

**UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF FLORIDA
 MIAMI DIVISION**

CASE NO. 04-20516-CIV-Jordan/Brown

JUDITH HANEY, LIAT MAYER, JAMIE LOUGHNER, DARCY SMITH, and AMANDA WELLS, individually and on behalf of a Class of all others similarly situated,

Plaintiffs,

v.

MIAMI-DADE COUNTY, et al.,

Defendants.

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

I. INTRODUCTION

Plaintiffs herein, five individuals representing themselves and all others similarly situated in an action filed as a class action, by and through their counsel, Mark E. Merin of the Law Office of Mark E. Merin, Andrew C. Schwartz of the law firm Casper, Meadows & Schwartz, and Randall C. Berg, Jr., of the Florida Justice Institute, Inc., jointly move with defendants herein, Miami-Dade County, Charles J. McCray, Miami-Dade County Corrections and Rehabilitations Department, Captain B. Fuller, and Acting Captain M. Aladro, by and through their counsel, Jeffrey Ehrlich and Susan Torres, Assistant County Attorneys, Miami-Dade County Attorney, for this Court's preliminary approval of the class action settlement and issuance of an Order for Preliminary Approval of Settlement of Class Action (a proposed form of

the Order is attached hereto as Exhibit 1) so that notice may be given to the class and a fairness hearing on the proposed settlement scheduled with distribution of the settlement funds if the Court approves the settlement at that fairness hearing.

Judicial preliminary approval is appropriate where a case settles as a class action before certification. (Manuel for Complex Litigation, 4th Ed., ¶ 21.132.) In such instances, the parties typically present to the Court, along with their motion for preliminary approval of settlement, their plan for notifying the class and providing an opportunity for class members to opt out.

II. STATEMENT OF FACTS/HISTORY OF LITIGATION

A. Facts

Plaintiffs filed their Class Action Complaint alleging they were unconstitutionally strip searched following arrest for minor offenses and prior to their first appearances. Plaintiffs alleged that defendants typically booked females at the Miami-Dade Pre-Trial Detention Center and transported those not cited or bailed out to the Women's Detention Center to be held overnight and returned to the Pre-Trial Detention Center for their first appearances. Plaintiffs further alleged that defendants' practice and de facto policy was to strip search all women upon arrival at the Women's Detention Center to be held pending first appearance regardless of the charges on which they were arrested and regardless of whether or not they had been previously strip searched at the Pre-Trial Detention Center. No records of the strip searches at the Women's Detention Center were maintained. Despite the requirement of Florida Statute 901.211 that no person arrested on a minor offense be strip searched prior to first appearance without the specific written authorization of a supervising officer, no such required prior authorizations were obtained.

Females arrested on charges relating to prostitution, whether or not they were cited or bailed out prior to first appearance, were routinely strip searched at the Pre-Trial Detention Center pursuant to defendants' written policy.

Males arrested and booked at the Pre-Trial Detention Center were subjected to routine strip searches only if the charges on which they were arrested involved violence, drugs or weapons.

After conducting discovery on plaintiffs' allegations, the parties opened negotiations for a comprehensive resolution of this litigation, including compensation to persons who may have been strip searched illegally, and revisions of jail strip search practices.

The Stipulation of Settlement, attached hereto as Exhibit 2, the result of those negotiations, defines a "Settlement Class", provides methods to notify members of the class of the terms of the proposed settlement, and entitlement to receive compensation under the settlement, to object to the settlement at a Fairness Hearing before this Court, or to opt out of the settlement.

III. SUMMARY OF APPLICABLE LAW

A. Federal Law

In 1979, the United States Supreme Court in *Bell v. Wolfish*, 441 U.S. 520, 99 S.Ct. 1861, 60 L.Ed.2d 449 (1979) held that custodial strip searches are subject to a balancing test which weighs the privacy interest of the person to be searched against the legitimate security interests of the institution. Following *Bell v. Wolfish*, courts considering the issue have applied objective standards to determine the reasonableness of strip searches of pre-trial detainees. In *Skurstenis v. Jones*, 236 F.3d 678, 682 (11th Cir. 2000), for instance, the court held that a blanket strip search policy violated the Fourth Amendment to the United States Constitution because it did not

require reasonable suspicion as a predicate to strip searching newly admitted detainees.

In *Wilson v. Jones*, 251 F.3d 1340 (11th Cir. 2001) the court held that the strip search of plaintiff Wilson who was arrested for driving under the influence and strip searched pursuant to a policy which required a “complete search” prior to admission into the general population violated the Fourth Amendment’s prohibition against unreasonable searches and seizures. Likewise, the policy which authorized the search, without reasonable suspicion, violated the Fourth Amendment. In so holding, the Eleventh Circuit acknowledged that a host of other Circuits “addressing this issue have held similar policies unconstitutional.” *See, e.g., Roberts v. Rhode Island*, 239 F.3d 107 (1st Cir. 2001); *Chapman v. Nichols*, 989 F.2d 393 (10th Cir. 1993); *Fuller v. M.G. Jewelry*, 950 F.2d 1437 (9th Cir. 1991); *Masters v. Crouch*, 872 F.2d 1248 (6th Cir. 1989); *Watt v. City of Richardson Police Department*, 849 F.2d 195 (5th Cir. 1988); *Webber v. Dell*, 804 F.2d 796 (2nd Cir. 1986); *Jones v. Edwards*, 770 F.2d 739 (8th Cir. 1985); *Mary Beth G. v. City of Chicago*, 723 F.2d 1263 (7th Cir. 1983).

The Fourteenth Amendment provides that states shall not deny “any person within its jurisdiction the equal protection of the laws.” U.S. Const. Amend. XIV, ¶ 1. Where States make gender-based classifications, there is a “real danger that government policies that professedly are based on reasonable considerations in fact may be reflective of ‘archaic and over broad’ generalizations about gender or based on ‘outdated misconceptions concerning the role of females in the home rather than in the marketplace and world of ideas’.” *J.E.B. v. Ala. ex rel. T.B.*, 511 U.S. 127, 135 (1994).

The strip search of females charged with minor offenses not involving violence, drugs or weapons who were held prior to first appearance, while males in similar situation are not strip searched, violates the equal protection clause of the Fourteenth Amendment. *Ford v. Suffolk*

County, 154 F.Supp.2d 131, 151 (D. Mass. 2001); *Mary Beth G. v. City of Chicago*, 723 F.2d 1263 (7th Cir. 1983).

B. Florida State Law

Section 901.211, Florida Statutes, defines “strip search” as “having an arrested person remove or arrange some or all of his or her clothing so as to permit a visual or manual inspection of the genitals; buttocks; anus; breasts, in the case of a female; or undergarments of such person.”

The statute prohibits the strip search of any person arrested for “a traffic, regulatory, or misdemeanor offense, except in a case which is violent in nature, which involves a weapon, or which involves a controlled substance” unless “there is probable cause to believe that the individual is concealing a weapon, a controlled substance, or stolen property” or “a judge at first appearance has found that the person arrested cannot be released either on recognizance or bond and thereafter shall be incarcerated in the county jail.” Importantly, “no law enforcement officer shall order a strip search within the agency or facility without the written authorization of the supervising officer on duty.”

Florida courts have held that the appropriate remedy for a strip search in violation of Fla. Stat. § 901.211 is the suppression of evidence obtained by the unlawful search and, possibly, a civil suit for damages. *Perry v. State*, 846 So.2d 584 (Fla. 4th DCA 2003).

The Fourteenth Amendment provides that “[no State shall] deprive any person of life, liberty, or property, without due process of law.” U.S. Const. amend. XIV, § 1. State laws that mandate behavior by state officials implicate the Fourteenth Amendment, in that “[explicit,] mandatory language in connection with requiring specific substantive predicates demands a conclusion that the State has created a protected liberty interest.” *Hewitt v. Helms*, 459 U.S. 460, 471-472 (1983). Put differently, “a State creates a protected liberty interest by placing substantive

limitations on official discretion.” *Olim v. Wakinekona*, 461 U.S. 238, 249 (1983); *See also Chandler v. Baird*, 926 F.2d 1057, 1060-1061 (11th Cir. 1991) (“A state may, however, create a liberty interest which is protected by the Due Process Clause, and does so by placing substantive limitations on official discretion.”) (citations omitted). Use of the words “shall,” “must,” or “will” in a state statute that deal with official behavior is *prima facie* evidence of an enforceable 14th Amendment liberty interest. *Hewitt*, 459 U.S. at 471-472.

Section 901.211(2), Florida Statutes, explicitly limits the discretion of Florida law enforcement officers. The law states that “[n]o person arrested for a traffic, regulatory, or misdemeanor offense . . . **shall be strip searched**” unless the alleged crime is violent in nature or involves a weapon or controlled substance, unless there is probable cause to believe that the arrestee is concealing a weapon, a controlled substance, or stolen property, or unless a judge at first appearance has found that the person arrested cannot be released either on recognizance or bond. Thus, traffic, regulatory, or misdemeanor arrestees have a right not to be strip searched unless specific conditions precedent are met. Since Florida Statute § 901.211(2) puts a substantive limit on the discretion of Florida law enforcement officers in conducting strip searches, a liberty interest is created that is enforceable under the 14th Amendment.

Section 901.211(5), Florida Statutes, also states that “[n]o law enforcement officer **shall** order a strip search within the agency or facility without obtaining the written authorization of the supervising officer on duty.” There is no discretion here either. The law enforcement officer must have the written authorization of the supervising officer on duty to conduct the strip search. Thus, plaintiff’s contend that because Florida Statute § 901.211(5) puts a substantive limit on the discretion of Florida law enforcement officers in conducting strip searches, there is a liberty interest that is enforceable under the 14th Amendment. Defendants dispute this point of law.

C. Federal Class Action Law:

Class action certification under Federal Rule 23 has been the preferred method for dealing with cases challenging blanket jail pre first appearance strip search policies. See, *Smith v. Montgomery County*, 573 F.Supp. 604 (Dist. MD 1983); *Mack v. Suffolk County*, 191 F.R.D. 16 (Dist. Mass 2000); *Nielsen v. York County*, 219 F.R.D. 19 (Dist. ME 2003); *Tardiff v. Knox County*, 218 F.R.D. 332 (Dist. ME 2003); *Doe v. Calumet City, Illinois*, 128 F.R.D. 93 (ND Ill. 1989); *Mary Beth G v. City of Chicago*, 723 F.2d 1263, 1267, fn.2 (7th Cir. 1983); *Maneely v. City of Newburgh*, 208 F.R.D. 69 (SD NY 2002).

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

The advantages of certification in blanket strip search cases is manifest where the common issues of law or fact predominate over individual issues. In this class action case before this Court for preliminary approval of the proposed class settlement, the benefits to the parties include, for defendants, a complete settlement of all claims of persons in the class with claims for damages arising during the period from March 5, 2000, through February 28, 2005, and obtaining *res judicata* effect of the settlement. For plaintiffs, the settlement of the class action provides a fund adequate to pay claims of all those persons submitting the requisite claim form who were strip searched in violation of federal law or strip searched without the prior written authorization required by Florida state law, at or above the minimum payment to which they would be otherwise entitled if they had established their individual entitlement to damages under the relevant law, without the consumption of time and uncertainty litigation entails.

IV. OUTLINE OF PROPOSED SETTLEMENT

A. Purpose:

The purpose of the proposed settlement is fully and finally to resolve all claims for damages which any person strip searched in violation of state or federal law at the Miami-Dade Pre-Trial Detention Center and the Women’s Detention Center, prior to first appearance, during the period from March 5, 2000, through February 28, 2005, might have; to provide adequate compensation for each such person; to ensure that defendants, once the settlement funds have been distributed, shall be fully and finally relieved of all further liability to any persons in the class and bound by the Court’s final judgment; and to provide a mechanism by which persons wishing to opt out of the proposed settlement, either to abandon their claims or to prosecute them on their own behalf, or to challenge the fairness of the proposed settlement, may do so.

To accomplish the above-stated purposes, the parties entered into negotiations, facilitated by retired Circuit Court Chief Judge Gerald T. Wetherington, acting as mediator, and negotiated the stipulated settlement, a copy of which is attached hereto as Exhibit “2”.

The principle provisions of the attached settlement are the following:

B. Description of Class Members

The settlement class is divided into three sub-classes defined as follows:

Subclass A: All females arrested on municipal ordinance, infraction or misdemeanor charges, not involving violence, drugs or weapons, who were transported to the Women’s Detention Center and who were strip searched prior to their first appearance, excluding females strip searched on “probable cause” reported in writing on an incident form¹;

¹ Preliminary queries to the database maintained by the Miami-Dade County Corrections and Rehabilitations Department indicate there may be approximately 10,000 claims in this sub-class.

Subclass B: All females arrested on charges relating to prostitution included on the list of prostitution charge attached as an exhibit to the Stipulation of Settlement, who were strip searched prior to first appearance from March 5, 2000, until February 8, 2005, when the practice of strip searching all females charged with prostitution was officially terminated²; and

Subclass C: All persons arrested on felony charges or on charges relating to violence, drugs or weapons who were strip searched, prior to their first appearances, without a written authorization for the strip search having been first obtained from a supervising officer from March 5, 2000, until February 28, 2005, the date when the policy of strip searching detainees prior to obtaining a written authorization was terminated³.

Subclass A is intended to include all women who were strip searched pursuant to a blanket policy which provided that all women arriving at the Women's Detention Center and held prior to their first appearance were strip searched regardless of the charges on which they were arrested, and regardless of whether they had been previously strip searched at the Pre-Trial Detention Center.

The subclass defined in paragraph B above is intended to include all women charged with prostitution offenses but not felony offenses or misdemeanor offenses including violence, drugs or weapons, who were strip searched pursuant to a policy which provided for the strip search of person charged with prostitution offenses who were booked at the Pre-Trial Detention Center.

The subclass defined in paragraph C above is intended to include all persons charged with offenses which made them subject to legal strip searches who were strip searched without prior

² Preliminary queries to the defendants' database indicates there are approximately 2,000 claims in this sub-class.

³ Preliminary queries to the database indicates there may be as many as 100,000 claims in this sub-class.

written authorization from a supervising officer as required by Florida Statute 901.211.

The class definition, by Stipulation of Settlement, has been expanded from that described in the First Amended Complaint to include all persons arrested on charges relating to violence, drugs or weapons, including felonies, who were strip searched prior to their first appearance without a written authorization for the strip search having been first obtained from a supervising officer because persons in that group, while they were subject to strip search under present law, were strip searched without the prior written authorization required by Florida statutes. A proposed Third Amended Complaint is attached hereto as Exhibit 3 which the parties stipulate may be filed, with all new matter they deemed denied by defendants.

C. Compensation provided by settlement:

The Stipulation of Settlement provides that all females who were strip searched following arrests on charges relating to prostitution, prior to their first appearance, and all females who were strip searched at the Women's Detention Center prior to their first appearance after having been arrested on charges not involving violence, drugs or weapons, will be entitled to receive a minimum payment of \$1,000 and additional payments as follows: \$500 if they were under 21 or over 60 at the time of a strip search; \$500 if they were menstruating at the time of a strip search; \$500 if they were more than two months pregnant at the time of the strip search; \$500 if they had a significant physical or mental disability at the time of a strip search; and \$500 if the strip search during the class period was the first time in the claimant's life that she was arrested and strip searched.

The awards specified in the settlement agreement for these subclasses of females will be reduced by 50% for any female who had previously been incarcerated in a state prison.

Each person who was strip searched legally, but without the requisite prior written authorization to perform the search signed by a supervising officer on duty, shall be entitled to receive the sum of \$10 in full satisfaction of all of his or her claims.

D. Process for Claims Submission

Following preliminary approval of the proposed settlement by this Court, the parties, through a retained firm⁴ specializing in class action claim administration, will notify the class members of the terms of the proposed settlement and make claim forms available to be completed and returned within the specified 90 day period. The notice and claim form, copies of which are attached hereto as Exhibits 4 and 5, will direct the claimant to answer questions on the form which will determine the amount of compensation the claimant will receive. The claimant's responses are supplemental to information contained in the database which will be used to determine eligibility for payment and entitlement to certain additional payments. Additionally, a database will also be used to apply the 50% reduction factor based on prior incarceration in state prison.

The Claims Administrator will mail the notice and claim form, by first class mail, to the last known address of each claimant in subclasses A and B and will publish a summary form of the notice in newspapers specified in the Stipulation of Settlement during a two week period and will make repeated radio announcements of the settlement on radio stations specified in the Stipulation of Settlement during the same time period. The notices and announcements will provide information as to how claim forms may be received and submitted. Notices describing the settlement and claims procedure will be posted in all Miami-Dade Correctional Facilities.

⁴ The parties have agreed that Settlement Services, Inc., Tallahassee, Florida, will act as Claims Administrator and are requesting the Court appoint such firm for that purpose.

The Claims Administrator will re-mail notices and claim forms to addresses specified on returned undelivered mail and, if first class mail is returned a second time, will make additional efforts to locate claimants using additional sources of addresses available to them.

Claim forms will be available to be downloaded from a website established by the Claims Administrator and may be requested by calling a toll-free number established for that purpose by the Claims Administrator.

All notices, claim forms, publications and announcements will be made in English, Spanish and Creole languages.

Claim forms received by the Claims Administrator and postmarked by the Bar Date for submission of claims will be examined. Based on the answers provided by the claimant and following comparison with database information, the Claims Administrator will determine the dollar value to be assigned to each claim. The applicability of the 50% reduction factor will be determined based on information provided to the Claims Administrator by defendants.

E. Opt Outs

In the notice to members of the class delivered by First Class Mail, published in newspapers and broadcast on radio, information will be provided as to how persons choosing to “opt out” of the class may do so.

F. Settlement Funds for Claimants

Defendants have agreed to make up to \$4,550,000.00 (Four Million, Five Hundred Fifty Thousand Dollars) available for the payment of claims submitted during the claims period. If the total of all approved claims exceeds the funds available, payments to claimants will be reduced proportionately and the entire fund exhausted.

G. Payment for Claims Administration

Defendants will pay up to \$300,000.00 to cover costs relating to claims administration. Negotiations have concluded with Settlement Services, Inc., a class Claims Administrator, who has agreed to provide services relating to notification to claimants, receipt of class claim forms, review and valuation of claims, documentation of actions taken, and preparation of periodic and final accountings. The Claims Administrator has agreed to cap the cost of these services at an amount less than the total amount allocated for these services.

H. Attorneys' Fees

Defendants have agreed, subject to approval of the Court, to pay a total of \$1,000,000.00 (One Million Dollars) for attorneys fees and up to an additional \$100,000.00 (One Hundred Thousand Dollars) for itemized costs and expenses incident to the prosecution of this action including any fees and costs incurred in seeking final approval of the Stipulation of Settlement and the defense thereof in any Court or jurisdiction. This amount is 16% of the total settlement which is within the range of attorneys fees awarded in similar cases and substantially less than the 33 $\frac{1}{3}$ % specified in class counsel contingency fee agreement with representative plaintiffs.

I. Payment to Representative Plaintiffs

Defendants will pay \$300,000.00 (Three Hundred Thousand Dollars) to representative plaintiffs who may include additional persons who have executed retainer agreements with class counsel but who were not formally added as named plaintiffs. This amount will not be subject to proportional reduction in the event the entire fund available for claims payments is exhausted.

J. The Settlement is Fair and an Appropriate Method to Resolve this Litigation

The parties are in the process of querying the defendants' database to determine the names of each potential claimant in the three subclasses. It is estimated that 12,000 persons may

be in subclasses A and B and that as many as 100,000 may be in subclass C. Based on experience with similar class action settlements, it is anticipated that 1,000 to 2,000 claims will be submitted by persons in subclasses A and B and approximately 5,000 claims will be submitted by persons in subclass C.

The settlement is structured to compensate persons illegally strip searched in subclasses A and B with a minimum of \$1,000.00 (subject to a 50% reduction for prior incarceration in state prison). Persons who were particularly vulnerable to adverse effects from such strip searches based on their age, disability, pregnancy, menstruation, or first arrest/strip search experience, may receive increments bringing their awards up to \$3,000.00.

Persons in subclass C, those who suffered only a technical violation of the state statute requiring prior written authorization even for a justified strip search, will be adequately compensated by a \$10.00 payment.

These settlement amounts are well within the range of settlements paid to members of similar class action strip search cases.

K. Advantages of Settlement

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

On the other hand, if the matter is not settled and were to proceed through litigation to trial, multiple trials could take years to complete and appeals thereafter would delay ultimate

satisfaction of any judgments for several more years making settlement and resolution, as provided in the accompanying documents, desirable, appropriate and just.

V. CONCLUSION

For all of the reasons stated herein, represented in the attached documents, and presented at the hearing of 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, and to appoint Magistrate Judge Steven Brown as a special master, and to designate Settlement Services, Inc. as the Claims Administrator, so that the process of notifying the class members, receiving and reviewing the claims, finally approving the settlement and effectuating the settlement can proceed.

Dated: April 12, 2005

Respectfully submitted,

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EXHIBIT 1
STIPULATED MOTION FOR PRELIMINARY
APPROVAL OF SETTLEMENT

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION**

CASE NO. 04-20516-CIV-Jordan/Brown

JUDITH HANEY, LIAT MAYER, JAMIE LOUGHNER, DARCY SMITH, and AMANDA WELLS, individually and on behalf of a Class of all others similarly situated,

Plaintiffs,

v.

MIAMI-DADE COUNTY, et al.,

Defendants.

**ORDER FOR PRELIMINARY APPROVAL OF
SETTLEMENT OF CLASS ACTION**

WHEREAS, plaintiffs JUDITH HANEY, LIAT MAYER, JAMIE LOUGHNER, DARCY SMITH and AMANDA WELLS, by and through attorneys, and defendants MIAMI-DADE COUNTY, CHARLES J. MCCRAY, MIAMI-DADE COUNTY CORRECTIONS AND REHABILITATIONS DEPARTMENT, CAPTAIN B. FULLER, and ACTING CAPTAIN M. ALADRO, by and through their attorneys, have entered into a Stipulation of Settlement intending to resolve all claims raised in this class action pending in this Court;

WHEREAS, the Stipulation of Settlement, together with the supporting materials, sets forth the terms and conditions for a proposed settlement and dismissal with prejudice of the pending class action against all defendants;

WHEREAS, the Court has before it and has reviewed the parties' Stipulated Motion for Preliminary Approval of Settlement of Class Action together with Stipulation of Settlement and supporting materials; and

WHEREAS, the Court is satisfied that the terms and conditions set forth in the Stipulation of Settlement were the result of good faith, arms length settlement negotiations between competent and experienced counsel for both plaintiffs and defendants, after mediation ordered by this Court before Retired Circuit Court Judge Gerald T. Wetherington;

IT IS HEREBY ORDERED AS FOLLOWS:

I. PRELIMINARY APPROVAL OF SETTLEMENT AND APPROVAL OF SETTLEMENT CLASS

1. The terms of the Stipulation of Settlement are hereby preliminarily approved, subject to further consideration thereof at the Fairness Hearing provided for below. The Court finds that the settlement is sufficiently within the range of reasonableness and that notice of the proposed settlement should be given as provided in this Order.

2. The Court hereby orders that the proposed Third Amended Complaint, submitted as Exhibit 3 to the Stipulated Motion for Preliminary Approval of Provisional Settlement Class and Settlement of Class Action, shall be filed and the previous answer of defendants to the Second Amended Complaint shall be deemed an answer to the Third Amended Complaint with the further provision that any additional allegation in the Third Amended Complaint not included in the Second Amended Complaint shall be deemed denied.

3. The Court hereby orders that the class of persons defined in Paragraph 14 of the Stipulation of Settlement filed and incorporated by reference herewith is certified as a Provisional Settlement Class.

4. The Court further conditionally finds that plaintiffs JUDITH HANEY, LIAT MAYER, JAMIE LOUGHNER, DARCY SMITH, and AMANDA WELLS are adequate class representatives for the settlement class.

5. The Court further finds that plaintiffs' counsel Mark E. Merin of the Law Office of Mark E. Merin, Andrew C. Schwartz of the law office of Casper Meadows & Schwartz, and Randall C. Berg, Jr., of the Florida Justice Institute, Inc. are adequate class counsel.

6. The Court approves the Notice of Proposed Settlement of Class Action Strip Search Case attached hereto as Exhibit A and further approves the method by which notice is proposed to be given.

7. If, pursuant to the terms of the Stipulation of Settlement, the settlement is not consummated, the conditional certification of the settlement class and preliminary approval of the Stipulation of Settlement shall be void and the parties shall have reserved all of the rights to continue with any litigation or further mediation or settlement discussions.

8. The Bar Date, as defined in paragraph 2 of the Stipulation of Settlement, shall be September 1, 2005.

II. NOTICE TO SETTLEMENT CLASS MEMBERS, APPROVAL OF CLASS COUNSEL, AND EMPLOYMENT OF CLASS CLAIM ADMINISTRATOR

9. Counsel for the class ("class counsel") are as follows:

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10. Counsel for defendants is as follows:

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(305) 375-5634 - Facsimile
ehrich@miamidade.gov - E-mail

11. Class Claims Administrator is as follows:

Settlement Services, Inc.
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Tallahassee, FL 32308
(850) 385-1551 - Telephone
(850) 385-6008 - Facsimile
mpatton@nettally.com - E-mail

12. Beginning no later than June 1, 2005, counsel for the parties acting with the Class Claims Administrator shall cause to be disseminated the Notice and Claim Form, substantially in the form attached as Exhibits A and B hereto, in the manner set forth in paragraphs 49 through 51 of the Stipulation of Settlement. Such summary notice as the parties agree will be published in

accordance with the terms of the settlement and announcements summarizing the proposed settlement shall be made on such radio stations as the parties agree as provided in paragraph 51 of the Stipulation of Settlement. Class members will have up to and including September 1, 2005, in which to opt-out of this settlement, to object to the settlement or to file claims. Prior to the Fairness Hearing, the Claims Administrator shall file and serve a sworn statement attesting to compliance with the provisions of this paragraph.

13. The notice to be provided as set forth in the Stipulation of Settlement is hereby found to be the best means practicable of providing notice under the circumstances and, when completed, shall constitute due and sufficient notice of the proposed settlement and the Fairness Hearing to all persons and entities affected by and/or entitled to participate in the settlement, in full compliance with applicable statutes, due process, the Constitution of the United States, and other applicable laws. The notices are accurate, objective, informative and provide class members with all of the information necessary to make an informed decision regarding their participation in the settlement and its fairness.

14. Counsel for the respective parties are authorized to retain Settlement Services, Inc., 2032-D Thomasville Road, Tallahassee, Florida 32308, as Class Claims Administrator in accordance with the Stipulation of Settlement and this Order.

III. REQUESTS FOR EXCLUSION FROM THE SETTLEMENT CLASS

15. Any member of the settlement class who wishes to be excluded (“opt out”) from the settlement class must send a written request for exclusion to the Court, so that it is received by the Court at the address indicated in the mailed and published Notice on or before the Bar Date. The request for exclusion shall fully comply with requirements set forth in the Stipulation of Settlement. Members of the settlement class may not exclude themselves by filing requests

for exclusion as a group or class, but must in each instance individually and personally execute a request for exclusion and timely transmit it to the Court.

16. Any member of the settlement class who does not properly and timely request exclusion from the settlement class shall be bound by all of the terms and provisions of the Stipulation of Settlement, including but not limited to the releases, waivers and covenants described in the Stipulation of Settlement, whether or not such person objected to the settlement and whether or not such person made a claim upon or participated in the Settlement Fund created pursuant to the Stipulation of Settlement.

IV. THE FAIRNESS HEARING

17. A hearing on final approval, the "Fairness Hearing," is hereby scheduled to be held before this Court on Thursday, September 22, 2005, at 9:00 a.m., to consider the fairness, reasonableness, and adequacy of the proposed settlement, the dismissal with prejudice of these class action complaints with respect to the released parties herein, and the entry of final judgment in the class action. Class counsel's application for award of attorney's fees and costs shall be heard at the time of the Fairness Hearing.

18. The date and time of the Fairness Hearing shall be set forth in the Notice, but the Fairness Hearing shall be subject to adjournment by the Court without further notice to the members of the settlement class other than that which may be issued by the Court.

19. Any person who does not elect to be excluded from the settlement class may, but need not, enter an appearance through his or her own attorney. Settlement class members who do not enter an appearance through their own attorneys will be represented by class counsel.

20. Any person who does not elect to be excluded from the settlement class may, but need not, submit comments or objections to the proposed settlement. Any class member may

object to the proposed settlement, entry of the final order and judgment approving the settlement, and class counsel's application for fees and expenses by filing and serving a written objection.

21. Any class member making the objection (an "objector") must sign the objection personally. Any objection must state why the objector objects to the proposed settlement and provide the basis to support such position. If an objector intends to appear personally at the Fairness Hearing, the objector must include with the objection a notice of the objector's intent to appear at the hearing.

22. Objections, along with any notice of intent to appear, must be filed with the Court no later than September 1, 2005. If counsel is appearing on behalf of more than one class member, counsel must identify each such class member and each class member must have complied with the requirements of this order. These documents must be filed with the clerk of the Court at the following address: United States District Court, Southern District of Florida, Miami Division, Judge Adalberto Jordan, 301 North Miami Avenue, 8th Floor, Miami, Florida 33128.

23. Objections, along with any notice of intent to appear, must also be mailed to class counsel and counsel for defendants at the addresses listed below:

Counsel for the class ("class counsel") is as follows:

Class Counsel
c/o Randall C. Berg, Jr., Esq.
Florida Justice Institute, Inc.
2870 Wachovia Financial Center
200 South Biscayne Boulevard
Miami, Florida 33131-2310
(305) 358-2081 - Telephone
(305) 358-0910 - Facsimile
rcberg@bellsouth.net - E-mail

Counsel for defendants is as follows:

Jeffrey P. Ehrlich, Esq.
Susan Torres, Esq.
Assistant County Attorneys
111 N.W. First Street, Suite 2810
Miami, FL 33128-1993
(305) 375-1515 - Telephone
(305) 375-5634 - Facsimile
ehrllich@miamidade.gov - E-mail

24. Only class members who have filed and served valid and timely notices of objection shall be entitled to be heard at the Fairness Hearing. Any class member who does not timely file and serve an objection in writing to the settlement, entry of final order and judgment, or to class counsel's application for fees and expenses, in accordance with the procedure set forth in the class notice and mandated in the order, shall be deemed to have waived any such objection by appeal, collateral attack, or otherwise.

25. Persons wishing to be heard at the Fairness Hearing are required to file written comments or objections and indicate in their written comments or objections their intention to appear at the Fairness Hearing. Settlement class members need not appear at the hearing or take any other action to indicate their approval.

26. All members of the settlement class who do not personally and timely request to be excluded from the class are enjoined from proceeding against the defendants until such time as the Court renders a final decision regarding approval of the settlement and, if the settlement is approved, enters final judgment as provided in the Stipulation of Settlement.

V. OTHER PROVISIONS

27. Upon approval of the settlement provided for in the Stipulation of Settlement, each and every term and provision shall be deemed incorporated herein as if expressly set forth

and shall have the full force and effect of an order of this Court.

28. Magistrate Judge Steven Brown of the United States District Court is hereby appointed to serve as Special Master to review and resolve certain disputes pursuant to the terms of the Stipulation of Settlement.

29. All reasonable costs incurred in notifying members of the settlement class as well as administering the Stipulation of Settlement shall be paid as set forth in the Stipulation of Settlement.

IT IS SO ORDERED.

DATED: _____, 2005

HON. ADALBERTO JORDAN
U.S. DISTRICT JUDGE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

EXHIBIT 2
STIPULATED MOTION FOR PRELIMINARY
APPROVAL OF SETTLEMENT

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION**

CASE NO. 04-20516-CIV-Jordan/Brown

JUDITH HANEY, et al.,

Plaintiffs,

v.

MIAMI-DADE COUNTY, et al.,

Defendants.

STIPULATION OF SETTLEMENT

Plaintiffs JUDITH HANEY, LIAT MAYER, JAMIE LOUGHNER, DARCY SMITH, and AMANDA WELLS, individually and on behalf of the settlement class defined herein, and Defendants MIAMI-DADE COUNTY, CHARLES J. MCRAE, MIAMI-DADE COUNTY CORRECTIONS AND REHABILITATIONS DEPARTMENT, CAPTAIN B. FULLER, ACTING CAPTAIN M. ALADRO (hereinafter referred to as "Parties"), by and through their respective counsel, hereby submit the following Stipulation of Settlement.

I.

RECITALS

On March 5, 2004, original named Plaintiffs JUDITH HANEY, LIAT MAYER and JAMIE LOUGHNER, on behalf of themselves and all persons similarly situated, filed a complaint in the above-captioned matter in which they challenged, pursuant to 42 U.S.C. Section 1983, certain practices of Defendants including the strip search of certain detainees, prior to first appearance, and

sought damages and declaratory and injunctive relief. The complaint was subsequently amended to add named representative Plaintiffs DARCY SMITH and AMANDA WELLS.

The parties entered into extensive discovery which included exchange of documents, preparation of and responses to request for production of documents, interrogatories, and depositions.

On August 11, 2004, Defendants issued a memorandum designed to conform strip search practices to pre-existing policies and initiated a process to examine and evaluate all of its strip search policies. Copies of revised policies relating to the strip search of pre-first appearance detainees are attached hereto as **Exhibit "1"**.

On July 12, 2004, Judge Jordan issued an order scheduling a mediation conference to be held beginning February 7, 2005, with retired Circuit Court Judge Gerald T. Wetherington. The parties attended the mediation and, following two (2) days of meetings, agreed to this Stipulation of Settlement which, subject to the approval of the Court, settles this action in the manner and upon the terms set forth below and fully resolves the dispute.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between the Parties, as follows:

II.

DEFINITIONS

1. "Administrator" means Settlement Services, Inc., to be appointed by the Court to review and determine the validity and amount of claims submitted by Settlement Class Members ("SCMs"), according to the procedures set forth herein.

2. The “Bar Date” is the date established by the Court by which any SCM who wishes to receive payment pursuant to the Stipulation of Settlement must file his/her Claim Form(s), objections to this Stipulation of Settlement, or request to be excluded from the class (opt-out).

3. “Charge List” means the list of charges attached hereto as **Exhibit “2”**.

4. The “Claim Form” is the form required to be used to make a claim for payment under this settlement. A copy of the proposed Claim Form is attached as **Exhibit “3”**.

5. “Class Counsel” means, collectively, The Law Office of Mark E. Merin, Mark E. Merin, attorney; Casper, Meadows & Schwartz, Andrew C. Schwartz, attorney; and the Florida Justice Institute, Inc., Randall C. Berg, Jr., attorney.

6. The “Class Notice” means the notice in a form substantially similar to that attached hereto as **Exhibit “4”** (Notice by Mail); such other summary notice(s) to be published in newspapers serving Miami-Dade, Broward and Monroe counties, and posted in all Miami-Dade Correctional facilities; and radio and television messages to be transmitted over stations serving Miami-Dade, Broward and Monroe counties.

7. The “Class Period” is March 5, 2000, through February 28, 2005, except that the offensive practices giving rise to liability to sub-groups within the class may have terminated during the Class Period.

8. The “Database” is the information to be provided in hard copy and/or electronic form by the Defendant Miami-Dade County to the Administrator and Class Counsel which includes, to the extent practicable, the name, last known addresses, date of birth, Social Security Number, date(s) of arrest and charge(s) of all SCMs arrested during the Class Period; dates of arrests prior to the Class Period (if any); date(s) of booking(s), housing(s) and first appearance(s) of each member of

the class booked at any facility operated by the Miami-Dade County Corrections and Rehabilitations Department.

9. The “Effective Date” means the date upon which a judgment entered by the Court approving the Stipulation of Settlement 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 writ of certiorari.

10. “Non-VDW Misdemeanor Offense” means a misdemeanor, infraction, or ordinance arrest charge not listed on the Charge List.

11. “VDW Misdemeanor Offense” means any misdemeanor arrest charge which does appear on the Charge List.

12. An “Opt-Out” is any potential Settlement Class Member who files a timely request for exclusion as specified in **Paragraph 44**.

13. “Released Persons” means the Defendants and their predecessors, successors, and/or assigns, together with past, present, and future officials, employees, representatives, attorneys and/or agents of the COUNTY OF MIAMI-DADE.

14. The “Settlement Class” means all of those persons who are members of any of the following defined sub-classes who, during the Class Period identified in **Paragraph 7** above, were arrested and strip searched prior to making a first appearance at the Miami-Dade Pre-Trial Detention Center:

- a. All females arrested on municipal ordinance, infraction or misdemeanor charges not involving violence, drugs or weapons who were transported to the Women’s Detention Center and who were strip searched prior to their

first appearance, excluding females strip searched on “probable cause” reported in writing on an incident form; and

- b. All females arrested on charges relating to prostitution included on the list of prostitution charges attached hereto as **Exhibit “5”**, who were strip searched prior to first appearance from March 5, 2000, until February 8, 2005, when the practice of strip searching all females charged with prostitution was officially terminated; and
- c. All persons arrested on felony charges or charges relating to violence, drugs or weapons who were strip searched, prior to their first appearances, without a written authorization for the strip search having been first obtained from a supervising officer from March 5, 2000, until February 28, 2005, the date when the policy of strip searching detainees prior to obtaining a written authorization was terminated.

15. A “Settlement Class Member” (“SCM”) means any member of the Settlement Class including representatives, successors and assigns, who does not file a valid and timely Request for Exclusion as provided in **Paragraph 44** of this Stipulation of Settlement.

16. “Special Master” shall mean the MAGISTRATE JUDGE Stephen Brown of the United States District Court, Southern District of Florida, Miami Division, appointed by the Court to preside over this Stipulation of Settlement. The Special Master shall have power to make decisions in all matters pertaining to administration and enforcement of the Stipulation of Settlement, subject to review by the Court upon request of any party.

17. This Stipulation of Settlement is for settlement purposes only, and neither the fact of, nor any provision contained in this Stipulation of Settlement or its exhibits, nor any action taken hereunder shall constitute, be construed as, or be admissible in evidence as any admission of the validity of any claim or any fact alleged by Plaintiffs or SCMs in this action or in any other pending action or of any wrongdoing, fault, violation of law, or liability of any kind on the part of Defendants or admission by Defendants of any claim or allegation made in this action or in any other action, nor as an admission by any of the Plaintiffs, SCMs or Class Counsel of the validity of any fact or defense asserted against them in this action or in any other action. Defendants deny all allegations of wrongdoing and deny any liability to Plaintiffs or to any other class members. The parties have agreed that, in order to avoid long and costly litigation, this controversy should be settled pursuant to the terms of this settlement, subject to the approval of the Court.

III.

TERMS AND EFFECT OF STIPULATION OF SETTLEMENT

18. The parties agree solely for the purposes of this settlement and implementation that the within action shall proceed as a class action, with the Settlement Class as defined in **Paragraph 14**, and that attorneys for the Class are Class Counsel defined in **Paragraph 5**; but if such settlement fails to be approved or otherwise fails of consumption, then this Stipulation of Settlement is hereby withdrawn.

19. SCMs who comply with the requirements set forth in this Stipulation of Settlement will be paid specified sums determined by the procedures set forth herein in full satisfaction of all claims.

20. The Stipulation of Settlement, as of the Effective Date, resolves in full all claims against the Released Persons by all of the SCMs, including the named Plaintiffs JUDITH HANEY, LIAT MAYER, JAMIE LOUGHNER, DARCY SMITH, and AMANDA WELLS involving violation of their Fourth Amendment rights, their Fourteenth Amendment rights, or of any other federal, state or local law, regulation, duty, or obligation which are based upon or could be based upon or arise from the facts alleged in Case No. 04-20516-CIV-Jordan/Brown filed in the United States District Court, Southern District of Florida, Miami Division. When the Stipulation of Settlement is final, as of the Effective Date, all SCMs, including the named Plaintiffs, hereby release all such claims.

21. The Parties agree that the Court, by preliminarily approving the Stipulation of Settlement, will be certifying the class as defined in **Paragraph 14**, as the Settlement Class, subject to final approval of the Settlement at the fairness hearing and that the Court shall retain exclusive and continuing jurisdiction of the action, Parties, SCMs, Special Master and the Administrator to interpret and enforce the terms, conditions and obligations under this agreement.

22. As of the Effective Date of this Stipulation of Settlement, the SCMs, including the named Plaintiffs, hereby waive any and all rights to pursue, initiate, prosecute, or commence any action or proceeding before any court, administrative agency or other tribunal, or to file any complaint with regard to acts of commission or omission by the Released Persons respecting such SCMs with respect to any strip search by Defendants prior to their first appearance which occurred during the Class Period.

23. This Stipulation of Settlement contains all the terms and conditions agreed upon by the Parties hereto regarding the subject matter of the instant proceeding, and no oral agreement

entered into at any time nor any written agreement entered into prior to the execution of this Stipulation shall be deemed to exist, or to bind the Parties hereto, or to vary the terms and conditions contained herein, except as expressly provided herein.

24. Each SCM shall be deemed to have submitted to the jurisdiction of the Court.

25. No Opt-Out shall share in any monetary benefits provided by this Stipulation of Settlement.

26. This agreement is subject to and conditioned upon the final approval of this Stipulation of Settlement and the issuance of the final order and judgment of dismissal by the United States District Court, Southern District of Florida, Miami Division, providing the below specified relief, which relief shall be pursuant to the terms and conditions of this Stipulation of Settlement and the Parties' performance of their continuing rights and obligations hereunder. The order and 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. Such final order and judgment shall:

- a. Dismiss with prejudice all complaints in the action as to the Released Persons;
- b. Order that all SCMs are enjoined from asserting against any Released Person, any and all claims which the SCMs 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 which any SCMs 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 Stipulation of Settlement 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 Stipulation of Settlement, including Defendants and all SCMs, to administer, supervise, construe and enforce the Stipulation of Settlement in accordance with the terms for the mutual benefit of all the Parties.

27. Plaintiffs will take all necessary and appropriate steps to obtain preliminary approval of the Stipulation of Settlement, final approval of the Settlement, and dismissal of the action with prejudice. If the Court finally approves this Stipulation of Settlement, and if there is an appeal from such decision, the Defendants will not oppose Plaintiffs' efforts to defend the Stipulation of Settlement.

IV.

RESOLUTION AND PAYMENT OF CLAIMS FOR DAMAGES

28. The settlement amount which shall be used to pay all claims of SCMs, administrative costs and attorney fees shall not be more than \$6,250,000.00 (Six Million, Two Hundred Fifty Thousand Dollars). The total settlement amount will be distributed as follows: (1) up to \$4,550,000.00 (Four Million, Five Hundred Fifty Thousand Dollars) will be allocated to pay verified claims; (2) \$1,000,000.00 (One Million Dollars) will be allocated to attorneys' fees; (3) up to \$100,000.00 (One Hundred Thousand Dollars) will be allocated to pay itemized costs and expenses incurred by Class Counsel in the prosecution of this case; (4) \$300,000.00 (Three Hundred Thousand Dollars) will be allocated for payment of representative Plaintiffs' claims; and (5) up to \$300,000.00 (Three Hundred Thousand Dollars) will be allocated to cover the costs of claims administration to

provide notice to the class and to process and to administer the settlement of class members' claims. Within 30 days of preliminary approval by the United States District Court of the terms of this Stipulation of Settlement, Defendants will certify that they have sufficient funds available to them or on deposit to satisfy fully the terms of this Stipulation of Settlement. If the total amount of all verified claims exceeds the amount of \$4,550,000.00 (Four Million, Five Hundred Fifty Thousand Dollars), the amount payable to SCMs for each claim shall be reduced proportionately so that the entire amount, but no more than \$4,550,000.00 (Four Million, Five Hundred Fifty Thousand Dollars) is paid out to SCMs.

29. The payment of \$300,000.00 (Three Hundred Thousand Dollars) for the representative Plaintiffs shall be paid by check made out to the client trust account of the Law Office of Mark E. Merin. The Law Office of Mark E. Merin will acknowledge receipt of such payment and deliver to Defendants' counsel a list showing how the \$300,000.00 (Three Hundred Thousand Dollars) is allocated among representative Plaintiffs who may include additional persons who have executed retainer agreements with Class Counsel but who were not formally added as named Plaintiffs, and, if any of such funds are not distributed by the Bar Date, such funds shall be returned to Defendants and added to the amount available for payment of SCMs' claims. The \$300,000.00 (Three Hundred Thousand Dollars) check shall be delivered within 10 days of the Effective Date.

30. The parties agree to make an application to the Court to appoint the Administrator as officer of the Court for the purpose of implementing the terms of this Stipulation of Settlement. The Administrator shall be subject to judicial immunity to the fullest extent permitted by law.

V.

**PROCEDURES FOR RECEIVING
PAYMENT UNDER THIS SETTLEMENT AGREEMENT**

31. All female SCMs who were strip searched following arrests on charges relating to prostitution prior to their first appearance and all female SCMs who were strip searched at the Women's Correctional Center prior to their first appearance after having been arrested on charges not involving violence, drugs or weapons, shall be entitled to receive a payment of a minimum of \$1,000.00 (One Thousand Dollars) in full satisfaction of their claims, except as provided in **Paragraph 38** of this Stipulation of Settlement.

32. All SCMs other than those identified in **Paragraph 31** above, who were strip searched without the person performing the strip search having first received a written authorization to perform the search signed by a supervising officer on duty shall, upon filing of a completed and executed Claim Form, be entitled to receive the sum of \$10.00 (Ten Dollars) in full satisfaction of all claims.

33. The Administrator shall determine whether or not a person who has submitted a Claim Form is an SCM and shall reject claims by persons who are not SCMs.

34. All SCMs will receive payments specified herein for each incident in which they were strip searched, following a qualifying arrest within the Class Period prior to their first appearances.

35. Any SCM who fails to submit a Claim Form completed in accordance with the instructions contained therein by the Bar Date or any other Court mandated extension, shall be forever barred from receiving any payment pursuant to the Stipulation of Settlement. Such SCM

shall in all other respects be bound by all of the terms of the Stipulation of Settlement, and the judgment entered herein, including but not limited to the release of all Released Persons of all claims resolved herein.

36. The Administrator will determine the dollar amount of each payment to an eligible SCM based upon the Administrator's review of the SCMs' responses to questions on the Claim Form, subject to reduction as set forth in **Paragraph 38**.

37. All female SCMs who qualify for payment, other than for reason of the absence of a prior written authorization for a strip search, shall be entitled to payment as set forth below, in addition to the basic \$1,000.00 (Thousand Dollar) payment for each qualifying strip search following a fresh arrest during the Class Period:

- a. A female SCM who was under 21 or over 60 at the time of a qualifying strip search shall receive an additional \$500.00 (Five Hundred Dollars);
- b. A female SCM who was menstruating during the time she was strip searched shall receive an additional \$500.00 (Five Hundred Dollars);
- c. An SCM who was more than two months pregnant at the time she was subjected to a strip search shall receive an additional \$500.00 (Five Hundred Dollars);
- d. A female SCM who had a significant physical or mental disability (such as unsightly scarring, amputation or malformation or a medically diagnosed psychiatric condition) at the time she was strip searched shall receive an additional \$500.00 (Five Hundred Dollars); and

- e. A female SCM who was arrested and strip searched for the first time in her life during the Class Period shall receive an additional \$500.00 (Five Hundred Dollars).

VI.

REDUCTION OF AWARDS

38. The amounts payable to a female SCM, other than one solely entitled to payment hereunder because of the absence of prior written authorization for a strip search, shall be subject to the following reduction:

- a. In the event that an SCM, prior to being strip searched during the Class Period, had served a term in a state prison, the award will be reduced by Fifty Percent (50%) and the fact of prior incarceration in a state prison shall be reported to the SCM when the payments are distributed and the SCM given 15 days within which to challenge the determination of prior imprisonment with written evidence filed under penalty of perjury.
- b. Counsel for the respective parties will review the evidence submitted within 15 days of its receipt and determine whether the reduction will be reversed or upheld. If the parties cannot agree, evidence offered by the SCM will be submitted to the Special Master within 10 days for final decision which shall be rendered by the Special Master within 10 days of receipt of relevant evidence.
- c. The Claims Administrator will make an initial determination if an SCM who has timely submitted a valid claim had previously been incarcerated

in a state prison by obtaining from Defendants access to a Database against which the names of SCMs returning valid verified Claim Forms may be electronically compared. If such Database is not provided within thirty (30) days of submission by the Claims Administrator of the list of qualified SCMs, no reductions will be made.

39. There shall not be any 50% reduction for a prior incarceration in a state prison for those persons strip searched without the prior written authorization of a supervising officer on duty.

VII.

GENERAL CLAIM PROCEDURES

40. To receive payment, an SCM shall be required to submit to the Claims Administrator an executed Claim Form signed under penalty of perjury with questions completed in accordance with the instructions provided. All Claim Forms must be submitted by the Bar Date unless such period is extended by order of the Court.

41. The Claim Form shall be submitted by first class mail and shall be deemed submitted upon the date of the postmark thereon.

42. SCMs who submit claims and whose names appear on the Database will be paid by mail at the address specified on the Claim Form.

43. The representative Plaintiffs shall be deemed fully compensated by the distribution for them to Class Counsel of \$300,000.00 (Three Hundred Thousand Dollars) and shall not be permitted or required to submit Claim Forms. In the event that there is a proportional reduction of claims because claims valued at more than \$4,550,000.00 (Four

Million Five Hundred Fifty Thousand Dollars) were submitted, the \$300,000.00 (Three Hundred Thousand Dollars) allocated for the named representatives will not be reduced.

VIII.

EXCLUSION FROM THE SETTLEMENT CLASS

44. Any potential SCM who wishes to be excluded from the Settlement Class must file a request to be excluded from the class with the Clerk of the Court, on or before the Bar Date or as the Court may otherwise direct. Named Plaintiffs and others identified to Defendants' counsel who executed retainer agreements and will receive a portion of the funds allocated for the representative Plaintiffs will not request exclusion pursuant to this paragraph.

45. Any potential SCM who does not timely file a Request for Exclusion shall conclusively be deemed to have become an SCM and to be bound by this Stipulation of Settlement and all subsequent proceedings, orders, and judgments herein.

46. Any SCM who does not elect to be excluded from the Settlement Class may, but need not, enter an appearance through his or her own attorney. SCMs who do not enter an appearance will be represented by Class Counsel.

IX.

OBJECTING TO THE PROPOSED SETTLEMENT

47. Any SCM who does not elect to be excluded from the Settlement Class may, but need not, submit comments or objections to the proposed settlement. The Court will enter an appropriate order setting forth the procedure for SCMs to submit comments or objections to the proposed settlement.

X.

ATTORNEYS FEES

48. Class Counsel shall receive a total award of \$1,000,000.00 (One Million Dollars) for attorney fees and up to an additional \$100,000.00 (One Hundred Thousand Dollars) for itemized costs and expenses incident to prosecution of this action including any fees and costs incurred in seeking final approval of this Stipulation of Settlement and the defense thereof in any court or jurisdiction. Payment will be made within thirty (30) of the Effective Date by check delivered to Class Counsel, c/o Florida Justice Institute, 2870 Wachovia Financial Center, 200 South Biscayne Blvd., Miami, FL 33131-2310 , made payable jointly to the Florida Justice Institute, Law Office of Mark E. Merin and Casper, Meadows & Schwartz. This award is subject to the approval of the Court.

XI.

NOTICE

49. Notice to SCMs defined in **Paragraphs 14(a) and 14(b)** shall be by first class mail, postage prepaid, to all individuals whose addresses are on record in the Inmate Profile System (IPS) or in the Criminal Justice Information System (CJIS) maintained by Defendants or to such other, better addresses identified by the Administrator. Both Parties and the Administrator will exercise their best efforts to update and to verify addresses, including but not limited to addresses of SCMs who are incarcerated. This paragraph shall not limit further appropriate efforts to provide notice. Notice to SCMs defined in **Paragraph 14(c)** shall be by notice specified in **Paragraph 50**.

50. The Administrator shall cause to be published in English, Spanish and Creole languages, in _____, _____ and _____ newspapers once a week in each of two consecutive weeks notices in a form and manner agreed to by the Parties describing this settlement, the claims procedure and the procedure to object and/or to Opt-Out of the settlement. Notices in a form to be agreed to by the parties shall also be posted in all Miami-Dade Correctional facilities. If the Parties cannot agree, the Court will determine the content of the published notice.

51. Announcements summarizing the proposed settlement in English, Spanish and Creole will be made on the following radio stations at least three times during a week, during two successive weeks: (Stations) _____, _____ and _____.

XII.

ADMINISTRATIVE COSTS

52. All reasonable costs incurred in the administration of this Stipulation of Settlement including, but not limited to, the fees of the Administrator, costs of disseminating notice to class members, by mail, publication, or other means agreed to by the Parties, costs of receiving and evaluating claims, including the cost of distribution of the monetary payments to the class members, fees, if any, of the Special Master, and any additional ancillary administration fees will be paid up to the total amount of \$300,000.00 (Three Hundred Thousand Dollars) allocated for these expenses.

53. Following preliminary Court approval of the Stipulation of Settlement, the Administrator shall submit *bi-weekly* invoices to Class Counsel for services rendered and for expense reimbursement. All invoices will indicate the dates upon which services were

performed, the titles of the employees performing the services, the number of hours of worked by each title on each date, the hourly rate for each such title, and the total fee for the services performed. The hourly rates shall be in accordance with the agreement between the Parties and the Claims Administrator.

Dated: April 12, 2005

Dated: April 12, 2005

Respectfully submitted,

Respectfully submitted,

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