

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

TRAFFORD BOISSELLE,

Plaintiff(s),

- vs -

COUNTY OF MERCER, et al.,

Defendant(s).

Civil Action No. 3:06-2065 (GEB)

**ORDER GRANTING FINAL APPROVAL
OF CLASS ACTION SETTLEMENT AND JUDGMENT**

THIS CASE coming on for hearing before the Honorable Tonianne Bongiovanni, U.S.M.J. on April 20, 2008, pursuant to this Court's Order of Nov 19, 2008 in order for this Court to conduct a final fairness hearing to determine whether the proposed Settlement Agreement between the parties is fair, reasonable and adequate, and to address Class Counsel's application for an award of attorney's fees and costs; and the Class Members being represented by Class Counsel and Defendants being represented by their attorney;

AND THE COURT having read and considered the Settlement Agreement, the Notice Plan, the Memorandum of Law submitted by Class Counsel and the Certification of Seth R. Lesser, one of the Class Counsel, in support of the Settlement, having received evidence at the hearing, having heard arguments from Class Counsel and the Defendants, and having considered all matters heretofore had in this case, now makes the following:

FINDINGS OF FACT

1. This action was commenced on May 5, 2006, as a class action.

2. After several years of intensive litigation, including extensive discovery and motion practice, and as a result of intensive, arm's length negotiations between Class Counsel and Defendants, including settlement conferences before former Magistrate Judge Joel Rosen, the parties have reached accord with respect to a Settlement that provides substantial benefits to Settlement Class Members, in return for a release and dismissal of the claims at issue in this case against the Defendants ("Settlement Agreement"). The resulting Settlement Agreement was preliminarily approved by the Court on November 20, 2008.

3. As part of the Order Granting Preliminary Approval, this Court approved a proposed Notice Plan and Class Notice, which provided Settlement Class Members notice of the proposed settlement. The Notice Plan provided an opportunity for Class Members to file objections to the Settlement, and an opportunity to opt-out of the Settlement.

4. As of the deadline for the filing of objections, no objections were filed. Given the size of this Settlement, and the Notice Plan described above, this Court finds that the comparatively low number of objections is indicative of the fairness, reasonableness and adequacy of the Settlement with the Defendants. Following the deadline date, a single objection, not filed or served in compliance with the Order Granting Preliminary Approval and the terms of the Notice, was received from a Class Member who did not provide any substantive basis for his objection, only that he thought he should receive a greater amount.

5. Class Counsel has filed with the Court an affidavit from The Garden City Group declaring that the mailing of the Court-approved notice, consistent with the Notice Plan,

has been completed.

6. The Court finds that the published notice, mailed notice and Internet posting constitute the best practicable notice of the Fairness Hearing, proposed Settlement, Class Counsel's application for fees and expenses, and other matters set forth in the Class Notice and Short Form Notice; and that such notice constituted valid, due and sufficient notice to all members of the Settlement Class, and complied fully with the requirements of Rule 23 of the Federal Rules of Civil Procedure, the Constitution of the United States, the laws of New Jersey and any other applicable law.

7. Any persons who wished to be excluded from this action were provided an opportunity to "opt-out" pursuant to the Notice. One individual has excluded himself, Herman Smith.

8. Settlement Class Members, aside from Mr. Herman Smith are bound by the: Settlement, Settlement Agreement, releases contained within the Settlement Agreement, and the Final Order and Judgment. Settlement Class Members do not have a further opportunity to opt-out of this Action.

9. Any Class Member who did not timely file and serve an objection in writing to the Settlement Agreement, to the entry of Final Order and Judgment, or to Plaintiff's Class Counsel's application for fees, costs, and expenses, in accordance with the procedure set forth in the Class Notice and mandated in the Order Granting Preliminary Approval of Settlement, is deemed to have waived any such objection by appeal, collateral attack, or otherwise.

10. On the basis of all of the issues in this litigation, and the provisions of the Settlement Agreement, the Court is of the opinion that the Settlement is a fair, reasonable

and adequate compromise of the claims against the Defendants in this case, pursuant to Rule 23 of the Federal Rules of Civil Procedure. There are a number of factors which the Court has considered in affirming this Settlement, including:

- a. The liability issues in this case have been vigorously contested.
- b. This Settlement has the benefit of providing relief to Class Members now, without further litigation, under circumstances where the liability issues are still vigorously contested among the parties to this litigation and among the parties to the individual litigation. This Settlement provides Class Members with a substantial monetary benefit.
- c. This Settlement is clearly a product of hard-fought litigation between the parties, and not a result of any collusion on the part of Class Counsel or Counsel for the Defendants.

11. The claims procedure established under the Settlement Agreement is fair, a simplified process, and workable. In any event, the Court will retain jurisdiction to work out any unanticipated problems.

NOW, THEREFORE, ON THE BASIS OF THE FOREGOING FINDINGS OF FACT AND THE COURT HEREBY MAKES THE FOLLOWING CONCLUSIONS OF LAW:

12. This Court has jurisdiction over the parties and the subject matter of this proceeding.

13. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, the following Settlement Class is certified for purposes of final settlement:

All persons who were placed into the custody of the Mercer County Correctional Facility after being charged with disorderly person's offenses, violations of Title 39 (traffic offenses), Municipal Ordinance infractions and other non-indictable

offenses and were strip searched upon their entry into the Mercer County Correctional Facility pursuant to the custom and practice of the Mercer County Sheriff's Department and the County of Mercer. The class period commences on May 5, 2004 and extends until August 17, 2006. Specifically excluded from the class are Defendants and any and all of their respective affiliates, legal representatives, heirs, successors, employees or assignees. For purposes of class definition, multiple entries into the Facility shall be viewed as a single entry.

12. The Court finds that, for the purpose of this Settlement, the requirements of Rule 23 of the Federal Rules of Civil Procedure are satisfied, and that a class action is an appropriate method for resolving the disputes in this litigation. All the prerequisites for class certification under Rule 23 are present. The Class Members are ascertainable and too numerous to be joined. Questions of law and fact common to all Class members predominate over individual issues and should be determined in one proceeding with respect to all Class members. The Class Representative's claims are typical of those of the Class. The Class action mechanism is superior to alternative means for adjudicating and resolving this action.

13. The Settlement Class Representative, Trafford Boiselle, is entitled to and is hereby awarded a payment of \$20,000, in recognition of the efforts he undertook in connection with this lawsuit. All Class Members who have made claims on the settlement are entitled to receive their *pro rata* share of the settlement fund after administrative expenses, attorneys' fees and expenses, and incentive awards are deducted from the fund.

14. Class Counsel are qualified, experienced, and have aggressively litigated this case, thereby demonstrating their adequacy as counsel for the Settlement Class. Seth Lesser, Esquire, of Klafter Olsen & Lesser, LLP, Rye Brook, New York; Charles J. LaDuca, Esquire, of Cuneo Gilbert & LaDuca, LLP, Washington, DC; Elmer Robert Keach, III, of the Law Offices of Elmer Robert Keach, III, Amsterdam, New York; and

William A. Riback of William Riback, LLC, are hereby appointed as Counsel for the Settlement Class. 11. Class Counsel submitted to the Court and served on the Defendants their application for reasonable attorneys' fees, costs, and expenses consistent with the terms of the Settlement Agreement. This Court has considered Class Counsel's request and hereby grants the request. The Court finds that final approval of attorneys' fees in the amount of \$540,000 is warranted. The Court finds that this amount is justified by the work performed, skill, risks taken and the results achieved by Class Counsel. The Court also finds that approval of the \$19,236.49 attorneys' costs application is warranted, based on Plaintiff's counsel's out-of-pocket expenses as demonstrated by the Certification of Seth R. Lesser and that approval of payment of such other incidental expenses, not to exceed \$500, as may have been incurred or will be incurred in connection with the Final Approval Hearing and the finalization of the Settlement is also warranted.

15. The Court finds that the payment of the incurred and anticipated expenses of the Claims Administrator, the Garden City Group, as set forth in the Certification of Seth R. Lesser is reasonable and justified.

16. The Court grants final approval of the Settlement Agreement, as being fair, reasonable and adequate, pursuant to Rule 23 of the Federal Rules of Civil Procedure.

NOW, THEREFORE, ON THE BASIS OF THE FOREGOING FINDINGS OF FACT AND CONCLUSIONS OF LAW, IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. The motion for Final Approval of the proposed Settlement is GRANTED.
2. The Settlement Class Representative, Trafford Boiselle, is entitled to and is hereby awarded a payment of \$20,000 in recognition of the efforts he undertook in

connection with this lawsuit. All Class Members who have made claims on the settlement are entitled to receive their *pro rata* share of the settlement fund after administrative expenses, attorneys' fees and expenses, and incentive awards are deducted from the fund.

3. The Class Counsel's application for attorneys' fees and expenses is granted in the amount of \$540,000 in fees and \$19,236.49 for expenses, as well as such other incidental expenses, not to exceed \$500, as may have been incurred or will be incurred in connection with the Final Approval Hearing and finalization of the Settlement and the Claims Administrator is ordered upon Final Approval to pay such amounts to Seth R. Lesser of Klafter Olsen & Lesser LLP for disbursement to the Class Counsel's law firms.

4. The costs and expenses incurred to date or hereafter incurred for finalization of the Settlement by the Claims Administrator, estimated to be \$500,000, but not to exceed \$525,000 without leave of Court and subject to approval by Class Counsel, are granted for payment and the Garden City Group can disburse to itself from the Settlement funds such funds, upon approval by Class Counsel.


4. This Action and all claims against the Settling Defendant are hereby dismissed with prejudice, but the Court shall retain exclusive and continuing jurisdiction of the Action, all Parties, and Settlement Class Members, to interpret and enforce the terms, conditions and obligations of this Settlement Agreement.

5. All Class Members who have not timely filed an opt-out request are barred and enjoined from commencing and/or prosecuting any claim or action against the

Defendants. Any Class Member who has not timely filed a request to exclude himself or herself shall be enjoined from initiating and/or proceeding as a class action in any forum.

IT IS SO ORDERED.

Dated: April 20, 2009


Tonianna J. Bongiovanni
United States Magistrate Judge