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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

MARSIAL LOPEZ, et al., each individually, and as class representatives, Plaintiffs, vs. SHERIFF DONNY YOUNGBLOOD, et al., Defendants.	Case No. CV-F-07-0474 DLB [Hon. Dennis L. Beck] **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR CLASS CERTIFICATION [FILED CONCURRENTLY WITH NOTICE OF MOTION, MOTION, DECLARATIONS, EXHIBITS]** DATE: AUGUST 29, 2008 TIME: 9:00 A.M. CRTRM: 9

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Defendant Kern County operates its own jails under the auspices of the Kern County Sheriff's Department ("KCSD"). *Cal. Govt. Code* §26605; *Cal. Penal Code* §4000.[1] *See, also, Defendants' Answer to Plaintiffs' Second Amended Complaint*, ¶5 (admitting that the KCSD is an agency of the County).

Until October 2007, the policy of the KCSD was 1) to strip/visual body cavity search (hereafter "strip/vbc search") all persons who appeared in court and became entitled to release. The individual would be taken back to the housing location in which s/he had been placed and strip searched, or alternatively would be returned to the Central Receiving Facility ("CRF") and strip searched there. This shall be referred to herein as the "Post-Release Class".

In addition, until that date, strip/vbc searches were routinely conducted any time an inmate was moved out of the facility and returned, including when taken to court and returned. All such strip/vbc searches during that time period occurred in groups where inmates could view each other during the search. Thus, the searches were not conducted in such a manner as to provide privacy to those being searched. This is referred to herein as the "Group Strip Search Class".[2]

This motion seeks certification of these two classes.

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[1] Kern County Sheriffs website at http://www.co.kern.ca.us/sheriff/index.html states that, "The Sheriff is the chief law enforcement officer in the county. In addition to providing police services to the unincorporated portions of the county, the Sheriff has the responsibility for the jail system…." Ex. "4".

[2] Plaintiffs' First Amended Complaint also alleges that the KCSD conducts routine strip/vbc searches prior to as part of the booking process prior to arraignment. ("Prearraignment Class") However, based on the discovery adduced thus far, there does not appear to be any factual basis to make such a claim. Therefore, plaintiffs shall not seek to certify a Prearraignment Class, pending further discovery.

II. COUNTY STRIP SEARCH POLICIES AND PRACTICES

The alleged County policies are, for the most part, admitted by the County. In any event, in deciding a motion for class certification, it is axiomatic that the plaintiffs' allegations in the complaint are taken as true. *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 177-78 (1974).

Plaintiffs deposed Sgt. Ian Silva on December 7, 2007, as the designated representative of the Kern County Sheriff's Department on various strip search policy issues. Most of the description below of the Kern County practices in effect during the class period are based on his testimony.

A. KCSD Strip Search Methodology

A strip search in the Kern County Jail typically entails the following: The inmate removes his/her clothing; after the clothing is removed, deputy searches the clothing articles; the male would lift his penis and scrotum to visually inspect for anything hidden there; the inmate would be told to squat down and stand back up; the inmate would bend over and separate the buttocks. Silva D. Tr. pp.19:14-21; 20:1-17. Department Search Procedures definition of strip search includes "visual inspection of the underclothing, female breasts, buttocks, or genitalia of such person." The policies further specify that a visual body cavity search entails a "visual inspection of the anus and/or vaginal area" in such a manner as to "expose body cavity orifices."[3] Exhibit "1".

B. The Policy To Strip Search Those Returning From Court Entitled to Release.

Until the policy was changed after filing of this suit, those inmates who were being housed in the jail, appeared in court and became entitled to release were

[3] Kern County Sheriff's Department, Detentions Bureau Policies and Procedures; Search Procedures C-500 revised 5/4/07; Definitions, Bates #05092 Ex. "7".

returned to their housing location and were subjected to a strip/ visual body cavity search ("strip/vbc search"). The Kern County housing units are known as Lerdo.

Sgt. Silva testified that Lerdo inmates who went to court in 2005 and were ordered released would go back to Lerdo via CRF, and would be strip searched at Lerdo. Silva D. Tr. pp. 44:14-45; 45: 1-4. While the testimony was in reference to 2005, this was the policy in effect until October 2007. Silva D. Tr. pp.56:14-57; 57:1-7.

The written policy for inmates going into Lerdo provided that any inmate going into the general population would be strip/vbc searched. Ex. "6", "Lerdo Pre-Trial Divison Search Procedure," pg. 2 (Bates 05070). Thus, the written policy provided for such strip searches because post-release inmates were being returned to the general population for out-processing. Ex. "6".

C. The Policy Of Conducting Strip Searches *En Masse*

When strip/vbc searches are conducted by the KCSD, which occurs every time that inmates are moved from Lerdo and back (see Ex. "6", *supra*), the searches are routinely conducted *en masse*, i.e., the searches were group searches where inmates were able to view the other inmates being strip searched. Silva D. Tr. pp.35:3-36; 36:1-2, D. Tr. p.51:2-10. The Sheriff's Department stopped both of the foregoing policies on or about October 1, 2007. *See Policy No. C-550: Strip and Body Cavity Searches, effective date 10-01-07*, Ex. "1".

III. CLASS REPRESENTATIVES

In the interests of space, the facts supporting each of the named plaintiffs' allegations, including the facts supporting commonality, typicality and their adequacy as class representatives, are contained in the declarations submitted herewith. The facts are summarized here are contained in the declarations of each plaintiff submitted with this motion, but the specific references to the relevant paragraphs of each declaration are omitted.

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A. Plaintiff Marsial Lopez

On or about late June 2005, plaintiff Lopez surrendered himself to out-of-state law enforcement officers upon learning that there was a Kern County felony warrant for his arrest for charges filed in the Kern County Superior Court. Thereafter, Lopez was incarcerated in the Kern County jails, commencing late June 2005 and continuing until the first week of November, 2006.

During his incarceration in the Kern County jails, Kern County Sheriff's Department ("KCSD") deputies transported Lopez to and from the Kern County Superior Court for appearances on plaintiffs' then pending criminal case. Whenever Lopez was transported between jail facilities, and when he was returned to jail from superior court, he was subjected to intrusive visual body cavity/strip searches in groups with other inmates being transported, where inmates were able to view each others while being strip/vbc searched. The conditions in which these searches occurred were often unsanitary.

On or about November 6, 2006, Lopez, still incarcerated in the Kern County jail and awaiting a retrial (in his first trial, the jury deadlocked 11-1 in favor of acquittal), was taken before the Kern County Superior Court. At that time the prosecuting authority dismissed all criminal charges against him. The prosecutor dismissed the charges because the prosecutor's office finally decided to test DNA found on clothing recovered from the crime scene. The DNA test results excluded him as the perpetrator of the charged crimes.

After the charges were dismissed, the superior court ordered Lopez' release. At that point KCSD deputies returned Lopez to the Kern County jail for the sole purpose of processing his release from custody. Upon arrival at the jail, Lopez was subjected to an illegal and intrusive visual body cavity/strip search, in unsanitary conditions, without privacy, and without reasonable suspicion that he possessed contraband or weapon(s). The search took place in the presence of persons not

necessary for the search, forcing Lopez to expose his body cavities in the presence of other persons, without privacy, and in unsanitary conditions.

B. Plaintiff Sandra Chávez

On or about February 17, 2007, plaintiff Chavez was arrested by KCSD personnel, placed in KCSD custody after arrest, and transported to a Kern County jail facility. Chavez was arrested on a charge related to fighting in public.

Upon her arrival at the jail, KCSD personnel subjected Chavez to an intrusive strip and visual body cavity search. During the search KCSD employees required Chavez to remove all of her clothing, and to bend and squat, exposing her anus and vagina. Chavez was searched in a room along with approximately four or five other women. At the time of the search, KCSD personnel did not have probable cause or reasonable suspicion that Chavez or the other prisoners were in the possession of contraband, or any other substance that would justify or necessitate the strip and/or body cavity search. A male officer, though not participating in the strip search, was within view of Chavez during the search.

After being booked and strip searched, Chavez was given a court date and released from custody. She was not arraigned until two weeks later, where she was sentenced to probation and a fine.

C. Plaintiff Theodore Medina

On or about June 7, 2006, plaintiff Medina was arrested by KCSD personnel, placed in KCSD custody after arrest, and transported to a Kern County jail facility. Medina was arrested on a charge of public intoxication.

Upon arrival at the jail, KCSD personnel subjected Medina to an intrusive strip and visual body cavity search. During the search KCSD employees required Medina to remove all of his clothing, and to bend and squat, exposing his anus. Medina was searched in a room along with approximately four or five other arrestees. At the time of the search, KCSD personnel did not have probable cause or reasonable suspicion that Medina or the other arrestees were in the possession of

contraband, or any other substance that would justify or necessitate the strip and/or body cavity search. The strip and visual body cavity search described herein occurred before Medina was arraigned.

Within two years from the filing of this complaint, Medina was also arrested on a charge of spousal abuse, placed in KCSD custody after arrest, and transported to a Kern County jail facility. While being booked KCSD personnel subjected Medina to an intrusive strip and visual body cavity search, in the presence of others not involved in his search, and in unsanitary conditions. After spending 17 days in a Kern County jail facility, Medina appeared in court, was sentenced to time served and ordered released by the judge. After the order of release, Medina was transferred from court to jail and, as a routine part of out-processing, was subjected to an intrusive strip search, in the presence of others not involved in his search, and in unsanitary conditions. At the time of the aforementioned searches, KCSD personnel did not have probable cause or reasonable suspicion that Medina was in possession of contraband, or any other substance that would justify or necessitate the strip and/or visual body cavity search.

IV. CLASS DEFINITIONS

Class One ("Post-Release Class") is defined as persons who, from March 27, 2005, up to October 1, 2007, or the time of judgment or settlement of the case: (a) were in KCSD custody; (b) were taken from jail to court; (c) became entitled to release after going to court; and (d) were strip and/or visual body cavity searched before release pursuant to KCSD's blanket policy, practice and/or custom to strip/vbc search all court returns, including those entitled to release. Plaintiffs Lopez and Medina belong to and represent the Post-Release Class.

Class Two ("Group Strip Search Class") is defined as persons who, from March 27, 2005, up to October 1, 2007, or the time of judgment or settlement of the case: (a) were in KCSD custody; (b) were subjected to a strip and/or visual body cavity search in a group with other inmates also being strip/vbc searched,

which search did not afford privacy from others; and (c) whose strip searches were conducted pursuant to KCSD's blanket policy, practice and/or custom to regularly conduct strip/vbc searches in a group setting. Plaintiffs Lopez, Chavez and Medina belong to and represent the Group Strip Search Class.

V. GENERAL CLASS ACTION CONSIDERATIONS.

A. Class Actions Are Particularly Suitable in Civil Rights Cases.

The purposes of class actions are to (1) avoid multiplicity of actions and (2) enable persons to assert small claims that could not be litigated individually because the costs would far out-weigh any recovery. *E.g., Crown, Cork, & Seal Co. v. Parker*, 462 US 345, 349 (1983). Class actions "conserve" resources by permitting an issue potentially affecting every class member to be litigated in an economical fashion. *General Telephone Co. of Southwest v. Falcon*, 457 U.S. 147, 155 (1982). Civil rights cases, like this one, "are often by their very nature class suits involving class-wide wrongs." *East Texas Motor Freight, Inc. v. Rodriguez*, 431 U.S. 395, 405 (1977).

The United States Supreme Court and the Ninth Circuit have repeatedly endorsed the class action procedure as the superior method of adjudicating cases where there are numerous claims that are too small to litigate individually. *See, e.g.*, *Phillips Petroleum Co v. Shutts*, 472 U.S. 797 (1985); *Blackie v. Barrack*, 524 F.2d 891, 899 (9th Cir. 1975), *cert. denied*, 429 U.S. 816 (1976). Further, "certain types of lawsuits, such as those in the criminal justice area, are inherently class actions because individual wrongs can be righted only by institutional reforms affecting an entire class of people." Herbert B. Newberg & Alba Conte, *Newberg on Class Actions* (4th ed.2002) (hereafter "*Newberg")* §25:25.

B. Presumptions Applicable to Motion for Class Certification

In a class certification motion, plaintiffs' allegations in the complaint are taken as true, and inquiry into the merits of the case is improper except to determine whether there is a realistic claim. *Eisen v. Carlisle & Jacquelin*, *supra,*

1 177-78; *Stanton v. Boeing*, 327 F.3d 938, 954 (9th Cir. 2003) (court's inquiry
2 "does not extend to whether plaintiff class representatives have successfully stated
3 a cause of action or will prevail on the merits"); *Blackie v. Barrack*, 524 F.2d 891,
4 901 (9th Cir. 1975).

5 In a close certification case, a court should err on the side of certifying the
6 class, because a class can always be decertified. Rule 23(c) (1); *Blake v. City of*
7 *Los Angeles*, 595 F.2d 1367, 1386 (9th Cir. 1979); *Cummings v. Connell*, 316 F.3d
8 886, 896 (9th Cir. 2003). As a result, "if there is to be an error made, let it be in
9 favor and not against the maintenance of the class action, for it is always subject to
10 modification should later developments during the course of the trial so require."
11 *Esplin v. Hirschi*, 402 F. 2d 94, 99 (10th Cir. 1968). Although class certifications
12 are reviewed for abuse of discretion, "an appellate court…is noticeably less
13 deferential, … when the district court has denied class status than when it has
14 certified a class." *Parker v. Time-Warner Entertainment Corp*., 331 F. 3d 13, 18
15 (2nd Cir. 2003). *See also Dukes v. Wal-Mart, Inc.,* 474 F.3d 1214, 1223 (9th Cir.
16 2007) (greater deference given where district court certifies class). Hence, the
17 presumption is in favor of certification. *Newberg* §7.17.

18 **C. Strip Search Damages Class Actions Have Routinely Been Certified by Federal Courts Around the Country**

19 In recent years, there have been numerous Rule 23(b)(3) strip search class
20 actions certified around the county. *See, e.g., Craft v. County of San Bernardino*,
21 No. EDCV 05-00359 SGL (OPx) (dated October 11, 2006) (certifying pre-
22 arraignment, post-release, and manner of search (encompassing group strip search)
23 (b)(3) damages classes)[4]; *Johnson v. District of Columbia,* 248 F.R.D. 46 (D.D.C.
24 2008) (certifying Fourth Amendment and equal protection pre-arraignment (b)(3)
25
26
27 [4] Because the *Craft* opinion is not currently available on-line, a copy is attached as Ex. "8".
28

damages classes); *Moyle v. County of Contra Costa*, 2007 WL 4287315 (N.D. Cal. 2007) (certifying juvenile classes for pre-detention hearing strip searches, and those who were strip searched after visits or court appearances before the detention hearing); *Smith v. Dearborn County, Ind.*, 244 F.R.D. 512 (S.D. Ind. 2007) (certifying (b)(3) class of arrestees strip searched solely because they were charged with a felony); *Kelsey v. County of Schoharie*, 2007 WL 603406 (N.D.N.Y. 2007) (certifying (b)(2) and (b)(3) classes for those subjected to clothing exchange/strip search process on initial admission to be housed in county jail); *Marriott v. County of Montgomery*, 227 F.R.D. 159, 173 (N.D.N.Y. 2005) (certifying class of arrestees

required to completely disrobe in front of an officer while the officer observes the naked body for injury and gang tattoos); *McBean v. City of New York*, 228 F.R.D. 487, 502 (S.D.N.Y. 2005) (inmates subjected to DOC's blanket policy subjecting all post-arraignment misdemeanor arrestees to intake strip searches); *Bullock v. Sheahan*, 225 F.R.D.227 (N.D. Ill. 2004) (men returned from court and entitled to release were routinely strip searched and women were not); *Smook v. Minnehaha*, 340 F. Supp. 2d 1037 (D.S.C. 2004) (strip searches of all juveniles admitted to facility regardless of charged offense or reasonable suspicion); *Tardiff v. Knox County*, 365 F.3d 1 (1st Cir. 2004) (affirming Nilsen v. York County, 219 F.R.D. 19 (D.Me. 2003) and *Tardiff v. Knox County*, 218 F.R.D. 332 (D.Me. 2003), both arrestee strip search classes); *Calvin v. Sheriff of Will County*, 2004 WL 1125922 (N.D. Ill. 2004) (misdemeanor arrestee strip search class and court return strip search class); *Bynum v. District of Columbia*, 217 F.R.D. 43 (D.D.C. 2003) (23(b)(2) and (b)(3) court return entitled to release strip search classes; accepted statistical sampling proposal for handling of damages claims); *Blihovde v. St. Croix County, Wis.*, 219 F.R.D. 607 (W.D. Wis. 2003) (23(b)(3) certification granted for policy of strip searching arrestees); *Maneely v. City of Newburgh*, 208 F.R.D. 69, 78-79 (S.D.N.Y. 2002) (policy of strip searching all pre-arraignment inmates);

1 *Ford v. City of Boston*, 154 F. Supp. 2d 131 (D. Mass. 2001) (strip searches of
2 female arrestees); *Mack v. Suffolk County*, 191 F.R.D. 16, 17 (D. Mass 2000) (strip
3 search of women arrestees); *Doan v. Watson,* No. 99-4-C (S.D.Ind. Mar. 2, 2000)
4 (cited in *Doan v. Watson,* 168 F.Supp.2d 932, 933 n. 1 (S.D.Ind.2001)) (23(b) (3)
5 strip search class certified); *Gary v. Sheahan*, 1999 WL 281347 (N.D. Ill. 1999),
6 *appeal dismissed*, 188 F.3d 891 (7th Cir. 1999) (denying motion to decertify
7 (b)(2)and (b)(3) class of persons returned from court and strip searched when
8 entitled to release); *Tyson v. City of New York,* No. 97 CIV-3762 (S.D.N.Y. Mar.
9 18, 1998) (oral decision) (cited in *Augustin v. Jablonsky*, No. 99 CV 3126(DRH)
10 (ARL), 2001 WL 770839, at *11-12 (E.D.N.Y. Mar. 8, 2001)) (arrestee strip
11 searches); *Eddleman v. Jefferson County, Ky.*, 96 F.3d 1448 (6th Cir. 1996) (strip
12 searches of minor arrestees); *Jones v. Cochran*, 1994 U.S. Dist. LEXIS 20625
13 (S.D. Fla. 1994) (post-acquittal strip searches); *Doe v. Calumet City*, 128 F.R.D. 93
14 (N.D. Ill. 1989) and 707 F. Supp. 343 (N.D. Ill. 1989); 1993 WL 512788 (N.D. Ill.
15 1993) (policy of strip searching all women misdemeanor arrestees); *Smith v.*
16 *Montgomery Co.*, 573 F. Supp. 604 (D. Md. 1983) (strip searches of temporary
17 detainees). *See, also, In re Nassau County Strip Search Cases*, 461 F.3d 219 (2nd
18 Cir. 2006) (abuse of discretion to refuse to certify under 23(b)(3) strip search class
19 for liability pursuant to Rule 23 (c)(4)(A) where there was a blanket strip search
20 policy; on remand, district court should reconsider whether damages component of
21 case should also be certified).

22 VI. REQUIREMENTS UNDER FRCP 23(A).

23 All class actions in federal court must meet the prerequisites of Rule 23(a).
24 There are four prerequisites, each of which are satisfied in this case for all five
25 classes: *Numerosity:* The class must be so numerous that joinder of all members
26 individually is “impracticable”. *FRCP* 23(a) (1). *Commonality:* There must be
27 questions of law or fact common to the class. *FRCP* 23(a) (2). *Typicality:* The
28 claims or defenses of the class representative must be typical of the claims or

defenses of the class. *FRCP* 23(a) (3). *Adequacy of representation:* The person representing the class must be able fairly and adequately to protect the interests of all members of the class. *FRCP* 23(a) (4).

A. **Numerosity**

According to the Kern County Sheriff's website (http://www.co.kern.ca.us/ sheriff/detentions), Ex. "4" "The Kern County Sheriff's Office, Detentions Bureau has an average daily inmate population of approximately 2,500 inmates. We receive approximately 40,000 new arrests a year." Thus, assuming that the challenged practices ceased as of October 2007, the class period is approximately 30 months, and the total processed over that time was 100,000. KCSD classification supervisor Sgt. Greg Gonzales, whose job in part was to maintain population counts in the jails, provided ample evidence of numerosity at his deposition.[5] *Deposition of Greg Gonzales*, Ex. "9", at p. 4:4-20. For example, in 2006 alone 51,882 inmates were transported to and from court. Ex. "9", at B-0002. That same year, 44, 797 were released by the jails. *Id*. at B-0003. Because all court returnees during the class period were strip searched *en masse*, and because persons released after court were also strip searched as a matter of policy, Sgt. Gonzales' numbers are far above what is needed to satisfy the numerosity requirement. Since Plaintiffs have not yet received the Sheriff's computer database and the information needed to write code to determine the size of different classes, we ourselves have not generated a precise number. The requests for such data are pending, but it will probably be some time before the data has

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[5]In response to a 30(b)(6) notice, Sgt. Gonzales generated population counts for the class period. *Gonzales Depo*, Ex. "9", at pp. 11:11 to 12:22. Attached hereto as Ex. 9, is a copy of the 30(b)(6) notice. Attached hereto as Ex. 9, is a copy of Sgt. Gonzales' calculations in response to each of the 30(b)(6) areas, which were also attached as an exhibit to his deposition.

been obtained, understood and analyzed. *See Declaration of Brian Kriegler*, Ex. "3", at ¶12.

To satisfy the numerosity requirement, Plaintiffs need only show that the number is sufficiently large that it would be extremely difficult or inconvenient to join all the members of the class. Comparably sized or smaller classes have routinely been certified. Alba Conte and Herbert B. Newberg, *Newberg on Class Actions* (4th Ed. 2002), §3:5 (hereafter "*Newberg*") ("in light of prevailing precedent, the difficulty inherent in joining as few as 40 class members should raise a presumption that joinder is impracticable"); s*ee*, *e.g*., *Jordan v. County of Los Angeles,* 669 F.2d 1311, 1319 (9th Cir.), *vacated on other grounds,* 459 U.S. 810 (1982)(class consisting of three groups numbering 39, 64, and 71 respectively probably sufficient to satisfy on numbers alone, although there were "other indicia of impracticability); *Gay v. Waiters' and Dairy Lunchmen's Union*, 549 F.2d 1330, 1332 (9th Cir. 1977) (reversing denial of class certification for lack of numerosity of class of 184 plaintiffs, noting that "[c]ertification of a class under Rule 23 has been granted many times on lesser numbers than in the present case," and citing as an example *Sagers v. Yellow Freight System, Inc.*, 529 F.2d 721 (5th Cir. 1976) (110 members "clearly a sufficient number"); *Paxton v. Union Nat'l Bank,* 688 F.2d 552 561 (8th Cir. 1982)(citing with approval the decision in *Cypress v. Newport News Gen. & Nonsectarian Hosp. Ass'n,* 375 F.2d 648, 653 (4th Cir.1967) (18 class members); *Jack v. American Linen Supply Co.,* 498 F.2d 122, 124 (5th Cir.1974) (51 class members); *Horn v. Associated Wholesale Grocers, Inc.,* 555 F.2d 270, 275-276 (10th Cir.1977) (41-46 class members sufficient); *Cross v. National Trust Life Ins. Co.,* 553 F.2d 1026, 1030 (6th Cir.1977) (7 member class); *International Molders' and Allied Workers' Local Union No. 164 v. Nelson*, 102 F.R.D. 457, 461 (N.D. Cal. 1983) (456 member Fourth Amendment class); *Patrykus v. Gomilla*, 121 F.R.D. 357, 363 (D.C. Ill. 1988) (50 member Fourth Amendment class); *Johns v. DeLeonardis,* 145 F.R.D. 480 (N.D. Ill. 1992)

1 (25 member strip search class); *Multi-Ethnic Immigrant Workers Organizing*
2 *Network v. City of Los Angeles*, 246 F.R.D. 621 (C.D.Cal. 2007) (certifying
3 injunctive relief and damages classes for police breakup of May Day march in Los
4 Angeles; estimated number of people who attended the protest was 6000).

5 **B. Commonality**

6 Minor factual differences will not defeat a class action. So long as it appears
7 unlikely "that differences in the factual background of each claim will affect the
8 outcome of the legal issue, … the class action device saves the resources of both
9 the courts and the parties permitting an issue potentially affecting [class members]
10 to be litigated in an economical fashion under Rule 23." *Califano v. Yamasaki*,
11 442 U.S. 682, 701 (1979). *See, also, Walters v. Reno*, 145 F.3d 1032, 1045-45 (9th
12 Cir. 1998) (existence of common legal issue with divergent factual predicates
13 sufficient to meet commonality requirement of Rule 23); *Hanlon v. Chrysler*
14 *Corp.,* 150 F.3d 1011, 1019 (9th Cir. 1998) ("existence of shared legal issues with
15 divergent factual predicates is sufficient, as is a common core of salient facts
16 coupled with disparate legal remedies within the class"); *Hurley v. Ward*, 1979
17 U.S. Dist. LEXIS 8630 (S.D.N.Y. 1979) (fact that New York Department of
18 Corrections Services' strip search policy, applicable to all inmates, included a
19 general authorization for practices challenged as unconstitutional provided the
20 "necessary common questions, even though the specific circumstances in which it
21 may be applied to individual inmates can differ").

22 Class certification in strip search cases, for example, does not turn on the
23 individual circumstances of each search. *See In re Nassau County Strip Search*
24 *Cases*, 461 F.3d 219 (2nd Cir. 2006) (abuse of discretion to refuse to certify under
25 23(b)(3) strip search class for liability pursuant to Rule 23 (c)(4)(A) where there
26 was a blanket strip search policy); *see generally* strip search cases cited at § V(C)
27 *supra*.
28

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28

The common issues here include the existence and legality of blanket policies of (1) conducting strip/visual body cavity searches of those returned from court entitled to release before release; and (2) conducting strip/visual body cavity searches in groups where inmates could view each other during the search.

The Ninth Circuit, and district courts within it, has allowed the certification of other classes where the class members have far less in common than the class members here. *See, Hilao v. Estate of Ferdinand Marcos*, 103 F. 3d 767, 774 (9th Cir. 1996) (allowing the certification of a class of "all current civilian citizens of the Republic of the Philippines, their heirs, and beneficiaries, who between 1972 and 1986 were tortured, summarily executed or disappeared while in custody of military or paramilitary groups."); *see, also, International Molders' and Allied Workers' Local Union No. 164 v. Nelson*, 102 F.R.D. 457, 461 (N.D. Cal. 1983) (certifying a class of persons of Hispanic or other Latin American ancestry, subjected to the policies, practices and conduct of INS and/or Border Patrol during the course of INS area control operations directed at places of employment).

C. <u>Typicality</u>

"The commonality and typicality requirements of Rule 23(a) tend to merge." *General Telephone Co. of Southwest v. Falcon*, 457 U.S. 147, 157 (1982); *Stanton v. Boeing*, 327 F.3d 938, 957 (9th Cir. 2003) (same). The test of typicality is "whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct." *Hanon v. Dataproducts Corp*., 976 F. 2d 497, 508 (9th Cir. 1992). If the representative "claim arises from the same event, practice or course of conduct … and is based upon the same legal theory, varying factual differences" will not render the class representative's claim atypical. *Jordan*, *supra*, 669 F.2d at 1321. Commonality and typicality "mandate only that complainants' claims be common, and not in conflict." *Hassine v. Jeffes*, 846 F.2d 169, 177 (3rd Cir. 1988). Thus,

"representative claims are 'typical' if they are reasonably co-extensive with those of absent class members; they need not be substantially identical." *Hanlon*, *supra,* 150 F.3d at 1020.

Here, the main legal theories apply equally to all class representatives and members. As discussed extensively, *supra*, plaintiffs were subjected to unreasonable searches in violation of their civil rights without a reasonable suspicion to believe they had contraband, or otherwise posed a threat to the security of the prison facility, upon release, and were strip searched in groups. Typicality is satisfied.

D. Adequacy of Representation

1. Class Representatives' Interests Are Not Antagonistic To The Interests Of The Class

The class will be adequately represented in this action. Rule 23(a)(4)'s requirement for adequate representation is met when 1) there is no conflict of interest between the legal interests of the named plaintiffs and those of the proposed class; 2) counsel for the plaintiffs is competent to represent the class. *Lerwill Inflight Motion Pictures, Inc.,* 582 F. 2d 507, 512 (9th Cir. 1978); *In Re: Northern Dist. Of Cal Dalkon Shield Etc.,* 693 F. 2nd 847, 855 (9th Cir. 1982); *Stanton v. Boeing,* 327 F.3d 938, 957 (9th Cir. 2003).

The interests of all the members of the class are aligned in this action, and there is no anticipated or actual conflict of interests here. *See Class Representative Declarations filed herewith*. The Defendants' policies and practices subjected all of the plaintiff class to the same deprivations, and all of the plaintiffs have suffered substantially similar injuries as a result. Moreover, the named Plaintiffs have suffered injuries that are representative of those of all of the class members.

2. Counsel Are Well Qualified To Represent The Class

Plaintiffs' counsel include Barrett Litt and Paul Estuar of the law firm of Litt, Estuar, Harrison & Kitson, LLP; Robert Mann and Donald Cook. Counsel are

experienced class action and civil rights practitioners. Mr. Litt has handled numerous civil rights class actions, which are enumerated in his accompanying declaration and CV, including three of the four largest strip search settlements in the country. *See Declaration of Barrett* Litt, ¶5. Mr. Estuar, Mr. Mann and Mr. Cook have been involved in many to most (in Mr. Estuar's case) of the class cases in which Mr. Litt has been active. Mr. Mann and Mr. Cook have also been involved in class civil rights cases in which Mr. Litt has not participated. This group of class counsel is among the most experienced in the country in litigation of the type involved here.

All of the criteria set forth in Rule 23 (g) are present here, i.e., (a) counsel have identified and investigated the potential claims in the case, (b) counsel have extensive experience in handling similar cases, (c) counsel are well versed in the applicable law, and indeed have often made the law, and (d) counsel have the resources necessary to prosecute the case.

VII. REQUIREMENTS UNDER RULE 23(B)

Plaintiffs are seeking certification under all of Rule 23(b)'s provisions – (b)(1), (b)(2), and (b)(3). "In order to be maintained as a class action, a representative suit must comply with the requirements of each of the four subsections of Rule 23(a), and must satisfy the additional requirements of at least one of the three subdivisions of Rule 23(b)." *Newberg,* §4:1. In addition to meeting all the requirements for 23(a), the plaintiff class easily meets the requirements of 23(b), and specifically Rule 23(b)(2) and (3).

A. Rule 23(b)(1)'s Requirements Are Met.

Rule 23 (b)(1) provides that a class action may be maintained where prosecution by or against individual class members would create a risk of either (a) inconsistent or varying adjudications that could establish incompatible standards, or (b) adjudication with respect to individual class members that would, as a practical matter, dispose of others' claims or substantially impair or impede their

ability to defend their interests. A case of this type readily meets the standard of a risk of inconsistent verdicts, given that the challenge here is to a policy, and there is a risk that different triers of fact could reach different conclusions regarding the lawfulness of the policy.

B. Common Questions of Law or Fact Predominate

Rule 23(b)(3) provides that class certification should be granted where "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." Determination of the predominance of questions of law or fact common to the class and the superiority of a class action is to be guided by a consideration of four factors, (1) the interest of members of the class in individually controlling the prosecution or defense of separate actions; (2) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (3) the desirability or undesirability of concentrating the litigation of the claims in a particular forum; and (4) the difficulties likely to be encountered in the management of a class action. Rule 23(b)(3).

1. Common Questions of Law or Fact Predominate

The first requirement is that common factual and legal issues predominate over any such issues that affect only individual class members. There is no magic formula in making this determination. *E.g., Bynum v. District of Columbia*, 214 F.R.D. 27, 41 (D.D.C. 2003) (certifying hybrid (b)(2) and (b)(3) strip search class). The common questions of law or fact "predominate over any questions affecting only individual members" in this case because the allegations of an unconstitutional custom and practice of strip searches relate to the defendant' s conduct, and therefore proof of liability will not vary among the class members. *See, e.g., Johnson v. District of Columbia*, 2008 WL 344739, 2 (D.D.C. 2008)

1 ("Courts routinely certify strip search class actions similar to this one"); *see*
2 *generally* cases cited in §V(C), *supra*.
3 Where a common nucleus of operative facts forms the central issue in the
4 case, even if individualized issues of proof are present, the predominance hurdle
5 will have been cleared. *See, e.g., Dornberger v. Metropolitan Life Insurance*
6 *Company*, 182 F.R.D. 72, 77 (S.D. N.Y. 1998) (Rule 23(b)(3) class where
7 insurance policies sold in nine overseas countries without regulatory approval);
8 *Wells v. Allstate Insurance Co.*, 210 F.R.D. 1, 12 (D.D.C. 2002) (Rule 23(b)(3)
9 class certified where common questions predominated in consumer action
10 involving denial of insurance claims); *Rossini v. Olgivy & Mather*, 798 F.2d 590,
11 598-599 (2d Cir. 1986) (reversing decertification of Rule 23(b)(3) class as to
12 employee claims of sex discrimination in training and promotion alleging pattern
13 and practice of employer). Here, the common policies described above provide that
14 common nucleus. As mentioned above, (b)(3) certifications are common in strip
15 search cases due to the predominance of a particular policy or approach to a
16 particular demonstration.
17 Generally speaking, if the action complained of on behalf of the putative
18 class members arises out of a single set of operative facts, then the commonality
19 requirement will have been satisfied. If that common nucleus of operative facts
20 forms the central issue in the case, even if individualized issues of proof are
21 present, the predominance hurdle will have been cleared. *See, e.g., Rossini v.*
22 *Olgivy & Mather*, 798 F.2d 590, 598-599 (2d Cir. 1986) (reversing decertification
23 of Rule 23(b)(3) class as to employee claims of sex discrimination in training and
24 promotion alleging pattern and practice of employer); *see generally* cases cited in
25 Argument V (C), *supra*.
26
27
28

There are at least two key questions, one of fact and one of law, common to members of each of the proposed classes: (a) whether the County has a particular strip search policy and (b) whether the policy violates the Constitution.
The resolution of both these questions would dispose of the liability issue. This suffices to show that common questions of law and fact predominate over any questions affecting individual class members. *E.g., Bynum*, 214 F.R.D. at 39.

2. *Once a Common Policy Or Law Is Established, the Burden Shifts To The Defendants To Identify Exceptions.*

It is well established in strip search cases that, once Plaintiffs establish an unlawful policy, the burden shift to defendants to affirmatively identify individuals who were justifiably strip searched despite the existence of the unlawful policy. *See, e.g., Doe v. Calumet City, Illinois,* 754 F.Supp. 1211, 1220 (N.D.Ill. 1990) (plaintiffs not required to show that defendants lacked reasonable belief that individual plaintiffs were concealing weapons or contraband where plaintiffs had shown the strip-search policy to be routine and indiscriminate); *Mack v. Suffolk County*, 191 F.R.D. 16, 24 (D.Mass. 2000) (where a blanket strip search policy existed, defendants had burden to demonstrate that particular searches were reasonable); *Blihovde v. St. Croix County, Wis*., 219 F.R.D. 607, 621 - 622 (W.D.Wis. 2003) (following *Mack* and *Doe*, *supra*); *Tardiff v. Knox County*, 365 F.3d 1, 6 (1st Cir. 2004) (recognizing that several courts have found where there is a blanket policy the burden shifts to the defendants to point out the exceptions to the rule, but not deciding the issue except to say that, whoever had the burden, it would not defeat class certification); *In re Nassau County Strip Search Cases*, 461 F.3d 219, 230-31 (2nd Cir. 2006) (defense that some plaintiffs were properly strip searched not defeat class certification). *See also International Brotherhood of Teamsters v. United States,* 431 U.S. 324 (1977) (when plaintiffs in discrimination action prove that defendants engaged in pattern or practice of discrimination, burden of persuasion shifts to defendants to prove individual

1 actions were not discriminatory); *Hervey v. City of Little Rock,* 787 F.2d 1223,
2 1228 (8th Cir.1986) (applying pattern or practice method of proof to claim brought
3 under §1983); *Anderson v. Cornejo,* 199 F.R.D. 228, 240-41 (N.D.Ill.2000)
4 (assuming that pattern and practice method of proof applies to class actions
5 involving strip search policies).

6 *3. Predominance on a Single Issue is Enough to Satisfy 23(b)(3)*

7 Rule 23(c)(4) provides that "when appropriate (A) an action may be brought
8 or maintained as a class action with respect to particular issues." Thus, the court
9 could certify the class for liability purposes only, or for a determination of certain
10 specified liability issues, leaving other liability issues (although here there are
11 none) and damages for individual determination. *See, e.g.,* 7A Charles Alan Wright
12 & Arthur R. Miller, *Federal Practice and Procedure* §1778 (2d ed. 1986) ("when
13 one or more of the central issues in the action are common to the class and can be
14 said to predominate, the action will be considered proper under Rule 23(b)(3) even
15 though important matters will have to be tried separately"); *Valentino v. Carter-*
16 *Wallace, Inc.,* 97 F.3d 1227, 1234 (9th Cir. 1996) ("even if the common questions
17 do not predominate over the individual questions so that class certification of the
18 entire action is warranted, Rule 23 authorizes the district court in appropriate cases
19 to isolate the common issues under Rule 23(c)(4)(A) and proceed with class
20 treatment of these particular issues."); *In re Nassau County Strip Search Cases*,
21 461 F.3d 219, (abuse of discretion to refuse to certify 23(b)(3) strip search class for
22 liability only under Rule 23 (c)(4)(A) where there was a blanket strip search
23 policy; on remand, district court should reconsider whether damages component
24 should be certified) (citing *Valentino*); *Sterling v. Velsicol Chemical Corp*., 855
25 F.2d 1188, 1196-97 (6th Cir. 1988) ("no matter how individualized the issue of
26 damages may be . . . the mere fact that questions peculiar to each member of the
27 class remain after the common questions of the defendant's liability have been
28 resolved does not dictate the conclusion that a class action is impermissible").

In *In Re Nassau County Strip Search Cases*, *supra*, 2006 WL 2441023, the Second Circuit reversed as an abuse of discretion the district court's denial of class certification in a case involving a blanket strip search policy, indicating that the requirements of Rule 23(b)(3) were met even if damages were not certified due to individual considerations because Rule 23(c)(A)(4) provided for certification of individual issues. In doing so, the Court characterized the issue as "whether a court may employ Rule 23(c)(4)(A) to certify a class as to a specific issue where the entire claim does not satisfy Rule 23(b)(3)'s predominance requirement" In answering the question in the affirmative (and indeed holding it was an abuse of discretion not to do so), the Second Circuit cited *Valentino, supra,* a Ninth Circuit case. It emphasized that, as here, the class "definition referenced only defendants' 'blanket policy,' thus avoiding questions of probable cause." *Id*. at p.9. Thus, at a minimum, certification should be granted on the liability issues.

4. Damages Do Not Defeat Predominance in this Case.

The First, Second, Fourth, Fifth, Sixth, Seventh and Eleventh Circuits, have recently reaffirmed that the mere existence of individual damages issues in a (b)(3) class does not cause individual issues to predominate over common issues on liability or causation so as to justify denying certification of the class when the liability issue is susceptible of class proof. *Tardiff*, *supra,* 365 F.3d at 6; *In re Visa Check/MasterMoney Antitrust Litigation*, 280 F.3d 124, 141 (2d Cir. 2001); *Gunnells v. Healthplan Servs.*, 348 F.3d 417, 426 (4th Cir. 2003); *Bertulli v. Indep. Ass'n of Cont'l Pilots*, 242 F.3d 290, (5th Cir. 2001); *Carnegie v. Household Int'l, Inc*., 2004 U.S. App. LEXIS 14635 (7th Cir. July 16, 2004); *Allapattah Servs. v. Exxon Corp.*, 333 F.3d 1248, 1261 (11th Cir. Fla. 2003); *Klay v. Humana, Inc.*, 382 F.3d 1241, 1259 (11th Cir. 2004). *See also* cases cited in §VI(C)(4), *supra*.

Several Circuits have recognized that, since most class actions settle, manageability (including predominance issues) issues – which generally do not

arise until the damages phase – will never arise at all. *See, e.g., Carnegie v. Household Int'l , Inc.,* 376 F.3d 656, 661 (7th Cir.2004) (Posner, J.) ("it may be that if and when the defendants are determined to have violated the law separate proceedings of some character will be required", but that "prospect need not defeat class treatment"; after a liability determination favorable to the class, "a global settlement … will be a natural and appropriate sequel"; and if not, "Rule 23 allows … imaginative solutions," including bifurcation of liability and damages, appointing a magistrate judge or special master to preside over individual damages proceedings, decertifying class for subsequent proceedings, and others) [6].

Bifurcation of liability and damage determinations is well recognized. *See, e.g., Chang v. U.S.*, 217 F.R.D. 262, 272 (D.D.C. 2003) ("district court, should, of course, ordinarily consider such well-established methods as bifurcating the trial into liability and damages phases before denying certification," quoting *McCarthy v. Kleindienst,* 741 F.2d 1406, 1415 (D.C.Cir. 1984) (citing cases)) (mass protest case); *Calvin v. Sheriff of Will County*, 2004 WL 1125922, 5 (N.D.Ill. 2004) (strip search class; "fact that damages may vary based on each plaintiff's mental state is not, however, a sufficient reason to deny certification because the court may bifurcate" liability and damages).[7]

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[6] *Carnegie* is a "signal…that the existence of individualized issues regarding damages does not spell doom for class certification (indeed, that is especially true where the individualized claims are small)." *Owner-Operator Independent Drivers Ass'n, Inc. v. Allied Van Lines, Inc.,* 231 F.R.D. 280, 284 -85 (N.D.Ill. 2005).

[7] As long as separate juries do not re-examine previously resolved fact determinations, Rule 42(b) and the Seventh Amendment permit trials of individual, discrete issues before separate juries. *Robinson v. Metro-North Commuter R.R.*, 267 F.3d 147, 170 (2nd Cir. 2001); *Mullen v. Treasure Chest Casino, LLC,* 186 F.3d 620 (5th Cir. 1999). *See also See, e.g., Equal Employment Opportunity Commission v. McDonnell Douglas Corp.,* 960 F.Supp. 203, 205 (E.D.Mo.1996) (liability and damages issues bifurcated in ADEA case); *McElroy v. Arkansas Log Homes, Inc.,* 1989 WL 18755, 1 (D.Kan. 1989) (bifurcated issue of causation in

1 In this case, there are several readily available approaches to damages
2 should settlement not be possible after a class-wide liability determination.
3 **a) Classifying Damages**
4 Damages could be tried as a whole, with the jury placing values on certain
5 categories of damages (e.g., the value of a strip search of a 1) first time arrestee, 2)
6 men versus women, 3) those who suffered particular psychological distress, 4)
7 those who were mentally ill, those who were searched under particularly difficult
8 circumstances, such as while menstruating, and the like). A grid could be
9 developed, and the jury could place values on these or other categories of damages.
10 Plaintiffs are not specifically proposing these categories, but use them as
11 illustrations. *See, e.g., Dellums v. Powell,* 566 F.2d 167 (D.C.Cir.1977) (damages
12 set by category: for false arrest based on categories of detention of up to 12 hours,
13 12-24 hours, 24-48 hours, and 48-72 hours; additional fixed amount of damages
14 for violation of First Amendment rights, cruel and unusual punishment, and
15 categories of malicious prosecution: court did not "think that determination of
16 damages in this case requires individualization"; instead, they "were fixed either
17 for the class as a whole or by subclass"); *Allaptatah Services v. Exxon*, 157
18 F.Supp.2d 1291, 1313 (S.D. FLA 2001) ("it is appropriate for the class
19 representatives to develop and prove common guidelines or formulae that will
20 apply for each individual proof of claims.") (citing *Newberg*, §10.01 and *Hilao*, *v.*
21 *Estate of Marcos*, 103 F.3d 767 (9th Cir. 1996)).
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24 EPA case); *Paine, Webber, Jackson & Curtis, Inc. v. Merrill Lynch, Pierce,*
25 *Fenner & Smith,* 587 F.Supp. 1112, 1117 (D.Del.1984) (patent infringement bifurcated into liability and damages trials); *Carroll-McCreary Co., Inc. v. New*
26 *Jersey Steel Corp.,* 1981 WL 2030 (E.D.N.Y. 1981) (no "neat dividing line"
27 between the issues of liability and damages in antitrust case; bifurcation permissible under Seventh Amendment).
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b) Bellwether Trials

Alternatively, the court could hold bellwether or test trials to aid settlement, if the parties cannot agree. *See, e.g., MCL, supra,* §22.91, p.448 ("parties may agree to use test-case trials to establish a range of value for resolving similar claims"); *In re Chevron*, 109 F.3d 1016, 1019 (5th Cir. 1997) (notion that bellwether trials may enhance settlement prospects or help resolve common questions "is a sound one"); *In re Methyl Tertiary Butyl Ether (MTBE) Products*, 2007 WL 1791258 (S.D.N.Y. 2007) (ordering bellwether trials on representative claims despite defendants' objections).

c) Statutory Damages

In this case, individual damage issues may be obviated by the availability of statutory minimum damages of $4,000 per violation under California's *Unruh Act*, *Civil Code* §52. Section 52 is the remedies section of the Act. Thus, although §52 itself only address certain violations of §51 (not including §52.1), §52.1(b) expressly incorporates the remedy provisions of §52(a) making statutory damages available for a violation of §52.1. When and if the stage of the litigation were reached where a violation of §52.1 were determined, plaintiffs would then propose that class members have the choice of accepting the statutory damages or opting out, which would effectively eliminate the need to determine individual damages at all.

The propriety of applying a pre-determined mathematical formula to class compensatory damages is well-established. *See, e.g., Six (6) Mexican Workers v. Arizona Citrus Growers*, 904 F.2d 1301, 1305-1306 (9th Cir. 1990) (where plaintiff class sought statutory not actual damages, they were intended "to promote enforcement" of the underlying statute [there the FLCRA] and "deter future violations…. Therefore, the district court was not obligated to require individual proof of injury from each class member."); *Windham v. American Brands, Inc.*, 565 F.2d 59, 68 (4th Cir.1977).

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d) Statistical Methods of Determining Damages

2 The Ninth Circuit has endorsed the use of special and innovative methods to
3 allow a damages class to proceed, including specifically statistical sampling. *Hilao*
4 *v. Estate of Marcos*, 103 F.3d 767, 774 (9th Cir. 1996) (class action against
5 Fernando Marcos for of torture, "disappearance," or summary execution that
6 occurred over a 14 year period based on randomly selected sample comports with
7 the historical understanding of both procedural and substantive due process).[8] *See*
8 *also, e.g., Blue Cross and Blue Shield of New Jersey, Inc. v. Philip Morris, Inc.*,
9 113 F. Supp.2d 345, 372-376 (E.D.N.Y. 2000) and 2001 WL 1304370, p.43
10 (E.D.N.Y. 2001) (Weinstein, D.J.) (health plans could use statistical evidence in
11 support of their claim for damages due to unlawful conduct of Phillip Morris).

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C. <u>Manageability and the Role of Kern County's Sheriff's Database.</u>

13 Because Kern County maintains a database which contains the essential
14 information in (a) determining class membership and (b) contacting class
15 members, there should be little or no manageability concerns in certifying this case
16 as a class action.

17 Lieutenant Dennis Smithson, the County's Rule 30(b)(6) designee regarding
18 its inmate management system called the Criminal Justice Information System or
19 "CJIS", testified that CJIS identifies every person presently in Kern County
20 Sheriff's custody, identifies what criminal matters are pending against an inmate,
21 identify whether an inmate has any warrants or holds placed on him/her, identify
22 when an inmate is eligible for release. *Smithson Depo*., Ex. 10, pp.18:19-25 to
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[8] For an extensive analysis of statistical sampling, see Michael J. Saks and Peter David Blanck, *Justice Improved: THE UNRECOGNIZED BENEFITS OF AGGREGATION AND SAMPLING IN THE TRIAL OF MASS TORTS*, 44 Stanford Law Review 815 (1992); Laurens Walker & John Monahan, *Sampling Damages,* 83 Iowa L.Rev. 545 (1998) ("a complete solution of the numbers problem in mass torts can only be achieved by ··· randomly sampling damages without apology.").

19:1-6. Using CJIS, one can generate a list of everyone who was held in custody at a Kern County detention facility for a given period of time, and can further limit that list, for example, to only felony bookings. *Smithson Depo*., Ex. 10, p.24:15-25 to 26:1-10. CJIS also allows to not only extract a record of all releases, but can also identify the reason for a particular release. *Smithson Depo*., Ex. 10, p.28:13-15.

It is clear that all the information necessary to determine class membership is maintained by the County in its computer records. In addition, plaintiffs have retained the services of a statistical expert, Brian Kriegler, who has extensive experience analyzing highly sensitive and confidential inmate data from law enforcement databases in strip search cases, as he has acted as an expert for Plaintiffs' counsel in several strip search class actions for purposes of determining class membership and ultimately class damages through statistical means (*e.g.,* using statistical sampling of class members as a basis for drawing conclusions about the whole class). There should be little concern about manageability of this case as a class action. *See Declarations of Barrett S. Litt and Brian Kriegler*.

VIII. CONCLUSION

For the foregoing reasons, plaintiffs respectfully request that the Court grant their Motion for Class Certification.

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Respectfully submitted,

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