

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

GREGORY GARVEY, Sr., on behalf of himself and on behalf of others similarly situated, Plaintiffs,)	
)	
v.)	Civil Action No. 07-30049-KPN
)	
FREDERICK B. MACDONALD and FORBES BYRON, in their individual capacities, Defendants.)	
)	

**PLAINTIFFS’ MEMORANDUM IN SUPPORT OF JOINT MOTION
FOR PRELIMINARY APPROVAL OF CLASS SETTLEMENT**

I. INTRODUCTION

The parties to this civil rights class action have reached a settlement in which Defendants will pay \$1,162,468, subject to reversion, to resolve all claims of a class of 486 individuals. After payment of claims administration expenses, litigation expenses, an incentive award to the class representative, and attorneys’ fees, the remaining settlement fund balance will be evenly divided among participating class members up to a cap of \$3,500 per person. If there are any remaining funds after distribution to claimants, half of those funds will be given to Prisoners’ Legal Services (formerly Massachusetts Correctional Legal Services) under the doctrine of *cy pres*, and half will revert to the Commonwealth.

The settlement is the product of intensive arm’s length negotiations, and it is substantively fair, reasonable, and adequate. The parties have submitted a joint motion requesting that the Court (1) grant preliminary approval to the settlement, (2) appoint Analytics, Inc., as claims administrator, (3) approve the class notice and notice plan, and (4) set a date for a final fairness hearing and a date

for filing motions to approve the settlement and for attorneys' fees. Plaintiffs submit this separate memorandum to give the Court a full account, from Plaintiffs' perspective, of why the settlement is fair and beneficial to the class.

II. CASE BACKGROUND

This is a civil rights class action under 42 U.S.C. § 1983 against Franklin County Sheriff Frederick Macdonald and Special Sheriff Forbes Byron. Plaintiff, Gregory Garvey, Sr., filed suit on March 28, 2007, alleging that Defendants maintained a policy of strip searching all individuals admitted to the Franklin County Jail without individualized suspicion, in violation of the Fourth Amendment. This policy was in place throughout the class period, which runs from March 28, 2004, to February 24, 2007, inclusive. On April 15, 2008, the Court certified the following class under Fed. R.Civ. P. 23(b)(3):

All people strip searched without individualized reasonable suspicion on or after March 28, 2004, and before February 25, 2007, at the Franklin County Jail

- (a) while waiting for bail to be set or for a first court appearance after being arrested on charges that did not involve a weapon, drugs, contraband or a violent felony, or
- (b) while waiting for a first court appearance after being arrested on a default or other warrant for charges that did not involve a weapon, drugs, contraband or a violent felony.

The parties conducted discovery from July 2007 to November 2008, after which they filed cross motions for summary judgment. On October 22, 2009, the Court granted Plaintiffs' motion for summary judgment and denied Defendants'.

Following the Court's ruling, the parties spent several months determining who was in the class, a necessary precursor to negotiating a settlement. After extensive review of individual intake

files and of the applicable law, on or about March 25, 2010, the parties reached agreement as to who was in the class and who was not. The parties then began settlement discussions in earnest. After several months of negotiations, the parties signed the settlement agreement on June 24, 2010.

III. SUMMARY OF THE SETTLEMENT

On behalf of Defendants, the Commonwealth has agreed to pay \$1,162,468, subject to reversion, to settle all claims brought by Plaintiffs in this action, including attorney's fees and costs. The agreement provides for a cash payment of up to \$3,500 to every person who meets the class definition and submits a claim form. The parties have determined that there are 486 class members. Only one payment will be made to each class member no matter how many times during the class period he or she was admitted into the jail and strip searched.

Class counsel recommends, and Defendants do not oppose, an incentive payment of \$20,000 to the named plaintiff, Gregory Garvey, Sr., to compensate him for his loss of privacy as a result of bringing this case and for the time he spent working with counsel to bring about the favorable result for the class. While the parties have no agreement with regard to attorneys' fees, class counsel will request that the Court award a fee of one-third of the gross settlement amount. Fees and expenses, including the costs of administering the settlement, will be deducted from the settlement amount before calculating the distribution amount to class members.

After the above payments are deducted from the total settlement amount, each class member who has submitted a valid claim form will receive an equal share of the remaining amount, up to a cap of \$3,500. If money is left over after every participating class member receives a payment, then one-half of this amount will be given to Prisoners' Legal Services under the doctrine of *cy pres*, and half will revert to the Commonwealth.

IV. THE COURT SHOULD PRELIMINARILY APPROVE THE SETTLEMENT AND NOTICE PLAN AND SET A DATE FOR A FAIRNESS HEARING

In deciding whether to approve a proposed settlement of a class action, the Court must hold a hearing and determine whether the settlement is “fair, reasonable and adequate.”¹ At this stage, the Court should make a “preliminary determination of the fairness, reasonableness and adequacy of the settlement terms.”² The Court should also review the reasonableness of the proposed notices, attached to the Settlement Agreement as Exhibits A and C, and notice plan. This provisional approval is subject to a more searching inquiry at the fairness hearing. “If the parties negotiated at arm’s length and conducted sufficient discovery, the district court must presume the settlement is reasonable.”³

A. The Settlement Is Procedurally Fair

1. The negotiations occurred at arm’s length.

This settlement is the result of vigorous negotiations. After the Court granted summary judgment in October 2009, the parties began to discuss settlement. As a threshold matter, the parties needed to know the size of the class, which in turn required the parties to agree on who met the class definition. This process alone took several months. After determining class size, the parties negotiated for several months before agreeing on all terms of the written settlement agreement.

¹ Fed. R. Civ. P. 23(e); *Howe v. Townsend*, 588 F.3d 24, 32 (1st Cir. 2009).

² See *Hochstadt v. Boston Sci. Corp.*, 2010 U.S. Dist. LEXIS 41007, at *32 (D. Mass. Apr. 27, 2010)(citing *Manual for Complex Litigation, Fourth* § 21.632 (2004)).

³ *Howe*, 588 F.3d at 32-33; see also *Hochstadt*, 2010 U.S. Dist. LEXIS 41007, at *32

2. The parties engaged in full discovery.

“[T]he stage of the proceedings at which settlement is reached is important because it indicates how fully the district court and counsel are able to evaluate the merits of Plaintiffs’ claims.”⁴ Plaintiffs in this case had the benefit of a complete discovery period, and a ruling on the merits from the Court, before entering into the settlement.

Plaintiffs took extensive discovery both on the merits of their claims and on the composition of the class. Plaintiffs took twelve depositions, sent document requests, and propounded two sets of interrogatories to each Defendant. Plaintiffs’ counsel reviewed multiple complex spreadsheets and voluminous paper booking records.

During discovery, Plaintiffs identified approximately 580 individuals as likely to fit the class definition based on Defendants’ records. To arrive at the final class list, Defendants reviewed the intake files and other materials for nearly all of these individuals. Plaintiffs’ counsel, in turn, reviewed the materials Defendants provided from these files that allegedly disqualified certain individuals from the class. The parties also conducted legal research to determine, among other things, whether particular crimes should be deemed “violent felonies.” As a result of this intensive review process, the parties agreed that 486 individuals met the class definition.

B. The Settlement Is Substantively Fair and Reasonable

Courts recognize a policy in favor of settlement of class actions.⁵ Settlement of this case will prevent expenditure of significant time and resources by the parties and the Court, eliminate the risks to all parties of proceeding to a trial on damages, and provide a substantial benefit to class members.

⁴*Rolland v. Cellucci*, 191 F.R.D. 3, 10 (D. Mass. 2000) (citation omitted).

⁵ See, e.g., *Howe v. Townsend*, 588 F.3d 24, 36 (1st Cir. 2009); *Durrett v. Housing Auth. of Providence*, 896 F.2d 600, 604 (1st Cir. 1990).

The Court should examine the amount of recovery as well as the plan for distributing the recovery to class members in order to determine whether the proposed monetary settlement is fair, reasonable and adequate. “[I]n any case, there is a range of reasonableness with respect to a settlement.”⁶ The settlement in this case is well within that range.

1. The settlement provides a significant benefit to the class.

The total value of the settlement is \$1,162,468. Unless an exceptionally high proportion of class members submit claims, each participating class member is likely to receive the maximum individual payment amount of \$3,500. By any measure, this is more than a token recovery. Participating class members will receive a significant cash payment for filling out a short form and mailing it to the claims administrator. These class members will obtain money without having to find and hire their own lawyers, pay litigation expenses, endure the anxiety of litigation, respond to interrogatories or requests for documents, testify at depositions, and prepare for trials. Instead of giving up their privacy by filing suit or participating in a damages hearing, they will benefit from the anonymity provided by their membership in the class.

Class counsel anticipates that each participating class member will receive the \$3,500 maximum payment, or an amount close thereto. If the Court approves the attorneys’ fees and costs requested by class counsel, including the costs of claims administration, the estimated minimum amount available for distribution to class members will be \$710,000. There are 486 class members. If up to 202 people, or 41.6% of the class, submit claim forms, then each claimant will receive the \$3,500 maximum. Even assuming a 50% participation rate – which would be extraordinary for a civil rights class action like this one – each claimant would receive an estimated \$2,920. While class

⁶ *In re Relafen Antitrust Litig.*, 231 F.R.D. 52, 73 (D. Mass. 2005) (citing *Newman v. Stein*, 464 F.2d 689, 693 (2d Cir. 1972)).

counsel will work to secure a high participation rate, a more realistic estimate of the participation rate is 25-30 %. In such a case, each class member would receive the full \$3,500. Assuming a 30 percent participation rate (or 146 claimants), \$511,000 would be distributed to the class, with approximately \$200,000 remaining to be divided between Prisoners' Legal Services and the Commonwealth.

The amount class members will receive under the settlement is well within the range of reasonableness for similar settlements in this state and nationwide. In *Ryan v. Garvey*, No. 05-30017-MAP, a case against the Hampshire Sheriff's Department settled in 2007, Judge Ponsor approved a \$205,000 settlement for 89 class members, 30 of whom filed claims. Each participating class member received approximately \$3,900.⁷ In 2009, a district court in Pennsylvania approved a settlement that provided for all participating claimants to be granted a pro rata share of a settlement fund up to cap of \$3,000 per class member; each claimant received approximately \$1,400.⁸ In 2006, a New York district court approved a settlement granting \$750 or \$ 1,000 per class member; the court cited another strip-search class action in which claimants received \$1,000 each and another in which claimants received an average of \$ 3,800 per person.⁹

2. Class members risked getting less, or nothing, if the case went to trial.

By reaching a compromise, Plaintiffs avoid the risks they would have faced by proceeding to trial. Although this Court determined liability in Plaintiffs' favor, two recent decisions from other circuits have presented the possibility that the Supreme Court may soon take up the issue of

⁷ In addition to *Ryan*, Plaintiffs' counsel has settled two other strip search class actions in Massachusetts, *Mack v. Suffolk County*, 191 F.R.D. 16 (D. Mass. 2000), and *Connor v. Plymouth County*, 00-10835-RBC. See Affidavit of Howard Friedman ("Friedman Aff.") ¶ 12.

⁸ *Boone v. City of Phila.*, 668 F. Supp. 2d 693, 702-03 (E.D. Pa. 2009).

⁹ *McBean v. City of New York*, 233 F.R.D. 377, 388, 390-91 (S.D.N.Y. 2006).

prearrest strip-searches, potentially overruling the First Circuit precedent on which this Court relied. In *Bull v. City and County of San Francisco*, 539 F.3d 1193 (9th Cir. 2010) (en banc), and *Powell v. Barrett*, 541 F.3d 1298 (11th Cir. 2008) (en banc), the Ninth and Eleventh Circuits held that blanket strip searches of non-felons at the time of admission to jail are constitutional. By settling, class members avoid any risk of losing on the merits because of future changes in the law.

Moreover, if damages claims were decided individually by a jury, class members would risk winning less than \$3,500, or winning only nominal damages.¹⁰ Particularly in this economic environment, juries may not feel generous to former arrestees. Individuals who believe they have strong damages claims can opt out.¹¹

Settling now also ensures that class members will receive payment much sooner than if the case proceeded to trial and appeal. Receiving prompt payment is especially important in this case, where a significant portion of the class is poor and transient. Not only do many class members presumably need the money, but as time goes by, it will become increasingly difficult to contact them.¹²

¹⁰ See, e.g., *Foote v. Spiegel*, 118 F.3d 1416 (10th Cir. 2001) (after two appeals, plaintiff awarded \$1 for an admittedly illegal strip search); *Stewart v. Lubbock County*, 767 F.2d 153, 154, n.2. (5th Cir. 1985) (one plaintiff awarded \$1 and the other awarded \$15,000); *Sorenson v. City of New York*, 2000 U.S. Dist. LEXIS 15090 (S.D.N.Y. 2000) (two plaintiffs awarded \$1 each); *Polk v. Montgomery County*, 689 F.Supp. 556 (D. Md. 1988) (plaintiff awarded \$1 after rejecting a settlement offer of \$31,000).

¹¹ See *McBean*, 233 F.R.D. at 388 (“Individual class members can decide on their own where on the scale of damages they fall, from nominal to substantial. If on the nominal side, the settlement’s award of \$ 750 or \$ 1000 is quite attractive; if on the substantial side, the settlement allows individuals to opt out and pursue their own claims.”).

¹² See *id.* (“The prospect of a trial in this case, with the risk of receiving only nominal damages, and the risk that during protracted litigation class members or become unreachable to collect even a nominal amount, strongly favors settlement.”).

3. The distribution formula is fair, reasonable and adequate.

The distribution formula in this case, which provides that each class member will receive the same amount, is fair and reasonable. This simple, easy-to-administer formula preserves one of the principal benefits of this settlement – avoiding the expenditure of resources required to make hundreds of individual damages determinations.

Plaintiffs' counsel has consulted with lawyers from around the country who have settled similar strip search class actions in other states. Experience has shown that requiring individualized determinations of each class member's subjective experience to determine his or her share of the settlement can be so time consuming and expensive that it harms the class as a whole.¹³

People who were arrested more than once during the class period will not receive additional payments because it is unlikely that a jury would reward a person for being arrested several times. Indeed, a jury could decide that a strip search was less traumatic for a detainee who had been through the search previously.

4. The *cy pres* distribution to Prisoners' Legal Services is appropriate.

The settlement agreement contemplates that half of any funds remaining after all participating class members are paid will go to Prisoners' Legal Services, a nonprofit that provides direct legal services to prisoners and detainees throughout the Commonwealth. The other half will revert to the Commonwealth. This is a fair and reasonable use of the leftover funds.

The First Circuit recently endorsed the use of *cy pres* fund in a class action settlement. In *Howe v. Townsend*, the Court upheld a settlement agreement that provided that a portion of funds remaining after all class members submitted claims would go to charitable organizations that

¹³ Friedman Aff. ¶ 21.

indirectly benefitted the class.¹⁴ *Howe* was a consumer class action against a pharmaceutical company alleging artificial inflation of the price of a prostate cancer drug; the *cy pres* moneys went to “charitable organizations funding cancer research or patient care.”¹⁵ The First Circuit noted that “[t]he *cy pres* . . . distributions serve the objectives of compensation for the class (albeit in an indirect manner), access to judicial relief for small claims, and deterrence of illegal behavior.”¹⁶

The creation of the *cy pres* fund in this case is consistent not only with federal law and policy, but also with the policy of the Commonwealth of Massachusetts, which is paying for the settlement. Massachusetts recently amended its rules of civil procedure to explicitly provide for the donation of residual funds in class actions to charitable organizations. The amended rule states that “residual funds shall be disbursed to one or more nonprofit organizations or foundations . . . which support projects that will benefit the class or similarly situated persons consistent with the objectives and purposes of the underlying causes of action on which relief was based, or to the Massachusetts IOLTA Committee.”¹⁷

In this case, Prisoners’ Legal Services will receive payment only after all class members who have submitted claims have been paid the maximum individual compensation under the agreement, \$3,500, and all expenses and fees have been paid. The agreement states that any funds paid to Prisoners’ Legal Services are to be used for “provision of additional prisoners’ legal services (i.e.: for legal services not presently provided in its budget).”¹⁸ The funds will thus indirectly benefit class members who did not submit claims.

¹⁴*Howe v. Townsend*, 588 F.3d 24 (1st Cir. 2009).

¹⁵*Id.* at 30.

¹⁶*Id.* at 34 (quoting 3 Conte & Newberg, 4 *Newberg on Class Actions* § 10:15, at 513 (4th ed. 2002)).

¹⁷Mass. R. Civ. P. 23(e)(2) (amendment effective January 1, 2009).

¹⁸Agreement ¶ 47.

5. The attorneys' fees and expenses are reasonable.

Class counsel will request attorneys' fees of one-third of the total settlement amount, plus litigation and claims administration expenses. This is consistent with the fees awarded to counsel in other similar strip search class action cases.¹⁹

The fee is justified by the amount of work, skill, and expertise needed to settle this case with the results achieved. Counsel will file a motion for attorney's fees and expenses under Fed. R.Civ.P. 23(h) to be heard at the time of the fairness hearing. Counsel will provide the Court with a lodestar figure for attorney's fees to verify the reasonableness of the percentage of fund method.

6. The proposed incentive award to the class representative is reasonable.

Class counsel requests an incentive payment of \$20,000 for class representative Gregory Garvey, Sr. The purpose of the award is to compensate him for his loss of privacy as a result of bringing this case and for the time he spent in responding to discovery and working with counsel to benefit the entire class. Mr. Garvey answered individual discovery requests and consulted with counsel throughout the litigation. He filed two affidavits in support of summary judgment and attended the oral argument. Mr. Garvey endured a loss of his personal privacy by revealing his name to bring this lawsuit on behalf of the class.

¹⁹ See, e.g., *Mack, supra* (awarding class counsel fees of 30% of a \$10 million settlement fund); *Connor, supra* (awarding class counsel fees of 33% of a \$1.35 million settlement fund); *Eddleman v. Jefferson County* (awarding class counsel 33.3% of a \$11.5 million settlement fund); *Moser v. Anderson* (awarding class counsel 33.3% of the \$3 million settlement fund), cited in Friedman Affidavit ¶¶ 14-15, 18-19.

“Incentive awards are recognized as serving an important function in promoting class action settlements, particularly where, as here, named plaintiffs actively participated in the litigation.”²⁰ In granting incentive awards, courts consider the efforts of plaintiffs in pursuing the claims and “the important public policy of fostering enforcement of laws and rewarding representative plaintiffs for being instrumental in obtaining recoveries for persons other than themselves.”²¹ The dollar amount proposed for Mr. Garvey is in line with awards approved by other courts.²²

An incentive payment is especially appropriate for the named class representative here because Mr. Garvey sacrificed his privacy and subjected himself to embarrassment by admitting publicly that he was arrested and forced to strip naked as part of his detention in jail.²³ If Mr. Garvey had not come forward, class members would not know that their rights were violated and would not have sought or received any compensation for their injury. Mr. Garvey deserves compensation for efforts that helped achieve a substantial benefit for hundreds of people.

C. The Notice to Class Members Satisfies Due Process Requirements and Federal Rule of Civil Procedure 23(e)

²⁰ *In re Lupron(R) Mktg. & Sales Practices Litig.*, 228 F.R.D. 75, 98 (D. Mass. 2005)(citing *Denney v. Jenkins & Gilchrist*, 230 F.R.D. 317, 2005 U.S. Dist. LEXIS 2507, 2005 WL 388562, *31 (S.D.N.Y. Feb. 18, 2005)); *see also In re Relafen Antitrust Litig.* 231 F.R.D. 52, 82 (D.Mass. 2005).

²¹ *Bussie v. Allmerica Fin. Corp.*, 1999 U.S. Dist. LEXIS 7793, *12 (D. Mass. May 19, 1999).

²² *See, e.g., Boone*, 668 F.Supp. 2d at 715 & n.3 (in strip-search class action, awarding \$15,000 to class representatives, and collecting cases with incentive awards ranging from \$15,000 to \$35,000); *McBean v. City of New York*, 233 F.R.D. 377, 391-392 (S.D.N.Y. 2006)(approving incentive awards ranging from \$25,000 to \$35,000 and noting that “when compared to incentive awards given generally to named plaintiffs across a variety of class actions, the awards given to the class representatives under the settlement here fall solidly in the middle of the range.”); *Godshall v. Franklin Mint. Co.*, 2004 U.S. Dist. LEXIS 23976, *19-21 (E.D.Pa. Dec. 1, 2004)(approving \$20,000 each to two class representatives from a \$1.125 million settlement fund).

²³ *See Boone*, 668 F.Supp. 2d at 715 (noting that named plaintiffs in strip search class action subject themselves to “public exposure of the fact that they have been placed into custody and charged with a crime”).

Fed.R.Civ.P. 23(e) requires that the Court direct notice “in a reasonable manner” of the proposed settlement to all members of the class who would be bound by the settlement. “An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.”²⁴ Plaintiffs propose a multi-part notice plan composed of individual mailed notice, individual and posted notice at the Franklin County Jail, publicity via press release, legal notice by publication, and a website to be created by the claims administrator. The notice plan is designed to reach as many class members as possible, not to simply meet minimum due process requirements.

1. Individual notice

“Individual notice must be sent to all class members whose names and addresses may be ascertained through reasonable effort.”²⁵ Plaintiffs propose sending individual notice to each class member based on the mailing address provided at booking unless the address has been updated by the class member or obtained by an electronic search following the return of the original class notice mailing as undeliverable by the post office.

In addition to individual notice by mail, the agreement provides that Defendants shall hand deliver notice and a claim form to any class member in custody of the Franklin County Jail during the period for filing claims. Defendants will provide a copy of the notice packet to any inmate upon request.

The Notice of Class Action and Proposed Settlement is attached to the Settlement

²⁴ *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950).

²⁵ *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173 (1974).

Agreement as Exhibit A. The notice summarizes the terms of the settlement, describes the options of each class member, discloses the incentive payment to the class representative, discloses the proposed amount of attorney's fees and expenses and explains that this issue will be decided by the Court at the fairness hearing, gives the date, time and place of the fairness hearing, and provides contact information for any questions about the settlement. The notice is drafted in plain English. This notice will be sent by first class mail, postage-prepaid, to all potential class members at their last known addresses within three weeks of the court's order granting preliminary approval of the settlement. In addition, a "generic notice" – describing in greater detail who is and who is not a class member – will be available along with a claim form on the website, and to anyone who writes the Claims Administrator asking for more information about the case. The generic notice and claim form are attached to the Agreement as Exhibits C and D.

2. Additional notices via media, publication, and posting at the jail

In order to reach as many class members as possible, the notice plan includes several additional notices. First, because some class members may have moved without leaving a forwarding address, and because the class list may contain errors, the notice plan also includes publication of a settlement notice in two local newspapers. A notice, attached to the Settlement Agreement as Exhibit E, will be published in the *Springfield Republican* and the *Greenfield Recorder*. Second, the press will be notified of the settlement through the press release attached as Exhibit G, which is likely to result in news coverage of the settlement. The press release will be sent to the *Valley Advocate*, the *Springfield Republican*, the *Daily Hampshire Gazette*, the *Greenfield Recorder*, the Associated Press, and several western Massachusetts radio and TV

stations. Class members are more likely to learn of this settlement through news coverage than through paid notices in newspapers.²⁶ Third, Defendants have agreed to post notices, attached to the Agreement as Exhibit F, in the Booking Room and in the Inmate Library of the Franklin County Jail. Finally, the class website that has already been established will provide information about the settlement.²⁷ The notices, forms and other information about the case will be posted to the website.

Class counsel also proposes to send notice to individuals who were previously identified as potential class members but who have since been determined not to be class members. Based on the information provided by Defendants at the time class notice was sent after class certification, Plaintiffs identified approximately 582 individuals as potential class members. Notice of the case was sent to these individuals with approval of the Court. Since then, it has been determined that approximately 100 individuals in this group do not meet the class definition.²⁸ Class counsel has prepared a notice explaining to these individuals why they do not meet the class definition and informing them of their right to challenge this decision if they believe it was in error. The proposed notice is attached as Exhibit 1 to the affidavit of counsel submitted with this memorandum.

V. ADMINISTRATION OF THE SETTLEMENT

Class counsel recommends that this Court appoint Analytics, Inc., as the claims administrator. Analytics has more than 35 years' experience in administering class actions.²⁹ It has experience in processing settlements in strip search class actions, having handled the

²⁶ See 3 Conte & Newberg § 8.38 (“Traditional and expensive published notices . . . are not efficient in serving the objectives of class notice, in contrast to radio and television announcements and discussions.”).

²⁷ See www.franklincountyjailclass.com.

²⁸ Friedman Aff. ¶¶ 24-25.

²⁹ Friedman Aff. ¶ 28.

administration of cases nationwide. Class counsel has handled three other strip search class actions that were successfully administered by Analytics: the *Nilsen* strip-search class action in Maine and the *Connor* and *Ryan* cases in this District.³⁰ Magistrate Judge Collings recently appointed Analytics to be the claims administrator in another prisoners' rights class action handled by class counsel, *Tyler v. Suffolk County*, 06-11354-RBC (D. Mass.).

The payment to Analytics in this case is capped at \$30,000, based on a detailed estimate that the company provided to Class Counsel and that defense counsel also reviewed.

VI. PROPOSED SCHEDULE

Appendix A at the end of this memorandum is a proposed schedule for the settlement process using the time periods in the Settlement Agreement. Based on this schedule, the fairness hearing would take place in January 2011 in order to allow sufficient time for all possible appeals of denied claims to be exhausted. Assuming that there are no unforeseen circumstances and that the Court approves the settlement, distribution could begin shortly after final approval in January 2011.

VII. CONCLUSION

For the foregoing reasons, Plaintiffs request that the Court (1) grant preliminary approval to the settlement, (2) appoint Analytics, Inc., as claims administrator, (3) approve the class notice and notice plan, and (4) set a date for a final fairness hearing and a date for filing motions to approve the settlement and for attorneys' fees.

³⁰ *Id.*

RESPECTFULLY SUBMITTED,
For the Plaintiffs,

/s/ Howard Friedman

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Dated: June 24, 2010

CERTIFICATE OF SERVICE

I certify that on this day I caused a true copy of the above
document to be served upon the attorney of record for all parties via ECF.

Date: June 24, 2010 /s/ Howard Friedman
Howard Friedman

APPENDIX A

Chronology of Anticipated Dates for Completing the Settlement Process			
EVENT NUMBER	DATE CALCULATION	DESCRIPTION OF EVENT	ESTIMATED DATE
1		Preliminary Hearing held.	7/12/2010
2	To be determined by the Court	Court issues Order granting preliminary approval of settlement.	7/12/2010
3	1 day after 2	Defendants post notice at Franklin County Jail and House of Correction. Class counsel issues press release and submits legal notice for publication in newspapers.	7/13/2010
4	1 week after 2	Defense counsel provides class counsel with last known address(es), Social Security Number, and date of birth of each class member. Defendants hand deliver Notice Packets to all class members in custody of Franklin County Sheriff's Department.	7/19/2010
5	3 weeks after 2	Claims Administrator mails Notice Packets.	8/2/2010
6	30 days before 9	Defendants hand deliver Notice Packets to any class members in custody of Franklin County Sheriff's Department not identified at 4.	9/10/2010
7	90 days after 2	Deadline for receipt of class members' written objections to settlement.	10/11/2010*
8	90 days after 2	Deadline for receipt of class members' written notices of exclusion.	10/11/2010*
9	90 days after 2	Deadline for receipt of class members' Settlement Claim Forms.	10/11/2010*
10	10 days after 7	Claims Administrator forwards all letters of objection to Court and to all counsel.	10/21/2010
11	2 weeks after 9	Two-week amnesty period for late Settlement Claim Forms ends.	10/25/2010*
12	1 week after 11	Last possible date on which Claims Administrator will send notices of claim denial	11/1/2010
13	2 weeks after 12	Last possible date for receipt by Claims Administrator of rejected claimants' appeals.	11/15/2010
14	1 week after 13	Claims Administrator decides any remaining appeals regarding class membership and sends notices to claimants regarding final decisions.	11/22/2010
15	10 days after 14	Last possible date for Defendants to file objection and request hearing before Court regarding Claims Administrator's approval of any appeal.	12/3/2010*
16	2 weeks after 14	Last possible date for receipt of rejected appellants' letters by Claims Administrator indicating intention to appeal to Court.	12/6/2010
17	2 weeks after 16	Last possible date on which Claims Administrator will forward appeals and supporting documentation to Court and to all counsel.	12/20/2010
18	To be determined by the Court	Final Fairness Hearing held.	1/10/2011
19	To be determined by the Court	Court issues Order granting final approval of settlement.	1/10/2011
20	To be determined by the Court	Court decides all appeals.	1/10/2011
21	1 week after 20	Claims Administrator sends Distribution Spreadsheet and Substitute W-9 Forms submitted by participating class members to Defendants.	1/17/2011
22	10 days after 21	Defense counsel submits executed Settlement and Judgment Payment Authorization Form and all required documentation to Comptroller's Office for payment.	1/27/2011
24	60 days after 19	Interest begins to accrue on any unpaid portion of settlement.	3/11/2011

*Date adjusted to avoid weekend or to account for intervening holiday.