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27 UNITED STATES DISTRICT COURT
28 NORTHERN DISTRICT OF CALIFORNIA

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ROSALETY BARNETT, VANESSA HUNT, and
all others similarly situated,

Plaintiffs,

vs.

COUNTY OF CONTRA COSTA, et al.,

Defendants.

CASE NO: C 04-04437 TEH

**JOINT APPLICATION FOR APPROVAL
OF SETTLEMENT AND DISMISSAL OF
COMPLAINT**

1 Plaintiff Vanessa Hunt (“Plaintiff”) and Defendants County of Contra Costa, Contra Costa
2 County Sheriff’s Department and Contra Costa County Sheriff Warren Rupf (“Defendants”) (collectively,
3 the “Parties”), respectfully submit this Joint Application for the approval of the settlement reached
4 between the Parties, and to dismiss the Plaintiff’s case on behalf of herself and those similarly situated in
5 its entirety. Defendants join in this application in direct reliance on the Representations and Warranties
6 set forth by Plaintiff and her counsel in the Settlement Agreement, the Declaration of Mark Merin, Esq.
7 submitted herewith, and pursuant to Defendants’ obligations to cooperate in good faith with Plaintiff and
8 her counsel under Section 4(C) of the Settlement Agreement.

9 **I. BACKGROUND**

10 This case was originally filed on October 20, 2004, by Rosalety Barnett on behalf of herself and
11 an alleged putative class of persons similarly situated who were strip searched at Contra Costa jail
12 facilities after being arrested on crimes not involving violence, drugs, or weapons. When it was
13 determined that Ms. Barnett was strip searched after the defendant county changed its policies, Ms.
14 Barnett was replaced as class proposed class representative by Peter Morganelli. Since Mr. Morganelli
15 was arrested for a felony and the Court ruled that the complaint did not include felony offenses, Mr.
16 Morganelli was replaced by Adeline Chan as proposed class representative, and the class certified to
17 include all persons who were arrested on misdemeanor or lesser charges not involving weapons,
18 controlled substances or felony violence and who were subjected to blanket strip searches, before
19 arraignment at the Contra Costa County jail without reasonable suspicion between October 20, 2002, and
20 June 1, 2003. The class also included all arrestees “subjected to subsequent blanket strip searches before
21 arraignment after the initial strip search, without any reasonable individual suspicion that they had
22 subsequently acquired and hidden contraband on their persons.”

23 On February 9, 2010, the Ninth Circuit Court of Appeal in *Bull v. San Francisco*, 595 F.3d 964
24 (9th Cir. 2010), modified the law on which this Court had relied to certify the class herein and to deny
25 the Defendants’ motion for summary judgment, and upheld the blanket strip search of persons classified
26 for housing as related to legitimate jail safety measures. As a result of that Ninth Circuit ruling, the
27 Court entered a Stipulated Order dismissing all of Chan’s claim and most of the Misdemeanor Class’
28 federal Fourth Amendment claims, exempting from dismissal the claims of women misdemeanor

1 arrestees who alleged that they were subjected to additional or “secondary” visual body searches during
2 their transfer from Contra Costa Martinez Detention Facility to Contra Costa West County Detention
3 Facility.

4 Plaintiffs filed their Third Amended Complaint and substituted Vanessa Hunt as an individual and
5 representative Plaintiff on behalf of herself and all others similarly situated who alleged that they were
6 subjected to a secondary strip search after having been arrested on a misdemeanor charge not involving
7 violence, drugs, or weapons, when they had no opportunity to obtain contraband after having been
8 subjected to an initial strip search. Defendants filed another motion for summary judgment on the
9 remaining secondary search claims and, after determining that there were too few potential class
10 members to qualify for class certification, Plaintiff notified the Court and counsel that it would not seek
11 certification of the Hunt secondary search claims.

12 Thereafter, the parties initiated settlement discussions which have been concluded and, if the
13 proposed settlement which has been approved by the parties is approved by the Court, it will finally end
14 this marathon litigation.

15 **II. PROPOSED SETTLEMENT**

16 The Proposed Settlement which is attached hereto as Exhibit 1, provides that the defendant
17 County will pay to Plaintiff Hunt the sum of \$19,999.00, to be shared with any other similarly situated
18 persons who executed retainer agreements with Plaintiff’s counsel, and the Plaintiff, in return, will file a
19 request for a dismissal of the action, with prejudice. Pursuant to Section 2 of the Settlement Agreement,
20 Plaintiff’s counsel will have sole responsibility for holding, determining eligibility for, and administering
21 any settlement proceeds to any clients and/or putative or actual Plaintiffs, including and in addition to
22 Hunt.

23 According to the declaration of Mark E. Merin, filed herewith, Plaintiff, through discovery,
24 determined that there were only eight (8) women who were potentially similarly situated and made
25 repeated attempts to contact them to see if they would like to join the action. Counsel was able to contact
26 two (2) of those women; one, Vanessa Hunt, is the present Plaintiff; the other recorded that she was
27 arrested on a disqualifying charge and is therefore not a proper class member. Accordingly, Vanessa

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1 Hunt, therefore, is the only Plaintiff who will share in this settlement and she has read and signed the
2 Settlement Agreement and General Release which is attached hereto.

3 **III. THERE IS NO CLASS AND NO NOTICE SHOULD BE REQUIRED**

4 Rule 23(e)(1)(A) requires the Court to “approve any settlement, voluntary dismissal, or
5 compromise of the claims, issues, or defenses of a certified class.” Subpart (1)(B) requires the Court to
6 “direct notice in a reasonable manner to all class members who would be bound by a proposed
7 settlement, voluntary dismissal, or compromise.” Although it might appear that court approval and notice
8 are mandatory on dismissal or compromise of a class suit, the authors of Newberg on Class Actions, 4th
9 Edition, ' 11:66, observe that:

10 . . . on closer analysis, notice is not mandatory in all instances but “shall be
11 given to all members of the class in such manner as the court directs.”
12 Broadly interpreted, this language is sufficiently flexible to permit the court
13 to approve a dismissal or compromise by the named plaintiff individually,
14 but to determine that no class notice at all is required, when the dismissal
15 or compromise will not result in any prejudice to the class. Thus, generally
speaking, while notice to the class will effectuate the policies behind the
rule, judicial discretion is permitted for withholding notice in instances
when notice would issue unnecessarily or force the court to employ
unnecessary alternative methods to circumvent the policy when dismissal of
the class litigation is otherwise proper.

16 (4 Newberg on Class Actions ' 11:66.)

17 This is an appropriate case for the Court to exercise its discretion by not requiring notice to be
18 given of the proposed stipulated settlement for the following reasons:

19 1. No class has been certified and, indeed, there are only six (6) potential person who might
20 be similarly situated to Ms. Hunt, but diligent efforts have failed to result in contact with such potential
21 plaintiffs. In the absence of any way to contact such potential plaintiffs, the parties are unable to give
22 notice to those persons.

23 2. Settlement of Ms. Hunt’s case is not res judicata for any other claim; no one is foreclosed
24 from bringing an individual action as a result of this proposed settlement. To the contrary, if there are
25 other persons who could bring an action as a result of being subjected to secondary strip searches at
26 Contra Costa County Jail, the running of the statute of limitations on any such claims has been and will
27 be tolled until the dismissal of Ms. Hunt’s complaint. Since no notices have gone out advising persons of
28 the filing of Ms. Hunt’s claim, it is unlikely that there are any putative Plaintiffs who are relying on Ms.

Hunt to continue to litigate a class claim on their behalf. Thus it is unlikely that any persons will or could be prejudiced by the settlement of Ms. Hunt’s complaint.

3. If notice were required to be given, it would have to be given to six (6) women who had been subjected to a secondary strip search after having been arrested on a misdemeanor charge not involving violence, drugs, or weapons, when they had no opportunity to obtain contraband after having been subjected to an initial strip search. Plaintiff has already attempted to locate these six (6) women using expensive on-line database searches, but has been able to locate only two (2) of the women: one, Ms. Hunt, and another whose arrest charges made her an unqualified plaintiff. The additional expense of attempting to locate the remaining six (6) women is not justified considering the difficulty of establishing liability and damages.

While generally notice to class members is given when an action filed or certified as a class action is proposed for or has been settled, in this case there is no class of women similarly situated to Vanessa Hunt, and only six (6) other women who may have been arrested on misdemeanor charges, not involving violence, drugs, or weapons and strip searched, before arraignment, then transferred to Contra Costa West County Detention Facility and strip searched a second time, before arraignment, without having had the opportunity to receive contraband following the first strip search.

Accordingly, Plaintiff requests (and Defendants are not aware of any basis to object to) the Court issue an order approving the settlement without ordering that notice be given of the settlement to any persons who might claim that they should share in the settlement funds since efforts to locate the few women who might, conceivably, be similarly situated to Ms. Hunt, have been unsuccessful.

DATED: March 15, 2011

Respectfully submitted,

LAW OFFICE OF MARK E. MERIN
CASPER MEADOWS, SCHWARTZ & COOK

BY: _____/s/

_____ - “Mark E. Merin”
Mark E. Merin
Attorney for Plaintiffs

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1 DATED: March 15, 2011

Respectfully submitted,

2 MCNAMARA,
3 SLATTERY,

BINGHAM MCCUTCHEN LLP and
DODGE, NEY, BEATTY,
PFALZER & BORGES, LLP

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5 BY: /s/

- "Peter Obstler"

6 _____
Peter Obstler
7 Attorney for Defendants
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