

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

**SHARON ALLISON, on behalf of herself and the
class of similarly situated persons;**

Plaintiffs,

v.

NO. CV 05-881 WPJ/WDS

**LINCOLN COUNTY BOARD OF
COMMISSIONERS; CORNELL COMPANIES,
INC., a Delaware Corporation; CORRECTIONAL
SYSTEMS, INC., a Delaware Corporation; MIKE
HOLM, individually and in his official capacity;
ROGER JEFFERS, individually and in his official
capacity; PETER MORALES, individually and in
his official capacity; LUCY VEGA, individually
and in her official capacity; LINCOLN COUNTY
DETENTION CENTER CORRECTIONS
OFFICERS DOES 1 THROUGH 50 and ROES 1
THROUGH 20, inclusive;**

Defendants.

**SUPPLEMENTAL MEMORANDUM IN SUPPORT OF JOINT MOTION
FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

COMES NOW Plaintiff Sharon Allison (“Plaintiff”), by and through her counsel, below-listed, and in response to the Court’s direction at the hearing on January 30, 2007, hereby provides the following supplemental authority in support of the Joint Motion for Preliminary Approval of Class Action Settlement. The Court specifically requested that Plaintiff provide additional briefing on the proposed class representative incentive payment to Plaintiff in the amount of \$100,000.

Class representative incentive awards are intended to recognize the significant time and efforts expended by class representatives on behalf of the class and the risks that they undertook in bringing a lawsuit. *Ingram v. The Coca Cola Co.*, 200 F.R.D. 685, 694 (N.D. Ga. 2001)(awarding incentive awards of \$300,000 to each plaintiff and holding that “courts routinely approve incentive awards to compensate named plaintiffs for the services they provide and the risks they incurred during the course of the class action litigation” (*quoting In re Southern Ohio Correctional Facility*, 175 F.R.D. 270, 272 (S.D. Ohio 1997)); *see also, Huguley v. Gen. Motors Corp.*, 128 F.R.D. 81, 85 (E.D. Mich. 1989) (“Named plaintiffs and witnesses are entitled to more consideration than class members generally because of the onerous burden of litigation that they have borne.”). In considering incentive awards, the Court may consider the risk to the class representative, financial and otherwise; the personal difficulties encountered by the class representative; the amount of time and effort spent on litigation; the duration of the litigation; and the personal benefit—or lack thereof—enjoyed by the class representative as a result of the litigation. *Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 299 (N.D. Cal. 1995).

In the present case, these factors weigh in favor of the agreed-upon incentive award for Plaintiff. She was willing to allow her name to appear on the complaint, which she knew would receive significant publicity. She made personal sacrifices in order to pursue this case on behalf of the class. Plaintiff had a particularly strong individual case that would likely have resulted in a significant award if her case had been pursued individually. Instead,

Plaintiff chose to pursue a recovery that, while less beneficial to her, provided a benefit to hundreds of others.

Plaintiff was required to submit to deposition and other public scrutiny into embarrassing details of her personal life, including her arrest. In addition, she spent hours reviewing information provided in discovery, providing information to counsel, participating in depositions, answering written discovery, attending mediations, and assisting counsel in countless other ways in the pursuit and eventual settlement of this case. Ultimately, pressures associated with the lawsuit were an important factor in Plaintiff's decision to move away from Lincoln County.

In addition to the discussion of the class representative incentive award set forth at pages 9-10 of the Joint Motion for Preliminary Approval of Class Action Settlement [Doc. No. 51], Plaintiff submits the following additional authority in support of the proposed payment in this case:

1. *Bull, et al. v. Sacramento County, et al.*, (Sacramento County Superior Court No. 01 AS 01545, Order and Judgment of Dismissal entered on 10/22/2004). In this class action lawsuit challenging the Sacramento County Jail's strip search policies, Plaintiff Mary Bull received a class representative incentive payment of \$150,000. A description of the case is set forth in the Affidavit of Mark Merin, Exhibit "1" hereto, and a copy of the Superior Court's Order is attached as Exhibit "A" to Mr. Merin's Affidavit. The case involved an

overall settlement in the amount of \$4,924,406.25 and provided for an average per claimant payout of \$1,499.06.

2. *Haney, et al. v. Miami-Dade County, et al.*, (United States District Court for the Southern District of Florida, Miami Division, Case No. 04-20516 CIV, Agreed Order and Judgment of Dismissal entered on October 6, 2005). This case involved a class action challenging the strip search policies of the Miami-Dade County Corrections and Rehabilitation Department. Class representative Mary Haney received a court-approved incentive payment of \$135,000. The overall settlement amount of the case was \$3,287,740.00 with an average per claim award of \$2,515.49. The case is discussed in Mr. Merin's Affidavit, Exhibit "1" hereto at page three and a copy of the Court's Agreed Order and Judgment of Dismissal is attached as Exhibit "B" to Mr. Merin's Affidavit.
3. *Katie Kelley Mareau, et al. v. Regents of the University of California, et al.*, (First Judicial District Court (County of Santa Fe), No. SF 96-2430 (C), Order of January 25, 2002). This class action arose from State law challenges to the practice of Los Alamos National Laboratory in performing autopsies on deceased laboratory employees and other persons without consent of next of kin. Class representative Katie Kelley Mareau received a court-approved payment of \$75,000 as a class representative. A copy of the Court's Order Approving Allocation and Distribution of Settlement Amounts and Award of

Attorneys Fees, Litigation Expenses and Incentive Awards is attached hereto as Exhibit "2".

As can be seen from the foregoing examples and the material previously provided to the Court, the sum of \$100,000 which has been agreed upon by all parties as part of the overall settlement of this case is not without precedent and is justified by the unusual circumstances involved in Plaintiff's services as class representative in this case. In addition to the information previously provided to the Court, and in supplementation of the points raised at the hearing on preliminary approval on January 30, 2007, Plaintiff's counsel Mark E. Merin has set forth additional factors regarding Plaintiff's service in this case which make the proposed payment of \$100,000 reasonable and justified. That information is set forth in Mr. Merin's Affidavit, Exhibit "1" hereto at pages 3-5. As the Court observed at the hearing, it took particular courage for Plaintiff to agree to be the sole class representative in what was a controversial and potentially unpopular cause.

WHEREFORE, for all of the foregoing reasons, Plaintiff respectfully requests that this Court enter its order granting the Joint Motion for Preliminary Approval of Class Action Settlement, including the class representative incentive payment.

Respectfully submitted,

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Attorneys for Plaintiff Sharon Allison

CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of February, 2007, I filed the foregoing electronically through the CM/ECF system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

Patrick D. Allen, Esq.
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/s/ Robert R. Rothstein, Attorney at Law
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