

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

FILED

2011 JAN 12 P 12:57

CLERK, US DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY J. [Signature]
DEPUTY

JULIA ANN JACKSON, ERICA BERNAL,)
and MARTIN MARTINEZ, Individually)
and on Behalf of a Class of Others)
Similarly Situated,)
Plaintiffs,)

vs.)

CIVIL ACTION NO. SA-07-CA-928-FB

THE COUNTY OF BEXAR,)
Defendant.)

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

On January 12, 2011, pursuant to this Court's Order of October 13, 2010, and the Court having conducted 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. At the time of this hearing the Settlement Class Members having been represented by Class Counsel, and Defendant having been represented by its attorneys;

The Court having read and considered the Settlement Agreement, the Notice Plan, the Memorandum of Law submitted by Class Counsel and the Certification of Charles J. LaDuca, one of the Class Counsel, in support of the Settlement, having received evidence at the hearing, having heard arguments from Class Counsel and the Defendant and any Objector present, and having considered all matters in this case, now makes the following findings of fact, conclusions of law and ruling:

FINDINGS OF FACT

1. This action was commenced on November 15, 2007, as a class action.
2. Plaintiffs initiated this lawsuit and alleged Bexar County maintained a strip search policy and practice throughout the class period, pursuant to which all newly admitted pre-trial detainees, including those admitted on misdemeanor offenses, were subjected to a strip search, often in a group setting, after being transported to the Bexar County Adult Detention Center. To facilitate an inspection of body cavities, Plaintiffs contend detainees were required to manipulate their genitalia and buttocks, and sometimes “squat and cough” in view of a corrections officer. Female detainees were also required to manipulate their breasts. The strip search procedure involved an inspection of detainees’ naked bodies, as well as the visual inspection of their body cavities. Plaintiffs allege that this policy and practice applied to all detainees, without regard to the existence of reasonable suspicion to believe they were concealing contraband. Plaintiffs complain that in practice they were touched in an offensive manner or reasonably believed that they were about to be touched, or subjected to offensive touching. Plaintiffs allege these actions constituted a battery or assault.
3. After the almost three years of litigation, including motion practice and an intensive, arm’s length negotiation between Class Counsel and Defendants, including numerous mediation sessions with Michael Curry, Esquire, the parties have reached accord with respect to a Settlement which provides substantial benefits to Settlement Class Members, in return for a release and dismissal of all claims at issue in this case against the Defendant (“Settlement Agreement”). The resulting Settlement Agreement was preliminarily approved by this Court on October 13, 2010, and in the Order Granting Preliminary Approval.

4. 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 Settlement Class Members to file objections to the Class Settlement, and an opportunity to opt-out of the Class Settlement.
5. As of January 4, 2011, the Claims Administrator mailed a total of 34,375 Claim Packets to known and potential Class Members.
6. The Claims Administrator determined a total of 29,602 unique individuals are eligible Class Members.
7. As of January 4, 2011, the Claims Administrator received approximately 2,575 Claim Forms.
8. Assuming all of the Claims Forms received to date are valid, the claims rate, out of 29,603 unique individuals, is approximately 8.7%, and this rate is almost certain to rise given that Class Members have until March 16, 2011 to submit claims.
9. Class Counsel anticipate the ultimate valid claims rate will be at least 15%, which is within the typical rate of return of claims in strip search class actions.¹

¹ *Williams v. County of Los Angeles*, 97-cv-03826 (C.D. Cal.) (approximately 9% claims rate); *Craft v. San Bernardino County*, 05-cv-0359 (C.D. Cal.) (approximately 14% claims rate); *Tyson v. City of New York*, 97-cv-3762 (S.D.N.Y.) (approximately 12% claims rate); *Leyba v. County of Santa Fe Bd. of Commissioners*, 05-cv-0036 (D.N.M.) (approximately 17% claims rate); *Haney v. County of Miami Dade*, 04-cv-20516 (S.D. Fla.) (approximately 16% claims rate); *Connor v. Plymouth County*, 00-cv-10835 (D. Mass.) (approximately 18% claims rate); *Boisselle v. County of Mercer*, No. 06-2065 (D.N.J. April 20, 2009) (approximately 22% claims rate); *Graff v. County of Salem*, 07-2259 (D.N.J.) (approximately 30% claims rate); *Hicks v. County of Camden*, No. 05-1857 (D.N.J.) (approximately 16% claims rate); *Mitchell v. County of Clinton*, No. 06-0254 (N.D.N.Y.) (approximately 20% claims rate); *Reynolds v. County of Dauphin*, 07-1688 (M.D. Pa.) (approximately 30% claims rate); *Suggs v. County of Cumberland*, No. 06-00087 (D.N.J.) (approximately 32% claims rate); *Wilson v. County of Gloucester*, No. 06-01368 (D.N.J.) (approximately 32% claims rate)

10. Assuming the ultimate valid claims rate is 15%, with 80% of the claims received from members of Subclass 1, and the remaining 20% from members of Subclass 2, the payments to members of Subclass 1 would be approximately \$437 and the payments to members of subclass 2 would be \$100.²

11. As of the deadline for the filing of objections, four objections were filed. Given the size of this Settlement, and the Notice Plan described above, this Court finds that the total of four objections is indicative the plan is fair, reasonable and adequate.

12. 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, is complete. Additionally, Class Counsel evidenced the establishment of the Court-approved Class Settlement website.

13. The Court finds the Notice Plan, as effectuated, constitutes 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. The Court finds the Class Settlement 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 Texas and any other applicable law.

14. Any persons who wished to be excluded from this action were provided an opportunity to "opt-out" pursuant to the Notice. Ten individuals opted out of the settlement, though only five of these individuals are Class Members.

² This figure was calculated based on the current available settlement amount of \$3 million, after the deduction of attorneys' fees, expenses, incentive awards, and administration-related expenses.

15. Settlement Class Members 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.

16. Any Settlement 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 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. Four individuals filed objections, and each was considered by the Court prior to the issuance of this Order.

17. On the basis of all of the issues in this litigation, and the provisions of the Settlement Agreement, the Court is of the opinion the Class Settlement is a fair, reasonable and adequate compromise of claims against the Defendant in this case, pursuant to Rule 23 of the Federal Rules of Civil Procedure. There are a number of factors which the Court considered in affirming this Settlement, including:

- a. The liability issues in this case have been vigorously contested.
- b. Bexar County has continually asserted its policy has not been adjudged unconstitutional and that it carried out the strip search policy specifically to ensure the safety of detainees, employees of the jail, law enforcement officers and the general public, and for no other objectionable purpose.
- c. This Settlement has the benefit of providing relief to Settlement 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 Settlement Class Members with a substantial monetary benefit.

d. 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 Defendant.

18. The claims procedure established under the Settlement Agreement is fair, a simplified process, and workable. The Court retains jurisdiction to work out any unanticipated problems.

CONCLUSIONS OF LAW

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

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

All pre-trial detainees confined to the Bexar County Adult Detention Center between November 15, 2005 and April 9, 2009 who were subjected to a strip search before being sent to jail housing after being booked on misdemeanor or other minor charges. Specifically excluded from the class are pre-trial detainees who were subjected to strip search before being sent to jail housing after being booked on a felony charge, or a felony charge and misdemeanor charge.

The Court also certifies the following two settlement subclasses:

Subclass I: All persons in the Settlement Class, not in Subclass II.

Subclass II: All persons in the Settlement Class who were admitted on misdemeanor charges of narcotics, shoplifting and weapons violations. The misdemeanor offenses which qualify as those constituting charges of narcotics, shoplifting and weapons violations are defined by the parties in Exhibit G to this Settlement Agreement.

21. 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 Settlement Class Members are ascertainable and too numerous to be joined. Questions

of law and fact common to all Settlement Class Members predominate over individual issues and should be determined in one proceeding with respect to all Settlement Class members. The Class Representatives' claims are typical of those of the Class. The Class action mechanism is superior to alternative means for adjudicating and resolving this action.

22. The Settlement Class Representatives, Julia Ann Jackson, Martin Martinez, and Erica Bernal, are entitled to and are each hereby awarded a payment of \$15,000, in recognition of the efforts they undertook in connection with this lawsuit. All Settlement Class Members who have made claims on the settlement are entitled to receive their *pro rata* share of the settlement fund for Subclass I, or Subclass II, after administrative expenses, attorneys' fees and expenses, and incentive awards are deducted from the fund.

23. Class Counsel are qualified, experienced, and have aggressively litigated this case, thereby demonstrating their adequacy as counsel for the Settlement Class. Charles J. LaDuca, Esq. and Alexandra C. Warren, Esq. of Cuneo Gilbert & LaDuca, LLP, Washington, DC; Sam H. Lock, Esq. of the Law Offices of Sam H. Lock, San Antonio, Texas; Elmer Robert Keach, III, Esq. of the Law Offices of Elmer Robert Keach, III, Amsterdam, New York; Gary M. Mason, Esq. and Nicholas Migliaccio, Esq. of the Mason Law Firm, LLP, Washington, DC; James C. Harrington, Esq. of the Texas Civil Rights Project, Austin, Texas; and Kerrisa Chelkowski, Esq. of the Law Office of Kerrisa Chelkowski, San Antonio, Texas; are hereby appointed as Class Counsel. Class Counsel submitted to the Court and served on Defendant their application for reasonable attorneys' fees, costs, and expenses consistent with the terms of the Settlement Agreement, in the amount of \$900,000. The time spent on this litigation so far by Class Counsel is at least 1,931.35 hours of lawyer and legal assistant time. This amounts to a total lodestar of at least \$782,025.00. This amount is reasonable given the time spent, the complex

nature of this litigation, the fact that Class Counsel took this case on a contingent fee basis, and the fee is consistent with fees granted in similar cases. Further, it appears that the total lodestar will not lead to any multiplier or will yield a negative multiplier. With respect to expenses, Class Counsel have incurred at least \$60,194 in expenses in connection with the prosecution of this litigation, further reducing the multiplier. Accordingly, the Court find that final approval of attorneys' fees and expenses in the amount of \$900,000 is warranted.

24. The Court finds the payment of the incurred and anticipated expenses of \$345,000 of the Claims Administrator, the Garden City Group, and the website administrator, as set forth in the Certification of Charles J. LaDuca is reasonable and justified.

Accordingly, on the basis of the foregoing Findings of Fact and Conclusions of Law, it is ORDERED, ADJUDGED and DECREED that:

25. The motion for Final Approval of the proposed Settlement is GRANTED.

26. The Class Representatives, Julia Ann Jackson, Martin Martinez, and Erica Bernal, are hereby awarded a payment of \$15,000 each, in recognition of the efforts each undertook in connection with this lawsuit. All Settlement Class Members who have made claims on the settlement are entitled to receive their *pro rata* share of Subclass I or Subclass II of the Settlement Fund after administrative expenses, attorneys' fees and expenses, and incentive awards are deducted from the fund.

27. The Class Counsel's application for attorneys' fees and expenses is granted in the amount of \$900,000.

28. The costs and expenses incurred to date or hereafter incurred for finalization of the Settlement by the Claims Administrator and Website Administrator, estimated to be \$395,000 and subject to

approval by Class Counsel, are granted. The Garden City Group can disburse such reasonable administrative costs from the Class Settlement Funds.

29. If a Class Member owes a Medicare lien it must be paid.

30. If a Class Member who has filed a valid claim owes fines, fees, court costs or restitution by virtue of a court order by a Bexar County Judge, that amount will be subtracted first from any Class Member's check, with the maximum of any such payment being one-half of that Class Member's payment, capped at \$500.00 for Subclass I Class Members and \$50.00 for Subclass II Class Members. This subtracted amount will be paid directly to Bexar County.

31. If after distribution of Settlement checks to Settlement Class Members, there are unclaimed funds as a result of Settlement checks being issued which are undeliverable or uncashed after 12 months, the Settlement Administrator shall pay these funds to the Bexar County Inmates Commissary Fund.

32. If remaining funds exist after the pro rata distribution is made to the Settlement Class, with the maximum payment to Members of Subclass I being \$1,000.00 and the maximum payment to Members of Subclass II being \$100.00, then Bexar County will receive a reverter of the remaining funds.

33. The Court will retain jurisdiction over the settlement until all outstanding litigation is concluded regarding the pending insurance coverage action between Bexar County and State National Insurance Company and/or Star Insurance Company, and the settlement will remain open during that litigation. In the event additional funds are to be paid into the settlement, then the Court will revisit an additional distribution of those funds at that time. The settling parties may petition this Court to cease jurisdiction and close the file at the completion of the administration of the Settlement Class Fund.

34. All Settlement Class Members who have not timely filed an opt-out request are deemed to have waived any rights or benefits under the Settlement Agreement and are barred and enjoined from commencing any claim or action, individually or as a class action, that is based upon or related to the strip search, booking process and related incidents that are the subject of the Settlement Agreement.

35. Defendant is hereby ORDERED to disclose the personal information of Class Members, to the reasonable extent necessary, including known address, dates of birth and social security numbers, to Class Counsel and the Claims Administrator, in order to facilitate the identification of Class Members for purposes of mailing notice and assessing the validity of claims.

36. In accordance with the law, only Class Members who object to the Settlement pursuant to the terms immediately above may appeal this Order Granting Final Approval of Class Action Settlement and Judgment. Any Class Member who wishes to appeal this Order Granting Final Approval of Class Action Settlement and Judgment, which appeal will delay the distribution of the Settlement to the Class, shall post a bond with this Court in th amount of \$ _____.

TO BE DECIDED

ASB

37. Out of a total of 29,603 Class Members, only four objections were submitted. Mr. Johnny Vela and Mr. Ronald Fuller object to the settlement because they believe it does not provide them with sufficient compensation. Mr. Sterling Allen objects to the Class definition. Ms. Virginia Cooks, though counsel, objects to the adequacy of the notice of the settlement fund, the Class Members' expectation of benefits, incentive rewards for class representatives, the propriety of attorneys' fees request, and to the presence of a reverter and a bond requirement. Having considered each objection, the Court finds that each argument is without merit.

38. Motions pending with the Court, if any, are Dismissed as Moot.

It is so ORDERED, ADJUDGED and DECREED.

SIGNED this 12 day of January, 2011.



FRED BIERY
CHIEF UNITED STATES DISTRICT JUDGE