

1 LAW OFFICE OF MARK E. MERIN
Mark E. Merin, SBN. 043849
2 2001 P Street, Suite 100
Sacramento, California 95814
3 Telephone: (916) 443-6911
4 Facsimile: (916) 447-8336

5 CASPER, MEADOWS, SCHWARTZ & COOK
Andrew Charles Schwartz, SBN 064578
6 2121 N California Boulevard, Suite 1020
Walnut Creek, CA 94596
7 Telephone: (925) 947-1147
Facsimile: (925) 947-1131

8 Attorneys for Plaintiffs

9 THOMAS F. CASEY III, COUNTY COUNSEL, SBN 47562
10 Carol L. Woodward, Deputy, SBN 084197
Hall of Justice and Records
11 400 County Center, 6th Floor
Redwood City, CA 94063
12 Telephone: (650) 363-4746
Facsimile: (650) 363-4034

13 PORTER, SCOTT, WEIBERG & DELEHANT
14 Terence J. Cassidy, SBN 99180
P.O. Box 255428
15 Sacramento, CA 95865
16 Telephone: (916) 929-1481
Facsimile: (916) 927-3706

17 Attorneys for Defendants

18 UNITED STATES DISTRICT COURT
19 NORTHERN DISTRICT OF CALIFORNIA

21 SHANNON GALLAGHER, ROBERTA
BAUCCIO, GRACE CARLAND, and all others
22 similarly situated,
23 Plaintiffs,

24 vs.

25 COUNTY OF SAN MATEO, SAN MATEO
COUNTY SHERIFF'S DEPARTMENT; SAN
MATEO COUNTY SHERIFF DON HORSLEY, in
26 his individual and official capacity; SAN MATEO
COUNTY SHERIFF'S DEPUTIES DOES 1
27 THROUGH 100; and DOES 1 THROUGH 150,
INCLUSIVE, et al.,
28 Defendants.

CASE NO: C 04-0448 SBA

**STIPULATED MOTION FOR
PRELIMINARY APPROVAL OF
PROVISIONAL SETTLEMENT
CLASS AND SETTLEMENT OF
CLASS ACTION**

DATE: April 3, 2007
TIME: 1:00 p.m.
CTRM: 3
JUDGE: Hon. Sandra Brown
Armstrong

I. INTRODUCTION

1
2 Plaintiffs herein, three individuals representing themselves and all others similarly situated
3 in an action filed as a class action and certified as such by this Court, by and through their counsel,
4 Mark E. Merin of the Law Office of Mark E. Merin, and Andrew C. Schwartz of the firm Casper,
5 Meadows, Schwartz & Cook, jointly move with defendants herein, County of San Mateo, San Mateo
6 County Sheriff’s Department, and San Mateo County Sheriff Don Horsley, by and through their
7 counsel, Thomas F. Casey, III, County Counsel, Carol L. Woodward, Deputy County Counsel and
8 Terence J. Cassidy of the law firm Porter, Scott, Weiberg & Delehant, for this Court’s preliminary
9 approval of the class action settlement and issuance of an Order for preliminary approval of
10 settlement of class action (a proposed form of the Order is filed concurrently herewith) so that notice
11 may be given to the class and a Fairness Hearing on the proposed settlement scheduled with
12 distribution of the settlement funds if the Court approves the settlement at that Fairness Hearing.

II. STATEMENT OF FACTS/HISTORY OF LITIGATION

13
14 On or about February 3, 2004, plaintiff, SHANNON GALLAGHER, filed a class action
15 complaint against defendants, amended on July 18, 2006, to add plaintiffs ROBERTA BAUCCIO
16 and GRACE CARLAND as additional representative plaintiffs, challenging the defendants’ policy
17 of strip searching persons, prior to arraignment, who were arrested on charges not involving
18 violence, drugs, or weapons.

19 The parties engaged in extensive discovery which included exchange of documents,
20 preparation of and responses to request for production of documents, interrogatories and depositions
21 of policy makers and line officers, as well as depositions of the parties.

22 Effective December 2, 2003, defendants revised their strip search policies to eliminate
23 automatic, blanket strip searches of women housed in the Women’s Correctional Center prior to
24 arraignment. They also revised their practice to ensure that women arrested on felony charges were
25 not subject to blanket strip searches at the Maguire Correctional Facility unless there was individual,
26 reasonable suspicion for such strip searches based upon the arrest charges or other factors. A copy
27 of defendants’ revised policies is attached hereto as Exhibit A.

28 \\\

1 Plaintiffs moved for class certification and, on October 28, 2005, the honorable Sandra
2 Brown Armstrong issued her Order certifying the action to proceed as a class action with the classes
3 defined as follows:

4 a. For the federal claim ("Class One"):

5 All women who, from February 3, 2002 to December 2, 2003, were arrested on any
6 charge (including felonies) *not* involving weapons, controlled substances, or
7 violence, and *not* involving a violation of parole or a violation of probation (where
8 consent to search is a condition of such probation), *and* who were subjected to a
9 uniform and indiscriminate (blanket) strip/visual body cavity search by defendants
10 before arraignment at the San Mateo County Jail without any individualized
11 reasonable suspicions that they were concealing contraband. This class also includes
12 all female arrestees who were subjected to subsequent blanket strip search before
13 arraignment after the initial strip/visual body cavity search without any reasonable
14 individualized suspicion that they had subsequently acquired and hidden contraband
15 on their persons.

16 b. For the state law claim ("Class Two"):

17 All female arrestees who, from June 12, 2003 to December 2, 2003, were arrested on
18 an infraction or misdemeanor charge and brought to the San Mateo County Jail *and*
19 who were subjected to a uniform and indiscriminate (blanket) strip/visual body cavity
20 search before arraignment without written supervisorial authorization, as required
21 under California Penal Code § 4030(f).

22 On December 16, 2005, and again on April 5, 2006, the parties met with Chief Magistrate
23 Judge James Larson in an attempt to mediate resolution of their dispute. That attempt was
24 unsuccessful and the parties continued to litigate the matter until August 15 and 16, 2006, when they
25 participated in further mediation sessions presided over by the Honorable Raul A. Ramirez (Ret.).
26 Thereafter, the parties continued their negotiations and, finally, agreed to a Stipulation of Settlement,
27 a copy of which is attached hereto as Exhibit B, which, subject to the approval of the Court, settles
28 this action in the manner and upon the terms set forth in the Stipulation of Settlement. The

1 settlement provides for methods to notify the members of the class of the proposed settlement and
2 their entitlement to receive compensation upon the settlement, and to appear and object to the
3 settlement at a Fairness Hearing to be scheduled before this Court.

4 III. SUMMARY OF APPLICABLE LAW

5 A. Federal Law

6 In 1979 the Supreme Court in *Bell v. Wolfish*, 441 U.S. 520, 99 S.Ct. 1861, 60 L.Ed.2d 449
7 (1979), held that custodial strip searches are subject to a balancing test which weighs the privacy
8 interest of the person to be searched against the legitimate security interests of the institution.
9 Following *Bell v. Wolfish*, courts considering the issue have applied objective standards to determine
10 the reasonableness of strip searches of pre-trial detainees.

11 In 1984, In *Giles v. Ackerman*, 746 F.2d 614, 619 (9th Cir. 1984), the Ninth Circuit applied
12 the test of reasonableness to a strip search of a pre-arraignment detainee at a county jail and held that
13 a pre-arraignment strip search of a person arrested for a minor offense is unconstitutional absent an
14 individualized suspicion that such arrestee is carrying or concealing contraband or suffering from
15 a communicable disease. The fact that an arrestee might ultimately be intermingled with the general
16 population did not, by itself, justify a strip search as such intermingling at the pre-arraignment stage
17 was found to be “both limited and avoidable.” (*Id.*, 745 F.2d at 618.)

18 In 1988, the Ninth Circuit decided *Kennedy v. Los Angeles Police Department*, 901 F.2d 702
19 (9th Cir. 1990). There, plaintiff was arrested and charged with grand theft, a felony, after a dispute
20 with a roommate concerning ownership of a T.V. She was stripped and subjected to a visual body
21 cavity search after she was booked and before she was placed in the general population. In that case
22 the court found that a blanket policy that subjected all felony arrestees to a visual body cavity search
23 upon booking in the county jail was a violation of the Fourth Amendment, in that the
24 felony/misdemeanor classification was not “reasonably related to the institution’s objective of
25 maintaining security.” (901 F.2d at 714.)

26 In 1992, the Ninth Circuit decided *ActUp!/Portland v. Bagley*, 971 F.2d 298 (9th Cir. 1992).
27 There, the court summarized the rule regarding strip searches as follows:

28 At the time appellees were searched, it was clearly established in this
circuit that it is unlawful to strip search an arrestee brought to a jail

1 facility on charges of committing a minor offense, unless the officer
2 directing the search possesses a reasonable suspicion that the
3 individual arrestee is carrying or concealing contraband. *Giles v.*
4 *Ackerman*, 746 F.2d 614, 617 (9th Cir. 1984), cert. denied, 471 U.S.
5 1053, 105 S.Ct. 2114. Reasonable suspicion may be based on “such
6 factors as the nature of the offense, the arrestee’s appearance and
7 conduct, and the prior arrest record.” *Id.* Adhering to the Supreme
8 Court’s direction in *Bell v. Wolfish*, 441 U.S. 520, 529, 99 S.Ct. 1861,
9 1884 (1979), the *Giles* test accounts for the fact that local jail
10 facilities frequently confront difficult security problems, and balances
11 those facility’s interests in controlling such problems against the
12 privacy interests of arrestees. See, 746 F.2d at 617.

13 (917 F.2d at 301.)

14 **B. State Law**

15 1. Penal Code § 4030:

16 Penal Code § 4030 was enacted with the express intent to protect the state and federal
17 constitutional rights of pre-arraignment adult arrestees and pre-detention hearing juvenile arrestees
18 detained for minor offenses. (Penal Code § 4030(a).) Penal Code § 4030(f) prohibits visual body
19 cavity searches and strip searches of prearraignment detainees “held in custody on a misdemeanor
20 or infraction offense, except those involving weapons, controlled substances, or violence,” unless
21 “a peace officer has determined there is reasonable suspicion based on specific and articulable facts
22 to believe that such person is concealing a weapon or contraband, and the strip search will result in
23 the discovery of the weapon or contraband.” The subsection further provides that no strip search
24 may be conducted without the prior written authorization of a supervising officer on duty and that
25 the authorization “shall include the specific and articulable facts and circumstances upon which the
26 reasonable suspicion determination was made by the supervisor.”

27 Penal Code § 4030(m) provides that all strip searches “shall be conducted in an area of
28 privacy so that the search cannot be observed by persons not participating in the search.”

Penal Code § 4030(p) provides that any person who suffers damages as a result of a violation
of 4030 may recover actual damages or \$1,000, which ever is greater, in addition to other relief the
court may award, including reasonable attorney’s fees.

\\

\\

1 2. California Constitution:

2 Article I, § 1 of the California Constitution states that privacy is an inalienable right. In *Hill*
3 *v. National Collegiate Athletic Association*, 7 Cal.4th 1, 26 Cal.Rptr. 834 (1994), the California
4 Supreme Court set out clear and detailed guidelines for courts to follow in addressing alleged
5 violations of California States Right to Privacy.

6 Persons who are strip searched in violation of Penal Code § 4030 are, ipso facto, deprived
7 of a specific statutory protection in violation of privacy protected, as well, by the California State
8 Constitution.

9 3. Federal Class Action Law:

10 Class action certification under Federal Rule 23 has been the preferred method for dealing
11 with cases challenging blanket jail pre-arraignment (pre-detention hearing) strip search policies.
12 (See *Smith v. Montgomery County*, 573 F.Supp 604 (Dist. MD 1983); *Mack v. Suffolk County*, 191
13 F.R.D. 16 (Dist. Mass 2000); *Nielson v. York County*, 219 F.R.D. 19 (Dist. MA 2003); *Tardiff v.*
14 *Knox County*, 218 F.R.D. 332 (Dist. MA 2003); *Doe v. Calumet City, Illinois*, 128 F.R.D. 93 (N.D.
15 Ill. 1989); *Marybeth G. v. City of Chicago*, 723 F.2d 1263, 1267, fn.2 (7th Cir. 1983); *Maneely v.*
16 *City of Newburg*, 208 F.R.D. 69 (S.D. NY 2002); and *Bull, et al. v. San Francisco, et al.*, WL
17 449148 (2006).)

18 On April 9, 2004, the First Circuit Court of Appeal in *Tardiff v. Knox County, et al.*,
19 consolidated with *Nielson v. York County, et al.*, upheld the certification of two blanket strip search
20 cases under Federal Rule 23(b)(3). (365 F.3d 1 (1st Cir. 2004).)

21 The advantages of certification in blanket strip search cases is manifest where the common
22 issues of law or fact predominate over individual issues. In this class action case before this Court
23 for preliminary approval of the proposed class settlement, the benefits to the parties include, for
24 defendants, a complete settlement of all claims of persons in the class with claims for damages
25 arising during the period from February 3, 2002, to December 2, 2003, and obtaining *res judicata*
26 effect of the settlement. For plaintiffs, the settlement of the class action provides a fund adequate
27 to pay claims of all those persons submitting the requisite Claim Form who were strip searched in
28 violation of federal law or state statute at or above the minimum payment to which they would be

1 otherwise entitled if they had established their individual entitlement to damages under the relevant
2 law, without the consumption of time and uncertainty continued litigation entails.

3 **IV. OUTLINE OF PROPOSED SETTLEMENT**

4 **A. Purpose**

5 The purpose of the proposed settlement is fully and finally to resolve all claims for damages
6 which any female strip searched in violation of state or federal law at the San Mateo County Maguire
7 Correctional Facility or the Women's Correctional Center, prior to arraignment, during the period
8 from February 3, 2002, to and including December 2, 2003, might have; to provide adequate
9 compensation for each such person; to ensure that defendants, once the settlement funds have been
10 distributed, shall be fully and finally relieved of all further liability to any persons in the class and
11 bound by the Court's final judgment; and to provide a mechanism by which persons challenging the
12 fairness of the proposed settlement may do so.

13 To accomplish the above-stated purposes, the parties entered into negotiations, facilitated by
14 first Chief Magistrate Judge James Larson and thereafter by the Honorable Raul Ramirez (Ret.),
15 acting as mediators, and negotiated the Stipulation of Settlement, a copy of which is attached hereto
16 as Exhibit B.

17 The principle provisions of the attached settlement are the following:

18 **B. Description of Class Members**

19 The settlement class is, as the Honorable Sandra Brown Armstrong stated in her Order
20 certifying the action to proceed as a class action:

21 a. For the federal claim ("Class One"):

22 All women who, from February 3, 2002 to December 2, 2003, were arrested on any
23 charge (including felonies) *not* involving weapons, controlled substances, or
24 violence, and *not* involving a violation of parole or a violation of probation (where
25 consent to search is a condition of such probation), *and* who were subjected to a
26 uniform and indiscriminate (blanket) strip/visual body cavity search by defendants
27 before arraignment at the San Mateo County Jail without any individualized
28 reasonable suspicions that they were concealing contraband. This class also includes

1 all female arrestees who were subjected to subsequent blanket strip search before
2 arraignment after the initial strip/visual body cavity search without any reasonable
3 individualized suspicion that they had subsequently acquired and hidden contraband
4 on their persons.

5 b. For the state law claim ("Class Two"):
6 All female arrestees who, from June 12, 2003 to December 2, 2003, were arrested on
7 an infraction or misdemeanor charge and brought to the San Mateo County Jail *and*
8 who were subjected to a uniform and indiscriminate (blanket) strip/visual body cavity
9 search before arraignment without written supervisorial authorization, as required
10 under California Penal Code § 4030(f).

11 The Class Period extends from February 3, 2002, to December 2, 2003, the date on which
12 new strip search policies, in compliance with state and federal law, were promulgated by defendants.

13 **C. Compensation Provided By Settlement**

14 The Stipulation of Settlement provides for the payment of up to One Million, One Hundred
15 Fifty Thousand Dollars (\$1,150,000) to satisfy all claims of the Settlement Class Members
16 ("SCMs"). All SCMs who submit qualifying verified Claim Forms will be compensated as follows:
17 for each booking up to a maximum of three (3) bookings, SCMs will receive the following payments.
18 The Administrator will determine the amount of each Tier 1 payment based on the SCM's responses
19 to the Claim Form and the database provided by the County.

20 **Tier 1 Payments**

21 (a) If they were booked and transferred to the Women's Correctional Center, prior to
22 arraignment, a base sum of \$2,500;

23 (b) If they were booked and released, without being transferred to the Women's
24 Correctional Center, a base payment of \$1,250.

25 SCMs who seek more than the basic payments provided pursuant to Tier 1 shall have their
26 claims determined in accordance with the criteria set forth below relating to Tiers 2 and 3.

27 \\\

28 \\\

1 **Requirements for Being Considered for Tier 2 Payments**

2 In order to be considered for a Tier 2 payment, the SCM must answer applicable questions
3 1 through 5 in the Claim Form and provide substantiating detail in accordance with the instructions
4 in the Claim Form. Questions 1 through 5 are designed to determine if circumstances existed at the
5 time of the strip search which merit, in all fairness, additional compensation for the SCM. Those
6 factors include the following: age (under 21 or over 60); the existence of a physical disability or
7 disfigurement (such as an embarrassing scar condition in a private area); a mental disability; a
8 condition of pregnancy (more than 3 months); piercings in a private area which had to be removed
9 or hair extensions or religious garments which had to be removed; a female who was menstruating
10 at the time of the strip search. The SCMs must also provide substantiating detail in accordance with
11 the instructions when they submit their Claim Forms to qualify for Tier 2 payments. The Claims
12 Administrator will assign points to the SCMs based on responses to the questions and the
13 substantiating detail provided which may permit SCMs to receive up to an additional \$3,000 over
14 the base payment.

15 **Requirements for Obtaining Tier 3 Payments**

16 SCMs may also qualify for Tier 3 payments of up to \$25,000 if they received counseling or
17 therapy as a result of the strip search, were diagnosed with a psychological condition resulting from
18 the strip search, or suffered other significant ill effects from the strip search and provided
19 substantiating documentation in support of their request for Tier 3 payments.

20 The stipulated settlement provides a method by which the Claims Administrator makes a
21 preliminary determination of the value of payments to be made to the SCMs and the parties may
22 review the Administrator's determination subject to appeal to the Special Master which shall be
23 binding.

24 **D. Reduction Categories**

25 Amounts payable to SCMs who qualify for payments under Tiers 2 and 3 shall be subject to
26 reduction if the claimant falls into any of the following categories:

- 27 1. If the SCM owes debt to the County which could be collected by the San Mateo
28 County Tax Collector-Treasurer-Revenue Services for unpaid work furlough fees

1 and/or owed debts to the county of San Mateo or to the state of California for unpaid
2 child support, Tier 2 and 3 payments will be reduced by up to 50% to recover the
3 SCMs' obligations;

4 2. Awards otherwise payable to an SCM under Tiers 2 and 3 will be reduced by 75%
5 if, within five (5) years preceding the strip search, the SCM was sentenced to and
6 incarcerated in county jail or state prison.

7 **E. Proportionate Reduction/Revision**

8 If the total value of all SCM claims which are submitted before the Bar Date to be established
9 by the Court exceeds the total amount allocated for payment of class claims, payout for the claims
10 will be reduced proportionately so that the entire amount available is disbursed. If the total value
11 of claims submitted is less than One Million, One Hundred Fifty Thousand Dollars (\$1,150,000),
12 the amount remaining in the Payment Fund will revert to defendants.

13 **F. Payment to Representative Plaintiffs**

14 The named plaintiffs, SHANNON GALLAGHER, ROBERTA BAUCCIO and GRACE
15 CARLAND shall be entitled to a distribution of One Hundred Twenty Thousand Dollars (\$120,000)
16 from the Payment Fund of up to One Million, One Hundred Fifty Thousand Dollars (\$1,150,000).
17 The distribution to the named plaintiffs shall not be reduced proportionately if the total of all valid
18 claims, including the distribution to the named plaintiffs, exceeds One Million, One Hundred Fifty
19 Thousand Dollars (\$1,150,000).

20 **G. Process for Claims Submission**

21 Following preliminary approval of the proposed settlement by this Court, the parties, through
22 a retained firm¹ specializing in class action claim administration, will notify each of the class
23 members of the terms of the proposed settlement and provide each claimant with a claim form to be
24 completed and returned within the specified 90 day period. The Notice and Claim Form, copies of
25 which are attached hereto as Exhibits C and D, direct the SCMs to answer questions on the form
26 which, together with information contained in defendants' database and substantiating detail

27 _____

28 ¹ The parties have agreed that Gilardi and Co., LLC will act as Claims Administrators and are requesting the Court appoint them for that purpose.

1 provided by the SCMs, will determine the level of payment the claimants will receive. The SCMs'
2 responses are supplemental to information contained in the database which will be used to determine
3 eligibility for payment and entitlement to certain additional payments for reasons such as: multiple
4 bookings, age of claimant at time of strip search, and severity of charges.

5 The Claims Administrator will not only mail the Notice and Claim Form to the last known
6 address of each claimant, but will publish a summary form of the Notice in mass media and will
7 make specific attempts to locate persons whose Claim Forms are returned as undeliverable or who
8 are incarcerated, as shown on the database of persons in institutions, jails or prisons within the state
9 of California.

10 Claim Forms will also be available to be downloaded from a website established by the Class
11 Claims Administrator and will be provided by the Claims Administrator or by Class Counsel in
12 response to specific requests for such forms, and furnished to institutions to be distributed to
13 prospective claimants.

14 The Claim Form informs the claimants that Class Counsel will provide assistance to those
15 class claimants who require it if they contact the offices of Class Counsel.

16 Claim Forms received by the Claims Administrator by the cut off date for submission of
17 claims will be examined. Based on the answers provided by the claimant and following comparison
18 with database information, the Claims Administrator will determine the number of points to be
19 assigned to the claim and the value of each claim.

20 Any award to SCMs shall be subject to reduction as stated above. The defendants will
21 provide to the Claims Administrator, with a copy to Class Counsel, a list of all qualified SCMs who
22 have debts owed to the County or to the State in specific identified categories and who submit valid
23 claims, with the amount of the debt owed to the County and/or State specified. The Claims
24 Administrator will then deduct from each SCM's award the amount of the specified debt owed to
25 the County or to the state, up to the maximums provided in the Stipulation of Settlement. SCMs may
26 submit written objections to reduction for the debts owed to the County or State within 30 days of
27 the date that settlement checks are distributed. Written objections shall specify the grounds for
28 objection and copies shall be sent to Class Counsel and defendants' counsel. In the event that the

1 SCM, Class Counsel and defense counsel cannot informally resolve the objection, then the objection
2 will be submitted to the Special Master for binding determination.

3 **H. Opt Outs**

4 In the Notice to the class of the Court's ruling certifying the Class, SCMs were informed that
5 they could exclude themselves (opt out) of the class by mailing a letter to Class Counsel, postmarked
6 on or before March 31, 2006, requesting exclusion from the class. A copy of the published Notice
7 is attached hereto as Exhibit E. As of March 31, 2006, no persons requested exclusion from the
8 class.

9 **I. Settlement Funds for Claimants**

10 The total settlement amount for distribution to claimants is One Million, One Hundred Fifty
11 Thousand Dollars (\$1,150,000) which shall be allocated to pay verified claims, including One
12 Hundred Twenty Thousand Dollars (\$120,000) for the representative plaintiffs who are named
13 plaintiffs in this action who have participated actively in the litigation.

14 If less than the total amount of funds available for payout to SCMs exceeds the value of the
15 verified claims submitted by the Bar Date, the balance of the funds shall revert to defendants.

16 **J. Claims Administration Fund**

17 Defendants will allocate up to One Hundred Fifty Thousand Dollars (\$150,000) to cover the
18 cost of processing and administering the settlement. If the total cost of the claims administration is
19 less than One Hundred Fifty Thousand Dollars (\$150,000), the balance of any funds allocated for
20 this purpose will revert to defendants. In addition to Claims Administration costs and expenses, the
21 expenses of the Special Master will be charged to the Claims Administration Fund as expenses
22 relating to Claims Administration.

23 **K. Attorneys' Fees**

24 Defendants will allocate Six Hundred Thousand Dollars (\$600,000) to pay attorneys fees and
25 costs incurred by Class Counsel for representation of representative plaintiffs and class members.
26 This amount is 31.5% of the total settlement which is within the range of attorney's fees awarded
27 in similar cases and less than the 33 1/3% specified in Class Counsel's contingency fee agreements
28 with representative plaintiffs. Payment will be made as follows: Three Hundred Thousand Dollars

1 (\$300,000) within 20 days of the Effective Date, and Three Hundred Thousand Dollars (\$300,000)
2 upon distribution of settlement funds to claimants. This award is subject to approval of the Court.

3 **L. The Settlement is Fair and an Appropriate Method to Resolve this Litigation**

4 As a result of the discovery in this action, the parties agree that there were approximately
5 1,000 bookings of SCMs during the Class Period and that all females booked on charges not
6 involving violence, drugs or weapons, or otherwise subject to strip search on reasonable suspicion,
7 who were strip searched prior to arraignment, are entitled to participate in this settlement.
8 Experience from settlement of other class action strip search cases indicates that it is probable that
9 25% of the class or fewer will submit completed Claim Forms. Efforts will be made to locate SCMs
10 whose Claim Forms are returned from the last known address to which they will be mailed.

11 The settlement is structured to compensate persons strip searched at San Mateo County jails
12 at or above the minimum statutory compensation specified in Penal Code § 4030. Persons strip
13 searched multiple times by virtue of multiple bookings during the Class Period, or strip searched at
14 both the Maguire Correctional Facility and Women’s Correction Center during any one booking, will
15 receive additional compensation for up to the first three (3) booking strip searches and may qualify
16 for additional Tier 2 or Tier 3 payments depending upon responses to questions on the Claim Form.

17 The settlement amounts specified herein are in-line with settlements typically paid in class
18 action cases.

19 **M. Advantages of Settlement**

20 Many of the persons entitled to compensation under this settlement agreement would have
21 difficulty establishing that the damages they suffered exceeded the amounts they will receive under
22 this settlement. Because the value of each claim is minimal, in the absence of this class action
23 settlement, few persons would be expected to come forward to file their own challenges to
24 defendants’ strip search policies and procedures and would receive no compensation.

25 On the other hand, if the matter is not settled and were to proceed through litigation to trial,
26 multiple trials could take years to complete and appeals thereafter would delay ultimate satisfaction
27 of any judgments for several more years making settlement and resolution, as provided in the
28 accompanying documents, desirable, appropriate and just.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

V. CONCLUSION

For all of the reasons stated herein, represented in the attached documents, and presented at the hearing on this request for preliminary approval of the settlement, the parties jointly request the court to sign the accompanying order to give preliminary approval to the Stipulation of Settlement, to appoint the Honorable Raul Ramirez as Special Master, and to designate Gilardi and Company as the Claims Administrator, so that the process of notifying the class members, receiving and reviewing the submitted Claim Forms, finally approving the settlement and effectuating the settlement can proceed.

DATED: February 5, 2007

Respectfully submitted,

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

/s/ - "Mark E. Merin"

Mark E. Merin
Attorneys for Plaintiffs

DATED: February 5, 2007

Respectfully submitted,

PORTER, SCOTT, WEIBERG & DELEHANT and
THOMAS F. CASEY III, County Counsel

/s/ - Terence J. Cassidy"

Terence J. Cassidy
Attorneys for Defendants