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

SAJAN KURIAN, individually and on behalf of a class of others similarly situated, Plaintiffs,	:	**CIVIL ACTION**
v.	:	**NO. 07-3482**
THE COUNTY OF LANCASTER, THE LANCASTER COUNTY PRISON BOARD and JOHN DOES 1-20, Defendants.	:	

ORDER

In this putative class action, Plaintiffs challenge Defendants' alleged policy or practice of strip searching all pretrial detainees upon their commitment to Lancaster County Prison: (1) regardless of the nature of the charged offense; and (2) without determining whether reasonable suspicion exists to believe the detainee is concealing weapons or contraband. 28 U.S.C. § 1983. The Parties now ask me to certify conditionally a Rule 23(b)(3) class for settlement purposes and approve preliminarily their proposed Settlement. I grant their Motion.

BACKGROUND

The Supreme Court has held that in determining the Fourth Amendment reasonableness of pretrial detainee strip searches, courts must consider "the scope of the particular intrusion, the manner in which it is conducted, the justification for initiating it, and the place in which it is conducted." Bell v. Wolfish, 441 U.S. 520, 559 (1979) (upholding prison's policy of strip searching all pretrial detainees that had contact visits with outsiders). Applying Bell, the First, Second, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, and Tenth Circuits have held that a pretrial

detainee charged with a misdemeanor or lesser offense may not be strip searched upon commitment without reasonable suspicion to believe that he or she is concealing a weapon or contraband. See Allison v. GEO Group, Inc., 611 F. Supp. 2d 433, 451-52 (E.D. Pa. 2009) (collecting cases); see also Young v. County of Cook, 616 F. Supp. 2d 834, 846 (N.D. Ill. 2009) ("The crux of these cases is that given the extreme intrusion into personal privacy that a strip search or body cavity search entails, people charged with minor offenses that do not involve drugs or weapons are not subject to such searches absent individualized reasonable suspicion. Of all the circuits to consider this issue, only the Eleventh Circuit has reached a contrary result."); but see Powell v. Barrett, 541 F.3d 1298, 1310 (11th Cir. 2008) ("The difference between felonies and misdemeanors or other lesser offenses is without constitutional significance when it comes to detention facility strip searches."). The Third Circuit has not yet addressed this issue. See Allison, 611 F. Supp. 2d at 437.

Plaintiffs filed the instant action on August 22, 2007, alleging that Defendants have "instituted a written and/or *de facto* policy, custom or practice of strip searching all individuals who enter the custody of the Lancaster County Prison and are placed into Prison clothing, regardless of the nature of their charged crime or violation and without the presence of reasonable suspicion to believe that the individual was concealing a weapon or contraband." Compl. ¶ 24 (Doc. No. 1). Plaintiffs sought money damages and declaratory and injunctive relief pursuant to 28 U.S.C. § 1983, and asked me to certify a hybrid Rule 23(b)(2)/(b)(3) class of similarly situated persons: (1) who, commencing on August 22, 2005, have been or will be admitted to LCP after being detained for misdemeanors or similar offenses "that do not involve the possession or distribution of drugs, possession of weapons, or are violent felonies"; and (2)

"who were or will be strip searched upon their entry into [LCP] pursuant to the practice, policy, or custom of Defendants." Am. Compl. ¶ 11; Doc. No. 33 at 1.

Plaintiffs moved for class certification on November 11, 2007. (Doc. No. 17.) On November 21, 2007, I issued a Scheduling Order and allowed Plaintiffs to submit a renewed Motion for Class Certification following class discovery. (Doc. No. 21.) Plaintiffs filed an Amended Complaint on May 15, 2008, and renewed their Motion for Class Certification on October 14, 2008. (Doc. Nos. 28, 32.) Defendants filed an Opposition on November 4, 2008; Plaintiffs filed a Reply on November 14, 2008. (Doc. Nos. 35, 38, 39.) Oral argument on Plaintiffs' Motion was scheduled for November 24, 2008. (Doc. No. 31.) During a Chambers Conference before oral argument, however, the Parties agreed to suspend litigation while they engaged in settlement discussions. (Doc. Nos. 42, 43.)

The Parties agreed to settle this matter on March 23, 2009. (Doc. Nos. 45, 48 at 2.) Their Settlement Agreement (executed on July 28, 2009) provides for a $2,507,200 Settlement Fund, with an initial contribution of $1,946,860. See Settlement Agreement § III.B.1. The amount distributed to each Class Member -- ranging from $50 to $900 -- will be determined by his or her classification into one of five categories. Id. § III.C.1(*i*). These categories are based on various criteria, including: whether the Class Member was on probation or on parole at the time of admission to LCP, and the information disclosed on the individual's Strip Search Checklist pertaining to the nature of the charge, whether the detainee has a known history of violence or drug use, and whether the detainee was disruptive or threatening when he or she was admitted. Id.; see also id., Ex. D.

The Parties jointly filed the instant Motion on July 31, 2009, asking me to: (1) certify

conditionally a Rule 23(b)(3) class for settlement purposes; (2) approve preliminarily the Settlement; (3) direct notice of the Settlement to the Class; and (4) schedule a Final Approval Hearing. (Doc. No. 48.) On August 20, 2009, I held a hearing on the Motion. Doc. No. 52; see Gates v. Rohm and Haas Co., 248 F.R.D. 434, 438 (E.D. Pa. 2008) ("Judicial review of a proposed class settlement generally requires two hearings: one preliminary approval hearing and one final 'fairness' hearing.").

LEGAL STANDARDS

Federal Rule of Civil Procedure 23(e) provides that "[t]he claims, issues, or defenses of a certified class may be settled . . . only with the court's approval." Fed. R. Civ. P. 23(e). At the preliminary approval stage, I must determine whether the "settlement falls within the range of reason." Gates, 248 F.R.D. at 438 (quotations omitted); see also Manual for Complex Litigation, § 21.632 (4th ed. 2009). Where a class has not already been certified, I must also independently determine that the proposed settlement class satisfies the requirements of Rule 23. See Amchem v. Windsor, 521 U.S. 591, 620 (1997); In re Prudential Ins. Co. of Amer. Sales Practices Litig., 148 F.3d 283, 308 (3d Cir. 1998) ("[A] district court must first find [that] a class satisfies the requirements of Rule 23, regardless of whether it certifies the class for trial or settlement."); see also Manual for Complex Litigation, § 21.632 (4th ed. 2009) ("The judge should make a preliminary determination that the proposed class satisfies the criteria set out in Rule 23(a) and at least one of the subsections of Rule 23(b)."). As the Supreme Court has explained:

> 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, see Fed. Rule Civ. Proc. 23(b)(3)(D), for the proposal is that there be

> no trial. But other specifications of the Rule -- those designed to protect absentees by blocking unwarranted or overbroad class definitions -- demand undiluted, even heightened, attention in the settlement context. Such attention is of vital importance, for a court asked to certify a settlement class will lack the opportunity, present when a case is litigated, to adjust the class, informed by the proceedings as they unfold.

Amchem, 521 U.S. at 620.

In determining whether to certify, I must accept as true all substantive allegations in the Amended Complaint. See Chiang v. Veneman, 385 F.3d 256, 262 (3d Cir. 2004) (citing Eisen v. Carlisle & Jacquelin, 417 U.S. 156, 177-78 (1974)). Although I may not consider whether Plaintiffs will prevail on the merits, I must "make whatever factual and legal inquiries are necessary and must consider all relevant evidence and arguments presented by the parties." In re Hydrogen Peroxide Antitrust Litig., 552 F.3d 305, 307 (3d Cir. 2008).

DISCUSSION

In deciding whether to certify the Settlement Class conditionally and in evaluating the proposed Settlement, I have considered, *inter alia*, those arguments made by the Parties before they agreed to settle. That review convinces me that conditional certification is warranted, that the Settlement appears reasonable, and that the Class Notice passes legal muster.

I. Conditional Certification of a Settlement Class

A. Rule 23(a) Prerequisites

Numerosity

Rule 23(a)(1) requires that the Class be so numerous that joinder of its members is

impracticable. "Generally, if the named plaintiff demonstrates that the potential number of plaintiffs exceed 40, the numerosity requirement of Rule 23(a) has been met." Ketchum v. Sunoco, Inc., 217 F.R.D. 354, 357 (E.D. Pa. 2003) (citing Stewart v. Abraham, 275 F.3d 220, 227-28 (3d Cir. 2001)). The proposed Class consists of thousands of persons. (Doc. No. 48 at 21.) It is thus apparent that Plaintiffs meet Rule 23's numerosity requirement.

Commonality

Plaintiffs must also demonstrate that there are questions of law or fact common to the Class. Fed. R. Civ. P. 23(a)(2). A single such issue will suffice. Johnston v. HBO Film Mgmt., Inc., 265 F.3d 178, 184 (3d Cir. 2001). Here, the Parties have identified at least two such common questions: (1) whether Defendants employ a practice or policy of strip searching all new detainees admitted for misdemeanors or lessor charges without individualized reasonable suspicion; and (2) whether that practice or policy is constitutional. These issues satisfy the commonality requirement. See, e.g., In re Nassau County Strip Search Cases, 461 F.3d 219, 229-230 (2d Cir. 2006); Florence v. Bd. of Chosen Freeholders of County of Burlington, No. 05-3619, 2008 WL 800970, at *7 (D.N.J. Mar. 20, 2008) (commonality requirement satisfied where the named Plaintiffs and the proposed class members' claims involved "the same factual and legal theories": (1) "that they were all subjected to the same intake procedures, which they claim involve suspicionless strip searching"; and (2) "that these procedures violate the Fourth Amendment"); Dodge v. County of Orange, 226 F.R.D. 177, 180 (S.D.N.Y. 2005) (shared, "central" issue of "the existence or non-existence of a policy at the [defendant prison] of strip searching each and every new pre-trial detainee upon arrival at the jail, regardless of the existence of individualized reasonable suspicion that the new arrival was carrying contraband,

based on the nature of the crime charged, the circumstances of the arrest, and the particular characteristics of the arrestee" satisfied commonality requirement).

Typicality

I must determine whether "the named plaintiff[s'] individual circumstances are markedly different or . . . the legal theory upon which the claims are based differs from that upon which the claims of other class members will perforce be based." Johnston, 265 F.3d at 184 (quotations omitted). Here, the named Plaintiffs allege that they -- along with each member of the proposed Class -- were strip searched pursuant to Defendants' blanket policy or practice. See Baby Neal v. Casey, 43 F.3d 48, 58 (3d Cir. 1994) ("[C]ases challenging the same unlawful conduct which affects both the named plaintiffs and the putative class usually satisfy the typicality requirement irrespective of the fact patterns underlying the individual claims."). In these circumstances, I agree that the typicality requirement is met. See, e.g., Florence, 2008 WL 800970, at *9; Marriott v. County of Montgomery, 227 F.R.D. 159, 172 (N.D.N.Y. 2005) ("The claims of the representative parties in this case, while involving a more detailed search than every member of the class, still are based upon a strip search conducted pursuant [to] the Jail change-out policy. Therefore, the typicality requirement is met."), aff'd, 2005 WL 3117194 (2d Cir. 2005); Sutton v. Hopkins County, No. 03-003, 2007 WL 119892, at *4 (W.D. Ky. Jan. 11, 2007) ("Because each named Plaintiff alleges an unconstitutional strip search after arrest for a minor violation or before release from Prison, the claims of the representatives are typical of the class as a whole.").

In their Opposition to Plaintiffs' Motion for Class Certification, Defendants argued that Plaintiff Sajan Kurian's "individual circumstances" are not typical of those of the Class because: (1) under Pennsylvania law, reasonable suspicion was not required to strip search him because he

was a parolee; and (2) Kurian consented to the search when, as required by Pennsylvania law, he signed a document consenting to warrantless searches while on parole. Cf. Beck v. Maximus, Inc., 457 F.3d 291, 296 (3d Cir. 2006) ("[U]nique defenses bear on both the typicality . . . of a class representative.").

I do not believe these defenses would have been viable had this litigation continued. Although Pennsylvania law authorizes parole and probation officers to conduct a "personal search" of a parolee when he or she enters or leaves a "correctional institution, jail, or detention facility," Defendants have offered no authority suggesting: (1) that this law applies to intake officers; or (2) that a strip search is subsumed within a "personal search." See 61 Pa. Con. Stat. §§ 331.27a(g), 331.27b(g) (defining a "personal search" as "[a] warrantless search of an offender's person, including, but not limited to, the offender's clothing and any personal property which is . . . within the reach or under the control of the offender"); id. §§ 331.27a(d)(1), 331.27b(d)(1).

Moreover, I do not agree that Kurian consented to being strip searched. The Supreme Court authority Defendants had relied upon related to a California statute requiring parolees to agree to be searched "with or without a search warrant and with or without cause." Samson v. California, 547 U.S. 843, 846 (2006) (citing Cal. Penal Code § 3067(a)); Doc. No. 35 at 29-30. Kurian's parole agreement included only his consent to be "search[ed] at any time by my probation officer *based upon reasonable suspicion that I am in possession of contraband*." Doc. No. 38, Ex. 1 (emphasis supplied); see Commonwealth v. Williams, 457 Pa. 577, 588-89 (1997) ("[T]he parolee's signing of a parole agreement . . . does not mean either that the parole officer can conduct a search at any time and for any reason or that the parolee relinquishes his Fourth

Amendment Right to be free from unreasonable searches.").

In these circumstances, I believe that even though Kurian is a parolee, his claims are typical of those of the Class. Accordingly, I conclude that the typicality requirement is satisfied.

Adequacy of Representation

Finally, Plaintiffs must demonstrate that they will fairly and adequately protect the interests of the Class. Fed. R. Civ. P. 23(a)(4). In evaluating this requirement, I must determine "whether the representatives' interests conflict with those of the class and whether the class attorney is capable of representing the class." Johnston, 265 F.3d at 185; see also In re Community Bank of N. Va., 418 F.3d 277, 303 (3d Cir. 2005) ("This requirement encompasses two distinct inquiries designed to protect the interests of absentee class members: it considers whether the named plaintiffs' interests are sufficiently aligned with the absentees', and it tests the qualifications of the counsel to represent the class.") (quotations omitted).

Neither Party has suggested any conflict of interest between the named Plaintiffs and the other Class Members. Moreover, Class Counsel -- led by David Rudovsky, the preeminent civil rights lawyer in this District -- are more than capable of representing the Class. Accordingly, I conclude that the adequacy requirement is satisfied.

B. Rule 23(b)(3) Requirements

Predominance

In determining predominance, I must consider

> whether [the] proposed class[is] sufficiently cohesive to warrant adjudication by representation, a standard far more demanding than the commonality requirement of Rule 23(a), requiring more than a common claim. Issues common to the class must predominate over individual issues. Because the nature of the evidence that will suffice to resolve a question determines whether the question is common or

> individual, a district court must formulate some prediction as to how specific issues will play out in order to determine whether common or individual issues predominate in a given case. If proof of the essential elements of the cause of action requires individual treatment, then class certification is unsuitable.

In re Hydrogen Peroxide Antitrust Litig., 552 F.3d at 310-11.

Numerous courts have found the predominance requirement satisfied in actions similar to the instant matter, reasoning that the existence and constitutionality of a policy or practice of strip searching all new detainees without reasonable suspicion are common issues subject to generalized proof. See, e.g., Florence, 2008 WL 800970, at *12 ("Plaintiff challenges whether Defendants have a policy or practice of using intake procedures for non-indictable arrestees that are tantamount to suspicionless strip searches. This issue is at the heart of each putative class members' claim and turns on generalized, not individualized, proof."); Marriott, 227 F.R.D. at 173 ("[T]he common question is whether the change-out, strip search procedure applicable to all admittees, regardless of whether reasonable suspicion exists that contraband or weapons are possessed, violates the Fourth Amendment. This question does not vary among class members.").

Defendants had disputed predominance, pointing to evidence contradicting the allegation that they employ a blanket strip search policy, including: (1) LCP's Strip Search Checklists, which include questions to help the intake officer determine whether reasonable suspicion exists; (2) the deposition testimony of several former and current corrections officers that all new detainees are not strip searched; and (3) a video demonstration of how new detainees are processed. See Doc. No. 35, Exs. 1-10, 12-13, 19. Defendants thus argued that whether each Class Member was illegally strip searched would require individualized determinations of

reasonable suspicion.

Other courts have rejected similar arguments, reasoning that whether a prison follows its own strip search policies -- or instead, employs a *de facto* practice of strip searching all new detainees -- is a factual question that does not defeat predominance. See, e.g., Sutton, 2007 WL 119892, at *7 (rejecting argument that prison's written policy refuted the existence of a blanket strip search practice and so defeated predominance; "Ultimately, a reasonable jury could find that the . . . Jail failed to follow its written policy, and instead followed a custom or practice to strip search all persons . . . without regard to . . . reasonable suspicion[.]"). Moreover, Plaintiffs have offered considerable evidence demonstrating the existence of a blanket practice, including: (1) the deposition testimony of current and former correctional officers who could not recall "a single instance" where a new detainee was not strip searched; (2) new detainee Strip Search Checklists created during a 77 day period indicating that 32% were strip searched even though the Checklists provided no basis for such action; and (3) LCP's "Contraband Training" video -- created in 1978 and purportedly still in use -- directing that all new detainees are to be strip searched. See Doc. No. 33 at 3-11.

Further, Defendants have admitted that all new detainees must submit to a "clothing exchange": *i.e.*, completely undress and change into prison clothes in the presence of a corrections officer. (Doc. No. 35 at 16-17.) At least one court has held that this practice does not differ materially from a strip search. See Marriott, 227 F.R.D. at 169 (certifying a Rule 23(b)(3) class challenging the constitutionality of a prison's clothing "change-out" policy; "The differences . . . in the extent and purpose of the [clothing exchange] procedure do not change the fact that the admittees are required to strip naked in front of a [corrections officer] and submit to

the observation of their body . . . . This procedure squarely fits both the common and legal definitions of strip search."), aff'd, 2005 WL 3117194 (2d Cir. 2005). Accordingly, whether a "clothing exchange" is the equivalent of a "strip search," and whether Defendants' "clothing exchange" policy comports with the Fourth Amendment are also predominant, common issues.

Defendants further argued that individual issues would predominate because, the existence of a blanket strip search practice notwithstanding, some Class Members: (1) may have been strip searched as a result of reasonable suspicion; or (2) *could have* been searched as a result of reasonable suspicion. See Doc. No. 35 at 39-44. Several courts have rejected similar challenges to predominance in strip search class actions. See, e.g., In re Nassau County Strip Search Cases, 461 F.3d at 229-230 ("The class definition also implicated two broad common liability issues: whether the blanket policy existed and whether defendants are liable for its implementation. The only countervailing, individualized liability issue was whether, regardless of the policy, some plaintiffs were strip searched based upon 'reasonable and contemporaneously held suspicion.' The existence of this defense does 'not . . . foreclose class certification.'") (quoting In re Visa Check/MasterMoney Antitrust Litig., 280 F.3d 124, 138 (2d Cir. 2001)). The First Circuit has reasoned that

> [i]f there [is] in fact a rule, custom or policy of strip searching every arrestee or a substantially overlarge category, then it is a fair guess that most arrestees so classed were strip searched on this basis. There might yet be some number as to whom defensible individual judgments to strip search were actually made or could have been made -- two different situations with different legal implications; but whoever has the burden of identifying such persons, they may well not be numerous.

Tardiff v. Knox County, 365 F.3d 1, 6 (1st Cir. 2004). Other courts have ruled that once plaintiffs establish a blanket practice of strip searching all new detainees: (1) the burden shifts to

the defendant to prove that particular class members were legally strip searched based on reasonable suspicion; and (2) the existence of such a defense to certain class members' claims does not defeat predominance. See Sutton, 2007 WL 119892, at *4 ("Courts generally recognize that if plaintiffs can establish that defendants had an unconstitutional strip search policy or custom, defendants will have the burden to show that a particular search was reasonable.") (quotations omitted); Dodge, 226 F.R.D. at 182 ("[T]he fact that a particular class member could have been lawfully strip searched if [the prison] had made the constitutionally required assessment is a defense to a particular class member's claim for damages, not a defense to the class-wide claim that the County searched everyone without making any assessment at all."); Mack v. Suffolk County, 191 F.R.D. 16, 24 (D. Mass. 2000) ("[T]o require Plaintiff to prove that each individual search was unsupportable, as well as indiscriminate, would be unnecessary and unfair. Given that these [plaintiffs] were routinely strip-searched, the burden rests on Defendants to demonstrate that particular searches were reasonable.").

In sum, I conclude that the predominance requirement is satisfied.

Superiority

I must also consider whether a class action is superior to other forms of adjudication. Fed. R. Civ. P. 23(b)(3). "The superiority requirement asks the court to balance, in terms of fairness and efficiency, the merits of a class action against those of alternative available methods of adjudication." In re Prudential, 148 F.3d at 316 (quotations omitted).

It is apparent that a class action is the superior form of adjudication. Indeed, because each Class Member's "provable[,] actual damages" are likely low, a class action is "not only the superior means, but probably the only feasible one . . . to establish liability and perhaps

damages." Tardiff, 365 F.3d at 7 ("[O]nly the limited number of cases where serious damage ensued would ever be brought without class status and . . . the vast majority of claims would never be brought unless aggregated because provable actual damages are too small.") (citations omitted); see also In re Nassau County Strip Search Cases, 461 F.3d at 229 ("Absent class certification and its attendant class-wide notice procedures, most of these individuals -- who potentially number in the thousands -- likely never will know that defendants violated their clearly established constitutional rights, and thus never will be able to vindicate those rights. As a practical matter, then, without use of the class action mechanism, individuals harmed by defendants' policy and practice may lack an effective remedy altogether.").

In sum, I conclude that Plaintiffs satisfy the requirements of Rule 23(a) and at least one requirement of Rule 23(b). Accordingly, I will conditionally certify a Rule 23(b)(3) class for settlement purposes.

II. Preliminary Approval of Settlement

"The preliminary approval decision is not a commitment to approve the final settlement; rather, it is a determination that there are no obvious deficiencies and the settlement falls within the range of reason." Gates, 248 F.R.D. at 438 (quotations omitted); see also In re Diet Drugs Prods. Liab. Litig., No. 99-20593, 1999 WL 33644489, at *2 (E.D. Pa. Dec. 3, 1999) ("[A] district court's first step in reviewing a class action settlement proposal is . . . to determine whether the proposed settlement is within the range of possible approval.") (quoting Armstrong v. Bd. of Sch. Dirs. of the City of Milwaukee, 616 F.2d 305, 314 (7th Cir. 1980)); Manual for Complex Litigation, § 21.632 (4th ed. 2009). In determining whether to approve preliminarily

the Settlement, I must consider whether: "(1) the negotiations occurred at arm's length; (2) there was sufficient discovery; (3) the proponents of the settlement are experienced in similar litigation; and (4) only a small fraction of the class objected." In re Linerboard Antitrust Litig., 292 F. Supp. 2d 631, 638 (E.D. Pa. 2003) (quoting In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig., 55 F.3d 768, 785-86 (3d Cir. 1995)).

It is apparent that the proposed Settlement is the result of good faith, arms-length negotiations between the Parties. Before settlement negotiations began, Class Counsel took extensive class discovery, including numerous interrogatories, voluminous document production, and many depositions and interviews. (Doc. No. 48 at 4). The Parties also vigorously litigated class certification. The settlement negotiations involved the mediation services of former Chief Magistrate Judge James R. Melinson and took several months. Moreover, Class Counsel and Defense Counsel are familiar with the issues presented, having previously litigated the constitutionality of prison strip search policies. See, e.g., Martinez v. Warner, No. 07-3213 (E.D. Pa. 2007) (David MacMain, counsel for Defendants); Boone v. City of Phil., No. 05-1851 (E.D. Pa. 2005) (Daniel C. Levin and Christopher G. Hayes, counsel for Plaintiffs). Finally, I am not aware of any objectors to the proposed Settlement at this stage.

Significantly, the Settlement Agreement will provide prospective relief that the named Plaintiffs sought in this action, but likely lacked standing to pursue. In their Amended Complaint, Plaintiffs brought claims for declaratory and injunctive relief, seeking to change practices at LCP. Courts have repeatedly concluded in similar circumstances that the plaintiffs lacked standing to seek such equitable relief because the threat that they would suffer future harm -- *i.e.*, that they would again be arrested, detained at the same facility, and strip searched -- was

too speculative. See, e.g., Powell v. Barrett, 496 F.3d 1288, 1308 n.27 (11th Cir. 2007); Smook v. Minnehaha County, 457 F.3d 806, 815-16 (8th Cir. 2006), cert. denied, 549 U.S. 1317 (2007); Shain v. Ellison, 356 F.3d 211, 214-216 (2004); Campbell v. Miller, 373 F.3d 834, 836 (7th Cir. 2004); Ducharme v. R.I., 30 F.3d 126, 1994 WL 390144, at *3-4 (1st Cir. July 15, 1994) (unpublished); see also O'Shea v. Littleton, 414 U.S. 488, 494 (1974) ("[I]f none of the named plaintiffs . . . establishes the requisite of a case or controversy with the defendants, none may seek [injunctive] relief on behalf of himself or any other member of the class.").

In the proposed Settlement, however, Defendants have agreed to revise their strip search policy and employ a new Strip Search Checklist approved by Class Counsel. See Settlement Agreement § III.A.1. The Parties agree that the revised policy comports with the Fourth Amendment; Defendants have agreed to re-train their Corrections Officers to ensure compliance. Id. §§ III.A.2-3. In addition, the Parties have agreed that Class Counsel will monitor compliance with the new policy: every 90 days, Defendants will provide Class Counsel with copies of the intake files for all new detainees during a specified 5 day period. Id. § III.A.4. I will retain jurisdiction during this monitoring, which will terminate 18 months after Final Approval of the Settlement. Id. If Class Counsel believes that Defendants have violated the new policy, and the Parties cannot resolve the dispute, Class Counsel may seek relief from the Court, including contempt sanctions. Id. The providing of significant prospective relief along with monitoring and sanctions again confirms that the proposed Settlement is the product of vigorous litigation and arms-length negotiations.

III. Class Notice

Rule 23(e) requires that I "direct notice in a reasonable manner to all class members who would be bound by the proposal." Fed. R. Civ. P. 23(e)(1). This requirement is "designed to summarize the litigation and the settlement and to apprise class members of the right and opportunity to inspect the complete settlement documents, papers, and pleadings filed in the litigation." In re Prudential, 148 F.3d at 326-27 (quotations omitted).

I conclude that the plan for notifying the Class of the proposed Settlement is reasonable. The Parties have agreed that Class Counsel will obtain from Defendants a last known address, date of birth, and social security number (if possible) for each Class Member. See Settlement Agreement §§ IV.B.1-4. The Notice will be mailed to each identified individual. Class Counsel will also use print media (the Philadelphia Inquirer and the Intelligencer Journal/Lancaster New Era), a website, and a toll-free number to provide notice. See id. § IV.B.1; Zimmer Paper Prods., Inc. v. Berger & Montague, P.C., 758 F.2d 86, 90 (3d Cir. 1985) ("It is well-settled that in the usual situation first class mail and publication fully satisfy the notice requirements of Fed. R. Civ. P. 23 and the due process clause."). Moreover, the Class Notice and Claim Form will be posted in prominent locations in LCP and the Lancaster County Office of Probation and Parole. See Settlement Agreement §§ IV.B.1; cf. Harris v. Reeves, 761 F. Supp. 383, 393 (E.D. Pa. 1991) (approving similar notice in class action challenging prison overcrowding; "posting in the prisons remain[s] the best way to provide whatever notice is required").

CONCLUSION

In sum, I preliminarily conclude that: (1) the requirements for maintaining a Rule

23(b)(3) class action are met; (2) the Parties' proposed Settlement "falls within the range of reason"; and (3) the Class Notice is reasonable. Gates, 248 F.R.D. at 438. Accordingly, I will grant the Parties' Joint Motion for Preliminary Approval of Settlement and Provisional Class Certification, direct notice of the Settlement to the Class, and schedule a Final Approval Hearing.

AND NOW, this 1st day of September, 2009, it is **ORDERED** that the Parties' Joint "Motion for Preliminary Approval of Settlement and Provisional Class Certification" (Doc. No. 46) is **GRANTED as follows:**

1. Capitalized terms used in this Order have the meanings assigned to them in the Settlement Agreement and this Order.

2. The terms of the Parties' Settlement Agreement are hereby conditionally approved, subject to further consideration thereof at the Final Approval Hearing provided for below. The Court finds that said Settlement is sufficiently within the range of reasonableness and that notice of the proposed Settlement should be given as provided in this Order.

3. Pursuant to Federal Rule of Civil Procedure 23, the Court conditionally certifies the following Settlement Class:

> All persons who have been or will be placed into the custody of the Lancaster County Prison after being detained for misdemeanors, summary offenses, traffic infractions, civil commitments, bench warrants, violations of probation, parol or Accelerated Rehabilitative Disposition, and/or for other similar charges and/or crimes that do not involve the possession or distribution of drugs, possession of weapons, or are violent felonies, and who were or will be strip searched upon their entry into the Lancaster County Prison pursuant to the policy, custom and practice of the Defendants. The Class Period commences on August 22, 2005 and extends to July 28, 2009. Specifically excluded from the Class are Defendants and any and all of their respective affiliates, legal representatives, heirs, successors, employees or assignees.

4. The Court further conditionally finds that Plaintiffs Sajan Kurian and Michael Rhodes are adequate Class Representatives for the Settlement Class.

5. The Court further finds that Plaintiffs' Counsel are adequate Class Counsel.

6. The Parties' joint "Motion to Court to Authorize Change in Notice" (Doc. No. 51) is **GRANTED**. The Court approves: (1) the Class Notice of Settlement attached as Exhibit B to

the Parties' Settlement Agreement (Doc. No. 47-3); (2) the Summary Notice for Publication attached as Exhibit E to the Parties' Settlement Agreement (Doc. No. 47-6); and (3) the final Publication Notice attached as Exhibit B to the Parties' joint "Motion to Court to Authorize Change in Notice" (Doc. No. 51). The Court also approves the Notice Program as set forth in Section IV of the Settlement Agreement.

7. If the Settlement Agreement is terminated or not consummated for any reason whatsoever, the conditional certification of the Settlement Class shall be void, the Defendant shall have reserved all its rights to oppose any and all class certification motions, to contest the adequacy of Plaintiffs as representative of any putative class, and to contest the adequacy of Class Counsel as adequate Class Counsel. Additionally, Plaintiffs reserve all of their rights, including the right to continue with the litigation pending at the time of the Settlement should the Settlement Agreement not be consummated.

Notice to Settlement Class and Appointment of Settlement Administrator

8. Counsel for the Class ("Class Counsel") are as follows:

David Rudovsky (I.D. No. 15168)
Jonathan H. Feinberg (I.D. No. 88227)
KAIRYS, RUDOVSKY, MESSING & FEINBERG LLP
The Cast Iron Building
718 Arch Street, Suite 501
Philadelphia, PA 19106
Office: 215-925-4400
Fax: 215-925-5365

Joseph G. Sauder (I.D. No. 82467)
Benjamin F. Johns (I.D. No. 201373)
CHIMICLES & TIKELLIS LLP
One Haverford Centre
361 West Lancaster Avenue
Haverford, PA 19041

Telephone: (610) 642-8500
Facsimile: (610) 649-3633

Christopher G. Hayes (I.D. No. 57253)
LAW OFFICE OF CHRISTOPHER G. HAYES
225 South Church Street
West Chester, PA 19382
610-431-9505 (phone)
610-431-1269 (fax)

Daniel C. Levin (I.D. No. 80013)
LEVIN, FISHBEIN, SEDRAN & BERMAN
510 Walnut Street, Ste. 500
Philadelphia, PA 19106
Telephone: 215-592-150

9. Beginning no later than sixty (60) days from the date of this Order Preliminarily Approving Settlement, Class Counsel shall cause to be disseminated the notices, substantially in the form attached as Exhibits A and B hereto, in the manner set forth in Section IV of the Settlement Agreement. Such Notice Program will be completed expeditiously pursuant to the terms of the Settlement Agreement. Class Members will have forty-five (45) days from the Notice Date to opt out or to object, and one-hundred twenty (120) days from the Notice Date to file claims. Prior to the Final Approval Hearing, Plaintiffs and/or the Claims Administrator shall serve and file a sworn statement attesting to compliance with the provisions of this paragraph.

10. The Class Notice to be provided as set forth in the Settlement Agreement as filed with the Court is hereby found to be the best practicable means of providing notice under the circumstances and, when completed, shall constitute due and sufficient notice of the proposed Settlement and the Final Approval Hearing to all persons and entities affected by and/or entitled to participate in the Settlement, in full compliance with the notice requirements of Fed. R. Civ. P. 23, due process, the Constitution of the United States, the laws of Pennsylvania and all other

applicable laws. The Notices are accurate, objective, informative and provide Class members with all of the information necessary to make an informed decision regarding their participation in the Settlement and its fairness.

11. Class Counsel are authorized to retain a claims administrator to be agreed upon by counsel in accordance with the terms of the Settlement Agreement and this Order.

Requests for Exclusion from the Settlement Class

12. Any member of the Settlement Class that wishes to be excluded ("opt out") from the Settlement Class must send a written Request for Exclusion to the Claims Administrator, so that it is received by the Claims Administrator at the address indicated in the Notice on or before the close of the opt out period. The Request for Exclusion shall fully comply with the requirements set forth in the Settlement Agreement. Members of the Settlement Class may not exclude themselves by filing Requests for Exclusion as a group or class, but must in each instance individually and personally execute a Request for Exclusion and timely transmit it to the Claims Administrator.

13. Any member of the Settlement Class who does not properly and timely request exclusion from the Settlement Class shall be bound by all the terms and provisions of the Settlement Agreement, whether or not such person objected to the Settlement and whether or not such person made a claim upon, or participated in, the Settlement Fund pursuant to the Settlement Agreement.

The Final Approval Hearing

14. A hearing on the Settlement is hereby scheduled to be held before this Court no later than one hundred fifty (150) days from the Notice Date, to consider the fairness, the

reasonableness, and adequacy of the proposed settlement, the dismissal with prejudice of this class action with respect to the Released Parties that are Defendant herein, and the entry of final judgment in this class action. Class Counsel's application for award of attorney's fees and costs shall be heard at the time of the hearing.

15. The hearing shall be subject to adjournment by the Court without further notice to the members of the Settlement Class other than that which may be posted by the Court. Class Counsel will advise members of the Settlement Class of any scheduling issues by way of the Settlement Website.

16. Any person or entity that does not elect to be excluded from the Settlement Class may, but need not, enter an appearance through his or her own attorney. Settlement Class members who do not enter an appearance through their own attorneys will be represented by Class Counsel.

17. Any person who does not elect to be excluded from the Settlement Class may, but need not, submit comments or objections to the proposed Settlement. Any Class member may object to the proposed Settlement, entry of Final Order and Judgment approving the Settlement, and Class Counsel's application for fees and expenses by serving a written objection.

18. Any Class Member making the objection (an "objector") must sign the objection personally. An objection must state why the objector objects to the proposed Settlement and provide the basis to support such position. If an objector intends to appear personally at the hearing, the objector must include with the objection a notice of the objector's intent to appear at the hearing.

19. Objections, along with any notices of intent to appear, must be filed no later than

forty-five (45) days from the Notice Date. If counsel is appearing on behalf of more than one Class Member, counsel must identify each such Class Member and each Class Member must have complied with the requirements of this Order. These documents must be filed with the Clerk of the Court at the following address:

United States District Court for the Eastern District of Pennsylvania
Office of the Clerk of Court
James A. Byrne Federal Courthouse
601 Market Street, Room 2609
Philadelphia, PA 19106-1797

20. Objections, along with any notices of intent to appear, must also be mailed to Class Counsel and counsel for Defendant at the address listed below:

CLASS COUNSEL:
Joseph G. Sauder (I.D. No. 82467)
Benjamin F. Johns (I.D. No. 201373)
CHIMICLES & TIKELLIS LLP
One Haverford Centre
361 West Lancaster Avenue
Haverford, PA 19041
Telephone: (610) 642-8500
Facsimile: (610) 649-3633

DEFENSE COUNSEL:
David J. MacMain, Esquire (I.D. No. 59320)
LAMB McERLANE, PC
24 E. Market Street, P.O Box 565
West Chester, PA 19381
(610) 430-8000

21. Only Class Members who have filed and served valid and timely notices of objection shall be entitled to be heard at the Final Approval Hearing. Any Class Member who does not timely file and serve an objection in writing to the Settlement, entry of Final 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 this Order, shall be deemed to have waived any such objection by appeal, collateral attack, or otherwise.

22. Persons wishing to be heard at the hearing are required to file written comments or objections and indicate in their written comments or objections their intention to appear at the hearing. Settlement Class Members need not appear at the hearing or take any other action to indicate their approval.

23. All members of the Settlement Class who do not personally and timely request to be excluded from the Class are enjoined from proceeding against the Defendant for the claims made in the Complaint.

Other Provisions

24. Upon approval of the Settlement provided for in the Settlement Agreement, each and every time period and provision thereof shall be deemed incorporated herein as if expressly set forth and shall have the full force and effect of an Order of this Court.

25. All reasonable costs incurred in notifying members of the Settlement Class, as well as administering the Settlement Agreement, shall be paid as set forth in the Settlement Agreement.

AND IT IS SO ORDERED.

s/ Paul S. Diamond

_____

Paul S. Diamond, J.