

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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NICHOLE MARIE McDANIEL, and  
LESSIE LEE DAVIES,  
both individually and on behalf of a class of others  
similarly situated,

-against-

Index No. 1:04-CV-0757(GLS)(RFT)

COUNTY OF SCHENECTADY,  
HARRY BUFFARDI, both individually and in  
His official capacity as Sheriff of the County of  
Schenectady, GORDON POLLARD, both  
Individually and as Undersheriff of the  
County of Schenectady, and ROBERT  
ELWELL, both individually and as Major  
In the Schenectady County Sheriff's Department,

Defendants.

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**ORDER PRELIMINARILY APPROVING SETTLEMENT**

WHEREAS, the Plaintiffs and Defendants have entered into a  
Settlement Agreement intended to resolve the litigation pending in this  
Court; and

WHEREAS, the Settlement Agreement, together with supporting  
materials, sets forth the terms and conditions for a proposed settlement  
and dismissal with prejudice of these actions against the Defendants; and

WHEREAS, the Court has before it the parties' Motion for Preliminary

Approval of Settlement and Memorandum in Support of Motion for Preliminary Approval of Settlement, together with the Settlement Agreement and supporting materials; and

WHEREAS, the Court is satisfied that the terms and conditions set forth in the Settlement Agreement were the result of good faith, arm's length settlement negotiations between competent and experienced counsel for both Plaintiffs and Defendants,

**IT IS HEREBY ORDERED AS FOLLOWS:**

1. Capitalized terms used in this Order have the meanings assigned to them in the Settlement Agreement and this Order.
2. The terms of the parties' Settlement Agreement are hereby conditionally approved, subject to further consideration thereof at the Final Approval Hearing provided for below. The Court finds that said settlement is sufficiently within the range of reasonableness and that notice of the proposed settlement should be given as provided in this Order.
3. Pursuant to Fed R. Civ. P. 34 the Court conditionally certifies the following settlement class:

All persons who were placed into the custody of the Schenectady County Jail during the period June 29, 2001, through and including June 29, 2005, after being charged with misdemeanors, violations, traffic violations, violations of probation or parole, or held on civil matters, and were strip

searched upon their entry into the Jail. Specifically excluded from the class are Defendants and any and all of their respective affiliates, legal representatives, heirs, successors, employees or assignees.

4. The Court further conditionally finds that Plaintiff Lessie Davies is an adequate class representative for the Settlement Class.

5. The Court further finds that Plaintiffs' Counsel are adequate Class Counsel.

6. The Court approves the Class Notice of Settlement attached hereto as Exhibit A and the Summary Notice for Publication attached hereto as Exhibit B. The Court also approves the Notice Program as set forth in Paragraph IV of the Settlement Agreement.

7. If the Settlement Agreement is terminated or not consummated for any reason whatsoever, the conditional certification of the Settlement Class shall be void, the Defendants shall have reserved all their rights to oppose any and all class certification motions, to contest the adequacy of Plaintiffs as representatives of any putative class, and to contest the adequacy of Class Counsel as adequate Class Counsel. Additionally, Plaintiffs have reserved all of their rights, including their right to continue with the litigation pending at the time of the settlement.

*Notice to Settlement Class and Appointment of Settlement Administrator*

8. Counsel for the Class (“Class Counsel”) are as follows:

Elmer R. Keach, III, Esq.  
1040 Riverfront Center  
P.O. Box 70  
Amsterdam, NY 12010  
Telephone (518) 434-1718  
Facsimile (518) 770-1558

Bruce E. Menken, Esq.  
Jason J. Rozger, Esq.  
BERANBAUM MENKEN BEN-ASHER & BIERMAN LLP  
80 Pine Street, 32<sup>nd</sup> Floor  
New York, NY 10005  
Telephone (212) 509-1616  
Facsimile (212) 509-8088

Gary Mason  
THE MASON LAW FIRM, PLLC  
1225 19<sup>th</sup> Street, NW  
Suite 600  
Washington, DC 20036  
Telephone (202) 429-2290  
Facsimile (202) 429-2294

Charles LaDuca, Esquire  
CUNEO WALDMAN & GILBERT, LLP  
507 C Street NE  
Washington, DC 20002

9. Beginning no later than November 27, 2006, Class Counsel shall cause to be disseminated the notices, substantially in the form attached as Exhibits A and B hereto, in the manner set forth in Paragraph IV of the Settlement Agreement. Such Notice Program will be completed expeditiously pursuant to the terms of the Settlement Agreement. Class members

will have until February 26, 2007 to opt out and March 28, 2007 to file claims. Prior to the Final Approval Hearing, Plaintiffs and/or the Claims Administrator shall serve and file a sworn statement attesting to compliance with the provisions of this paragraph.

10. The notice to be provided as set forth in the Settlement Agreement is hereby found to be the best practicable means of providing notice under the circumstances and, when completed, shall constitute due and sufficient notice of the proposed settlement and the Final Approval Hearing to all persons and entities affected by and/or entitled to participate in the settlement, in full compliance with the notice requirements of Fed R. Civ. P. 23, due process, the Constitution of the United States, the laws of New York and all other applicable laws. The Notices are accurate, objective, informative and provide Class members with all of the information necessary to make an informed decision regarding their participation in the Settlement and its fairness.

11. Class Counsel are authorized to retain Rust Consulting, Inc., 625 Marquette Avenue, Suite 880, Minneapolis, MN 55402 in accordance with the terms of the Settlement Agreement and this Order.

*Requests for Exclusion from the Settlement Class*

12. Any member of the Settlement Class that wishes to be excluded (“opt

out”) from the Settlement Class must send a written Request for Exclusion to the Claims Administrator, so that it is received by the Claims Administrator at the address indicated in the Notice on or before the close of the opt out period. The Request for Exclusion shall fully comply with the requirements set forth in the Settlement Agreement. Members of the Settlement Class may not exclude themselves by filing Requests for Exclusion as a group or class, but must in each instance individually and personally execute a Request for Exclusion and timely transmit it to the Claims Administrator.

13. Any member of the Settlement Class who does not properly and timely request exclusion from the Settlement Class shall be bound by all the terms and provisions of the Settlement Agreement, whether or not such person objected to the Settlement and whether or not such person made a claim upon, or participated in, the Settlement Fund pursuant to the Settlement Agreement.

*The Final Approval Hearing*

14. A hearing on final settlement approval (the “Final Approval Hearing”) is hereby scheduled to be held before this Court on May 1, 2007, to consider the fairness, the reasonableness, and adequacy of the proposed settlement, the dismissal with prejudice of this class action with respect to

the Released Parties that are Defendants herein, and the entry of final judgment in this class action. Class Counsel's application for award of attorney's fees and costs shall be heard at the time of the fairness hearing.

15. The date and time of the Fairness Hearing shall be set forth in the Notice, but the Fairness Hearing shall be subject to adjournment by the Court without further notice to the members of the Settlement Class other than that which may be posted by the Court. Class Counsel will advise members of the settlement class of any scheduling issues by way of the settlement website.

16. Any person or entity that does not elect to be excluded from the Settlement Class may, but need not, enter an appearance through his or her own attorney. Settlement Class members who do not enter an appearance through their own attorneys will be represented by Class Counsel.

17. Any person who does not elect to be excluded from the Settlement Class may, but need not, submit comments or objections to the proposed Settlement. Any Class member may object to the proposed Settlement, entry of Final Order and Judgment approving the settlement, and Class Counsel's application for fees and expenses by serving a written objection.

18. Any Class member making the objection (an "objector") must sign the objection personally. An objection must state why the objector objects to

the proposed Settlement and provide the basis to support such position. If an objector intends to appear personally at the Fairness Hearing, the objector must include with the objection a notice of the objector's intent to appear at the hearing.

19. Objections, along with any notices of intent to appear, must be filed no later than February 26, 2007. If counsel is appearing on behalf of more than one Class Member, counsel must identify each such Class Member and each Class Member must have complied with the requirements of this Order. These documents must be filed with the Clerk of the Court at the following address:

Clerk of the Court  
U.S. District Court for the Northern District of New York  
James T. Foley U.S. Courthouse  
445 Broadway  
Albany, NY 12207

20. Objections, along with any notices of intent to appear, must also be mailed to Class Counsel and counsel for Defendant at the address listed below:

**CLASS COUNSEL**

Elmer R. Keach, III, Esq.  
1040 Riverfront Center  
P.O. Box 70  
Amsterdam, NY 12010



**DEFENSE COUNSEL**

William J. Greagan, Esq.  
Goldberg Segalla LLP  
8 Southwoods Boulevard  
Suite 204  
Albany, NY 12211

21. Only Class Members who have filed and served valid and timely notices of objection shall be entitled to be heard at the Fairness Hearing. Any Class Member who does not timely file and serve an objection in writing to the Settlement, entry of Final Judgment, or to Class Counsel's application for fees, costs, and expenses, in accordance with the procedure set forth in the Class Notice and mandated in this Order, shall be deemed to have waived any such objection by appeal, collateral attack, or otherwise.
22. Persons wishing to be heard at the Fairness Hearing are required to file written comments or objections and indicate in their written comments or objections their intention to appear at the Fairness Hearing. Settlement Class members need not appear at the hearing or take any other action to indicate their approval.
23. All members of the Settlement Class who do not personally and timely request to be excluded from the Class are enjoined from proceeding against the Defendants for the claims made in the Complaint.

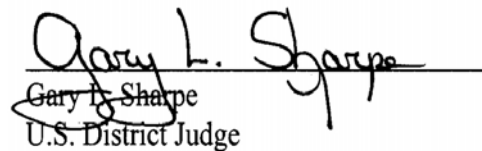
Other Provisions

24. Upon approval of the settlement provided for in this Settlement Agreement, each and every time period and provision thereof shall be deemed incorporated herein as if expressly set forth and shall have the full force and effect of an Order of this Court.

25. All reasonable costs incurred in notifying members of the Settlement Class, as well as administering the Settlement Agreement, shall be paid as set forth in the Settlement Agreement.

IT IS SO ORDERED.

Albany, New York  
Dated: October 25, 2006

  
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Gary L. Sharpe  
U.S. District Judge