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 FINAL APPROVAL OF CLASS ACTION SETTLEMENT AGREEMENT

Plaintiffs and Class Representatives 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" or "Class Representatives") 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, jointly move the Court to grant final approval of the Parties' settlement of this class action case. As grounds for this motion, the Parties state as follows:

I. BACKGROUND AND SUMMARY

On January 12, 2005, Plaintiffs filed this lawsuit against the MTC Defendants and the Santa Fe County Defendants (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.

After extensive discovery and investigation, numerous mediation sessions, and many hours of negotiations directly between counsel, the Parties agreed to settle these cases. On July

24, 2006, this Court entered an Order certifying the class, appointing the Class Representatives, appointing Class Counsel, and granting preliminary approval of the Parties' Settlement Agreement. After obtaining the Court's preliminary approval, the Parties appointed a Claims Administrator who has carried out the claims administration process in accordance with the Settlement Agreement and the Court's July 24, 2006 Order. With the claims administration process nearly complete, the Parties now seek the Court's final approval of their settlement so that the Claims Administrator may distribute the settlement funds to Class members in accordance with the Settlement Allocation Plan.

At this point, then, the Parties request that the Court enter an Order:

1. Dismissing with prejudice all claims in the Action as to the Released Persons as defined in the Settlement Agreement including all claims for declaratory and injunctive relief;

2. Ordering that all Settlement Class Members as defined in the Settlement Agreement ("SCMs") are enjoined from asserting against any Released Person, any and all claims that the SCMs had, has, or may have in the future arising out of the facts alleged in the Complaint;

3. Releasing 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;

4. Determining that the Settlement Agreement is entered into in good faith, is reasonable, fair and adequate, and in the best interest of the Class;

5. Ordering that no person may assert any claim against the Class Representatives, Class Counsel, or Claims Administrator based on the distribution of the Settlement Fund made substantially in accordance with the Settlement Agreement and/or the orders of the Court; and

6. Reserving the Court's continuing and exclusive jurisdiction over the Parties to the Settlement Agreement, including Defendants and SCMs, to administer, supervise, construe and enforce the Settlement Agreement in accordance with its terms for the mutual benefit of all the Parties.

Additionally, Class Representatives and Class Counsel respectfully request that the Court approve payment forthwith of the attorneys fees, costs and incentive payments as set forth in the Stipulation of Settlement. Defendants do not oppose these requests.

II. FACTUAL BACKGROUND RELEVANT TO FINAL 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 John C. Bienvenu, filed separately, ¶ 9. Additionally, the Parties engaged in a number of additional sessions among counsel for the Parties. *Id*. Arms-length settlement negotiations continued through June 2006 when the Settlement Agreement was finally reached. *Id*.

B. The Settlement Terms

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

1. Monetary Relief to Settlement Class Members

a. Payments to the Settlement Class

Pursuant to the terms of the Settlement Agreement, the MTC Defendants have deposited the sum of $8,000,000 into an interest-earning qualified settlement fund account ("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. Thus, the total settlement fund created for the benefit of the class ("Total Settlement Fund") is $8,500,000.

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 $200[1] 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.

As of November 29, 2006, approximately 3,402 individuals had filed Claim Forms. *See*

1 In the Parties' motion for preliminary approval, the minimum amount was incorrectly stated as $1,000. That is the correct minimum base amount, but several factors (relating to previous incarceration) can result in an 80% reduction of the base amount, thus making the minimum possible payment equal to $200.

Affidavit of Mark Patton, filed separately, ¶ 13. Class members had until November 27, 2006 to submit Claim Forms. Assuming that several hundred additional Class members submitted timely Claim Forms and are entitled to payment from the Settlement Fund, it is estimated by Class Counsel that the total amount of claims to be paid is more than $4,000,000 but somewhat less than the amount of $5,529,750 allocated for payment of claims. Bienvenu Aff., ¶ 26.

b. Incentive Payments

Under the Settlement Agreement, the Parties have agreed that the Class Representatives are 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.

C. Class Notice and Settlement Administration

On July 24, 2006, this Court granted the Parties' Joint Motion for Preliminary Approval of Class Action Settlement Agreement. In that Order, the Court (1) preliminarily approved the Settlement Agreement; (2) certified the Class under Fed.R.Civ.P. 23; (3) appointed 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; (4) appointed Mark H. Donatelli, Robert R. Rothstein and John C. Bienvenu of Rothstein, Donatelli, Hughes, Dahlstrom, Schoenburg, & Bienvenu, LLP as Class Counsel; (5) approved 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; (6) approved the forms of, and set deadlines for submission of, claim forms, exclusion requests ("opt outs") and objections; and (7) set for December 8, 2006 a hearing for final approval of the settlement.

The Settlement Agreement preliminarily approved by the Court provided for a detailed Notice Package to be sent to all Class members informing them of their rights under the Settlement Agreement, for a Summary Notice to be published in local newspapers, for advertisements to be placed on local radio stations, and for notices to be posted at the Santa Fe County Detention Center. Counsel for the Parties retained Settlement Services, Inc. ("SSI") as Claims Administrator to carry out the duties of mailing the Notice Package and publishing the Summary Notice in the newspapers. The Defendants provided SSI with a database containing the names and last known addresses for all potential Class members. After receipt of the database from the Defendants, SSI began the notice and claims administration process.

In accordance with the Settlement Agreement and the Court's July 24, 2006 Order, the Claims Administrator mailed the Court-approved Notice Package to over 19,000 potential class members. Patton Aff., ¶ 7. SSI also caused to be published the Court-approved Summary Notice as directed in the Court's order of preliminary approval, and placed announcements on numerous radio stations, in both English and Spanish. *Id*. at ¶¶ 8, 9. Furthermore, SSI created an interactive website to provide information to and answer questions from potential Class Members, and further provided a toll free number to call with questions. *Id*. at ¶¶ 5, 6. Class Counsel also fielded thousands of calls from and to Class Members and answered their questions about the terms of the settlement. Bienvenu Aff., ¶ 26.

To date, more than 3,400 individuals have submitted Claim Forms to SSI; three individuals have filed Opt-Out Forms; and no individuals have submitted Objections to the settlement. Patton Aff., ¶¶ 13, 14. As noted above, the deadline for filing Claim Forms was November 27, 2006, and the Parties anticipate that SSI will receive additional Claim Forms submitted prior to that deadline.

III. THE COURT SHOULD GRANT FINAL APPROVAL OF THE SETTLEMENT

A. Adequate Notice Has Been Provided to the Class and the Terms of the Settlement are Fair, Reasonable and Adequate

Settlement of a class action requires the Court's approval. Rule 23(e) ("A class action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to all members of the class in such a manner as the court directs"). The law generally favors the settlement of complex class actions. *Entr. Energy Corp. v. Columbia Gas Transmission Corp.*, 137 F.R.D. 240, 242 n.1 (S.D. Ohio 1991); *see also* 4A Conte & Newberg, *Newberg on Class Actions*, §11.41 (4th ed. 2002). The Court

should approve a class action settlement if the settlement is "fair, reasonable and adequate." Rule 23(e)(1)(C); *In re Sprint Corp. ERISA Litig.*, 443 F. Supp. 2d 1249, 1256 (D. Kan. 2006). *See also Bailey v. Great Lakes Canning, Inc.*, 908 F.2d 38, 42 (6th Cir. 1990); *Jones v. Nuclear Pharmacy, Inc.*, 741 F.2d 322, 324 (10th Cir. 1984); *In re Rio Hair Naturalizer Prods. Liab. Litig.*, No. MDL 1055, 1996 WL 780512, at *11 (E.D. Mich. Dec. 20, 1996) (*citing Manual for Complex Litigation*, §30.42 (3d ed. 1995)). The Court's main concern in evaluating a class action settlement is to ensure that the rights of passive class members are not jeopardized by the proposed settlement. *In re Sprint Corp. ERISA Litig.*, 443 F. Supp. 2d at 1255 (*citing Amchem Prods., Inc. v. Winsor*, 521 U.S. 591, 623 (1997)).

There are three steps on the road to final approval of a class action settlement: first, the Court must preliminarily approve the proposed settlement; second, members of the class must be given proper notice of the proposed settlement; and third, after holding a hearing, the Court must give its final approval to the settlement. *Williams v. Vukovich*, 720 F.2d 909, 921 (6th Cir. 1983); *Enter. Energy Corp., 137 F.R.D. at 245; In re Dun & Bradstreet Credit Servs. Customer Litig.*, 130 F.R.D. 366, 369 (S.D. Ohio 1990). The Court granted preliminary approval of the settlement in its July 24, 2006 Order. Thus, the Court must at this point determine whether the Parties provided proper notice of the settlement to the Class and whether the terms of the settlement are fair, reasonable and adequate.

1. Proper Notice Has Been Provided to the Class

"[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 addresses of the interested parties are known, due process requires mailed notices. *Id*. at 318-19; *Dejulius v. New England Health Care Employee Pension Fund*, 429 F.3d 935 (10th Cir. 2005) The contents of the 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." *Hitt v. Nissan Motor Co. Ltd. (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 Notice and Summary Notice and their method of dissemination meet these requirements. The Notice and Summary Notice clearly and concisely informed Class members of all the relevant aspects of the litigation: (1) the Class definition and statement of claims; (2) the litigation history; (3) the terms of the Settlement Agreement; (4) how the settlement proceeds will be allocated; (5) the amount of compensation requested for the Class Representatives to compensate them for their services to the Class; (6) the amount of attorneys' fees and costs which may be awarded to Class Counsel; (7) the binding effect of any judgment approving the settlement on those who do not opt out; (8) the right to object to the Settlement and the procedure for doing so; and (9) whom to contact to obtain additional information regarding the Settlement or the litigation. The notices provide all the information necessary for Class members to make

an informed decision with respect to whether to remain in or opt out of the Class or whether to object to the proposed settlement.

The method of providing notice to potential Class members also complies with the requirements of due process. The Claims Administrator mailed the Court-approved Notice Package to over 19,000 potential class members. Patton Aff., ¶ 7. The Claims Administrator also caused the Summary Notice to be published in several newspapers, some with local and some with statewide circulation, and placed announcements in local radio stations. Patton Aff., ¶¶ 8, 9. The Claims Administrator further created an interactive website to provide information to and answer questions of potential Class Members, and provided a toll free number to call with questions. *Id*. at ¶¶ 5, 6. Class Counsel also fielded thousands of calls from and to Class Members and answered their questions about the terms of the settlement. Bienvenu Aff., ¶ 26.

In summary, the Court should hold that the notice requirements of Rule 23 and the due process clause have been met in the present case.

2. The Settlement is Fair, Reasonable and Adequate

The Tenth Circuit has established four non-exclusive factors which this Court must consider in evaluating whether the Parties' settlement in this case is fair, reasonable and adequate: (a) whether the proposed settlement was fairly and honestly negotiated; (b) whether serious questions of law and fact exist, placing the ultimate outcome of the litigation in doubt; (c) whether the value of an immediate recovery outweighs the mere possibility of future relief after protracted and expensive litigation; and (d) the judgment of the parties that the settlement is fair and reasonable. *Rutter & Wilbanks Corp. v. Shell Oil Co.*, 314 F.3d 1180, 1188 (10th Cir. 2002) (internal quotation marks & citation omitted); *In re Sprint Corp. ERISA Litig.,* 443 F. Supp. 2d

1249, 1256 (D. Kan. 2006).[2]

In considering whether to grant final approval, the Court cannot modify the proposed settlement, but must approve or disapprove the proposed settlement "as a whole" in relation to all of those concerned. *See Evans v. Jeff D.*, 475 U.S. 717, 727 (1986); *Walsh v. Great At. & Pac. Tea Co., Inc.*, 726 F.2d 956, 965 (3d Cir. 1983); *In re Rio Hair Naturalizer Prods. Liab. Litig.*, 1996 WL 780516 *11 ("The touchstone for final approval is the effect on the class as a whole in light of the particular circumstances."(emphasis omitted)). The Court examines the settlement "in its entirety and not as isolated components." *Enter. Energy Corp. v. Columbia Gas Transmission Corp.*, 137 F.R.D at 246. Also, the Court is not "to determine the merits of the controversy or the factual underpinning of the legal authorities advanced by the parties." *Williams v. Vukovich*, 720 F.2d 909, 921. *See also Armstrong v. Bd. of Sh. Dirs.*, 616 F.2d 305, 314-15 (7th Cir. 1980), *overruled on other grounds by Felzen v. Andreas*, 134 F.3d 873 (7th Cir. 1998). To do so would defeat the purposes of the settlement, which include avoiding a determination of sharply contested issues and dispensing with expensive and wasteful litigation. *Levin v. Miss. River Corp.*, 59 F.R.D. 353 (S.D.N.Y. 1973), *aff'd mem.*, 486 F.2d 1398 (2d Cir. 1973).

Examination of the Tenth Circuit's factors confirms that the settlement in the present case is fair, reasonable and adequate.

a. The Proposed Settlement was Fairly and Honestly Negotiated

The first factor the Court must consider is whether the proposed settlement was fairly and

2 Courts in other circuits utilize similar factors, such as (1) the Plaintiffs' likelihood of ultimate success on the merits balanced against the amount and form of relief offered in settlement; (2) the complexity, expense and likely duration of the litigation; (3) the stage of the proceedings and the amount of discovery completed; (4) the judgment of experienced trial counsel; (5) the nature of the negotiations; (6)the objections raised by the class members; and (7) the public interest. *See Enter. Energy Corp.*, 137 F.R.D. at 245; *In re Dun & Bradstreet Credit Litig.*, 130 F.R.D. 366, 371 (*citing Williams*, 720 F.2d at 922); *Thompson v. Midwest Found. Indep. Physicians Ass'n*, 124 F.R.D. 154, 157 (S.D. Ohio 1988).

honestly negotiated. *Rutter & Wilbanks Corp. v. Shell Oil Co.* , 314 F.3d 1180, 1188 10th Cir. 2002); *In re Sprint Corp. ERISA Litig.,* 443 F. Supp. 2d 1249, 1256 (D. Kan. 2006). In evaluating the propriety of a proposed settlement, courts have frequently focused on the negotiating process by which the settlement was reached to determine whether that process was genuinely adversarial. *See e.g., Weinberger v. Kendrick* , 698 F.2d 61, 74 (2d Cir. 1982), *cert. denied*, 464 U.S. 818 (1983).

In the present case, settlement negotiations were only undertaken after the Parties engaged in extensive discovery and voluntary disclosure of all relevant background information. The Parties exchanged all relevant documents including training materials, written policies, jail records, and the voluminous computer files for all bookings during the class period. In addition, the Defendants deposed each of the named Plaintiffs, and the Plaintiffs deposed the warden and former warden, the jail monitor, the county sheriff, and correctional and training officers. The Parties had sufficiently developed the facts in the action to fully analyze the pro and cons of settlement. *See Levell v. Monsanto Research Corp.* , 191 F.R.D. 543, 550 (S.D. Ohio 2000); *Collier v. Montgomery County Hous. Auth.* , 192 F.R.D. 176, 184 (E.D. Pa. 2000); *Bryant v. Universal Servs.*, No. CIV. A. 99-2944, 2000 WL 680258 at 3 (E.D. La. May 24, 2000); *In re Holocaust Victim Assets Litig.*, 105 F. Supp. 2d 139, 146 (E.D.N.Y. 2000).

Settlement negotiations were lengthy, involved, and complex. Multiple separate mediation sessions were facilitated by retired United States District Judge Raul Ramirez, who has special expertise in the mediation of class action suits involving allegedly unconstitutional strip search polices and practices. In addition, the Parties participated in numerous unmediated meetings between counsel, and many telephone conversations and email exchanges among counsel. The settlement negotiations lasted many months, were adversarial in nature, and

involved numerous parties with varying interests. Settlement negotiations were hard-fought, arms-length, and contentious at times. Clearly, the settlement negotiations were adversarial in nature. *See In re Sprint Corp. ERISA Litig.,* 443 F. Supp. 2d at 1260 (finding that settlement negotiations, although conducted at an early stage of litigation, were fair and honest, thus supporting final approval). The first factor weighs in favor of final approval.

b. Serious Questions of Law and Fact Place the Ultimate Outcome in Doubt

The second factor the Court must consider is whether serious questions of law and fact place the ultimate outcome of this case in doubt. *Rutter & Wilbanks Corp. v. Shell Oil Co.*, 314 F.3d 1180, 1188 (10th Cir. 2002); *In re Sprint Corp. ERISA Litig.,* 443 F. Supp. 2d 1249, 1260-61 (D. Kan. 2006). While Plaintiffs firmly believe they have meritorious claims on the merits, Plaintiffs also acknowledge that all complex cases such as this one confront numerous hurdles on their way to a successful outcome in the case. First and foremost, Plaintiffs always face a significant burden in obtaining class certification. Second, if class certification is denied or limited, Plaintiffs would be faced with prosecuting scores of individual cases. The time and resources required to prosecute more than a handful of individual cases would be immense. On the other hand, if class certification is obtained, there still remains the difficulty burden of proving class-wide liability, and the possibility that individual damage cases must still be brought. Again, such serious questions of law and fact would have placed the ultimate outcome of the action in doubt. *See In re Sprint Corp. ERISA Litig.,* 443 F. Supp. 2d at 1260-61 (finding that serious questions of law and fact regarding plaintiffs' claims placed the ultimate outcome in doubt and weighed in favor of final approval). This factor also weighs in favor of final approval.

c. The Value of Immediate Recovery Outweighs the Mere Possibility of Future Relief After Protracted and Expensive Litigation

The third factor to be considered by the Court is the value of immediate recovery under the proposed settlement versus the mere possibility of future relief after protracted and expensive litigation. *Rutter & Wilbanks Corp. v. Shell Oil Co.*, 314 F.3d 1130, 1188 (10th Cir. 2002); *In re Sprint Corp. ERISA Litig.,* 443 F. Supp. 2d 1249, 1261 (D. Kan. 2006) There can be no doubt whatsoever that if the Parties had not reached an agreement to settle the action, litigation in this case would have been exceedingly difficult, expensive and lengthy. After the Court ruled on the difficult class certification issues, the Parties would have proceeded to additional discovery on the merits, which they anticipate would have lasted several years at least. Due to the complexity of the issues, the large amount of money at stake, and the number of attorneys and experts involved in these cases, tremendous resources would have been expended trying these cases, either collectively or individually. And as noted above, the ultimate outcome of this case was uncertain due to disputed questions of law and fact.

By settling this case and providing $8.5 million for the benefit of the Class members, all Parties have averted many of the risks of proceeding with litigation. Each Class member who files a valid claim is entitled to receive a minimum of $200 and a maximum of $3,500 (depending on a number of individualized factors, including the time period in which the search took place, whether the Class member had been previously incarcerated, and whether individual exacerbating factors were present). Thus, the settlement provides a meaningful financial benefit to Class members.

In addition, as a direct result of Plaintiffs' and Class Counsel's efforts preceding and during this lawsuit, the strip search policies at the Santa Fe County Detention Center were

changed. Plaintiffs' request for injunctive relief was thereby rendered moot because Plaintiffs' aims were achieved.

Of course, resolution of the action provides a benefit to the Defendants as well. It removes the risk of a significant jury award against the Defendants, and operates to reduce the continued accrual of attorneys' fees and costs on all sides. Resolution of the action will save the Parties and the Court a tremendous amount of time and money, while providing meaningful benefit to the Class. This factor also weighs in favor of final approval. *In re Sprint Corp. ERISA Litig.,* 443 F. Supp. 2d at 1261 (uncertainty of result and certainty of additional expense to litigate claims weighs heavily in favor of approval); s*ee also Levell v. Monsanto Research Corp.*, 191 F.R.D. 543, 550 (S.D. Ohio 2000); *Collier v. Montgomery Housing Auth.*, 192 F.R.D. 176, 184 (E.D. Pa. 2000); *Bryant v. Universal Servs.*, 2000 WL 680258, at *3 (E.D. La. 2000); *In re Holocaust Victim Assets Litig.*, 105 F. Supp.2d at 146.

d. The Parties and Their Counsel Believe the Settlement Is Fair and Reasonable

The fourth factor the Court must consider is whether the Parties and their counsel believe the settlement is fair and reasonable. *Rutter & Wilbanks Corp. v. Shell Oil Co.*, 314 F.3d 1180, 1188 (10th Cir. 2002); *In re Sprint Corp. ERISA Litig.,* 443 F. Supp. 2d 1249, 1261-62 (D. Kan. 2006). First and foremost, the Class Representatives believe this settlement is in the best interest of the Class. *See* Affidavit of Elizabeth Leyba, filed separately, ¶¶ 9-12. These Class Representatives have been intimately involved in the action from the beginning through settlement. They firmly believe that, given the meaningful benefits provided by the settlement and the risks associated with continued litigation, the settlement is fair and reasonable. *Id*.

Counsel for the Parties hold the same belief. All of the Parties' attorneys are experienced trial attorneys. It is the collective judgment of counsel for the Parties that settlement of the

action in accordance with the terms set forth in the Settlement Agreement is fair, reasonable and preferable to continued litigation. The Court "s hould keep in m ind the unique ability of class and defense counsel to assess poten tial risks and rewards o f litigation [and] a presum ption of fairness, adequacy and reasonableness m ay attach to a class settlem ent reached in arm 's-length negotiations between experienced, capable counsel after m eaningful discovery." *See Cotton v. Hinton*, 559 F.2d. 1326, 1330 (5 th Cir. 1977). Som e courts ev en hold that the Court should "defer to the judgment of experienced counsel who has competently evaluated the strength of his proofs." *See Levell v. Monsanto research C orp.*, 191 F.R.D. 543, 557 (S.D. Ohio 2000); *Williams v. Vukovich*, 720 F.2d 909, 922 (6th Cir. 1983). This factor also weighs in favor of final approval. *In re Sprint Corp. ERISA Litig.,* 443 F. Supp. 2d at 1261 (opinion of the parties' counsel supports final approval of class action settlement).

For all these reasons, the Court should hold th at the Parties provided proper notice of the settlement to the Class and that the term s of the Parties ' Settlement Agreement are f air, reasonable and adequate.

B. Plaintiffs' Request for Attorneys' Fees, Costs and Incentive Payments is Fair and Reasonable and Should be Approved

The Parties have 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. In addition, the Parties have agreed that the Class Representatives are 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.

As fully set forth in Plaintiffs' Memorandum in Support of Approval of Reasonable Attorneys Fees, Costs and Incentive Payments, filed separately, these payments are fair, reasonable, supported by law, and should be approved.

C. The Absence of Any Objections Supports Final Approval

Class members were fully informed of all aspects of the proposed settlement, including the amount of the settlement fund, the allocation formula, the amount to be requested for attorneys' fees and costs, and the amount to be requested for incentive payments to the Class Representatives. Class members were provided with an opportunity to object to the terms of the settlement. Not one objection was received by any Class members. Patton Aff., ¶ 14.

The fact that no class member has objected to the settlement is a strong indication of a settlement's fairness. *Newberg*, §11.48. In the present case, it is revealing that, despite the issuance of the Notice Package to more than 19,000 potential Class members, none filed objections to the settlement. By contrast, more than 3,400 individuals have submitted Claim Forms without objection to date, and three individuals have chosen to opt out of the settlement. *See Stoetzner v. U.S. Steel Corp.*, 897 F.2d 115, 188-19 (3d Cir. 1990) (objections of 29 class members out of a settlement class of 281 (over ten percent) "strongly favors settlement); *Boyd v. Bechtel Corp.*, 485 F.Supp. 610, 624 (N.D. Cal. 1979) (objections from 16% of class was "persuasive" that settlement was adequate). The Parties submit that, given the absence of any objections in the present case, the Court should grant final approve the settlement.

IV. CONCLUSION

For the foregoing reasons, the Parties respectfully request that the Court issue its Order:

1. Dismissing with prejudice all claims in the Action as to the Released Persons as defined in the Settlement Agreement including all claims for declaratory and injunctive relief;

2. Ordering that all Settlement Class Members as defined in the Settlement Agreement ("SCMs") are enjoined from asserting against any Released Person, any and all claims that the SCMs had, has, or may have in the future arising out of the facts alleged in the Complaint;

3. Releasing 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;

4. Determining that the Settlement Agreement is entered into in good faith, is reasonable, fair and adequate, and in the best interest of the Class;

5. Ordering that no person may assert any claim against the Class Representatives, Class Counsel, or Claims Administrator based on the distribution of the Settlement Fund made substantially in accordance with the Settlement Agreement and/or the orders of the Court; and

6. Reserving the Court's continuing and exclusive jurisdiction over the Parties to the Settlement Agreement, including Defendants and SCMs, to administer, supervise, construe and enforce the Settlement Agreement in accordance with its terms for the mutual benefit of all the Parties.

Additionally, Class Representatives and Class Counsel respectfully request that the Court approve payment forthwith of the attorneys fees, costs and incentive payments as set forth in the Stipulation of Settlement. Defendants do not oppose these requests.

Respectfully submitted,

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