

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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

I. SUMMARY

The parties, by counsel, enter into this Settlement Agreement, which they will submit to the Court for approval. Defendants agree to settle Plaintiffs’ claims for an amount not to exceed One Million, One Hundred Sixty Two Thousand, Four Hundred Sixty Eight Dollars (\$1,162,468.00) (“the Total Amount”). After payment of claims administration expenses, litigation expenses, an incentive award to the class representative, and attorney’s fees (collectively, “non-class member payments”), the difference between the Total Amount and the non-class member payments (“the Class Member Amount”), which the parties estimate will be no less than \$710,000, will be evenly divided among Participating Class Members up to a cap of \$3,500 per person. Under this agreement, Participating Class Members will receive one payment each no matter how many times they were booked into the jail during the class period. To satisfy the claims of nonparticipating Class Members, one-half of what is left of the Class Member Amount after payments are made to Participating Class Members will be paid to Prisoners’ Legal

Services (formerly Massachusetts Correctional Legal Services) pursuant to Paragraph 47.

II. BACKGROUND

1. Plaintiff Gregory Garvey filed this case as a class action on March 28, 2007.

2. On April 15, 2008, the Court certified this case as a class action under Fed.R.Civ.P. 23(b)(3) and appointed Attorneys Howard Friedman and David Milton as class counsel under Fed.R.Civ.P. 23(g). The certified class (“Class Members” or “Plaintiffs”) is defined as follows:

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.

3. On October 22, 2009, the Honorable Kenneth P. Neiman, United States Magistrate Judge, granted Plaintiffs’ motion for summary judgment.

4. The parties have agreed that 486 people fit the class definition. The parties reached this determination based on careful review of Defendants’ computerized and hand-written booking records; individual arrestees’ case files; and relevant caselaw and criminal statutes.

III. TERMS OF SETTLEMENT

5. On behalf of Defendants, the Commonwealth of Massachusetts will pay One Million, One Hundred Sixty Two Thousand, Four Hundred Sixty Eight Dollars (\$1,162,468.00) (“Settlement Proceeds”), subject to reversion, to settle all claims brought by Plaintiffs in this

action including claims for attorney's fees and costs.

6. Defendants understand that this agreement will require the approval of the Court. Defendants will ask the Court to approve the terms of this settlement agreement.

7. Defendants and their counsel agree to provide reasonable assistance to facilitate the administration of this settlement including providing access to data and documents necessary to determine class membership if a person disputes denial of a claim.

8. Defendants represent that they are authorized to enter into this settlement agreement and that they are able to perform each of its terms. Defendants specifically represent that the Commonwealth of Massachusetts has agreed to pay the Total Amount and is bound to do so under the terms of this Settlement Agreement.

IV. COURT SUPERVISION

9. The Court will retain jurisdiction over the settlement and may enter orders as appropriate to enforce it, to adjudicate the rights and responsibilities of the parties, and to effect fair and orderly administration.

10. Any deadlines, dates, or other details in this Settlement Agreement may be changed by the Court on a showing of good cause.

V. HEARINGS

11. The parties will jointly request that the Court hold a hearing as soon as reasonably practicable to decide whether to grant preliminary approval of the settlement. If preliminary approval is granted, the parties will begin to implement the settlement.

12. The parties will request that the Court hold a Final Fairness Hearing to decide whether to grant final approval of the settlement on a date no less than five months after the

Court grants preliminary approval of the settlement.

13. If the Court grants final approval of the settlement, the Settlement Proceeds will be distributed pursuant to this agreement and the orders of the Court.

VI. CLAIMS ADMINISTRATOR

14. Class counsel recommends that the firm of Analytics, Inc., of Chanhassen, Minnesota, be approved by the Court as the claims administrator for this case. Analytics, Inc. has provided similar claims administration services in other strip search class actions.

15. The claims administrator will provide notice to Class Members in the manner prescribed by the Court; shall accept and record all claim forms; shall send notices; shall send each denied Claimant notice that his or her claim has been rejected; shall resolve any appeals of claim denials subject to Paragraph 33; and shall calculate the amount of each claim pursuant to this agreement.

16. Class counsel will oversee settlement administration and will provide direction to the claims administrator as needed.

VII. TREASURER'S OFFICE

17. The Treasurer of the Commonwealth of Massachusetts will distribute settlement checks to Participating Class Members through the state accounting system.

VIII. NOTICE, OBJECTIONS, AND OPT-OUTS

18. As soon as practicable, but in no case more than fourteen (14) days after the Court's preliminary approval of the Settlement Agreement, Defendants' counsel will provide Plaintiffs' counsel with the last known address(es), Social Security Number, and date of birth of each of the 486 class members. The "last known address(es)" shall mean the most recent address(es) known to the Franklin County Sheriff's Department and the Massachusetts

Department of Correction. If any individual is in the custody of any Franklin County Sheriff's Department or Department of Correction facility at the time the information is provided, Defendants shall provide the name and address of the facility in addition to such individual's last known outside address(es)

19. The Claims Administrator will send a Notice of Class Action and Proposed Settlement ("Notice") and a Settlement Claim Form ("Claim Form") (collectively, the "Notice Packet"), by first class mail postage prepaid to all Class Members at their last known addresses within 21 days after the Court's order granting preliminary approval. If any mail is returned by the post office with notice of a more current address, class counsel will resend the notice packet to the newer address. Class counsel is not required to make any further efforts to send mail directly to Class Members.

20. The Notice will include the terms of the settlement and the Class Member's right to contest the settlement or opt-out. The Notice will answer anticipated questions explaining the settlement terms. The proposed Notice is attached as Exhibit A.

21. The Claim Form requests the Class Member's contact information, instructions for check delivery, and a W-9 Form. The proposed Claim Form is attached as Exhibit B.

22. At the time they provide Class Counsel with Class Member addresses, Defendants shall identify each Class Member who is then in the custody of the Franklin County Sheriff's Department, whether in the Jail or House of Correction, and shall hand deliver to each such Class Member a Notice Packet with Claim Form. Approximately 30 days before the deadline for submitting claims, Defendants shall again identify all Class Members in their custody at that time, and shall hand deliver a Notice Packet to any Class Member not identified the first time.

Defendants shall provide a copy of a “Generic” Notice and Claim Form – designed for individuals who have not already been identified as class members – to any inmate upon request. The Generic Notice and Generic Claim Form are attached as Exhibit C and D, respectively.

23. Legal notice shall be published for two days in the *Springfield Republican* and the *Greenfield Recorder*. This notice is attached as Exhibit E. Defendants will post a notice in the Booking Room and in the Inmate Library of the Franklin County Jail and House of Correction; the notice shall be posted from the day after the Court preliminarily approves the Settlement to the date of the Claims Deadline, described in paragraph 24. This notice is attached as Exhibit F. In addition to the legal notices, Class Counsel will also send a press release 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. The press release is attached as Exhibit G. The Notice, Claim Form and other information about the lawsuit will also be available at the website www.franklincountyjailclass.com, which is maintained by the Claims Administrator. Notice as set forth in this paragraph shall be deemed sufficient legal notice to Class Members who did not receive individual notice.

24. In order for a Class Member to claim a share of the settlement, he or she must submit a valid and complete Claim Form that is received no later than 90 days after the Court grants Preliminary Approval to the settlement agreement, or as allowed by the Court. This deadline is the “Claims Deadline.”

25. The claims administrator will maintain updated documents regarding this settlement on the case website, including the Generic Claim Form, which can be printed and mailed.

26. In order for a Class Member to object to the proposed settlement, he or she must

submit a written notice of the objection to the claims administrator that is received no later than 90 days after the Court grants Preliminary Approval to the agreement (“Objection Period”), or as allowed by the Court. An objector may also appear in person or through counsel at the Final Fairness Hearing. The claims administrator will forward all letters of objection to the Court and to counsel for all parties within ten days of the close of the Objection Period. The Class Member must also submit a Claim Form if he or she wishes to be eligible to share in the settlement should it be approved despite an objection.

27. In order for a Class Member to opt out of the proposed settlement, he or she must submit a written notice of exclusion to the claims administrator that is received no later than 90 days after the Court grants Preliminary Approval to the agreement, or as allowed by the Court. The claims administrator will forward all notices of exclusion to the Court and to counsel for all parties.

IX. CLAIMS APPROVAL, DENIAL AND APPEALS

28. Claim Forms received by the claims administrator within 14 days after the claims deadline will be treated as if received by the claims deadline. This 14 day grace period is the Amnesty Period. Claim Forms received after the Amnesty Period will be denied as untimely, except as allowed by the Court for good cause and in the absence of prejudice to any affected party.

29. The claims administrator will review each Claim Form to determine that the Claimant is a Class Member by confirming (a) that the Claim Form is timely and valid, (b) that the information on the Claim Form is consistent with the Class List provided by the parties, and (c) that the Claim Form is completely filled out and signed. If an individual who submitted a

Claim Form is determined to qualify to be a Class Member, the Claims Administrator will send him or her a notice of approval.

30. The claims administrator may, in its discretion, waive a technical defect in a Claim Form to achieve substantial justice.

31. If the Claimant is not on the Class List, the claims administrator will send a Notice of Claim Denial to the Claimant. Where possible, the claims administrator shall provide the reason for the denial.

32. In order to object to the claims administrator's determination that he or she is not a Class Member, a Claimant must file a written appeal to the claims administrator that is received no later than 14 days after the date of the mailing of the Notice of Claim Denial. The Claimant must include written documentation that shows that he or she is a Class Member, and may also include a written statement. After consultation with the parties' counsel, the claims administrator will make a determination on each appeal no later than 7 days after the deadline for Claimants to file such appeals. The claims administrator will inform the Claimant in writing of its determination, and provide copies to all counsel. If the claims administrator allows the Claimant's appeal pursuant to Paragraph 33, the Defendants have the right to file an objection and request a hearing before the Court to determine whether the Claimant qualifies as a Class Member. Such objection must be filed within 10 days of the date of the claims administrator's mailing of its determination.

33. A Claimant may appeal to the Court the claims administrator's final decision denying a claim ("Notice of Claim Denial Upon Appeal"). In order to do so, a Claimant must write a letter addressed to the claims administrator indicating his or her wish to appeal to the Court within 14 days after the date of the mailing of the Notice of Claim Denial Upon Appeal.

The claims administrator will provide all such appeals, along with supporting documentation, to the Court within 14 days of the deadline to file such appeals, and provide copies to all counsel.

X. SUBMISSION FOR PAYMENT

34. Within ten days after approval of the settlement at the Final Fairness Hearing, or receipt of the Distribution List and W-9 Forms from the Claims Administrator, whichever is later, defense counsel will submit to the Comptroller's Office for payment an executed Settlement and Judgment Payment Authorization Form, along with all required documentation. Once this submission has been made, payments will be put in line for payment from the Settlement and Judgments Fund and will be paid on a first-in, first-out basis when sufficient funds are available.

XI. EXPENSES AND ATTORNEY'S FEES

35. Class counsel will ask the Court to approve payment of Plaintiffs' attorney's fees in an amount of \$387,489.33 (one-third) of the Settlement Proceeds. In addition to attorney's fees, Plaintiffs will ask that the court award litigation expenses and class action administrative costs (including the claims administrator's fees and expenses, which shall not exceed \$30,000.00). Prior to payment, the claims administrator shall submit its bills to Class Counsel and Defendants' counsel. These expenses and attorney's fees will be deducted from the Settlement Proceeds and incorporated into a single payment to be paid by one check made payable to class counsel. Such check shall be mailed at the same time that distribution payments are first made to Participating Class Members under this Agreement, subject to sufficient funding.

XII. DISTRIBUTION TO CLASS MEMBERS

36. The named plaintiff Gregory Garvey Sr. will receive \$20,000, subject to approval of the Court, to be paid from the Settlement Proceeds to compensate him for bringing this case, the time he spent on this case and his loss of privacy as a result of serving as the named plaintiff. Mr. Garvey maintained diligent contact with class counsel over the course of three years of litigation, answered interrogatories and requests for documents, and submitted two affidavits on summary judgment. This incentive payment is in addition to his share as a Class Member. This payment will be issued at the same time as the distribution payments to Class Members.

37. Class Members will receive payment from the Settlement Proceeds after deducting attorney's fees, litigation expenses, claims administration costs and the incentive payment to the class representative.

38. The claims administrator will calculate the amount of money due each Class Member by dividing the number of Participating Class Members into the balance of the Settlement Proceeds. Class Members will receive one payment each, of the same amount each, even if they were booked into the jail more than one time during the class period. The payment to Class Members will be capped at a maximum of \$3,500, except that the amount of any interest awarded due to delay in distribution, as provided for in paragraph 40 below, may cause payments to exceed \$3,500.

40. Interest shall accrue at the rate of three percent (3%) per annum beginning 60 days after the Court grants final approval to the settlement. Interest shall accrue only on the unpaid portion of Defendants' obligations. Interest shall accrue on the payment amount to Class Members and on the payment to class counsel for attorney's fees and costs, regardless of the reason for non-payment including inadequate funds due to appropriation issues or otherwise. Interest, if any, will not be paid by separate check but will be included in the original check

issued by the Treasurer's Office.

41. Any interest awarded pursuant to the above paragraph shall be drawn only from any remaining moneys from the Settlement Proceeds that would otherwise be divided between Prisoners' Legal Services and the Commonwealth pursuant to Paragraph 47. If a sufficiently large number of Class Members participate in the settlement so that there are no remaining Settlement Proceeds, then no interest shall be awarded pursuant to the above paragraph, notwithstanding any delay in payment. The Commonwealth's total payment pursuant to this Agreement, including any interest payments, shall be capped at \$1,162,468.00.

42. The Claims Administrator will prepare a settlement distribution list in the form of a spreadsheet which will contain the legal names, current addresses, mailing addresses (if different), and TIN/EINs of the Participating Class Members as well as the Distribution Amount for each Participating Class Member ("Distribution Spreadsheet"). The Claims Administrator shall send the Distribution Spreadsheet and all of the Substitute W-9 forms submitted by Participating Class Members to the Defendants after the time for any appeals to the Claims Administrator of denied claims has expired.

43. The Commonwealth will directly pay each Participating Class Member and Class Counsel. The Commonwealth may deduct any outstanding child support or tax obligations or other delinquent debts owed to the Commonwealth pursuant to M.G.L. Ch. 7A § 3, from a Participating Class Member's Distribution Amount if that Class Member owes any such obligations. The check stub or payment advice shall indicate the amount of any such deduction(s), the department for which the deduction(s) is (are) being made, and the contact information of such department(s). If a Participating Class Member receives no money from the

settlement as a result of such deduction(s), then he or she shall receive a check stub or payment advice with the foregoing information concerning the deductions.

44. The Commonwealth will be responsible for all tax withholding and reporting as required by law. Participating Class Members are responsible for payment of any additional taxes and other withholdings for which they are legally responsible that may become due on settlement proceeds, and hold Defendants and their counsel harmless from any and all claims for said taxes and withholdings thereon.

45. Each Participating Class Member's check will be made payable only in his name or in the name of a deceased Class Member's estate, provided the duly appointed estate administrator has completed a W-9 Form, and subject to the provisions of Paragraph 53. The check will be mailed to the Participating Class Member at the legal address indicated on the Claim Form. Any change of address request must be made in writing and must be signed by the Participating Class Member and must include an amended W-9 Form.

46. If a Participating Class Member is confined in a prison, hospital, or other institution and has provided the address of such institution for payment, the settlement check will be sent to that address unless the Participating Class Member makes other acceptable arrangements in writing with the Claims Administrator.

XIII. DISTRIBUTION OF REMAINING PROCEEDS

47. Should any Settlement Proceeds remain after payment of attorney's fees and expenses, claims administration costs, incentive payment to the class representative, and distribution to Class Members, half of such remaining monies will be paid, as an indirect means of benefitting injured Class Members who did not file claims, to Prisoners' Legal Services provided that 1) the use of the monies paid to Prisoners' Legal Services is to be restricted to

provision of additional prisoners' legal services (i.e.: for legal services not presently provided in its budget), and 2) upon the Commonwealth's request, Prisoners' Legal Services shall within 30 days provide a report of how the proceeds were spent in accordance with the Agreement. The other half of such remaining money will revert back to the Commonwealth.

XIV. POST-DISTRIBUTION ADMINISTRATION

48. The Commonwealth will prepare all 1099s, and any other tax forms relating to the settlement that are required by law, for Class Members who were issued a settlement check during the next regular tax-form processing period following the distribution.

49. Within 60 days of mailing settlement checks to Class Members, the Commonwealth will provide to class counsel a settlement distribution report accounting for the distribution of the Settlement Proceeds, including attorney's fees and expenses.

50. One year after the original date of the first distribution, the Commonwealth will provide a final report accounting for the distribution of the Settlement Proceeds.

51. Class Members will be informed in the Claim Form that all settlement checks must be cashed within sixty days.

52. Checks not presented for payment within one year from the original date of issue will be subject to M.G.L. c. 29, § 32.

XV. DECEASED CLASS MEMBERS

53. If a Class Member is deceased, an authorized representative may file a Settlement Claim Form on behalf of the estate. However, the representative must provide to the Claims Administrator documentation that an estate has been established in accordance with the law and that he or she is the duly appointed administrator or executor.

XVI. RELEASE AND DISMISSAL

54. In consideration of payment of the Settlement Proceeds, and the forbearance of claims thereunder, and for other good and sufficient consideration, the receipt and sufficiency of which is hereby acknowledged, the Plaintiff Class Members, including those Class Members who do not file claims but excluding those Class Members who request exclusion, hereby remise, release and forever discharge defendants Frederick B. MacDonald and Forbes Byron in their individual capacities, the Franklin County Sheriff's Office, the Commonwealth of Massachusetts and all of their present and former agents, servants, officers, employees and insurers of and from any and all manner of action and actions, cause or causes of action, suits, debts, dues, claims, and demands, and any and all claims of every kind, nature, and description whatsoever, in law or in equity, which Plaintiff Class Members now have or ever had arising out of or in any way related to the incidents, events, allegations or occurrences described in Gregory Garvey, Sr., on behalf of himself and on behalf of others similarly situated v. Frederick B. MacDonald and Forbes Byron, in their individual capacities, United States District Court Civil Action No. 07-30049-KPN (D. Mass.).

55. It is the express intent of the Plaintiffs to enter into this full and final Settlement Agreement to settle and compromise all claims against the Defendants by the Plaintiffs, excluding any Plaintiffs who timely and properly exclude themselves from the settlement. Plaintiffs agree to the entry of a dismissal with prejudice upon Defendants' performance in full of the terms of this Settlement Agreement.

56. It is the express intent of Defendants and of the Commonwealth of Massachusetts to be bound by this Settlement Agreement. The Commonwealth is a non-party to this litigation that does not waive its 11th Amendment immunity by signing and assuming obligations under

this Agreement.

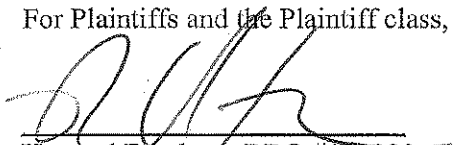
XVII. EXHIBITS

56. The following Exhibits are attached to this Agreement:

Exhibit A	Class Notice to be mailed to Class Members.
Exhibit B	Claim Form to be mailed to Class Members.
Exhibit C	Generic Notice
Exhibit D	Generic Claim Form
Exhibit E	Legal Notice to be published in local newspapers
Exhibit F	Notice to be posted at Franklin County Jail
Exhibit G	Press Release

For Plaintiffs and the Plaintiff class,

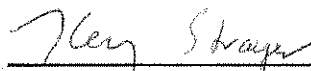
Date: July 14, 2010


Howard Friedman BBO #180080
David Milton BBO #668908
Law Offices of Howard Friedman, P.C.
90 Canal Street, Fifth floor
Boston, MA 02114-2022
T (617) 742-4100
hfriedman@civil-rights-law.com
dmilton@civil-rights-law.com

For defendants Frederick Macdonald
and Forbes Byron,
and for the Commonwealth of Massachusetts,

By: Martha Coakley, Attorney General,

Date: July 14, 2010


Kerry Strayer BBO #549404
Assistant Attorney General
Western Massachusetts Division
1350 Main Street, 4th Floor
Springfield, MA 01103
T (413)784-1240 Ext. 107
kerry.strayer@state.ma.us