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16 **UNITED STATES DISTRICT COURT**
17 **CENTRAL DISTRICT OF CALIFORNIA**

18 MARY AMADOR, et al.,

19 Plaintiffs,

20 vs.

21 SHERIFF LEROY D. BACA, etc., et al.,

22 Defendants.
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Case No. CV 10-01649 SVW (JEMx)

[Honorable Stephen V. Wilson]

**NOTICE OF MOTION AND MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT;
[PROPOSED] ORDER;
DECLARATIONS AND EXHIBITS**

Date: August 12, 2019

Time: 1:30 P.M.

Place: Courtroom 10A

1 TO DEFENDANTS AND TO THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that, on August 12, 2019, at 1:30 P.M, or as soon
3 thereafter as this matter may be heard in Courtroom 10A of the United States
4 District Court for the Central District of California, 350 West First Street, Los
5 Angeles, California 90012, Plaintiffs will, and hereby do, move the Court to
6 preliminarily approve the proposed settlement in this case, and to authorize the
7 mailing and other forms of notice to class members.

8 This motion is unopposed and is based on the accompanying Memorandum
9 of Law, the stipulation of all parties to entry of the proposed Preliminary Approval
10 Order, the proposed Preliminary Approval Order and exhibits thereto filed
11 concurrently, the files and records in this case, and on such further evidence as
12 may be presented at a hearing on the motion.

13 DATED: July 16, 2019

Respectfully submitted,

14 Kaye, McLane, Bednarski & Litt, LLP

15 By: /s/ Barrett S. Litt

16 Barrett S. Litt

Attorneys for Plaintiffs

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18 By: /s/ Lindsay Battles

19 Lindsay Battles

Attorneys for Plaintiffs

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1 **MEMORANDUM OF POINTS & AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs are former detainees of the Los Angeles Sheriff’s Department’s
4 Century Regional Detention Facility (hereafter “CRDF”). Plaintiffs filed this class
5 action lawsuit in 2010 challenging what they contended was the systematic
6 violation of their constitutional rights through the unnecessarily humiliating and
7 dehumanizing manner of strip searching female inmates entering CRDF. The Court
8 entered its final class certification order on November 18, 2016. Dkt. 327. It
9 granted Plaintiffs’ motion for summary judgment on liability for the damages
10 classes on June 7, 2017. Dkt. 361 (2017 WL 9472901).

11 Plaintiffs contend that, between 2006 and 2015¹, the LASD routinely
12 subjected female inmates to highly invasive body cavity inspections, in large
13 groups (often over 40 women), without individual privacy, and despite the absence
14 of a penological justification and the ready availability of alternatives, in violation
15 of the Fourth Amendment. Plaintiffs specifically challenged as unconstitutional the
16 search procedures common to the whole period, which included practices that
17 required female inmates to (1) manually spread their labia to expose their vaginal
18 opening in the presence of a group; and (2) expose their naked body – including
19 bare pubic region and bare breasts – in the presence of a group. Plaintiffs
20 contended that the use of these specific, highly invasive, gender-specific
21 procedures in a group setting, without individual privacy, despite the known risk of
22 trauma to female inmates and despite the availability of inexpensive, fully secure
23 alternatives that would have provided privacy for the most egregious intrusions
24 was unconstitutional, represented an extreme departure from accepted practice in
25

26 ¹ While the practice goes back to 2006, the complaint was filed in 2010, and thus the
27 class period begins in 2008, specifically March 5, 2008, which is two years before the
28 filing of the complaint. The class period is between March 5, 2008 (two years before the
filing of the complaint) and January 1, 2015 (the date body scanners or privacy partitions
were available for all CRDF strip searches).

1 women’s detention facilities, and were unsupported by a valid penological
2 justification. The County’s representative testified that that privacy curtains, which
3 she installed in 2015, were always a viable option and “could have solved the
4 privacy problem years ago [had someone thought of them].”²

5 In addition to these core conditions, applicable to all class members across
6 the full class period, Plaintiffs also challenged several specific practices applicable
7 to specific time periods or subclasses of women. Plaintiffs challenged the practice
8 of requiring menstruating women to publicly identify themselves and remove their
9 tampons or pads in view of other detainees, and before completing the visual-body-
10 cavity inspection, which often caused them bleed on themselves or the ground.
11 Plaintiffs likewise challenged LASD’s practice of searching women outside in cold
12 weather conditions. Because the inmates were wearing no clothing, shoes or socks,
13 the air temperature would often have felt as though it were in the 40’s or 50’s.
14 Plaintiffs also challenged more intrusive practices used during the first several
15 years of the class, including the requirements that women: (1) face each undressed,
16 with bare breasts and underwear pulled to their knees, while performing various
17 steps in the search process (including inspection of the area under their breasts and
18 stomachs and inspection of their mouths); and (2) that two parallel lines
19 simultaneously complete the visual body cavity inspection by bending over and
20 looking through their legs while deputies inspect their rectum and vagina, one-by-
21 one, during which time they could not avoid seeing similarly positioned women on
22 the opposite wall. The Court did not need to reach whether these additional
23 conditions were unreasonable under the Fourth Amendment because it found that
24 the core conditions, common throughout all time periods and applicable to all class
25

26 ² While there was initially a claim for injunctive relief, Plaintiffs agreed that the
27 installation of the previously described body scanners and privacy partitions mooted that
28 claim. Thus, the settlement only addresses damages except for the provision for the
development of gender responsive policies and the retention of the Moss Group and the
Center for Gender and Justice.

1 members, uniformly violated all class members’ constitutional rights.

2 The parties held three full day in-person settlement conferences before the
3 Hon. George H. King (Ret.), as well as numerous discussions among or between
4 counsel and Judge King. After extensive arms-length negotiations, the parties
5 reached a settlement, which is contingent on this Court’s approval. Declaration of
6 Barrett S. Litt (hereafter “Litt Dec.”), ¶ 4. Even after settlement in principle was
7 reached, it has taken over a year to agree to the specific settlement terms. The
8 proposed settlement has now been agreed to by all parties. After a bidding process,
9 the parties have agreed to a Class Administrator (JND Legal Administration).

10 **II. TERMS OF THE SETTLEMENT**

11 The terms of the settlement are set forth in greater detail in the exhibits
12 attached to the Proposed Preliminary Approval Order (specifically in the
13 Settlement Agreement), which exhibits are as follows:

- | | | |
|----|-----------|--|
| 14 | Exhibit A | Settlement Agreement |
| 15 | Exhibit B | Proposed Class Notice |
| 16 | Exhibit C | Claim Form |
| 17 | Exhibit D | JND Class Administration Bid and Credentials |

18 In summary, the settlement’s basic terms, as they relate to Damages Class
19 Members, are that Defendants will provide payment of a total of Fifty-Three
20 Million dollars (\$53,000,000) equally spread over a three-year period into a Class
21 Fund. From that amount, the following awards will be made, subject to court
22 approval:

- 23 a. Incentive awards to the 9 Named Plaintiffs in the amount of \$10,000 each
24 (for a total of 90,000).
- 25 b. As a form of indirect compensation to absent Class Members, up to \$3
26 million of the Class Fund will be used to fund contracts between the
27 County of Los Angeles, on the one hand, the Moss Group and the Center
28 for Gender and Justice (“CGJ”), on the other hand (the “Moss/CGJ
Contracts”). Both organizations have significant experience in assisting

1 local, state, and national correctional agencies in the development of
2 gender-responsive and trauma-informed practices, programming, and
3 services. The purpose of the contracts shall be to help develop a
4 strengthened model of gender-responsive policy and operational practice
5 at all LASD facilities that house female inmates (including CRDF and
6 Twin Towers), while enhancing the culture of safety and respect for both
7 staff and the inmate population. The contracts will include preliminary
8 assessment/evaluation, and may also include the provision of expertise,
9 leadership, technical assistance, and services in the following areas:
10 system analysis/operations, policy review and development, strategic
11 planning, program development/inmate services, training/culture, and
12 ongoing assessment. The Moss/CGJ contracts shall be secured in
13 furtherance of the Los Angeles County Board of Supervisors' effort to
14 facilitate the design and implementation of gender-responsive systems
15 within the Los Angeles County criminal justice system, as reflected in the
16 Board of Supervisors' February 2019 motion titled "Building a Gender-
17 Responsive Criminal Justice System."

- 18
- 19 c. Payment of the third-party class settlement administration costs to the
20 chosen class administrator, JND Legal Administration, estimated at a
21 maximum of approximately \$464,000 for a claims rate of up to 33%
22 (which, based on counsel's experience in jail cases, is substantially
23 higher than the expected claims rate). However, depending on the
24 response rate to the notice, Plaintiffs' counsel may request that JND do
25 greater outreach, which would increase the cost.³
- 26 d. Plaintiffs will file a motion for attorney's fees and costs to be approved
27 by the court. The agreement provides that Plaintiffs' counsel may request
28 up to 1/3 of the class fund but not more, plus reimbursement of litigation

22 ³ Plaintiffs' counsel wish to advise the court that they contracted with JND, with whom
23 they have worked on other class actions, to do class members outreach prior to reaching a
24 settlement agreement to do class outreach. Plaintiffs' counsel considered it vital to a
25 successful settlement process to reach a significant number of class members pre-notice
26 in order to demonstrate that they would be in a position to proceed with at least several
27 hundred, and potentially over 1000, individual damages cases if the case did not settle on
28 a class basis even without the benefit of class notice. This cost was incurred by Plaintiff's
counsel, who will seek reimbursement from the Class Fund in the motion for attorney's
fees and costs. JND was chosen as the Class Administrator for the case through a
competitive bidding process, in which it was the judgment of Plaintiffs' counsel that the
JND bid presented the best value for the class.

1 costs.

2 e. The remainder of the Class Fund (estimated as a minimum of slightly
3 under \$31 Million) shall be distributed to the class members (including
4 Named Plaintiffs/Class Representatives) under a formula contained in
5 ¶¶ 5-13 of the Settlement Agreement (Exhibit A to the proposed
6 Preliminary Approval Order), particularly ¶ 7.

7 The distribution formula awards a certain number of points for each
8 strip/visual body cavity search. The number of points per search ranges between 70
9 – 100, based on the time period in which the search occurred. The points vary
10 according to time period because the invasiveness of the search conditions varied
11 over time, with the worst conditions occurring prior to July 2011. Each search
12 conducted at a temperature of 70 degrees or less receives an additional 10-points.
13 The per-search points are assigned to each class member, up to their 50th search.⁴
14 This cap is to ensure that outliers who have outsized claims do not distort the
15 meaningfulness of the recovery to the remaining class members. (Such outliers
16 would be entitled to opt out and pursue their own claims if they so chose.)

17 Once the claims period closes, the claims administrator will calculate the
18 total points for each class member and total points for all claiming class members
19 who submitted timely claims.⁵ Each class member's recovery will be determined
20 based on that class member's percentage of the total points for all class members.
21 Despite the foregoing, no class member who qualifies for payment will receive less
22 than a total of \$200. (This minimum payment amount would apply only in the
23 event of an unexpectedly high claims rate).

24 The Class Fund is non-reversionary. However, to ensure that there is not a
25 windfall to claiming class members in the event of a very low claims rate, there
26 will be a donation to *cy pres* organizations to be agreed on to the extent that the
27

28 ⁴ The “50-search cap” applies to less than .04% of the class.

⁵ The Settlement Agreement provides how to determine what claims are timely.

1 total value of claims is less than the agreed upon “Minimum Remainder” of \$31
2 Million. The value of the claims for purposes of this provision is based on the
3 following chart.

CY PRES FORMULA	
# SEARCHES	AMOUNT
1-3	\$5,000
4-6	\$10,000
7-10	\$15,000
11+	\$20,000

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10 This issue is addressed more fully in Section VI of the Settlement Agreement.

11 Defendants have the right to withdraw from the settlement if more than 250
12 class members opt out of the settlement.

13 The settlement provides for the Class Administrator (JND Legal
14 Administration, see Fn. 3) to issue notice to all class members via a combination of
15 text message, email, and first class mail notice. Initial notice will be sent by US
16 mail unless JND is able to locate both a mobile phone number and email address,
17 in which case it will initially be sent by both of those means, with follow up notice
18 by regular mail for those who do not file claims in response to text message/email
19 notice. All class members for whom JND can locate email address or phone
20 numbers will receive follow-up notice by email and text. JND will also public
21 notice in Prison Legal News (a publication widely distributed to inmates
22 throughout the country) and selective social media/online outreach directly
23 targeting class members’ Facebook and/or Instagram accounts. The full details of
24 the agreement and the proposed schedule are contained in the proposed
25 Preliminary Approval Order and exhibits thereto, which is filed
26 contemporaneously with this motion.

27 This motion is unopposed, and the Defendants concur in entry of the
28 proposed Preliminary Approval Order.

1 The proposed Preliminary Approval Order assumes entry of the order no
2 later than August 19, 2019. If an order is not entered by that time, the dates will
3 have to be extended. The draft preliminary approval order indicates the time
4 needed between the various events if the times do need to change.

5 **III. THE STANDARDS FOR ENTRY OF THE PRELIMINARY**
6 **APPROVAL ORDER HAVE BEEN MET**

7 The following from the court in *Cotter v. Lyft, Inc.* well explains the
8 preliminary approval inquiry:

9 “District courts have interpreted Rule 23(e) to require a two-step
10 process for the approval of class action settlements: the Court first
11 determines whether a proposed class action settlement deserves
12 preliminary approval and then, after notice is given to class members,
13 whether final approval is warranted. At the final approval stage, it is
14 well-established that the Court must balance the following non-
15 exhaustive factors to evaluate the fairness of the proposed settlement:
16 “the strength of the plaintiffs' case; the risk, expense, complexity, and
17 likely duration of further litigation; the risk of maintaining class action
18 status throughout the trial; the amount offered in settlement; the extent
19 of discovery completed and the stage of the proceedings; the
20 experience and views of counsel; the presence of a governmental
21 participant; and the reaction of the class members to the
22 proposed settlement.

23 It is less clear what factors should guide the Court's evaluation of the
24 proposed settlement at the preliminary approval stage. Some
25 district courts ... have stated that the relevant inquiry is whether
26 the settlement ‘falls within the range of possible approval or within
27 the range of reasonableness. In determining whether the
28 proposed settlement falls within the range of reasonableness, perhaps

1 the most important factor to consider is plaintiffs' expected recovery
2 balanced against the value of the settlement offer. Determining
3 whether the settlement falls in the range of reasonableness also
4 requires evaluating the relative strengths and weaknesses of the
5 plaintiffs' case; it may be reasonable to settle a weak claim for
6 relatively little, while it is not reasonable to settle a strong claim for
7 the same amount.”

8 *Cotter v. Lyft, Inc.*, 176 F. Supp. 3d 930, 935 (N.D. Cal. 2016) (internal citation
9 and quotation omitted).

10 *Newberg on Class Actions* summarizes the standards for entry of a
11 preliminary approval order as follows:

12 “[T]he goal of preliminary approval is for a court to determine
13 whether notice of the proposed settlement should be sent to the class,
14 not to make a final determination of the settlement's fairness.

15 Accordingly, the standard that governs the preliminary approval
16 inquiry is less demanding than the standard that applies at the final
17 approval phase. Some courts go so far as to state that a proposed
18 settlement is ‘presumptively reasonable at the preliminary approval
19 stage, and there is an accordingly heavy burden of demonstrating
20 otherwise.’ Nevertheless, most courts will not simply ‘rubber-stamp’ a
21 motion for preliminary approval, and review is more than
22 ‘perfunctory.’

23 Bearing in mind that the primary goal at the preliminary review stage
24 is to ascertain whether notice of the proposed settlement should be
25 sent to the class, courts sometimes define the preliminary approval
26 standard as determining whether there is “‘probable cause” to submit
27 the [settlement] to class members and [to] hold a full-scale hearing as
28 to its fairness.’ More specifically, courts will grant preliminary

1 approval where the proposed settlement ‘is neither illegal nor
2 collusive and is within the range of possible approval.’ Courts in most
3 circuits use some variation of this test. The test grew out of a
4 statement in an early version of the *Manual for Complex Litigation*
5 calling for approval if ‘the proposed settlement appears to be the
6 product of serious, informed, non-collusive negotiations, has no
7 obvious deficiencies, does not improperly grant preferential treatment
8 to class representatives or segments of the class, and falls within the
9 range of possible [judicial] approval.’ Many courts continue to utilize
10 that phrasing of the test.

11 ...

12 “The general test—holding that a settlement will be preliminarily
13 approved if it ‘is neither illegal nor collusive and is within the range
14 of possible approval’—contains both procedural and substantive
15 elements. The procedural element focuses on the nature of the
16 settlement negotiations and the possibility of collusion, while the
17 substantive element focuses on the terms of the agreement itself. ...”.

18 *Newberg on Class Actions* §13:13 (5th ed.) (footnote references and footnotes
19 omitted).

20 Applying the factors for preliminary approval, this case qualifies for such
21 approval. The following facts are uncontested or stipulated to in the parties’
22 accompanying stipulation for purposes of the settlement and pleadings related to it:

- 23 1. The settlement terms were negotiated at arms’ length with the
24 assistance of an experienced mediator and jurist, retired United States
25 District Judge George King, after three in person mediation sessions.
26 Litt Dec., ¶ 4.
- 27 2. This case was litigated extensively and vigorously. Plaintiffs
28 conducted extensive discovery, both documents and numerous

1 depositions. There were four class certification motions, each of
2 which was litigated in depth. There were two full rounds of summary
3 judgment litigation, the second of which involved cross summary
4 judgment motions, resulting in the grant of summary judgment on
5 liability to Plaintiffs. Litt Dec., ¶ 5.

- 6 3. There were arms' length negotiations and no collusion, as evidenced
7 by the extensive discovery and mediation process. (See Litt Dec. ¶¶
8 4,5.)
- 9 4. The proposed settlement provides a slight benefit to the class
10 representatives (\$10,000 in addition to their class member formula
11 award). The proposal for incentive awards was at Class Counsel's
12 initiative and the proposed incentive awards to each class
13 representative reflects counsel's assessment of the value of their
14 contributions to the case, the risk taken by them and the size of the
15 settlement. No agreements were made with class representatives prior
16 to settlement to seek incentive awards. Litt Dec., ¶ 7.
- 17 5. While there is a larger than normal number of class representatives,
18 that is due to Class Counsel's judgment that there were several
19 categories of class representatives needed in order to have both those
20 in custody with standing to seek injunctive relief, and those not in
21 custody in order to have damages class representatives who were not
22 in custody and therefore not subject to PLRA restrictions. Further, the
23 Court's 2016 Rule 23(C)(4) class certification order required Plaintiffs
24 to add additional class members to represent subclasses specific to
25 various time periods, as well as a subclass of women who were
26 searched while menstruating.
- 27 6. Plaintiffs proposal for \$10,000 for each of the nine class
28 representatives in light of the factors to be considered in determining

1 the reasonableness of incentive awards. The Named Plaintiffs either
2 initiated the lawsuit (Plaintiff Mary Amador), entered the lawsuit
3 while still imprisoned thereby risking retaliation (Plaintiffs Lora
4 Barranca, Diane Vigil and Diana Paiz) or were added to the lawsuit to
5 fill potential class representative gaps to account for time period based
6 classes or subclasses (Plaintiffs Felice Cholewiak, Evangelina Madrid,
7 Alisa Battiste, Nancy Briseno and Myeshia Williams). All nine
8 plaintiffs were deposed and responded to discovery requests. All of
9 the plaintiffs submitted declarations disclosing intimate details of
10 their experiences and publicly revealing themselves as having spent
11 time in jail, which were used in support of the class certification
12 motions, summary judgment motions and motions to amend. The
13 class substantially benefited from these class representatives' efforts,
14 resulting in one of the largest jail class action settlements ever
15 recorded and the first based exclusively on an unconstitutional manner
16 of strip search. The requested \$10,000 incentive award is well within
17 the range of reasonable incentive awards. *See Staton v. Boeing Co.*,
18 327 F.3d 938, 977 (9th Cir. 2003) (identifying factors to consider in
19 evaluating the reasonableness of incentive awards); *Rodriguez v. West*
20 *Publishing Corp.*, 563 F.3d 948, 958–59, 2009-1 Trade Cas. (CCH) ¶
21 76614, 60 A.L.R.6th 723 (9th Cir. 2009) (incentive awards are
22 “intended to compensate class representatives for work done on behalf
23 of the class, to make up for financial or reputational risk undertaken in
24 bringing the action, and, sometimes, to recognize their willingness to
25 act as a private attorney general”); *In re: Cathode Ray Tube (CRT)*
26 *Antitrust Litig.*, No. 1917, 2016 WL 153265, at *2–3 (N.D. Cal. Jan.
27 13, 2016). The awards here – totaling \$90,00 – represent a very small
28 proportion (less than .17%) of the Class Fund, also a factor in

1 evaluating the reasonableness of proposed incentive awards. *See, e.g.,*
2 *id.* at *3 (0.196%.of class fund); *Hopson v. Hanesbrands Inc.*, 2009
3 WL 928133, *10 (N.D. Cal. 2009) (1.25% of the settlement amount).
4 Numerous cases have approved incentive awards of \$10,000 or more.
5 *See, e.g., Cathode Ray Tube (CRT) Antitrust Litig., supra* (\$25,000 for
6 each of ten class representatives in \$127.45 Million settlement); *Glass*
7 *v. UBS Fin. Servs., Inc.*, 2007 WL 221862, at *16 (N.D. Cal. Jan.26,
8 2007) (approving payments of \$25,000 to each named plaintiff); *Van*
9 *Vranken v. Atlantic Richfield Co.*, 901 F.Supp. 294, 299 (N.D.
10 Cal.1995) (awarding \$50,000 to a lead plaintiff); *In re High-Tech*
11 *Employee Antitrust Litig.*, No. 11-CV-02509-LHK, 2015 WL
12 5158730, at *18 (N.D. Cal. Sept. 2, 2015) (awarding \$120,000 and
13 \$80,000 to class representatives in a case that settled for \$415 million,
14 noting such awards were in line with “megafund” cases, and
15 collecting cases); *Glass v. UBS Fin. Servs., Inc.*, No. C-06-4068
16 MMC, 2007 WL 221862, at *17 (N.D. Cal. Jan. 26, 2007) *aff’d*, 331
17 F. App'x 452 (9th Cir. 2009) (approving award of \$25,000 for each of
18 four class representative in a six-year case settling for \$45 million
19 where named plaintiffs provided help with informal discovery, insight
20 into an industry, and “placed something at risk by putting their names
21 on a complaint against one of the largest brokerage houses in
22 America”); *Chu v. Wells Fargo Investments, LLC*, Nos. C 05–4526
23 MHP, C 06–7924, 2011 WL 672645, *5 (N.D. Cal. Feb. 16, 2011)
24 (awarding \$10,000 to two plaintiff representatives involved in case for
25 five years and \$4,000 to three representative plaintiffs participating in
26 case for two years, from a \$6.9 million settlement fund).

- 27 7. The class size has been determined to be approximately 93,000-
28 94,000 individuals. Litt Dec., ¶ 6. A claims rate of approximately 20%

1 is generally considered a good claims rate in Plaintiffs' counsel's
2 extensive experience in jail cases. (See Litt Declaration, ¶ 8.)
3 Assuming such a rate here, there would be approximately 20,000
4 claims, and a mean recovery over \$1500 per claiming class member,
5 which would place it at the high end of class member recoveries in
6 strip search class actions. Litt Dec., ¶ 10.

- 7 8. The accepted bid for class administration costs cap costs at \$464,000
8 for a claims rate of up to 35% but could be more or less depending on
9 a variety of factors. Litt Declaration, ¶ 14.

10 Examining what the *Cotter* Court looked to as the most important factor to
11 consider (“plaintiffs' expected recovery balanced against the value of
12 the settlement offer”), the proposed settlement is an excellent settlement. Plaintiffs
13 do not doubt that awards for many individual class members would have been five
14 figures, and for some six figures, but only after individual damages trials. General
15 damages were not available for the class as a whole based on the court's rulings.
16 Statutory damages were potentially available, but only if Civil Code § 52.1 were
17 ruled available; that code section has been the subject of considerable legal debate,
18 and its contours are not yet clearly set. This settlement qualifies as among the
19 highest ever in the country for strip searches, and to Plaintiffs' counsel's
20 knowledge is the first successful strip search class action based solely on a
21 challenge to the manner of search (as opposed to challenging the legality of a
22 search at all, on which there have been many successful challenges).

23 A factor driving settlement from Plaintiffs' perspective is that, even given
24 summary judgment on liability, this case could have spread out over several years
25 litigating individual damages claims, and only a far smaller percentage of the class
26 would likely have come forward to pursue individual damages in comparison to
27 the number that will file claims. In addition, absent settlement, there is no question
28 that Defendants would have appealed the grant of summary judgment.

1 Given all of these factors, it was the judgment of Plaintiffs’ counsel that the
2 settlement represents a fair compromise reflecting “plaintiffs’ expected recovery
3 balanced against the value of the settlement offer.” Accordingly, the proposed
4 settlement is certainly “within the range of possible approval.” (*Newberg, supra.*)

5 **IV. CONCLUSION**

6 For the foregoing reasons, Plaintiffs ask that the Court preliminarily approve
7 the settlement, and sign the proposed Preliminary Approval Order (with any
8 revisions the Court deems necessary). The Proposed Preliminary Approval Order
9 contains a provision approving the parties’ request to issue notice using a
10 combination of mail, email and text message (and specifically approving the
11 parties’ request for text message notice). The Proposed Order contains dates that
12 have been worked out among the parties and reviewed by the Class Administrator.
13 They assume that the order will be entered by August 12, 2019. If it is later, the
14 dates may need to be modified to allow sufficient time to follow the schedule.

15 DATED: July 16, 2019

Respectfully submitted,
KAYE, McLANE, BEDNARSKI & LITT, LLP

17 By: /s/ Barrett S. Litt
18 Barrett S. Litt

19 By: /s/ Lindsay Battles
20 Lindsay Battles
21 Attorneys for Plaintiffs