

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

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

Plaintiffs,

vs.

Civil No. 05-881 WJ/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.

**ORDER GRANTING PRELIMINARY APPROVAL**  
**OF CLASS ACTION SETTLEMENT AND**  
**CONDITIONALLY CERTIFYING THE CLASS**

THIS MATTER comes before the Court pursuant to the parties' Joint Motion for Preliminary Approval of Class Settlement (Doc. 51). The Court has considered the facts and legal authorities set forth in the motion, the exhibits to the motion and the Supplemental Memorandum in Support of Join Motion (Doc. 55). The Court has also considered the representations of counsel at a hearing conducted on January 30, 2007. In light of the representations of the parties and the relevant law, I conclude with reservations that there is good cause for preliminary approval of the class action settlement and for conditionally certifying the class.

Preliminary approval of a proposed class settlement is the first step of a two part process required for class action settlement. Manual for Complex Litigation Fourth § 21.632 (Fed. Jud. Ctr. 2004) (hereinafter “Manual”). While the court must make a fairness determination for preliminary approval, at the preliminary stage a court does not undertake a full and complete fairness review. Inter-Op Hip Prosthesis Liability Litigation, 204 F.R.D. 330, 350 (N.D. Ohio 2001) (citing Manual § 30.41 at 236-37 (3rd ed. 1995)). Generally, a court grants preliminary approval “where a proposed settlement appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of a the class, and falls within the range of possible [final] approval.” In re NASDAQ Market-Makers Antitrust Litigation, 176 F.R.D. 99, 102 (S.D.N.Y. 1997) (citing Manual § 30.41 (3rd ed. 1995)). “In making a preliminary assessment of the fairness of the proposed settlement agreement, the Court’s intrusion upon what is otherwise a private consensual agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.” Inter-Op Hip Litigation, 204 F.R.D. at 350. When a settlement is the result of extensive negotiations by experienced counsel, the Court should presume it is fair. Id. at 351 (citing Williams v. Vukovich, 720 F.2d 909, 923 (6th Cir. 1983); Duhaime v. John Hancock Mut. Life Ins. Co., 177 F.R.D. 54, 68 (D. Mass. 1997); In re Orthopedic Bone Screw Prods. Liab. Litig., 176 F.R.D. 158, 184 (E.D. Pa. 1997)).

I have carefully reviewed the Stipulation of Settlement, attached to the Joint Motion as Exhibit A, and the full contents of the record in this case. In light of the above principles of law, I

conclude that the settlement is the result of informed, serious, arms-length negotiations between the parties with no overreaching, fraud or collusion. I also conclude that the proposed settlement has no obvious deficiencies and falls within the range of possible final approval.<sup>1</sup> Accordingly, I will grant the parties motion for preliminary approval of the settlement.

I have also carefully reviewed the proposed Settlement Notices. The parties propose to send individual notice in English and Spanish to persons identified as potential class members. The parties also propose to publish notice in local newspapers and provide radio announcements in both English and Spanish. This notice meets the due process requirements because it is reasonably calculated to reach interested parties, and, to the extent the identity of individual parties is known, notice is being mailed individually. See Mullane v. Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950); Dejulius v. Sprint Corp., 429 F.3d 935 (10th Cir. 2005). The contents of the notice inform potential class members of the terms of the class settlement and the options of potential class members in a manner that may be understood by the average class member. Accordingly, I will approve the proposed settlement notices and authorize their dissemination.

The parties have proposed deadlines for publication and mailing of notice to the potential class, for allowing potential class members to opt out of the class, for the filing by potential class members of objections to settlement, for filing by potential class members of claims and for the fairness hearing. I find these deadlines reasonable and will herein adopt them.

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<sup>1</sup>At the hearing on this matter, I ruled that the parties had made a prima facie showing sufficient for preliminary approval with regard to the basic settlement agreement and the attorneys' fees provision. However, I ordered supplemental briefing on the issue of the incentive award for the class representative. While I continue to have reservations about the proposed incentive award, there is no obvious deficiency for purposes of the preliminary analysis.

With regard to conditional certification of the class, a class must meet the following prerequisites under Fed. R. Civ. P. 23(a) for certification: “(1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class.” Lopez v. City of Santa Fe, 206 F.R.D. 285, 288 (D.N.M. 2002); Fed. R. Civ. P. 23(a).

The proposed Settlement Class in this case consists of approximately 1,200 individuals. Joinder of this many persons would be impracticable, and I conclude that the numerosity requirement is met. The commonality requirement is met if putative class members’ grievances share a common question of law or fact. Lopez, 206 F.R.D. at 288. The claims on behalf of the class share several common questions of fact and law, and this case is dominated by the common issue whether Defendants policies and procedures with regard to strip searches of pre-arraignment detainees violated the rights of the members of the proposed Settlement Class. Resolving the issues with regard to each member of the class would depend largely upon common evidence. Accordingly, I conclude that the commonality requirement is met with respect to the proposed Settlement Class.

With regard to typicality, a plaintiff’s claim is typical “if it arises from the same event or practice or course of conduct that gives rise to the claims of other class members and if his or her claims are based on the same legal theory.” Lopez, 206 F.R.D. 289. In this case, the proposed class representative brings claims based on her allegations that, when she was a pre-arraignment detainee at the Lincoln County Detention Center, she was strip searched in violation of her rights. She brings these claims on behalf of the proposed class of persons who were subjected to the

same practices and course of conduct that gave rise to the alleged class-wide injury at issue. Accordingly, the typicality requirement is met.

The purpose of the adequacy requirement is to protect the legal rights of absent class members. Lopez, 206 F.R.D. at 289. “In order to adequately represent the class, two requirements must be met: (1) the class representative must not have interests antagonistic to those of the class; and (2) the attorneys representing the class must be qualified, experienced, and generally able to conduct the proposed litigation.” Lopez, 206 F.R.D. at 289-90. There is no conflict and no antagonistic interests between the proposed class representative and the members of the class. She alleges the same harm arising from the same course of conduct as the members of the proposed class. Based on the record in this case it is clear that proposed class counsel are highly qualified and experienced. Accordingly, I conclude that the adequacy requirement is met.

Based on the above, I conclude that the proposed settlement class with the proposed class representative meets the requirements Fed. R. Civ. P. 23(a). Having found this, I must now proceed to determine whether the requirements of Fed. R. Civ. P. 23(b) have been met. Class certification under Rule 23(b) is appropriate when “questions of law or fact common to the members of the class predominate” and “a class action is superior to other available methods” of adjudicating the controversy. Fed. R. Civ. P. 23(b)(3). In this case, Plaintiff’s claim meets both the predominance and superiority requirements. As already noted, the claims of the proposed class all arise from the alleged practice of the Defendants with regard to conducting strip searches of pre-arraignment detainees. The common legal issue whether this conduct violated the rights of the proposed class members predominates in this case, and a common trial of this issue is superior to conducting hundreds or even more than a thousand trials over this issue. Accordingly, I

conclude that the requirements of Fed. R. Civ. P. 23(b) are met and I will conditionally certify the class, appoint Plaintiff as the class representative, and appoint Plaintiff's counsel as class counsel.

IT IS THEREFORE ORDERED THAT:

1. The Court preliminarily approves the Stipulation of Settlement as fair, reasonable and adequate. Neither this preliminary order of approval nor the Stipulation of Settlement is a finding or an admission by Defendants of any liability or wrongdoing whatsoever.

2. The Court concludes that (1) the Settlement Class (as that term is defined in the Stipulation of Settlement) is so numerous that joinder of all member is impracticable, (2) there are questions of law and fact common to the Settlement Class, (3) the claims of the Plaintiff Sharon Allison ("Plaintiff") are typical of the claims of the Settlement Class, (4) the Plaintiff will fairly and adequately protect the interests of the Settlement Class, (5) the questions of law and fact common to the members of the Settlement Class predominate over any questions affecting only individual members, and (6) a class action is superior to other available methods for the fair and efficient adjudication of this controversy.

3. Pursuant to Fed. R. Civ. P. 23 and the Stipulation of Settlement, the Court hereby conditionally certifies a Settlement Class as that term is defined in Paragraph 14 of the Stipulation of Settlement.

4. The Court appoints Sharon Allison as Class Representative.

5. The Court appoints Mark E. Merin of the Law Office of Mark E. Merin, Andrew C. Schwartz of Casper, Meadows Schwartz and Cook, and Robert R. Rothstein of Rothstein, Donatelli, Hughes, Daholstrom, Schoenburg & Bienvenu, LLP as Class Counsel.

6. The Court approves the Administrator, as that term is defined in the Stipulation of Settlement, to be stipulated to by the parties or to be determined by further order of the Court, and authorizes the Administrator to perform those duties as defined in the Stipulation of Settlement.

7. The Court approves the Class Notice in the form attached to the Stipulation of Settlement as Exhibit 4. The Court approves the Claim Form attached to the Stipulation of Settlement as Exhibit 3.

8. Within thirty (30) days of the entry of this Order, the Defendants shall provide to the Administrator and Class Counsel the “Database” as that term is defined in Paragraph 8 of the Stipulation of Settlement and shall transmit by wire transfer or certified funds the Settlement Fund (as defined in Paragraphs 27-28 of the Stipulation of Settlement) to the Administrator or the Administrator’s designee for deposit in an interest-bearing qualified settlement fund.

9. The Administrator is directed to mail the Class Notice and Claim Form (“Notice Package”) to all members of the Settlement Class as set forth in the Stipulation of Settlement. The Administrator is further directed to publish the Notice as set forth in the Stipulation of Settlement and to ensure that announcements are made on the radio as set forth in the Stipulation of Settlement.

10. Such dissemination of the Class Notice is the best notice practicable under the circumstances, within the meaning of Fed. R. Civ. P. 23(c)(2)(B).

11. The Court shall conduct a Final Approval Hearing on **November 1, 2007 at 9:00 a.m.** to determine whether the Stipulation of Settlement should be finally approved as fair,


reasonable and adequate to the Settlement Class, and whether judgment should be entered accordingly.

12. Any Settlement Class member who so desires may object to the proposed settlement, or the proposed form of Final Approval, provided that the Class member refrains from opting out of the Settlement Class and otherwise complies with the procedures described in the Class Notice.

13. The Final Approval Hearing may be continued or adjourned by order of the Court without further notice to the Class.

14. If the Stipulation of Settlement is finally approved by the Court, then upon the occurrence of the effective date, all Settlement Class members who do not timely exclude themselves from the Settlement Class – whether or not they file a timely and valid Claim Form, or any claim at all – shall be barred and enjoined from asserting any of the claims released in the Stipulation of Settlement, shall conclusively be deemed to have released any and all such claims, and shall be subject to and bound by the provisions of the Stipulation of Settlement and the Final Judgment.

15. Until the Court finally determines whether the Stipulation of Settlement should be approved, no member of the Settlement Class who has not timely and validly opted out of the settlement may commence or prosecute any action or proceeding in any forum asserting any of the claims that are the subject of the Stipulation of Settlement.

  
UNITED STATES DISTRICT JUDGE