IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PENNY ALLISON and ZORAN HOCEVAR, individually and on behalf of a class of others similarly situated,

Plaintiffs,

v.

THE GEO GROUP, INC, in its official and individual capacities, and JOHN DOES 1 – 100, in their official and individual capacities,

Defendants.

2:08-cv-00467-JD

Judge Jan E. Dubois

CLASS ACTION

[PROPOSED] ORDER GRANTING FINAL APPROVAL
TO CLASS ACTION SETTLEMENT AND JUDGMENT

THIS CASE coming on for hearing before the Honorable Jan E. Dubois pursuant to this Court's Order of March 2, 2010 in order for this Court to conduct a final fairness hearing to determine whether the proposed Settlement Agreement between the Parties is fair, reasonable and adequate, and to address Class Counsel's application for an award of attorney's fees and costs; and the Settlement Class Members being represented by Class Counsel and Defendant being represented by their attorney; AND THE COURT having read and considered the Settlement Agreement, the Notice Plan, and Memoranda of Law submitted by Class Counsel, having received evidence at the hearing, having heard arguments from Class Counsel and the Defendant, and having considered the submissions by Class Members, now makes the following:

FINDINGS OF FACT

1. This action was commenced on January 30, 2008, as a putative class action.

2. After over a year of intensive litigation, including extensive discovery and motion practice, and as a result of intensive, arm's length negotiations between Class Counsel and Defendant, including a settlement conference before former Magistrate Judge James K. Melinson, the Parties have reached accord with respect to a Settlement that provides substantial benefits to Settlement Class Members, in return for a release and dismissal of the claims at issue in this case against the Defendant ("Settlement Agreement"). The resulting Settlement Agreement was preliminarily approved by the Court on March 2, 2010. *See* Docket Entry No. 61.

3. As part of the Order Granting Preliminary Approval, this Court approved a proposed Notice Plan and Class Notice, which provided Settlement Class Members notice of the proposed Settlement. The Notice Plan provided an opportunity for Class Members to file objections to the Settlement, and an opportunity to opt-out of the Settlement.

4. As of the July 1, 2010 deadline for the filing of objections, none were filed. Given the size of this Settlement, and the Notice Plan described above, this Court finds that the non-existence of any objections is indicative of the fairness, reasonableness and adequacy of the Settlement with the Defendant.

5. The settling Parties have filed with the Court an affidavit from Ryanne Cozzi of Gilardi & Co. (the Settlement Administrator), declaring that the mailing and publication of the Court-approved notice, consistent with the Notice Plan, has been completed.

6. The Court finds that the published radio notice, the mailed notices, the posted notices at the Jails GEO operates and appropriate probation and parole offices, and the website notice constitute the best practicable notice of the Fairness Hearing, proposed Settlement, Class Counsel's application for fees and expenses, such notice constituted valid, due and sufficient notice to all members of the Class, and complied fully with the requirements of Rule 23 of the Federal Rules of Civil Procedure, the Constitution of the United States, the laws of Pennsylvania and any other applicable law.

7. Any persons who wished to be excluded from this action were provided an opportunity to "opt-out" pursuant to the Notice. As of the deadline to do so, July 1, 2010, only one person, Timothy Montgomery, has elected to opt out of the Settlement. Mr. Montgomery shall not be bound by the Settlement Agreement or the final judgment herein.

8. Settlement Class Members are bound by the: Settlement, Settlement Agreement, Release contained within the Settlement Agreement, and the Final Order and Judgment. Settlement Class Members do not have a further opportunity to opt-out of this Action.

9. Any Class Member who did not timely file and serve an objection in writing to the Settlement Agreement, to the entry of Final Order and Judgment, or to Class Counsel's application for fees, costs, and expenses, in accordance with the procedure set forth in the Class Notice and mandated in the Order Granting Preliminary Approval of Settlement, is deemed to have waived any such objection by appeal, collateral attack, or otherwise.

10. On the basis of all of the issues in this litigation, and the provisions of the Settlement Agreement, the Court is of the opinion that the Settlement is a fair, reasonable and adequate compromise of the claims against the Defendant in this case, pursuant to Rule 23 of the Federal Rules of Civil Procedure. There are a number of factors which the Court has considered in affirming this Settlement, including:

a. The liability issues in this case have been vigorously contested.

b. This Settlement has the benefit of providing relief to Class Members now, without further litigation, under circumstances where the liability issues are still vigorously contested among the Parties to this litigation. This Settlement provides Class Members with a substantial monetary benefit and equitable relief.

c. This Settlement is clearly a product of hard-fought litigation between the Parties, and not a result of any collusion on the part of Class Counsel or Counsel for the Defendant.

11. Class Counsel submitted to the Court and served on the Defendant their application for reasonable attorneys' fees, costs, and expenses consistent with the terms of the Settlement Agreement. This Court has considered Class Counsel's request and hereby _______________ the request.

12. The claims procedure established under the Settlement Agreement is fair, a simplified process, and workable. In any event, the Court will retain jurisdiction to work out any unanticipated problems.

13. The parties agree that an injunction is appropriate to ensure that Defendant complies with its revised written strip search policies at the Jails, as set forth in the Settlement Agreement.

NOW, THEREFORE, ON THE BASIS OF THE FOREGOING FINDINGS OF FACT, THE COURT HEREBY MAKES THE FOLLOWING CONCLUSIONS OF LAW:

14. This Court has jurisdiction over the Parties and the subject matter of this proceeding.

15. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the following Class is certified for purposes of final settlement:

> All persons who were placed into the custody of one or more of the Jails after being detained for misdemeanors, summary offenses, or other crimes that did not involve the possession or distribution of drugs, possession of weapons, crimes of violence, or felonies, who had no history of such charges, and did not behave in a manner at intake that would give intake officers reasonable suspicion that the inmate was carrying or concealing contraband, but were strip searched upon their admission into one or more of the Jails pursuant to Defendants' then-

existing strip search policy. Excluded from the class are Defendants and any and all of their respective affiliates, legal representatives, heirs, successors, employees or assignees. The Class Period is from January 30, 2006 to January 30, 2008 for George W. Hill Correctional Facility, Frio County Detention Center, Dickens County Detention Center, Tri-County Detention Center, and Newton County Correctional Center, and from January 30, 2005 to January 30, 2008 for Guadalupe County Correctional Facility.

16. The Court finds that, for the purpose of this Settlement, the requirements of Rule 23 of the Federal Rules of Civil Procedure are satisfied, and that a class action is an appropriate method for resolving the disputes in this litigation. All the prerequisites for class certification under Rule 23 are present. The Class Members are ascertainable and too numerous to be joined. Questions of law and fact common to all Class Members predominate over individual issues and should be determined in one proceeding with respect to all Class members. The Class Representatives claims are typical of those of the Class. The Class action mechanism is superior to alternative means for adjudicating and resolving this action.

17. The Class Representatives, Penny Allison and Zoran Hocevar, are entitled to and are hereby awarded a payment of $2,500.00 each, in recognition of the efforts they undertook in connection with this lawsuit. All Class Members who have made claims on the settlement are entitled to receive their *pro rata* share of the Settlement fund, not to exceed $400.00, after administrative expenses, attorneys' fees and expenses, and incentive awards are deducted from the fund.

18. Any unused monies will revert to The GEO Group, Inc.

19. Class Counsel are qualified, experienced, and have aggressively litigated this case, thereby demonstrating their adequacy as counsel for the Class. Joseph G. Sauder and Benjamin F. Johns of Chimicles & Tikellis LLP are hereby appointed as counsel for the Class.

20. The Court grants final approval of the Settlement Agreement, as being fair, reasonable and adequate, pursuant to Rule 23 of the Federal Rules of Civil Procedure.

21. The Courts finds that the request for attorneys' fees is reasonable.

NOW, THEREFORE, ON THE BASIS OF THE FOREGOING FINDINGS OF FACT AND CONCLUSIONS OF LAW, IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

22. The Parties' Joint Motion for Final Approval of the Proposed Settlement is GRANTED.

23. The Plaintiffs' Motion for fees of $899,700.00 and expenses of $7,500.00 and the payment of incentive awards to each of the named plaintiffs in the amount of $2,500.00 each is _______________. Plaintiffs' counsel are hereby awarded $ __________________ in fees and $ _____________________ in expenses.

23. The Settlement Class Representatives, Penny Allison and Zoran Hocevar, are entitled to and are hereby awarded a payment of $2,500.00 each in recognition of the efforts they undertook in connection with this lawsuit, All Class Members who have made claims on the Settlement are entitled to receive their *pro*

rata share of the Settlement Fund, not to exceed $400.00, after administrative expenses, attorneys' fees and expenses, and incentive awards are deducted from the fund.

24. This Action and all claims against the settling Defendant are hereby dismissed with prejudice, but the Court shall retain exclusive and continuing jurisdiction of the Action, all Parties, and Settlement Class Members, to interpret and enforce the terms, conditions and obligations of this Settlement Agreement.

25. All Class Members who have not timely filed an opt-out request are barred and enjoined from commencing and/or prosecuting any claim or action against the Defendant, and any Class Member who has not timely filed a request to exclude themselves shall be enjoined from initiating and/or proceeding as a class action in any forum.

26. Pursuant to 23 Pa. Cons. Stat. § 4305(b)(10) – and upon application by any domestic relations agent within thirty (30) days of this Order – any monies due to class members under the terms of this settlement shall be offset by any arrearages for child support obligations.

IT IS SO ORDERED.

Dated: ___________________

____
The Honorable Jan E. Dubois
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PENNY ALLISON and ZORAN HOCEVAR, individually and on behalf of a class of others similarly situated, Plaintiffs, v. THE GEO GROUP, INC, in its official and individual capacities, and JOHN DOES 1 – 100, in their official and individual capacities, Defendants.	2:08-cv-00467-JD Judge Jan E. Dubois CLASS ACTION

PLAINTIFFS' AND DEFENDANT'S MOTION FOR FINAL APPROVAL OF SETTLEMENT AND CLASS CERTIFICATION

Plaintiffs Penny Allison and Zoran Hocevar, on behalf of themselves and all others similarly situated, and Defendant, The GEO Group, Inc., respectfully submit this joint motion for final approval of settlement and class certification. Pursuant to Rule 23 of the Federal Rules of Civil Procedure – and for the reasons set forth in the accompanying memorandum of law – Plaintiffs and Defendant respectfully request that this Court grant final approval to the settlement and certify the settlement class pursuant to Rule 23.

Dated: September 27, 2010

FOR PLAINTIFFS AND THE CLASS:

/s/ David Rudovsky
David Rudovsky
Jonathan H. Feinberg
KAIRYS RUDOVSKY MESSING
& FEINBERG
The Cast Iron Building
718 Arch Street, Suite 501
Philadelphia, PA 19106
215.925.4400

Joseph G. Sauder
Benjamin F. Johns
CHIMICLES & TIKELLIS LLP
One Haverford Center
361 W. Lancaster Ave
Haverford, PA 19041
610.642.8500

Daniel C. Levin
Charles Schaffer
LEVIN, FISHBEIN, SEDRAN
& BERMAN
510 Walnut Street, Ste. 500
Philadelphia, PA 19106
215.592.1500

Christopher G. Hayes
LAW OFFICES OF
CHRISTOPHER G. HAYES
225 South Church Street
West Chester, PA 19382
610.431.9505

Jennifer R. Clarke
THE PUBLIC INTEREST LAW
CENTER OF PHILADELPHIA
125 S. Ninth Street, Suite 700
Philadelphia, PA 19107
215.627.7100

FOR DEFENDANT:

/s/ Carolyn P. Short
Carolyn P. Short
Shannon E. McClure
REED SMITH LLP
2500 One Liberty Place
1650 Market Street
Philadelphia, PA 19103
215.851.8100

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PENNY ALLISON and ZORAN HOCEVAR, individually and on behalf of a class of others similarly situated,

Plaintiffs,

v.

THE GEO GROUP, INC, in its official and individual capacities, and JOHN DOES 1 – 100, in their official and individual capacities,

Defendants.

2:08-cv-00467-JD

Judge Jan E. Dubois

CLASS ACTION

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' AND DEFENDANT'S MOTION FOR FINAL APPROVAL OF SETTLEMENT AND CLASS CERTIFICATION

David Rudovsky
Jonathan H. Feinberg
KAIRYS RUDOVSKY MESSING & FEINBERG
The Cast Iron Building
718 Arch Street, Suite 501
Philadelphia, PA 19106
215.925.4400

Joseph G. Sauder
Benjamin F. Johns
CHIMICLES & TIKELLIS LLP
One Haverford Center
361 W. Lancaster Ave
Haverford, PA 19041
610.642.8500

Counsel for Plaintiffs
[Additional Counsel on Signature Page]

Carolyn P. Short
Shannon E. McClure Roberts
REED SMITH LLP
2500 One Liberty Place
1650 Market Street
Philadelphia, PA 19103
215.851.8100

Counsel for Defendant The GEO Group, Inc.

Plaintiffs Penny Allison and Zoran Hocevar (together, "Plaintiffs"), on behalf of themselves and all others similarly situated, and Defendant The GEO Group, Inc. ("GEO"),[1] respectfully submit this Memorandum of Law in Support of Plaintiffs' and Defendants' Motion for Final Approval of Settlement and Class Certification. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the Parties respectfully request that this Court grant final approval to the Settlement, certify the action as a class action for purposes of settlement, and dismiss this action with prejudice as set forth in the Settlement.[2]

I. INTRODUCTION

The Settlement, which represents the culmination of over eighteen months of highly contested litigation between the Parties, provides substantial benefits to certain individuals who were strip searched upon admission to the six GEO Jails at issue in this case: the George W. Hill Correctional Facility; the Guadalupe County Correctional Facility; the Frio County Detention Center; the Dickens County Detention Center; the Tri-County Detention Center; and the Newton County Correctional Center (the "Jails").[3] *See* Amended Settlement Agreement dated

---

[1] Plaintiffs and Defendants shall be collectively referred to herein as the "Parties."

[2] Separately, Plaintiffs' Counsel will be filing a motion and supporting memorandum of law in support of their request for attorneys' fees, expenses, and incentive payments for the two named plaintiffs. The parties agreed that GEO has the right to contest Plaintiffs' counsel's application for attorney fees and costs. Amended Settlement Agreement (ECF No. 60-3) § III(D) at 11. GEO will contest Plaintiffs' counsel's application for attorney fees.

[3] Of the six Jails covered by the Settlement, GEO no longer operates the following four: the George W. Hill Correctional Facility; the Dickens County Detention

March 1, 2010 (the "Settlement") (Docket Entry No. 60-3). Plaintiffs allege that GEO violated the constitutional rights of Plaintiffs and Class members by illegally strip searching them in the absence of reasonable suspicion. The Class is defined as:

> All persons who were placed into the custody of one or more of the Jails after being detained for misdemeanors, summary offenses, or other crimes that did not involve the possession or distribution of drugs, possession of weapons, crimes of violence, or felonies, who had no history of such charges, and did not behave in a manner at intake that would give intake officers reasonable suspicion that the inmate was carrying or concealing contraband, but were strip searched upon their admission into one or more of the Jails pursuant to Defendants' then-existing strip search policy. Excluded from the class are Defendants and any and all of their respective affiliates, legal representatives, heirs, successors, employees or assignees. The Class Period is from January 30, 2006 to January 30, 2008 for George W. Hill Correctional Facility, Frio County Detention Center, Dickens County Detention Center, Tri-County Detention Center, and Newton County Correctional Center, and from January 30, 2005 to January 30, 2008 for Guadalupe County Correctional Facility.

Settlement at 2.[4]

The Settlement creates a fund valued up to $2,999,000.00 for the benefit of Class members who were committed to one of the Jails during the class period. *See* Settlement at §(I)(OO)-(defining the "Settlement Amount" to be $2,999,000.00). *See also, id.* at § (I)(NN) (providing that the entire Settlement Amount is to be "earmarked for the sole purpose of this case, and will not be utilized for any other payments or purposes.").

Center; the Newton County Correctional Center; and the Tri-County Detention Center.

[4] The Class Period is longer at Guadalupe County Correction Facility because the applicable New Mexico Statute of limitations is longer (three years instead of two).

There is a tiered-structure to GEO's obligation to pays into the Settlement Fund. The first $500,000 was paid into the fund to cover the costs of administration and claims. Settlement at § III(B)(1). The second contribution of $1,000,000 is to be paid after the close of the claims period. *Id.* at § III(B)(2).[1] The Third Contribution is ~~is~~to be paid into the settlement fund if the amount of claims received exceeds the amount of the Second Contribution; if the amount of the Second Contribution is exceeded by the amount of money necessary to pay the number of claims received, only the amount of money necessary to pay those claims need be paid (not the entire Third Contribution). *Id.* at § III(B)(3) ("In the event the amount of claims received: (a) do not exceed the amount of Second Contribution, GEO does not have to pay the Third Contribution into the Settlement Fund until it receives notice, if any, from the Settlement Administrator that such contribution is needed to satisfy any claims; or (b) exceeds the amount of the Second Contribution but does not rise to the level of the Third Contribution amount, GEO shall pay into the Settlement Fund an amount of the Third Contribution identified by the Settlement Administrator as necessary to satisfy the claims received."). However, the entire amounts of the Second and Third Contributions were to be "set aside by GEO and earmarked for

[1] The parties have mutually agreed to keep the Claims Period open longer than the September 14, 2010 original claims date; all claims postmarked on or before September 30, 2010 will be considered timely.

the sole purpose of funding the Settlement Fund, as needed." *Id.* at (III)(B)(2)-(3). Any money that is unused reverts to GEO. *Id.* at § III(C)(1).[5]

As set forth in the Settlement, Class members who timely submitted a claim form will be entitled to a check in the amount of $400.00. *Id.* at § (III)(C)(1). Hundreds of class members elected to participate in this aspect of the settlement and sent in timely claim forms. Only one class member opt-ed out. None objected.

In addition to this benefit, the Settlement also provided substantial non-monetary benefits to the Class. Specifically, the settlement agreement expressly provides that upon the filing of (and as a result of) this lawsuit, GEO "stopped strip searching detainees admitted to the Jails without reasonable suspicion ...." *See* Settlement at § (III)(A)(1). This commitment to stop conducting blanket strip searches remained in effect from the filing of this lawsuit in January of 2008 until around the time that the Third Circuit recently issued its decision in *Florence,* discussed *infra.*

In short, the Parties respectfully submit that this Settlement is fair, adequate, and reasonable for the Class (particularly given the current state of the law after *Florence*), and that the requirements for final approval are satisfied.

---

[5] The reverter and the $400 per claim cap are material settlement terms. Settlement Agreement § III(C)(1) ("Both the reverter and the $400 per claim cap are critical, essential and nonnegotiable terms of the settlement, and that nonacceptance of theses terms makes this agreement null and void, unless both parties agree to any changes in a signed writing.").

II. BACKGROUND

A. Plaintiffs' Allegations and GEO's Defenses.

On January 30, 2008, Plaintiffs filed this putative class action lawsuit against GEO challenging its alleged practice of strip searching all arrestees regardless of crime, and regardless of whether the officers at intake had reasonable suspicion justifying a search. Plaintiffs allege that GEO maintained an unconstitutional strip search policy and practice throughout the class period by maintaining a strip-search policy whereby it conducted visual strip searches on all pretrial detainees upon their admission to the Jails in the absence of reasonable suspicion, including those charged with misdemeanor offenses or other minor crimes (referred to as a "blanket" strip search).

GEO denies that it had a blanket strip search policy, and contends that pretrial detainees were only strip searched when reasonable suspicion existed. GEO further contends that it only conducted strip searches where appropriate, and that to the extent that any practice of strip searching all pretrial detainees existed, it was a result of the decision-making of the county or governmental units for which GEO operated Jails, and was contrary to GEO's own written Corporate Policy. All pretrial detainees who entered the jails were going to inter-mingle with the general population. GEO's sole purpose in strip searching any detainee was to prevent contraband from entering the general population (including drugs, weapons and money). GEO contends to have had a long history of recovering contraband in the jails via intake strip searches.

In response to Plaintiffs' lawsuit, to the extent any jail had a strip search practice of permitting strip searches with less than reasonable suspicion, GEO immediately took steps to effectively implement all of the injunctive relief Plaintiffs sought in the Complaint. Specifically, GEO, through its outside counsel Reed Smith, LLP, immediately launched an extensive investigation into what strip search practices were employed at each of the potentially affected Jails. As a result of this investigation, GEO took steps to recommit to its Corporate Policy to ensure that all Jails employed a policy that no person detained for misdemeanors, summary offenses, or other crimes that did not involve the possession or distribution of drugs, possession of weapons, crimes of violence, or felonies, who had no history of such charges, and did not behave in a manner at intake that would give intake officers reasonable suspicion that the inmate was carrying or concealing contraband, was strip searched upon their admission to the Jails. GEO also implemented a strip search checklist (or "log") for use at each Jail, which is now completed by intake personnel for each detainee. Detainees are only strip searched after that checklist or log is filled out, and only if the checklist or log permits a strip search under Plaintiffs' understanding of the law – i.e., only if the checklist or log provides reasonable suspicion. GEO ensured that all intake personnel and all supervisory employees were affirmatively made aware of these requirements, and ensured that new employees would be trained on these procedures before working at intake.

B. History of the Litigation.

After the Amended Complaint in this action was filed on March 28, 2008, a new *en banc* decision was issued by the Eleventh Circuit Court of Appeals, *Powell v. Barrett*, 541 F.3d 1298, 1310 (11th Cir. 2008) (en banc), which GEO contends markedly changed the landscape of strip search litigation by calling into question decades of appellate interpretation of the seminal case of *Bell v. Wolfish*, 441 U.S. 520, 559 (1979). As a result of *Powell*, GEO filed a Motion for Judgment on the Pleadings, which required extensive briefing by the Parties. *See* Docket Entry Nos. 29, 35, 37, 39, and 40.

On March 25, 2009, this Court issued a memorandum and order that denied GEO's Motion for Judgment on the Pleadings. *See* Docket Entry No. 41. Shortly thereafter, GEO moved for certification for immediate appellate review pursuant to 28 U.S.C. §1292(b) (the "1292(b) Motion"), which was opposed by Plaintiffs and also required extensive and complicated briefing. *See id.* at Nos. 43, 44, 48, 49. While the § 1292(b) Motion was pending, the parties entered into settlement negotiations.

In addition to this and other motion practice before the Court, the Parties have engaged in discovery over the course of this litigation.[6] This included serving and responding to interrogatories and document requests. The parties also exchanged initial disclosures pursuant to FED. R. CIV. P. 26(a). GEO gathered and produced over 1,200 pages of documents to Plaintiffs, which were reviewed and analyzed by their counsel. Plaintiffs' counsel also provided counsel for GEO with

---

[6] On October 7, 2008, the Court issued an order that, *inter alia*, granted in part and denied in part GEO's motion for a stay of discovery. *See* Docket Entry No. 33.

responsive documents. In addition, Plaintiffs' counsel contend that they engaged in a substantial amount of informal discovery and fact gathering.

C. Settlement Negotiations.

While GEO's 1292(b) Motion was pending before this Court, the Parties entered into settlement negotiations in the late spring of 2009, with the help of retired Magistrate Judge James R. Melinson. The Parties met for a day-long mediation session conducted by Judge Melinson and continued negotiations afterwards, conferring by telephone on an almost daily basis. After continuing to negotiate for over a month, the Parties ultimately reached a preliminary agreement to settle on July 17, 2009. The Parties then spent several months memorializing the terms of the Settlement Agreement, preparing for the administration of the Settlement, and drafting the Class Notice that is attached to the Settlement Agreement.

Although these lengthy and complex negotiations have been difficult and time consuming, the Parties' good-faith efforts to resolve this Litigation ultimately resulted in an arm's-length Settlement representing a thoughtful compromise. The Settlement takes into consideration the Plaintiffs' concerns regarding their alleged constitutional violations, the Defendant's prison security concerns, as well as the Parties' respective positions regarding the viability of Plaintiffs' claims.

D. Recent Developments in the State of the Law on Blanket Strip Searches.

As noted above, during the pendency of this case, the Eleventh Circuit issued its *en banc* decision in *Powell,* 541 F.3d at 1298. At the time of the settlement

negotiations, the parties were also aware that the Ninth Circuit Court of Appeals had ordered *en banc* consideration of *Bull v. City and County of San Francisco*, a strip search case presenting similar issues. On February 9, 2010, the Ninth Circuit, 7-4, upheld San Francisco's strip search policy, permitting strip searches of all pretrial detainees without individualized reasonable suspicion. *Bull v. City & County of San Francisco*, 595 F.3d 964 (9th Cir. 2010) (en banc).

On September 21, 2010, the Third Circuit Court of Appeals (which had not previously addressed the issue) issued a precedential opinion which held that the constitution does not forbid jails from conducting blanket strip searches, in the absence of reasonable suspicion, of all newly admitted pretrial detainees, including those arrested only for minor offenses. *Florence v. Board of Chosen Freeholders of the County of Burlington*, ___ F.3d ___, No. 09-3661, 2010 WL 3633178 at *13 (3d Cir. Sept. 21, 2010).[7] The Third Circuit "rejected Plaintiffs' argument that blanket strip searches are unreasonable because jails have little interest in strip-searching arrestees charges with non-indictable offenses." *Id.* at *10. Indeed, the majority opinion reached this conclusion notwithstanding the plaintiffs' argument that the jails did not put forth any evidence of a past smuggling problem or of a single new pretrial detainee who attempted to conceal contraband. *See Florence,* 2010 WL 3633178 at 30 ("[O]ur interpretation of the Supreme Court's decision in *Bell* leads

---

[7] Even before the issuance of *Florence, infra,* both Judge McLoughlin and Judge Diamond recognized this uncertainty in the law on the state of strip searches in recent decisions granting final approval to class action settlements challenging blanket searches. *Boone v. City of Philadelphia*, 668 F. Supp. 2d 693, 704-05, 710 (E.D. Pa. 2009) (McLaughlin, J.); *Kurian v. County of Lancaster*, E.D. Pa. No. 07-cv-03482, at 9-10, 12 (E.D. Pa Apr. 9, 2010) (unpublished) (ECF No. 68).

us to conclude that the Jails are not required to produce such a record.”). Judge Pollak filed a dissenting opinion.

Thus, the legal landscape has changed dramatically since the settlement in this case was reached. Were litigation still proceeding, GEO would file, and this Court would likely grant, a motion for judgment on the pleadings to dismiss Plaintiffs’ claims based on *Florence*. In light of the sea change occurring in this area, this settlement could, then, represent for the near future one of the last strip search settlements negotiated within at least the Third, Ninth, and Eleventh Circuits.

E. Benefits Created by the Settlement.

The Settlement Agreement provides for the creation of a Settlement Fund to compensate the Class for these alleged constitutional violations, and provides class members with certain non-monetary benefits.

1. The Monetary Benefit Created.

The Settlement creates a Settlement Fund valued up to $2,999,000.00, tiered in three contributions. *See* Settlement at §§ (I)(OO) and (III)(B). Class members were eligible to receive a *pro rata* share of the Settlement Fund, up to a maximum recovery of $400.00 each.[8] *Id.* at § (III)(C)(1). These payments to Class members, as well as administrative expenses (including the costs of settlement administration, website administration and the provision of notice to class

---

[8] Based on the number of timely claims submitted by Class members, each eligible Class member will receive $400.00, the maximum amount permissible under the Settlement.

members), and the amount awarded by the Court for attorneys' fees and costs and incentive awards to the Class Representatives, will be deducted from the Settlement Fund. In the event that there is any money remaining in the Settlement Fund after these deductions, the unused portion of the Settlement Fund will revert to GEO. *Id.* In the event that the number of claims received does not require payment of all of part of the Third Contribution, GEO does not need to make the Third Contribution.[9] *Id.* at § III(B)(3). Both the reverter and the $400 per claim cap are critical and essential terms of the settlement, and are non-negotiable terms by GEO.[10]

2. The Non-Monetary Benefits.

GEO agreed to ***all*** of the class injunctive relief sought by plaintiffs. Specifically – and as a result of this lawsuit – GEO agreed to ensure that all Jails subject to the Settlement Agreement did not conduct blanket strip searches of people detained for misdemeanors, summary offenses, or other crimes that did not involve the possession or distribution of drugs, possession of weapons, crimes of violence, or felonies, who had no history of such charges, and did not behave in a manner at intake that would give intake officers reasonable suspicion, be strip searched upon intake at the Jails. And while the prospective injunctive relief in the

[9] However, as noted above the Settlement provides that the entire amount of the Third Contribution "shall be set aside by GEO and earmarked for the sole purpose of funding the Settlement Fund, as needed." *See* Settlement at § (III)(B)(3).

[10] The creation of this Settlement Fund – and extent to which its proceeds will be distributed to Class members who timely submitted valid claim forms – is not affected by the recently issued *Florence* decision.

settlement will not be enforceable so long as *Florence* remains the controlling law in the Third Circuit,[11] the settlement created value for a thirty-two (32) month period by virtue of GEO's commitment to cease blanket strip searches during this period.

F. Implementation and Administration of the Settlement.

Promptly after the Court's March 2, 2010 order granting preliminary approval to the Settlement, the parties began providing the Class Members with notice, as set forth in the Settlement Agreement. In response, 594 class members submitted timely claim forms to the settlement administrator.

1. Class Notice and Settlement Administration.

Pursuant to the Settlement Agreement, the Court-approved notice was mailed to the last known or readily ascertainable mailing addresses for the 6,551 potential Class Members where address information could reasonably be obtained.[12] The notice was also provided to the Class by posting notices at each of the Jails GEO currently operates, and the probation and parole offices in the relevant geographic areas. In addition, the Settlement Administrator, Gilardi & Co., LLC, caused an announcement of the Settlement on the radio stations KLEY in San

[11] Should the Third Circuit's 2-1 *Florence* decision be reversed by an *en banc* panel and/or by the Supreme Court of the United States, the prospective injunction in the settlement will be reinstated by operation of law. Plaintiffs note that the *en banc* panels of both the Eleventh and Ninth Circuits have granted reviews of *Powell* and *Bull,* respectively.

[12] Of the 6,551 addresses of potential Class Members on the Mailing List to whom notice was mailed, 2,211 notices were returned as undeliverable from the initial mailing. *See* Cozzi Declaration at ¶ 6. Through a third party locator service, Gilardi has performed address searches for these potential class members and was able to find updated addresses for 1,048 class members. *Id.* A total of 4,076 Notice Packets that were mailed were *not* returned as undeliverable. *Id.* at ¶ 7.

Antonio Texas, KISS in San Antonio Texas, KTCX in Beaumont Texas, KIKR in Beaumont Texas, KAIQ in Lubbock Texas, KFMX in Lubbock Texas, KSSR in Santa Rosa New Mexico, WPHI in Philadelphia Pennsylvania, ESPN 950.in Philadelphia Pennsylvania, ESPN 97.50 in Philadelphia Pennsylvania, and KGMO in Ullin Illinois. *See* Declaration of Ryanne Cozzi at ¶ 8 (Ex. 1). The radio notice was broadcasted a total of 454 times throughout these 11 markets. *Id.*

The Settlement Administrator established a website where Settlement Class Members could (and still can) obtain information and Claim Forms,[13] and maintain a toll-free number for use by Class Members. The Settlement Website made claim forms and notice available in both Spanish and English. The Settlement Website was visited by 3,110 unique visitors. *See* Cozzi Decl. at ¶ 4. The Settlement Administrator has also received 222 calls from potential Class Members inquiring about the settlement. *Id.* at ¶ 3. In addition to the mass mailing that occurred on May 17, 2010, the Settlement Administrator has sent 213 claim forms to class members that called to request one. *Id.* at ¶ 9.

News of the settlement also received media coverage in several regional markets, including the greater Philadelphia, San Antonio, Southern Illinois, and Albuquerque, New Mexico areas. *See* Exhibits A-F of the Declaration of Benjamin F. Johns in Support of Final Approval of Settlement (Ex. 2). While this third-party news coverage was not expressly contemplated in the Settlement or preliminary approval order, it is additional evidence that that Class members were provided

[13] *See http://www.multistatestripsearchsettlement.com/casedocs.html.*

with constitutionally adequate notice of the Settlement. *See Krell v. Prudential Ins. Co. of Am. (In Re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions)*, 148 F.3d 283, 327 (3d Cir. 1998); *Wilson v. Airborne, Inc.*, No. 07-770, 2008 U.S. Dist. LEXIS 110411, at *13 (C.D. Cal. Aug. 13, 2008) ("[T]hough it was not part of the plan for disseminating notice, initial media coverage of the settlement agreement provided additional opportunities for class members to learn about the settlement.").

2. Response by Class Members.

Not a single class member has objected to the Settlement, and only one class member elected to opt-out. The correspondence received by this class member who opted-out does not express any displeasure about the merits, substance, or fairness of the Settlement. *See* Exhibit B of the Cozzi Decl. Indeed, it does not set forth any reason why this particular person wishes to be excluded.

As of September 21, 2010, a total of 594 class members have filed timely claim forms, and 4 late claim forms have been filed.~~[13]~~[14] The participation rate of the class members who received the 4,076 notices that were returned as undeliverable) was 14.5%.[15] According to the claims administrator's experience from work on other class action settlements, these figures are comparable to that seen in similar cases. *See* Cozzi Decl. at ¶ 12.

---

[14] The parties have agreed that these and any late claims received which are post marked by September 30, 2010 will be included, and any claims post marked after that date will not be.

[15] There were 6,551 notices in total sent to potential Class members. Of those, 2475 were returned as undeliverable.

III. ARGUMENT

The Third Circuit requires that before a class action settlement agreement is approved, the district court must find that the settlement is fair, reasonable and adequate under FED. R. CIV. P. 23(e). *See Girsh v. Jepson*, 521 F.2d 153 (3d Cir. 1975). The district court must also find that the class meets the requirements for certification set forth in FED. R. CIV. P. 23(a) and 23(b). *See Boone*, 668 F. Supp. 2d at 705. A district court's determination of whether the Rule 23(a) and 23(b) requirements are met is subject to its discretion. *See Sullivan v. DB Investments, Inc.*, No. 08-2784, 2010 U.S. App. LEXIS 14375, at *18 (3d Cir. Jul. 13, 2010) (citing *In re Schering Plough Corp. ERISA Litig.*, 589 F.3d 585, 595 (3d Cir. 2009)). Where – as here – the Court has already preliminarily approved the settlement, "an initial presumption of fairness" is established.~~[14]~~[16] *In re Linerboard Antitrust Litig.*, 321 F. Supp. 2d 619, 628 (E.D.Pa. 2004) (DuBois, J.) (quoting *In re Gen. Motors Corp.*, 55 F.3d at 768, 785 (3d Cir. 1995)).

As set forth below, the Parties' Settlement Agreement meets the requisite criteria for final approval. It should therefore be granted, the Settlement Class should be certified, and this case should be dismissed with prejudice.

A. Certification of the Proposed Settlement Class is Appropriate to Resolve All Strip-Search Claims Against Defendants.

To certify a class under Rule 23, the Court must find that all of the requirements of Rule 23(a) are met, as well as at least one part of Rule 23(b). *See*

[16] On March 2, 2010, the Court in this case issued an order granting preliminary approval to the Settlement. *See* Docket Entry No. 61.

Boone, 668 F. Supp. 2d at 705 (citing *Baby Neal v. Casey*, 43 F.3d 48, 55 (3d Cir. 1994)). The Settlement Class readily satisfy these requirements.[17] It consists of thousands of individuals, hundreds of whom have elected to receive the monetary benefits of the Settlement. The claims of the class representatives and the settlement class are typical because they are based on the same challenges to the same conduct by the Defendants, and both the named plaintiffs and their counsel are adequate representatives. There are several factual and legal questions that are common to the Class, which predominate over any questions affecting only individual members. Finally, a class action is the superior method for fairly and efficiently adjudicating this controversy. Other courts that have addressed blanket strip search policies or practices have consistently recognized the propriety of certifying such cases as class actions, and granting approval to class action settlements. *See e.g.*, *Boone*, 668 F. Supp. 2d at 708. *See also, Florence v. Board of Chosen Freeholders*, 05-3619, 2008 U.S. Dist. LEXIS 22152, at *48 (D.N.J., Mar. 20, 2008).

1. Numerosity Under Rule 23(a)(1).

Rule 23(a)(1) requires that the Class be "so numerous that joinder of all members is impracticable." FED. R. CIV. P. 23(a)(1). The numerosity requirement will generally be satisfied if the named plaintiff demonstrates that the potential

[17] Defendant agrees to certification of a class for settlement purposes only; if this settlement is not approved, Defendant retains all rights to challenge certification of a litigation class.

number of Plaintiffs exceeds forty (40). *See Stewart v. Abraham,* 275 F.3d 220, 226-27 (3d Cir. 2001).

The Class here consists of thousands of geographically dispersed Class members, hundreds of whom have submitted claim forms. Thus, numerosity is readily satisfied in this case. *See, e.g.*, *Boone*, 668 F. Supp. 2d at 705 (numerosity met in strip search class action against City of Philadelphia involving thousands of class members).

2. Commonality Under Rule 23(a)(2).

Rule 23(a)(2) requires that there be "questions of law or fact common to the Class." FED. R. CIV. P. 23(a)(2). The commonality requirement is met if Plaintiffs' grievances share a common question of law or of fact. *See Baby Neal,* 43 F.3d at 56. "It is well-established in the Third Circuit that commonality does not require all claims and facts among class members be identical, rather a single common issue of law or fact shared by the named plaintiffs and the prospective class will suffice." *Clarke v. Lane*, 267 F.R.D. 180, 196 (E.D. Pa. 2010) (citations omitted). A party is entitled to certification where the Class claims arise "from a common nucleus of operative fact' regardless of whether the underlying facts fluctuate over the Class period and vary as to individual claimants." *In re Asbestos Sch. Litig.*, 104 F.R.D. 422, 429 (E.D. Pa. 1984) (citations omitted).

Applying these principles, it is clear that the commonality requirement of Rule 23(a)(2) is easily met here. The central issues posed by this litigation are whether the GEO-run Jails had a blanket strip-search policy and/or practice during

the Class period, and whether such a practice or policy is constitutional. *See Kurian,* E.D. Pa. No. 07-CV-03482 at 5 (ECF No. 68) (finding commonality satisfied based on similar constitutional challenges to a prison's strip search practices). The Plaintiffs both assert a common claim pursuant to 42 U.S.C. § 1983 for GEO's alleged violation of the constitution. Given these common questions central to the litigation, Rule 23(a)(2)'s requirement for the existence of common questions of fact or law has been met here. *See id. See also, Boone*, 668 F. Supp. 2d at 706; *Florence*, 2008 U.S. Dist. LEXIS 22152, at *21.

3. Typicality Under Rule 23(a)(3).

Rule 23(a)(3) requires that a representative plaintiff's claims be "typical" of those of other Class members. The commonality and typicality requirements of Rule 23(a) "tend to merge." *Gen. Tel. Co. of Southwest v. Falcon,* 457 U.S. 147, 157 n.13 (1982). The requirement of typicality, along with the adequacy of representation requirement set forth in Rule 23(a)(4), are designed to assure that the interests of unnamed Class members will be protected adequately by the named Class representative. *Id.* The typicality requirement "is satisfied when each Class member's claim arises from the same course of events, and each Class member makes similar legal arguments to prove the Defendant's liability." *Marisol A. v. Giuliani,* 126 F.3d 372 (2d Cir. 1997).

Here, the claims of named Plaintiffs Penny Alison and Zoran Hocevar are typical of the claims of the Settlement Class. Their claims arise from the same course of events, and both would have to make the same arguments as the Class in

challenging the constitutionality of Defendants' strip search practices. As such, typicality as readily satisfied here. *See Florence*, 2008 U.S. Dist. LEXIS 22152, at *25.

4. Adequacy Under Rule 23(a)(4).

The final requirement of Rule 23(a) is set forth in subsection 23(a)(4), which requires that "the representative parties will fairly and adequately protect the interests of the Class." FED. R. CIV. P. 23(a)(4). The Third Circuit has consistently ruled that:

> Adequate representation depends on two factors: (a) the Plaintiff's attorney must be qualified, experienced and generally able to conduct the proposed litigation; and (b) the Plaintiff must not have interests antagonistic to those of the Class.

Weiss v. York Hosp., 745 F.2d 786, 811 (3d Cir. 1984) (quoting *Wetzel v.Liberty Mutual Ins. Co.*, 508 F.2d 239, 247 (3d Cir. 1975)).

These two components are designed to ensure that absentee Class members' interests are fully and adequately pursued. The existence of the elements of adequate representation are presumed, and "the burden is on the Defendant to demonstrate that the representation will be inadequate." *Asbestos School Litigation*, 104 F.R.D. at 430 (citing *Lewis v. Curtis*, 671 F.2d 779 (3d Cir. 1982)).

Representative Plaintiffs and Class Counsel have fairly and adequately represented the Settlement Class here, especially judging by the excellent settlement achieved in this litigation. With respect to the issue of adequacy of counsel, the Class is represented by competent and experienced counsel who are

experienced in civil rights and class action litigation, and who have invested time and resources into the prosecution of this action. *See Kurian,* E.D. Pa. No. 07-cv-03482, at 6 (ECF No. 68) (describing class counsel in that case – many of whom are the same plaintiffs' lawyers in this case – as "especially talented lawyers" who are "vastly experienced in class action litigation" and "are more than capable of representing the Class.").

As to the second issue, there is nothing to suggest that the named Plaintiffs have interests antagonistic to those of the absent Class members. *See Beck v. Maximus, Inc.,* 457 F.3d 291, 296 (3d Cir. 2006) (adequacy "assures that the named Plaintiffs' claims are not antagonistic to the Class"). *See also, Florence*, 2008 U.S. Dist. LEXIS 22152, at *31. The named Plaintiffs sought to bring an end to allegedly illegal strip-searches at the Jails, and are committed to obtaining appropriate compensation from Defendants for themselves and for the members of the proposed Class. The named Plaintiffs have come forward to represent the Settlement Class under great personal pressure – being subject to an event that some consider humiliating and would be difficult to recall on a regular basis for litigation purposes. Adequacy is therefore met in this case.

5. The Requirements of Rule 23(b)(3) Are Met.

The proposed Class also satisfies the requirements of Rule 23(b)(3) of the Federal Rules of Civil Procedure. Under this rule, a class action may be maintained if:

> the court finds that the questions of law or fact common to the members of the Class predominate over any questions affecting only

> individual members, and that a Class action is superior to other available methods for the fair and efficient adjudication of the controversy.

FED. R. CIV. P. 23(b)(3). The Rule 23(b)(3) analysis is commonly broken down into a "predominance" part and a "superiority" part. *See Boone*, 668 F. Supp. 2d at 707 (citing *In re Ins. Brokerage Antitrust Litig.*, 579 F.3d 241 (3d Cir. 2009)). As discussed below, both parts of the test are met here.

a. Predominance.

"The Rule 23(b)(3) predominance inquiry tests whether proposed Classes are sufficiently cohesive to warrant adjudication by representation." *Amchem,* 521 U. S. at 623. Although Rule 23(b)(3) requires that common issues of law and fact predominate, it does not require that there be an absence of any individual issues. *See In re Sugar Industry Antitrust Litig.,* 73 F.R.D. 322, 344 (E.D. Pa. 1976). The Court must find that "the group for which certification is sought seeks to remedy a common legal grievance." *Hochschuler v. G.D. Searle* & *Co.,* 82 F.R.D. 339, 348-49 (N.D. Ill. 1978); *Dietrich,* 192 F.R.D. at 119 (in determining whether common issues of fact predominate, "a court's inquiry is directed primarily toward whether the issue of liability is common to members of the Class"). Rule 23(b)(3) does not require that all questions of law or fact be common. *See In re Telectronics Pacing Systems,* 172 F.R.D. 271, 287-88 (S.D. Ohio 1997).

Here, the proposed Settlement Classes' claims involve one central question: was GEO's alleged practice of strip-searching every pretrial detainee admitted to the Jails constitutional when conducted without regard to the crime charged or the

circumstances of arrest? Proof of this issue would have been the undoubted focus of any trial,[18] and would predominate over any of the Plaintiffs' individual issues. *See Florence*, 2008 U.S. Dist. LEXIS 22152 at *36.[19] As a result, "[n]umerous courts have found Rule 23(b)'s predominance requirement satisfied in actions similar to the instant matter, reasoning that the issues respecting the existance and constitutionality of strip searching policies or practices are common to the class and subject to generalized proof." *Kurian*, E.D. Pa. No. 07-CV-03482 at 6 (ECF No. 68) (citations omitted). General evidence of the Defendants' policy and its blanket application to Class members will be required to prove their claims. *See Boone*, 668 F. Supp. 2d at 708. Accordingly, predominance is met.

b. Superiority.

The relevant inquiry for the superiority determination is whether a class action, rather than individual litigation, is the best method for achieving a fair and efficient adjudication. *See Boone*, 668 F. Supp. 2d at 708 (citing *Newton v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 259 F.3d 154 (3d Cir. 2001)). FED. R. CIV. P. 23(b)(3) sets forth a non-exhaustive list of factors to aid the Court in determining whether a class action is the superior method of adjudication:

> (A) the class members' interests in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of

---

[18] Defendant agrees to certification of a class for settlement purposes only; if this settlement is not approved, Defendant retains all rights to challenge certification of a litigation class.

[19] The Third Circuit recently ruled that this single question has a single answer—an unqualified yes, GEO's practices (to the extent any blanket strip search practice existed) were, in fact, constitutional.

> any litigation concerning the controversy already begun by or against class members; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (D) the likely difficulties in managing a class action.[20]

Given the nature of this action and the fact that a substantial proportion of the Class membership is comprised of economically disenfranchised individuals, a class action is also the superior method by which to adjudicate claims of individual Class members. *See Florence*, 2008 U.S. Dist. LEXIS 22152 at *41 (superiority found in strip search class action). In the absence of this class action settlement, Class members may not have even been aware that the Defendants allegedly violated their constitutional rights, much less actually pursue those claims. *See In re Nassau County Strip Search Cases,* 461 F.3d 219, 229 (2d Cir. 2006). Indeed, poor and marginalized Class members are unlikely to be able to litigate their cases individually, particularly given the relatively small amounts of their potential individual recovery in such a case. *See Mack,* 191 F.R.D. at 25; *D'Alauro v.* GC *Services Ltd, 168* F.R.D. 451, 458 (E.D.N.Y. 1996). As Judge McLaughlin explained in finding that superiority was met with respect to the class action settlement of the Philadelphia strip search case,

> [a] class action in this case saves the time, effort and expense of litigating the claims of as many as 37,000 class members individually and guarantees uniform treatment of individual class members within

---

[20] Courts have recognized that, in the context of certifying a settlement-only class, the "(D)" factor in Fed. R. Civ. P. 23(b)(3)(D) is not relevant. *See Boone*, 2009 U.S. Dist. LEXIS 103277, at *25. *See also, In re Insurance Brokerage Antitrust Litig.*, 579 F.3d at 257 ("Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems, for the proposal is that there be no trial.") (quoting *Amchem Prods., Inc. v. Windsor,* 521 U.S. 591, 620 (1997)).

> their respective subclasses… Because it is generally desirable to concentrate many smaller claims into a single forum, a class action is appropriate in this case. A class action is the superior method for adjudicating this particular matter.

See Boone, 668 F. Supp. 2d at 708. *Accord, Kurian*, E.D. Pa. 07-cv-03482 at 7-8 (ECF No. 68) (superiority satisfied in the context of a strip search class settlement). Similarly, the superiority requirement is met here.

B. The Settlement Agreement Should Be Approved By the Court.

The Parties also respectfully request that the Court grant final approval to the Settlement Agreement. "Compromises of disputed claims are favored by the courts." *Williams v. First Nat'l Bank,* 216 U.S. 582, 595 (1910); *In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions,* 148 F.3d 283, 317 (3d Cir. 1998) (*"Prudential II").* The Settlement Agreement spares the litigants the uncertainty, delay and expense of a trial, while simultaneously reducing the burden on judicial resources. The Court has broad discretion in deciding whether to approve a settlement. *See Kurian*, E.D. Pa. 07-cv-03482 at at 8 (ECF No. 68) (citing *Girsh v. Jepson*, 521 F.2d 153, 156 (3d Cir. 1975)).

Rule 23(e) of the Federal Rules of Civil Procedure provides that a district court must determine whether to grant approval to any settlement of a class action. FED. R. CIV. P. 23(e). In a class action, the "court plays the important role of protector of the [absent members'] interests, in a sort of fiduciary capacity." *In re Gen. Motors Corp. Pick-up Truck Fuel Tank Prods. Liab. Litig.,* 55 F.3d 768, 785 (3rd Cir. 1995) ("*GM Trucks*"). As discussed below, the Court should grant final approval to the settlement because Class members received notice in the best

manner practicable under the circumstances, and because the substance of the Settlement is more than fair, reasonable and adequate, especially in light of the Third Circuit's ruling in *Florence* means that GEO's practice of strip searching all pretrial detainees entering the jail was constitutional.

1. The Notice Satisfied Rule 23(c)(2)(B).

Members of a class that is settled pursuant to FED. R. CIV. P. 23(b)(3) must be provided with "the best notice that is practicable under the circumstances." FED. R. CIV. P. 23(c)(2)(B). This includes individual notice to all potential class members that can be identified through reasonable effort. *Boone*, 668 F. Supp. 2d at 709. The substance of the notice must contain, in clear language, a description of the nature of the action, settlement class(es), the claims, issues and defenses, the class member's right to enter an appearance by an attorney and to be excluded from the class, the time and manner of requesting exclusion, and the binding effect of the settlement on class members. *Id.* (citing FED. R. CIV. P. 23(c)(2)(B)).

In this case, the notice of the settlement that was provided satisfied FED. R. CIV. P. 23(c)(2)(B). The notice, which was preliminarily approved by the Court before its dissemination, contained all of the criteria required under Rule 23(c)(2)(B). It was mailed to an over-inclusive list of Settlement Class members for whom mailing addresses were available, and then re-mailed to those who had undeliverable addresses (and for whom a forwarding address could be obtained). *See* §(I)(d), *supra.* The notice was posted at the Jails GEO currently operates and at regional probation and parole offices. The notice was publicized via frequent radio

advertisements. And the notice was published on a website dedicated to the settlement, and was also picked up be several news sources. As such, the notice readily meets the requirements of Rule 23(c)(2)(B). *See, e.g., Boone*, 668 F. Supp. 2d at 709.

2. The Settlement Satisfies the Girsh Factors.

The substance of the settlement should also be approved. A class settlement should be approved when the court finds it is fair, reasonable and adequate, and is in the best interest of class members. *See Fry v. Hayt, Hayt & Landau*, 198 F.R.D. 461, 470 (E.D. Pa. 2000). In *Girsh*, the Third Circuit adopted the following nine-factor test for district courts to use in determining whether a class action settlement is fair, reasonable and adequate:

> (1) the complexity, expense and likely duration of the litigation…; (2) the reaction of the Class to the Settlement…; (3) the stage of the proceedings and the amount of discovery completed…; (4) the risks of establishing liability…' (5) the risks of establishing damages…(6) the risks of maintaining the Class action through trial…; (7) the ability of the Defendants to withstand a greater judgment; (8) the range of reasonableness of the Settlement fund in light of the best possible recovery…; (9) the range of reasonableness of the Settlement fund to a possible recovery in light of all the attendant risks of litigation.

Girsh, 521 F.2d at 157.[21] As set forth below, the Settlement satisfies the *Girsh* factors.

---

[21] This nine factor test from *Girsh* was recently re-affirmed and used by the Third Circuit in *In re Insurance Brokerage Antitrust Litig.*, 579 F.3d at 258.

a. The Complexity, Expenses and Likely Duration of the Litigation Support Final Approval.

This *Girsh* factor is intended to capture 'the probable costs, in both time and money, of continued litigation." *In re Linerboard Antitrust Litig.*, 321 F. Supp. 2d at 629 (citations omitted). In this case, the litigation began in January of 2008. Class Counsel have reviewed over a thousand of pages of documents, served discovery requests, interviewed witnesses, and successfully opposed GEO's motion for judgment on the pleadings. In all, Plaintiffs' counsel contends that they have expended in excess of 1,188 hours on this case. Further, Class Counsel have collectively incurred out of pocket costs of $8,466.51. Plaintiffs have not compensated for any of their work on the case, nor have they been reimbursed for any of these expenses.

If Plaintiffs were to continue to trial, the trial would be complex and expensive. Moreover, the outcome of trial would be uncertain. To prosecute this as a class action, Plaintiffs would ultimately have to prove that the Defendant's strip-search policy was unconstitutional. Clearly, this is more difficult—indeed, impossible—in light of the recent Precedential Third Circuit opinion in *Florence.*

Moreover, even if Plaintiffs were successful on the merits of their claims (and that holding was not disturbed by the Third Circuit and/or Supreme Court), Defendants may argue that Class Members would still be required to prove

damages individually, or in group mini-trials.[22] This may have led to unsuccessful results with respect to class certification.

In sum, Class Counsel in this case weighed the risks of pursuing further litigation against the benefit of receiving the proposed settlement in this case, and concluded it was in the Class members' best interest to resolve this matter at this juncture. Similarly, the Defendants weighed their risks in proceeding to trial, and determined that the settlement was in its best interests as well. In light of the current legal landscape, the Settlement is therefore more than fair, reasonable and adequate. *See Boone*, 668 F. Supp. 2d at 712-713.

b. The Reaction of the Class Justifies Final Approval.

Under the second *Girsh* factor, the reaction of the Class is relevant to assessing whether the settlement should be approved. *See Prudential II*, 148 F.3d at 318. This factor is "attempts to gauge whether members of the class support the settlement…" *In re Linerboard Antitrust Litig.*, 321 F. Supp. 2d at 629 (citations omitted).

In this case, the low number of exclusions (one) and objection requests (zero) create a strong presumption in favor of approving the Settlement. *See In re Linerboard Antitrust Litig.*, 321 F. Supp. 2d at 629 ("No class members objected to either settlement. This fact strongly militates a finding that the settlement is fair and reasonable."); *Boone v. City of Phila.*, 668 F. Supp. 2d 693, 712 (E.D. Pa. 2009)

---

[22] There is recent authority where courts have refused to certify a class in a strip search class action. *See Rattray v. Woodbury County,* No. 07-4032, 2008 U.S. Dist. LEXIS 66922 (N.D. Iowa Sept. 2, 2008), *aff'd.,* No. 09-2314, 2010 U.S. App. LEXIS 16207 (8th Cir. Aug. 5, 2010).

("The fact that so few potential class members objected to or opted out of the settlement supports a finding of general acceptance of the settlement in the class.").[23] *See also, Austin v. Pa. Dept. of Corrections,* 876 F. Supp. 1437, 1458 (E.D.Pa. 1995) (approving class action settlement of civil rights claims brought by prisoners, notwithstanding the receipt of 457 written objections by class members) (DuBois, J.). This is particularly true where, as here, the settlement notification mailed to Class members for whom addresses were ascertainable (and the notice posted in the prisons and parole/probation offices and on the Settlement Website) contained clear instructions for the procedures to opt-out from or object to the Settlement.

In response to the Court-approved notice, nearly 600 Class members have sent in claim forms to the Claims Administrator. *Id.* Depending on how this participation is measured, this represents a claims rate as high as 14.5% whereby hundreds of Class members will be entitled to the maximum payment under the Settlement ($400.00 each). This positive response rate, coupled with the fact that there were no objections and only one opt-out, supports a finding that this *Girsh* factor is met. Indeed, courts have granted final approval to class action settlements with comparable participation rates. *See Boone*, 668 F. Supp. 2d at 702-03 (approving strip search class action settlement with 15% participation); (McLaughlin, J.); *Kurian*, E.D. Pa. No. 07-cv-03482 (ECF No. 68) (approving

---

[23] The fact that the Settlement Agreement allows dissatisfied class members to opt-out of the settlement further supports a finding, in and of itself, that the Settlement is fair and reasonable. *See In re Insurance Brokerage Antitrust Litig.*, 579 F.3d at 259, n.17. *See also, id.* at 274, n.29.

settlement of strip search class action with 10.8% participation) (Diamond, J.); *Van Horn v. Nationwide Prop. & Cas. Ins. Co.*, 2010 U.S. Dist. LEXIS 42357 (N.D. Ohio Apr. 30, 2010) ("It is not unusual for only 10 or 15% of the class members to bother filing claims.") (quoting *In re TJX Companies Retail Sec. Breach Litig.*, 584 F. Supp. 2d 395, 404 (D. Mass. 2008)); *Hughes v. Microsoft Corp.,* No. C98-1646C, 2001 U.S. Dist. LEXIS 5976, at *23-24 (W.D. Wash. Mar. 21, 2001) (approving settlement where approximately 7.4% of the potential class members that received a mailed notice "wrote to class counsel wanting the benefits of the settlement."); *Weber v. Government Employees Insurance Co.*, 262 F.R.D. 431, 440-41 (D.N.J. 2009) (granting approval to a settlement with a 15.1% claims rate reached after two rounds of notice); *McBean v. City of New York*, 233 F.R.D. 377 (S.D.N.Y. 2006) (approving strip search settlement with 8.5% participation rate). *See also, Zimmer Paper Products Inc. v. Berger & Montague, P.C.*, 758 F.2d 86, 92-93 (3d Cir. 1985) (affirming district court's dismissal of a challenge by a class member to the notice associated with a court-approved settlement that had a 12% response rate). Furthermore, the Settlement Administrator has affirmed that the response rate in this case is comparable to that obtained in similar strip search class action settlements. *See* Cozzi Decl. at ¶ 12.

c. The Stage of the Proceeding and Amount of Discovery Favor Final Approval.

It has been generally recognized by the Third Circuit that settlements that are made after discovery reflect the true value of the claim. *See Bell Atlantic Corp. v. Bolger,* 2 F.3d 1304, 1314 (3d Cir. 1993). The parties in this case exchanged

discovery requests and disclosures, and reviewed thousands of pages of documents regarding the admittance of pretrial detainees at the Jails. This weighs heavily in favor of approving the Settlement as fair, reasonable and adequate. *Boone*, 2009 U.S. Dist. LEXIS 103277, at *38 ("The discovery and other investigations that the parties have undertaken render them sufficiently informed to make a determination about the fairness of a settlement.").

Moreover, as discussed above, the Settlement was a product of extensive negotiations between the parties, including a mediation before Retired Judge Melinson. "A presumption of correctness is said to attach to a class settlement reached in arms-length negotiations between experienced, capable counsel after meaningful discovery." *In re Linerboard Antitrust Litig.*, 321 F. Supp. 2d at 630 (quoting *Hanrahan v. Britt*, 174 F.R.D. 356, 366 (E.D. Pa. 1997)). That presumption should likewise apply here.

d. The Risks of Establishing Liability and Damages Weigh in Favor of Approving Settlement.

The risks of establishing liability and damages are the fourth and fifth factors to be weighed when evaluating a Settlement. *See In Re Automotive Refinishing Paint Antitrust Litig.*, 617 F. Supp. 2d at 343. "Although the Court must weigh the relative strengths and weaknesses of each side to determine the risks of establishing liability, it should 'not decide the merits of the case or resolve unsettled legal questions.'" *Austin v. Pennsylvania Dep't of Corrections*, 876 F. Supp. at 1471 (quoting *Carson v. American Brands, Inc.*, 450 U.S. 79, 88 n.14 (1981)).

This factor in and of itself weighs heavily in favor of this Settlement being approved. Clearly, the recent precedential opinion issued by the Third Circuit in *Florence* illustrates the risks associated with establishing liability and damages in this case. Indeed, given the current state of the law in this Circuit, class members would be entitled to *no* recovery as a matter of law were this case to be filed or litigated today.

In addition, this putative class action had inherent risks merely by virtue that the GEO represented by the experienced and highly-skilled defense counsel at Reed Smith LLP. If this case were to proceed to trial, Plaintiffs would have faced a number of challenges in order to succeed before a jury. Specifically, Defendants may have argued that Plaintiffs would have been required to try the individual actions for damages, which may have led to unsuccessful results. Further, there is a real likelihood that Plaintiffs may have undergone years of litigation in the appellate courts. *See In Re Michael Milken & Associates Securities Litigation*, 150 F.R.D. 57, 65 (S.D.N.Y. 1993). And even before *Florence* was resolved by the Third Circuit, two *en banc* circuit court decisions had found that blanket strip-searches are not unconstitutional regardless whether reasonable suspicion exists. *See* § (II)(B)(2)(a), *supra*. *See Boone*, 668 F. Supp. 2d at 713 (citing to "the risk that the class members might not recover at all…"). Thus, based on the above risks, Plaintiffs obtained a more than favorable result for the Class.

e. The Risks of Maintaining a Class Action Through Trial Weigh in Favor of Approving this Settlement.

The risks of maintaining a Class through trial support approval of the Settlement. *See Prudential II,* 148 F.3d at 321. In light of the fact that the Third Circuit has found that a district court always possesses the authority to decertify an action, this factor in and of itself weighs in favor of settlement. "Consistent with this reality, we are satisfied that the inherent difficulties of bringing a Class action to trial weighs in favor of approving the Settlements." *In Re Automotive Refinishing Paint Antitrust Litigation*, 617 F.Supp. 2d at 344. As discussed above, the risk of establishing any liability in light of *Florence* supports this factor. This Court should find that this factor weighs in favor of approving the Settlement.

f. The Ability of Defendants to Withstand Greater Judgment.

Under the seventh *Girsh* factor, it must be considered whether the defendant could withstand an "amount *significantly* greater than the Settlement." *In re Cendant Corp. Litig.*, 264 F.3d 201, 240 (3d Cir. 2001) (emphasis supplied). Due to the realities of the current macro-economic environment, this factor weighs heavily in favor of finding that a settlement valued at up to nearly $3 million is fair, reasonable and adequate. *See Boone*, 668 F. Supp. 2d at 712 (taking into consideration the current financial situation of the city-defendant in assessing fairness of settlement). And even if it were theoretically possible that GEO could withstand a "significantly" larger judgment after a trial, this *Girsh* factor should be balanced against "the risk that the plaintiffs would not be able to achieve any

greater recovery at trial." *In re Linerboard Antitrust Litig.*, 321 F. Supp. 2d at 632 (citing *Lazy Oil Co. v. Witco Corp.,* 95 F. Supp. 2d 290, 318 (W.D. Pa. 1997)). Indeed, any further litigation on these claims at this time is entirely doomed by the *Florence* opinion, which held strip searches similar to those employed here are facially legal and constitutional. When viewed through this spectrum under the circumstances here, it is readily apparent that this *Girsh* factor is satisfied.

g. The Reasonableness of the Settlement in Light of the Best Possible Recovery Weighs in Favor of Approving this Settlement.

The final two *Girsh* factors require the court to determine whether Plaintiffs settled for appropriate value in light of the Class members' damages. *See In Re Automotive Refinishing Paint Antitrust Litigation*, 617 F. Supp. 2d at 344. This matter settled for $2.99 million, and each Class member that timely submitted a claim form will receive $400. This is a fair value for the settlement, and is comparable to settlement awards in other strip search cases—the large majority of which were reached prior to the recent split among the circuits. *See McBean v. City of New York,* 233 F.R.D. 377, 388 (S.D.N.Y. 2006) (awarding either $750 or $1,000 per claimant, depending on the number of times the class member was searched); *Kurian*, E.D. Pa. No. 07-cv-03482 at 13 (ECF No. 68) (describing the allocation of payments ranging from $50 to $900 to class members in a strip search class action settlement as "fair, reasonable, and adequate."). As is demonstrated by the above analysis of the *Girsh* factors, Plaintiffs' and Defendant's Settlement is clearly an

excellent result and is fair, reasonable and adequate under *Girsh*. *See Boone*, 668 F. Supp. 2d at 713.

h. The Recommendation of Class Counsel.

Finally, in addition to the *Girsh* factors discussed above, "several courts have accorded significant weight to the view of experienced counsel who have engaged in arm's-length negotiations." *Austin,* 876 F. Supp. at 1457 (citing *In re Unisys Corp. Retiree Medical Benefits ERISA Litig.*, MDL No. 969, 1994 U.S. Dist. LEXIS 17877 (E.D. Pa. Nov. 3, 1994)). The recommendation of Class counsel in this case that the Settlement be approved should, accordingly, be considered by the Court. *See id.* at 1472-73 (citing to the experience of Mr. Rudovsky and others, and finding that their recommendation that the settlement be approved "is entitled to great weight.").

IV. CONCLUSION

For the foregoing reasons, Plaintiffs and Defendant respectfully request that this Court enter an Order that: (1) provides final approval to the Settlement as fair, reasonable and adequate, and (2) certifies the Class action with respect to the claims against Defendant pursuant to FED. R. CIV. P. 23(a) and FED. R. CIV. P. 23(b)(3) for the purpose of effectuating a class action settlement of the claims against the Defendants.

/
/
/

Dated: September 27, 2010

Respectfully submitted,

FOR PLAINTIFFS AND THE CLASS:

/s/ David Rudovsky
David Rudovsky
Jonathan H. Feinberg
KAIRYS RUDOVSKY MESSING
& FEINBERG
The Cast Iron Building
718 Arch Street, Suite 501
Philadelphia, PA 19106
215.925.4400

Joseph G. Sauder
Benjamin F. Johns
CHIMICLES & TIKELLIS LLP
One Haverford Center
361 W. Lancaster Ave
Haverford, PA 19041
610.642.8500

Daniel C. Levin
Charles Schaffer
LEVIN, FISHBEIN, SEDRAN
& BERMAN
510 Walnut Street, Ste. 500
Philadelphia, PA 19106
215.592.1500

Christopher G. Hayes
LAW OFFICES OF
CHRISTOPHER G. HAYES
225 South Church Street
West Chester, PA 19382
610.431.9505

Jennifer R. Clarke
THE PUBLIC INTEREST LAW
CENTER OF PHILADELPHIA
125 S. Ninth Street, Suite 700
Philadelphia, PA 19107

FOR DEFENDANT:

/s/ Carolyn P. Short
Carolyn P. Short
Shannon E. McClure
REED SMITH LLP
2500 One Liberty Place
1650 Market Street
Philadelphia, PA 19103
215.851.8100

CERTIFICATE OF SERVICE

I, Shannon E. McClure certify that on this 27th day of September, 2010, I caused the foregoing **MOTION AND MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' AND DEFENDANT'S MOTION FOR FINAL APPROVAL OF SETTLEMENT AND CLASS CERTIFICATION**, and related motion, proposed order, and exhibits thereto, to be filed electronically using the Court's CM/ECF system, and thereby served it upon all registered ECF users in this case.

By: /s/Shannon E. McClure
Shannon E. McClure