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12 COUNTY OF SOLANO and GARY R. STANTON

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14 UNITED STATES DISTRICT COURT
15 EASTERN DISTRICT OF CALIFORNIA

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17 MICHAEL TODD, JAMESY K. DAVIS,
DEANGELA HARRIS, CARMEN HARRIS
18 ROBINSON, BRADLEY WOLFE, on behalf
of themselves and all those similarly situated;

19 Plaintiffs,

20 v.

21 COUNTY OF SOLANO; SOLANO
COUNTY SHERIFF GARY R. STANTON,
22 IN HIS INDIVIDUAL AND OFFICIAL
CAPACITIES; SOLANO COUNTY
SHERIFF'S DEPUTIES DOES 1 through
23 100, and ROES 1 through 20, inclusive,

24 Defendants.

CASE NO: 2:07-cv-00726-FCD-EFB

**JOINT MOTION FOR ORDER
APPROVING STIPULATION OF
SETTLEMENT AND DISMISSAL OF
COMPLAINT**

DATE: NOT SET
TIME: 10:00 a.m.
CTRM: 2, 15th Floor
JUDGE: Hon. Frank C. Damrell, Jr.

25 **I. INTRODUCTION**

26 On April 16, 2007, plaintiff MICHAEL TODD f iled an action against the COUNTY OF
27 SOLANO, SOLANO COUNTY SHERIFF GARY R, STANTON, in his individual and official
28 capacities, and SOLANO COUNTY SHERIFF'S DEPUTIES sued fictitiously as DOES 1 through

1 100 and ROES 1 through 20. Mr. TODD filed the action on behalf of him self and all those
2 similarly situated for damages, injunctive and class relief for all persons who were strip searched at
3 Solano County Jails, prior to arraignment, without defendants having any reasonable suspicion that
4 the searches would be productive of contraband. Plaintiff also alleged that defendants had a policy
5 of conducting strip searches in ar eas which could be observed by pe rsons not participating in the
6 searches, in violation of the 4th and 14th Amendments of the United States Constitution.

7 The complaint was filed as a result of Mr . TODD's experience following his arrest on
8 September 1, 2006, on charges not involving viol ence, drugs or weapons, following which he
9 alleged he was transported to the Solano County Justice Center Detention Facility (Solano County
10 Jail), and taken to an area where he submitted to a strip search in a group of several other persons
11 who were not participating in the search.

12 Defendants filed a tim ely denial that plaintiff was st rip searched and/or that they had a
13 policy or practice of which plaintiff complained.

14 On or about July 29, 2008, afte r completing initial discovery, plaintiff filed an am ended
15 complaint adding f our additional plaintiffs, JAMESY K. DAVIS, DEANGELA HARRIS,
16 CARMEN HARRIS ROBINSON, and BRADLEY WOLFE who alleged that they, too, had been
17 arrested on charges not involving violence, drug s or weapons and transported to Solano County
18 Jail where, prior to a rraignment, they were strip searched in gro ups in vio lation of their
19 constitutional rights. During the pendency of this action and, as a result of publicity that the action
20 had been filed, a group of additional persons contacted plaintiffs' attorney's office and alleged that
21 they fell within the allegations alleged in the complaint.

22 After extensive discovery, which included the depositions of all of the plaintiffs as well as
23 depositions of twenty-four (24) officers and em ployees of defendants, the parties have determined
24 that while prior to Novem ber 2003, defendants ha d a policy and practice of strip searching all
25 persons to be housed in Solano County Jail, often in groups, prior to arraigm ent, they, they
26 discovered in 2003 that the policy did not com ply with federal law and revise d the policy so as to
27 bring it into compliance with federal law and a ll custodial staff was trained in the new policy.
28 Specifically, Captain Ferrara issued a memorandum on July 7, 2003 to all custody staff infor ming

1 them of the modification of the strip search procedures and training sessions were then conducted
2 with all correctional officers consistent with that memorandum.

3 Although a revised policy was issued on November 20, 2003, that revision erroneously
4 included a provision that specified that all persons going into housing would be strip searched even
5 though it was the explicit policy of Solano County not to strip search persons merely because they
6 were to be housed and custodial staff had been trained not to strip search persons merely because
7 they were to be housed unless there was reasonable suspicion for a strip search.

8 A corrected version of the strip search policy was issued in March 2007.

9 While persons arrested and held at the Solano County Jail may have, on occasion, been
10 strip searched in violation of the defendants' strip search policy, those isolated instances were
11 unauthorized, in violation of policy, and inadvertent.

12 Accordingly, the parties agree that certification of this action as a class action would be
13 inappropriate as no class, premised on the existence of a policy, practice or custom of defendants,
14 exists and if a motion were made to certify class, that motion would most likely be denied. Instead
15 of further litigating this case, the parties entered into negotiations to settle the claim of the persons
16 who contacted plaintiffs' counsel's office and alleged that they were strip searched, illegally,
17 during the period within two years of the filing of the original TODD complaint. As a result of
18 these negotiations the parties reached agreement and now request the Court to approve a
19 Stipulation of Settlement, a copy of which is attached to the Declaration of Mark E. Merin as
20 Exhibit A, filed herewith. This stipulation provides for compensation to each of the individual
21 plaintiffs in the amount of \$12,500, compensation to each of the persons listed on Exhibit 4 to the
22 Stipulation of Settlement (attached as Exhibit A to the Declaration of Mark E. Merin, filed
23 herewith), who contacted plaintiffs' counsel's office alleging that they fall within the allegations
24 alleged in the complaint in the amount of \$750 if they were brought to Solano County Jail
25 following arrest for a felony, or in the amount of \$1,000 if they were arrested on a misdemeanor
26 that falls within the statute of limitations and were not otherwise subject to strip search; and a
27 \$100,000 payment to counsel for attorney's fees and costs incurred in the prosecution of this
28 litigation. The settlement check shall be made payable to the Law Office of Mark E. Merin Client

1 Trust Account. Mr. Merin shall deposit those funds into his Client Trust Account and shall handle
2 the disbursement of settlement funds to representative plaintiffs and those persons listed on Exhibit
3 4.

4 As the complaint was filed as a class action complaint, the parties are specifically
5 requesting that the Court approve the settlement without ordering notice to be given to the persons
6 who were housed at Solano County Jail prior to arraignment since there are no ascertainable
7 members of a “class.”

8 II. FACTS

9 Plaintiff MICHAEL TODD was arrested on September 1, 2006 on charges not involving
10 violence, drugs or weapons and transported to Solano County Justice Center Detention Facility, a
11 Solano County Jail, where, prior to arraignment, he alleged he was taken to an area where he was
12 strip searched in a group with several other persons who were not officially participating in the
13 search.

14 Plaintiff JAMESY K. DAVIS on November 1, 2005, on charges not involving violence,
15 drugs or weapons, transported to Solano County Jail where, prior to arraignment, he alleged he
16 was taken to an area and strip searched in a room where other individuals not participating in the
17 search could see him being strip searched.

18 Plaintiff DEANGELA HARRIS was arrested November 18, 2005, on charges not
19 involving violence, drugs or weapons, transported Solano County Jail where, prior to arraignment,
20 she alleged was strip searched together with two other women who were also strip searched.

21 On August 23, 2005, plaintiff CARMEN HARRIS ROBINSON was arrested on charges
22 not involving violence, drugs or weapons and transported to Solano County Jail where, prior to
23 arraignment, she alleged she was required to submit to a strip search. On February 22, 2006, Ms.
24 ROBINSON was again arrested on charges not involving violence, drugs or weapons and alleged
25 she was again strip searched at the Solano County Jail prior to arraignment.

26 On July 19, 2006, BRADLEY WOLFE was arrested on charges not involving violence, drugs
27 or weapons, transported to Solano County Jail where, prior to arraignment, he alleged he was strip
28 searched in a group with at least two other persons.

1 The strip searches described by plaintiffs proceeded in similar fashion:

2 They were required to remove all of their clothing and to bend over
3 exposing their rectal areas for inspection and to lift or spread their
4 genitals for inspection.

4 Defendants adamantly denied having a policy, practice or custom, following the issuance
5 of the memorandum by Captain Ferrara dated July 7, 2003, the training sessions and their revised
6 policy in November 2003, of strip searching persons going into housing and/or strip searching
7 persons in groups. Defendants acknowledged, however, that prior to the change in their policy in
8 2003, it was the practice of the jail to strip search all persons going into housing since they
9 understood that strip search to be permitted by state and federal law. They also acknowledged that
10 prior to the change, for convenience of the institution, persons were strip searched in groups if
11 several persons were being transported into housing simultaneously.

12 The depositions of twenty-four (24) officers confirmed that defendants' representation that
13 the strip search policy and practice was brought into conformance with state and federal law in
14 2003 and, with few exceptions, all of the deposed officers stated that they had revised their policies
15 and practices to conform to the institution's requirements by the end of 2003. Thus, if persons
16 were strip searched at the Solano County Jail within two years prior to the TODD complaint, those
17 strip searches either were performed on reasonable suspicion or in violation of defendants' official
18 policies. In any event, if strip searches occurred, they were unrecorded, unauthorized, and
19 impossible to corroborate or disprove.

20 **III. HISTORY OF THE LITIGATION**

21 Following the filing of the complaint on April 16, 2007, defendants filed a timely answer.
22 The parties then undertook the initiation of discovery and in July, 2008, filed an amended
23 complaint adding four additional plaintiffs.

24 As persons alleging that they had been strip searched at Solano County Jail came forward
25 and contacted plaintiffs' counsel, plaintiffs directed interrogatories and written discovery to
26 defendants in an attempt to corroborate the allegations of such persons.

27 To ascertain the policies and practices of defendants, plaintiffs noticed and took the
28 depositions of twenty-four (24) officers and agents of defendants and presented named plaintiffs

1 for deposition by defendants. The result of such extensive discovery was the determination that
2 although an erroneous written policy had been issued which failed to include the specific
3 modifications which were designed to bring the strip search policy into conformance with state and
4 federal law, custodial staff had been appropriately trained and their practices conformed to state
5 and federal law.

6 Claims of being strip searched in violation of constitutional protections were both
7 exceptional and unsustainable. In any event, when the error in existing written policy relating to
8 strip searches at Solano County Jail was discovered a corrected version was issued in March, 2007,
9 fully comporting with state and federal law.

10 **IV. THERE IS NO CLASS**

11 While plaintiffs' versions of being strip searched at Solano County Jail often in groups are
12 similar, and suggest a pattern of illegality, various circumstances suggest explanations for the
13 plaintiffs' claims:

- 14 1. Many of the plaintiffs had also been arrested prior to November, 2003, when the
15 Solano County strip search policies and practices were revised and could be
16 confusing earlier strip searches-outside of the statute of limitations-with the
17 circumstances they faced when arrested on subsequent occasions.
- 18 2. For other plaintiffs, and indeed other persons who contacted plaintiffs' counsel's
19 office complaining of being strip searched at Solano County Jails, there may have
20 been reasonable suspicion for those strip searches based either on a history of
21 criminal conduct or circumstances apparent to jail officers at the time the plaintiffs
22 and others were brought to the facility. There is no way, at this point, given the
23 paucity of available records, either to prove or to disprove the fact of the strip
24 searches or any justification-reasonable suspicion-for them.
- 25 3. Under these circumstances, it seems highly unlikely that plaintiffs would be able to
26 identify persons who should receive notice of this proposed settlement or
27 otherwise participate in ongoing litigation of the plaintiffs' claims. In short,
28 plaintiffs do not have sufficient information or sufficient evidence of which to move

1 for class certification and further discovery is unlikely to uncover any such
2 evidence. If plaintiffs were required to move for class certification based on the
3 evidence available to them, they would be unlikely to prevail.

4 **V. TERMS OF SETTLEMENT**

5 Defendants' present policy which was issued in March, 2007, purports to express the
6 policy and practice continuously in effect since November, 2003, and, in all respects, conforms to
7 applicable state and federal law. A copy of the policy revised March 2007, is attached as Exhibit 3
8 to the Stipulation of Settlement (attached as Exhibit A to the Declaration of Mark E. Merin, filed
9 herewith).

10 **A. Payment of Named Plaintiffs**

11 Because the nature and legality of the searches of plaintiffs, including whether or not they
12 were strip searched and whether or not they were strip searched in areas where the search could be
13 seen by others, is highly contested and depends on the resolution of credibility determinations, the
14 outcome of a contested proceeding is uncertain. Accordingly, the parties consider it appropriate to
15 resolve the named plaintiffs' complaint by paying to each of them the sum of \$12,500 in return for
16 a dismissal with prejudice of the within complaint.

17 **B. Payment to Other Persons Who Contact Plaintiffs' Counsel's Office**

18 Persons contacted plaintiffs' counsel's office, upon learning of the pendency of the TODD
19 action, complaining that they, too, fell within the allegations alleged in the complaint and who
20 were not otherwise subject to strip search. Plaintiffs have obtained records relating to these
21 individuals, but, aside from undertaking extensive additional discovery which, if prior experience
22 is an indication, will not produce definitive evidence that the claimants were strip searched or that
23 there was no reasonable suspicion for those searches, there is nothing further that could be
24 accomplished to prove plaintiffs' claims that they were strip searched pursuant to defendants'
25 policy. Accordingly, weighing the cost of proceeding with further discovery versus compensation
26 for those claimants in line with previous resolution of strip search actions, the parties have agreed
27 that the persons on the list attached as Exhibit 4 to the Stipulation of Settlement (attached as
28 Exhibit A to the Declaration of Mark E. Merin, filed herewith) will receive \$750 each if they were

1 arrested on felony charges and \$1,000 each if they were arrested on misdemeanor charges.

2 **C. Attorney's Fees and Costs**

3 Throughout the litigation of this action, plaintiffs' counsel has expended over 300 hours in
4 the preparation and litigation of this complaint, its amendment, the discovery of relevant facts, and
5 negotiation of a settlement and the making of this motion for approval of that settlement. While
6 fees at a rate of \$450 per hour would exceed \$135,000, and costs to date, expended by plaintiffs'
7 counsel exceed \$15,000, defendants have agreed to pay and plaintiffs have agreed to accept the
8 total of \$100,000 in payment of attorney's fees and all costs associated with this litigation.

9 **VI. THE PARTIES REQUEST AN APPROVAL OF THE STIPULATION OF**
10 **SETTLEMENT WHICH PROVIDES THAT NO NOTICE WILL BE GIVEN TO**
11 **MEMBERS OF THE CLASS**

12 Rule 23(e)(1)(A) requires the Court to "approve any settlement, voluntary dismissal, or
13 compromise of the claims, issues, or defenses of a certified class period." Subpart(1)(b) requires
14 the Court to "direct notice in a reasonable manner to all class members who will be bound by a
15 proposed settlement, voluntary dismissal, or compromise." Although it might appear that Court
16 approval and notice are mandatory on dismissal or compromise of a class suit, the authors of
17 Newberg on Class Actions, Fourth Edition, Section 11:66 observe that:

18 *"On closer analysis a notice is not mandatory on all instances but 'shall be given to*
19 *all members of the class in such a manner as the Court directs.'* Broadly
20 *interpreted, this language is sufficiently flexible to permit the Court to approval a*
21 *dismissal or compromise by the names plaintiffs individually, but to determine that*
22 *no class notice at all is required, when the dismissal or compromise will not result*
23 *in any prejudice to the class. Thus, generally speaking, while notice to the class*
24 *will effectuate the policies behind the rule, judicial discretion is permitted for*
25 *withholding notice in instances when notice would issue unnecessarily or force the*
26 *Court to employ unneeded alternative methods to circumvent the policy when*
27 *dismissal of the class litigation is otherwise proper." – Four, Newberg on Class*
28 *Actions, Section 11.66.*

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

- 31 1. No class has been certified and, indeed, there is no ascertainable class of persons
32 who were strip searched, prior to arraignment, without reasonable suspicion that
33 they possessed contraband or weapons, for whom a class certification could be

1 made. In the absence of identifiable members of a punitive class, the parties have
2 no idea as to whom notice could or should be given.

3 2. Settlement of named plaintiffs' claims with payment to additional persons who
4 contacted plaintiffs' counsel's office is not res judicata to any other claim; no one is
5 foreclosed from bringing an individual action under this proposed settlement. To
6 the contrary, if there are other persons who could bring another action as a result of
7 being illegally strip searched at Solano County Jails, the running of the statute of
8 limitations on any such claim has been and will be tolled until the dismissal of the
9 TODD complaint. Since no notices have gone out advising persons of the filing of
10 TODD's claim, it is unlikely that there are any putative plaintiffs who are relying
11 on the pendency of the TODD action to litigate a class claim on their behalf. It is
12 unlikely that any persons will or could be prejudiced by the settlement of this
13 complaint.

14 If notice were required to be given, it would have to be given to all persons who were
15 housed at the Solano County Jail from the period from April 16, 2005, to date in order to include
16 any potential punitive plaintiff; even the giving of such notice would be inordinately expensive,
17 would be unnecessary, and would likely cause confusion among the persons who received the
18 notice. For all of these reasons, the parties respectfully request the Court to exercise its sound
19 discretion in this instance and approve the parties' negotiated stipulated settlement without
20 imposing on the parties any notice of proposed settlement requirements.

21 VII. CONCLUSION

22 The parties believe that the proposed settlement of this action is both fair and reasonable.
23 The named plaintiffs are not only being compensated for their experiences for their experiences at
24 Solano County Jail, but also for having participated actively in the prosecution of this litigation.
25 Furthermore, their actions have resulted in the clarification of the Solano County policies which
26 prohibit strip searches of persons merely because they are going to be housed.

27 Attorney's fees and costs were negotiated following a tabulation of the number of hours
28 devoted to the litigation and are less than two-thirds of what they would have been had the Court

1 awarded fees following a motion for an award of attorney's fees pursuant to 42 USC Section 1988.

2 Accordingly, respectfully request the court to approve the stipulation of settlement and to
3 enter its order dismissing the complaint and the claims of named plaintiffs, with prejudice.

4 DATED: September 24, 2009 Respectfully submitted,

5 LAW OFFICE OF MARK E. MERIN

6
7 BY: _____ /s/ - "Mark E. Merin"

8 Mark E. Merin
9 Attorneys for Plaintiffs

10 DATED: September 24, 2009 Respectfully submitted,

11 PORTER SCOTT

12 BY: _____ /s/ - "Terence J. Cassidy"

13 Terence J. Cassidy
14 Attorneys for Defendants

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