IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SAJAN KURIAN, individually and on behalf of a Class of others similarly situated, Plaintiffs,	:	**CIVIL ACTION**
v.	:	**NO. 07-3482**
THE COUNTY OF LANCASTER, THE LANCASTER COUNTY PRISON BOARD and JOHN DOES 1-20, Defendants.	:	

ORDER

In this class action, Plaintiffs allege that Defendants maintained an unconstitutional policy or practice of strip searching all pretrial detainees upon their commitment to Lancaster County Prison: (1) regardless of the nature of the charged offense; and (2) without determining whether there was reasonable suspicion to believe the detainee was concealing weapons or contraband. 28 U.S.C. § 1983. On July 28, 2009, the Parties submitted a Settlement Agreement for my approval. (Doc. No. 47.) On September 1, 2009, I granted the Parties' Motion for Preliminary Approval of the Settlement Agreement and conditionally certified the Class. (Doc. No. 53.) I held a hearing on March 31, 2010 to determine whether finally to approve the Settlement as fair, reasonable, and adequate. For the reasons that follow, I will certify the Settlement Class and grant the Parties' Motion for Approval of Settlement and Class Certification (Doc. No. 61).

I. BACKGROUND

The Supreme Court has held that in determining the Fourth Amendment reasonableness of pretrial detainee strip searches, courts must consider "the scope of the particular intrusion, the

manner in which it is conducted, the justification for initiating it, and the place in which it is conducted." Bell v. Wolfish, 441 U.S. 520, 559 (1979) (upholding prison's policy of strip searching all pretrial detainees that had contact visits with outsiders). Applying Bell, a majority of Circuits have held that a pretrial detainee charged with a misdemeanor or lesser offense may not be strip searched upon commitment without reasonable suspicion to believe that he or she is concealing a weapon or contraband. See Allison v. GEO Group, Inc., 611 F. Supp. 2d 433, 451-52 (E.D. Pa. 2009) (collecting cases); Young v. County of Cook, 616 F. Supp. 2d 834, 846 (N.D. Ill. 2009) ("The crux of these cases is that given the extreme intrusion into personal privacy that a strip search or body cavity search entails, people charged with minor offenses that do not involve drugs or weapons are not subject to such searches absent individualized reasonable suspicion."); but see Powell v. Barrett, 541 F.3d 1298, 1310 (11th Cir. 2008) ("The difference between felonies and misdemeanors or other lesser offenses is without constitutional significance when it comes to detention facility strip searches."). The Third Circuit has not yet addressed this issue, but has agreed to hear an interlocutory appeal involving prison strip searches of misdemeanor offenders. See Florence v. Bd. of Chosen Freeholders of the County of Burlington, No. 05-3619, 2008 WL 800970 (D.N.J. Mar. 20, 2008), appeal docketed, No. 09-3603 (3d Cir. Sept. 21, 2009).

Plaintiffs filed the instant action pursuant to 28 U.S.C. § 1983 on August 22, 2007, alleging that Defendants have "instituted a written and/or *de facto* policy, custom or practice of strip searching all individuals who enter the custody of the Lancaster County Prison and are placed into Prison clothing, regardless of the nature of their charged crime or violation and without the presence of reasonable suspicion to believe that the individual was concealing a weapon or contraband." (Doc. No. 1, Compl. ¶ 24.) Plaintiffs sought money damages and

declaratory and injunctive relief, and asked me to certify a hybrid Rule 23(b)(2)/(b)(3) class of similarly situated persons: (1) who, commencing on August 22, 2005, have been or will be admitted to LCP after being detained for misdemeanors or similar offenses "that do not involve the possession or distribution of drugs, possession of weapons, or are violent felonies"; and (2) "who were or will be strip searched upon their entry into [LCP] pursuant to the practice, policy, or custom of Defendants." (Doc. No. 33, Am. Compl. ¶ 11.)

Plaintiffs moved for Class Certification on November 11, 2007. (Doc. No. 17.) On November 21, 2007, I issued a Scheduling Order and allowed Plaintiffs to submit a renewed Motion for Class Certification following discovery. (Doc. No. 21.) Plaintiffs filed an Amended Complaint on May 15, 2008, and renewed their Motion for Class Certification on October 14, 2008. (Doc. Nos. 28, 32.) Defendants filed a Response in Opposition on November 4, 2008; Plaintiffs filed a Reply on November 14, 2008. (Doc. Nos. 35, 38, 39.) Oral argument on Plaintiffs' Motion was scheduled for November 24, 2008. (Doc. No. 31.) During a Chambers Conference before oral argument, however, the Parties asked to suspend litigation while they engaged in settlement discussions. (Doc. Nos. 42, 43.)

The Parties agreed to settle this matter on March 23, 2009. (Doc. Nos. 45, 48 at 2.) Their Settlement Agreement, executed on July 28, 2009, provides for a $2,507,200 Settlement Fund, with an initial contribution of $1,946,860. See Settlement Agreement § III.B.1. The amount distributed to each Class Member -- ranging from $50 to $900 -- will be determined by his or her classification into one of five Categories. Id. § III.C.1(*i*). These Categories are based on criteria that include: whether the Class Member was on probation or on parole at the time of admission to LCP, the information disclosed on the individual's Strip Search Checklist pertaining to the

nature of the charge, whether the detainee has a known history of violence or drug use, and whether the detainee was disruptive or threatening when he or she was admitted. Id.; see also id., Ex. D.

II. CERTIFICATION OF THE SETTLEMENT CLASS

I preliminarily certified a Rule 23(b)(3) Class for settlement purposes in my September 1st Order. (Doc. No. 53.) See also Fed. R. Civ. P. 23; In re General Motors Corp. Pick-Up Truck Fuel Tank Prods. Liability Litig., 55 F.3d 768, 786 (3d Cir. 1995) (a settlement class is "a device whereby the court postpones the formal certification procedure until the parties have successfully negotiated a settlement, thus allowing a defendant to explore settlement without conceding any of its arguments against certification").

To be certified, a class must satisfy the four threshold requirements of Rule 23(a): (1) numerosity (a "class [so large] that joinder of all members is impracticable"); (2) commonality ("questions of law or fact common to the class"); (3) typicality (named parties' claims or defenses "are typical . . . of the class"); and (4) adequacy of representation (representatives must "fairly and adequately protect the interests of the class"). See Fed. R. Civ. P. 23(a); Amchem Prods., Inc. v. Windsor, 521 U.S. 591, 613 (1997). Where, as here, a settlement class is sought to be certified under Rule 23(b)(3), the class must show that: (1) common questions "predominate over any questions affecting only individual members," and (2) class resolution is "superior to other available methods for the fair and efficient adjudication of the controversy." Fed. R. Civ. P. 23(b); Amchem, 521 U.S. at 615.

With more than 19,000 potential members of the Settlement Class, Rule 23(a)(1)'s numerosity requirement is obviously satisfied, and has never been disputed. See Ketchum v.

Sunoco, Inc., 217 F.R.D. 354, 357 (E.D. Pa. 2003) (citing Stewart v. Abraham, 275 F.3d 220, 227-28 (3d Cir. 2001)) ("Generally, if the named plaintiff demonstrates that the potential number of plaintiffs exceed 40, the numerosity requirement of Rule 23(a) has been met.").

The commonality requirement is met because the Parties have identified two questions of law or fact common to the Class: (1) whether Defendants employed a practice or policy of strip searching all new detainees admitted for misdemeanors or lesser charges without individualized reasonable suspicion; and (2) whether that practice or policy was constitutional. See, e.g., In re Nassau County Strip Search Cases, 461 F.3d 219, 229-230 (2d Cir. 2006); Florence, 2008 WL 800970 at *7 (D.N.J. Mar. 20, 2008) (commonality requirement satisfied where the named plaintiffs and the proposed class members' claims involved "the same factual and legal theories": (1) "that they were all subjected to the same intake procedures, which they claim involve suspicionless strip searching"; and (2) "that these procedures violate the Fourth Amendment"). Similarly, the Rule's typicality requirement is satisfied because Plaintiffs allege that they -- along with each member of the proposed Class -- were strip searched pursuant to Defendants' blanket policy or practice. See Baby Neal v. Casey, 43 F.3d 48, 58 (3d Cir. 1994) ("[C]ases challenging the same unlawful conduct which affects both the named plaintiffs and the putative class usually satisfy the typicality requirement irrespective of the fact patterns underlying the individual claims.").

Finally, Rule 23(a) requires Plaintiffs to demonstrate that they will fairly and adequately protect the interests of the Class. Fed. R. Civ. P. 23(a)(4). In evaluating this requirement, I must determine "whether the representatives' interests conflict with those of the class and whether the class attorney is capable of representing the class." Johnston v. HBO Film Mgmt., Inc., 265 F.3d

178, 185 (3d Cir. 2001). There is no suggestion of any conflict of interest between the named Plaintiffs and the other Class Members. Class Counsel are especially talented lawyers, who are more than capable of representing the Class. Lead counsel is David Rudovsky, the preeminent civil rights lawyer in this District. Also representing the Class are lawyers who are vastly experienced in class action litigation: Joseph Sauder of Chimicles & Tikellis LLP, Christopher G. Hayes of the Law Office of Christopher G. Hayes, and Daniel C. Levin of Levin, Fishbein, Sedran & Berman. Accordingly, I conclude that the adequacy requirement is satisfied.

Numerous courts have found Rule 23(b)'s predominance requirement satisfied in actions similar to the instant matter, reasoning that the issues respecting the existence and constitutionality of strip searching policies or practices are common to the class and subject to generalized proof. See, e.g., Florence, 2008 WL 800970, at *12 ("Plaintiff challenges whether Defendants have a policy or practice of using intake procedures for non-indictable arrestees that are tantamount to suspicionless strip searches. This issue is at the heart of each putative class members' claim and turns on generalized, not individualized, proof."); Marriott v. County of Montgomery, 227 F.R.D. 159, 173 (N.D.N.Y. 2005) ("[T]he common question is whether the change-out, strip search procedure applicable to all admittees, regardless of whether reasonable suspicion exists that contraband or weapons are possessed, violates the Fourth Amendment. This question does not vary among class members.").

Defendants had contested predominance, however, before agreeing to settle. They offered evidence contradicting the suggestion that LCP employs a blanket strip search policy, and argued that individualized determinations of reasonable suspicion to strip search each Class Member would predominate. See Doc. No. 35, Exs. 1-10, 12-13, 19. Other courts have rejected

similar arguments, concluding that whether a prison follows its own strip search policies -- or instead, employs a *de facto* practice of strip searching all new detainees -- is a factual question that does not defeat predominance. See, e.g., Sutton v. Hopkins County, No. 03-003, 2007 WL 119892, at *7 (W.D. Ky. Jan. 11, 2007) (rejecting argument that prison's written policy refuted the existence of a blanket strip search practice and so defeated predominance: "Ultimately, a reasonable jury could find that the . . . Jail failed to follow its written policy, and instead followed a custom or practice to strip search all persons . . . without regard to . . . reasonable suspicion[.]"). Moreover, Plaintiffs offered considerable evidence establishing the existence of a blanket practice, including the deposition testimony of current and former correctional officers who could not recall "a single instance" where a new detainee was not strip searched. See Doc. No. 33 at 3-11. Courts have also ruled that once plaintiffs offer evidence of a blanket practice of strip searching all new detainees: (1) the burden shifts to the defendant to prove that particular class members were legally strip searched based on reasonable suspicion; and (2) the existence of such a defense to certain class members' claims does not defeat predominance. See, e.g., Mack v. Suffolk County, 191 F.R.D. 16, 24 (D. Mass. 2000) ("[T]o require Plaintiff to prove that each individual search was unsupportable, as well as indiscriminate, would be unnecessary and unfair. Given that these [plaintiffs] were routinely strip searched, the burden rests on Defendants to demonstrate that particular searches were reasonable."). In sum, I conclude that the predominance requirement is satisfied.

It is also apparent that a class action is the superior form of adjudication. In fact, because each Class Member's "provable[,] actual damages" are not likely to be substantial, a class action is "not only the superior means, but probably the only feasible one . . . to establish liability and

perhaps damages." Tardiff v. Knox County, 365 F.3d 1, 7 (1st Cir. 2004) ("[O]nly the limited number of cases where serious damage ensued would ever be brought without class status and . . . the vast majority of claims would never be brought unless aggregated because provable actual damages are too small.") (citations omitted); see also In re Nassau County Strip Search Cases, 461 F.3d at 229 ("Absent class certification and its attendant class-wide notice procedures, most of these individuals -- who potentially number in the thousands -- likely never will know that defendants violated their clearly established constitutional rights, and thus never will be able to vindicate those rights. As a practical matter, then, without use of the class action mechanism, individuals harmed by defendants' policy and practice may lack an effective remedy altogether."). Accordingly, because Plaintiffs have satisfied the requirements of Rule 23(a) and (b), I will certify a Rule 23(b)(3) Settlement Class.

III. APPROVAL OF THE SETTLEMENT

I may approve a class action settlement under Rule 23 where, as here, it is "fair, reasonable and adequate." See Fed. R. Civ. P. 23(e)(1)(c); In re Prudential Ins. Co. of Am. Sales Practices Litig., 148 F.3d 283, 316 (3d Cir. 1998); Stoetzner v. U.S. Steel Corp., 897 F.2d 115, 118 (3d Cir. 1990); Walsh v. Great Atlantic & Pacific Tea Co., Inc., 726 F.2d 956, 965 (3d Cir. 1983). I have broad discretion in making this decision. Girsh v. Jepson, 521 F.2d 153, 156 (3d Cir. 1975).

Courts in this Circuit give considerable weight and deference to the views of experienced counsel as to the merits of an arms-length settlement. In re Automotive Refinishing Paint Antitrust Litig., 2004 U.S. Dist. LEXIS 29161, at *6 (E.D. Pa. September 27, 2004); see also Petruzzi's, Inc. v. Darling-Delaware Co., 880 F. Supp. 292, 301 (M.D. Pa. 1995) ("[T]he

opinions and recommendations of … experienced counsel are … entitled to considerable weight."); Lake v. First Nationwide Bank, 156 F.R.D. 615, 628 (E.D. Pa. 1994) (giving "due regard to the recommendations of the experienced counsel in this case, who have negotiated this settlement at arms-length and in good faith"). "A presumption of correctness is said to attach to a class settlement reached in arms-length negotiations between experienced, capable counsel after meaningful discovery." In re Linerboard Antitrust Litig., 292 F. Supp. 2d 631, 640 (E.D. Pa. 2003).

In Girsh v. Jepson, the Third Circuit Court identified nine factors to assist courts in determining whether a class action settlement should be approved as "fair, adequate and reasonable." 521 F.2d at 157. These "Girsh factors" are:

> (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; and
> (9) the range of reasonableness of the settlement fund in light of all the attendant risks of litigation.

In re Cendant Corp. Litig., 264 F.3d 201, 232 (3d Cir. 2001). Applying these factors here, I conclude that the proposed Settlement is fair, adequate, and reasonable.

The complexity, expense, and likely duration of the litigation support final approval of the Settlement. This matter has been pending since August 2007, and Class Counsel have already recorded 2,381 hours working on the case and incurred out-of-pocket costs of $40,867.87. (Doc. No. 59 at 19.) Moreover, the outcome of trial or dispositive motions is by no

means certain, particularly because the Third Circuit could at any time issue a ruling on the constitutional questions presented here. See Florence, No. 05-3619 (D.N.J), appeal docketed, No. 09-3603, (3d Cir. Sept. 21, 2009). Although the weight of authority suggests that a blanket policy of strip searches is unconstitutional, the Eleventh Circuit, and more recently, the Ninth Circuit, have held that pretrial detainees could be strip searched even in the absence of reasonable suspicion. See Powell, 541 F.3d at 1310; Bull v. City & County of San Francisco, 595 F.3d 964 (9th Cir. 2010) (en banc). In these circumstances, Settlement at this time is in the Class' best interest because it affords certain relief.

The reaction of the Class to the Settlement also weighs in favor of final approval. Pursuant to my September 1st Order, the Parties mailed individual notices to more than 19,000 potential Class Members and posted notices in newspapers, on the Internet, and at Lancaster County Prison. (Doc. No. 59 at 21-22.) In response, 2,047 Class Members have submitted claim forms, and nine Class Members have opted out of the Settlement. Only one person objected, although he did not claim to be a Class Member, nor did he raise any concerns respecting the fairness of the Settlement or the allocation of the Settlement funds. (Id.) Accordingly, the Class' reaction to the Settlement has been overwhelmingly favorable.

The stage of proceedings and the amount of discovery completed also supports approval of the Settlement. It is apparent that the Settlement is the result of good faith, arms-length negotiations. Before negotiations began, Class Counsel took extensive discovery, propounding interrogatories and document requests, and conducting depositions and interviews. (Doc. No. 48 at 4.) The Third Circuit has held that settlements made after discovery typically reflect the true value of the claim. See Bell Atlantic Corp. v. Bolger, 2 F.3d 1304, 1314 (3d Cir. 1993).

The Parties also vigorously litigated class certification. The settlement negotiations involved the mediation services of former Chief Magistrate Judge James R. Melinson and took several months. Moreover, Class Counsel and Defense Counsel are familiar with the issues presented, having previously litigated the constitutionality of prison strip search policies. See, e.g., Martinez v. Warner, No. 07-3213 (E.D. Pa. 2007) (David MacMain, counsel for Defendants); Boone v. City of Phila., 668 F. Supp. 2d 693, 712 (E.D. Pa. 2009) (Daniel C. Levin and Christopher G. Hayes, counsel for Plaintiffs).

The risks of being unable to establish liability and damages and maintain the class action through trial – the fourth, fifth, and sixth Girsh factors – appear to support approval of the Settlement. As discussed earlier, a Third Circuit ruling could dramatically affect the liability questions presented. Moreover, the Third Circuit has held that a district court has the authority to decertify a class action. See In re Automotive Refinishing Paint Antitrust Litigation, 617 F. Supp. 2d 336, 344 (E.D. Pa. 2007). In any event, the case could proceed to trial, followed by years of appellate litigation. These factors thus weigh in favor of the Settlement.

Although Lancaster County could likely withstand a greater judgment, this is not certain. See, e.g., Boone, 668 F. Supp. 2d at 712 ("Taking into consideration the current financial situation of the City, however, the plaintiffs do have cause to be genuinely concerned about the ability of the defendant to allocate its resources to a greater judgment.") In any event, courts in this Circuit have held that this Girsh factor is not especially significant in assessing a proposed settlement. See Meijer, Inc. v. 3M, 2006 WL 2382718, at *16 (E.D. Pa. Aug. 14, 2006) (the determination, standing alone, that a defendant could withstand a greater judgment "does not carry much weight in evaluating the fairness of the Settlement") (citing Perry v. FleetBoston Fin.

Corp., 229 F.R.D. 105, 116 (E.D. Pa. 2005)).

The value of the Settlement in light of the Class Members' damages and the risks of litigation also weighs in favor of the Settlement. Each Class Member will receive between $50 and $900, an amount comparable to the awards in other strip search cases. See McBean v. City of New York, 233 F.R.D. 377, 388 (S.D.N.Y. 2006). Significantly, the Settlement Agreement will also provide the prospective relief that named Plaintiffs sought here, but likely lacked standing to pursue. See, e.g., Powell v. Barrett, 496 F.3d 1288, 1308 n.27 (11th Cir. 2007). Defendants have agreed to revise their Strip Search Policy and employ a new Strip Search Checklist approved by Class Counsel. See Settlement Agreement § III.A.1. The Parties agree that the revised policy comports with the Fourth Amendment, and Defendants have agreed to re-train their Corrections Officers to ensure compliance. Id. §§ III.A.2-3. This significant prospective relief, coupled with damages for the individual Class Members, confirms that the proposed Settlement is the product of vigorous litigation and arms-length negotiations.

Considering all the benefits obtained for the Class and the difficulties litigation would present, I conclude that the Settlement is reasonable. Accordingly, the Girsh factors support the settlement.

I must also determine the reasonableness of the Settlement's allocation plan. See In re Ikon Office Solutions, Inc., 194 F.R.D. 166, 184 (E.D. Pa. 2000). "Approval 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.'" Id. (quoting In re Computron Software, Inc., 6 F. Supp. 2d 313, 321 (D.N.J. 1998)) "As with other aspects of settlement, the opinion of experienced and informed counsel is

entitled to considerable weight." In re American Bank Note Holographics, Inc., 127 F. Supp. 2d 418, 430 (S.D.N.Y. 2001).

Under the Settlement Agreement, Class Members are divided into five Categories. See Settlement Agreement § III.C.1.i. Category I includes Class Members who were not on parole or probation at the time of their admission to Lancaster County Prison and whose Strip Search Checklists are checked or signed on the line next to "This Prisoner has been Searched by Me." These Class Members will receive no more than $900. Category II includes Class Members who were not on parole or probation, but whose Strip Search Checklists are checked or signed on the line next to "This Prisoner has Not been Searched by Me." These Class Members will receive no more than $500. Category III includes Class Members who were on probation or parole whose Checklists indicate they were searched. They will receive nor more than $400. Category IV includes Class Members who were on probation or parole whose Settlements indicate they were not searched. They will receive no more than $200. Category V includes Class Members who do not fit into any other Category, but contend they were strip searched upon admission to the prison. They will receive no more than $50.

These Categories appear to correspond to Defendants' potential defenses against individual claims. Defendants had argued in their Opposition to Plaintiffs' Motion for Class Certification that Pennsylvania law did not require reasonable suspicion to strip search prisoners on parole. (Doc. No. 35.) Accordingly, because the Parties propose to pay the most to those Class Members with the strongest claims, the allocation plan – like the rest of the Settlement – appears to be fair, reasonable, and adequate.

IV. ATTORNEYS' FEES AND OTHER COSTS

Class Counsel have requested attorneys' fees of $750,000 – 29.91 percent of the $2.5 million Settlement Fund. (Doc. No. 61 at 1.) Counsel also requests reimbursement of $35,000 for out-of-pocket expenses, and $22,500 in incentive awards to the named Plaintiffs. (Id.) The Settlement Agreement explicitly allows Class Counsel to petition for these sums. See Settlement Agreement § III.B.3.

Class Counsel who recover a common fund are entitled to a fair and reasonable award of attorneys' fees from the fund. Boeing Co. v. Van Gemert, 444 U.S. 472, 478 (1980). Here, Class Counsel calculate their fee award using the percentage-of-recovery method which is favored in common fund cases. See In re General Motors, 55 F.3d at 819. They also use the the lodestar method as a cross-check to ensure that the proposed fee is reasonable. See, e.g., In re Insurance Brokerage Antitrust Litig., 579 F.3d 241 (3d Cir. 2009).

Where, as here, the percentage-of-recovery method is used to determine attorneys' fees in a common fund case, the Third Circuit requires district courts to consider seven factors for determining the reasonableness of the fee. Gunter v. Ridgewood Energy Corp., 223 F.3d 190 (3d Cir. 2000). These are:

> (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 Plaintiffs' counsel; and
> (7) the awards in similar cases.

Gunter, 223 F.3d at 195 n.1. All factors weigh in favor of approving the attorneys' fee petition in

this case.

The size of the fund created and number of persons benefitted favors the fee amount, as Class Counsel were able to obtain $2.5 million for a potential Class of some 19,000 individuals.

The number of substantial objections also weighs in Class Counsels' favor. Only one person objected, and he did not raise any concerns respecting the proposed attorneys' fees or the incentive payments to the named Plaintiffs. (Doc. No. 59 at 22.)

The third factor – the skill and efficiency of the attorneys involved – supports approval of the attorneys' fee request. As I have discussed, Class Counsel are highly skilled and have obtained significant prospective relief in addition to cash awards.

The fourth and fifth factors – the complexity and duration of the litigation and the risk of nonpayment – also support approval of Class Counsels' request. As I have discussed, this case involves complicated – and increasingly uncertain – issues of constitutional law. Given the nearly three years Counsel have spent litigating this matter, the fee requested is entirely reasonable.

The sixth factor – the amount of time devoted by counsel – supports the fee amount. Class Counsel document 2,381 hours of contingent work on this litigation, justifying the amount requested in their petition. (Doc. No. 61 at 11.)

The last Gunter factor – the awards granted in similar cases – supports the fee request as well. The nearly 30 percent fee requested by Class Counsel is within the range of requests granted in other strip search cases. See Boone, 668 F. Supp. 2d at 714. Accordingly, under the Gunter factors, attorneys' fees of slightly less than 30 percent are reasonable.

The Third Circuit instructs district courts to conduct a "cross-check" of a fee award using

the lodestar method "to insure that plaintiffs' lawyers are not receiving an excessive fee at their clients' expense." Gunter, 223 F.3d at 199. A court determines the lodestar by multiplying the number of hours counsel reasonably worked on a client's case by a reasonable hourly billing rate for such services in a given geographical area provided by a lawyer of comparable experience. Id. Class Counsel worked 2,381 hours at rates ranging from $407 to $550 an hour. (Doc. No. 61 at 12-13, Ex. 1-4.) Thus, their total lodestar is $1.11 million, significantly higher than the $750,000 they have requested.

Courts overseeing complex class actions have found that a multiplier of one to four of a counsel's lodestar is fair and reasonable. In re Prudential, 148 F.3d 283, 341 (3d Cir. 1998). Here, Class Counsel's request is less than a multiplier of one of their lodestar, and therefore confirms the reasonableness of their request. See In re Insurance Brokerage Antitrust Litig., 579 F.3d at 284-85 ("The lodestar multiplier that the District Court calculated was less than one and thus reveals the Class Counsel's fee request constitutes only a fraction of the work they billed . . . we are satisfied that in the present case the District Court's lodestar cross-check confirmed the reasonableness of the fee request.")

Class Counsel have also requested reimbursement of $35,000 in costs, out of a total of $40,867.87 in out-of-pocket litigation expenses. A district court may exercise its equity power to award reimbursement of litigation costs from a common fund. Sprague v. Ticonic, 307 U.S. 161, 166-67 (1939). Class Counsel explain that these expenses were incurred for photocopying, deposition transcripts, experts, filing fees, postage, and computer research. (Doc. No. 61, Ex. 1-4.) Because these totals are reasonable for a large, complex case spanning several years, Class Counsel's request is granted.

Finally, Class Counsel requests $22,500 in incentive awards for the Class Representatives: $15,000 to named Plaintiff Sajan Kurian and $7,500 to Michael Rhodes. A district court may award named plaintiffs a modest sum in recognition of their services. See, e.g., Boone, 668 F. Supp. 2d at 715 (approving $15,000 payment to each Class Representative in a strip search case, and noting that "these awards, though high, are justified by the benefit provided to the absent Class Members. The class representatives have accepted the public exposure of the fact that they have been placed into custody and charged with a crime."). Kurian and Rhodes initiated the litigation, were deposed, and participated in conferences and meetings with Class Counsel. (Doc. No. 61 at 15.) Accordingly, these payments are approved.

In these circumstances, Class Counsel's requests for fees, costs, and incentive awards – like the Settlement Agreement as a whole – is approved as reasonable.

AND NOW, this 9th day of April, 2010, upon consideration of the Parties' Joint Motion for Approval of Settlement and Class Certification (Doc. No. 59), their Motion for Attorney Fees and Expenses (Doc. No. 61), and all related filings, it is hereby **ORDERED** as folows:

1. A Class is **CERTIFIED** pursuant to Rule 23(e) consisting of:

> All persons who have been or will be placed into the custody of the Lancaster County Prison after being detained for misdemeanors, summary offenses, traffic infractions, civil commitments, bench warrants, violations of probation, parol or Accelerated Rehabilitative Disposition, and/or for other similar charges and/or crimes that do not involve the possession or distribution of drugs, possession of weapons, or are violent felonies, and who were or will be strip searched upon their entry into the Lancaster County Prison pursuant to the policy, custom and practice of the Defendants. The Class Period commences on August 22, 2005 and extends to July 28, 2009. Specifically excluded from the Class are Defendants and any and all of their respective affiliates, legal representatives, heirs, successors, employees or assignees.

The Class is certified solely for purposes of this settlement.

2. I find that Class Representatives Sajan Kurian and Michael Rhodes will fairly and adequately protect the interests of the Class. Class Counsel's request for $22,500 in incentive awards (Doc. No. 61) for these Class Members is **APPROVED.**

3. Pursuant to Rule 23(g), the following attorneys are appointed as Class Counsel:

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Class Counsel's request for $750,000 in attorney fees and $35,000 in reimbursement for

out-of-pocket litigation expenses (Doc. No. 61) is **GRANTED**.

4. The Class has received notice in the manner approved by the Court in its Order of September 1, 2009. (Doc. No. 53.) The Court finds that such notices: (1) constitute reasonable and the best practicable notice; (2) constitute notice that is reasonably calculated, under the circumstances, to apprise Class Members of the terms of the Settlement, Class Members' right to object to the Settlement, and Class Members' right to appear at the Settlement fairness hearing; (3) constitute due, adequate, and sufficient notice to all persons entitled to receive notice; and (4) meet the requirements of due process and Rule 23 of the Federal Rules of Civil Procedure.

5. I find that arms-length negotiations have taken place in good faith between Class Counsel counsel for Defendants, resulting in the Settlement Agreement filed on July 28, 2009. That Agreement is adopted and made a part of this Order. (Doc. No. 47.)

6. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, and after a duly-noticed final fairness hearing held on March 31, 2009, I will **GRANT** the Parties Motion for Final Approval of the Proposed Settlement (Doc. No. 59). I find that the Settlement and the Settlement Agreement are, in all respects, fair, reasonable, and adequate, and in the best interests of the Class. The Parties are directed to implement the Settlement according to the terms and provisions of the Settlement Agreement.

7. This action and all claims against Defendants are hereby dismissed with prejudice, but I will retain exclusive and continuing jurisdiction of this matter, all Parties, and Settlement Class Members, to interpret and enforce the terms, conditions, and obligations of the Settlement Agreement. I will also retain jurisdiction to ensure that Defendants comply

with their revised Strip Search Policy, in accordance with the Settlement Agreement.

8. All Class Members who have not timely filed an opt-out request are barred and enjoined from prosecuting any claim or action related to strip searches against Defendants in any forum, as provided in the Settlement Agreement.

9. The Clerk of Court shall mark this case closed.

AND IT IS SO ORDERED.

/s/ Paul S. Diamond

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Paul S. Diamond, J.