UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

GREGORY GARVEY, Sr., on behalf of himself and on behalf of others similarly situated, Plaintiffs, v. FREDERICK B. MACDONALD and FORBES BYRON, in their individual capacities, Defendants.	Civil Action No. 07-30049-KPN

PLAINTIFFS' MEMORANDUM IN SUPPORT OF JOINT MOTION FOR FINAL APPROVAL OF CLASS SETTLEMENT

I. INTRODUCTION

Plaintiffs submit this memorandum in support of the parties' joint motion for final approval of the settlement in this civil rights class action.

The Court granted preliminary approval to the settlement agreement on July 12, 2010. The agreement provides that the Commonwealth of Massachusetts will pay $1,162,468 on behalf of both Defendants to resolve all of Plaintiffs' claims, including claims for costs and attorney's fees. The 487 class members received individual notice of the settlement, along with a claim form, whenever possible; notice was otherwise provided by multiple methods designed to reach as many class members as possible. To date, 250 class members, or 51% of the class, have submitted valid claim forms – an extraordinarily high rate of return for a prisoners' rights class action. No class members have filed any objections to the settlement, and only one class member has opted out.[1]

After payment of claims administration expenses, litigation expenses, an incentive award to the class representative, and attorneys' fees, all of the remaining settlement fund balance will be

evenly divided among participating class members. If the Court approves the amounts requested for costs, fees, and the incentive payment, each participating class member will receive approximately $2,850. Because of the high participation rate, the reversion and *cy pres* provisions of the agreement – which provide that funds remaining after distribution to class members will be divided equally between Prisoners' Legal Services and the Commonwealth – do not apply.

The settlement is the product of contested and lengthy negotiations. It is fair, reasonable and adequate. For these reasons, it warrants the Court's final approval, which will permit the Commonwealth to make the required payments under the agreement.

II. CASE BACKGROUND

This is a civil rights class action under 42 U.S.C. § 1983 against Franklin County Sheriff Frederick Macdonald and Special Sheriff Forbes Byron. Plaintiff, Gregory Garvey, Sr., filed suit on March 28, 2007, alleging that Defendants maintained a policy of strip searching all individuals admitted to the Franklin County Jail without individualized suspicion, in violation of the Fourth Amendment. This policy was in place throughout the class period, which runs from March 28, 2004, to February 24, 2007, inclusive. On April 15, 2008, the Court certified the following class under Fed. R.Civ. P. 23(b)(3):

> All people strip searched without individualized reasonable suspicion on or after March 28, 2004, and before February 25, 2007, at the Franklin County Jail
>
> (a) while waiting for bail to be set or for a first court appearance after being arrested on charges that did not involve a weapon, drugs, contraband or a violent felony, or
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> (b) while waiting for a first court appearance after being arrested on a default or other warrant for charges that did not involve a weapon, drugs, contraband or a violent felony.

[1] See Declaration of David Milton ("Milton Decl.") ¶ 5.

The parties conducted discovery from July 2007 to November 2008, after which they filed cross motions for summary judgment. On October 22, 2009, the Court granted Plaintiffs' motion for summary judgment and denied Defendants'.

Following the Court's ruling, the parties spent several months determining who was in the class, a necessary precursor to negotiating a settlement. After extensive review of individual intake files and of the applicable law, the parties reached agreement as to who was in the class and who was not. The parties then began settlement discussions in earnest. After several months of negotiations, the parties signed the settlement agreement on June 24, 2010.

On July 12, 2010, the Court held a hearing and granted preliminary approval of the settlement agreement; appointed Analytics, Inc., as claims administrator; approved the class notice and notice plan, as altered during the hearing; and set January 14, 2011, as the date for the final fairness hearing. On July 16, 2010, the parties filed amended settlement documents to conform to the changes discussed at the July 12 hearing.

III. SUMMARY OF THE SETTLEMENT

Under the settlement, the Commonwealth agrees to pay on behalf of Defendants $1,162,468 to settle all claims brought by Plaintiffs in this action, including claims for attorney's fees and costs. The agreement provides for a cash payment of up to $3,500 to every person who meets the class definition and submits a claim form. Only one payment will be made to each class member no matter how many times during the class period he or she was admitted into the jail and strip searched.

Class counsel recommends and Defendants do not oppose an incentive payment of $20,000 to the named Plaintiff, Gregory Garvey, Sr., to compensate him for his loss of privacy as a result of bringing this case and for the time he spent working with counsel to bring about the favorable result

for the class. Attorney's fees and expenses, including the costs of administering the settlement, will be deducted from the settlement amount before calculating the distribution amount to class members. Class counsel have filed a motion requesting that the Court award a fee of one-third of the gross settlement amount, or $387,489.33. Counsel's total costs will not exceed $42,498, of which $12,498 represents litigation costs[2] and up to $30,000 represents the costs of claims administration.[3]

After the above payments are deducted from the total settlement amount, each class member who submitted a valid claim form will receive a payment of approximately $2,850.[4] Because no funds will be left over after every participating class member receives a payment, no money will be given to Prisoners' Legal Services under the doctrine of *cy pres*, and no money will revert to the Commonwealth.

IV. THE SETTLEMENT IS FAIR, REASONABLE AND ADEQUATE

A. The Settlement Is Entitled to a Presumption of Reasonableness.

Under Fed. R. Civ. P. 23(e), the Court must hold a hearing and determine if the settlement is "fair, reasonable and adequate." *See Nat'l Ass'n of Chain Drug Stores v. New Eng. Health Benefits Fund*, 582 F.3d 30, 44 (1st Cir. 2009); *Durrett v. Housing Auth. of Providence*, 896 F.2d 600, 604 (1st Cir. 1990). "If the parties negotiated at arm's length and conducted sufficient discovery, the district court must presume the settlement is reasonable." *Id.*; *accord City Pshp. Co. v. Atlantic Acquisition Ltd. Pshp.*, 100 F.3d 1041, 1043 (1st Cir. 1996).

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[2] Milton Decl. ¶ 19.

[3] Under the settlement agreement, the payment to the Claims Administrator is capped at $30,000, based on a detailed estimate provided by Analytics at the time of the agreement was made. As of November 24, 2010, Analytics estimated its fees to date to be $23,000; this figure will go up as Analytics continues to respond to class member inquiries, processes changes of address and other administrative matters, and, if the settlement is approved, prepares the final distribution list. Milton Decl. ¶ 20.

[4] The actual amount will be slightly more if the Claims Administrator's final fee is less than $30,000.

The settlement in this case warrants the presumption of reasonableness. The parties' claims and defenses were thoroughly litigated. The parties reached settlement only after vigorous arm's length negotiations.

1. The parties conducted extensive discovery.

"The stage of the proceedings at which settlement is reached is important because it indicates how fully the district court and counsel are able to evaluate the merits of plaintiffs' claims." *Rolland v. Celluci*, 191 F.R.D. 3, 10 (D. Mass. 2000) (quoting *Duhaime v. John Hancock Mutual Insurance*, 177 F.R.D. 54 at 67 (D. Mass. 1997)). Plaintiffs in this case had the benefit of a complete discovery period, and a ruling on the merits from the Court, before entering into the settlement.

Plaintiffs took extensive discovery both on the merits of their claims and on the composition of the class. Plaintiffs took eleven depositions, sent document requests, and propounded two sets of interrogatories to each Defendant. Plaintiffs' counsel reviewed multiple complex electronic spreadsheets and voluminous paper booking records.

During discovery, Plaintiffs identified approximately 580 individuals as likely to fit the class definition based on Defendants' records. To arrive at the final class list, Defendants reviewed the intake files and other materials for nearly all of these individuals. Plaintiffs' counsel, in turn, reviewed the materials Defendants provided from these files that allegedly disqualified certain individuals from the class. The parties also conducted legal research to determine, among other things, whether particular crimes should be deemed "violent felonies." Then counsel discussed the application of

this research to the class definition. Eventually counsel came to an agreement. As a result of this intensive review process, the parties agreed that 486 individuals met the class definition.[5]

2. The negotiations occurred at arm's length.

This settlement is the result of vigorous negotiations. After the Court granted summary judgment in October 2009, the parties began to discuss settlement. As a threshold matter, the parties needed to know the size of the class, which in turn required the parties to agree on who met the class definition. This process alone took several months. After determining class size, the parties negotiated for several months before agreeing on all terms of the written settlement agreement.

B. Other Factors Confirm the Reasonableness of the Agreement.

The First Circuit has not mandated any single test for determining whether a settlement meets the standard for reasonableness under Rule 23(e). *See In re Relafen Antitrust Litig.*, 231 F.R.D. 52, 72 (D. Mass. 2005); *Rolland v. Cellucci*, 191 F.R.D. 3, 8 (D. Mass. 2000). "[T]he ultimate decision by the judge involves balancing the advantages and disadvantages of the proposed settlement as against the consequences of going to trial or other possible but perhaps unattainable variations on the proffered settlement." *In re Pharm. Indus. Avg. Wholesale Price Litig.*, 588 F.3d 24, 44 (1st Cir. 2009).

In *Rolland,* this Court identified eight factors courts have considered: "(1) Plaintiffs' likelihood of success on the merits; (2) the amount and nature of discovery or evidence; (3) the actual settlement terms and conditions; (4) the recommendation and experience of counsel; (5) the future expense and likely duration of litigation; (6) the recommendation of neutral parties, if any; (7)

[5] During the claims period, an additional individual was added to the class after review of information he submitted to the Claims Administrator, and of Defendants' records, showed that he met the class definition. Twenty-three (23) other individuals not on the class list submitted claims, which were denied after review of Defendants' records confirmed that they did not meet the class definition. Milton Decl. ¶ 5.

the number and nature of objections; and (8) the presence of good faith and the absence of collusion." *Rolland,* 191 F.R.D. at 8.[6]

These factors support the settlement agreement in this case.

1. Likelihood of success on the merits

Each class member will receive approximately $2,850 if the settlement and all attendant requests are approved. Class members risked getting much less, or nothing, if the case went to trial. By reaching a compromise, Plaintiffs avoid the risks they would have faced by proceeding to trial. Although this Court determined liability in Plaintiffs' favor, three recent decisions from other circuits have presented the possibility that the Supreme Court may soon take up the issue of prearraignment strip-searches, potentially overruling the First Circuit precedent on which this Court relied. In *Florence v. Bd. of Chosen Freeholders of Burlington*, 621 F.3d 296 (3d Cir. 2010), *Bull v. City and County of San Francisco*, 539 F.3d 1193 (9th Cir. 2010) (en banc), *Powell v. Barrett*, 541 F.3d 1298 (11th Cir. 2008) (en banc), the Third, Ninth, and Eleventh Circuits held that blanket strip searches of non-felons at the time of admission to jail are constitutional; there is now a circuit split. By settling, class members avoid any risk of losing on the merits because of future changes in the law.

Moreover, if damages claims were decided individually by a jury, class members risked winning less than $2,850, or winning only nominal damages.[7] Particularly in this economic environment, juries may not feel generous to former arrestees. Any individual who believed he or

[6] In *Rolland*, the Court also considered the effect of the settlement, if any, on third parties. *Rolland,* 191 F.R.D. at 9. This factor is inapplicable here, which affects only class members and creates no institutional changes like those in *Rolland.*

[7] *See, e.g., Foote v. Spiegel,* 118 F.3d 1416 (10th Cir. 2001) (after two appeals, plaintiff awarded $1 for an admittedly illegal strip search); *Stewart v. Lubbock County,* 767 F.2d 153, 154, n.2. (5th Cir. 1985)(one plaintiff awarded $1 and the other awarded $15,000); *Sorenson v. City of New York,* 2000 U.S.Dist. LEXIS 15090 (S.D.N.Y. 2000)(two plaintiffs awarded $1 each); *Polk v. Montgomery County,* 689 F.Supp. 556 (D. Md. 1988) (plaintiff awarded $1 after rejecting a settlement offer of $31,000).

she could have done better at trial because of a particularly strong damages claim had the option to opt out.[8] Only one individual opted out (without giving a reason), as opposed to 250 individuals who chose to participate in the settlement.[9]

Settling now also ensures that class members will receive payment much sooner than if the case proceeded to trial and appeal. Receiving prompt payment is especially important in this case, where a significant portion of the class is poor and transient. Not only do many class members presumably need the money, but as time goes by, it will become increasingly difficult to contact them.[10]

2. The amount and nature of discovery or evidence

As discussed above, the parties reached settlement only after a full discovery period and extensive review of Defendants' intake records and a summary judgment decision in favor of the plaintiff class. The extensive discovery permitted counsel to carefully assess the value of the case and to reach a principled compromise.

3. The actual settlement terms and conditions

The total value of the settlement is $1,162,468. By any measure, this is more than a token recovery. Participating class members will receive nearly $3,000 for filling out a short form and mailing it to the claims administrator. These class members will obtain this money without having to find and hire their own lawyers, pay litigation expenses, endure the anxiety of litigation, respond to

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[8] *See McBean v. City of New York,* 233 F.R.D. 377, 388 (S.D.N.Y. 2006) ("Individual class members can decide on their own where on the scale of damages they fall, from nominal to substantial. If on the nominal side, the settlement's award of $ 750 or $ 1000 is quite attractive; if on the substantial side, the settlement allows individuals to opt out and pursue their own claims.").

[9] Two other class members submitted claim forms that were defective (one was unsigned, one was signed by someone other than the class member). Milton Decl. ¶ 5. Despite being given notice of these deficiencies and an opportunity to correct them, they have not done so.

[10] *See McBean,* 233 F.R.D. at 388 ("The prospect of a trial in this case, with the risk of receiving only nominal damages, and the risk that during protracted litigation class members or become unreachable to collect even a

interrogatories or requests for documents, testify at depositions, and prepare for trials. Instead of giving up their privacy by filing suit or participating in a damages hearing, they will benefit from the anonymity provided by their membership in the class.

As discussed, class counsel anticipates that each participating class member will receive approximately $2,850. If the Court approves the attorneys' fees and costs requested by class counsel, including the costs of claims administration, the estimated minimum amount available for distribution to class members will be approximately $712,481. All of this money will be divided amount participating class members. Because of the excellent participation rate, the reverter and *cy pres* provisions for undistributed funds do not come into play.

The amount class members will receive under the settlement is well within the range of reasonableness for similar settlements in this state and nationwide. In *Ryan v. Garvey,* No. 05-30017-MAP, a case against the Hampshire Sheriff's Department settled in 2007, Judge Ponsor approved a $205,000 settlement for 89 class members, 30 of whom filed claims. Each participating class member received approximately $3,900.[11] In 2009, a district court in Pennsylvania approved a settlement that provided for all participating claimants to be granted a pro rata share of a settlement fund up to cap of $3,000 per class member; each claimant received approximately $1,400.[12] In 2006, a New York district court approved a settlement granting $750 or $ 1,000 per class member; the court cited another strip-search class action in which claimants received $1,000 each and another in which claimants received an average of $3,800 per person.[13]

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nominal amount, strongly favors settlement.").

[11] In addition to *Ryan,* Plaintiffs' counsel has settled two other strip search class actions in Massachusetts, *Mack v. Suffolk County,* 191 F.R.D. 16 (D. Mass. 2000), and *Connor v. Plymouth County*, 00-10835-RBC. See Declaration of Howard Friedman ("Friedman Decl.") ¶ 12.

[12] *Boone v. City of Phila.,* 668 F. Supp. 2d 693, 702-03 (E.D. Pa. 2009).

[13] *McBean v. City of New York,* 233 F.R.D. 377, 388, 390-91 (S.D.N.Y. 2006).

4. The recommendation and experience of counsel

"When the parties' attorneys are experienced and knowledgeable about the facts and claims, their representations to the court that the settlement provides class relief which is fair, reasonable and adequate should be given significant weight." *Rolland,* 191 F.R.D. at 10.

As detailed in the declaration of counsel, Plaintiffs' counsel has extensive experience litigating claims of illegal strip searches. Howard Friedman has represented the plaintiffs in more than a dozen strip search cases, including four other class actions and one case that went to trial. He has spoken on strip search law at conferences, lectured on the subject in law schools, and served as a consulting expert for the plaintiffs in other cases alleging illegal strip search policies. Attorney Friedman's opinion that the settlement is advantageous to the class weighs in favor of approval.

5. The future expense and likely duration of litigation

"When comparing the significance of immediate recovery by way of the compromise to the mere possibility of relief in the future, after protracted and expensive litigation, there are clearly strong arguments for approving a settlement." *Rolland,* 191 F.R.D. at 10 (citations and internal quotation marks omitted). Had the parties not settled, it would have been necessary to determine damages for 487 class members. The simple, easy-to-administer distribution formula in this case – all class members receive an equal share of the settlement – avoids the expenditure of resources required to make hundreds of individual damages determinations. Plaintiffs' counsel has consulted with lawyers from around the country who have settled similar strip search class actions in other states. Experience has shown that requiring individualized determinations of each class member's

subjective experience to determine his or her share of the settlement can be so time consuming and expensive that it harms the class as a whole.[14]

Further, as discussed above, many individuals risked getting less money from an individualized determination than they are getting from this settlement, and all class members faced the prospect that this Court's finding of liability might have been affected if the Supreme Court had taken up the issue of pre-arraignment strip searches before this case had resolved.

6. Recommendation of neutral parties, if any

No neutral parties have made any recommendations, for or against, approval of the settlement. The parties based the settlement on other settlements in this District, particularly *Ryan v. Garvey*, and on the extensive, helpful discussions with the Court.

7. The number and nature of objections

As described in more detail below, class members received more than adequate notice of the settlement. Although the settlement notice and the claim form informed class members of their right to object to the settlement, not a single class member out of 487 has done so. "The lack of any objections from Class members is an extremely strong indication that the Settlement is fair." *In re Marsh ERISA Litig.*, 265 F.R.D. 128, 139 (S.D.N.Y. 2010); *see also* 4 Newberg on Class Actions § 11.41 at 108 ("If only a small number of objections are received, that fact can be viewed as indicative of the adequacy of the settlement."). Further, any class member who felt dissatisfied with the settlement, who felt that he or she suffered atypical hardship as a result of being strip searched, or who, for whatever reason, did not want to participate in the settlement could have opted out of the

[14] Friedman Decl. ¶ 22.

settlement. Only 1 of 487 class members did so.[15] When weighed against the fact that more than 50% of the class chose to participate in the settlement, this factor strongly supports a finding that the settlement is fair.

8. The presence of good faith and the absence of collusion

"The storm warnings indicative of collusion are a 'lack of significant discovery and [an] extremely expedited settlement of questionable value accompanied by an enormous legal fee.'" *In re Lupron Mktg. & Sales Practices Litig.*, 228 F.R.D. 75, 94 (D. Mass. 2005) (citing *In In re GMC Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 801 (3d Cir. 1995)). No such warnings are present here. As discussed above, the parties reached settlement only after three years of litigation and many months of negotiation. The settlement provides a substantial benefit to individual class members. As discussed below, the amounts requested for attorney's fees and for an incentive award to the representative are reasonable and are consistent with awards in other cases.

C. The Class Received Adequate Notice of Their Rights

Rule 23(e) requires that the Court direct notice "in a reasonable manner" of the proposed settlement to all members of the class who would be bound by the settlement. Fed. R. Civ. P. 26(e)(1). On July 12, 2010, this Court approved the parties' notice plan, with certain modifications to the text of the class notice that were incorporated into the final version of the notice. The notice plan was a success. More than 50% of the class submitted valid, timely claims showing that the class received notice.[16]

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[15] Milton Decl. ¶ 5.

[16] This is a well above the norm for prisoners' rights class actions, where return rates generally range from 10% to 30%. See, e.g., *Boone v. City of Phila.*, 668 F. Supp. 2d 693, 703 (E.D. Pa. 2009) (noting 15% of class members had filed claims); *McBean v. City of New York*, 233 F.R.D. 377, 382 (S.D.N.Y. 2006) (noting that 4,319 of 40,352 class members, 11 %, had filed claims).

Beginning in early August 2010, the Claims Administrator mailed the approved notice and claim form by first class mail postage-prepaid to all potential class members at their last known addresses. The last-known addresses were derived from the records of the Franklin County Sheriff's Department and the Massachusetts Department of Correction. Where it was not clear which address was more current, mailings were sent to both addresses. Additionally, approximately 13 class members who were incarcerated at the Franklin County Jail during the notice period received individual notice by hand. Defendants also posted notices in the booking room and in the inmate library of the jail.

Legal notice of the settlement was posted in the Springfield Republican and Greenfield Recorder on August 3-4, 2010. On July 13, 2010, the Republican published a front-page article about the preliminary approval of the settlement. Also in July 2010, Associated Press released an article that was published on over fifteen websites, including masslive.com (the Republican's website), CBS3Springfield.com, Boston.com, and BostonHerald.com. WFCR radio reported on the settlement and included an interview with attorney Howard Friedman. The case website, www.franklincountyjailclass.com, provided notice and other information about the case as well as a downloadable claim form.

D. The proposed incentive award to the class representative is reasonable.

Class counsel requests, and Defendants do not oppose, an incentive payment of $20,000 for class representative Gregory Garvey, Sr. This award is to compensate him for his loss of privacy as a result of bringing this case and for the time he spent in responding to discovery and working with counsel to benefit the entire class. Mr. Garvey answered individual discovery requests and consulted with counsel throughout the litigation. He filed two affidavits in support of summary judgment and

attended the oral argument and preliminary settlement hearing. Mr. Garvey endured a loss of his personal privacy by revealing his name to bring this lawsuit on behalf of the class.

"Incentive awards are recognized as serving an important function in promoting class action settlements, particularly where, as here, named plaintiffs actively participated in the litigation."[17] In granting incentive awards, courts consider the efforts of plaintiffs in pursuing the claims and "the important public policy of fostering enforcement of laws and rewarding representative plaintiffs for being instrumental in obtaining recoveries for persons other than themselves."[18] The dollar amount proposed for Mr. Garvey is in line with awards approved by other courts.[19]

An incentive payment is especially appropriate for the named class representative here because Mr. Garvey sacrificed his privacy and subjected himself to embarrassment by admitting publicly that he was arrested and forced to strip naked as part of his detention in jail.[20] If Mr. Garvey had not come forward, class members would not have known that their rights were violated and would not have sought or received any compensation for their injury. Mr. Garvey deserves compensation for efforts that helped achieve a substantial benefit for hundreds of people.

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[17] *In re Lupron(R) Mktg. & Sales Practices Litig.*, 228 F.R.D. 75, 98 (D. Mass. 2005)(citing *Denney v. Jenkens & Gilchrist*, 230 F.R.D. 317, 2005 U.S. Dist. LEXIS 2507, 2005 WL 388562, *31 (S.D.N.Y. Feb. 18, 2005)); *see also In re Relafen Antitrust Litig.* 231 F.R.D. 52, 82 (D.Mass. 2005).

[18] *Bussie v. Allmerica Fin. Corp.*, 1999 U.S. Dist. LEXIS 7793, *12 (D. Mass. May 19, 1999).

[19] *See, e.g., Boone,* 668 F.Supp. 2d at 715 & n.3 (in strip-search class action, awarding $15,000 to class representatives, and collecting cases with incentive awards ranging from $15,000 to $35,000); *McBean v. City of New York*, 233 F.R.D. 377, 391-392 (S.D.N.Y. 2006)(in strip search class action, approving incentive awards ranging from $25,000 to $35,000 and noting that "when compared to incentive awards given generally to named plaintiffs across a variety of class actions, the awards given to the class representatives under the settlement here fall solidly in the middle of the range."); *Godshall v. Franklin Mint. Co.*, 2004 U.S.Dist. LEXIS 23976, *19-21 (E.D.Pa. Dec. 1, 2004)(approving $20,000 each to two class representatives from a $1.125 million settlement fund). In another prisoners' rights class action handled by class counsel, *Tyler v. Suffolk County,* 06-cv-11354-RBC, Magistrate Judge Collings recently approved $20,000 incentive payments to each of the two class representatives out of a $1.5 million settlement fund. Friedman Decl. ¶ 23.

[20] *See Boone,* 668 F.Supp. 2d at 715 (noting that named plaintiffs in strip search class action subject themselves to "public exposure of the fact that they have been placed into custody and charged with a crime").

E. The attorneys' fees and expenses are reasonable.

Under Fed. R. Civ. P. 23(h) and 54(d)(2), class counsel is filing a separate motion supporting its request for attorney's fees and costs, along with declarations and a memorandum in support. Class counsel requests attorneys' fees of one-third of the total settlement amount, plus litigation and claims administration expenses. The fee request is consistent with the fees awarded to counsel in other similar strip search class action cases, and it is justified by the amount of work, skill, and expertise needed to settle this case with the results achieved.[21] The costs are also reasonable.

V. CONCLUSION

For the foregoing reasons, Plaintiffs request that the Court grant final approval to the settlement and approve an incentive payment of $20,000 to the class representative, Gregory Garvey, Sr.

RESPECTFULLY SUBMITTED,
For the Plaintiffs,

/s/ David Milton
Howard Friedman, BBO #180080
David Milton, BBO #668908
Law Offices of Howard Friedman P.C.
90 Canal Street, 5th Floor
Boston, MA 02114-2022
T (617) 742-4100
hfriedman@civil-rights-law.com
dmilton@civil-rights-law.com

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[21] *See, e.g., Mack, supra* (awarding class counsel fees of 30% of a $10 million settlement fund); *Connor, supra* (awarding class counsel fees of 33% of a $1.35 million settlement fund); *Eddleman v. Jefferson County* (awarding class counsel 33.3% of a $11.5 million settlement fund); *Moser v. Anderson* (awarding class counsel 31% of the $3 million settlement fund), *cited in,* Friedman Decl. ¶¶ 14-15, 18-19.

CERTIFICATE OF SERVICE
I certify that on this day I caused a true copy of the Above document to be served upon the attorney of record for all parties via ECF.

Date: December 23, 2010 */s/ David Milton*
David Milton