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12 SUPERIOR COURT FOR THE STATE OF CALIFORNIA
13 IN AND FOR THE COUNTY OF SACRAMENTO

—o0o—

15 MARY BULL, et al.,

16 Plaintiffs,

17 v.

18 COUNTY OF SACRAMENTO, et al.,

19 Defendants.

CASE NO. 01AS01545

**STIPULATED MOTION FOR
PRELIMINARY APPROVAL OF
PROVISIONAL SETTLEMENT CLASS AND
SETTLEMENT OF CLASS ACTION**

20 DONIZETTI HALE, et al.,

21 Plaintiffs,

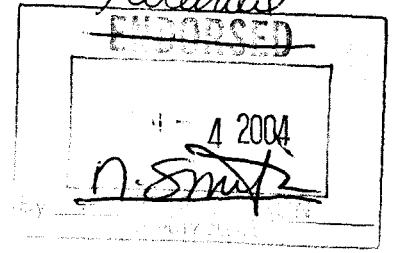
22 v.

23 COUNTY OF SACRAMENTO, et al.,

24 Defendants.

CASE NO. 02 AS 05862

**CONSOLIDATED
ORDER DATED 3/20/03**



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I. INTRODUCTION

Plaintiffs herein, eight individuals representing themselves and all others similarly situated in an action certified as a class action, by and through their counsel, Mark E. Merin of the Law Office of Mark E. Merin, jointly move with defendants herein, County of Sacramento, Sacramento County Sheriff Lou Blanas and Does 1 through 50, by and through their counsel, Terence J. Cassidy of Porter, Scott, Weiberg & Delehant, for this court's preliminary approval of the class action settlement so that notice may be given to the class and a fairness hearing on the proposed settlement scheduled with distribution of the settlement funds if the court approves the settlement at that fairness hearing.

Judicial preliminary approval of a class action settlement is provided for in Rule 1859(c) of the California Rules of Court.

Any party to a settlement agreement may submit a written notice of motion for preliminary approval of the settlement. The settlement agreement and proposed notice to class members must be filed with the motion, and the proposed order must be lodged with the motion.

II. STATEMENT OF FACTS/HISTORY OF LITIGATION

A. Facts

On March 14, 2000, seven plaintiffs were arrested at a Board of Forestry hearing in Sacramento, California, on minor misdemeanor charges and transported to the Sacramento County Jail where they were subjected to strip searches, in groups. They were required to expose their genitalia for inspection and, during those searches, were able to see and could be seen by other arrestees being searched.

On September 14, 2000, plaintiffs, on behalf of themselves and other similarly situated, filed a group government tort claim against the County of Sacramento, Sheriff Lou Blanas and unknown Sheriff's Deputies alleging the strip searches they underwent violated their statutory and constitutional rights and requesting declaratory and injunctive relief and damages.

Notice of rejection of plaintiffs' claim was received on September 27, 2000, and on March 13, 2001, plaintiffs, on behalf of themselves and all those similarly situated, filed a class action complaint alleging defendants' strip search policies violated plaintiffs' state and federal constitutional rights and

1 California Penal Code § 4030 which prohibits strip searches of persons arrested on infractions or
2 misdemeanor charges not involving drugs, weapons or violence, unless there is reasonable suspicion to
3 believe that a search would be productive of contraband, and requires that all strip searches be performed
4 outside of the view of persons not participating in the searches.

5 For two and a half years the parties vigorously litigated the various issues raised in the litigation
6 and engaged in extensive discovery, described more particularly below, following which they agreed to
7 mediate the dispute before the Honorable Raul Ramirez. Beginning in late August 2003, the parties have
8 met for 13 days of mediation and negotiated the settlement described herein which they now present to the
9 court for approval.

10 **B. History of the Litigation**

11 Following initial discovery, plaintiffs moved for redesignation of the complaint as Class II and, on
12 November 7, 2001, moved for certification of the complaint as a class action on behalf of all persons
13 arrested on infractions or misdemeanors not involving drugs, weapons or violence and strip searched at
14 the Sacramento County Jail prior to arraignment. Following several hearings, issuance of tentative
15 rulings, and motions for reconsideration, the court approved certification of the action as a class action in
16 March 2002. (An index of all pleadings filed by the parties is attached hereto as Exhibit "1".)

17 On November 19, 2002, plaintiffs moved for summary adjudication on all plaintiffs' claims and on
18 defendants' affirmative defenses. On November 26, 2002, defendants filed their cross-motion for
19 summary judgment. On January 3, 2003, the court issued its ruling on the cross-motions and found that
20 defendants were liable to the class of plaintiffs for strip searches in violation of Penal Code § 4030 and the
21 California Constitution, and held that each plaintiff was entitled to minimum statutory damages of \$1,000.
22 (A copy of Judge Thomas Cecil's decision is attached hereto as Exhibit "2".)

23 Central to the plaintiffs' case was proof of the defendants' policy of strip searching, in groups, all
24 persons whom they intended to house in the Jail's general population. The Jail's policies have been
25 revised, effective June 6, 2003, so that group searches no longer occur, and pre-arraignment detainees are
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1 searched only if there is reasonable suspicion that the detainee is concealing contraband or weapons, that a
2 search would produce that contraband, and the strip search is approved, in writing, by a supervisor.

3 Defendants moved for judgment on the pleadings and filed a writ petition in the Court of Appeal
4 in an attempt to have the class action decertified. The motion was denied and the writ was denied.

5 On February 20, 2003, the court granted plaintiffs' motion to consolidate the within action with a
6 similar action styled *Hale v. County of Sacramento* in which Ms. Hale, arrested on a misdemeanor battery
7 charge, was strip searched prior to arraignment.

8 On March 25, 2003, plaintiffs filed a federal action on behalf of all those persons arrested for non-
9 violent, non-drug or weapons related offenses who were subjected to strip searches at the Sacramento
10 County Main Jail prior to arraignment in violation of federal rights which were not included in the state
11 court litigation, since the federal claims were dismissed by Judge Cecil in response to defendants' motion
12 for summary adjudication. Defendants moved to dismiss the federal claim on the grounds of *res judicata*,
13 but the court permitted plaintiffs to amend their complaint to include those plaintiffs whose claims were
14 not pending before the state court. That order has been stayed, pursuant to stipulation of the parties,
15 pending the results of the mediation of this state strip search class action.

16 The parties have stipulated that the class, as originally certified, may be expanded to include all
17 misdemeanants as well as those persons who could be proper parties to the federal action. The expanded
18 class will include persons arrested during the relevant period and charged with felonies not involving
19 drugs, weapons, or violence and strip searched at the Sacramento County Jail prior to arraignment.

20 As originally certified, the class was limited to persons arrested on misdemeanors or infractions,
21 not involving drugs, violence or weapons. The class has been expanded, by stipulation, to include all
22 persons arrested during the relevant period on infractions or misdemeanor charges who were strip
23 searched at the Sacramento County Jail prior to arraignment and all persons arrested on felony charges not
24 involving drugs, weapons or violence who were strip searched prior to arraignment. The class has been
25 expanded because defendants had the practice of strip searching people in groups and such persons could
26 claim damages under the state and federal Constitutions for such treatment. Since the class has been

1 expanded, all persons in the class are being given an opportunity to opt out of the settlement even though
2 such notices and an opportunity to opt out were earlier given to the narrower class originally certified.

3 The parties have engaged in extensive discovery to establish the relevant policies and practices,
4 and to determine the number and identity of persons in the class. (An index of the discovery practice is
5 attached hereto as Exhibit "3".)

6 III. SUMMARY OF APPLICABLE LAW

7 A. State law:

8 1. Penal Code § 4030:

9 Penal Code § 4030 was enacted with the express intent to protect the state and federal
10 constitutional rights of pre-arraignment arrestees detained for minor offenses. (Penal Code § 4030(a).)
11 Penal Code § 4030(f) prohibits visual body cavity searches and strip searches of pre-arraignment arrestees
12 "held in custody on a misdemeanor or infraction offense, except those involving weapons, controlled
13 substances, or violence," unless "a peace officer has determined there is reasonable suspicion based on
14 specific and articulable facts to believe such person is concealing a weapon or contraband, and the strip
15 search will result in the discovery of the weapon or contraband." The subsection further provides that no
16 strip search may be conducted without the prior written authorization of a supervising officer on duty and
17 that the authorization "shall include the specific and articulable facts and circumstances upon which the
18 reasonable suspicion determination was made by the supervisor."

19 Penal Code § 4030(m) provides that all strip searches "shall be conducted in an area of privacy so
20 that the search cannot be observed by persons not participating in the search."

21 Penal Code § 4030(p) provides that any person who suffers damages as a result of a violation of
22 4030 may recover actual damages or \$1,000, which ever is greater, in addition to other relief the court
23 may award, including reasonable attorney's fees.

24 2. California Constitution:

25 Article I, § 1 of the California Constitution states that privacy is an inalienable right. In *Hill v.*
26 *National Collegiate Athletic Association*, 7 Cal.4th 1, 26 Cal.Rptr. 834 (1994), the California Supreme

1 Court set out clear and detailed guidelines for courts to follow in addressing alleged violations of
2 California's Right to Privacy.

3 On summary adjudication, the Honorable Thomas Cecil found that defendants' violated the
4 California State Constitutional rights of all persons who were strip searched in groups or without
5 reasonable suspicion to believe they were concealing contraband and that a strip search would result in the
6 discovery of such contraband.

7 3. Federal Law:

8 Since 1979 when the Supreme Court decided *Bell v. Wolfish*, 441 U.S. 520, 558, 99 S.Ct. 1861,
9 1884 (1979), the court has held that routine visual body cavity inspections of pre-trial detainees must be
10 "reasonable" under the Fourth Amendment, and that the determination of whether a challenged search is
11 reasonable requires a balancing test:

12 . . . balancing of a need for the particular search against the intrusion of
13 personal rights that the search entails. Courts must consider the scope of the
14 particular intrusion, the manner in which it is conducted, the justification for
15 initiating it, and the place in which it is conducted.

16 441 U.S. at 559, 99 S.Ct. at 1884.

17 The Court of Appeal for the Ninth Circuit has found visual body cavity searches to be
18 unreasonable and unconstitutional since 1984. In that year, the Ninth Circuit applied the test of
19 reasonableness to a strip search of a pre-arraignment detainee at a county jail and held that a pre-
20 arraignment strip search for a person arrested for a minor offense is unconstitutional absent an
21 individualized suspicion that such arrestee is carrying or concealing contraband or is suffering from a
22 communicable disease. *Giles v. Ackerman*, 746 F.2d 614, 619 (9th Cir. 1984). The fact that an arrestee
23 might ultimately be intermingled with the general population did not, by itself, justify a strip search, as
24 such intermingling at the pre-arraignment stage was found to be "both limited and avoidable." *Id.* 745
25 F.2d at 618.

26 In 1988, the Ninth Circuit decided *Kennedy v. Los Angeles Police Department*, 901 F.2d 702 (9th
Cir. 1990). There, plaintiff was arrested and charged with grand theft, a felony, after a dispute with a

1 roommate concerning ownership of a T.V. She was stripped and subjected to a visual body cavity search
2 after she was booked and before she was placed in the general population. In that case the court found
3 that a blanket policy that subjected all felony arrestees to a visual body cavity search upon booking in the
4 county jail was a violation of the Fourth Amendment, in that the felony/misdemeanor classification was
5 not "reasonably related to the institution's objective of maintaining security." 901 F.2d at 714.

6 In 1992, the Ninth Circuit decided *ActUp!/Portland v. Bagley*, 971 F.2d. 298 (9th Cir. 1992).

7 There, the court summarized the rule regarding strip searches as follows:

8 At the time appellees were searched, it was clearly established in this circuit
9 that it is unlawful to strip search an arrestee brought to a jail facility on
10 charges of committing a minor offense, unless the officer directing the
11 search possesses a reasonable suspicion that the individual arrestee is
12 carrying or concealing contraband. *Giles v. Ackerman*, 746 F.2d 614, 617
13 (9th Cir. 1984), cert. denied, 471 U.S. 1053, 105 S.Ct. 2114. Reasonable
14 suspicion may be based on "such factors as the nature of the offense, the
15 arrestee's appearance and conduct, and the prior arrest record." *Id.*
16 Adhering to the Supreme Court's direction in *Bell v. Wolfish*, 441 U.S. 520,
17 529, 99 S.Ct. 1861, 1884 (1979), the *Giles* test accounts for the fact that
18 local jail facilities frequently confront difficult security problems, and
19 balances those facility's interests in controlling such problems against the
20 privacy interests of arrestees. See, 746 F.2d at 617.

21 917 F.2d at 301.

22 The court in *ActUp!/Portland v. Bagley*, *supra*, noted that arrestees were strip searched "in a semi-
23 public area, observed by other deputy marshals and other individuals also in federal custody." Abhorring
24 such lack of privacy, the court stated that "the Fourth Amendment requires that any strip search be
25 conducted in a reasonable manner, and accordingly the officers must respect arrestees' privacy interests."

26 4. California Class Action Law:

Class actions in California are generally governed by Code of Civil Procedure § 382 which
authorizes class actions in "suits of common or general interest" as follows:

If the consent of anyone who should have been joined as a plaintiff cannot
be obtained, he may be made a defendant, the reason thereof being stated in
the complaint; and when the question is one of common or general interest,
of many persons, or when the parties are numerous or it is impracticable to
bring them all before the court, one or more may sue or defend for the
benefit of all.

1 Because Code of Civ. Proc. § 382 does not establish specific statutory requirements for class
2 actions, the California Supreme Court has “urged trial courts to be procedurally innovative, encouraging
3 them to incorporate procedures from outside sources in determining to allow the maintenance of a
4 particular suit. More specifically, we have directed them to Rule 23 of the Federal Rules of Civil
5 Procedure.” *City of San Jose v. Superior Court*, 12 Cal.3d 447, 453, 115 Cal.Rptr. 797 (1974).

6 Class action certification under Federal Rule 23 has been the preferred method for dealing with
7 cases challenging blanket jail pre-arraignment strip search policies. See, *Smith v. Montgomery County*,
8 573 F.Supp. 604 (Dist. MD 1983); *Mack v. Suffolk County*, 191 F.R.D. 16 (Dist. Mass 2000); *Nielsen v.*
9 *York County*, 219 F.R.D. 19 (Dist. Maine 2003); *Tardiff v. Knox County*, 218 F.R.D. 332 (Dist. Maine
10 2003); *Doe v. Calumet City, Illinois*, 128 F.R.D. 93 (ND Ill. 1989); *Marybeth G v. City of Chicago*, 723
11 F.2d 1263, 1267, fn.2 (7th Cir. 1983); *Maneely v. City of Newburgh*, 208 F.R.D. 69 (SD NY 2002).

12 On April 9, 2004, the First District Court of Appeal in *Tardiff v. Knox County, et al.*, consolidated
13 with *Nielsen v. York County, et al.*, upheld the certification of two blanket strip search cases under Federal
14 Rule 23(b)(3). See, Slip Opinion attached hereto as Exhibit “4”.

15 The advantages of certification in blanket strip search cases is manifest where the common issues
16 of law or fact predominate over individual issues. In the cases before this court for preliminary approval
17 of the proposed settlement, the benefits to the parties include; for defendants a complete settlement of all
18 claims of persons in the class with claims for damages arising during the period from March 14, 2000, to
19 June 6, 2003, the date on which new policies protecting pre-arraignments’ interests were implemented,
20 and obtaining *res judicata* effect of the settlement. For the plaintiffs, the settlement of the class action
21 provides a fund adequate to pay claims of all those persons submitting the requisite claim form and
22 substantiating documentation at a level at or above the minimum payment to which they would otherwise
23 be entitled if they had established their individual entitlement to damages under the relevant statutes,
24 without the consumption of time and uncertainty litigation entails.

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IV. OUTLINE OF PROPOSED SETTLEMENT

A. Purpose:

The purpose of the proposed settlement is fully and finally to resolve all claims for damages which any person strip searched at the Sacramento County Jail, prior to arraignment, during the period from March 14, 2000, through and including June 6, 2003, might have under applicable state and federal statutory and constitutional law; to provide adequate compensation for each such person; to ensure that defendants, once the settlement funds have been distributed, shall be fully and finally relieved of all further liability to any persons in the class and bound by the court's final judgment; and to provide a mechanism by which persons wishing to opt out of the proposed settlement either to abandon their claims or to prosecute them in their own behalf, or to challenge the fairness of the proposed settlement, may do so.

To accomplish the above-stated purposes, the parties have entered into extensive negotiations, facilitated by mediator former federal judge, Raul Ramirez and negotiated a proposed settlement, a copy of which is attached hereto as Exhibit "5".

The principle provisions of the attached settlement are the following:

B. Description of Class Members

The class certified by the Sacramento County Superior Court was all persons arrested on infractions or misdemeanor charges not involving drugs, weapons or violence, who were strip searched prior to arraignment on such charges without a peace officer having reasonable suspicion to believe that a strip search would be productive of contraband or weapons. Because, on summary adjudication, the court held that all persons strip searched in groups in violation of Penal Code § 4030(m) also suffered a violation of their rights entitling them to minimum damages, and because federal law does not distinguish between misdemeanor and felony arrests, the class definition, by stipulation, has been expanded herein to apply to all misdemeanants strip searched at the Sacramento County Jail during the relevant period.

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1 The allegations in the pending federal complaint are broad enough, relying upon federal law, to
2 include persons charged with felonies not involving drugs, weapons, or violence and strip searched, prior
3 to arraignment, at the Sacramento County Jail from March 7, 2002, through June 6, 2003.

4 In order to include and bind all persons strip searched prior to arraignment at the Sacramento
5 County Jail who could conceivably have claims against defendants, the parties have stipulated that the
6 following persons will qualify for participation in the class of claimants eligible to submit claim forms:

7 All persons arrested on infractions and/or misdemeanors and strip searched
8 at the Sacramento County Jail prior to arraignment, between March 14,
9 2000, and June 6, 2003, and all persons arrested on felonies not involving
10 violence, drugs or weapons who were strip searched at the Sacramento
11 County Jail prior to arraignment between March 14, 2000, and June 6, 2003.

12 Because the settlement class has been expanded over that certified, the settlement provides for notice to
13 all class members of their right to opt out of the class even though an earlier notice of that right was given
14 to the class as previously defined.

15 **C. Compensation provided by settlement:**

16 While the vast majority of persons strip searched prior to arraignment at the Sacramento County
17 Jail underwent a perfunctory group search, many persons experienced particularly damaging treatment or
18 were in categories making them particularly vulnerable to the indignities and humiliation of a strip search
19 and of a search performed in a group where the person search could be observed by others and, in turn,
20 could observe other inmates being strip searched.

21 The proposed settlement provides three tiers of payments which will be made based on review of
22 answers provided on claim forms submitted by class members and on the basis of a database maintained
23 by defendants.

24 Tier 1: Persons in the class who were strip searched during the relevant period at the Sacramento
25 County Jail will receive \$1,000. If a claimant was strip searched more than once, the claimant will receive
26 \$1,000 for a second strip search and \$500 for a third strip search, for a maximum possible total of \$2,500.

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1 Tier 2: If, in addition to experiencing a strip search at the Sacramento County Jail, the claimant is
2 in any of the following categories, points valued at \$250 each will be awarded:

- 3 • under age 21 or over age 60 – 2 points;
- 4 • physical or mental disability – 2 points;
- 5 • obese (according to chart) – 2 points;
- 6 • pregnant – 4 points;
- 7 • required to remove religious garments – 2 points;
- 8 • required to remove piercing in private areas – 2 points;
- 9 • required to retract foreskin – 2 points;
- 10 • required to remove hair extensions – 1 point;
- 11 • menstruating female – 4 points;
- 12 • observed by persons of the opposite sex – 2 points;
- 13 • touched in a private area – 4 points;
- 14 • subjected to foul, demeaning language or nasty jokes – 2 points;
- 15 • required to bend over and spread buttocks or labia multiple times – 2 points;
- 16 • made to jump/dance during search – 4 points.

17 The maximum additional payment for persons qualifying for tier 2 payments is \$3,500.

18 Tier 3: Persons who suffered any of the following will be entitled to additional payments as
19 follows:

- 20 • forcible strip search – 20 points (\$5,000);
- 21 • received counseling with the first event within 90 days of the incident – 10 to 20
22 points (\$2,500 to \$5,000);
- 23 • diagnosed with a psychological injury as a result of the strip search (if first therapy
24 session or medical appointment was within 90 days of the strip search and the
25 person attended a total of no less than five therapy or medical appointments) – 30 to
26 100 points (\$7,500 to \$25,000);

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- suffered other significant ill effects of the strip search not included under any previous Tier 2 or Tier 3 category – up to 100 points (\$25,000).

Tier 1 through 3 awards may be combined for a maximum award of \$31,000 in addition to an award of \$5,000 if the claimant was subject to a forcible strip search.

D. Reduction Factors

Claimants submitting verified claims will have their claims reduced according to the formula set out below if they are in any of the groups for which a reduction of claims has been provided:

1. Claimants who were arrested for committing a misdemeanor involving violence, drugs or weapons will have any award made to them under Tier 2 or 3 reduced by 50%.

2. Claimants arrested for committing a felony not involving violence, drugs or weapons will have any awards made to them under Tier 2 or 3 reduced by 50%, but if the felony arrest occurred between March 14, 2000, and December 31, 2001, their entire award will be reduced by 50%.

3. Claimants incarcerated in county jail or state prison within five years preceding the first of their qualifying strip searches will have awards made under Tier 2 or 3 reduced by 75%.

4. If a claimant submits a fraudulent claim for payment under certain of the Tier 3 categories (sought therapy resulting from the strip search; was diagnosed with a psychological injury resulting from the strip search, or suffered other significant effects from the strip search) no award under Tier 3 will be permitted.

E. Process for Claims Submission

Following preliminary approval of the proposed settlement by this court, the parties, through a retained firm¹ specializing in class action claim administration, will notify each of the class members of the terms of the proposed settlement and provide each claimant with a claim form to be completed and returned within the specified 90 day period. The notice and claim form, copies of which are attached hereto as Exhibit “6”, direct the claimant to answer questions on the form which will determine the

¹ The parties have agreed that Gilardi and Company will act as Claims Administrators and are requesting the court appoint them for that purpose.

1 amount of compensation the claimant will receive. The claimant's responses are supplemental to
2 information contained in the database which will be used to determine eligibility for payment and
3 entitlement to certain additional payments for reasons such as: multiple strip searches and age.
4 Additionally, the database will be used to apply the reduction factors applicable to a portion of those
5 claimants submitting claims.

6 The Claims Administrator will not only mail the notice and claim form to the last known address
7 of each claimant, but will publish a summary form of the notice in mass media and will make attempts to
8 locate persons whose claim forms are returned as undeliverable or who are incarcerated, as shown on the
9 database of persons in jails or prisons within the state of California.

10 Claim forms will also be available to be downloaded from a website established by the class
11 Claims Administrator and will be provided by the Claims Administrator or by class counsel in response to
12 requests for such forms.

13 The claim form informs the claimant that class counsel will provide assistance to those class
14 claimants who require it if they contact the offices of class counsel.

15 Claim forms received by the Claims Administrator by the cut off date for submission of claims
16 will be examined. Based on the answers and support provided by the claimant and following comparison
17 with database information, the Claims Administrator will determine the number of points to be assigned
18 (dollar value) to the claim. Claims providing affirmative answers to questions indicating the possibility of
19 Tier 3 awards will be assigned values and those forms will be reviewed by defendants. If defendants
20 challenge any award to Tier 3 payments, counsel for the parties will review the Claims Administrator's
21 determination to see if they can agree on a valuation. If they cannot agree, the claim will be referred to the
22 Special Master² for decision which will be binding except in cases where the Special Master reviews a
23 form which claims damages for a diagnosis for psychological injury resulting from a strip search or a
24 claim form "other significant ill effects" experienced as a result of a strip search. In those instances, either
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26 ² The parties propose that Judge Raul Ramirez be appointed as the Special Master. He has agreed to serve
in that capacity.

1 party may appeal the Special Master's determination to the judge of the Sacramento County Superior
2 Court appointed to hear such appeals from the Special Master's rulings. The Superior Court Judge's
3 determination shall be final.

4 Defense counsel may question claimants submitting documentation for a Tier 3 award and may
5 require claimants to submit to an agreed medical examiner's examination or to a deposition. All costs of
6 such procedures will be born by the defense.

7 **F. Opt Outs**

8 In the notice to members of the class, information will be provided as to how persons choosing to
9 "opt out" of the class may do so. If more than 40 claimants opt out of the class, defendants reserve the
10 right to withdraw from the settlement in which case the matter will be returned to the mediator for further
11 mediated negotiation and, if those negotiations are not successful, for return to the civil active list for trial.

12 **G. Settlement Funds for Claimants**

13 Defendants will deposit \$11.5 million dollars in an escrow account by June 30, 2004. Following
14 the cutoff date for submission of claims and after the resolution of all appeals to the Special Master or to
15 the Superior Court Judge, the value of all claims will be totaled and settlement checks distributed by the
16 Claims Administrator. If the total of all approved claims exceeds the funds available, payments to
17 claimants will be reduced proportionately and the entire fund exhausted.

18 If approved claims total less than \$11.5 million dollars, the balance remaining in the fund will
19 revert to defendants.

20 **H. Claims Administration Fund**

21 Defendants will deposit \$500,000 to cover costs relating to claims administration. Negotiations
22 have concluded (although no agreement has been signed) with Gilardi and Company, a class Claims
23 Administrator, who has agreed to provide services relating to notification to claimants, receipt of class
24 claim forms, review and valuation of claims, documentation of action taken, and preparation of periodic
25 and final accountings. The Claims Administrator has agreed to cap the cost of these services at an amount
26 less than the total amount allocated for these services.

1 In addition to claims administration costs and expenses, the expenses of the Special Master will be
2 charged to the class claim fund as expenses relating to Claims Administrator.

3 **I. Attorneys' Fees**

4 Defendants will deposit \$3 million dollars for attorney's fees and costs incurred by class counsel
5 for representation of representative plaintiffs and class members. This amount is 20% of the total
6 settlement which is within the range of attorneys fees awarded in similar cases and substantially less than
7 the 33 $\frac{1}{3}$ % specified in class counsel's contingency fee agreement with representative plaintiffs.

8 Plaintiffs' counsel reserve the right to impose a nominal charge to claimants who request assistance to
9 complete and submit claim forms.

10 **J. Payment to Representative Plaintiffs**

11 Defendants will allocate \$410,000 from the \$11.5 million dollars for payment to the individual
12 named class representative plaintiffs. This amount will not be subject to proportional reduction in the
13 even the entire fund available for claims payments is exhausted.

14 **K. The Settlement is Fair and an Appropriate Method to Resolve this Litigation**

15 As a result of the discovery in this action, the parties agree that approximately 16,100 potential
16 claimants fall within the definition of the class agreed to by the parties. Experience from settlement of
17 other class action strip search cases indicates that it is probable that 25% of the class or fewer will submit
18 completed claim forms. Persons who have been strip searched at the Sacramento County Jail comprise a
19 population difficult to track: many are transient; many may be in custody in various institutions or
20 facilities; many may want nothing to do with this litigation.

21 This settlement is structured to compensate persons strip searched at the Sacramento County Jail at
22 or above the minimum specified in Penal Code § 4030 – \$1,000. Persons strip searched multiple times
23 will recover up to \$2,500 for undergoing the strip searches and may qualify for additional payments (up to
24 \$3,500) if their experience was such as is presumed to be associated with emotional distress or other
25 general damage.

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1 Finally, up to an additional \$30,000 may be recovered by persons who had other significant
2 experiences or damages, or underwent forcible strip searches.

3 These settlement amounts specified herein are above those typically paid in class action cases
4 because the vast majority of persons strip searched at the Sacramento County Jail were strip searched in
5 groups.

6 **L. Advantages of Settlement**

7 Many of the persons entitled to compensation under this settlement fall into categories whose
8 claims could be legally disputed. Thus, for instance, most strip search cases hold there is per se
9 reasonable suspicion to strip search persons charged with crimes involving drugs, weapons or violence.
10 Persons arrested for these crimes are, nonetheless, included in this settlement because they were strip
11 searched in groups and/or because the crimes for which they were arrested arguably fall outside of the
12 categories for which reasonable suspicion is presumed.

13 Even if entitlement to compensation is not disputed, the damages suffered by a person being strip
14 searched is disputed and the time and expense necessary to resolve that dispute makes settlement at the
15 levels obtained through this agreement desirable.

16 If the matter is not settled and proceeds to trial, multiple trials could take years to complete and
17 appeals thereafter could delay ultimate satisfaction of any judgments for several more years making
18 settlement and resolution as provided in the accompanying documents desirable and appropriate.

19 **V. CONCLUSION**

20 For all of the reasons stated herein, represented in the attached documents, and presented at the
21 hearing of this request for preliminary approval of the settlement, the parties jointly request the court to
22 sign the accompanying order to give preliminary approval to the stipulation of settlement, to appoint Hon.

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1 Raul Ramirez as Special Master, and to designate Gilardi and Company as the Claims Administrator, so
2 that the process of notifying the class members, receiving and reviewing the claims, finally approving the
3 settlement and effectuating the settlement can proceed.

4 DATED: June 4, 2004

Respectfully submitted,

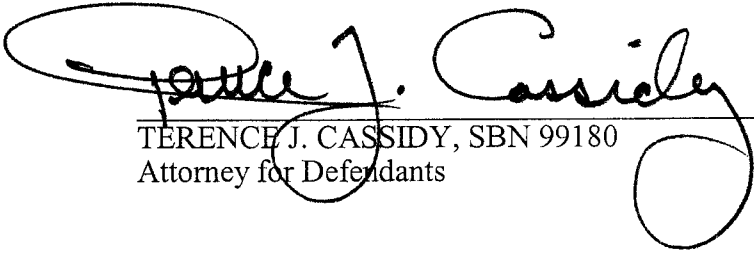
LAW OFFICE OF MARK E. MERIN


MARK E. MERIN, SBN 043849
Attorney for Plaintiffs

9 DATED: June 4, 2004

Respectfully submitted,

PORTER, SCOTT, WEIBERG & DELEHANT


TERENCE J. CASSIDY, SBN 99180
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