

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

ELIZABETH LEYBA, NATASHA
APODACA, NANCY ELLIN, MONICA
GARCIA, LUCY M. MARQUEZ, MARK
MILLER, COPPER PERRY, DAVID
SANDOVAL, KRISTI SEIBOLD, RUSSELLA
SERNA, and KIMBERLY WRIGHT,
on their own behalf and on behalf of a class of
similarly situated persons,

Plaintiffs,

vs.

No. CIV-05-0036 BB/ACT

SANTA FE COUNTY BOARD OF
COMMISSIONERS; MANAGEMENT
& TRAINING CORPORATION;
SANTA FE COUNTY SHERIFF GREG
SOLANO, in his individual and official
capacities; FORMER SANTA FE COUNTY
SHERIFF RAYMOND L. SISNEROS, in his
individual and official capacities; and KERRY
DIXON, in his individual and official capacities.

Defendants.

**JOINT UNOPPOSED MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION SETTLEMENT AGREEMENT**

Plaintiffs Elizabeth Leyba, Natasha Apodaca, Nancy Ellin, Monica Garcia, Lucy M. Marquez, Mark Miller, Copper Perry, David Sandoval, Kristi Seibold, Russella Serna, and Kimberly Wright (collectively "Named Plaintiffs" or "Plaintiffs") individually and on behalf of the settlement class defined herein; Defendants Management & Training Corporation and Kerry Dixon, in his individual and official capacities ("MTC Defendants"); and Santa Fe County

FILED
at Santa Fe, NM

JUL - 6 2006

MATTHEW J. DYKMAN
CLERK

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Board of Commissioners, Santa Fe County Sheriff Greg Solano, in his individual and official capacities, and Former Santa Fe County Sheriff Raymond L. Sisneros, in his individual and official capacities (“Santa Fe County Defendants”) (hereinafter collectively referred to as “the Parties”), by and through their respective counsel, jointly move the Court to grant preliminary approval of a Stipulation of Settlement (“Settlement Agreement”) that has been negotiated and reached by the Parties as a proposed complete resolution of this class action case. A copy of the Settlement Agreement is attached hereto as Exhibit A. Specifically, the Parties request the Court to enter an Order, in the form attached hereto as Exhibit B: (1) preliminarily approving the Settlement Agreement; (2) conditionally certifying the Class; (3) appointing Named Plaintiffs as Class Representatives; (4) appointing counsel for the Named Plaintiffs as Class Counsel; (5) approving the form and manner of the Notice to be sent to Class Members and a Summary Notice to be published in various newspapers concerning the Settlement Agreement;¹ (6) approving the forms of, and setting deadlines for submission of, claim forms, exclusion requests (“opt outs”) and objections;² and (7) setting a date for a formal fairness hearing.

This motion will explain the circumstances and terms of the settlement, and the legal grounds supporting its preliminary approval.

¹ A Copy of the proposed Notice is attached as Exhibit 2 to the Settlement Agreement.

² A Copy of the Claim Form is attached as Exhibit 1 to the Settlement Agreement.

I. INTRODUCTION

A. The Action

On January 12, 2005, Plaintiffs filed a lawsuit against the MTC Defendants and the Santa Fe County Defendants, captioned *Leyba et al. v. Santa Fe County Board of Commissioners, et al.*, No. CIV-05-0036 BB/ACT (the “Action”). The Action was brought on behalf of the Named Plaintiffs and all other persons similarly situated. Plaintiffs allege that they were unlawfully subjected to strip searches performed pursuant to the policies, practices and customs of Defendants of conducting strip searches of all incoming pre-arraignment detainees, without individualized reasonable belief that the detainees possessed weapons, drugs or contraband.

In the Action, Plaintiffs sought damages for civil rights violations under 42 U.S.C. § 1983, and for claims arising under the New Mexico Tort Claims Act and New Mexico common law. Plaintiffs additionally sought a judgment declaring that Defendants must cease the activities described herein and enjoining Defendants from any further strip searches without individualized reasonable suspicion.

The Defendants generally deny the claims in the Action. The MTC Defendants contend that the admissions search policies at the Santa Fe County Adult Detention Center were reasonably related to legitimate penological interests in deterring the introduction of weapons, drugs and other contraband into the detention center. As such, Defendants submit that detention center policies are entitled to deference under the law, and that the policies should not be found to violate the Constitution or any state law. Defendants deny that all of the Plaintiffs were subject to strip searches upon admission to the detention center, and they deny that all pre-

arraignment detainees were strip searched during the period of time in question. Defendants further deny that searches of the Plaintiffs violated any state or federal statutory or common law.

The Santa Fe County Defendants deny any and all liability for their own acts and omissions and deny any liability for the acts and omissions by independent contractor MTC and MTC's employees. The Santa Fe County Defendants contend that Count II fails to state a claim upon which relief can be granted under the New Mexico Tort Claims Act. In addition, Defendant Solano and Defendant Sisneros affirmatively assert that they had no role whatsoever in the formulation or implementation of MTC's strip search policies and have no individual responsibility or liability for any of the allegedly unconstitutional policies, practices or acts of the MTC Defendants, and they also assert qualified immunity as to the violations of 42 U.S.C. § 1983 alleged in the complaint. In addition, Defendants assert that a class action is inappropriate and that the claim for injunctive relief is moot.

Nonetheless, while denying any liability, the Defendants consider it desirable and in their interests that the Action be dismissed on the terms set forth in the Settlement Agreement in order to avoid further expense, inconvenience, and distraction, and to avoid protracted litigation.

By entering into the Settlement Agreement and taking actions pursuant to it, the Parties do not concede that any particular allegations, claims or defenses in the Action have merit. Accordingly, while Defendants join in this motion for preliminary approval of the Settlement Agreement and request that the Court enter the accompanying Order, this motion does not constitute an admission of any liability or of the propriety of class action treatment of this litigation in the event that the Court does not preliminarily or finally approve the Settlement or if

such approval is overturned on appeal. In the event that final approval is not obtained and the Settlement Agreement does not become effective, nothing in this motion or the accompanying settlement pleadings may be used for any purpose in further litigation of the claims of the Named Plaintiffs or of any of the putative Class Members that they seek to represent. Similarly, even if the Settlement Agreement is finally approved and becomes effective, none of the assertions made in this motion or in any of the accompanying settlement pleadings constitutes or should be deemed an admission by any of the Defendants in any litigation commenced by any putative class member who opts out of the Settlement or by any person who does not meet the criteria for inclusion in the Class.

B. Summary of the Settlement Terms

After exchanging discovery, the Parties entered into the arms-length settlement negotiations that culminated in the Settlement Agreement. Under the Settlement Agreement, the Parties have stipulated that the Action should be certified as a class action under Fed.R.Civ.P. 23. The Parties agree that the MTC Defendants will pay up to \$8 million (the "Settlement Fund") in compensation for the Settlement Class (as that term is defined in the Settlement Agreement), for payment of incentive compensation for each Named Plaintiff, and for Plaintiffs' reasonable attorneys' fees and costs. In addition, the Santa Fe County Defendants will pay an additional amount up to \$500,000 for claims administration expenses. The settlement will constitute a full and complete adjudication of the claims, rights and obligations of the Parties and the Class with respect to the matters alleged in the Action and as further set forth in the Settlement Agreement. The Parties believe that they have crafted a fair, reasonable and adequate settlement of the claims

at issue in this case, and one that warrants the Court's preliminary approval.

II. FACTUAL BACKGROUND RELEVANT TO PRELIMINARY APPROVAL

A. History of This Litigation

The Action was filed on January 12, 2005. Between January 2005 and November 2005, the Parties engaged in extensive discovery, including the exchange of voluminous documents, inspection of the detention center facility and depositions of all eleven Named Plaintiffs, individually named Defendants Kerry Dixon and Greg Solano, and other correctional officers and officials. In addition, the Plaintiffs obtained and analyzed the voluminous database maintained by the Defendants for all persons booked into the detention center during the relevant class period (numbering in excess of 31,000 individual bookings).

In mid-2005, the Parties agreed to enter into settlement discussions. The Parties engaged in six days of mediation sessions with retired United States District Judge Raul A. Ramirez of Sacramento, California. See Affidavit of Attorney John C. Bienvenu, filed separately. Additionally, the Parties engaged in a number of additional sessions among counsel for the Parties. Arms-length settlement negotiations continued through June 2006 when the attached Settlement Agreement was finally reached.

B. The Settlement Terms

The terms of the settlement are fully described in the Settlement Agreement, and are summarized as follows.

1. Certification of the Class

The Settlement Class is defined in the Settlement Agreement as all pre-arraignment

detainees who were subjected to a strip search upon booking and intake to the Santa Fe County Detention Facility between January 12, 2002 and the date of the Settlement Agreement. There are approximately 13,000 Settlement Class members. *See* Bienvenu Affidavit. The Parties agree that the Action should be conditionally certified as a class action under Fed.R.Civ.P. 23.

2. *Monetary Relief to Settlement Class Members*

a. *Payments to the Settlement Class*

The Settlement Agreement provides that the MTC Defendants will deposit a Settlement Fund of \$8,000,000 into an interest-earning qualified settlement fund account within thirty days of the date of preliminary approval. The Claims Administrator will pay out of the Settlement Fund to each Settlement Class member who submits a valid and timely Claim Form a Settlement Payment calculated for that Settlement Class member under the proposed Plan of Allocation (attached to the Settlement Agreement as Exhibit 4). Those payments range from a minimum of \$1,000 to a maximum of \$3,500. In the event that the total amount of verified claims exceeds the amount available in the Settlement Fund, the amount payable to each Settlement Class member will be reduced proportionately. In the event that the total amount of verified claims is less than the amount available in the Settlement Fund, the balance will be refunded to the Defendants.

b. *Incentive Payments*

Under the Settlement Agreement, the Class Representatives will be eligible to receive compensation for their contribution to the investigation and prosecution of this case, in addition to the amounts to which they are entitled under the Plan of Allocation. The Parties have agreed that \$470,250 of the Settlement Fund will be allocated for this purpose, subject to approval of the Court, representing \$42,750 per Class Representative.

c. Equitable Relief

The Parties have stipulated and agreed that the strip search policies at the Santa Fe County Detention Center were changed as a result of Plaintiffs' and Plaintiffs' counsel's efforts preceding and during this lawsuit, and that the request for equitable relief was thereby rendered moot.

d. Attorneys' Fees and Costs

The Parties have stipulated and agreed that \$2,000,000 of the Settlement Fund will be allocated to Plaintiffs' attorneys' fees, gross receipts tax on fees, and litigation expenses, subject to approval of the Court.

e. Release of Claims

All Plaintiffs and Settlement Class members who do not opt out of the settlement will release the Defendants from any and all claims which are based upon or could be based upon or arise from the facts alleged in the Action.

f. Notice and Opt-Out Procedures

The Settlement Agreement provides for a detailed Notice to be sent by mail to all Settlement Class members informing them (in English and Spanish) of their rights under the Settlement Agreement, and for a summary Notice (in English and Spanish) to be published in local newspapers informing Settlement Class members of the settlement and directing them to sources of additional information. In addition, announcements summarizing the settlement are to be made in English and Spanish on three local radio stations.

The Settlement Agreement provides that Settlement Class members have two options for responding to the Notice. A Settlement Class member may (1) remain a Settlement Class member and be eligible to submit a Claim Form, or (2) request exclusion from the Settlement

Class and opt out. Settlement Class members who request exclusion from the Settlement Class and opt out will not be deemed to have released the Defendants from any claims and may pursue any claims they may have against the Defendants, but will not receive any payments from the Settlement Fund. Settlement Class members who do nothing will be deemed to have released their claims, but will not receive any payments from the Settlement Fund. Settlement Class members who submit Claim Forms will be eligible to receive payments from the Settlement Fund as determined under the Plan of Allocation.

Settlement Class members who do not opt-out may also present objections to the Court at the final fairness hearing.

III. ARGUMENT

A. The Settlement Agreement Merits Preliminary Approval

Preliminary approval of a proposed settlement is part of a two-step process required before a class action can be settled. *See Manual for Complex Litigation, Fourth* (hereinafter “*Manual*”) § 21.632 (Fed. Jud. Ctr. 2004). In considering preliminary approval, courts make a preliminary evaluation of the fairness of the settlement. “Where the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class and falls within the range of possible approval, preliminary approval is granted.” *In re NASDAQ Market-Makers Antitrust Litig.*, 176 F.R.D. 99, 102 (S.D.N.Y. 1997); *see also Manual* § 21.632. “Once preliminary approval is bestowed, the second step of the process ensues: notice is given to the class members [of the terms of the proposed settlement and of a hearing] at which class members and the settling parties may be heard with respect to final court approval.” *NASDAQ*,

176 F.R.D. at 102; *Manual* at §§ 21.633-34.

In considering whether to grant a motion for preliminary approval of a proposed settlement agreement, the Court utilizes a “threshold inquiry” intended merely to reveal conspicuous defects. *See In re Inter-Op Hip Prosthesis Liability Litig.*, 204 F.R.D. 330, 337-38 (N.D. Ohio 2001). Ultimately, of course, before a settlement can be finally approved, the Court must determine that a settlement is fair, reasonable and adequate. *See Jones v. Nuclear Pharmacy, Inc.*, 741 F.2d 322, 324 (10th Cir. 1984). At the preliminary approval stage, however, the Court should evaluate, based on the terms of the Settlement Agreement, the contents of the record, and the controlling legal authority whether “the proposed settlement is sufficiently reasonable, adequate, fair, and consistent with the requirements of Fed.R.Civ.P. 23 to warrant notice... to the class members and a fairness hearing.” *See Marcus v. Kan., Dep’t of Revenue*, 206 F.R.D. 509, 513 (D. Kan. 2002).

Considering the issues, evidence, and nature of the settlement negotiations, preliminary approval is appropriate in this case. First, the proposed settlement is the product of serious, informed, non-collusive negotiations. The settlement negotiations lasted many months, were adversarial in nature, and involved numerous parties with varying interests. The Parties engaged in a series of mediations with the assistance of a highly experienced mediator, retired United States District Judge Raul Ramirez, beginning in September 2005 and continuing through December 2005, and then continued negotiations through a number of additional sessions amongst counsel through June 2006. *See Bienvenu Affidavit*. Thus, the course of settlement negotiations rises well above the threshold for preliminary approval.

Second, the terms of the Settlement Agreement are fair, reasonable, and adequate to resolve the dispute. Liability was hotly contested. Both sides developed evidence to support

their claims and defenses. Plaintiffs believe their class would have been certified. Defendants are equally convinced they would have defeated class certification and would have been allowed to defend the claims on an individual basis. All Parties predicted protracted litigation. Most courts, in considering approval of a class action settlement, note the advantages of avoiding lengthy and expensive litigation. *See, e.g., Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992)(recognizing “the strong judicial policy that favors settlements, particularly where complex class action litigation is concerned”); *Wald v. Wolfson (In re United States Oil and Gas Litig.)*, 967 F.2d 489, 493 (11th Cir. 1992) (“Complex litigation . . . can occupy a court’s docket for years on end, depleting the resources of the parties and the taxpayers while rendering meaningful relief increasingly elusive”). The Parties here recognized the advantages of settlement over continued litigation.

The Settlement Fund established here is a meaningful benefit to Settlement Class members. Plaintiffs’ counsel, who are experienced in this type of litigation, believe the Class members’ chances of obtaining better results by continuing the litigation or by pursuing separate claims are uncertain at best. *See Bienvenu Affidavit. See also Duhaime v. John Hancock Mut. Life Ins. Co.*, 177 F.R.D. 54, 69 (D. Mass. 1997) (approving settlement agreement and noting that settlement “provides class members with timely relief without having to risk the uncertainty of outcome, duration, and expense inherent in continuing the litigation”).

Finally, the Settlement Agreement does not grant unduly preferential treatment of class representatives or segments of the class. *NASDAQ*, 176 F.R.D. at 102. In this instance, through non-collusive negotiation, the Parties have agreed that the Settlement Agreement should include incentive awards to the Class Representatives. The Plaintiffs submit that the proposed incentive awards are reasonable and are intended to recognize the significant time and efforts expended by

the Class Representatives on behalf of the Class and the risks that they undertook in bringing the lawsuit. *Ingram v. The Coca Cola Co.*, 200 F.R.D. 685, 694 (N.D. Ga. 2001) (“Courts routinely approve incentive awards to compensate named plaintiffs for the services they provide and the risks they incurred during the course of the class action litigation” (quoting *In re Southern Ohio Correctional Facility*, 175 F.R.D. 270, 272 (S.D. Ohio 1997))). The Class Representatives contributed substantial time and energy in support of the action, including extensive participation in discovery, case strategy, case management, and mediation. *Van Franken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 299 (N.D. Cal. 1995) (in considering an incentive award, the court may consider the risk to the class representatives, both financial and otherwise: the personal difficulties encountered by the class representatives; the amount of time and effort spent on litigation; the duration of the litigation; and the personal benefit— or lack thereof —enjoyed by the class representative as a result of the litigation). Given their contributions throughout the litigation, Plaintiffs contend that the individual payments are reasonable and not excessive. *Cf. Ingram*, 200 F.R.D. at 694 (approving \$300,000 incentive award to each named plaintiff). The Defendants have agreed to neither oppose nor support the amounts proposed to be paid to the Class Representatives as an incentive.

B. The Court Should Appoint Class Representatives and Class Counsel and Conditionally Certify the Class

The instant case, which alleges that the Defendants’ practices affected a large group of individual detainees at the Santa Fe County Detention Center, is exactly the sort of dispute that Fed.R.Civ.P. 23 is designed to remedy. For that reason, the Parties urge the Court to appoint Class Representatives and Class Counsel, and to conditionally certify the Class under Rule 23. Courts have regularly certified classes of a similar nature. *See e.g. Tardiff v. Knox County*, 365 F.3d 1 (1st Cir. 2004) (upholding certification of class of arrestees challenging counties’ alleged

policies of conducting routine strip searches of all pre-arraignment detainees): *Blihovde v. St. Croix County, Wis.*, 219 F.R.D. 607 (W.D. Wis. 2003) (certifying class of persons strip searched at county jail); *Mack v. Suffolk County*, 191 F.R.D. 16 (D. Mass. 2000) (certifying class of pre-arraignment female detainees challenging county's policy of routine subjecting female pre-arraignment detainees to strip searches without individualized reasonable suspicion). Because Plaintiffs meet all the technical requirements of Rule 23, and because it is fair and efficient to resolve all the claims together, the Court should conditionally certify the Class in this case.

1. The Court Should Appoint the Class Representatives and Class Counsel

This Motion seeks appointment of Named Plaintiffs Elizabeth Leyba, Natasha Apodaca, Nancy Ellin, Monica Garcia, Lucy M. Marquez, Mark Miller, Copper Perry, David Sandoval, Kristi Seibold, Russella Serna, and Kimberly Wright as Class Representatives. All of these Named Plaintiffs are appropriate Class Representatives because they were subject to the same policies and practices that allegedly violated the rights of the Class members. Furthermore, all of these Plaintiffs have acted in the best interest of the Class and none of these Plaintiffs has a conflict of interest which would preclude him or her from serving as a representative of the Class.

This Motion also seeks appointment of Mark H. Donatelli, Robert R. Rothstein and John C. Bienvenu of Rothstein, Donatelli, Hughes, Dahlstrom, Schoenburg & Bienvenu, LLP as Class Counsel. These lawyers are experienced in the areas of civil rights law and class action litigation, and none has any conflict of interest which would preclude him from serving as Class Counsel. All of these lawyers have been involved in the litigation from the time the lawsuit was filed, and all participated in the negotiations that led to the Settlement Agreement.

2. The Proposed Settlement Class Meets the Requirements of Rule 23(a)

A class must have the following prerequisites in order to be certified under Fed. R. Civ. P. 23(a): “(1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.” *See Lopez v. City of Santa Fe*, 206 F.R.D. 285, 288 (D.N.M. 2002)(certifying settlement class); Fed. R. Civ. P. 23(a). Here the proposed Class clearly satisfies all of the Rule 23(a) requirements.

a. The Class Is So Numerous that Joinder Is Impracticable

The Settlement Class in this case is estimated to include approximately 13,000 individuals. *See* Bienvenu Affidavit. Joinder of so many individual members would be impracticable, and accordingly this Court should find that the numerosity requirement of Rule 23(a) is satisfied in this case. *See* 1 H. Newberg & A. Conte, *Newberg on Class Actions* §3:5, at 246 (4th. ed. 2002)(in most cases where class size numbers in the hundreds, numerosity is not an issue).

b. There Are Questions of Law and Fact Common to the Class

The commonality requirement is met if plaintiffs’ grievances share a common question of law or fact. *Lopez*, 206 F.R.D. at 288. “Commonality requires only a single issue common to the class, and the fact that the claims of individual class members may differ factually should not preclude certification under Rule 23(b)(2) of a claim seeking the application of a common policy.” *Id.* at 289 (internal quotations marks & citations omitted); *see also Adamson v. Bowen*, 855 F.2d 668, 676 (10th Cir. 1988).

The claims on behalf of the Class before the Court share numerous common questions of

fact and law. Most importantly, the case is dominated by the factual and legal questions of whether the Defendants' policies and procedures with respect to strip searches of pre-arraignment detainees violated the rights of the Settlement Class members. Resolving these questions would depend in large part upon evidence that would apply to the Settlement Class as a whole. Thus, the Rule 23(a)(2) commonality requirement is satisfied.

c. Plaintiffs' Claims Are Typical of the Settlement Class and There Are No Conflicts

The proposed Class Representatives present claims that are typical of those of the Settlement Class. "A... plaintiff's claim is typical if it arises from the same event or practice or course of conduct that gives rise to the claims of other class members and if his or her claims are based on the same legal theory." *Lopez*, 206 F.R.D. at 289 (internal quotation marks & citations omitted); *see also In re American Medical Systems, Inc.*, 75 F.3d 1069, 1082 (6th Cir. 1996) (*citing Newberg on Class Actions* §3.13, at 3-76 (3d. ed. 1992)).

In this case, each of the proposed Class Representatives claims that he or she was strip searched in violation of his or her rights. *See* Compl. ¶¶ 22-69. These claims are also brought on behalf of the Settlement Class. *See* Compl. ¶¶ 71-73. The Complaint alleges that the Named Plaintiffs' claims arise out of the same events, practices and course of conduct that give rise to the class-wide injury at issue. *See* Compl. at ¶¶ 71-73. As such, it is manifest that the typicality requirement is met.

d. The Class Representatives Have Fairly and Adequately Protected the Interests of the Settlement Class

The purpose of the adequacy of representation requirement is to "protect the legal rights of absent class members." *Lopez*, 206 F.R.D. at 289 (internal quotation marks & citation omitted); *see also Kirkpatrick v. J.C. Bradford & Co.*, 827 F.2d 718, 721 (11th Cir. 1987). "In

order to adequately represent the class, two requirements must be met: (1) the class representative must not have interests antagonistic to those of the class, and (2) the attorneys representing the class must be qualified, experienced, and generally able to conduct the proposed litigation.” *Lopez*, 206 F.R.D. at 289-9; *see also Retired Chicago Police Ass’n v. City of Chicago*, 7 F.3d 584, 598 (7th Cir. 1993); *Cross v. Nat’l Trust Life Ins. Co.*, 553 F.2d 1026, 1031 (6th Cir. 1977).

The first requirement, an absence of any conflicts between the Class Representatives and the Settlement Class, is satisfied because both the Class Representatives and the Settlement Class members allege they have been harmed by the Defendants’ allegedly unlawful practices. Because all Class Representatives and the Settlement Class Members have allegedly suffered harm as a result of the Defendants’ practices, there are no antagonistic or conflicting interests that would prevent the Class Representatives from safeguarding the rights of absent Settlement Class members.

The second requirement is also met. Counsel for the Plaintiffs are qualified and experienced in class action and civil rights litigation. Bienvenu Affidavit. Class Counsel have diligently pursued this case on behalf of the Named Plaintiffs and absent Settlement Class members and are continuing to do so. Thus, the adequacy requirement is met.

3. The Proposed Settlement Class Satisfies the Rule 23(b) Requirements

Once the Court finds that the prerequisites of Rule 23(a) are satisfied, the Court must determine whether or not the action is maintainable as a class action under one or more provisions of Rule 23(b). *See, e.g., Senter v. Gen. Motors Corp.*, 532 F.2d 511, 525 (6th Cir. 1976). Courts have certified class actions under both Rules 23(b)(2) and (b)(3) when both monetary compensation and equitable relief are at issue. *See, e.g., Molski v. Gleich*, 318 F.3d

937 (9th Cir. 2003); *Senter v. Gen. Motors Corp.*, 532 F.2d 511 (6th Cir. 1976). As the claims here satisfy the requirements of both Rule 23(b)(2) and (b)(3), the Court should certify the Class.

a. Rule 23(b)(2) Certification Is Appropriate

Certification is appropriate under Rule 23(b)(2) where the defendant has “acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.” Fed. R. Civ. P. 23(b)(2); *Marcus v. Kan., Dep’t of Revenue*, 206 F.R.D. 509, 513 (D. Kan. 2002). This case involves a class of individuals who claim that they were unlawfully strip searched pursuant to a blanket policy. *See* Compl. ¶¶ 68, 71. This is precisely the type of case where certification under Rule 23(b)(2) is appropriate. *See Marcus*, 206 F.R.D. at 513 (finding certification appropriate under Rule 23(b)(2) where defendant had allegedly violated the law “in a manner that is generally applicable to the class”); *Wilfong v. Rent-A-Center, Inc.*, No. 00-CV-680, 2001 WL 1795093, at *7-8 (S.D. Ill. Dec. 27, 2001).

b. Rule 23(b)(3) Certification Is Appropriate

Class certification under Rule 23(b)(3) is appropriate when “questions of law or fact common to the members of the class predominate” and “a class action is superior to other available methods” of adjudicating the controversy. Fed. R. Civ. P. 23(b)(3); *Wilfong*, 2001 WL 1795093, at *7-8. Here, Plaintiffs’ claims are properly certified under Rule 23(b)(3) because Plaintiffs satisfy both the “predominance” and the “superiority” requirements. To satisfy the predominance requirements, Plaintiffs must show that one or more common issues predominate over individual issues and that one trial of common issues is superior to conducting literally hundreds or thousands of separate trials. *See* Fed. R. Civ. P. 23(b)(3). The primary purpose of Rule 23(b)(3) is to promote efficiency and to take advantage of the economy that results from

jointly adjudicating a large number of claims that share one or more common questions. *See* Fed. R. Civ. P. 23 Advisory Committee Notes, 1966 Amendments; *see also Sterling v. Velsicol Chemical Corp.*, 855 F.2d 1188, 1196 (6th Cir. 1988) (goal of Rule 23(b)(3) is “to achieve the economies of time, effort, and expense”).

“Common issues predominate within the meaning of Rule 23(b)(3) when they constitute a significant part of the litigation.” *Wilfong*, 2001 WL 1795093 at *8; *see also Jenkins v. Raymark Industries, Inc.*, 782 F.2d 468, 472 (5th Cir. 1986). The predominance requirement addresses efficiency by making certain that class wide issues outweigh individual issues. *See Sterling*, 855 F.2d at 1197. The claims in the Action are based on what Plaintiffs allege to be a single course of conduct: the Defendants’ unconstitutional policy of strip searching all pre-arraignment detainees without individualized reasonable suspicion. Thus, Plaintiffs face a common set of factual and legal issues and a common cause of injury that predominates over individual questions.

Since all Settlement Class members have the right to opt out of the settlement, there is nothing that prevents any plaintiff from continuing to prosecute his or her claim for monetary relief individually. *See, e.g., In re Inter-Op Hip Prosthesis Liab. Litig.*, 204 F.R.D. 330, 347 (N.D. Ohio 2001); Fed. R. Civ. P. 23(b)(3)(A). Further, the relief provided in the Settlement Agreement would not be available in the absence of the class treatment. *See Hip Prosthesis*, 204 F.R.D. at 347-48.

C. The Court Should Approve the Proposed Settlement Notices and Authorize Their Dissemination

“[I]n any proceeding [that] is to be accorded finality,” due process requires that interested parties be provided with “notice reasonably calculated, under... the circumstances, to apprise [them] of the pendency of the action and afford them an opportunity to present their objections.”

Mullane v. Cent. Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950). The notice must be reasonably calculated to reach interested parties and where the names and address of the interested parties are known, due process requires mailed notices. *Id.* at 318-19; *Dejulius v. Sprint Corp.*, 429 F.3d 935 (10th Cir. 2005).

The contents of class notice must “fairly apprise the . . . members of the class of the terms of the proposed settlement and of the options that are open to them in connection with [the] proceedings.” *Maywalt v. Parker & Parsley Petroleum Co.*, 67 F.3d 1072, 1079 (2d Cir. 1995) (quoting *Weinberger v. Kendrick*, 698 F.2d 61, 70 (2d Cir. 1982)). Class notice is sufficient if it “may be understood by the average . . . class member.” *In re Nissan Motor Corp. Antitrust Litig.*, 552 F.2d 1088, 1104 (5th Cir. 1997); *see also Churchill Village L.L.C. v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004) (“Notice is satisfactory if it generally describes the terms of the settlement in sufficient detail to alert those with adverse viewpoints to investigate and to come forward and be heard.”)(internal quotation marks & citation omitted).

Here, the proposed notices and their method of dissemination meet these requirements. The proposed notices clearly and concisely inform Settlement Class members of all the relevant aspects of the litigation: (a) the Class definition and statement of claims; (b) the litigation history; (c) the terms of the Settlement Agreement; (d) the binding effect of any judgment approving the Settlement on those who do not opt out; (e) the right to object to the Settlement and the procedure for doing so; (g) whom to contact to obtain additional information regarding the Settlement or the litigation; (h) the amount of compensation requested for the Class Representatives to compensate them for their services to the Class; and (i) the amount requested for reasonable attorneys’ fees and costs. Thus, the notices provide all the information necessary for Settlement Class members to make an informed decision with respect to whether to remain in

or opt out of the Settlement Class or whether to object to the proposed Settlement. Further, delivery by first class mail to the Settlement Class members' last known addresses is designed to reach the members in the most expeditious and economical way. In addition, summary notice of the Settlement will be published in local newspapers and will be broadcast on three local radio stations in order to notify Settlement Class members who are not notified of the Settlement through other means.

D. The Court Should Schedule a Fairness Hearing and Approve the Proposed Schedule for the Mailing of Settlement Notices, the Return of Opt-Outs, and the Filing of Objections

The Parties propose the following sequence of events and deadlines, assuming the Court grants this Motion for Preliminary Approval:

Mailing of Notice Package to Class: 45 days after preliminary approval.

Opt out deadline: 45 days after mailing of Notice Package.

Objections to settlement: 45 days after mailing of Notice Package.

Fairness Hearing: At least 135 days after preliminary approval.

Claims Deadline: 30 days after final approval hearing.

IV. CONCLUSION

For the foregoing reasons, the Parties respectfully request that the Court issue its Order, substantially in the form attached hereto as Exhibit B.

- (1) Preliminarily approving the Settlement Agreement;
- (2) Conditionally certifying the proposed Settlement Class;
- (3) Appointing Named Plaintiffs as Class Representatives;
- (4) Appointing counsel for Named Plaintiffs herein as Class Counsel;
- (5) Approving the form and manner of Notice to be sent to Settlement Class

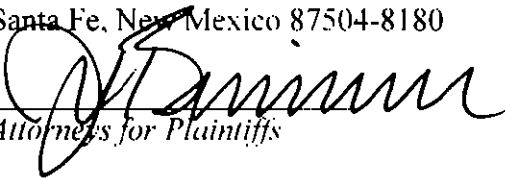
Members and Summary Notice to be published in various newspapers in accordance with the Settlement Agreement:

- (6) Approving the forms for, and setting deadlines with respect to, claims, opt outs, and objections; and
- (7) Setting a date for a formal fairness hearing.

Respectfully submitted,

ROTHSTEIN, DONATELLI, HUGHES,
DAHLSTROM, SCHOENBURG & BIENVENU, LLP
Mark H. Donatelli
Robert R. Rothstein
John C. Bienvenu
Post Office Box 8180
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By:


Attorneys for Plaintiffs

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Attorneys for Defendants MTC and Dixon

KELEHER & McLEOD, P.A.

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*Attorney for Defendants Santa Fe County
Board of Commissioners, Greg Solano and
Raymond J. Sisneros*

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

**ELIZABETH LEYBA, NATASHA
APODACA, NANCY ELLIN, MONICA
GARCIA, LUCY M. MARQUEZ, MARK
MILLER, COPPER PERRY, DAVID
SANDOVAL, KRISTI SEIBOLD, RUSSELLA
SERNA, and KIMBERLY WRIGHT,
on their own behalf and on behalf of a class of
similarly situated persons,**

Plaintiffs,

vs.

No. CIV-05-0036 BB/ACT

**SANTA FE COUNTY BOARD OF
COMMISSIONERS; MANAGEMENT
& TRAINING CORPORATION;
SANTA FE COUNTY SHERIFF GREG
SOLANO, in his individual and official
capacities; FORMER SANTA FE COUNTY
SHERIFF RAYMOND L. SISNEROS, in his
individual and official capacities; and KERRY
DIXON, in his individual and official capacities,**

Defendants.

STIPULATION OF SETTLEMENT

Plaintiffs Elizabeth Leyba, Natasha Apodaca, Nancy Ellin, Monica Garcia, Lucy M. Marquez, Mark Miller, Copper Perry, David Sandoval, Kristi Seibold, Russella Serna, and Kimberly Wright ("Plaintiffs"), individually and on behalf of the settlement class defined herein; Defendants Management & Training Corporation and Kerry Dixon, in his individual and official capacities ("MTC Defendants"); and Santa Fe County Board of Commissioners, Santa Fe County Sheriff Greg Solano, in his individual and official capacities, and Former Santa Fe County Sheriff Raymond L. Sisneros, in his individual and official capacities ("Santa Fe County Defendants") (hereinafter collectively referred

to as “the Parties”), by and through their respective counsel, hereby submit the following Stipulation of Settlement (“Stipulation of Settlement”).

I.

RECITALS

On January 12, 2005, Plaintiffs, on behalf of themselves and all persons similarly situated, filed a complaint in the above-captioned matter in which they challenged certain practices of Defendants including the strip search of certain detainees, and sought damages and declaratory and injunctive relief. Plaintiffs allege that they were unlawfully subjected to strip searches performed pursuant to the policies, practices and customs of Defendants of conducting strip searches of all incoming pre-arraignment detainees. Plaintiffs allege that these strip searches were performed without regard to the nature of the alleged offenses for which Plaintiffs had been arrested, and without Defendants having a reasonable belief that the Plaintiffs so searched possessed weapons or contraband, or that there existed facts supporting a reasonable belief that the searches would produce contraband or weapons.

Plaintiffs sought damages for civil rights violations under 42 U.S.C. § 1983, and for claims arising under the New Mexico Tort Claims Act and New Mexico common law. Plaintiffs additionally sought a judgment declaring that Defendants must cease the activities described herein and enjoining Defendants from any further strip searches without individualized reasonable suspicion. Plaintiffs brought this action on their own behalf and on behalf of a class of similarly situated individuals.

The MTC Defendants contend that the admissions search policies at the Santa Fe County Adult Detention Center were and are reasonably related to legitimate penological

interests in deterring the introduction of weapons, drugs and other contraband into the detention center. As such, Defendants submit that detention center policies are entitled to deference under the law, and that the policies should not be found to violate the Constitution or any state law. Defendants deny that all of the Plaintiffs were subject to strip searches upon admission to the detention center, and they deny that all pre-arraignment detainees were strip searched during the period of time in question. Defendants further deny that searches of the Plaintiffs violated any state or federal statutory or common law.

The Santa Fe County Defendants deny any and all liability for their own acts and omissions and deny any liability for the acts and omissions by independent contractor MTC and MTC's employees. The Santa Fe County Defendants contend that Count II fails to state a claim upon which relief can be granted under the New Mexico Tort Claims Act. In addition, Defendant Solano and Defendant Sisneros affirmatively assert that they had no role whatsoever in the formulation or implementation of MTC's strip search policies and have no individual responsibility or liability for any of the allegedly unconstitutional policies, practices or acts of the MTC Defendants, and they also assert qualified immunity as to the violations of 42 U.S.C. § 1983 alleged in the complaint. In addition, Defendants assert that a class action is inappropriate and that the claim for injunctive relief is moot.

The Parties entered into extensive discovery which included exchange of documents, preparation of and responses to requests for production of documents, and depositions.

The Parties engaged in six days of mediation sessions with retired United States District Judge Raul A. Ramirez of Sacramento, California, and additional sessions among counsel for the Parties, after which they agreed to this Stipulation of Settlement which, subject to the approval of the Court, settles this action in the manner and upon the terms set forth below and fully resolves the dispute.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between the Parties, as follows:

II.

DEFINITIONS

1. "Administrator" means a claims administrator as appointed by the Court to review and determine the validity and amount of claims submitted by Settlement Class Members ("SCMs"), according to the procedures set forth herein.
2. The "Bar Date" is the date established by the Court by which any SCM who wishes to receive payment pursuant to the Stipulation of Settlement must file his/her Claim Form(s), objections to this Stipulation of Settlement, or request to be excluded from the class (opt-out).
3. The "Claim Form" is the form required to be used to make a claim for payment under this settlement. A copy of the proposed Claim Form is attached as Exhibit "1."
4. "Class Counsel" means, Mark H. Donatelli, Robert R. Rothstein and John C. Bienvenu of the Law Offices of Rothstein, Donatelli, Hughes, Dahlstrom, Schoenburg & Bienvenu, LLP.
5. The "Class Notice" means the notice in a form substantially similar to that

attached hereto as Exhibit "2" (Notice by Mail); such other summary notice(s) to be published in newspapers identified in Paragraph 47 herein, and posted in the Santa Fe County Detention Facility and radio as referenced in Paragraph 48 herein.

6. The "Class Period" is January 12, 2002, through the date of this Agreement.

7. The "Database" is the information to be provided in hard copy and/or electronic form by the Defendants to the Administrator and Class Counsel no later than thirty (30) days from the date the United States District Court grants preliminary approval of the terms of this Stipulation of Settlement which includes, to the extent practicable, the name, last known addresses, date of birth, Social Security Number, date(s) of arrest and charges of all SCMs arrested during the Class Period; date(s) of booking(s), housing(s) and first appearance(s) of each member of the class. The Database shall not be provided by the Administrator or Class Counsel to any parties, or to any SCMs.

8. "Documented" or "documented history" mean the original documents or true and correct copies of original documents. Documents required to prove a history of sexual abuse are reports from law enforcement agencies and/or reports prepared by governmental agencies, healthcare providers or mental health counselors. Documents required to prove formal counseling or medical treatment are records prepared by healthcare providers at or near the time of the services that were provided, but in no event produced more than 30 days after the time that services were provided.

9. The "Effective Date" means the date upon which a judgment entered by the Court approving the Stipulation of Settlement becomes final. The judgment will be

deemed final only upon expiration of the time to appeal or, if a Notice of Appeal is filed, upon exhaustion of all appeals and petitions for writs of certiorari.

10. An “Opt-Out” is any potential Settlement Class Member who files a timely request for exclusion as specified in Paragraph 41.

11. “Released Persons” means the Defendants and their affiliates, subsidiaries, predecessors, successors, and/or assigns, together with past, present, and future officials, employees, representatives, attorneys and/or agents of the Santa Fe County Board of Commissioners, Management & Training Corporation, Santa Fe County Sheriff Greg Solano, Former Santa Fe County Sheriff Raymond L. Sisneros, and Kerry Dixon, or any of them. “Released Persons” also includes any and all insurance carriers for the Released Persons.

12. A “Settlement Class Member” (“SCM”) means any member of the Settlement Class including representatives, successors and assigns, who does not file a valid and timely Request for Exclusion as provided in Paragraph 41 of this Stipulation of Settlement.

13. “Settlement Class” means all pre-arraignment detainees who were subjected to a strip search upon booking and intake to the Santa Fe County Detention Facility during the Class Period without individualized reasonable suspicion that the search would lead to the discovery of contraband or weapons, not including persons arrested or booked on charges involving drugs, weapons or violence, substantially similar to those charges provided as examples in Exhibit 3 hereto.

14. “Significant physical deformities” means a significant disfigurement of the body that would otherwise be hidden by clothing, such as a missing limb or body part or substantial scarring.

15. “Strip search” means a search conducted upon intake and booking by a corrections officer in which the person was required to remove all of his or her clothing, including underwear, in the presence of the corrections officer.

16. “Verified claims” means claims that are made in writing on the Claim Forms and that are signed under oath by the SCM.

17. This Stipulation of Settlement is for settlement purposes only, and neither the fact of, nor any provision contained in this Stipulation of Settlement or its exhibits, nor any action taken hereunder shall constitute, be construed as, or be admissible in evidence as any admission of the validity of any claim or any fact alleged by Plaintiffs or SCMs in this action or in any other pending or future action or of any wrongdoing, fault, violation of law, or liability of any kind on the part of Defendants or admission by Defendants of any claim or allegation made in this action or in any other action, nor as an admission by any of the Plaintiffs, SCMs or Class Counsel of the validity of any fact or defense asserted against them in this action or in any other action. Defendants deny all allegations of wrongdoing and deny any liability to Plaintiffs or to any other class members. The parties have agreed that, in order to avoid long and costly litigation, this controversy should be settled pursuant to the terms of this Stipulation of Settlement, subject to the approval of the Court.

III.

TERMS AND EFFECT OF STIPULATION OF SETTLEMENT

18. The parties agree solely for the purposes of this settlement and implementation that the within action shall proceed as a class action, with the Settlement Class as defined in Paragraph 13, and that attorneys for the Class are Class Counsel defined in Paragraph 4; but if such settlement fails to be approved or otherwise fails of consummation, then this Stipulation of Settlement is hereby withdrawn.

19. SCMs who comply with the requirements set forth in this Stipulation of Settlement will be paid specified sums determined by the process set forth herein in full satisfaction of all claims.

20. The parties hereto stipulate and agree that the strip search policies at the Santa Fe County Detention Center were changed as a result of Plaintiffs' and Plaintiffs' counsel's efforts preceding and during this lawsuit and that the request for equitable relief was thereby rendered moot.

21. The Stipulation of Settlement, as of the Effective Date, resolves in full all claims against the Released Persons by all of the SCMs, including the named Plaintiffs, involving violation of law or constitutional rights, including their Fourth Amendment rights, their Fourteenth Amendment rights, or of any other federal, state or local law, regulation, duty, or obligation which are based upon or could be based upon or arise from the facts alleged in the lawsuit. When the Stipulation of Settlement is final, as of the Effective Date, all SCMs, including the named Plaintiffs, hereby release all such claims.

22. The Parties agree that the Court, by preliminarily approving the Stipulation of Settlement, will be certifying the class as defined in Paragraph 13, as the

Settlement Class, subject to final approval of the Settlement at the fairness hearing and that the Court shall retain exclusive and continuing jurisdiction of the action, Parties, SCMs, and the Administrator to interpret and enforce the terms, conditions and obligations under this agreement.

23. As of the Effective Date of this Stipulation of Settlement, the SCMs, including the named Plaintiffs, hereby waive any and all rights to pursue, initiate, prosecute, or commence any action or proceeding before any court, administrative agency or other tribunal, or to file any complaint with regard to acts of commission or omission by the Released Persons respecting such SCMs with respect to any strip search by Defendants that occurred during the Class Period.

24. This Stipulation of Settlement together with its exhibits contains all the terms and conditions agreed upon by the Parties hereto regarding the subject matter of the instant proceeding, and no oral agreement entered into at any time nor any written agreement entered into prior to the execution of this Stipulation shall be deemed to exist, or to bind the Parties hereto, or to vary the terms and conditions contained herein, except as expressly provided herein.

25. Each SCM shall be deemed to have submitted to the jurisdiction of the Court.

26. No Opt-Out shall share in any monetary benefits provided by this Stipulation of Settlement.

27. This agreement is subject to and conditioned upon the final approval of this Stipulation of Settlement and the issuance of the final order and judgment of dismissal by the Court, providing the below specified relief, which relief shall be

pursuant to the terms and conditions of this Stipulation of Settlement and the Parties' performance of their continuing rights and obligations hereunder. The order and judgment will be deemed final only upon expiration of the time to appeal, or if a Notice of Appeal is filed, upon exhaustion of all appeals and petitions for writs of certiorari. Such final order and judgment shall:

- a. Dismiss with prejudice all claims in the action as to the Released Persons including all claims for declaratory and injunctive relief;
- b. Order that all SCMs are enjoined from asserting against any Released Person, any and all claims which the SCMs had, has, or may have in the future arising out of the facts alleged in the Complaint;
- c. Release each Released Person from the claims which any SCM has, had or may have in the future, against such Released Person arising out of the facts alleged in the Complaint;
- d. Determine that this Stipulation of Settlement is entered into in good faith, is reasonable, fair and adequate, and in the best interest of the Class; and
- e. Reserve the Court's continuing and exclusive jurisdiction over the Parties to this Stipulation of Settlement, including Defendants and SCMs, to administer, supervise, construe and enforce the Stipulation of Settlement in accordance with the terms for the mutual benefit of all the Parties.

28. The Parties will take all necessary and appropriate steps to obtain preliminary approval of the Stipulation of Settlement, final approval of the Settlement, and dismissal of the action with prejudice. If the Court finally approves this Stipulation

of Settlement, and if there is an appeal from such decision, the Defendants will not oppose Plaintiffs' efforts to defend the Stipulation of Settlement.

IV.

RESOLUTION AND PAYMENT OF CLAIMS FOR DAMAGES

29. The total settlement fund (not including the separate settlement funds allocated for claims administration expenses, as set forth below), which shall be used to pay all verified claims of SCMs as calculated pursuant to Exhibit "4" and attorneys' fees, is \$8,000,000 (Eight Million Dollars) ("Settlement Fund"). Within 30 days of preliminary approval by the United States District Court of the terms of this Stipulation of Settlement, Defendants will transmit by wire transfer or certified funds the Settlement Fund and the amount for administrative expenses, as defined in Paragraph 30, below, to the Claims Administrator or the Claims Administrator's designee for deposit in an interest-bearing qualified settlement fund, and all interest earned on the Settlement Fund shall inure to the benefit of the Class and the individually named Plaintiffs. The Settlement Fund will be allocated as follows:

a. Up to \$5,529,750.00, plus interest earned on the Settlement Fund, and any additional amounts allocated to the Settlement Fund pursuant to Paragraph 29b and 29c below, will be allocated to pay verified claims, pursuant to the Plan of Allocation attached hereto as Exhibit 4. If the total amount of verified claims exceeds this amount, or the amount reduced as provided in Paragraph 30, below, whichever is lower, the amount payable to SCMs for each claim shall be reduced proportionately so that the entire available amount in the Settlement Fund is paid out to SCMs. If the total amount required to be paid to SCMs pursuant to the allocation provided in Exhibit 4 is less than

\$5,529,750.00, or some lesser amount pursuant to Paragraph 30 below, the balance will be refunded to the MTC Defendants.

b. \$2,000,000.00 will be allocated to Plaintiffs' attorneys' fees, gross receipts tax on Plaintiffs' attorneys fees, and litigation expenses incurred on behalf of Plaintiffs, subject to approval of the Court. Defendants agree not to contest Plaintiffs' request for approval of this amount for fees, gross receipts tax, and litigation expenses. In the event the Court approves less than this amount, the balance remaining in the Settlement Fund will be added to the amount allocated to pay verified claims;

c. \$470,250.00 will be allocated equally among the class representatives to acknowledge their participation and efforts in this lawsuit in securing damages for personal injury for SCMs, subject to approval of the Court. This amount is separate and apart from any payment due for their individual claims as SCMs. Defendants agree not to contest Plaintiffs' request for approval of these payments to class representatives. In the event the Court approves less than this amount, the balance remaining in the Settlement Fund will be added to the amount allocated to pay verified claims.

30. Up to \$500,000 (Five Hundred Thousand Dollars) will be paid by the Santa Fe County Defendants for all claims administration costs. If the total amount of claims administration expenses incurred is more than \$500,000, then the allocation to pay verified claims will be reduced and such overage of administrative costs shall be paid from the \$5,529,750.00 allocated pursuant to Paragraph 29a above. If the total amount of claims administration expenses incurred is less than \$500,000, then the balance remaining will be returned to Santa Fe County. The selection of the Administrator and the terms and conditions of the administration agreement shall be subject to mutual

approval by counsel for the Plaintiffs, the MTC Defendants, and the Santa Fe County Defendants, but all parties shall cooperate in good faith.

31. The Parties agree to make an application to the Court to appoint the Administrator an officer of the Court for the purpose of implementing the terms of this Stipulation of Settlement. The Administrator shall be subject to judicial immunity to the fullest extent permitted by law. The Administrator shall be subject to the jurisdiction of the Court with respect to any dispute arising between the Administrator and the Parties regarding the implementation of the terms and conditions of the administration agreement.

V.

**PROCEDURES FOR RECEIVING
PAYMENT UNDER THIS STIPULATION OF SETTLEMENT**

32. Following final approval of this Stipulation of Settlement by the Court and exhaustion of all appeals so as to affirm the Court's approval of this Stipulation of Settlement, all SCMs who timely submit verified claims, which have not been disallowed pursuant to objections made pursuant to Paragraph 39 below, shall be entitled to receive payment as set forth in the Plan of Allocation attached hereto as Exhibit 4, subject to a pro rata reduction as set forth in Paragraphs 29 and 30, above.

33. The Parties expressly agree that the funds paid herein are not for economic damages or for punitive damages but are attributable to damages on account of personal injuries, including but not limited to bodily injury, mental and emotional distress, and pain and suffering, arising from an occurrence, within the meaning of § 104(a)(2) of the Internal Revenue Code of 1986, as amended..

34. Any SCM who fails to submit a Claim Form completed in accordance with the instructions contained therein by the Bar Date or any other Court mandated extension, shall be forever barred from receiving any payment pursuant to the Stipulation of Settlement. Such SCM shall in all other respects be bound by all of the terms of the Stipulation of Settlement, and the judgment entered herein, including but not limited to the release of all Released Persons of all claims resolved herein.

35. To receive payment, an SCM shall be required to submit to the Claims Administrator an executed Claim Form signed under penalty of perjury with questions completed in accordance with the instructions provided. All Claim Forms must be submitted by the Bar Date unless such period is extended by order of the Court.

36. The Claim Form shall be submitted by first class mail and shall be deemed submitted upon the date of the postmark thereon.

37. SCMs who submit valid and timely claims and whose names appear on the Database will be paid by mail at the address specified on the Claim Form as soon as practicable after the Effective Date.

38. The Administrator shall determine whether or not a person who has submitted a Claim Form is an SCM and shall reject claims by persons who are not SCMs. The Administrator will determine the dollar amount of each payment to an eligible SCM based upon the Administrator's review of the SCMs' responses to questions on the Claim Form.

39. If either the Defendants or Class Counsel contests a claim on the ground of fraud or administrative error, the contesting party will notify the other party, the Administrator and the claimant. The other party and/or the claimant will have 10 days

within which to respond to the notice. After the deadline for response, the contesting party will submit any remaining issue to the District Court in accordance with local motion practice. The decision of the District Court will be final and unappealable. The contesting party will have the burden of proof.

40. For any Claim Form that the Administrator determines to be invalid or incorrect, the Administrator will provide written notice to the SCM that will include procedures and time limits for seeking reconsideration of the Administrator's determination. If the SCM timely and properly contests the Administrator's determination of the validity or correctness of the Claim Form, the Administrator will reconsider the Claim Form and make a second determination. If the Administrator determines a second time that the Claim Form is invalid or incorrect the Administrator will notify the SCM of his or her right to appeal to the District Court within thirty days of notice of the Administrator's second determination. The District Court's written decision on appeal from the Administrator's second determination will be final and unappealable.

VI.

EXCLUSION FROM THE SETTLEMENT CLASS

41. Any potential SCM who wishes to be excluded from the Settlement Class must submit a request to be excluded from the class in the form attached hereto as Exhibit 5 to the Administrator, so that it is postmarked or otherwise delivered on or before the Bar Date or as the Court may otherwise direct.

42. Any potential SCM who does not timely file a Request for Exclusion shall conclusively be deemed to have become an SCM and to be bound by this Stipulation of Settlement and all subsequent proceedings, orders and judgments herein.

43. Any SCM who does not elect to be excluded from the Settlement Class may, but need not, enter an appearance through his or her own attorney. SCMs who do not enter an appearance will be represented by Class Counsel.

44. The Administrator will report all Opt-Out elections to all counsel upon receipt, and will determine and report to counsel for the Parties not later than ten (10) days after the Bar Date the total number of timely and valid Opt-Out elections. If the total number of potential SCMs submitting timely and valid Opt-Out elections equals or exceeds the number stated in a separate confidential letter, then the Defendants, in their sole discretion, may rescind their acceptance of this Agreement, in which case the Agreement will be rendered null and void and of no effect. To exercise this right of rescission, the Defendants must serve the Administrator and Class Counsel a written notice of rescission not later than thirty (30) days after the Administrator serves counsel for the Defendants with its totals of valid and timely Opt-Out elections received. In the event the Defendants validly and timely exercise their right of rescission, the funds deposited by Defendants pursuant to Paragraph 29 herein, together with any interest earned thereon, will be returned to Defendants, less any expenses, fees and costs incurred by the Administrator. Such expenses, fees and costs shall be paid by the MTC Defendants and the Santa Fe County Defendants 50/50, unless otherwise agreed by the Defendants.

VII.

OBJECTING TO THE PROPOSED SETTLEMENT

45. Any SCM who does not elect to be excluded from the Settlement Class may, but need not, submit comments or objections to the proposed settlement. The Court

will enter an appropriate order setting forth the procedure for SCMs to submit comments or objections to the proposed settlement.

VIII. **NOTICE**

46. Notice to SCMs shall be by first class mail, postage prepaid, to all individuals whose addresses are on record in the Database and any other databases and records maintained by Defendants or to such other, better addressees identified by the Administrator, and by publication and broadcast as set forth below. All notices and information provided to SCMs shall be in English and Spanish.

47. The Administrator shall cause to be published in English and Spanish languages, in the *Santa Fe New Mexican*, the *Albuquerque Journal* and the *Rio Grande Sun*, newspapers once a week in each of two consecutive weeks notices in a form and manner agreed to by the Parties describing this settlement, the claims procedure and the procedure to object and/or to Opt-Out of the settlement. Notices in a form to be agreed to by the parties shall also be posted in the Santa Fe County Adult Detention Center. If the Parties cannot agree, the Court will determine the content of the published notice.

48. Announcements summarizing the proposed settlement in English and Spanish will be made on the following radio stations three times during a week, during two successive weeks: KKOB-AM, KRST-FM, and KDCE-AM.

IX. **ADMINISTRATIVE COSTS**

49. Following preliminary Court approval of the Stipulation of Settlement, the Administrator shall submit monthly invoices to Counsel for the Santa Fe County Defendants, with copies to Counsel for the Parties, for services rendered and for expense

reimbursement, unless the administrative agreement provides for payment of a fixed or lump sum to the Administrator. All invoices will indicate the dates upon which services were performed, the titles of the employees performing the services, the number of hours worked by each title of each date, the hourly rate for each such title, and the total fee for the services performed. The hourly rates shall be in accordance with the agreement between the Parties and the Claims Administrator.

IX.
DISPUTE RESOLUTION

50. The Parties may bring an issue directly before the District Court when exigent facts or circumstances require immediate District Court action to prevent a serious violation of the terms of this Agreement, which otherwise would be without meaningful remedy.

X.
GOVERNING LAW

51. This Agreement will be subject to, governed by, and construed and enforced pursuant to the laws of New Mexico.

XI.
ENTIRE AGREEMENT

52. The terms of this Agreement and its attachments are the exclusive and final expression of all agreements by the Plaintiffs and Defendants with respect to full and final settlement of this matter, but the Agreement does not, and is not intended to, constitute the entirety of agreements among the Defendants and their respective insurers. The Parties have entered into this Agreement based solely upon its terms and not in reliance upon any representations or promises other than those contained in this Agreement. The terms of this Agreement may not be contradicted either by evidence of

any prior or contemporaneous agreement or by the use of any form of extrinsic evidence whatsoever in any judicial, administrative, or other legal proceeding involving this Agreement.

Dated: July 6, 2006

ROTHSTEIN, DONATELLI, HUGHES,
DAHLSTROM, SCHOENBURG & BIENVENU, LLP

By: 

Robert R. Rothstein

Mark H. Donatelli

John C. Bienvenu

P.O. Box 8180

1215 Paseo de Peralta

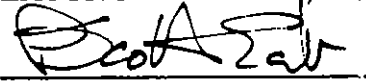
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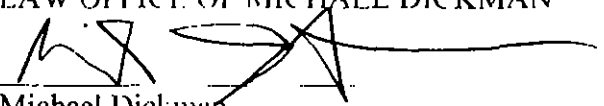
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LAW OFFICE OF MICHAEL DICKMAN

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*Attorney for Defendants Santa Fe County
Board of Commissioners, Greg Solano and
Raymond J. Sisneros*

**SANTA FE STRIP SEARCH LAW SUIT
CLASS ACTION CLAIM FORM**

LEYBA, et al., v. SANTA FE BOARD OF COMMISSIONERS, et al.

**UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW
MEXICO**

No. CIV-05-0036 BB/ACT

FILL OUT THIS FORM IF YOU WERE STRIP SEARCHED AT INTAKE AND BOOKING AT THE SANTA FE COUNTY ADULT DETENTION CENTER BEFORE YOU WERE ARRAIGNED BETWEEN JANUARY 12, 2002, AND _____. (ARRAIGNMENT MEANS THE INITIAL APPEARANCE BEFORE A JUDGE EITHER BY VIDEO CONFERENCE IN THE DETENTION FACILITY OR IN COURT AT WHICH A PLEA IS ENTERED TO THE CHARGES AND AT WHICH CONDITIONS OF RELEASE ARE DISCUSSED.) ALL MEMBERS OF THIS CLASS WHO QUALIFY MAY RECEIVE A MONETARY AWARD.

You must complete and submit this claim form no later than _____, to qualify for payment from settlement of the class action strip search case against Santa Fe County, Management & Training Corporation, and the other named Defendants. If you do not return a completed claim form by the due date you will receive NO MONEY from the settlement.

CLASS ACTION CLAIM FORM

Name _____

Address _____

City, State, Zip Code _____

Phone #: (____) _____

NM Driver's License No. _____

Social Security Number: _____

Date of Birth: _____

Gender: Male ____ Female ____

Answer each of the following questions by placing a check in the "yes" _ or "no" _ box at the end of the question. If you check "yes" as the answer to any question and it is requested, you MUST submit an explanation, description of the circumstances, photographs, medical verification, witness statements, or such other documentation necessary to support your answer. If you do not provide the requested explanation, description or documentation, your "yes" answer will be disregarded.

PLEASE PRINT YOUR ANSWERS CLEARLY

CAUTION . . . THESE ANSWERS ARE GIVEN UNDER PENALTY OF PERJURY. ANY MATERIAL FALSE STATEMENTS WILL RESULT IN A DENIAL OF THE CLAIM.

1. Were you strip searched during intake and booking at the Santa Fe County Adult Detention Center before arraignment at any time between January 12, 2002, and _____?

YES ☐ NO ☐

If so, state the date of each time that you were strip-searched during intake and booking. _____

If you answered "yes" to the above, or you are unsure of the date, please continue to answer the questions below.

Note: Not all persons strip searched at the Santa Fe County Adult Detention Center during the class period (January 12, 2002 to _____) will be entitled to payment. If you were charged with a crime involving drugs, weapons, or violence substantially similar to those charges provided as examples in Exhibit 3 of the Stipulation of Settlement, for instance, you may not be entitled to payment under this settlement.

2. * Do you have a history of being the prior victim of sexual abuse that is documented in any records of courts, law enforcement agencies or medical or healthcare providers? If so, please explain this history below, and provide the following documents: original or true and correct copies of reports from law enforcement agencies and/or reports prepared by governmental agencies, healthcare providers, or mental health care providers.

YES ☐

NO ☐

Explanation: _____

3. *Did you have any significant physical deformities that were exposed as a consequence of any strip search, such as a missing limb or body part or substantial scarring, that would otherwise be hidden by clothing? If so, describe the physical deformity in detail and/or submit a photograph.

YES ☐

NO ☐

Explanation: _____

4. *If you are female, were you menstruating at the time of the strip search?

YES ☐

NO ☐

5. * Did you receive documented formal counseling by a counselor or therapist or documented medical treatment because of any strip search, within 60 days following the strip search? If so, please explain this counseling or medical treatment below, and provide the following documents: original or true and correct copies of records prepared by healthcare providers at or near the time of the services that were provided (if the records were prepared more than 30 days after the time that services were provided, they will not be considered).

YES ☐

NO ☐

The name, address and telephone number(s) of the counselor(s), therapist(s) or medical care provider(s), the dates of the visits and the treatment received are as follows:

6. *Were you touched by a corrections officer on the breasts, genitals or buttocks during the search?

YES ☐

NO ☐

If so, describe completely, including a description of the corrections officer, the manner of touching, and the location in the facility where you were when the touching occurred:

7.* Were you an inmate in any state or federal detention center or prison at any time within five years before your first strip search upon intake and booking at the Santa Fe County Adult Detention Center?

YES ☐

NO ☐

8.* Were you an inmate in any county, city or juvenile detention facility after being convicted of a crime at any time within five years before your first strip search upon intake and booking at the Santa Fe County Adult Detention Center?

YES ☐

NO ☐

* If you answered "yes" to any of these questions you may be contacted and asked to provide further information.

ANY MATERIAL FALSE STATEMENT WILL RESULT IN DENIAL OF YOUR CLAIM.

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF NEW MEXICO THAT THE ABOVE IS TRUE AND CORRECT.

DATED: _____

SIGNATURE: _____

The information given here is private, and will be used only for purposes of evaluating and administering your claim. Your information may be reviewed by attorneys for any of the parties for accuracy. Verification of claims may involve review of your federal, state and county detention records. The information will not be released to the public. DO NOT CALL OR WRITE TO THE CLERK OF THE COURT FOR INFORMATION REGARDING THE PROPOSED CLASS SETTLEMENT. If you have any questions about this lawsuit, write to the Claims Administrator _____ or visit the website at _____

THIS CLAIM FORM MUST BE SIGNED AND RETURNED WITH A POSTMARK NO LATER THAN _____. Use the enclosed return envelope and mail the completed **claim form** and any supporting information to:

If you need assistance in completing this form, please feel free to contact the Administrator {contact information} or Plaintiffs' Class Counsel, Rothstein, Donatelli, Hughes, Dahlstrom, Schoenberg and Bienvenu, LLP, 1215 Paseo de Peralta, Santa Fe, New Mexico 87501; Telephone (505) 988-8004; Facsimile (505) 982-0307.

If you qualify for payment and you would like your settlement check mailed to an address other than that on the first page of the Claim Form, provide it here: (Address if different) to which settlement check should be mailed:

Name or c/o _____
Street Address (or Post Office Box) _____
City _____, State _____ Zip Code _____

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

**ELIZABETH LEYBA, NATASHA
APODACA, NANCY ELLIN, MONICA
GARCIA, LUCY M. MARQUEZ, MARK
MILLER, COPPER PERRY, DAVID
SANDOVAL, KRISTI SEIBOLD, RUSSELLA
SERNA, and KIMBERLY WRIGHT,
on their own behalf and on behalf of a class of
similarly situated persons,**

Plaintiffs,

vs.

No. CIV 05 0036 BB/ACT

**SANTA FE COUNTY BOARD OF
COMMISSIONERS; MANAGEMENT
& TRAINING CORPORATION;
SANTA FE COUNTY SHERIFF GREG
SOLANO, in his individual and official
capacities; FORMER SANTA FE COUNTY
SHERIFF RAYMOND L. SISNEROS, in his
individual and official capacities; and KERRY
DIXON, in his individual and official capacities,**

Defendants.

**NOTICE OF PROPOSED SETTLEMENT OF
SANTA FE COUNTY CLASS ACTION STRIP SEARCH CASE**

If you were strip searched at intake and booking at the Santa Fe County Detention Facility before you were arraigned between January 12, 2002 and ____, you may be entitled to monetary compensation under a proposed class action settlement.

There is presently pending a lawsuit filed as a class action in the United States District Court, District of New Mexico. The parties have proposed a settlement that, if it receives final approval, after all appeals, will provide that certain persons subject to strip searches at the Santa Fe County Adult Detention Center will receive money. Records of the Santa Fe County Detention Facility show that you were booked into the facility during the relevant time period. To receive monetary compensation in this pending settlement, **you must fill out and mail a claim form by _____, 2006.**

**IF YOU WISH TO CLAIM MONETARY COMPENSATION,
OBTAIN, FILL OUT AND MAIL THE CLAIM FORM AS SOON
AS POSSIBLE BUT NO LATER THAN _____, 2006.**

For more information, please read this notice.

**PLEASE READ THIS ENTIRE NOTICE CAREFULLY.
YOU MAY BE ENTITLED TO RECEIVE A PAYMENT.**

There is now pending in the United States District Court, District of New Mexico, an action filed as a class action on behalf of persons allegedly illegally strip searched at the Santa Fe County Detention Facility between January 12, 2002 and _____. A Stipulation of Settlement, approved preliminarily by the Court, defines the class included in this settlement as follows:

All pre-arraignment detainees who were subjected to a strip search upon booking and intake to the Santa Fe County Detention Facility during the Class Period [January 12, 2002 through _____] without individualized reasonable suspicion that the search would lead to the discovery of contraband or weapons, not including persons arrested or booked on charges involving drugs, weapons or violence, substantially similar to those charges are provided as examples in Exhibit 3 to the Stipulation of Settlement.

You have received this Notice either because records of the Santa Fe County Detention Facility indicate that you may be in the class, or because you contacted the Claims Administrator. Whether or not you qualify as a class member will be based upon the records of the Santa Fe County Detention Facility. If these records do not contain your name and show you to be within the definition of the class, you will not qualify.

This Notice is to inform you that a settlement has been proposed in this action and that, as a potential class member, your rights may be affected by the settlement. This Notice also summarizes the terms and effect of the proposed settlement, what you can do to participate in it, how you may obtain money under the settlement, and what you must do if you choose to exclude yourself from the class.

SUMMARY OF THE CASE

On January 12, 2005, Plaintiffs Elizabeth Leyba, Natasha Apodaca, Nancy Ellin, Monica Garcia, Lucy M. Marquez, Mark Miller, Copper Perry, David Sandoval, Kristi Seibold, Russella Serna, and Kimberly Wright ("Plaintiffs"), on behalf of themselves and all persons similarly situated, filed a complaint in the above-captioned matter against Defendants Management & Training Corporation and Kerry Dixon, in his individual and official capacities ("MTC Defendants"), and Santa Fe County Board of Commissioners, Santa Fe County Sheriff Greg Solano, in his individual and official capacities, and former Santa Fe County Sheriff Raymond L. Sisneros, in his individual and official capacities ("Santa Fe County Defendants"), in which they challenged

certain practices of Defendants including the strip search of certain detainees, and sought damages and declaratory and injunctive relief. Plaintiffs allege that they were unlawfully subjected to strip searches performed pursuant to the policies, practices and customs of Defendants of conducting strip searches of all incoming pre-arraignment detainees. Plaintiffs allege that these strip searches were performed without regard to the nature of the alleged offenses for which Plaintiffs had been arrested, and without Defendants having a reasonable belief that the Plaintiffs so searched possessed weapons or contraband, or that there existed facts supporting a reasonable belief that the searches would produce contraband or weapons.

Plaintiffs sought damages for civil rights violations under 42 U.S.C. § 1983, and for claims arising under the New Mexico Tort Claims Act and New Mexico common law. Plaintiffs additionally sought a judgment declaring that Defendants must cease the activities described herein and enjoining Defendants from any further strip searches without individualized reasonable suspicion. Plaintiffs brought this action on their own behalf and on behalf of a class of similarly situated individuals.

The MTC Defendants contend that the admissions search policies at the Santa Fe County Adult Detention Facility were reasonably related to legitimate penological interests in deterring the introduction of weapons, drugs and other contraband into the detention center. As such, Defendants submit that detention center policies are entitled to deference under the law, and that the policies should not be found to violate the Constitution or any state law. Defendants deny that all of the Plaintiffs were subject to strip searches upon admission to the detention center, and they deny that all pre-arraignment arrestees were strip searched during the period of time in question. Defendants further deny that searches of the Plaintiffs violated any state or federal statutory or common law.

The Santa Fe County Defendants deny any and all liability for their own acts and omissions and deny any liability for the acts and omissions by independent contractor MTC and MTC's employees. The Santa Fe County Defendants contend that Count II fails to state a claim upon which relief can be granted under the New Mexico Tort Claims Act. In addition, Defendant Solano and Defendant Sisneros affirmatively assert that they had no role whatsoever in the formulation or implementation of MTC's strip search policies and have no individual responsibility for any of the allegedly unconstitutional policies, practices or acts of the MTC Defendants, and they also assert qualified immunity as to the violations of 42 U.S.C. § 1983 alleged in the complaint.

In addition, Defendants assert that a class action is inappropriate and that the claim for injunctive relief is moot.

The Parties entered into extensive discovery which included exchange of documents, preparation of and responses to requests for production of documents, and depositions.

SUMMARY OF THE PROPOSED TERMS

A Stipulation of Settlement ("Settlement") was entered into after intensive negotiations between the parties, conducted with the assistance of a third party mediator. The Parties are requesting that the Court approve the Settlement.

A. Parties to the Settlement.

The Parties to the Settlement are the Plaintiffs, the MTC Defendants, and the Santa Fe County Defendants.

Class Counsel are Mark H. Donatelli, Robert R. Rothstein and John C. Bienvenu of the Law Offices of Rothstein, Donatelli, Hughes, Dahlstrom, Schoenburg & Bienvenu, LLP, 1215 Paseo de Peralta, P.O. Box 8180, Santa Fe, NM 87504-8180.

B. Defendants Do Not Admit Any Liability.

Plaintiffs allege that the acts and/or omissions that are the subject of the claims covered by this action (strip searches) violated various state and federal laws. Defendants deny all allegations of wrongdoing and deny any liability to Plaintiffs or to any other class members. The Parties have agreed that, in order to avoid long and costly litigation, this controversy should be settled pursuant to the terms of the Settlement, subject to approval of the Court.

C. Monetary Terms of the Settlement.

The total settlement fund (not including the separate settlement funds allocated for claims administration expenses, as set forth below), which shall be used to pay all verified claims of SCMs, administrative costs and attorneys' fees, is up to \$8,000,000 (Eight Million Dollars) ("Settlement Fund"). In addition, up to \$500,000.00 will be paid by the Santa Fe County Defendants for all claims administration expenses. Within 30 days of preliminary approval by the United States District Court of the terms of the Stipulation of Settlement, Defendants will deposit the Settlement Fund and the amount for administrative expenses in an interest-bearing qualified settlement fund. Funds will be distributed to SCMs and their counsel pursuant to an agreed upon Plan of Allocation. If all funds deposited into the Settlement Fund are expended pursuant to the Plan of Allocation, then all interest earned on the Settlement Fund shall inure to the benefit of the Class. The Settlement Fund will be allocated as follows:

- a. Subject to possible reduction in the funds available to SCMs, as provided in Paragraphs 29 and 30 of the Stipulation of Settlement, up to \$5,529,750.00 (plus interest earned on the Settlement Fund, and any additional amounts allocated to the Settlement Fund) will be allocated to pay verified claims, pursuant to the Plan

of Allocation (see below). If the total amount of verified claims exceeds this amount, or the amount reduced as provided in Paragraph 30 of the Settlement, the amount payable to SCMs for each claim shall be reduced proportionately so that the entire available amount in the Settlement Fund is paid out to SCMs. If the total amount paid to SCMs is less than \$5,529,750.00, or some lesser amount pursuant to Paragraph 31 of the Settlement, the balance will be refunded to the Defendants;

- b. \$2,000,000.00 will be allocated to Plaintiffs' attorneys' fees, gross receipts tax on Plaintiffs' attorneys fees, and litigation expenses incurred on behalf of Plaintiffs, subject to approval of the Court. Defendants agree not to contest Plaintiffs' request for approval of this amount for fees, gross receipts tax, and litigation expenses. In the event the Court approves less than this amount, the balance remaining in the Settlement Fund will be added to the amount allocated to pay verified claims; and
- c. \$470,250.00 will be allocated equally among the class representative to acknowledge their participation and efforts in this lawsuit, separate and apart from any payment due for their individual claims as SCMs, subject to approval of the Court. Defendants agree not to contest Plaintiffs' request for approval of this payments to class representatives. In the event the Court approves less than this amount, the balance remaining in the Settlement Fund will be added to the amount allocated to pay verified claims.
- d. Separate and apart from the Settlement Fund, up to \$500,000.00 will be paid by the Santa Fe County Defendants for all claims administration expenses. If the total amount of claims administration expenses incurred is more than \$500,000, then the allocation to pay verified claims will be reduced and such overage of administrative costs shall be paid from the \$5,529,750.00 allocated to the Settlement Fund. If the total amount of claims administration expenses incurred is less than \$500,000, then the balance remaining will be returned to Santa Fe County.
- e. The Settlement proposes the following Plan of Allocation:

A. All SCMs who were searched in the period January 12, 2002 through June 8, 2003 ("Period A") and who submit verified claims shall be entitled to receive the following payments in full satisfaction of their claims, subject to the reduction factors listed below and a pro rata reduction as set forth in Paragraphs 29 and 30 of the Settlement:

- 1. \$1,000 if he or she was strip searched one time during Period A:

2. An additional \$250 if he or she was strip searched two or more times during Period A;
3. An additional \$250 if he or she has a documented history (as defined in Paragraph 8 of the Stipulation of Settlement) of being the prior victim of sexual abuse;
4. An additional \$250 if he or she has significant physical deformities (as defined in Paragraph 14 of the Stipulation of Settlement) that were exposed as a consequence of any strip search in Period A;
5. An additional \$250 if she was menstruating at the time of any strip search in Period A;
6. An additional \$250 if he or she received documented (as defined in Paragraph 8 of the Stipulation of Settlement) formal counseling by a counselor or therapist or documented medical treatment because of any strip search in Period A, if the first counseling or medical session occurred within 60 days of the strip search; and
7. An additional \$100 if he or she was touched on the breasts, genitals, or buttocks during any strip search in Period A.

Notwithstanding the foregoing, the maximum possible payment to an SCM who was strip searched during Period A is \$2,250.

B. All SCMs who were searched in the period June 9, 2003 through November 17, 2005 ("Period B") and who submit verified claims shall be entitled to receive the following payments in full satisfaction of their claims, subject to the reduction factors listed below and a pro rata reduction as set forth in Paragraphs 29 and 30 of the Settlement:

1. \$2,200 if he or she was strip searched one time during Period B.
2. An additional \$250 if he or she was strip searched two or more times during Period B;
3. An additional \$250 if he or she has a documented history (as defined in Paragraph 8 of the Stipulation of Settlement) of being the prior victim of sexual abuse;

4. An additional \$250 if he or she has significant physical deformities (as defined in Paragraph 14 of the Stipulation of Settlement) that were exposed as a consequence of any strip search in Period A;
5. An additional \$250 if she was menstruating at the time of any strip search in Period A;
6. An additional \$250 if he or she received documented (as defined in Paragraph 8 of the Stipulation of Settlement) formal counseling by a counselor or therapist or documented medical treatment because of any strip search in Period A, if the first counseling or medical session occurred within 60 days of the strip search; and
7. An additional \$100 if he or she was touched on the breasts, genitals, or buttocks during any strip search in Period A.

Notwithstanding the foregoing, the maximum possible payment to an SCM who was searched in Period B is \$3,500.

C. All SCMs who were strip-searched in the period November 18, 2004 through the date of the Settlement ("Period C") and who submit verified claims establishing that they were strip-searched without reasonable suspicion shall be entitled to receive the following payments in full satisfaction of their claims, subject to the reduction factors listed below and a pro rata reduction as set forth in Paragraphs 29 and 30 of the Settlement:

1. \$1,000 if he or she was strip searched one time during Period C.
2. An additional \$250 if he or she was strip searched two or more times during Period C;
3. An additional \$250 if he or she has a documented history (as defined in Paragraph 8 of the Stipulation of Settlement) of being the prior victim of sexual abuse;
4. An additional \$250 if he or she has significant physical deformities (as defined in Paragraph 14 of the Stipulation of Settlement) that were exposed as a consequence of any strip search in Period A;
5. An additional \$250 if she was menstruating at the time of any strip search in Period A;

6. An additional \$250 if he or she received documented (as defined in Paragraph 8 of the Stipulation of Settlement) formal counseling by a counselor or therapist or documented medical treatment because of any strip search in Period A, if the first counseling or medical session occurred within 60 days of the strip search; and
7. An additional \$100 if he or she was touched on the breasts, genitals, or buttocks during any strip search in Period A.

Notwithstanding the foregoing, the maximum possible payment to an SCM who was searched in Period C is \$2,250.

D. An SCM who was subject to a search in more than one Class Period may claim only for one period.

E. Reduction Factors. The total award made to an SCM under Periods A, B or C, as defined above, shall be reduced as follows:

1. Incarceration in any state or federal prison at any time within five years before the first strip search in Periods A, B or C shall reduce the total award by 80%.
2. Conviction of a crime and incarceration for that conviction in any county or juvenile detention center within five years before the first strip search in Periods A, B or C shall reduce the total award by 80 %.
3. If the SCM makes material false statements on the Claim Form, the total award shall be reduced to zero.

F. For SCMs with more than one applicable reduction factor, as defined above, only the reduction factor with the largest applicable reduction percentage will apply.

G. SCMs who qualify for payment pursuant to the terms of the Stipulation of Settlement shall receive payments as soon as practicable after the Effective Date of the Settlement.

D. Strip Search Policy.

The MTC Defendants no longer operate the Santa Fe County Adult Detention Center. The Santa Fe County Defendants have agreed that they will no longer strip search pre-arraignment detainees without reasonable individualized suspicion that the strip search would be productive of contraband or weapons.

E. Your Options as a Class Member.

1. You May Choose to be Bound by the Settlement.

To qualify for a payment you must send in a completed Claim Form to the Claims Administrator. If you receive a notice by First Class Mail, a Claim Form will be included in the notice package. You can also get a Claim Form by: (1) calling this toll free number: [800-Number]; (2) visiting the website, [website]; or (3) writing the Claims Administrator at **Leyba, et al. Strip Search Class Action, c/o Claims Administrator, [name and address].**

You have until _____, 2006, to submit a claim or to opt-out of the Settlement.

Mail your completed Claim Form to Claims Administrator at **Leyba, et al. Strip Search Class Action, c/o Claims Administrator, [name and address].**

Remember, if you do not submit a Claim Form, you cannot get a payment. If you submit a Claim Form, you will be bound by the Settlement and receive money (if you are a class member and all other conditions are met). If you do not submit a Claim Form but do not exclude yourself from the class (as explained in the next paragraph), you will still be bound by the terms of the Settlement and dismissal entered in this case, but you will not receive any money.

By participating in this Settlement, or by doing nothing in response to this Notice, you will be waiving all your rights to all claims up to and including _____, 2006, related to strip searches at the Santa Fe County Detention Facility.

2. You May Choose to Exclude Yourself From the Class.

You do not have to take part in the Settlement or be a member of the class. This is called "excluding" yourself. If you exclude yourself, you cannot get a payment and you cannot object to the Settlement. Any Court orders will not apply to you. To exclude yourself, you must sign an "Opt-Out Form" that states that you want to be excluded from *Leyba, et al. v. Santa Fe County Board of Commissioners, et al.*, United States District Court, District of New Mexico, Case No. CIV 5-0036 BB/ACT. Opt-Out Forms are available from the Claims Administrator at [address, toll-free number, website]. Your Opt-Out Form must be mailed and postmarked before _____ to the Claims Administrator at **Leyba, et al. Strip Search Class Action, c/o Claims Administrator, [name and address].**

If you do not follow these instructions properly, you will lose your right to exclude yourself. If you exclude yourself, you cannot get any money from the Settlement of this case and you cannot tell the Court you do not like the Settlement (which is called "objecting"). If you exclude yourself, you are no longer part of the class or the Settlement. But you can sue or be part of a different lawsuit about the claims in this case.

E. Fairness Hearing and Process for Objections.

A Fairness Hearing will be held on _____, 2006, at _____ m., at the United States District Court, Pete V. Domenici U.S. Courthouse, 333 Lomas Blvd. NW Suite 270, Albuquerque, New Mexico. If you are a class member and do not exclude yourself, you can tell the Court you do not like the Settlement or some part of it at this hearing. This is called objecting to the Settlement. For example, you can say you do not think that the Settlement is fair or adequate. The Court will consider your views.

To object, you must send a letter to the Court that contains all of the following:

1. The name and title of the lawsuit (*Leyba, et al. v. Santa Fe County Board of Commissioners, et al.*, United States District Court, District of New Mexico, Case No. CIV-5-0036 BB/ACT);
2. A statement of each objection you have and the facts that support the objections;
3. A description of any law or case supporting the objections;
4. A statement on whether or not you or your lawyer will ask to appear at the Fairness Hearing to talk about your objections, and, if so, how long you will need to present your objections; and
5. Copies of any documents you or your lawyer will present at the Fairness Hearing.

At the hearing on the proposed Settlement, the Court may schedule further hearings without further notice to the class. The matters considered at such future hearings may include, but shall not be limited to, further consideration of the fairness and adequacy of the proposed Settlement, consideration of the request for attorneys' fees and reimbursement of costs and expenses to Class Counsel, and the form and entry of the final judgment of dismissal in the event the proposed Settlement is approved by the Court.

Individually, or through counsel, any class member has the right to object to the proposed Settlement as a whole, to the amount of attorneys' fees and costs to Class counsel, or to any portion of either. ANY SUCH OBJECTIONS MUST BE FILED IN WRITING ON OR BEFORE _____, 2006, IN THE UNITED STATES DISTRICT COURT, DISTRICT OF NEW MEXICO, PETE V. DOMENICI U.S. COURTHOUSE, 333 LOMAS BLVD. NW SUITE 270, ALBUQUERQUE, NEW MEXICO, ATTENTION: CLERK, RE LEBYA, ET AL. V. SANTA FE COUNTY BOARD OF COMMISSIONERS, ET AL. UNITED STATES DISTRICT COURT, DISTRICT OF NEW MEXICO, CASE NO. CIV-05-0036 BB/ACT).

If you wish to appear and present your objections at the Fairness Hearing, you must also submit a Notice of Intention to Appear that identifies the case, contains your name and address, and explains the reason the appearance is desired. The Notice of Intention to Appear and any objections must be filed with the Court on or before __ __ __, 2006. You may be represented by your own attorney. If you are represented by an attorney at the hearing, his or her name, address and telephone number must be included in the Notice of Intention to Appear as well. A copy of the Statement of Objection and/or Notice of Intention to Appear must also be mailed to: Leyba Class Counsel, Rothstein, Donatelli, Hughes, Dahlstrom, Schoenburg & Bienvenu, LLP, P.O. Box 8180, Santa Fe, NM 87504-8180; P. Scott Eaton, Eaton Law Office, P.O. Box 25305, Albuquerque, NM 87125-5305; Kurt Wihl/Gary J. Van Luchene, Keleher & McLeod, P.A., P.O. Box AA, Albuquerque, NM 87103; and Michael Dickman, P.O. Box 549, Santa Fe, NM 87504.

F. How to Obtain Further Information.

DO NOT TELEPHONE OR WRITE TO THE COURT OR COURT CLERK FOR INFORMATION REGARDING THE PROPOSED CLASS SETTLEMENT. For additional information regarding the Settlement and Claim Form, or to request a copy of the Settlement Agreement, Claim Form or Class Counsel's Application for Attorneys' Fees, you should contact the Claims Administrator at **Leyba, et al, Strip Search Class Action, c/o Claims Administrator, [name and address]**. You may also check the Claims Administrator's website at [website], or call [800 number]. You may also obtain detailed information about the case by examining the court file located in the office of the Clerk of the United States District Court, District of New Mexico, Pete V. Domenici U.S. Courthouse, 333 Lomas Blvd. NW Suite 270, Albuquerque, New Mexico.

G. Court Approval.

Although the Court has reviewed the proposed Settlement and granted preliminary approval, no decision as to final approval has been, or will be, reached by the Court until the Fairness Hearing. This Notice does not indicate that the Court has given final approval to the Settlement.

Dated: __ __ __

**LIST OF EXAMPLE OFFENSES INVOLVING
DRUGS, WEAPONS OR VIOLENCE
(Exhibit 3 to Stipulation of Settlement)**

Charges involving drugs, weapons or violence means the following or substantially similar New Mexico statutory, federal, tribal, and/or local offenses:

DRUG OFFENSES

§ 30-31-20	Trafficking controlled substances; violation
§ 30-31-21	Distribution to a minor
§ 30-31-22	Controlled or counterfeit substances; distribution prohibited
§ 30-31-23	Controlled substances; possession prohibited
§ 30-31-24	Controlled substances; violations of administrative provisions
§ 30-31-25	Controlled substances; prohibited acts
§ 30-31-25.1	Possession, delivery or manufacture of drug paraphernalia prohibited: exceptions
§ 30-31-41	Anabolic steroids; possession; distribution; penalties; notice
§ 30-31A-4	Manufacture, distribution [or possession] of imitation controlled substance.
§ 30-31A-5	Sale to a minor
§ 30-31A-6	Possession with intent to distribute an imitation controlled substance
§ 30-31B-1	New Mexico Drug Precursor Act
	30-31B-12: Drug precursors; prohibited acts; penalties
§ 30-28-1	Attempt to commit a felony (if involving the preceding offenses)
§ 30-28-2	Conspiracy (if involving the preceding offenses)
§ 30-28-3	Criminal solicitation (if involving the preceding offenses)

WEAPONS OFFENSES

NMSA 1978.	Unlawful Carrying of a Deadly Weapon
§ 30-7-2	
§ 30-7-2.1	Unlawful Carrying of a Deadly Weapon on School Premises
§ 30-7-2.2	Unlawful Possession of a Handgun
§ 30-7-2.4	Unlawful Carrying of Firearm on University Premises
§ 30-7-3	Unlawful Carrying of Firearm in Liquor Establishment
§ 30-7-4	Negligent Use of a Deadly Weapon
§ 30-7-5	Dangerous Use of Explosives
§ 30-7-6	Negligent Use of Explosives
§ 30-7-7	Unlawful Sale, Possession, or Transportation of Explosives
§ 30-7-8	Unlawful Possession of Switchblade
§ 30-7-12	Bus Crimes
§ 30-7-13	Weapon on a Bus
§ 30-7-16	Felon in Possession
§ 30-7-19	Possession of Explosives
§ 30-7-19.1	Possession of Explosive or Incendiary Device
§ 30-7-20	Hoax Bomb
§ 30-28-1	Attempt to commit a felony (if involving the preceding offenses)
§ 30-28-2	Conspiracy (if involving the preceding offenses)
§ 30-28-3	Criminal solicitation (if involving the preceding offenses)

CRIMES OF VIOLENCE

NMSA 1978.	Murder
§ 30-2-1	
§ 30-2-1(A)	First Degree Murder
§ 30-2-1(B)	Second Degree Murder
§ 30-2-3	Manslaughter
§ 30-2-3(A)	Voluntary Manslaughter
§ 30-2-3(B)	Involuntary Manslaughter
§ 30-3-2	Aggravated Assault
§ 30-3-3	Assault w/intent to commit violent felony (incl. murder, mayhem, CSP, robbery and burglary)
§ 30-3-5	Aggravated Battery
§ 30-3-7	Injury to Pregnant Woman
§ 30-3-8	Shooting at dwelling place or at or from vehicle
§ 30-3-8(A)	Shooting at dwelling place
§ 30-3-8(B)	Shooting at or from vehicle
§ 30-3-9	Assault/Battery on School Personnel
§ 30-3-9.1	Assault/Battery on Sports Official
§ 30-3-13	Aggravated Assault on a Household Member
§ 30-3-14	Aggravated Assault on HHM w/ intent to commit violent felony
§ 30-3-15	Battery Against a Household Member
§ 30-3-16	Aggravated Battery Against a Household Member
§ 30-3A-3.1	Aggravated Stalking
§ 30-4-1	Kidnapping
§ 30-6-	Child Abuse
1(D)(2)	
§ 30-6A-3	Sexual Exploitation of Children
§ 30-6A-4	Sexual Exploitation of Children by Prostitution
§ 30-9-11	Criminal Sexual Penetration
§ 30-9-12	Criminal Sexual Contact
§ 30-9-13	Criminal Sexual Contact of a Minor
§ 30-16-2	Robbery
§ 30-16-4	Aggravated Burglary
§ 30-17-5(A)	Arson
§ 30-17-6	Aggravated Arson
§ 30-20-2	Public affray
§ 30-20-11	Dueling
§ 30-20-16	Bomb scares unlawful
§ 30-20A-3	[Antiterrorism Act] Unlawful acts: penalty
§ 30-21-1	Sabotage
§ 30-22-1.1	Aggravated fleeing a law enforcement officer
§ 30-22-11	Assisting escape
§ 30-22-12	Furnishing articles for prisoner's escape

§ 30-22-16	Possession of deadly weapon or explosive by prisoner
§ 30-22-17	Assault by prisoner
§ 30-22-21	Assault upon peace officer
§ 30-22-22	Aggravated assault upon peace officer
§ 30-22-23	Assault with intent to commit violent felony upon peace officer
§ 30-22-24	Battery upon peace officer
§ 30-22-25	Aggravated battery upon peace officer
§ 30-22-26	Assisting in assault upon peace officer
§ 30-22-27	Disarming a peace officer
§ 30-24-3(A)(2)(3) & (B)	Bribery or intimidation of a witness; retaliation against a witness
§ 30-28-1	Attempt to commit a felony (involving the preceding offenses)
§ 30-28-2	Conspiracy (if involving the preceding offenses)
§ 30-28-3	Criminal solicitation (if involving the preceding offenses)
§ 30-47-4	Abuse of a resident; criminal penalties

PLAN OF ALLOCATION
(Exhibit 4 to Stipulation of Settlement)

Subject to final Court approval and exhaustion of all appeals so as to affirm that Court approval:

A. all SCMs who were searched in the period January 12, 2002 through June 8, 2003 ("Period A") and who submit verified claims shall be entitled to receive the following payments in full satisfaction of their claims, subject to the reduction factors listed under Paragraph E and a pro rata reduction as set forth in Paragraphs 29 and 30 of the Stipulation of Settlement:

1. \$1,000 if he or she was strip searched one time during Period A;
2. An additional \$250 if he or she was strip searched two or more times during Period A;
3. An additional \$250 if he or she has a documented history (as defined in Paragraph 8 of the Stipulation of Settlement) of being the prior victim of sexual abuse;
4. An additional \$250 if he or she has significant physical deformities (as defined in Paragraph 14 of the Stipulation of Settlement) that were exposed as a consequence of any strip search in Period A;
5. An additional \$250 if she was menstruating at the time of any strip search in Period A;
6. An additional \$250 if he or she received documented (as defined in Paragraph 8 of the Stipulation of Settlement) formal counseling by a counselor or therapist or documented medical treatment because of any strip search in Period A, if the first counseling or medical session occurred within 60 days of the strip search;
7. An additional \$100 if he or she was touched on the breasts, genitals, or buttocks during any strip search in Period A

Notwithstanding the foregoing, the maximum possible payment to an SCM who was strip searched during Period A is \$2,250.

B. All SCMs who were searched in the period June 9, 2003 through November 17, 2004, ("Period B") and who submit verified claims shall be entitled to receive the following payments in full satisfaction of their claims, subject to the reduction factors listed under Paragraph E and a pro rata reduction as set forth in Paragraphs 29 and 30 of the Stipulation of Settlement:

1. \$2,200 if he or she was strip searched one time during Period B.

2. An additional \$250 if he or she was strip searched two or more times during Period B;
3. An additional \$250 if he or she has a documented history (as defined in Paragraph 8 of the Stipulation of Settlement) of being the prior victim of sexual abuse;
4. An additional \$250 if he or she has significant physical deformities (as defined in Paragraph 14 of the Stipulation of Settlement) that were exposed as a consequence of any strip search in Period B;
5. An additional \$250 if she was menstruating at the time of any strip search in Period B;
6. An additional \$250 if he or she received documented (as defined in Paragraph 8 of the Stipulation of Settlement) formal counseling by a counselor or therapist or documented medical treatment because of any strip search in Period B, if the first counseling or medical session occurred within 60 days of the strip search;
7. An additional \$100 if he or she was touched on the breasts, genitals, or buttocks during any strip search in Period B.

Notwithstanding the foregoing, the maximum possible payment to an SCM who was searched in Period B is \$3,500.

C. All SCMs who were strip-searched in the period November 18, 2004 through the Date of the Stipulation of Settlement ("Period C") and who submit verified claims establishing that they were strip-searched without reasonable suspicion shall be entitled to receive the following payments in full satisfaction of their claims, subject to the reduction factors listed under Paragraph D and a pro rata reduction as set forth in Paragraphs 29 and 30 of the Stipulation of Settlement:

1. \$1,000 if he or she was strip searched one time during Period C.
2. An additional \$250 if he or she was strip searched two or more times during Period C;
3. An additional \$250 if he or she has a documented history (as defined in Paragraph 8 of the Stipulation of Settlement) of being the prior victim of sexual abuse;

4. An additional \$250 if he or she has significant physical deformities (as defined in Paragraph 14 of the Stipulation of Settlement) that were exposed as a consequence of any strip search in Period C;
5. An additional \$250 if she was menstruating at the time of any strip search in Period C;
6. An additional \$250 if he or she received documented (as defined in Paragraph 8 of the Stipulation of Settlement) formal counseling by a counselor or therapist or documented medical treatment because of any strip search in Period C, if the first counseling or medical session occurred within 60 days of the strip search;
7. An additional \$100 if he or she was touched on the breasts, genitals, or buttocks during any strip search in Period C.

Notwithstanding the foregoing, the maximum possible payment to an SCM who was searched in Period C is \$2,250.

D. An SCM who was subjected to a search in more than one Class Period may make a claim for a search or searches that occurred in only one period.

E. Reduction Factors. The total award made to an SCM under Periods A, B or C, as defined above, shall be reduced as follows:

1. Incarceration in any state or federal prison at any time within five years before the first strip search in Periods A, B or C shall reduce the total award by 80%.
2. Conviction of a crime and incarceration for that conviction in any county or juvenile detention center within five years before the first strip search in Periods A, B or C shall reduce the total award by 80%.
3. If the SCM makes material false statements on the Claim Form, the total award shall be reduced to zero.

F. For SCMs with more than one applicable reduction factor, as defined in Paragraph E, only the reduction factor with the largest applicable reduction percentage will apply.

OPT-OUT FORM

SANTA FE STRIP SEARCH LAW SUIT LEYBA, et al., v. SANTA FE BOARD OF COMMISSIONERS, et al.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW MEXICO

No. CIV-05-0036 BB/ACT

IN ORDER TO **EXCLUDE** YOURSELF FROM THE SETTLEMENT CLASS THAT HAS BEEN CERTIFIED IN THIS PROCEEDING, YOU MUST SUBMIT THIS OPT-OUT FORM SO THAT IT IS POSTMARKED OR OTHERWISE DELIVERED NO LATER THAN _____ [45 DAYS AFTER NOTICE WAS MAILED].

IF THIS OPT-OUT FORM IS TIMELY AND PROPERLY SUBMITTED, THEN YOU WILL BE EXCLUDED FROM THE SETTLEMENT CLASS AND YOU WILL NOT BE ENTITLED TO ANY BENEFITS UNDER THE SETTLEMENT AGREEMENT, YOU WILL NOT BE ENTITLED TO OBJECT TO THE SETTLEMENT AGREEMENT, AND YOU WILL NOT BE BOUND BY THE RELEASE OF CLAIMS SET FORTH IN THE SETTLEMENT AGREEMENT AND SUMMARIZED IN THE NOTICE OF PROPOSED SETTLEMENT OF SANTA FE COUNTY CLASS ACTION STRIP SEARCH CASE.

Before electing to opt-out and exclude yourself from the Settlement Class, you should read the enclosed Notice of Proposed Settlement of Santa Fe County Class Action Strip Search Case to understand the effect of either opting out of the Settlement Class or not opting out of the Settlement Class. You have the right to confer with Plaintiffs' Class Counsel or counsel of your own choosing, before executing this Opt-Out Form. If you have any questions regarding the effect of opting out of the Settlement Class or not opting out of the Settlement Class, or need any further information or assistance, please contact the Claims Administrator [address, website, toll-free number] or Plaintiffs' Class Counsel, Rothstein, Donatelli, Hughes, Dahlstrom, Schoenburg & Bienvenu, L.L.P., 1215 Paseo de Peralta, Santa Fe, New Mexico, 87501, telephone 505-088-8003, facsimile 505-982-0307.

INSTRUCTIONS:

1. Questions 1-6 of the Sworn Affidavit below must be answered.
2. The Opt-Out Form must be signed under penalty of perjury.
3. The completed Opt-Out Form must be sent to the following address so that it is postmarked or otherwise delivered no later than _____ [45 days after this Form was mailed]: Administrator

4. After submitting the completed Opt-Out Form, you may be required to submit additional proof, including a photocopy of your passport, birth certificate, or other identifying document.

SWORN AFFIDAVIT

STATE OF _____)
) ss.
COUNTY OF _____)

1. My name is: _____
(first) (middle) (last)
2. My home address is: _____

3. My telephone number (including area code) is: _____ (day) _____
(evening)
4. My Social Security number is: _____
5. My date of birth is: _____
6. **I WANT TO BE EXCLUDED FROM THE SETTLEMENT CLASS CERTIFIED IN THIS PROCEEDING AND FROM ALL BENEFITS OTHERWISE AVAILABLE TO ME UNDER THE SETTLEMENT:** _____ **Yes**

CERTIFICATION UNDER PENALTY OF PERJURY

I hereby affirm and declare under penalty of perjury that I have read and understand the contents of this Opt-Out Form and the Notice of Proposed Settlement of Santa Fe County Class Action Strip Search Case, the statements made in this Opt-Out Form are true and correct, and I am over the age of eighteen (18) and am of sound mind. I UNDERSTAND THAT BY SIGNING THIS OPT-OUT FORM I WILL NOT BE ENTITLED TO THE BENEFITS OF THE SETTLEMENT AGREEMENT.

Signature Type or print name Date

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

ELIZABETH LEYBA, NATASHA
APODACA, NANCY ELLIN, MONICA
GARCIA, LUCY M. MARQUEZ, MARK
MILLER, COPPER PERRY, DAVID
SANDOVAL, KRISTI SEIBOLD, RUSSELLA
SERNA, and KIMBERLY WRIGHT,
on their own behalf and on behalf of a class of
similarly situated persons.

Plaintiffs,

vs.

No. CIV-05-0036 BB/ACT

SANTA FE COUNTY BOARD OF
COMMISSIONERS; MANAGEMENT
& TRAINING CORPORATION;
SANTA FE COUNTY SHERIFF GREG
SOLANO, in his individual and official
capacities; FORMER SANTA FE COUNTY
SHERIFF RAYMOND L. SISNEROS, in his
individual and official capacities; and KERRY
DIXON, in his individual and official capacities.

Defendants.

**ORDER GRANTING PRELIMINARY APPROVAL
OF SETTLEMENT AGREEMENT AND APPROVING
THE FORM AND MANNER OF NOTICE**

THIS MATTER came before the Court upon the Joint Unopposed Motion of
Plaintiffs Elizabeth Leyba, Natasha Apodaca, Nancy Ellin, Monica Garcia, Lucy M.
Marquez, Mark Miller, Copper Perry, David Sandoval, Kristi Seibold, Russella Serna,
and Kimberly Wright (collectively "Named Plaintiffs"); Defendants Management &
Training Corporation and Kerry Dixon ("MTC Defendants"); and Santa Fe County Board
of Commissioners, Santa Fe County Sheriff Greg Solano, and Former Santa Fe County

Sheriff Raymond L. Sisneros, ("Santa Fe County Defendants") (hereinafter collectively referred to as "the Parties") for preliminary approval of the Stipulation of Settlement ("Settlement Agreement") entered into by the Parties. The Court has considered the facts and legal authorities set forth in the Parties' Joint Unopposed Motion for Preliminary Approval, has reviewed the terms of the Settlement Agreement, and has determined that there is good cause for preliminary approval. Therefore,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. The Court preliminarily approves the Settlement Agreement as fair, reasonable, and adequate. Neither this preliminary order of approval nor the Settlement Agreement is a finding or an admission by Defendants of any liability or wrongdoing whatsoever.

2. The Court concludes that (1) the Settlement Class (as that term is defined in the Settlement Agreement) is so numerous that joinder of all members is impracticable, (2) there are questions of law and fact common to the Settlement Class, (3) the claims of the Named Plaintiffs are typical of the claims of the Settlement Class, (4) the Named Plaintiffs will fairly and adequately protect the interests of the Settlement Class, (5) the questions of law and fact common to the members of the Settlement Class predominate over any questions affecting only individual members, and (6) a class action is superior to other available methods for the fair and efficient adjudication of this controversy.

3. Pursuant to Fed. R. Civ. P. 23 and the Settlement Agreement, the Court hereby certifies a Settlement Class as that term is defined in the Settlement Agreement.

4. The Court appoints Named Plaintiffs Elizabeth Leyba, Natasha Apodaca, Nancy Ellin, Monica Garcia, Lucy M. Marquez, Mark Miller, Copper Perry, David Sandoval, Kristi Seibold, Russella Serna, and Kimberly Wright as Class Representatives.

5. The Court appoints Mark H. Donatelli, Robert R. Rothstein and John C. Bienvenu of Rothstein, Donatelli, Hughes, Dahlstrom, Schoenburg, & Bienvenu, LLP as Class Counsel.

6. The Court approves the Administrator, as that term is defined in the Settlement Agreement, to be stipulated to by the Parties or to be determined by further order of the Court, and authorizes the Administrator to perform those duties as defined in the Settlement Agreement.

7. The Court approves the Notice of Class Action and Proposed Settlement in the form attached to the Settlement Agreement as Exhibit 2. The Court approves the Claim Form attached to the Settlement Agreement as Exhibit 1. The Court approves the Opt-Out Form attached to the Settlement Agreement as Exhibit 5.

8. Within thirty (30) days of the entry of this Order, the Defendants shall provide to the Administrator and Class Counsel the "Database" as that term is defined in the Settlement Agreement, and shall transmit by wire transfer or certified funds the Settlement Fund and the amount of administrative expenses (as defined in Paragraph 30 of the Settlement Agreement) to the Administrator or the Administrator's designee for deposit in an interest-bearing qualified settlement fund.

9. The Administrator is directed to mail the Notice of Class Action and Claim Form ("Notice Package") to all members of the Settlement Class as set forth in the Settlement Agreement. The Administrator is further directed to publish the Notice as set

forth in the Settlement Agreement, and to ensure that announcements are made on the radio as set forth in the Settlement Agreement.

10. Such dissemination of the Notice of Class Action is the best notice practicable under the circumstances, within the meaning of Rule 23(c)(2)(B), Federal Rules of Civil Procedure.

11. The Court will conduct a Final Approval Hearing on ____ [at least one hundred thirty five (135) days after Preliminary Approval] to determine whether the Settlement Agreement should be finally approved as fair, reasonable, and adequate to the Settlement Class, and whether judgment should be entered accordingly.

12. Any Settlement Class member who so desires may object to the proposed settlement, or the proposed form of Final Approval, provided that the Class member refrains from opting out of the Settlement Class and otherwise complies with the procedures described in the Notice of Class Action and Proposed Settlement.

13. The Final Approval Hearing may be continued or adjourned by order of the Court without further notice to the Class.

14. If the Settlement Agreement is finally approved by the Court, then upon the occurrence of the effective date, all Settlement Class members who do not timely exclude themselves from the Settlement Class—whether or not they file a timely and valid Claim Form, or any claim at all—will be barred and enjoined from asserting any of the claims released in the Settlement Agreement, will conclusively be deemed to have released any and all such claims, and will be subject to and bound by the provisions of the Settlement Agreement and the Final Judgment.

15. Until the Court finally determines whether the Settlement Agreement should be approved, no member of the Settlement Class who has not timely and validly opted out of the settlement may commence or prosecute any action or proceeding in any forum asserting any of the claims that are the subject of the Settlement Agreement.

IT IS SO ORDERED.

DATED: ____

U.S. DISTRICT COURT JUDGE