

2002 WL 31730917

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United States District Court,
S.D. Indiana,
New Albany Division.

Mindy DOAN, et al., Plaintiffs,
v.

Sheriff Leland WATSON, individually and as
former Sheriff of Floyd County, Indiana, and
Randall Hubbard, individually and as Sheriff of
Floyd County, Indiana, Defendants.

NA 99-4-C-B/S. | Dec. 4, 2002.

Attorneys and Law Firms

Bart M. Betteau, Mc Daniel & Betteau, New Albany, IN,
for plaintiffs.

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Louisville, KY, Stephen L Huddleston, Franklin, IN,
Richard T. Mullineaux, Kightlinger & Gray, New Albany,
IN, for defendants.

Opinion

ORDER GRANTING FINAL APPROVAL OF CLASS ACTION SETTLEMENT

SARAH EVANS BARKER, District Court Judge.

*1 The parties have sought final approval of their Class Action Settlement Agreement ("Settlement Agreement"). Plaintiffs, Mindy Doan, et al. (collectively "Plaintiffs"),¹ filed suit under 42 U.S.C. § 1983, alleging that former Floyd County, Indiana, Sheriff Leland Watson, individually and in his official capacity, and current Floyd County, Indiana, Sheriff Randall Hubbard, individually and in his official capacity (collectively "Defendants"), violated Plaintiffs' constitutional rights by administering improper strip searches. Having granted preliminary approval to the Settlement Agreement, in our August 2, 2002 Order, we directed Plaintiffs' counsel to proceed with the notice of same to the class and to provide an opportunity for individual class members to object or opt out. We held a "fairness" hearing on December 4, 2002, to determine whether final approval should be given to the proposed Settlement Agreement, at which hearing objectors to the Settlement Agreement had the opportunity to appear. No objections were filed. The Court, being fully advised on these matters, now enters the following findings, pursuant to which final approval

of the class action settlement is hereby *GRANTED*:

¹ Plaintiff Doan serves as class representative for a class that includes "all persons arrested for offenses not greater than a misdemeanor or Operating While Intoxicated, as a class D felony, between January 13, 1997, and January 13, 1999, and who were required by the Floyd County Jail to remove their clothing for visual inspection of all or part of their exposed bodies, unless there existed reasonable cause to believe they were carrying concealed weapons or contraband." (Entry of Mar. 2, 2000, at 25.)

1. Notice of the Class Action Settlement Agreement was mailed to 2,591 members of the class. Of that number, 891 mailings were initially returned as undeliverable; 387 of those 891 were resent. A total of 619 class members timely requested inclusion in the class settlement.² Fifty-three class members requested exclusion from the class and the settlement. In addition, Plaintiffs counsel estimates that 12 to 15 class members have filed untimely requests for inclusion. The Court directed and the parties agreed that the late-filing claimants will be included in the class and will be eligible to claim their respective shares of the settlement fund.

² However, four class members returned their requests for inclusion without the proper notarization. The parties agree that these claimants will be omitted from the class in terms of entitlement to compensation by Defendants but will be compensated by Plaintiffs' counsel from the attorney fees portion of the Settlement Agreement, leaving a total of 615 claimants to be paid from the settlement fund.

2. In conformity with the Court's August 8, 2002 Order regarding the Settlement Agreement, Defendants have previously deposited with the Court sufficient funds to cover the claims made by all Plaintiffs included in the class. It has been agreed by and between the parties that each Plaintiff in the class, including the named Plaintiff, shall receive a payment of \$1000 from the settlement fund as damages, in full compensation for his/her injury.

3. The issues as to damages and remedies, if any, in this action are issues as to which there are differences of opinion between the parties, and the Settlement Agreement, which resulted from arms-length negotiations between and among the attorneys, constitutes a resolution of those issues that is fair and reasonable to the members of the class previously certified in this matter.

4. For these reasons, as well as those explicated on the record at the "fairness" hearing on the Settlement Agreement, the previously submitted Settlement

Agreement is finally approved as fair, reasonable, and adequate, and the parties are directed to undertake forthwith the necessary steps to consummate the Agreement in accordance with its terms.

*2 5. The payment of fees and expenses to Plaintiffs' counsel in the amount of \$700,000 is hereby approved as fair and reasonable, in light of the risks assumed by Plaintiffs' counsel in pursuing the litigation and prevailing on the merits of their claims, the time expended in litigating the cause and thereafter in identifying and contacting class members, the significance of the constitutional rights that were vindicated in this case, and the fact that Plaintiffs' counsel accepted the case on a contingency-fee basis. Defendants have not opposed the awarding of fees in this amount. Payment of this amount by Defendants to Plaintiffs' counsel shall occur in accordance with the terms of the Settlement Agreement. This amount payable by Defendants is in addition to the settlement fund amount of \$1000 per plaintiff payable to the individual plaintiffs.

6. Execution of the settlement shall proceed as described in the Settlement Agreement and the Court hereby retains jurisdiction over all matters relating to the administration and implementation of the Settlement Agreement, including final disposition of the settlement fund.

7. Within ninety (90) days of the entry of this Order, Defendants shall file with the Court a Notice of Compliance setting forth Defendants' actions in complying with the terms of this Order and in completion of the Settlement Agreement.

8. Upon the filing of Defendants' Notice of Compliance and the Court's review and approval of such Notice, the Court shall enter final judgment dismissing this case.

It is so ORDERED this __ day of December, 2002.