

EXHIBIT A

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KERN, its agency the KERN COUNTY
SHERIFF'S OFFICE, DONNY
YOUNGBLOOD and MACK WIMBISH

17
18 **UNITED STATES DISTRICT COURT**

19 **EASTERN DISTRICT OF CALIFORNIA**

20 MARSIAL LOPEZ, SANDRA
21 CHAVEZ, THEODORE MEDINA,
each individually, and as class
22 representatives,

23 Plaintiffs,

24 vs.

25 SHERIFF DONNY YOUNGBLOOD, et
26 al.,

27 Defendants.

Case No. CV-F-07-0474 DLB
[Hon. Dennis L. Beck]

**CLASS ACTION SETTLEMENT
AGREEMENT PRESENTED TO
THE COURT FOR PRELIMINARY
APPROVAL**

Date: N/A
Time: N/A
Courtroom: 9

1 Plaintiffs MARSIAL LOPEZ, SANDRA CHAVEZ, and THEODORE
2 MEDINA (individually and on behalf of the class defined herein (collectively
3 “Plaintiffs”)), and Defendant Donny Youngblood (individually and as the Sheriff
4 for the County of Kern), Defendant County of Kern, and Defendant Mack Wimbish
5 (collectively “Defendants”), by and through their respective counsel, hereby submit
6 the following Settlement Agreement (“Settlement Agreement”).

7 **I. RECITALS**

8 WHEREAS, Plaintiffs filed the above referenced action in United States
9 District Court for the Eastern District of California (“Court”) on March 27, 2007;
10 and

11 WHEREAS, Plaintiffs asserted they represented a class of persons who were
12 subjected to strip/visual body cavity searches (“strip/vcb searches”) by the Kern
13 County Sheriff’s Department (“KCSO”) after having become entitled to release,
14 and a class of persons who were subjected to strip/vcb searches in groups without
15 any individual privacy; and

16 WHEREAS, Plaintiffs further alleged various violations of the Federal and
17 State Constitutions, of 42 U.S.C. §1983, and violation of various California
18 statutes; and

19 WHEREAS, the District Court certified a class on April 1, 2009; granted
20 summary judgment on liability issues to the Plaintiff class, and denied qualified
21 immunity to the Defendants; on March 31, 2009; and

22 WHEREAS, the matter was on appeal in the Circuit Court of Appeal from
23 the District Court’s orders; however, the Ninth Circuit has now granted conditional
24 dismissal without prejudice of the appeal to allow the District Court to have
25 jurisdiction over settlement of this class action case; and

26 WHEREAS, the Parties to this Settlement Agreement agree that this action
27 has been extensively litigated for the past nearly four years and have engaged in
28 extensive settlement negotiations over four days before retired United States

1 District Judge Raul Ramirez, who acted as the mediator in the case; and
2 WHEREAS, Defendants deny that they have done anything wrong
3 whatsoever, deny all liability to the defined class and do not concede any infirmity
4 in the defenses that they have asserted or intend to assert in these proceedings, but
5 are cognizant of the time and expense of further litigation; and

6 WHEREAS, the Parties to this Settlement Agreement believe that settlement
7 is in the best interests of the parties and will avoid further lengthy and costly
8 litigation;

9 THEREFORE, the Parties agree as follows:

10 **II. DEFINITIONS**

11 1. "Administrator" means the Class Administrator Gilardi & Co., LLC,
12 as agreed upon by the parties and as to be appointed by the Court, to review and
13 determine the validity and amount of claims submitted by a Settlement Class
14 Member ("SCM") (as defined herein), according to the procedures set forth herein.

15 2. The "Bar Date" is the date by which any SCM who wishes to receive
16 payment pursuant to the Settlement Agreement must file his/her Proof of Claim and
17 Release Form (attached as Exhibit B), objections to this Settlement Agreement, or
18 request to be excluded from the class (opt-out). The Bar Date shall be calculated as
19 the close of business on the 120th day after the last day of mailing Class Notice (the
20 time frame for which mailing is up to two consecutive business days from
21 beginning to end, as is addressed in ¶34).

22 3. "Class Counsel" means Barrett S. Litt and Paul J. Estuar, of Litt,
23 Estuar & Kitson ("LEK"), 1055 Wilshire Blvd., #1880, Los Angeles CA. 90017.

24 4. The "Class Notice" means the notice to the Class regarding settlement,
25 to be sent to Class Members in a form substantially similar to that attached hereto
26 as Exhibit C, and such other summary notice to be published in accordance with the
27 terms of this Settlement Agreement.

28 5. The "Class Period" is March 27, 2005, to October 1, 2007.

6. The Settlement Agreement "Database" is the information provided in

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CLASS ACTION SETTLEMENT AGREEMENT

EXHIBIT A

1 hard copy and/or electronic form by the Defendants to the Administrator and Class
2 Counsel no later than ten (10) days from the date the Court grants preliminary
3 approval of the terms of this Settlement Agreement (if it has not already occurred).
4 It may include, to the extent available, the name, address at time of booking, date of
5 birth, Social Security Number, whether the inmate is a Post-Release Settlement
6 Class Member 1 or 2, and any other computerized data relevant to determining
7 Class Membership or notifying Class Members.

8 7. The "Effective Date" means the date upon which a judgment entered
9 by the Court approving the Settlement Agreement becomes final. The Judgment
10 will be deemed final only upon expiration of the time to appeal or, if a Notice of
11 Appeal is filed, upon exhaustion of all appeals and petitions for writs of certiorari,
12 the final resolution of which upholds the settlement.

13 8. An "Opt-Out" is any Class Member who files a timely request for
14 exclusion pursuant to the terms of this Settlement Agreement, as specified in
15 Paragraph 43.

16 9. The "Proof of Claim Form" means the Proof of Claim and Release
17 Form required to be used to make a claim for payment under this settlement. The
18 Proof of Claim form utilized will be materially similar to the copy of the proposed
19 Proof of Claim attached as Exhibit B.

20 10. "Released Person" means the Defendants and their affiliates,
21 subsidiaries, predecessors, successors, and/or assigns, together with past, present
22 and future officials, employees, representatives, attorneys, and/or agents of the
23 County of Kern, the Kern County Sheriff's Department, or any of them. "Released
24 Persons" also includes any and all insurance carriers, and/or their representatives
25 and attorneys, for the Released Persons.

26 11. "Post-Release Class" means those persons who, from March 27, 2005,
27 up to October 1, 2007, (a) were in KCSD custody; (b) were taken from jail to court;
28 (c) became entitled to release after going to court; and (d) were strip and/or visual
body cavity ("vbc") searched before release pursuant to KCSD's blanket policy,

{00850924.DOC}4

CLASS ACTION SETTLEMENT AGREEMENT

EXHIBIT A

1 practice and/or custom to strip/vbc search all court returns, including those entitled
2 to release.

3 12. "Group Strip Search Class" means those persons who, from March 27,
4 2005, up to October 1, 2007, (a) were in KCSD custody; (b) were subjected to a
5 strip and/or visual body cavity search in a group with other inmates also being
6 strip/vbc searched, which search did not afford privacy from others; and (c) whose
7 strip searches were conducted pursuant to KCSD's blanket policy, practice and/or
8 custom to regularly conduct strip/vbc searches in a group setting.

9 13. A "Class Member" means any member of either Class as defined
10 above.

11 14. A "Settlement Class Member" ("SCM") means any member of either
12 Class as defined above, including representatives, successors and assigns, who does
13 not file a valid and timely Request for Exclusion as provided for in ¶44 of this
14 Settlement Agreement.

15 15. "Strip Search" means a search conducted by Kern County Sheriff's
16 personnel on a Kern County inmate in which the person was required to remove his
17 or her clothing, including underwear, in the presence of a corrections officer and/or
18 expose his or her breasts, genitals or body cavities for a visual inspection.

19 III. DISCLAIMER OF LIABILITY

20 16. This Settlement Agreement is for settlement purposes only, and neither
21 the fact of, nor any provision contained in, this Settlement Agreement or its
22 exhibits, nor any action taken hereunder, shall constitute, be construed as, or be
23 admissible in evidence as, any admission of the validity of any claim or any fact
24 alleged by any Plaintiff or Class Member in either this action or in any other
25 pending or future action or of any wrongdoing, fault, violation of law, or liability of
26 any kind on the part of any Released Person or admission by any Released Person
27 of any claim or allegation made in this action or in any other action. Defendants
28 deny all allegations of wrongdoing and deny any liability to Plaintiffs or to any
Class Member. The parties have agreed that, in order to avoid long and costly

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CLASS ACTION SETTLEMENT AGREEMENT

1 litigation, this dispute should be settled pursuant to the terms of this Settlement
2 Agreement, subject to the approval of the Court.

3 **IV. TERMS AND EFFECT OF SETTLEMENT AGREEMENT**

4 17. The Parties enter into this agreement solely for the purposes of this
5 settlement and implementation of the settlement. If the settlement fails to be
6 approved or otherwise fails consummation, then this Settlement Agreement is
7 hereby withdrawn.

8 18. A SCM who complies with the requirements set forth in this
9 Settlement Agreement will be paid specified sums determined by the settlement
10 distribution process set forth herein, which payment shall be in full satisfaction of
11 all claims of that SCM.

12 19. The Settlement Agreement, as of the Effective Date, resolves in full all
13 claims against the Released Persons by all of the SCMs, including the named
14 Plaintiffs, involving violations of law or constitutional rights, including, without
15 limitation, their Fourth Amendment rights, their Fourteenth Amendment rights, or
16 any other federal, state or local law, regulation, duty, or obligation, or any other
17 legal theory, action or cause of action, which are based upon or could be based
18 upon or arise from the facts alleged in the lawsuit, i.e., claiming damages for strip
19 searches occurring while in custody of the Kern County Sheriff's Department that
20 fit within the definition of either the Post-Release or Group Strip Search Class.
21 When the Settlement Agreement is final, as of the Effective Date, all SCMs,
22 including the named Plaintiffs, waive all rights to any and all claims relating to
23 Post-Release or Group Strip Searches by Released Parties under any theory or
24 cause of action whatsoever under California state law and federal law. This waiver
25 and release shall include a full release and waiver of unknown rights that may exist
26 as of the Effective Date.

26 20. As of the Effective Date, the SCMs, including the named Plaintiffs,
27 hereby waive any and all rights to pursue, initiate, prosecute, or commence any
28 action or proceeding before any court, administrative agency or other tribunal, or to

{00850924.DOC}6

CLASS ACTION SETTLEMENT AGREEMENT

EXHIBIT A

1 file any complaint regarding acts or omissions by the Released Persons with respect
2 to any Strip Search by Defendants that occurred or may have occurred during the
3 Class Period that fit within the definition of either the Post-Release or Group Strip
4 Search Class; and further, as it relates to this waiver or Release, expressly waive the
5 provisions of California Civil Code §1542, which provides that “a general release
6 does not extend to claims which the creditor does not know or suspect to exist in his
7 or her favor at the time of executing the release, which if known by him or her must
8 have materially affected his or her settlement with the debtor.”

9 21. This Settlement Agreement, together with its exhibits, contains all the
10 terms and conditions agreed upon by the Parties hereto regarding the subject matter
11 of the instant proceeding, and no oral agreement entered into at any time nor any
12 written agreement entered into prior to the execution of this Settlement Agreement
13 shall be deemed to exist, or to bind the Parties hereto, or to vary the terms and
14 conditions contained herein, except as expressly provided herein.

15 22. Each SCM shall be deemed to have submitted to the jurisdiction of the
16 Court.

17 23. This Settlement Agreement is subject to and conditioned on a Fairness
18 Hearing conducted by the Court and the final approval of this Settlement
19 Agreement and the issuance of the final order and judgment of dismissal by the
20 Court, providing the specified relief as set forth below, which relief shall be
21 pursuant to the terms and conditions of this Settlement Agreement and the Parties’
22 performance of their continuing rights and obligations hereunder. The Order and
23 Judgment shall be deemed final only on expiration of the time to appeal, or if a
24 Notice of Appeal is filed, upon exhaustion of all appeals and petitions for writs of
25 certiorari or the expiration of the time to file such writ petition (see definition of
26 “Effective Date”, *supra*). Such final Order and Judgment shall:

- 27 a. Dismiss with prejudice all claims in the action as to the Released Persons
28 including all claims for monetary damages, declaratory relief and
injunctive relief, each side to bear their own costs and fees except as

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CLASS ACTION SETTLEMENT AGREEMENT

EXHIBIT A

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otherwise provided for in this Settlement Agreement;

b. Order that all SCMs are enjoined from asserting against any Released Person, any and all claims that any SCM had, has or may have in the future arising out of the facts alleged in the Complaint;

c. Release each Released Person from the claims that any SCM has, had or may have in the future, against such Released Person arising out of the facts alleged in the Complaint;

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

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

The Parties will take all necessary and appropriate steps to obtain preliminary and final approvals of the Settlement Agreement, and dismissal of the action with prejudice, all parties bearing their own fees and costs unless otherwise set forth in this Settlement Agreement. If the Court gives final approval of this Settlement Agreement, and if there is an appeal from such decision, the Defendants will not oppose Plaintiffs' efforts to defend the Settlement Agreement.

V. RESOLUTION AND PAYMENT OF CLAIMS SETTLEMENT PAYMENTS

24. Released Parties shall not prefund any settlement fund or proceeds. Instead, funds will be deposited by the Released Parties to the Class Administrator as necessary to pay the class administration costs, the attorney's fees and costs, and the SCM (including the Named Plaintiff) claims.

25. Defendants agree to pay each of the three class representatives [Marsial Lopez, Sandra Chavez, and Theodore Medina] \$30,000 as full and complete payment of their claims in this case, subject to the approval of the Court. Said payments to the class representatives shall be paid to the Litt, Estuar & Kitson

1 LLP (hereafter "LEK") Client Trust Account at the same time that the Attorneys'
2 fees and costs are paid. Defendants or their insurers will make a single wire transfer
3 to the LEK Client Trust Account that will include the approved attorneys' fees and
4 costs, and the funds awarded to the class representatives in a single transfer
5 (hereafter the "Class Rep/Fee Transfer") within thirty (30) days of the Effective
6 Date. The Class Representatives and Class Counsel shall provide tax identification
7 information to Defendants within 30 days from the date of preliminary approval of
8 the Settlement Agreement.

9 26. The Parties agree that this is a claims-made settlement, requiring a
10 SCM to formally submit a valid and completed Proof of Claim Form in order to
11 qualify and receive payment under this Settlement Agreement. In addition to and
12 separate from any other payments called for in this Agreement, the Released Parties
13 agree to pay a SCM who complies with the requirements set forth in this Settlement
14 Agreement according to a tier payment process as follows:

- 15 a. Post-Release Settlement Class Member 1: A Post-Release Settlement
16 Class Member 1 is a SCM who meets the definition of a Post-Release
17 Settlement Class member provided above and was subjected to a post-
18 release strip/vbc search for the first time during the Class Period.
19 Defendants agree to pay a SCM who qualifies as a Post-Release Class
20 Member 1 a sum of \$1500.
- 21 b. Post-Release Settlement Class Member 2: A Post-Release Settlement
22 Class Member 2 is a SCM who meets the definition of a Post-Release
23 Settlement Class member provided above and was subjected to a post-
24 release strip/vbc search for a second time during the Class Period.
25 Defendants agree to pay an SCM who qualifies as a Post-Release Class
26 Member 2 a sum of \$750 (in addition to the amount such SCM receives as
27 a Post-Release Settlement Class Member 1). No additional payments will
28 be made to persons subjected to more than two such searches.
- c. Group Strip Search Settlement Class Member: A Group Strip Search

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CLASS ACTION SETTLEMENT AGREEMENT

EXHIBIT A

1 Settlement Class Member is a SCM who meets the definition of a Group
2 Strip Settlement Class member provided above and was subjected to a
3 group strip/vbc search during the Class Period. Defendants agree to pay a
4 SCM who qualifies as a Post-Release Class Member 1 a sum of \$200. No
5 additional sums shall be paid to a Group Strip Search Settlement Class
6 Member who was subjected to a post-release strip/vbc search more than
7 one time (i.e., each Group Strip Search Settlement Class Member shall be
8 paid \$200 no matter how many times the individual was subjected to a
9 group strip search).

10 27. A SCM who is a Post-Release Class member is also entitled to
11 payment as a Group Strip Search Class member in addition to the payment s/he
12 receives as a Post-Release Class member.

13 28. Notwithstanding the amounts set forth above to be paid to each class
14 member, the parties have agreed to a maximum payout for each class, the amount
15 of which was derived from their joint estimate that claims are unlikely to exceed
16 approximately 28% of the class members (and, based on past experience, will likely
17 be meaningfully lower than that). Accordingly, the amounts to be paid Class
18 Members (not including class representatives) will be adjusted if the amount to be
19 awarded eligible Class Members in either the Post-Release or Group Strip Search
20 who make claims exceeds the total amount to be paid to that class. In that event, the
21 amount that members of that class receive will be adjusted on a pro-rated basis,
22 which would result in payment to individual Class Members of amounts lower than
23 those set forth above. The total amount paid to Post-Release Class Members is
24 capped at \$2,335,830.00, and if claims exceed that, they will be adjusted on a pro-
25 rated basis so that the total payment to such Post-Release Class Members (first and
26 second time combined) will not exceed that total. Similarly, the amount paid to
27 Group Strip Search Class Members is capped at \$2,016,000.00, and if claims
28 exceed that, they will be adjusted on a pro-rated basis so that the total payment to
such Group Strip Search Class Members will not exceed that total.

{00850924.DOC} 10

CLASS ACTION SETTLEMENT AGREEMENT

1 29. The Parties agree that a *cy pres* fund is not necessary or warranted and
2 no *cy pres* fund will be created under the terms of this settlement.

3 **CLASS COUNSEL FEES**

4 30. In addition to and separate from any other payments called for in this
5 Agreement, the Released Parties shall pay a one-time only lump sum payment of
6 \$2,000,000, to be paid to the LEK Client Trust Account, as Class Counsel
7 attorneys' fees, plus costs not to exceed \$65,000. This payment represents a full and
8 final settlement of all past, present and future attorneys' fees and all past, present
9 and future ordinary and extraordinary costs. It shall be paid as specified in ¶25,
10 *supra*.

11 **CLASS ADMINISTRATION COSTS**

12 31. In addition to and separate from any other payments called for in this
13 Agreement, the Released Parties are responsible for all Class Administration costs,
14 which shall be limited to the costs of Class Administration, costs of class notice and
15 costs for a Special Master as set forth in this Settlement Agreement. They shall
16 include any charges by Plaintiffs' data expert, in the event and to the extent that
17 Defendants wish to utilize him. Defendants and Kern County's insurers had the
18 unilateral right to decline entering into the Settlement Agreement if they
19 determined that Class Administration costs would exceed an agreed upon amount.
20 Defendants and Kern County's insurers did not exercise that right, and have agreed
21 to retain Gilardi to act as the Class Administrator, to whom Class Counsel have also
22 agreed. Accordingly, Defendants and their insurers, subject to court approval, have
23 contracted with Gilardi to provide class administration services, and they are solely
24 responsible for the costs of class administration, whatever they amount to.

25 32. The Administrator shall be responsible for providing Class Notice.
26 This shall comprise mailing Class Notice and a Claim Form by regular mail to all
27 Class Members' last known address. The Administrator shall also use normal and
28 customary means to search for a Class Member's last known address, including the
use of a postal database, when mail is returned, or whenever else it is appropriate in

1 order to reasonably notify Class Members. In the event a Notice to a Class
2 Member's last known address is returned as undeliverable, this will also include
3 making determinations of the location and current mailing address of Class
4 Members who are in state or federal prison, and re-sending notices to them at that
5 address. The Parties believe in good faith that obtaining the location and mailing
6 addresses of Class Members who may be in prison can be accomplished by Gilardi
7 and Co. and/or in cooperation with the California Department of Corrections and
8 Rehabilitation and the Federal Bureau of Prisons. The Parties will only apply for a
9 court order to access those records if necessary. Because those records are
10 confidential, the Parties request that the order for preliminary approval permit the
11 Parties and the claims administrator the right to access and review that data for use
12 in administering this settlement, and that they be provided immunity for any such
13 use.

14 33. The Class Notice shall describe the particulars of the case, provide the
15 class definition, provide information for claimants to contact the Administrator for
16 a claim form, and other usual and customary information. The Class Notice will be
17 materially similar to the proposed Class Notice attached to this Settlement
18 Agreement as Exhibit C.

19 34. The Administrator shall complete the mailing of Class Notice within
20 two consecutive business days. The second day of such mailing is the first day of
21 the period for calculating the "bar date" as provided in ¶2.

22 35. The Administrator shall be responsible for publishing a summary Class
23 Notice as follows:

- 24 a. The Bakersfield Californian. The notice shall run on four separate days, a
25 week apart, over a four week period and shall be at least ¼ page in size;
26 and
27 b. To the extent possible, the Kern County Cable TV Community Bulletin
28 Board. Provide a notice announcement for four days.

1 **CLASS ADMINISTRATION FOR PROOF OF CLAIM FORMS**

2 36. The Administrator shall be responsible for providing and receiving
3 Proof of Claim Forms. The Administrator shall determine eligibility for, and the
4 amount of, payment based on the Database or other available County of Kern
5 documents provided by Defendants to the Administrator.

6 37. A Proof of Claim Form shall be deemed timely submitted when
7 received by the Administrator, or postmarked, on or before the Bar Date. Facsimile
8 or electronic mail filings are not acceptable, will be deemed untimely filed and shall
9 not be considered by the Administrator.

10 38. If a Class Member submits a timely claim form that is deficient in
11 some respect, the Administrator shall provide written notice by First Class Mail and
12 a 30-day time limit to provide a proper claim form, which notice shall inform the
13 Class Members of what s/he must do in order to submit a proper claim. Failure to
14 cure the deficiency within the 30 day time limit will bar any further rights for
15 consideration of eligibility.

16 39. Untimely filed Proof of Claim Forms shall be rejected by the
17 Administrator and no payment shall be made.

18 40. The Administrator shall be responsible for garnishing from any
19 payment to a SCM certain amounts that the SCM owes for any liens or court orders
20 for restitution, child support, debts owed to the County of Kern and any statutory
21 liens, as set forth in ¶43, *infra*.

22 41. The Administrator shall make payments to SCMs who have filed
23 timely claims in accordance with this Settlement Agreement within a reasonable
24 time, with a goal of within 120 days after the Effective Date. If a check to a SCM is
25 not cashed within three months of its mailing, the Administrator shall hold the
26 funds for six additional months, during which time it shall make reasonable efforts
27 to contact the person to whom the un-cashed check was written to make
28 arrangements for its cashing or reissuance. Any such funds not cashed within one
year of its mailing shall revert to Defendants.

{00850924.DOC} 13

CLASS ACTION SETTLEMENT AGREEMENT

1 42. The Administrator shall not make payment to any SCM until all claims
2 have been submitted to the Administrator pursuant to the terms of this Settlement
3 Agreement, all verified claims and payments have been calculated and all disputes
4 relating to claims have been resolved.

5 **GARNISHMENT OF PAYMENT FOR LIENS**

6 43. The Administrator shall deduct from any claim certain payment
7 amounts owed by a claim participant for any liens or court orders for restitution,
8 child support, debts to county and statutory liens. (Those SCMs filing claims who
9 have liens under this paragraph are referred to as "Claimant with Liens.") The Class
10 Administrator will make payment to Kern County, the proper payee and/or their
11 designee for those payment amounts deducted as set forth in this paragraph. The
12 Defendants shall prepare a list of the liens or orders applicable to each Class
13 Member with Liens (hereafter referred to collectively as "lien" or "liens"). That list
14 will be provided to the Administrator, which will be responsible to confirm the list
15 of such liens. The following procedures shall apply to the liens.

16 a. For Claimants with Liens, the payment disbursement letter accompanying
17 any claim check sent to them shall include a notice of that amount,
18 specifying the nature of the lien and the purported amount of the lien. The
19 Notice shall include advising the claimant of his or her right to contest the
20 lien and advise him or her of the procedures to do so. The Notice will
21 advise the Claimant with Liens that they have 30 days from the date of
22 receipt of such notice (based on the postmark of said notice) to file a
23 Notice Contesting Lien, and of the procedure to contest the lien. A form
24 Notice Contesting Lien shall be provided to each Claimant with Liens, to
25 be prepared by the Administrator subject to approval by the parties, which
26 will be used to contest the lien. The Notice Contesting Lien shall specify
27 the grounds for the objection, and copies shall be sent to Class Counsel,
28 Defendants' counsel and the Claims Administrator.

b. First, the SCM, Class Counsel and Defendants' Counsel will attempt to

{00850924.DOC} 14

CLASS ACTION SETTLEMENT AGREEMENT

EXHIBIT A

1 resolve the objection by meet and confer conference. In the event the
2 objection cannot be resolved in that fashion, the Special Master agreed to
3 pursuant to ¶49 will be empowered to resolve any lien disputes under this
4 paragraph. To participate as a class member, any Claimant with Liens will
5 be deemed to have agreed that the Special Master's determination shall be
6 binding and non-appealable, and that fact shall be included in the letter
7 sent to Claimants with Liens. Such a claimant may present his or her
8 contentions and supporting documents in writing to the Special Master.
9 The Special Master will decide the validity of the lien, and may request
10 recommendations from each side's counsel before doing so.

- 11 c. Despite the amount of any lien, no Claimant with Liens shall have to pay
12 more than 50% of his/her class fund payment towards the lien, which
13 ensures that the claimant will receive funds for his/her claim regardless of
14 the amount of any lien.
- 15 d. The cost of the Special Master shall be borne by the Defendants as part of
16 the Class Administration costs.

17 **EXCLUSION FROM SETTLEMENT CLASS—OPT OUTS**

18 44. Any Class Member who wishes to be excluded from the Settlement
19 Class must submit a request to be excluded from the class, defined herein as "Opt-
20 Out". The request for exclusion must be delivered to the Administrator, or
21 postmarked, on or before the Bar Date or as the Court may otherwise direct.

22 45. Each member of the Settlement Class who chooses to Opt-Out from or
23 object to this settlement shall be deemed to have submitted to the jurisdiction of the
24 Court with respect to his/her claim and to any dispute resolution process conducted
25 by a Special Master as set forth in this Settlement Agreement.

26 46. Any Class Member who does not Opt-Out as set forth in this
27 Settlement Agreement, shall be deemed conclusively to have become a SCM and to
28 be bound by the Settlement Agreement and all subsequent proceedings, orders and
judgments herein.

1 47. Any Class Member who exercises an Opt-Out, as set forth in ¶44, shall
2 not share in any monetary benefits provided by this Settlement Agreement.

3 48. The Administrator will report to Defendants' counsel and Class
4 Counsel all Opt-Outs upon receipt, and will determine and report to counsel the
5 total number of Opt-Outs no later than 10 days after the Bar Date. If the total
6 number of Opt-Outs exceeds 25, Defendants, in their sole discretion, may rescind
7 their acceptance of the Settlement Agreement. Defendants, in exercising this right
8 of rescission, shall provide the Administrator and Class Counsel with written notice
9 of rescission within 10 days after receipt of the Administrator's report providing the
10 total number of Opt-Outs. In the event Defendants exercise their right of rescission
11 in accordance with this paragraph, any funds paid or deposited pursuant to this
12 Settlement Agreement shall be returned to Defendants within 10 days of the
13 exercise of the right to rescind, less any expenses, fees and costs incurred by the
14 Administrator. Such Administrator costs shall be borne exclusively by Defendants
15 and shall not be chargeable as a collectible cost even should Defendants ultimately
16 prevail in this Action.

17 **DISPUTE RESOLUTION**

18 49. The Parties agree to the appointment of the Honorable Raul Ramirez
19 (Ret.) as Special Master pursuant to Federal Rules of Civil Procedure Rule 53 to
20 resolve disputes that arise from implementation of the Settlement Agreement as set
21 forth herein.

22 **INTEGRATION**

23 50. This Settlement Agreement supersedes all prior communications
24 regarding the matters contained herein between the signatories hereto or their
25 representatives. This Settlement Agreement is an integrated agreement and contains
26 the entire agreement regarding the matters herein between the signatories hereto
27 and no representations, warranties or promises have been made or relied on by any
28 party hereto other than as set forth herein. This Settlement Agreement was drafted
by counsel for the parties hereto, and there shall be no presumption or construction

1 against any party.

2 **FAIRNESS HEARING AND FINAL ORDER OF APPROVAL**

3 51. Before this settlement agreement becomes final and binding on the
4 parties, the Court shall hold a Fairness Hearing to determine whether to enter the
5 Final Order of Approval. A proposed Final Order of Approval shall be submitted to
6 the Court substantially in the form set forth in Exhibit D.

7 **NO ADMISSION OR WAIVER**

8 52. The Parties acknowledge and agree that all undertakings and
9 agreements contained in this Settlement Agreement have been agreed to solely for
10 the purpose of finally compromising and resolving all questions, disputes and issues
11 between them relating to the litigation. This Settlement Agreement and any
12 proceedings taken pursuant hereto shall not in any event be construed as,
13 interpreted as, or deemed to be evidence of an admission or concession by either
14 party for any purpose, or deemed to constitute a waiver of any legal position or any
15 defenses or other rights which either of the parties might otherwise assert in any
16 context. Neither this Settlement Agreement nor any of its provisions nor any other
17 documents related hereto nor any negotiations, statements or testimony taken in
18 connection herewith may be offered or received in evidence in, or used for any
19 other purpose, or in any suit, action or legal proceeding which either of them may
20 now have or in the future have with any other person, as an admission or
21 concession of liability or wrongdoing or as any admission or concession on the part
22 of either party, except in connection with any action or legal proceeding to enforce
23 this Settlement Agreement. The Parties have reached this Settlement Agreement on
24 a commercial basis through arms-length negotiations and to avoid the costs and
25 delays of further disputes, litigation and negotiations among them. This Settlement
26 Agreement has been entered into without any concession of liability or non-liability
27 whatsoever and has no precedential or evidentiary value whatsoever. This
28 Settlement Agreement does not and is not intended to create any rights with respect
to any third parties, except as otherwise provided herein.

(00850924.DOC) 17

CLASS ACTION SETTLEMENT AGREEMENT

EXHIBIT A

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DATED: _____

By: _____
Mark L. Nations, Chief Deputy
Office of the County Counsel
COUNTY OF KERN

DATED: January 21, 2011

By: /s/ Barrett S. Litt
Barrett S. Litt
LITT, ESTUAR & KITSON
Attorneys for Plaintiffs

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LIST OF EXHIBITS TO SETTLEMENT AGREEMENT

- Exhibit B Proof of Claim and Release Form
- Exhibit C Class Notice
- Exhibit D Final Order of Approval and Settlement

EXHIBIT B

Case 1:07-cv-00474-DLB Document 125-3 Filed 01/22/11 Page 1 of 2
Proof of Claim Form, Exhibit B, 10/28/10 DRAFT
CONFIDENTIAL SETTLEMENT COMMUNICATION

CLASS ACTION CLAIM FORM

If you receive more than one Claim Form, sign and file all Claim Forms you receive.

||||| Claim #: SBO-123456-7
First Last (pre-print)
c/o (pre-print)
Address (pre-print)
City, ST Zip (pre-print)

Name/Address Changes (if any). Please enter below:

First Name Last Name

Address

Please provide the following personal identification information:

City State Zip

Email address: _____

() _____
Area Code Daytime Telephone Number

() _____
Area Code Evening Telephone Number

Social Security Number: _____ - _____ - _____ Date of Birth: [M] ____ / [D] ____ / [Y] _____

Alias(es): _____

I understand my entitlement will be determined exclusively by records of the County of Kern.

I wish to make a claim against Kern County because, between March 27, 2005, and October 1, 2007, while in the custody of Kern County Jail, I was subjected to a strip/visual body cavity search in a group with other inmates, and/or strip/visual body cavity searched after going to court and becoming entitled to release from custody as a result. I have reviewed and understand the class notice. To the best of my knowledge, I qualify as a class member. I understand that any liens the County may have against me will be taken from my recovery, up to 50% of the total. I understand that, by filing a Claim Form, I agree to allow the Claims Administrator access to my records regarding my arrest and any potential lien. I understand that, by participating as a class member, I waive all rights I may have, known or unknown, regarding Kern County's strip searches of me.

You must mail this Claim Form with a postmark, or it must be received,
NO LATER THAN _____,
in order to receive money.

If your Claim Form is not mailed with a postmark, or received by, no later than _____ 2011, you will not be entitled to receive money, but you will be bound by the settlement anyway. **DO NOT DELAY.**

The information given in this Claim Form is private, and will be held in strictest confidence, except as needed by the Parties and Settlement Administrator. If you have any questions about this lawsuit, write to us at *Lopez v. County of Kern* Settlement Administrator, _____, _____, or contact us by e-mail at _____ or visit our web site at www._____.com.

By signing this form below, I am confirming that the above information is correct to the best of my recollection and that 1) I am the person identified above and I am over the age of 18; 2) I qualify as a member of the class as defined above, and agree to the terms of the settlement; 3) I have not already received money or compensation for any of the claims involved in this case; 4) I will abide by, and be limited to, the formula for damages approved by the Court; and 5) I will keep the Settlement Administrator informed of my whereabouts at all times.

Case 1:07-cv-00474-DLB Document 125-3 Filed 01/22/11 Page 2 of 2
Proof of Claim Form, Exhibit B, 10/28/10 DRAFT
CONFIDENTIAL SETTLEMENT COMMUNICATION

I declare under penalty of perjury that the information given above is true and correct.

Date: _____ Signature: _____
(mm/dd/yyyy)

If you are signing as a Parent or Guardian please print your first and last names on the lines below:

Print Parent/Guardian First Name: ____ Last Name: ____

EXHIBIT C

Class and Settlement Notice

NOTICE OF CLASS ACTION, PROPOSED CLASS SETTLEMENT AND HEARING

RE: *Lopez, et al. v. County of Kern, et al.*, United States District Court, Eastern District of California, Case No. CV-F-07-0474 DLB.

This Class and Settlement Notice is available in Spanish. Call toll-free _____ or visit the following website: _____ .com. (in Spanish)

If, between is March 27, 2005, and October 1, 2007, you were arrested in Kern County, booked into a Kern County Sheriff's Department facility, and strip searched in a group with other inmates and/or strip searched by Kern County authorities after a Court ordered that you be released from custody,

You may be a CLASS MEMBER and entitled to MONEY.

There is currently pending a class action lawsuit in the United States District Court, Eastern District of California. The Court has certified the case as a class action, and there is a proposed Settlement. If the proposed Settlement receives final court approval, CLASS MEMBERS are eligible to receive money.

Kern County records show that you may be a CLASS MEMBER. Therefore, you may be eligible to receive MONEY. To receive any money in this pending Settlement, you must fill out and mail a Claim Form.

Your Claim Form

must be postmarked or received by the Administrator no later than _____ 2011.

If you wish to "opt out," or be excluded from the Settlement, your opt-out letter must be postmarked or received by the Administrator by _____, 2011.

Even if you do not submit a Claim Form(s) or opt out by the above deadline, you will nonetheless be bound by the Settlement, but you will not receive any money.

**If You Wish to Claim Money,
Fill Out and Mail the Enclosed Claim Form Today.**

If you receive more than one Claim Form, sign and file all Claim Forms you receive.

Below are questions and answers designed to explain to you information about this lawsuit, including how to proceed to file a claim or otherwise participate in the Settlement process.

1. What Is The Class Action Lawsuit About?

This lawsuit involves the former policy and/or practice of the Kern County Jail of a) strip searching inmates (i.e., requiring inmates to remove all clothing and submit to a visual inspection, usually including a visual inspection of their breasts, genitals and rectum) in a group with other inmates, and b) strip searching inmates who became entitled to release from custody after going to court. The Class Period covers March 27, 2005, through October 1, 2007 (when the policy was stopped).

2. Who Is A Member Of The Class?

You are a member of the class if you meet the definition of either of the classes (summarized above and set forth fully in the judge's orders), and your claim can be verified from the records of the Kern County Sheriff's Department.

Kern County must have a record of your being in custody so that officials can identify you individually by true name and other methods of identification, and ascertain that you qualify as someone who is a member of the class. Such records are the sole and final way it is determined who is a member of the class.

You have received this Notice either because (a) County of Kern records indicate that you may be in the class, or (b) you contacted the Class Administrator in the belief that you are in the class. Whether or not you qualify as a class member will be based upon records of the County of Kern. If those records do not contain your name and show you to be within the definition of the class, you will not qualify.

3. What Is The Purpose Of This Notice?

You have a right to know about a proposed Settlement of this class action lawsuit and about all of your options before the Court decides whether to give final approval to the Settlement. Your rights may be affected by this lawsuit.

This information is being sent to every known person who is or may be a member of the class based upon the last known address available from the records of the Kern County Sheriff's Department, and otherwise publicized to reach class members.

This Notice explains the lawsuit, the Settlement, your legal rights, what benefits are obtained, who is eligible and how to file a claim.

The Court in charge of the case is the United States District Court for the Eastern District of California, located in Fresno, California. The case is known as *Lopez v. Youngblood, et al.*, Case No. CV-F-07-0474 DLB. The people who brought the case are called Plaintiffs, and the people they sued are called Defendants.

4. Why Is This A Class Action?

In a class action, one or more persons, called the Class Representative(s), sue on behalf of a group of people who have similar claims – the Class Members. One court then resolves the issues for all Class Members, except for those who exclude themselves from the class.

5. Why Is There A Settlement?

This case has been going on for a very long time. Instead of continuing with the case, both sides have agreed to a Settlement. That way, both sides are able to avoid the risks and costs of a trial or appeal, the case can be resolved immediately, and the benefits of the Settlement can be made immediately available to the Class Members. The Class Representatives and their attorneys think that the proposed Settlement is fair to the Class Members and the parties in the case, and think that the terms of the Settlement are a fair, reasonable and adequate resolution of this matter. Because this is a settlement, the Defendants do not formally admit liability, but they nonetheless agree to pay money to class members.

6. Are There Lawyers Representing You?

The Court has approved lawyers (called “Class Counsel”) to collectively represent you. You will not be asked to pay your own personal money for the services of these attorneys and their associates and staff in litigating this case and negotiating this Settlement. Instead, the lawyers will seek payment from the defendants, subject to final approval of the Court, as is described further below. Only Class Counsel may act on behalf of the class. However, that does not prevent you from hiring your own lawyer to advise you personally about your rights, options or obligations as a Class Member in this lawsuit. If you want to be represented by your own lawyer, you may hire one at your own expense.

7. What Does The Settlement Provide?

The Settlement provides for the following payments to class members in three tiers:

- a. A person who was subjected for the first time during the class period (between March 27, 2005, and October 1, 2007) to a Kern County strip search after a Court ordered him or her to be released from all pending charges, and the person was in fact entitled to immediate release based on that order, will receive a payment of \$1500 (subject to certain possible adjustments described below in ¶ 8).
- b. A person who was subjected for a second or more time during the class period (between March 27, 2005, and October 1, 2007) to a Kern County strip search after a Court ordered him or her to be released from all pending charges, and the person was in fact entitled to immediate release based on that order, will receive a payment of \$750 in addition to the \$1500 for the first strip search

(again subject to certain possible adjustments described below in ¶ 8). If someone was strip searched after being ordered released more than two times during the Class Period, s/he will not receive additional money for those searches.

- c. A person who was strip searched in a group while in Kern County custody during the Class Period will receive a one time only payment (regardless of the number of times the person was strip searched in a group) of \$200 (subject to certain possible adjustments described below in ¶ 8).

In addition, the Agreement provides for the following other payments:

- a) Separate payment by Defendants of settlement administration fees.
- b) Separate payment by Defendants of a total of \$90,000 to the three individuals (\$30,000 each) who were Named Plaintiff and Class Representatives, and whose individual damages could be assessed prior to Settlement. These plaintiffs will receive more under the Settlement than other Class Members because of the role that they played in the litigation, and because of individualized damages determinations made in their cases. The Court will finally approve whether to allow this amount or a different (but not higher) amount.
- c) An award of attorneys' fees, to be separately paid by the Defendants, in the amount of \$2,000,000, subject to the final approval of the Court, and costs of litigation not to exceed \$65,000.

As a result of this case, Kern County Jail no longer engages in routine strip searches in groups or of those who are ordered by a court to be released, and are entitled to immediate release.

8. What Are The Possible Adjustments To The Amounts Class Representatives Receive?

As indicated above, class members are to receive a fixed amount of money, which may be adjusted under certain circumstances. An adjustment would only occur if the number of claims substantially exceeds what the parties expect based on past experience in cases of this kind. Specifically, the total amount paid to Post-Release Class Members (first and second time combined) is capped at approximately \$2,335,000, and amount paid to Group Strip Search Class Members is capped at approximately \$2,015,000 (each rounded to the nearest \$5000). If claims exceed those amounts for either class, they will be adjusted on a pro-rated basis so that the total payment for that class will not exceed its maximum.

The reason for this maximum is that the defendants bargained that the settlement would not cost them more than a certain amount, so this adjustment assures them that the total cost of the settlement will not exceed a certain amount.

The parties expect that the amount allocated for each class will be sufficient to pay each class member the amounts set forth previously. However, it is possible that the parties are wrong, and that the amounts to be paid to class members will have to be adjusted. Thus, it is important that you understand that this is possible.

Even if 100% of class members filed claims, and all were paid, post-release strip search class members would receive \$420, and group strip search class members would receive \$56.

9. Lien Deductions?

The Class Administrator shall deduct from any claim payment the amount owed by a claim participant for liens or court orders for restitution, child support, debts owed to the County of Kern or any statutory liens. By filing a Claim Form, you agree to allow the Class Administrator access to your records regarding child support or potential statutory liens. However, no more than 50% of the amount due to a claimant may be deducted to pay such restitution, debts or liens, so all qualifying claimants will receive some money even if such deductions occur. A Class Member from whom lien deductions will be taken will have the right to present evidence to a retired judge that s/he does not owe the money on which the lien is based; the retired judge's decision on that issue will be final.

10. Will I Receive Anything From The Settlement?

If it is verified that you are a Class Member, and you file an approved claim within the time set by the Court, you will be entitled to receive compensation in accordance with the schedule described above.

11. What Do I Do To Get Money?

If you wish to receive money from the Settlement, you must complete and submit the accompanying Claim Form. Read the instructions on the Claim Form carefully. **All Claim Forms must be completed and postmarked (or received by the Administrator) no later than _____, 2011**, but it is recommended that you complete and mail your Claim Form as soon as possible. **If you do not timely and properly submit your Claim Form, you will not receive any money from the Settlement.** If you need a copy of a Claim Form, please call _____ (toll free), or write to the *Lopez v. Youngblood* Settlement Administrator, _____, _____, CA _____, or download the Form from the Internet at _____.

12. Can I Exclude Myself From The Settlement?

If you do not want to be a member of the class, then you must take steps to get out of the class. This is called "excluding yourself" from, and sometimes is referred to as "opting out" of, the class.

13. What Do I Do To Exclude Myself From The Lawsuit?

To exclude yourself, you must send a letter by First-Class mail clearly stating that you want to be excluded from *Lopez v. Youngblood, et al.* Be sure to include your name, address, telephone number and signature. The name and address of your attorney is not sufficient. **You must mail your Exclusion Request, postmarked no later than _____, 2011 to:**

Lopez v. Youngblood, et al. Settlement Administrator

_____, CA _____

You cannot exclude yourself on the phone or by email. If you are excluded, you will not be entitled to get any money from the Settlement, and you cannot object to the Settlement. Nor will you be legally bound by anything that happens in this lawsuit.

Unless you exclude yourself from the class, you remain in the class and give up all of your rights against the Defendants except those available to you under this Settlement. That means that, if you don't exclude yourself and you also don't file a claim, you will receive no money but still lose your rights against the Defendants. **So be sure to file your claim.**

14. What Is The Release Of Claims?

If you are a class member and have not excluded yourself from the class as described above, you are waiving all your rights to all claims during the class period related to strip searches by the Kern County Sheriff's Department falling within the Court's definition of the Classes, even those you are not aware of at present. This waiver includes a waiver of the provisions of California Civil Code §1542, which provides that "a general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor." By not excluding yourself, you will be giving up unsuspected claims in these areas related to strip searches by the Kern County Sheriff's Department. However, you will not be giving up any other claim(s) that you may have against Kern County for conduct not covered by this Settlement (for example, a false arrest or battery by a police officer).

15. If I Do Not Like The Settlement Or Object To The Attorneys' Fees, How Do I Tell The Court?

If you are and remain a Class Member, you can object to the Settlement if you do not like any part of it, or you may object to the request for Attorneys' Fees. You must give the reason why you think that the Court should not approve the Settlement or the requested Attorneys' Fees. A mere statement that "I object" will not be sufficient. Do not contact the Court orally to object. Rather, you must send a written statement with the case name and number (*Lopez v. Youngblood, et al.*, Case No. CV-F-07-0474 DLB) at the top of the page. In addition, provide your name, your address (just giving the address of an attorney who represents you is not sufficient), your telephone number, the date of arrest to the extent known, your signature and the reason why you object. If you are

represented by a lawyer, you should also give the name, address and telephone number of that lawyer. **You must mail your objections and any supporting papers by First-Class mail, postmarked no later than _____, 2011, to the Court and counsel as follows:**

U.S. District Court 2500 Tulare Street Fresno, CA 93721 Phone: (559) 499-5600	Barrett S. Litt Attn: Julia White Litt, Estuar & Kitson 1055 Wilshire Blvd. #1880 Los Angeles, CA. 90017 213-386-3114	Terence J. Cassidy Porter Scott 350 University Ave #200 P O Box 255428 Sacramento, CA 95865 (916) 929-1481
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A full set of the settlement documents, including the Proposed Final Order of Approval and Settlement and the Motion For Award of Attorneys' Fees and Costs either is available (or will be if the motion for attorneys' fees has not yet been filed) on the case website, _____.

16. What Is The Difference Between Objecting And Excluding?

Objecting is simply telling the Court that you do not like something about the Settlement. You can object only if you stay in the class. If you object and the Court rejects your objection, you remain a member of the class and will be bound by any outcome of the case. Excluding yourself is telling the Court that you do not want to be part of the class. If you exclude yourself, you have no basis to object because the case no longer affects you. **If you do object, you should also file a claim form.**

17. When And Where Will The Court Decide Whether To Approve The Settlement And Attorneys' Fees?

The Court has scheduled the Fairness Hearing for 10:00 A.M. on _____, 2011, in the United States District Courthouse for the Eastern District of California, 2500 Tulare Street, Fresno, CA 93721, in the courtroom of Magistrate Judge Dennis Beck, Courtroom No. 9. At this Hearing, Judge Beck will consider whether the Settlement is fair, reasonable and adequate, and will determine the amount of Attorneys' Fees and costs to be awarded. If there are any objections, the Court will consider and rule on them. We do not know how long this process will take. We do not know if the Hearing will be continued. There will not be a new notice if it is. You may speak at the Hearing with the permission of the Court, but only if you have submitted your comments or objections as described above.

18. Do I Have To Come To The Hearing?

No. You may, but need not, attend the Hearing. Class Counsel will answer any questions the Court may have. However, you may come if you choose, at your own expense. If you sent a written objection, you do not have to come to Court to talk about

it. As long as you properly submitted your written objection, the Court will consider it. You may also pay your own lawyer to attend, but it is not necessary.

19. May I Speak At The Hearing?

You will not be heard unless you have submitted your comments or objections. You cannot speak at the Hearing if you exclude yourself. If you have submitted an objection, the Court will decide whether or not to hear from you verbally as well.

20. What Happens If I Do Nothing At All?

If you do nothing, your rights will be affected. You will be bound by the terms of the Settlement and you will be agreeing to a release of the claims that are contained in the Settlement. However, because you did not file a claim, you will not be entitled to any money from the Settlement.

21. When Will I Receive Money From the Settlement?

No money will be paid until after the Settlement is approved and all possibilities of appeal are completed. After that, it will likely take two to three months, and quite possibly more, to process all the claims, calculate the amount due to each Class Member and receive the money to send to the Class Members.

If you file a claim and do not receive money within eight months after _____, 2011, which is the last day to mail or file a claim, check the website for this case about when mailings are expected, or contact the Class Administrator by either calling _____ or writing to:

Lopez v. Youngblood Settlement Administrator

_____, CA _____

We strongly recommend that you keep a copy of your Claim Form. You may want to send the Form in by certified mail so it can be verified, but you are not required to do so.

Remember that it is possible that the Court will approve the settlement, but that there could be an appeal that would substantially delay any payment if it were successful.

22. What Happens If There Is Not A Final Settlement?

Under certain circumstances, it is possible the settlement might not go through (for example, if there are too many people who decide not to participate or if the court for some reason does not approve the settlement). In that situation, the case would go forward and go to trial.

23. Are There More Details About The Settlement?

This Notice merely summarizes the proposed Settlement. You may go to the website titled _____ to see the complete Settlement documents in the case, or a copy of the

Motion for Award of Attorneys' Fees and Costs when it is filed. In the event that any description in this Notice of the terms in the Settlement documents conflict with the actual terms of the Settlement documents, the terms of the Settlement documents control. You may also contact Class Counsel's paralegal on this case, Julia White, at 1055 Wilshire Blvd. #1880, Los Angeles, CA. 90017; ph: 213-386-3114, extension 211.

EXHIBIT D

1 Barrett S. Litt, SBN 45527
Paul J. Estuar, SBN 167764
2 E-Mail: pestuar@littlaw.com
LITT, ESTUAR & KITSON, LLP
3 1055 Wilshire Boulevard, Suite 1880
Los Angeles, California 90017
4 Telephone: (213) 386-3114
Facsimile: (213) 380-4585

5 Robert Mann, SBN 48293
6 Donald W. Cook, SBN 116666
E-Mail: doncook@earthlink.net
7 Attorneys at Law
3435 Wilshire Boulevard, Suite 2900
8 Los Angeles, California 90010
Telephone: (213) 252-9444
9 Facsimile: (213) 252-0091

10 Attorneys for Plaintiffs

11 PORTER SCOTT
A PROFESSIONAL CORPORATION
12 Terence J. Cassidy, SBN 99180
Kristina M. Hall, SBN 196794
13 350 University Avenue, Suite 200
14 Sacramento, California 95825
Telephone: (916) 929-1481
15 Facsimile: (916) 927-3706

16 Attorneys for Def. COUNTY OF KERN

Mark L. Nations, Chief Deputy, SBN 101838
Office of the County Counsel
1115 Truxtun Avenue, Fourth Floor
Bakersfield, California 93301
Telephone: (661) 868-3800
Facsimile: (661) 868-3805

Attorneys for Defendants COUNTY OF
KERN, its agency the KERN COUNTY
SHERIFF'S OFFICE, DONNY
YOUNGBLOOD and MACK WIMBISH

18 **UNITED STATES DISTRICT COURT**

19 **EASTERN DISTRICT OF CALIFORNIA**

20 MARSIAL LOPEZ, SANDRA
21 CHAVEZ, THEODORE MEDINA,
each individually, and as class
22 representatives,

23 Plaintiffs,

24 vs.

25 SHERIFF DONNY YOUNGBLOOD,
et al.,

26 Defendants.

Case No. CV-F-07-0474 DLB

[Hon. Dennis L. Beck]

FINAL ORDER OF APPROVAL OF
SETTLEMENT

Date:
Time: 9:00 A.M.
Courtroom: 9

1 **I. INTRODUCTION**

2 This Lawsuit having come before this Court for a hearing, pursuant to this
3 Court's Order Preliminarily Approving Proposed Settlement Between Plaintiffs and
4 Defendant, dated _____, 2011 (the "Preliminary Approval Order") to consider
5 and determine the matters set forth in the Preliminary Approval Order; and due
6 notice of said hearing having been published and given; and all persons that made
7 timely objections to the proposed settlement set forth in the Settlement Agreement
8 made and entered into on _____, 2011, and described in the Class and Settlement
9 Notice, having been given an opportunity to present such objections to the Court;
10 and the Court having considered the matter, including all papers filed in connection
11 therewith, and the oral presentations of counsel at said hearing; and good cause
12 appearing,

13 IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

14 1. Each term and phrase used in this Final Order of Approval of
15 Settlement shall have the same definition and meaning as in the Settlement
16 Agreement, as follows:

- 17 a. "Administrator" means the Class Administrator Gilardi & Co., LLC, as
18 agreed upon by the parties and as to be appointed by the Court, to review
19 and determine the validity and amount of claims submitted by a
20 Settlement Class Member ("SCM"), as defined herein, according to the
21 procedures set forth herein.
- 22 b. The "Bar Date" is the date by which any SCM who wishes to receive
23 payment pursuant to the Settlement Agreement must file his/her Proof of
24 Claim and Release Form (attached as Exhibit B), objections to this
25 Settlement Agreement, or request to be excluded from the class (opt-
26 out). The Bar Date shall be calculated as the close of business on the
27 120th day after the last day of mailing Class Notice (the time frame for
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which mailing is up to two consecutive business days from beginning to end, as is addressed in ¶33).

- c. "Class Counsel" means Barrett S. Litt and Paul J. Estuar, of Litt, Estuar & Kitson ("LEK"), 1055 Wilshire Blvd., #1880, Los Angeles, CA. 90017.
- d. The "Class Notice" means the notice to the Class regarding settlement, to be sent to Class Members in a form substantially similar to that attached hereto as Exhibit C, and such other summary notice to be published in accordance with the terms of this Settlement Agreement.
- e. The "Class Period" is March 27, 2005, to October 1, 2007.
- f. The Settlement Agreement "Database" is the information provided in hard copy and/or electronic form by the Defendants to the Administrator and Class Counsel no later than ten (10) business days from the date the Court grants preliminary approval of the terms of this Settlement Agreement (if it has not already occurred). It includes, to the extent available, the name, address at time of booking, date of birth, Social Security Number, date(s) of movement to and from court or other places that would subject inmates to searches in groups, dates of court appearances as a result of which an inmate became entitled to release from custody and the date of release from custody of such inmates, and any other computerized data relevant to determining Class Membership or notifying Class Members.
- g. The "Effective Date" means the date upon which a judgment entered by the Court approving the Settlement Agreement becomes final. The Judgment will be deemed final only upon expiration of the time to appeal or, if a Notice of Appeal is filed, upon exhaustion of all appeals and petitions for writs of certiorari, the final resolution of which upholds

- 1 the settlement.
- 2 h. An "Opt-Out" is any Class Member who files a timely request for
- 3 exclusion pursuant to the terms of this Settlement Agreement.
- 4 i. The "Proof of Claim Form" means the Proof of Claim and Release Form
- 5 required to be used to make a claim for payment under this settlement. A
- 6 copy of the proposed Proof of Claim is attached as Exhibit B.
- 7 j. "Released Person" means the Defendants and their affiliates,
- 8 subsidiaries, predecessors, successors, and/or assigns, together with past,
- 9 present and future officials, employees, representatives, attorneys, and/or
- 10 agents of the County of Kern, the Kern County Sheriff's Department, or
- 11 any of them. "Released Persons" also includes any and all insurance
- 12 carriers, and/or their representatives and attorneys, for the Released
- 13 Persons.
- 14 k. "Post-Release Class" means those persons who, from March 27, 2005,
- 15 up to October 1, 2007, (a) were in KCSD custody; (b) were taken from
- 16 jail to court; (c) became entitled to release after going to court; and (d)
- 17 were strip and/or visual body cavity searched before release pursuant to
- 18 KCSD's blanket policy, practice and/or custom to strip/vbc search all
- 19 court returns, including those entitled to release.
- 20 l. "Group Strip Search Class" means those persons who, from March 27,
- 21 2005, up to October 1, 2007, (a) were in KCSD custody; (b) were
- 22 subjected to a strip and/or visual body cavity search in a group with
- 23 other inmates also being strip/vbc searched, which search did not afford
- 24 privacy from others; and (c) whose strip searches were conducted
- 25 pursuant to KCSD's blanket policy, practice and/or custom to regularly
- 26 conduct strip/vbc searches in a group setting.
- 27 m. A "Class Member" means any member of either Class as defined above.
- 28

- 1 n. A "Settlement Class Member" ("SCM") means any member of either
2 Class as defined above, including representatives, successors and
3 assigns, who does not file a valid and timely Request for Exclusion as
4 provided for in this Settlement Agreement.
- 5 o. "Strip Search" means a search conducted by Kern County Sheriff's
6 personnel on a Kern County inmate in which the person was required to
7 remove his or her clothing, including underwear, in the presence of a
8 corrections officer and/or expose his or her breasts, genitals or body
9 cavities for a visual inspection.

10 2. This Court has jurisdiction over this Lawsuit and each of the parties to
11 it.

12 **II. Objections**

13 3. There have been a combined total of ____ objections to the settlement
14 and/or the Motion for an award of attorneys' fees filed. The Court addresses those
15 objections below, and the award of attorney's fees and costs further on in this
16 Order.

17 4. [Discussion of Objections]

18 **III. OPT OUTS**

19 5. There have been a total of ____ opt outs, who filed timely opt out
20 notices. Except for these opt outs, all Class Members are bound by the terms of this
21 Order.

22 **IV. Settlement Agreement approved because fair, adequate, and reasonable.**

23 6. The settlement of this Lawsuit was not the product of collusion
24 between Plaintiffs and Defendants or their respective counsel, but rather was the
25 result of bona fide and arm's-length negotiation conducted in good faith by the
26 Parties and their counsel, with the assistance of an independent mediator, who is a
27 retired United States District Judge.

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EXHIBIT D

1 7. The Settlement Agreement and the settlement set forth therein are
2 hereby approved and found to be fair, adequate, reasonable, in the best interest of
3 the Class as a whole, and in satisfaction of Rule 23 of the Federal Rules of Civil
4 Procedure and due process requirements.

5 **V. Classes Certified Under Federal Rules Of Civil Procedure 23(B)(3).**

6 8. The Court has previously certified a strip search class in this case,
7 initially in its Order of April 1, 2009, and subsequently in the Stipulated Order
8 Granting Preliminary Approval to Class Settlement. The class has been certified
9 under Fed. R. Civ. P. 23(b)(3), and Class Members have a right to opt out of the
10 settlement.

11 **VI. Class-wide Prospective Relief**

12 9. As a result of this litigation, Kern County has ceased the practice of
13 strip searching court returns in groups and strip searching people who have gone to
14 court and become entitled to release as a result.

15 **VII. Notice**

16 10. As required by this Court in its Preliminary Approval Order: (a) Class
17 and Settlement Notice were mailed by first-class mail to all Class Members or their
18 representatives, whose addresses could be obtained with reasonable diligence; and
19 (b) Class and Settlement Notice was published in a summary fashion as set forth in
20 the Settlement Agreement and in the Preliminary Approval Order, all as more fully
21 set forth in the Declaration of the Class Administrator, dated _____, _____.

22 11. The notice given to the class is hereby determined to be fully in
23 compliance with requirements of Rule 23 of the Federal Rules of Civil Procedure
24 and due process and is found to be the best notice practicable under the
25 circumstances and to constitute due and sufficient notice to all parties entitled
26 thereto.

1 12. Due and adequate notice of the proceedings having been given to the
2 Class and a full opportunity having been offered to the Class to participate in the
3 hearing, it is hereby determined that all Class Members, except those who have
4 opted out of the settlement (who are listed in Exhibit 1 to this Order) are bound by
5 this Final Order of Approval of Settlement.

6 **VIII. Class Counsel**

7 13. The Court reaffirms the appointment of Barrett S. Litt and Paul J.
8 Estuar as counsel for the Class Representatives and the Class ("Class Counsel").

9 **IX. Payments To The Class By The Defendants**

10 14. As set forth in more detail in the Settlement Agreement, the
11 Defendants agreed to pay all Class Members who file claims on the following
12 terms.

- 13 a. Post-Release Settlement Class Member 1: A Post-Release Settlement
14 Class Member 1 is a SCM who meets the definition of a Post-Release
15 Settlement Class Member provided above and was subjected to a post-
16 release strip/vcb search for the first time during the Class Period.
17 Defendants agree to pay a SCM who qualifies as a Post-Release Class
18 Member 1 a sum of \$1500.
- 19 b. Post-Release Settlement Class Member 2: A Post-Release Settlement
20 Class Member 2 is a SCM who meets the definition of a Post-Release
21 Settlement Class Member provided above and was subjected to a post-
22 release strip/vcb search for a second time during the Class Period.
23 Defendants agree to pay a SCM who qualifies as a Post-Release Class
24 Member 2 a sum of \$650 (in addition to the amount such SCM receives
25 as a Post-Release Settlement Class Member 1). No additional sums shall
26 be paid to a Post-Release Settlement Class Member who was subjected to
27 a post-release strip/vcb search more than two times. (No additional
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1 payments will be made to persons subjected to more than two such
2 searches.)
3 c. Group Strip Search Settlement Class Member: A Group Strip Search
4 Settlement Class Member is a SCM who meets the definition of a Group
5 Strip Settlement Class Member provided above and was subjected to a
6 group strip/vcb search during the Class Period. Defendants agree to pay a
7 SCM who qualifies as a Post-Release Class Member 1 a sum of \$200. No
8 additional sums shall be paid to a Group Strip Search Settlement Class
9 Member who was subjected to a post-release strip/vcb search more than
10 one time (i.e., each Group Strip Search Settlement Class Member shall be
11 paid \$200 no matter how many times the individual was subjected to a
12 group strip search).

13 15. A SCM who is a Post-Release Class Member is also entitled to
14 payment as a Group Strip Search Class Member in addition to the payment s/he
15 receives as a Post-Release Class Member.

16 16. Notwithstanding the amounts set forth above to be paid to each Class
17 Member, the parties have agreed to a maximum payout for each class, the amount
18 of which was derived from their joint estimate that claims are unlikely to exceed
19 approximately 28% of the class members (and, based on past experience, will
20 likely be meaningfully lower than that). Accordingly, the amounts to be paid Class
21 Members (not including class representatives) will be adjusted if the amount to be
22 awarded eligible Class Members in either the Post-Release or Group Strip Search
23 make claims that exceed the total amount to be paid to that class. In that event, the
24 amount that members of that class receive will be adjusted on a pro-rated basis,
25 which would result in payment to individual Class Members of amounts lower than
26 those set forth above. Thus, the total amount paid to Post-Release Class Members
27 is capped at \$2,335,830.00, and if claims exceed that, they will be adjusted on a
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1 pro-rated basis so that the total payment to such Post-Release Class Members (first
2 and second time combined) will not exceed that total. Similarly, the amount paid to
3 Group Strip Search Class Members is capped at \$2,016,000.00, and if claims
4 exceed that, they will be adjusted on a pro-rated basis so that the total payment to
5 such Group Strip Search Class Members will not exceed that total.

6 17. Within thirty (30) calendar days from the date the Claims
7 Administrator notifies counsel for Defendants of the amount necessary to satisfy
8 all proper claims, the Defendants shall have deposited with the Class Administrator
9 the sums necessary to pay all claims made and approved to date. In the event that,
10 for some reason, there are timely claims not yet resolved, Defendants shall
11 continue to provide on an ongoing basis such sums as may be required to continue
12 to pay approved claims until all such claims are paid or determined not to qualify
13 for payment.

14 18. The Administrator shall make payments to SCMs who have filed
15 timely claims in accordance with this Settlement Agreement within a reasonable
16 time, with a goal of within 120 days after the Effective Date. If a check to a SCM
17 is not cashed within three months of its mailing, the Administrator shall hold the
18 funds for nine additional months, during which time it shall make reasonable
19 efforts to contact the person to whom the un-cashed check was written to make
20 arrangements for its chasing or reissuance. Any such funds not cashed within one
21 year of its mailing shall revert to Defendants.

22 **X. Named Plaintiffs' Distribution**

23 19. The Court awards each of the three class representatives – Marsial
24 Lopez, Sandra Chavez, and Theodore Medina – \$30,000. The class representatives
25 will not otherwise participate in the claims process involving SCMs or receive any
26 other payment under the terms of this Settlement Agreement. Pursuant to the terms
27 of the Settlement Agreement, the class representatives' payment shall be made to
28

1 the Litt, Estuar & Kitson Client Trust Account by wire at the same time that the
2 class attorneys' fees are paid.

3 20. The Court concludes that this award is justified because the Named
4 Plaintiffs made contributions to the class as a whole, justifying awards to them
5 higher than those to the general class. In addition, the Named Plaintiffs'
6 individualized damages claims, including special damages, are a factor in the
7 determination of the sum they receive. Such determinations cannot reasonably be
8 made for Class Members in general without unduly consuming funds for
9 administrative costs that will otherwise be available for distribution to Class
10 Members. Any fees due Class Counsel for their representation of the Named
11 Plaintiffs are encompassed within the Class Fund Attorneys' Fees referenced
12 herein.

13 **XI. Class Fund Attorneys' Fees**

14 21. The Court has reviewed the Plaintiffs' counsel's claim for attorneys'
15 fees and finds them well within the accepted range for class fund fees for the
16 reasons contained in the Order Granting Plaintiffs Motion for Attorneys' Fees and
17 Costs. In addition to and separate from any other payments called for in this Order,
18 the Released Parties shall pay a one-time only lump sump payment of \$2,000,000,
19 to be paid to the LEK Client Trust Account, as Class Counsel attorneys' fees, plus
20 costs not to exceed \$65,000. This payment represents a full and final settlement of
21 all past, present and future attorneys' fees and all past, present and future ordinary
22 and extraordinary costs. Defendants or their insurers will make a single wire
23 transfer to the LEK Client Trust Account that will include the approved attorneys'
24 fees and costs, and the funds awarded to the class representatives, in a single
25 transfer (hereafter the "Class Rep/Fee Transfer") within thirty (30) days of the
26 Effective Date.

1 **XII. CLASS-WIDE PROSPECTIVE RELIEF STRIP SEARCH CLASS**

2 22. As a result of this litigation, Defendants have discontinued the
3 practices of strip searching inmates in groups and strip searching inmates returning
4 from court who have become entitled to release as a result of their court
5 appearance

6 **XIII. SPECIAL MASTER**

7 23. The Court appoints retired United States District Judge Raul A.
8 Ramirez as the Special Master provided for in the Settlement Agreement.

9 **XIV. Class Administrator**

10 24. The Court reaffirms the appointment of Gilardi & Co., LLC as Class
11 Administrator (hereafter "Gilardi"). Defendants shall pay all past and future costs
12 of class administration as a separate and distinct payment from all other payments
13 set forth in this Order.

14 25. The Class Administrator shall preserve all written communications
15 from Class Members in response to the Class and Settlement Notice for at least
16 three years from the last payment of settlement funds to class members, or
17 pursuant to further order of the Court. All written communications received by the
18 Class Administrator from Class Members relating to the Settlement Agreement
19 shall be available at all reasonable times for inspection and copying by Counsel for
20 the Parties.

21 **XV. Remaining Class Administration**

22 26. To the extent it has not already occurred, or to the extent financial
23 obligations under this settlement become due in the future, the Class Administrator
24 shall be additionally compensated by Defendants for its services, and any costs
25 associated with them, in connection with notice and administration and for the
26 costs of giving mailed and published notice, pursuant to such orders as the Court
27 may enter from time to time, including this one. Such payment shall be separate
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1 from the payment of Named Plaintiffs awards, attorneys' fees and costs, and
2 payments to Class Members who file claims that are accepted.

3 27. The Administrator shall make payments to SCMs in two payment
4 rounds. The first round payment shall be paid to SCMs who filed timely Proof of
5 Claim and Release Forms and whose claims have been determined to be valid,
6 within a reasonable time, with a goal to be within 120 days after the Effective
7 Date. If for some reason, there are SCMs at that time whose claims remain
8 unresolved, they shall be paid as they are resolved.

9 28. If a check to a SCM is not cashed within three months of its mailing,
10 the Administrator shall hold the funds for nine additional months, during which
11 time it shall make reasonable efforts to contact the person to whom the un-cashed
12 check was written to make arrangements for its cashing or reissuance. Any such
13 funds not cashed within one year of its mailing shall revert to Defendants

14 **XVI. LIEN PROVISIONS**

15 29. Under the terms of the settlement agreement, the Administrator is
16 responsible to deduct from any claim certain payment amounts owed by a claim
17 participant for any liens or court orders for restitution, child support, debts to Kern
18 County and statutory liens. (Those Class Members filing claims who have liens
19 under this paragraph are referred to as "Claimant with Liens.") The Class
20 Administrator will make payment to Kern County, the proper payee and/or their
21 designee for those payment amounts deducted as set forth in this paragraph. The
22 Defendants shall prepare a list of the liens or orders applicable to each Class
23 Member with Liens (hereafter referred to collectively as "lien" or "liens"). That list
24 will be provided to the Administrator, which will be responsible to confirm the list
25 of such liens. The following procedures shall apply to the liens.

26 a. For Claimants with Liens, the payment disbursement letter
27 accompanying any claim check sent to them shall include a notice of that
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1 amount, specifying the nature of the lien and the purported amount of the
2 lien. The notice shall include advising the claimant of his or her right to
3 contest the lien and advise him or her of the procedures to do so. The
4 notice will advise the Claimant with Liens that they have 30 days from
5 the date of receipt of such notice (based on the postmark of said notice)
6 to file a Notice Contesting Lien. A form Notice Contesting Lien shall be
7 provided to each Claimant with Liens, to be prepared by the
8 Administrator subject to approval by the parties, which will be used to
9 contest the lien.

- 10 b. In the event the parties are unable to resolve a lien dispute as set forth in
11 Paragraph 43(b) of the Class Action Settlement Agreement, the Special
12 Master (see ¶23) will be empowered to finally resolve any lien disputes
13 under this paragraph. To participate as a class member, any Claimant
14 with Liens will be deemed to have agreed that the Special Master's
15 determination shall be binding and non-appealable, and that fact shall be
16 included in the letter sent to Claimants with Liens. Such a claimant may
17 present his or her contentions and supporting documents in writing to the
18 Special Master. The Special Master will decide the validity of the lien,
19 and may request recommendations from each side's counsel before doing
20 so.
- 21 c. Despite the amount of any lien, no Claimant with Liens shall have to pay
22 more than 50% of his/her class fund payment toward the lien, which
23 ensures that the claimant will receive funds for his/her claim regardless
24 of the amount of any lien.
- 25 d. The cost of the Special Master shall be borne by the Defendants as part of
26 the Class Administration costs.
- 27
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1 30. The Court approves the use of the liens under the terms set forth
2 herein, which will reduce the portion of the settlement provided to any SCM to
3 whom these provisions apply. Any government recordation of such liens or debts
4 shall be adjusted to the extent necessary to reflect the reduction resulting from the
5 pay down of the liens or debts effectuated by this provision.

6 **XVII. GENERAL PROVISIONS**

7 31. Claim forms not received or postmarked by ____, 2011, shall not be
8 paid, although such persons shall nonetheless be bound by this Order.

9 32. All Class Members except those who timely filed opt-out forms shall
10 be bound by this Order.

11 33. Except as otherwise provided in this Order, each party shall bear its
12 own costs, expenses and attorneys' fees.

13 34. The use of the masculine gender herein is construed to include the
14 feminine and/or the neuter where applicable. The use of the singular herein is to be
15 construed to include the plural where applicable. The use of the plural herein shall
16 be construed to include the singular where applicable.

17 35. Any disputes regarding the right of a claimant or Class Member to
18 qualify for payment under Order shall be resolved by the Special Master.

19 36. The Court reserves and maintains jurisdiction over this settlement and
20 its provisions, and over the Class Administration and distribution of the funds.
21 Disagreements between the parties on any disputes or unresolved aspects of this
22 Order shall be subject to mediation before the mediator who has mediated this case
23 to date. If mediation is not successful, the matter shall be brought to this Court for
24 resolution.

25 **XVIII. FINAL RESOLUTION**

26 37. The monetary relief provided for in the Settlement Agreement shall
27 compensate for all alleged violations of rights and all claims by the plaintiff Class
28

1 Members that were or could have been brought in this civil action under any theory
2 of liability related to allegedly unlawful strip searches of those within the class
3 definitions contained herein, except as to monetary damages for those Class
4 Members who choose to opt out.

5 38. The Court hereby dismisses the Lawsuit on the merits, with prejudice,
6 and without further costs, with such dismissal subject only to compliance by the
7 Parties with the terms and conditions of the Settlement Agreement and this Final
8 Order of Approval of Settlement. The Court retains jurisdiction for that purpose.

9 39. Plaintiffs, including their agents, attorneys and assigns, are hereby
10 severally and permanently barred and enjoined, to the fullest extent permitted by
11 law, from filing, commencing, instituting, maintaining, prosecuting or participating
12 in a lawsuit or any other proceeding against the Defendants, including the
13 employees, entities, agents, attorneys and insurers of Defendants, involving or
14 based on any of the claims encompassed by this Settlement and Order, including
15 specifically claims on behalf of any Class Member whose claims are covered by
16 this Settlement and Order.

17 40. The Named Plaintiffs and each Settlement Class Member waive all
18 rights or benefits which he or she now has or in the future may have under the
19 terms of California Civil Code Section 1542, arising from, alleged in, or pertaining
20 to the claims that were asserted in the Lawsuit, specifically claims for Post-Release
21 and/or Group strip/visual body cavity searches. Section 1542 reads:

22 41. A general release does not extend to claims which the creditor does
23 not know or suspect to exist in his or her favor at the time of executing the release,
24 which if known by him or her must have materially affected his or her settlement
25 with the debtor.

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42. Plaintiffs and Class Members have not relied upon the advice of Class Counsel as to the legal and/or tax consequences of this settlement, the payment of any money by the Defendants or the distribution of the Settlement Funds.

43. Neither this Final Order of Approval of Settlement, the Settlement Agreement, nor any of its terms or the negotiations or papers related thereto a) shall constitute evidence or an admission by any Defendant that any acts of wrongdoing have been committed, b) shall be offered or received in evidence or used for any purpose whatsoever, in this or any other matter or proceeding in any court, administrative agency, arbitration, or other tribunal, other than as expressly set forth in the Settlement Agreement, or c) be deemed to create any inference that there is any liability therefore.

44. Pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the Court finds that there is no just reason for delay and therefore directs entry of this Final Order of Approval of Settlement. Inasmuch as this disposes of all claims asserted in the Lawsuit, the Court further directs the Clerk to enter an order of dismissal pursuant to F.R.Civ.P Rule 41(a)(1)(2).

DATED: _____ UNITED STATES MAGISTRATE JUDGE

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Submitted jointly by:

Barrett S. Litt
Counsel for Plaintiffs

By: _____
Barrett S. Litt

Terrence J. Cassidy
Counsel for Defendants

By: _____
Terrence J. Cassidy

EXHIBIT E

FILED

UNITED STATES COURT OF APPEALS

JAN 21 2011

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

MARSIAL LOPEZ; et al.,

Plaintiffs - Appellees,

v.

DONNY YOUNGBLOOD, Sheriff,
individually and in his official capacity; et
al.,

Defendants - Appellants,

and

COUNTY OF KERN, a government
entity; et al.,

Defendants.

Nos. 09-16006; 09-17331

D.C. No. 1:07-cv-00474-DLB
Eastern District of California,
Fresno

ORDER

DONNY YOUNGBLOOD; et al.,

Petitioners,

v.

MARSIAL LOPEZ; et al.,

Respondents.

No. 09-80131

D.C. No. 1:07-cv-00474-DLB
Eastern District of California,
Fresno

Pursuant to the stipulation of the parties and the supplemental letter filed by counsel on January 21, 2011, these consolidated appeals are voluntarily dismissed pursuant to Fed. R. App. P. 42(b) without prejudice to reinstatement in the event any of the following occurrences take place:

(1) the District Court denies preliminary or final approval of the class action settlement reached by the parties through their mediation before the Honorable Raul Ramirez (see "Recitals" in the parties' January 19, 2011, joint motion);

(2) the number of opt-outs exceeds 25 and defendants file a notice in the District Court that they are exercising their right to rescind the settlement agreement;

(3) there is an objection from a class member that is granted and materially changes the terms of the settlement agreement such that either plaintiffs or defendants withdraw, via written notice filed in the District Court, from the settlement;

(4) there is an overruled class member objection that is timely appealed and therefore has not become final, and either (a) the Court of Appeal issues an order and mandate that upholds the overruled objection or (b) the United States Supreme Court grants a petition for a writ of certiorari and upholds the overruled objection.

In the event of listed items one through three, above, one of the parties shall file a notice of reinstatement within 28 days from the date of filing any such order or notice. In the event of listed item four, above, one of the parties shall file a notice of reinstatement within 28 days (a) after the filing of the mandate from the Court of Appeals that upholds the overruled objection or (b) after the United States Supreme Court upholds the overruled objection, if a petition for a writ of certiorari is filed and granted.

A copy of this order served upon the District Court shall act as and for the mandate of this court.

FOR THE COURT

By: C. Lewis Ross
Circuit Mediator

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10 Attorneys for Plaintiffs

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12 A PROFESSIONAL CORPORATION
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Mark L. Nations, Chief Deputy, SBN 101838
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16 Attorneys for Def. COUNTY OF KERN

Attorneys for Defendants COUNTY OF KERN, its
agency the KERN COUNTY SHERIFF'S OFFICE,
DONNY YOUNGBLOOD and MACK WIMBISH

17
18 **UNITED STATES DISTRICT COURT**
19 **EASTERN DISTRICT OF CALIFORNIA**

20
21 MARSIAL LOPEZ, SANDRA
CHAVEZ, THEODORE MEDINA, each
individually, and as class representatives,

22 Plaintiffs,

23 vs.

24 SHERIFF DONNY YOUNGBLOOD, et
25 al.,

26 Defendants.

27 al,

28 Defendants.

Case No. CV-F-07-0474 DLB

[Hon. Dennis L. Beck]

SUPPLEMENTAL FILING OF
EXHIBIT E, AND SIGNATURE
PAGES TO EXHIBITS A and D TO
PRELIMINARY APPROVAL
ORDER

Date: February 23, 2011

Time: 9 A.M.

Courtroom: 9

1 Attached hereto is Exhibit E to the Preliminary Approval Order, as well as the
2 signature pages to Exhibit A and Exhibit D to the Preliminary Approval Order, all filed in
3 this matter on January 22, 2011.

4 Dated: January 25, 2011

LITT, ESTUAR & KITSON, LLP

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6 By: /s/ Barrett S. Litt
7 Barrett S. Litt
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DATED: January 24, 2011

By: /s/ Mark L. Nations
Mark L. Nations, Chief Deputy
Office of the County Counsel
COUNTY OF KERN

DATED: January 21, 2011

By: /s/ Barrett S. Litt _____
Barrett S. Litt
LITT, ESTUAR & KITSON
Attorneys for Plaintiffs

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Submitted jointly by:

Barrett S. Litt
Counsel for Plaintiffs

By: /s/ Barrett S. Litt
Barrett S. Litt

Terrence J. Cassidy
Counsel for Defendants

By: /s/ Terrence J. Cassidy
Terrence J. Cassidy

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Submitted jointly by:

Barrett S. Litt
Counsel for Plaintiffs

By: /s/ Barrett S. Litt
Barrett S. Litt

Terrence J. Cassidy
Counsel for Defendants

By: /s/ Terrence J. Cassidy
Terrence J. Cassidy

FILED

UNITED STATES COURT OF APPEALS

JAN 21 2011

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
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MARSIAL LOPEZ; et al.,

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individually and in his official capacity; et
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and

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D.C. No. 1:07-cv-00474-DLB
Eastern District of California,
Fresno

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(1) the District Court denies preliminary or final approval of the class action settlement reached by the parties through their mediation before the Honorable Raul Ramirez (see "Recitals" in the parties' January 19, 2011, joint motion);

(2) the number of opt-outs exceeds 25 and defendants file a notice in the District Court that they are exercising their right to rescind the settlement agreement;

(3) there is an objection from a class member that is granted and materially changes the terms of the settlement agreement such that either plaintiffs or defendants withdraw, via written notice filed in the District Court, from the settlement;

(4) there is an overruled class member objection that is timely appealed and therefore has not become final, and either (a) the Court of Appeal issues an order and mandate that upholds the overruled objection or (b) the United States Supreme Court grants a petition for a writ of certiorari and upholds the overruled objection.

In the event of listed items one through three, above, one of the parties shall file a notice of reinstatement within 28 days from the date of filing any such order or notice. In the event of listed item four, above, one of the parties shall file a notice of reinstatement within 28 days (a) after the filing of the mandate from the Court of Appeals that upholds the overruled objection or (b) after the United States Supreme Court upholds the overruled objection, if a petition for a writ of certiorari is filed and granted.

A copy of this order served upon the District Court shall act as and for the mandate of this court.

FOR THE COURT

By: C. Lewis Ross
Circuit Mediator