dispute which can be resolved to effectuate the fundamental goals of Rule 23: (1) to promote judicial economy through the efficient resolution of multiple claims in a single action; and (2) to provide persons with smaller claims, who would otherwise be economically precluded from doing so, the opportunity

to assert their rights. Wright, Miller & Kane, *Federal Practice & Procedure: Civil 2d* § 1754. Moreover, unless Class Members obtain relief through the settlement, most of them will not obtain any relief at all. It would be inconceivable for every one of the thousands of potential plaintiffs to conduct expensive and extensive discovery to prove liability under the legal theories proffered in the complaint for a potential individual recovery of damages. *See In re Kirschner Medical Corp. Sec. Litig.*, 139 F.R.D. 74, 83 (D. Md. 1991) (class suits superior when individual claims are too small to warrant individual suit). At the same time, the settlement fully preserves the due process rights of each individual plaintiff seeking compensatory damages.

In sum, the requirements of Rule 23(b)(3) are satisfied and certification of a the proposed class is appropriate.

VI. Conclusion

For the foregoing reasons, the Joint Motion for Final Approval of Class Action Settlement, for an Award of Expenses and Attorneys' Fess, and for Approval of Incentive Award to the Class Representative should be granted in its entirety.

Dated: September 30, 2009

Respectfully Submitted By:

s/ Charles J. LaDuca

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EXHIBIT A

Camden, New Jersey
Hicks v. County of Camden, 05-cv-1857 (D.N.J.)

Class Members:	21,763
Claims:	6,291 main settlement class claims filed (also 1,494 wrongful detention subclass claims filed)
Claims Rate:	29%
Settlement Amount:	$7.5 million

Boston, Massachusetts
Mack v. Suffolk County, 98-cv-12511 (D. Mass.)

Class Members:	5,400
Claims:	1,495
Claims Rate:	28%
Settlement Amount:	$10 million

Indianapolis, Indiana
Doan v. Watson, 99-4-C (S.D. Ind.)

Class Members:	2,591
Claims:	691
Claims Rate:	27%
Settlement amount:	n/a

Rensselaer, New York
Kahler/Bruce v. Rensselaer County Jail, 03-cv-1324 (N.D.N.Y)

Class Members:	2,700
Claims:	733
Claims Rate:	27%
Settlement Amount:	$2.7 million

Washington, DC
Bynum v. Gov. of the Dist. of Columbia, 02-cv-956 (D.D.C)

Class Members:	20,877
Claims:	3,674
Claims Rate:	16.5%
Settlement Amount:	$12 million

Strafford County, New Hampshire
Moser v. Anderson, 93-cv-634 (D. N.H.)

Class Members:	2,200
Claims:	356
Claims Rate:	16%
Settlement Amount:	n/a