

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CHARLES V. RYAN IV, on behalf of himself
and on behalf of others similarly situated,

Plaintiffs

v.

ROBERT J. GARVEY, and PATRICK J.
CAHILLANE in their individual capacities,

Defendants

Civil Action No. 05-30017-MAP

SETTLEMENT AGREEMENT

I. SUMMARY

1. The parties, by counsel, enter into this Settlement Agreement, which they will submit to the Court for its approval. The defendants agree to settle plaintiffs' claims by establishing a common fund of Two Hundred and Five Thousand Dollars (\$205,000.00). This amount, hereinafter referred to as the "settlement fund," will not be segregated or placed in a separate account by the Commonwealth. After payment of claims administration expenses, litigation expenses, an incentive award to the class representative and attorney's fees, the remaining settlement fund balance will be evenly divided among participating class members. Under this agreement, class members will receive one payment each no matter how many times they were booked into the jail during the class period.

II. BACKGROUND

2. The plaintiffs filed this action on January 18, 2005.

3. On July 14, 2006, the Court appointed Attorneys Howard Friedman and Myong J. Joun as class counsel under Fed.R.Civ.P. 23(g) and certified this case as a class action under Fed.R.Civ.P. 23(b)(3) defined as follows:

All persons who were illegally strip searched at the Hampshire Jail and House of Correction from January 18, 2002 to November 7, 2002, under a policy of conducting strip searches without evaluating for individualized reasonable suspicion:

- (1) while waiting for bail to be set or for a first court appearance after being arrested on charges that did not involve a weapon or drugs or contraband or a violent felony; or
- (2) while waiting for a first court appearance after being arrested on a default or other warrant (for example, those issued by the State Parole Board) on charges that did not involve a weapon or drugs or contraband or a violent felony; or
- (3) while held after a finding of civil contempt of court for failure to pay child or spousal support, a judgment, or a fine.

III. TERMS OF SETTLEMENT

4. On behalf of the defendants, the Commonwealth of Massachusetts will pay Two Hundred and Five Thousand Dollars (\$205,000.00) ("settlement fund") to settle all claims brought by the plaintiffs in this action including claims for attorney's fees and costs.

5. All payments hereunder will be made out of the Commonwealth's Settlement and Judgments account as detailed in this agreement and are subject to appropriation.

6. The defendants understand that this agreement will require the approval of the Court. The defendants will ask the Court to approve the terms of this settlement agreement.

7. The defendants and their counsel agree to provide reasonable assistance to facilitate the administration of this settlement including providing access to data and documents necessary to determine class membership if a person disputes denial of a claim.

III. COURT SUPERVISION

8. The Court will retain jurisdiction over the settlement and may enter orders as appropriate to enforce it, to adjudicate the rights and responsibilities of the parties, and to effect fair and orderly administration.

9. Any deadlines, dates, or other details in this Settlement Agreement may be changed by the Court on a showing of good cause.

IV. HEARINGS

10. The parties will jointly request that the Court hold a hearing as soon as reasonably practicable to decide whether to grant preliminary approval to the settlement. If preliminary approval is granted, the parties will begin to implement the settlement.

11. The Court will hold the Final Fairness Hearing to decide whether to grant final approval to the settlement on a date sixteen weeks after the Court grants preliminary approval to the settlement.

12. If the Court grants final approval of the settlement, the settlement fund will then be distributed pursuant to this agreement and the orders of the Court.

VI. CLAIMS ADMINISTRATOR

13. Class counsel recommends that the firm of Analytics, Inc. of Chanhassen, Minnesota be approved by the Court as the claims administrator for this case. Analytics, Inc. has provided similar claims administration services in other strip search class actions.

14. The claim administrator will administer notice to class members in the manner prescribed by the Court; shall accept and docket all claim forms; shall send all notices that a claim has been either accepted or rejected to class members; shall resolve any appeals of claim denials and shall calculate the amount of each claim pursuant to the formula set out in this agreement.

15. Class counsel will oversee settlement administration and will provide direction to the claims administrator as needed.

VII. COMPTROLLER'S OFFICE

16. The Comptroller's Office will distribute settlement checks to participating class members; prepare all 1099s and other necessary tax forms relating to the settlement; and provide periodic reports accounting for the distribution of the settlement fund and reporting on the status of issued checks as provided in this agreement.

17. The Office of the Attorney General will oversee the settlement distribution to class members as detailed below in paragraphs 39, 41, and 44-47 and will provide direction to the Comptroller's Office as needed by class counsel.

VII. NOTICE, OBJECTIONS, AND OPT-OUTS

18. Class counsel will send a Notice of Class Action and Proposed Settlement ("Notice") and a Settlement Claim Form ("Claim Form") (collectively, the "Notice Packet"), by first class mail postage prepaid to all potential class members at their last known addresses within three weeks after the Court's order granting preliminary approval. If any mail is returned by the post office with notice of a more current address, class counsel will resend the notice packet to the newer address. Class counsel is not required to make any further efforts to send mail directly to class members.

19. The Notice will include the terms of the settlement and the class member's right to contest the settlement or opt-out. The Notice will answer anticipated questions explaining the settlement terms and answer anticipated questions. The proposed Notice is attached as Exhibit A.

20. The Claim Form requests the class member's contact information, instructions for check delivery, and a Form W-9. The proposed Claim Form is attached as Exhibit B.

21. Class counsel will also publish a notice in the *Springfield Republican*, the *Daily Hampshire Gazette* and the *Greenfield Recorder*. The defendants will post a notice in the Booking Room of the Hampshire Jail. These notices are attached as Exhibits C and D. In addition to the legal notices, class counsel will issue a press release informing the public of the settlement. The press release is attached as Exhibit E.

22. In order for a class member to claim a share of the settlement, he or she must submit a valid and complete claim form postmarked no later than 2 weeks after the the Final Fairness Hearing. This deadline is the "Claims Deadline."

23. The claims administrator will send a claim form to anyone who requests one up to the date of the Final Fairness Hearing, or as allowed by the Court. In addition, the claims administrator will maintain updated documents regarding this settlement on a website including the claim form which can be printed and mailed.

24. In order for a class member to object to the proposed settlement, he or she must submit a written notice of the objection to the claims administrator postmarked no later than 2 weeks before the Final Fairness Hearing. An objector must also appear in person or through counsel at the Final Fairness Hearing to have the objection considered by the Court. The claims administrator will forward all letters of objection to the Court and to counsel for all parties. The class member must

also submit a claim form if he or she wishes to be eligible to share in the settlement should it be approved despite an objection.

25. In order for a class member to opt out of the proposed settlement, he or she must submit a written notice of exclusion to the claims administrator postmarked within 2 weeks of the Final Fairness Hearing. The claims administrator will forward all notices of exclusion to the Court and to counsel for all parties.

VIX. CLAIMS APPROVAL, DENIAL AND APPEALS

26. Claim forms received by the claims administrator within one week after the claims deadline will be treated as if postmarked by the claims deadline. This one-week grace is the Amnesty Period. Claim forms received after the Amnesty Period will be denied as untimely.

27. The claims administrator will review each claim form to determine that the claimant is a class member by confirming (a) that the claim form is timely and valid, (b) that the information on the form is consistent with available booking data previously provided by the defendant, and (c) that the form is completely filled out and signed.

28. The claims administrator may, in its discretion, waive a technical defect in a claim form to achieve substantial justice.

29. If the booking data indicates that the person does not meet the class definition, the claims administrator will send a Notice of Claim Denial to the claimant. The denial notice will, if possible, indicate the reason or reasons for the denial.

30. In order to object to the claims administrator's determination that he or she is not a class member, a claimant must file a written appeal to the claims administrator postmarked no later than 2 weeks after the date of the mailing of the Notice of Claim Denial. The claimant must include

written documentation that shows that he or she is a class member, and may also include a written statement. The claims administrator will make a determination on each appeal no later than one week after the deadline for claimants to file such appeals. The claims administrator will inform the claimant in writing of its determination, and provide copies to all counsel.

31. A claimant may appeal to the Court the claims administrator's final decision denying a claim. In order to do so, a claimant must write a letter addressed to the claims administrator indicating his or her wish to appeal to the Court within 2 weeks after the date of the mailing of the Notice of Claim Denial Upon Appeal. The claims administrator will present all such appeals, along with supporting documentation, to the Court within 2 weeks of the deadline to file such appeals.

32. The claims administrator will send a Notice of Claim Approval to each approved claimant promptly but in no event later than 1 week after the Court grants final approval of the settlement.

33. A claimant who used a different name at booking must present documentation establishing that he or she is the person referred to in the booking records.

X. EXPENSES AND ATTORNEY'S FEES

34. Class counsel will ask the Court to approve payment of plaintiffs' litigation expenses, class action administrative costs (including the claims administrator's fees and expenses) and attorney's fees from the settlement fund. All of these expenses and attorney's fees will be incorporated into a single payment and paid by one check made payable to class counsel.

XI. DISTRIBUTION TO CLASS MEMBERS

35. The named plaintiff Charles V. Ryan IV will receive \$10,000, subject to approval of the Court, to be paid from the settlement fund to compensate him for bringing this case, the time he

spent on this case and his loss of privacy as a result of serving as the named plaintiff. Mr. Ryan answered interrogatories and requests for documents and counsel for the defendants took his deposition. This incentive payment is in addition to his share as a class member. This payment will be issued at the same time as the distribution payments to class members.

36. Class members will receive payment from the settlement fund after deducting attorney's fees, litigation expenses, claims administration costs and incentive payment to the class representative.

37. The claims administrator will calculate the amount of money due each class member by dividing the number of participating class members into the balance of the settlement fund. Class members will receive one payment each even if they were booked into the jail more than one time during the class period.

38. The claims administrator will prepare for the Comptroller's Office a settlement distribution list in the form of a spreadsheet which will contain the legal names, current addresses, mailing addresses (if different), and TIN/EINs of the participating class members as well as the amount payable to each class member. The claims administrator will also provide the Comptroller's Office with all of the Substitute W-9 forms submitted by the class members (Page 2 of the claim forms).

39. Within 60 days of receipt of the distribution spreadsheet from the claims administrator, the Comptroller's Office will directly pay each participating class member. The Comptroller's Office may deduct any outstanding child support obligations and IRS/DOR tax liens from a participating class member's check if that class member owes any such obligations or liens.

40. Interest will accrue at an annual rate of 4.9% on any payments which are not made within 60 days after the receipt by the Comptroller's Office of the distribution spreadsheet and W-9 forms regardless of the reason for non-payment including inadequate funds in the Settlements and Judgments account due to appropriation issues or otherwise. Interest will only apply to the unpaid portion of the defendants' obligation. Interest, if any, will not be paid by separate check but will be included in the original check issued by the Comptroller's Office.

41. The Comptroller's Office will be responsible for all tax withholding and reporting.

42. Each class member's check will be made payable only in his or her name or in the name of a deceased class member's estate. The check will be mailed to the class member at the address indicated on the claim form. Any change of address request must be made in writing and must be signed by the claimant.

43. If a participating class member is confined in a prison, hospital, or other institution and has provided the address of such institution for payment, the settlement check will be sent to that address unless the class member makes other acceptable arrangements in writing with the claims administrator.

XII. POST-DISTRIBUTION ADMINISTRATION

44. The Comptroller's Office will prepare all 1099s for class members who were issued a settlement check during the next regular tax-form processing period following the distribution and will prepare all other necessary tax forms relating to the settlement.

45. Within 60 days of mailing settlement checks to class members, the Commonwealth will provide to the Attorney General's Office a settlement distribution report accounting for the distribution of the settlement fund, including attorney's fees and expenses. This report will be

provided to class counsel by the Attorney General's Office. Thereafter, the Attorney General's Office will request quarterly updates from the Commonwealth concerning the status of payments (or checks issued) and balance of the settlement fund remaining uncashed pursuant to this agreement. These updates will be provided to class counsel by the Attorney General's Office.

46. After one year from the original date on which the last check is issued, the Attorney General's Office will request a Final Report from the Commonwealth accounting for the distribution of the settlement fund, reporting the status of payments (or checks issued) and total amount transferred to the Unpaid Check Fund.

47. Class members will be informed that all settlement checks must be cashed within sixty days. Within one year of the original date of issue, class counsel may request, through the Attorney General's Office, that the State Treasurer's Office reissue a check to any affected class member.

48. If checks are returned as undeliverable to the Comptroller's Office, these checks will be forwarded to class counsel who will then attempt to locate the affected class members. The Comptroller's Office will not assume any responsibility for attempting to locate class members for uncashed or undeliverable checks nor will the Commonwealth incur any additional attorney's fees or costs for class counsel's attempt to do so.

49. If a check is uncashed or unclaimed after one year from the original date of issue, the funds will be moved to the Commonwealth's Unpaid Check Fund. Any affected class member or her legal representative may claim the money by filing an Unpaid Check Fund Claim Form with the State Treasurer.

50. If any settlement check is not cashed or claimed within three years of the original date of issue, monies for uncashed or unclaimed checks will be moved from the Unpaid Check Fund to the Commonwealth's Abandoned Property Fund. Any affected class member or her legal representative may later claim the money from the State Treasurer pursuant to 960 C.M.R. 4.04 of the Massachusetts Abandoned Property Act.

51. All funds or monies referred to herein will be transferred in accordance with State Treasury procedures and State finance laws.

XIII. DECEASED CLASS MEMBERS

52. If a class member is deceased, an authorized representative may file a Settlement Claim Form on behalf of the estate. However, the representative must provide to the Claims Administrator documentation that an estate has been established in accordance with the law and that he or she is the duly appointed administrator or executor.

XIV. RELEASE AND AGREEMENT TO DEFEND, INDEMNIFY AND HOLD HARMLESS.

53. In consideration of payment of the settlement fund, the plaintiff class members, including those class members who do not file claims but excluding those class members who request exclusion and file claims within the statute of limitations, hereby remise, release and forever discharge defendants ROBERT J. GARVEY and PATRICK J. CAHILLANE in their individual capacities, the Hampshire Sheriff's Office, the Commonwealth of Massachusetts and all of their present and former agents, servants, officers, employees and insurers from any and all past, present and future claims and liabilities of every name and nature arising out of or in any way related to the incidents, events, allegations or occurrences described in Charles V. Ryan IV, on behalf of himself and on behalf of others similarly situated v. Robert J. Garvey and Patrick J. Cahillane in their individual capacities, United States District Court Civil Action No. 05-30017-MAP.

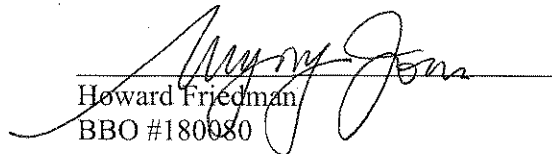
XV. EXHIBITS

54. The following Exhibits are attached to this Agreement:

- Exhibit A Class Notice to be mailed to class members.
- Exhibit B Claim Form
- Exhibit C Notice to be published in newspapers
- Exhibit D Notice to be posted at Hampshire Jail
- Exhibit E Press Release
- Exhibit F Documents regarding Analytics, Inc., the proposed Claims Administrator

For the plaintiffs and the plaintiff class,

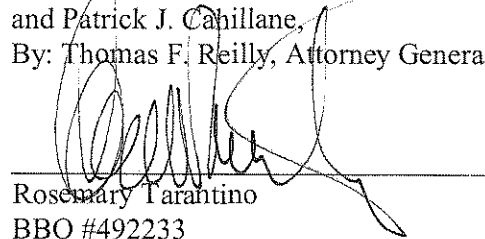
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