UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT OWENSBORO

[Filed Electronically]

EDWARD LEE SUTTON, et al.,	)	
	)	
PLAINTIFFS	)	
	)	
vs.	)	**CIVIL ACTION NO. 4:03-CV-3-M**
	)	
HOPKINS COUNTY, KENTUCKY, et al.,	)	
	)	
DEFENDANTS	)	

PLAINTIFFS' PROPOSED ORDER APPROVING CLASS-ACTION SETTLEMENT

On October 20, 2008, this Court conducted a Fairness Hearing in order to assess whether the settlement reached by the parties in this litigation is fair, reasonable, adequate, and should be approved. Such hearing having been held, the Court finds as follows:

1. This settlement was mediated by Magistrate Judge Robert Goebel. Magistrate Judge Goebel is an experienced mediator and knows the obligations of the Court in overseeing class action settlements of this kind. This settlement was preceded by more than five years of litigation in this case. The parties evaluated over 1000 questionnaires that were filled out and returned by potential claimants, over 100 depositions were conducted in this case, and the parties separately performed jury research in consultation with experts in jury dynamics to determine the range of results were these cases tried. As a consequence, counsel had not only a thorough understanding of the law and facts bearing on this litigation, but had researched the likely impact of those facts on a jury were this case not settled.

2. The settlement in this case was reached only after numerous, private, arms-length negotiations between the parties, and after no less than three settlement conferences mediated by Magistrate Judges, in which each side repeatedly argued its position and argued the risks the other would bear were the case not settled. The strengths and weaknesses of the case on both sides were thoroughly researched, explored through discovery, and argued in settlement. There is no question but that counsel had sufficient information to arrive at an informed evaluation on which this settlement is based.

3. This class action covers the period from January 9, 2002 to June 8, 2008. Plaintiffs claimed that the Hopkins County Detention Center ("the Jail") had in place a policy which required that all persons, even persons arrested for minor offenses, be strip-searched before their admission to the Jail's general population, and after they became entitled to release from the Jail. The Jail, however, had in place a written policy which Defendants claimed prohibited the strip-searches of persons arrested for minor offenses on admission to the Jail unless there existed reasonable grounds for believing that such arrestees were carrying or concealing weapons or contraband. Although the Jail had a written policy that indicated that all detainees who were taken to court and then returned to the Jail were to be strip-searched, a policy that Plaintiffs contended was applied even if detainees were ordered released, Defendants claimed that the Jail's unwritten custom and practice was to strip-search on return to the Jail only those persons who had not been ordered released. Plaintiffs also claimed that Defendants performed illegal strip-searches by observing pre-trial detainees while they changed into and out of jail uniforms, a claim that was also contested by Defendants.

4. Liability was thus a vigorously contested issue in this case, unlike prior strip-search class action cases in Kentucky in which the defendants' unlawful conduct was actually directed by a written policy of the jail in issue. It was unclear how many Plaintiffs would be willing to surrender their anonymity and bear the inconvenience of testifying at trial about an incident that many might consider personal and embarrassing. Those that chose to testify would then be presented with the challenge of communicating to the jury their recollection of incidents that may have occurred more than six years ago. Were Plaintiffs to prevail on the issue of liability, Plaintiffs would then have to endure a second series of trials, in which each Plaintiff's damages would likely be determined separately, and each Plaintiff would be confronted with the challenge of communicating to the jury the depth of the intangible damages -- the humiliation, shame and distress -- they sustained as a consequence of their strip-search. Even were these damages effectively communicated to the jury, it was likely that jury verdicts would vary greatly in amount. While a jury could award damages in excess of the sum a claimant might receive under this settlement, there was as great a chance that the jury might award significantly less, particular to those who having a lengthy criminal history. Throughout the litigation, the question would remain whether jurors would be predisposed to believe law enforcement officials over other citizens, particularly citizens with a criminal record. Counsel for Defendants were experienced litigators and would continue to provide a vigorous defense against all claims.

5. Defendants were unwilling voluntarily to pay more to settle this case. Pushing on to trial would have significantly delayed Plaintiffs' recovery, if any. Had trials eventually resulted in even greater total liability for the County, Plaintiffs would have been confronted

with the additional delay of appeals, and depending on future circumstances, the additional risk of recoverability of the judgment.

6. Class members under the settlement are divided into four groups: (a) the named class representatives, who surrendered their anonymity and spearheaded this litigation throughout its course; (b) the unnamed class members who responded to questionnaires sent by counsel and were subsequently deposed in the case; (c) unnamed class members who are members of both the "Entry" and "Release" classes certified in this case; and (d) unnamed class members who are only a member of one class or the other. The settlement provides that the ten named class representatives will divide among themselves the sum of $250,000.00. Named class representatives, depending upon their length in service, will receive between $15,000.00 and $35,000.00 each. Plaintiffs at the hearing provided the Court an Exel spreadsheet showing 32 prior strip-search class action settlements. That spreadsheet shows that amounts typically paid named class representatives, in cases in which it can be determined, range between $10,000.00 and $25,000.00.

7. With the exception of Messrs. Sutton and Turner, who originated this case, the named class representatives are receiving between $15,000.00 and $25,000.00, well within the range of reasonableness established by prior settlements. The $35,000.00 to be paid to Messrs. Sutton and Turner is not unreasonable, either. This is all the named class representatives will receive -- they will not be entitled to any additional payment under the terms of the Settlement Agreement proposed to the Court.

8. Not enough can be said for the individual citizen, with no formal legal training, who believes their constitutional rights have been violated, exercises the initiative of

contacting counsel, and then agrees to surrender their anonymity and be named as a plaintiff in a civil rights case that becomes a matter of public record. The named class representatives participated in three mediations of this case, numerous meetings with counsel and periodic contact via telephone, and responded to written discovery and were all deposed. They have honorably discharged their responsibilities as named class representatives, and each approved the settlement that has now been tendered to the Court.

9. The Court should encourage citizens to make the sacrifices and accept the responsibilities willingly undertaken and faithfully discharged by the named class representatives in this case. The Court has compared these amounts to settlements in comparable cases, and has found them reasonable, particularly given the length and complexity of this litigation, the named class representatives' numerous meetings with counsel and their attendance at three separate mediations (all of which occurred in a city other than the one in which they live), the faithful discharge of their duties, and the significance of this case and the ultimate result.

10. Unnamed class members with qualifying claims, who filled out and returned questionnaires and were also deposed in this case, will be paid $4,000.00 each. This amount compares very favorably even to settlements in which liability was not an issue, and the fact that these class members will receive more than the other members of the unnamed class is warranted given the initiative exercised by these class members in filling out and returning a questionnaire with no expectation of gain, and then submitting to a videotaped deposition in which they were examined by opposing counsel.

11. The recovery of remaining unnamed class members who qualify as members of both the "Entry" and the "Release" classes will be capped at $2,500.00. The recovery of class members who belong to only one class or the other will be capped at $1,500.00. Defendants were unwilling to agree to caps any higher than these. The named class representatives had to choose whether to accept such caps, or reject such caps, scuttle the settlement, and proceed to trial with all the delay inherent in such a process, not to mention the ever-present risk of non-recovery. Given the hard financial realities presently confronting many potential claimants, the named class representatives decided to accept the caps and tender this settlement for the consideration of the class. These caps nonetheless compare very favorably even to settlements in which liability was not an issue. Thus, while there are disparities in the treatment of members of the class, the Court finds the basis for those disparities to be reasonable, and the amounts in issue to be fair, reasonable and adequate.

12. Class members will only recover for one entry search and/or one release search, even though they may have been subjected to multiple entry and release searches. However, allowing class members to recover for searches following multiple arrests would substantially complicate and increase the expense of class administration, thus reducing that portion of the settlement fund available to pay the claims of unnamed class members. From a public policy standpoint, allowing class members to recover for searches following multiple arrests effectively rewards repeated acts of criminal conduct, which instead should be discouraged. The recovery of a claimant with a lengthy criminal record should not exceed that of a citizen subjected to a violation of her constitutional rights and an egregious

invasion of her privacy following her sole arrest. The Court thus finds this provision of the settlement to be fair and reasonable.

13. Funds will revert to Defendants only if -- after all payments contemplated by the settlement, including the *maximum* approved claimants can receive under the terms of the settlement -- there remain any funds in the settlement account. As a consequence, the reversion provision of the proposed Settlement Agreement in no way infringes upon the amount, fairness or reasonableness of what will be paid to qualified claimants. Moreover, as with the per claim caps, reversion was a non-negotiable condition of settlement for Defendants, and reflected a responsible effort on Defendants' part given public funding of the settlement amount.

14. No amount of the settlement fund will be set aside for late claims. Establishing such a reserve would decrease the sums paid to qualified claimants if the settlement fund would otherwise be exhausted by payment approved claims. In addition, a reserve would necessarily raise thorny issues of the amount of the appropriate set-aside, the appropriate grace period to allow for late claims, disparities in treatment of claimants, and what should be done in the event the amount set aside is too much or too little. These issues would unnecessarily complicate an otherwise straightforward settlement process, and would increase claims administration expense, thus reducing the recovery of approved claimants.

15. Plaintiffs' counsel is seeking to recover only for the time and expense they have actually invested in this case. Greg Belzley, lead counsel for the class, is an experienced litigator and a partner at Dinsmore & Shohl LLP. He first became involved in strip-search litigation with the filing of *Masters v. Crouch*, 872 F.2d 1248 (6th Cir.), cert.

denied, 493 U.S. 977 (1989). He has since been lead counsel for plaintiffs in five strip-search class actions, three of which have previously been settled. This case is one of two strip-search class actions now pending in Kentucky in which Mr. Belzley is lead counsel for Plaintiffs. Mr. Belzley has argued numerous strip-search appeals before the First and Sixth Circuits, including an *en banc* proceeding before the First Circuit. Mr. Belzley is highly experienced in the law, litigation and settlement of strip-search class actions. Bart L. Greenwald is a commercial litigator with class action experience, and a partner at Frost Brown Todd LLC. He and Mr. Belzley and their respective firms shared the load in this case. Plaintiffs turned to these Louisville firms after they were unable to find more local counsel to represent them.

16. This Court has observed the conduct of these counsel throughout this litigation. The record reflects that they have skillfully, effectively and zealously advocated the position of the class throughout these proceedings, and have achieved a fair and reasonable result for their clients. More than five years of hard-fought litigation preceded this settlement. Discovery was extensive and thorough. Issues of class certification and liability were thoroughly researched and argued and reargued as the parties vied for advantage. Civil rights and class action litigation both involve complex issues of law and procedure. Plaintiffs' counsel bore all fees and expenses during the five years of this litigation, and bore all risk of loss had Plaintiffs not prevailed. Instead of seeking some profit to offset the time and expenses put at risk in this litigation, Plaintiffs' counsel seeks only to be compensated for the time and expense actually invested in the case, a request that has been unanimously approved by the named class representatives.

17. The notice of settlement and claim form were negotiated by the parties with the assistance of, and were ultimately approved by, Magistrate Judge Goebel. The notice of settlement is simple and straightforward, as is the proof of claim form. The parties have created a settlement process that can be understood and administered by the claimants themselves, regardless of their socio-economic or educational background. Approved claimants will receive a substantial settlement simply by completing a proof of claim form and mailing it back to the Claims Administrator for verification and approval. Each claimant whose claim is rejected will receive a letter explaining why the claim was rejected, and will be provided the opportunity of an appeal first to the Claims Administrator, and then to this Court. There was no evidence at the hearing that claimants do not understand the terms of the settlement, find the proof of claim form confusing or hard to complete, or do not understand the process by which they may assert a claim for recovery of a portion of the settlement.

18. More than 3,400 notices have been mailed to potential claimants explaining the terms of the settlement and detailing the method by which claimants could file objections. In addition, notice has been published in 11 newspapers published in and around Hopkins County, including the *Madisonville Messenger* and the *Louisville Courier-Journal*. No objections have been filed to the terms of the settlement discussed above, and the Court regards this fact as additional evidence establishing the fairness, reasonableness and adequacy of the settlement under review.

19. The Claims Administrator, Analytics, Inc., is continuing to seek potential claimants for whom it has no address or has a bad address, and mail notice as soon as a

new address is found. In addition, all persons who contacted Plaintiffs' counsel or the Claims Administrator to advise of their potential claim were also mailed claim forms.

For all the reasons set forth above, the Court finds the settlement in this litigation to be fair, reasonable and adequate under the circumstances, and that the interests of the class as a whole are better served by this settlement instead of the pursuit of this litigation through trial. By separate Judgment, claims of all class members who have not made a timely request to be excluded from the class will be dismissed with prejudice.

Copies to: Counsel of record