Case Number

IN THE UNITED STATES SUPREME COURT

LECIA L. SHORTER

Objector, Class Member and Petitioner

v.

MARY AMADOR, ET AL,

Plaintiffs Individually and as Class Representatives and Respondents

v.

LEROY BACA, COUNTY OF LOS ANGELES AND LOS ANGELES COUNTY SHERIFF'S DEPARTMENT,

Defendants and Respondents

On Petition for Writ of Certiorari from the Ninth Circuit Court of Appeals and from the United States District Court for the Central District of California, Case No. 2:10-CV-01649-SVW

District Court Judge Stephen V. Wilson

APPENDIX TO

PETITION FOR WRIT OF CERTIORARI

Lecia L. Shorter

287 S. Robertson Blvd., No. 291

Beverly Hills, CA 90211

(310) 869-5838

Petitioner in Pro Per

INDEX TO APPENDICES

APPENDIX A

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MARY AMADOR; et al.,

Plaintiffs-Appellees,

v.

LECIA L. SHORTER,

Objector-Appellant,

v.

LEROY D. BACA, Sheriff, in his official capacity; et al.,

Defendants-Appellees.

No. 20-55965

D.C. No.
2:10-cv-01649-SVW-JEM
Central District of California,
Los Angeles

ORDER

Before: CANBY, GRABER, and FRIEDLAND, Circuit Judges.

Appellees' motion to dismiss this appeal for lack of jurisdiction (Docket Entry No. 3) is granted.

Appellant's motion to proceed in forma pauperis (Docket Entry No. 6) is denied as moot.

DISMISSED.

SC/MOATT

APPENDIX B

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MARY AMADOR; et al.,

Plaintiffs-Appellees,

v.

LECIA L. SHORTER,

Objector-Appellant,

v.

LEROY D. BACA, Sheriff, in his official capacity; et al.,

Defendants-Appellees.

No. 20-56278

D.C. No.
2:10-cv-01649-SVW-JEM
Central District of California,
Los Angeles

ORDER

Before: CANBY, GRABER, and FRIEDLAND, Circuit Judges.

Upon a review of the record and the response to the court's December 16, 2020 order, we conclude this appeal is frivolous. We therefore deny appellant's motion to proceed in forma pauperis (Docket Entry No. 3), *see* 28 U.S.C. § 1915(a), and dismiss this appeal as frivolous, pursuant to 28 U.S.C. § 1915(e)(2) (court shall dismiss case at any time, if court determines it is frivolous or malicious).

DISMISSED.

SC/MOATT

APPENDIX C

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

MAR 08 2021

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

MARY AMADOR; et al.,

Plaintiffs - Appellees,

v.

LECIA L. SHORTER,

Objector - Appellant,

v.

LEROY D. BACA, Sheriff, in his official capacity; et al.,

Defendants - Appellees.

No. 20-55965

D.C. No. 2:10-cv-01649-SVW-JEM
U.S. District Court for Central California, Los Angeles

MANDATE

The judgment of this Court, entered February 12, 2021, takes effect this date.

This constitutes the formal mandate of this Court issued pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure.

FOR THE COURT:

MOLLY C. DWYER
CLERK OF COURT

By: David J. Vignol
Deputy Clerk
Ninth Circuit Rule 27-7

APPENDIX D

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

MAR 08 2021

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

MARY AMADOR; et al.,

Plaintiffs - Appellees,

v.

LECIA L. SHORTER,

Objector - Appellant,

v.

LEROY D. BACA, Sheriff, in his official capacity; et al.,

Defendants - Appellees.

No. 20-56278

D.C. No. 2:10-cv-01649-SVW-JEM
U.S. District Court for Central California, Los Angeles

MANDATE

The judgment of this Court, entered February 12, 2021, takes effect this date.

This constitutes the formal mandate of this Court issued pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure.

FOR THE COURT:

MOLLY C. DWYER
CLERK OF COURT

By: Quy Le
Deputy Clerk
Ninth Circuit Rule 27-7

APPENDIX E

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MARY AMADOR; et al.,

Plaintiffs-Appellees,

v.

LECIA L. SHORTER,

Objector-Appellant,

v.

LEROY D. BACA, Sheriff, in his official capacity; et al.,

Defendants-Appellees.

No. 20-56278

D.C. No.
2:10-cv-01649-SVW-JEM
Central District of California,
Los Angeles

ORDER

A review of the district court's docket reflects that the district court denied appellant Lecia Shorter's motion for leave to proceed in forma pauperis for this appeal of the district court's October 29, 2020 order denying appellant's motion to intervene, because it found that the appeal is frivolous. This court may dismiss a case at any time, if the court determines the case is frivolous. *See* 28 U.S.C. § 1915(e)(2).

Within 35 days after the date of this order, appellant must:

(1) file a motion to dismiss this appeal, *see* Fed. R. App. P. 42(b), or

(2) file a statement explaining why the appeal is not frivolous and should go forward.

If appellant files a statement that the appeal should go forward, appellant also must:

(1) file in this court a motion to proceed in forma pauperis, OR

(2) pay to the district court $505.00 for the filing and docketing fees for this appeal AND file in this court proof that the $505.00 was paid.

If appellant does not respond to this order, the Clerk will dismiss this appeal for failure to prosecute, without further notice. *See* 9th Cir. R. 42-1. If appellant files a motion to dismiss the appeal, the Clerk will dismiss this appeal, pursuant to Federal Rule of Appellate Procedure 42(b). If appellant submits any response to this order other than a motion to dismiss the appeal, the court may dismiss this appeal as frivolous, without further notice.

If appellant files a statement that the appeal should go forward, appellee may file a response within 10 days after service of appellant's statement.

The briefing schedule for this appeal is stayed.

The Clerk shall serve on appellant: (1) a form motion to voluntarily dismiss the appeal, (2) a form statement that the appeal should go forward, and (3) a Form 4 financial affidavit. Appellant may use the enclosed forms for any motion to

dismiss the appeal, statement that the appeal should go forward, and/or motion to proceed in forma pauperis.

FOR THE COURT:

MOLLY C. DWYER
CLERK OF COURT

By: Corina Orozco
Deputy Clerk
Ninth Circuit Rule 27-7

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

_____ 9th Cir. Case No. _____

Appellant(s),

v.

_____

Appellee(s).

MOTION TO VOLUNTARILY DISMISS APPEAL

Pursuant to Federal Rule of Appellate Procedure 42(b), appellant(s)

_____hereby move(s)

the court for an order dismissing appeal No. _____-_____.

Dated: _____ _____

Print Name(s)

_____

Signature(s)

Appellant(s) in Pro Se

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

_____ 9th Cir. Case No. _____

Appellant(s),

v.

_____

Appellee(s).

STATEMENT THAT APPEAL SHOULD GO FORWARD
(attach additional sheets as necessary)

1. Date(s) of entry of judgment or order(s) you are challenging in this appeal:

_____.

2. What claims did you raise to the court below?

3. What do you think the court below did wrong? (You may, but need not, refer to cases and statutes.)

4. Why are these errors serious enough that this appeal should go forward?

5. Additional Information:

Dated: _____ _____

Print Name(s)

_____

Signature(s)

Appellant(s) in Pro Se

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

INSTRUCTIONS for Form 4.
Motion and Affidavit for Permission to Proceed in Forma Pauperis

Use Form 4 or an equivalent financial declaration to ask the court to waive the filing fees for an appeal or petition for review **in any civil case.**

For criminal and habeas corpus cases, use Form 23 CJA Financial Affidavit instead of Form 4 to request a fee waiver or to ask for appointment of counsel.

- Answer **all** questions on the form even if the answer is "0" or "N/A" (not applicable).
- Include your case number and sign the form. You do not need to have the form notarized.
- Do **not** include your Social Security number.

If you are a self-represented party who is not registered for electronic filing, mail the completed form to: U.S. Court of Appeals for the Ninth Circuit, P.O. Box 193939, San Francisco, CA 94119-3939.

To file Form 4 electronically, use the electronic document filing type "Motion for Any Type of Relief" and "motion to proceed in forma pauperis" as the relief.

How to prepare fill-in forms for filing:

- If you have Adobe Acrobat or another tool that lets you save completed forms:
  1. Complete the form.
  2. Print the completed form to your PDF printer (File > Print > select Adobe PDF or another PDF printer listed in the drop-down list).

- If you do not have Adobe Acrobat or another tool that lets you save completed forms:
  1. Complete the form.
  2. Print the completed form to your printer.
  3. Scan the completed form to a PDF file.

Note: The fill-in PDF version of the form is available on the court's website at http://www.ca9.uscourts.gov/forms/.

Do not file this instruction page

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Form 4. Motion and Affidavit for Permission to Proceed in Forma Pauperis

Instructions for this form: http://www.ca9.uscourts.gov/forms/form04instructions.pdf

9th Cir. Case Number(s)

Case Name

Affidavit in support of motion: I swear under penalty of perjury that I am financially unable to pay the docket and filing fees for my appeal. I believe my appeal has merit. I swear under penalty of perjury under United States laws that my answers on this form are true and correct. 28 U.S.C. § 1746; 18 U.S.C. § 1621.

Signature **Date**

The court may grant a motion to proceed in forma pauperis if you show that you cannot pay the filing fees **and** you have a non-frivolous legal issue on appeal. Please state your issues on appeal. (*attach additional pages if necessary*)

1. *For both you and your spouse, estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.*

	Average monthly amount during the past 12 months		**Amount expected next month**	
Income Source	**You**	**Spouse**	**You**	**Spouse**
Employment	$	$	$	$
Self-Employment	$	$	$	$
Income from real property (such as rental income)	$	$	$	$
Interest and Dividends	$	$	$	$
Gifts	$	$	$	$
Alimony	$	$	$	$
Child Support	$	$	$	$
Retirement (such as social security, pensions, annuities, insurance)	$	$	$	$
Disability (such as social security, insurance payments)	$	$	$	$
Unemployment Payments	$	$	$	$
Public-Assistance (such as welfare)	$	$	$	$
Other (specify)	$	$	$	$
TOTAL MONTHLY INCOME:	$	$	$	$

2. *List your employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)*

Employer	Address	Dates of Employment	Gross Monthly Pay
		From To	$
		From To	$
		From To	$
		From To	$

3. *List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)*

Employer	Address	Dates of Employment	Gross Monthly Pay
		From To	$
		From To	$
		From To	$
		From To	$

4. *How much cash do you and your spouse have?* $ [ ]

Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Financial Institution	Type of Account	Amount You Have	Amount Your Spouse Has
		$	$
		$	$
		$	$
		$	$

If you are a prisoner seeking to appeal a judgment in a civil action or proceeding, you must attach a statement certified by the appropriate institutional officer showing all receipts, expenditures, and balances during the last six months in your institutional accounts. If you have multiple accounts, perhaps because you have been in multiple institutions, attach one certified statement of each account.

5. *List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishing.*

Home	Value	Other Real Estate	Value
	$		$

Motor Vehicle 1: Make & Year	Model	Registration #	Value
			$
Motor Vehicle 2: Make & Year	**Model**	**Registration #**	**Value**
			$

8. *Estimate the average monthly expenses of you and your family. Sh spouse. Adjust any payments that are made weekly, biweekly, quarter monthly rate.*

Rent or home-mortgage payment (include lot rented for mobile home)	
- Are real estate taxes included?	○Yes ○No
- Is property insurance included?	○Yes ○No
Utilities (electricity, heating fuel, water, sewer, and telephone)	
Home maintenance (repairs and upkeep)	
Food	
Clothing	
Laundry and dry-cleaning	
Medical and dental expenses	
Transportation (not including motor vehicle payments)	
Recreation, entertainment, newspapers, magazines, etc.	
Insurance (not deducted from wages or included in mortgage payments)	
- Homeowner's or renter's	
- Life	
- Health	
- Motor Vehicle	
- Other	
Taxes (not deducted from wages or included in mortgage payments)	
Specify	

Other Assets	Value
	$
	$
	$

6. *State every person, business, or organization owing you or your spouse money, and the amount owed.*

Person owing you or your spouse	Amount owed to you	Amount owed to your spouse
	$	$
	$	$
	$	$

7. *State the persons who rely on you or your spouse for support. If a dependent is a minor, list only the initials and not the full name.*

Name	Relationship	Age

	You	Spouse
Installment payments		
- Motor Vehicle	$	$
- Credit Card (name)	$	$
- Department Store (name)	$	$
Alimony, maintenance, and support paid to others	$	$
Regular expenses for the operation of business, profession, or farm (attach detailed statement)	$	$
Other (specify)	$	$
TOTAL MONTHLY EXPENSES	$	$

9. *Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?* ○Yes ○No

If Yes, describe on an attached sheet.

10. *Have you spent—or will you be spending—any money for expenses or attorney fees in connection with this lawsuit?* ○Yes ○No

If Yes, how much? $

11. *Provide any other information that will help explain why you cannot pay the docket fees for your appeal.*

12. *State the city and state of your legal residence.*

City State

Your daytime phone number (ex., 415-355-8000)

Your age Your years of schooling

APPENDIX F

Activity in Case 2:10-cv-01649-SVW-JEM Mary Amador et al v. Leroy D. Baca et al Text Only Scheduling Notice

From: cacd_ecfmail@cacd.uscourts.gov

To: ecfnef@cacd.uscourts.gov

Date: Thursday, October 29, 2020, 05:30 PM PDT

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.
*****NOTE TO PUBLIC ACCESS USERS*** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.**

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

Notice of Electronic Filing

The following transaction was entered on 10/29/2020 at 5:29 PM PDT and filed on 10/29/2020

Case Name: Mary Amador et al v. Leroy D. Baca et al
Case Number: 2:10-cv-01649-SVW-JEM
Filer:
Document Number: 486(No document attached)

Docket Text:
IN CHAMBERS ORDER-TEXT ONLY ENTRY by Judge Stephen V. Wilson: Because she does not meet the requirements for intervention as of right or permissive intervention, Lecia Shorters motion to intervene [476] is DENIED. Intervention as of right requires an interest relating to the property or transaction that is the subject of the action. Fed. R. Civ. P. 24(a)(2). Moreover, an intervenor must have Article III standing to seek separate relief, see Town of Chester v. Laroe Estates, Inc., 137 S. Ct. 1645, 1651 (2017), or to litigate independently in the absence of the party on whose side intervention is sought, see Diamond v. Charles, 476 U.S. 54, 68 (1986). As the Court explained in its prior Order, because Shorter has opted out, she no longer has an interest in or standing to litigate in this case. Dkt. 473. Finally, Shorter admits that she became aware of the settlement on July 28, 2019, Dkt. 476, at 11, and Shorters considerable delay and potential disruption to the settlement both make permissive intervention inappropriate, Fed. R. Civ. P. 24(b)(3). The hearing is vacated and off-calendar. THERE IS NO PDF DOCUMENT ASSOCIATED WITH THIS ENTRY. (pc) TEXT ONLY ENTRY

2:10-cv-01649-SVW-JEM Notice has been electronically mailed to:

Andrew I Baum abaum@glaserweil.com, jjaramillo@glaserweil.com

Barrett S Litt blitt@kmbllaw.com, jwhite@kmbllaw.com, reception@kmbllaw.com

Colleen Flynn cflynnlaw@yahoo.com

Cynthia M Anderson-Barker cablaw@hotmail.com

Donald Webster Cook manncook@earthlink.net, dwc4009@sbcglobal.net

Jin S Choi jchoi@lbaclaw.com, eghadimian@lbaclaw.com

Justin W Clark jclark@lbaclaw.com, ekrylova@lbaclaw.com, ksimonian@lbaclaw.com

Lecia L Shorter leciashorter@yahoo.com

Lindsay Battles lbattles@kmbllaw.com, mbolanos@kmbllaw.com

Paul B Beach pbeach@lbaclaw.com, dard@lbaclaw.com

Robert Frederick Mann manncook@earthlink.net

2:10-cv-01649-SVW-JEM Notice has been delivered by First Class U. S. Mail or by other means BY THE FILER to :

Darla Ray Jones
CDC WE7503
California Institution for Women - CIW
Wilson B 929L
16756 Chino-Corona Road
Corona, CA 92880

Gilberto Figueroa Merced
PO Box 1321
Mayaguez, PR 00681-1321

Jessica Vega
CDC WF6975
PO Box 1508
Chowchilla, CA 93610

Joyce Lucero
9163 Mills Ave
Montclair, CA 91763

Yvonne Cruz
4734 E 57th St Apt B
Maywood, CA 90270-4000

APPENDIX G

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. 2:10-cv-01649-SVW-JEM Date 9/21/2020

Title *Mary Amador et al., v. Sherriff Leroy D. Baca et al.*

Present: The Honorable STEPHEN V. WILSON, U.S. DISTRICT JUDGE

Paul M. Cruz	N/A
Deputy Clerk	Court Reporter / Recorder
Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:
N/A	N/A

Proceedings: ORDER DENYING LECIA SHORTER'S MOTION TO APPEAL IN FORMA PAUPERIS [468]

I. Introduction

On August 11, 2020, the Court entered its order granting final approval to the settlement in this class action arising out of body cavity inspections at a Los Angeles County Sheriff's Department facility. Dkt. 463. Lecia Shorter opted out of that settlement. Dkt. 463, at 10; 465. Nevertheless, she sought to participate pro se in the final approval proceedings, filing an objection, Dkt. 450, Ex. J, an opposition, Dkt. 452, and a reply brief, Dkt. 457.

In its order granting final approval, the Court noted its concerns that Shorter lacked standing to object because she opted out of the settlement. Dkt. 463, at 10-11. The Court accordingly treated her filings "as equivalent to an amicus brief" and concisely addressed her points. *Id.* at 11-12.

On September 11, 2020, Shorter filed a motion to appeal in forma pauperis under 28 U.S.C. §§ 753(f), 1915(a). Dkt. 468. Class counsel opposed the motion. Dkt. 470. Because Shorter lacks standing as an opt-out to appeal the settlement, the Court DENIES Shorter's motion.

II. Legal Standard

"An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith." 28 U.S.C. § 1915(a)(3); *see also* § 753(f) (providing payment for transcripts for appellants proceeding in forma pauperis). Whether an appeal is filed in good faith is an "objective

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standard." *Coppedge v. United States*, 369 U.S. 438, 445 (1962). A party filing a frivolous appeal lacks good faith to file in forma pauperis. *See Hooker v. American Airlines*, 302 F.3d 1091, 1092 (9th Cir. 2002) ("If at least one issue or claim is found to be non-frivolous, leave to proceed in forma pauperis on appeal must be granted for the case as a whole."); *Tripati v. First Nat. Bank & Tr.*, 821 F.2d 1368, 1369-70 (9th Cir. 1987); *see also Brooks v. Pinnacle Fin. Corp.*, 2018 WL 1322028, at *1 (C.D. Cal. 2018). A claim is frivolous when brought by a party who lacks standing. *See Minetti v. Port of Seattle*, 152 F.3d 1113, 1115 (9th Cir. 1998).

III. Analysis

Because she opted out of the class settlement, Shorter lacks standing to appeal the Court's final approval order. "Class members who opt out of the class at certification or at settlement are no longer considered class members, and hence Rule 23 does not give them standing to object to the settlement." Newberg on Class Actions § 13.23 (5th ed.); *see also* Wright & Miller, Federal Practice and Procedure § 1797.4 (3d ed.) ("[C]ourts have concurred that a class member who opts out of the suit ... has no standing to appeal a later settlement."). Rule 23 makes this result clear: "[a]ny *class member* may object...." Fed. R. Civ. P. 23(e)(5)(A) (italics added). It is a consensus position. *See Senegal on behalf of a class v. JPMorgan Chase Bank, N.A.*, 939 F.3d 878, 881 (7th Cir. 2019) (citing *In re Brand Name Prescription Drugs Antitrust Litig.*, 115 F.3d 456 (7th Cir. 1997)); *In re Integra Realty Res., Inc.*, 262 F.3d 1089, 1101-03 (10th Cir. 2001); *In re Vitamins Antitrust Class Actions*, 215 F.3d 26, 28-29 (D.C. Cir. 2000) (citing *Mayfield v. Barr*, 985 F.2d 1090, 1093 (D.C. Cir. 1993)); *Zamora v. Ryder Integrated Logistics, Inc.*, 2014 WL 9872803, at *2 (S.D. Cal. 2014); *Wixon v. Wyndham Resort Dev. Corp.*, 2011 WL 3443650, at *1 n.2 (N.D. Cal. 2011); *Tarlecki v. bebe Stores, Inc.*, 2009 WL 3720872, at *1 n.1 (N.D. Cal. 2009); *Glass v. UBS Fin. Servs.*, 2007 WL 221862, at *8 (N.D. Cal. 2007); *see also* Newberg, § 13.23 n.6 (collecting cases).

Although the Ninth Circuit has no case standing for this precise proposition, that Shorter lacks standing to appeal is an obvious and unavoidable application of its precedents. A party only has standing to appeal a class settlement if the party is aggrieved by the settlement and modifying the settlement would redress the party's injury. *See Glasser v. Volkswagen of Am., Inc.*, 645 F.3d 1084, 1088 (9th Cir. 2011); *In re First Capital Holdings Corp. Fin. Prods. Secs. Litig.*, 33 F.3d 29, 30 (9th Cir. 1994); *Knisley v. Network Assocs., Inc.*, 312 F.3d 1123, 1126 (9th Cir. 2002). Because an opt-out such as Shorter does not benefit from and is not bound by the settlement, she is not aggrieved by the settlement and no asserted injuries could be redressed by its modification.

Importantly, Shorter does not present a coherent argument to support standing. She explained at the approval stage that "she intends to opt out of the settlement payout and maintain her status as class member and intended beneficiary of the *Monell* liability determination." Dkt. 452, at 6. Shorter appears to reiterate the same argument in her reply in support of this motion. Dkt. 471, at 2-5. Shorter's reliance on *Powers v. Eichen* is misplaced because that case involved an appeal by an unnamed class member – not an appeal by a party who had opted out. 229 F.3d 1249, 1256 (9th Cir. 2000). Shorter remains free to use this Court's prior orders for any preclusive or persuasive value they may have in her own case. However, she may not both opt out of the class settlement and retain her right to appeal a settlement that has no effect on the claims she chose to litigate independently. *See* Newberg, § 13.23 ("[C]lass members may either object or opt out, but they cannot do both.").[1]

IV. Conclusion

For the foregoing reasons, the Court DENIES Shorter's motion for leave to appeal in forma pauperis.

[1] Non-class members may have standing to object if they can show "plain legal prejudice" resulting from the settlement. *See* Newberg, § 13.23 & n.12. By opting out, Shorter "escape[d] the binding effect of the class settlement." *In re Vitamins Antitrust Class Actions*, 215 F.3d at 29 (quoting *Mayfield*, 985, F.2d at 1093). Therefore, although she does not argue this point, she would not be able to show plain legal prejudice. *See Integra Realty*, 262 F.3d at 1102-03 (internal citation and quotation marks omitted) ("plain legal prejudice" means that a settlement affects contract, contribution, or indemnification rights, or that it "strip[s] the party of a legal claim or cause of action").

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APPENDIX H

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. 2:10-cv-01649-SVW-JEM Date 8/11/2020

Title *Mary Amador, et al., v. Sheriff Leroy D. Baca, etc., et al.,*

Present: The Honorable STEPHEN V. WILSON, U.S. DISTRICT JUDGE

Paul M. Cruz	N/A
Deputy Clerk	Court Reporter / Recorder
Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:
N/A	N/A

Proceedings: ORDER GRANTING MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND GRANTING IN PART MOTION FOR ATTORNEY'S FEES [449] [409]

Motion for Final Approval of the Class Settlement

I. Introduction

Before the Court is a motion for final approval of a class action settlement filed by Lead Plaintiffs Mary Amador et al. in the class action lawsuit listed above. The County of Los Angeles and the Los Angeles County Sheriff's Department (collectively "Defendants") do not oppose this motion. For the reasons articulated below, the Court GRANTS the motion for final approval of the class action settlement.

II. Factual and Procedural Background

Lead Plaintiffs Mary Amador et al. represent a class of female inmates of the Los Angeles County Sheriff's Department ("LASD") who contend that highly invasive body cavity inspections conducted during the relevant class period (March 5, 2008 to January 1, 2015) violated their Fourth Amendment rights. Dkt. 449 at 1. These searches took place at the Century Regional Detention Facility ("CRDF") operated by LASD in Lynwood, California. After certification of several classes and sub-classes, Dkt. 327, the Court granted Plaintiff's Motion for Summary Judgment on June 7, 2017. Dkt.

Initials of Preparer PMC

361. Following a prolonged period of negotiation and mediation, the parties made a Motion for Preliminary Approval of Class Action Settlement. Dkt. 387. The Court initially denied the motion because it diverted $3 million in settlement funds to contracts between the County of Los Angeles ("the County") and certain for-profit and non-profit entities to develop gender-responsive policies at LASD facilities, which the Court found reduced the amount of funds available to the victims. Dkt. 394. After the parties presented the Court with a revised settlement that eliminated the diversion of $3 million in class funds, the Court granted preliminary approval to the settlement agreement. Dkt. 399.

The revised Settlement Agreement requires LASD to pay a total of $53 million dollars into a settlement fund over a period of three years. Dkt. 395-1[1] ("the Settlement Agreement"). The distribution of funds provided in the Settlement Agreement includes:

- Incentive awards to nine named plaintiffs of $10,000 each.
- Third-party class settlement administration costs by the chosen administrator, JND Legal Administration ("JND"), which are currently $672,185.96 based on incurred and estimated fees associated with administration of settlement claims. *See* Dkt. 451 at 7-8.
- A provision giving Class Counsel the right to apply for attorney's fees of up to one-third of the Class Fund as well as litigation costs, with final approval over any award of attorney's fees at the Court's discretion.
- The remainder of the Class Fund to be distributed to class members under a points-based allocation formula (described in more detail below).

The Class includes a total of 94,857 members, based on the contact information available to the parties and JND from the County's records. Claims made by class members are subject to a points-based distribution formula. *See* Dkt. 395-1 at 10-12. The distribution formula developed in the course of mediation by the parties is premised on the changing conditions and level of privacy across the multi-year class period. *Id.* at 10. It allocates increasing point totals for searches endured under worse conditions during earlier periods in the class. *Id.* at 11. Class members receive proportionate recoveries

[1] Plaintiffs cite to the unrevised Settlement Agreement at various points in their motion for final approval of the class settlement. *See* Dkt. 449 at 4-5. Because the revised Settlement Agreement includes relatively simple alterations to the settlement terms, this error does not alter the Court's analysis.

based on the total number of searches they have endured, because their recovery is tied to their proportionate share of the total points awarded to the class. *Id.* Class members were also given the opportunity to opt-out of the settlement during the notice period. *Id.* at 24-25. While up to 250 members were permitted to opt-out under the Settlement Agreement's terms before Defendants were able to withdraw from the settlement, only six class members have done so. Dkt. 451 at 6.

On January 6, 2020, JND began to send notices alerting class members to the settlement. The Administrator sent notices via text message to 58,272 mobile phone number representing 39,567 class members. Dkt. 451 at 2. The Administrator also sent 54,903 emails to 33,229 class members. *Id.* Finally, JND sent notices via mail to 71,676 class members. *Id.* JND estimates that 91.5% of the settlement class has received a text, email, or mailing that was not returned as undeliverable. *Id.* at 3. JND also utilized updated contact information provided by the California Department of Corrections and Rehabilitation to send additional notice to class members and locate additional mailing addresses. *Id.* at 4-5. JND purchased internet advertising, set up a settlement website, and provided a toll-free phone number to facilitate submission of claims to the settlement. *Id.* at 5-6. As of July 6, 2020, JND has received almost 40,000 claims, and has approved 25,528. *Id.* at 607. 9,940 claims have deficiencies that JND is currently addressing, and it anticipates that approximately one-half of those claims will ultimately be approved. Dkt. 449 at 9. This means that roughly one-third of class members will receive a distribution from the settlement fund, a figure that Class Counsel (who are specialists in this area of civil rights litigation) assert is an especially high claims rate for this area of class action litigation. *See* Dkt. 450 at 3. Class Counsel estimates that the average claim will be approximately $1000, and that the highest claims in the settlement will be closer to $10,000. However, given the *pro rata* distribution model, until all previously deficient claims are processed and either approved or denied, these figures cannot be calculated with certainty.

III. Legal Standard

Approval of a proposed class action settlement is governed by Federal Rule of Civil Procedure 23(e). "[T]he 2018 amendment to Rule 23(e) establishes core factors district courts must consider when evaluating a request to approve a proposed settlement." *Zamora Jordan v. Nationstar Mortg., LLC*, 2019 WL 1966112, at *2 (E.D. Wash. May 2, 2019).

Rule 23(e) now provides that the Court may approve a class action settlement only after a hearing and only on a finding that it is fair, reasonable, and adequate after considering whether:

(A) the class representatives and class counsel have adequately represented the class;
(B) the proposal was negotiated at arm's length;
(C) the relief provided for the class is adequate, taking into account:
(i) the costs, risks, and delay of trial and appeal;
(ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
(iii) the terms of any proposed award of attorney's fees, including timing of payment; and
(iv) any agreement required to be identified under Rule 23(e)(3); and
(D) the proposal treats class members equitably relative to each other.

Fed. R. Civ. P. 23(e)(2). "Under Rule 23(e), both its prior version and as amended, fairness, reasonableness, and adequacy are the touchstones for approval of a class-action settlement." *Zamora*, 2019 WL 1966112, at *2. "The purpose of the amendment to Rule 23(e)(2) is [to] establish a consistent set of approval factors to be applied uniformly in every circuit, without displacing the various lists of additional approval factors the circuit courts have created over the past several decades." *Id.* Factors that the Ninth Circuit has typically considered include (1) the strength of plaintiffs' case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk of maintaining class action status throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery completed and the stage of the proceedings; and (6) the experience and views of counsel. *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998); *Churchill Vill., L.L.C. v. Gen. Elec.*, 361 F.3d 566, 575 (9th Cir. 2004).

"While the Ninth Circuit has yet to address the amendment to Rule 23(e)(2) ... the factors in amended Rule 23(e)(2) generally encompass the list of relevant factors previously identified by the Ninth Circuit." *Zamora*, 2019 WL 1966112, at *2. "The goal of this amendment is not to displace any factor, but rather to focus the court and the lawyers on the core concerns of procedure and substance that should guide the decision whether to approve the proposal." Fed. R. Civ. P. 23(e)(2) advisory committee's note to 2018 amendment. "Accordingly, the Court applies the framework set forth in Rule

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23 with guidance from the Ninth Circuit's precedent, bearing in mind the Advisory Committee's instruction not to let '[t]he sheer number of factors' distract the Court and parties from the 'central concerns' underlying Rule 23(e)(2)." *In re Extreme Networks, Inc. Securities Litigation*, 2019 WL 3290770, at *6 (N.D. Cal. July 22, 2019); *see also Graves v. United Indus. Corp.*, 2020 WL 953210, at *4 (C.D. Cal. Feb. 24, 2020).

IV. Analysis

a. *Class Counsel have adequately represented the Class.*

The Court finds that Class Counsel and the Class Representatives have adequately represented the class during the course of litigation. The Class Representatives were each deposed during this litigation, and Class Counsel prevailed on two motions for class certification and a dispositive motion with regard to liability at summary judgment. Class Counsel conducted extensive discovery into the conditions in which strip searches occurred at CRDF, held a large number of depositions, and hired expert witnesses for multiple discrete issues relevant to establishing liability. *See* Dkt. 410 at 50-52 (summarizing litigation efforts of Class Counsel in table form). Class Counsel, in conjunction with JND, have also facilitated substantial notice and outreach to the relatively disparate and sometimes difficult to contact class of more than 94,000 individuals, which has resulted in a relatively high claims rate of between 33% and 40%, pending final verification of deficient claims forms. Dkt. 451 at 6-7. Their conduct both during litigation and after settlement was reached was adequate in all respects, and supports approval of the Settlement Agreement.

b. *The settlement was negotiated at arm's length.*

The Court finds that this settlement was clearly negotiated at arm's length and is the product of (lengthy) non-collusive negotiation between Class Counsel and Defendants. The parties reached a settlement agreement following three full days of in-person settlement conferences before the Hon. George H. King (Ret.). Dkt. 450 at 1. Settlement negotiations began only after the Court granted summary judgment on liability for Plaintiffs, and lasted more than two years before the parties reached a final agreement. The case was litigated by the parties for approximately six years prior to settlement

negotiations being initiated in earnest. This course of proceeding strongly suggests a non-collusive settlement has been reached.

While not necessary for approval because this class has previously been certified by the Court, Dkt. 327, the Court additionally notes that the settlement agreement does not contain (1) a disproportionate distribution of the settlement to Class Counsel (any fee award is subject to the Court's discretion), (2) a clear sailing arrangement for separate payment of attorney's fees, or (3) a reversion for unclaimed funds to the defendant. *See In re Bluetooth Headset Prod. Liab. Litig.* 654 F.3d 935, 946-47 (9th Cir. 2011) (instructing district courts to scrutinize settlement agreements for "subtle signs" that class counsel have permitted self-interest to "infect" the negotiations).

c. *The relief provided for the class is adequate*

To determine whether the relief provided for the class is adequate, courts must consider: (i) the costs, risks, and delay of trial and appeal, (ii) the effectiveness of any proposed method of distributing relief to the class, (iii) the terms of any proposed award of attorney's fees, and (iv) any side agreement required to be identified under Rule 23(e)(3). Fed. R. Civ. P. 23(e)(2)(C).

The Court finds that each of these factors favors granting final approval to the settlement. The Court granted summary judgment to the class solely on liability— no clear procedure had been developed to present the damages claims to a jury on a classwide basis given the relative circumstances of the different class members across the seven year period. *See* Dkt. 327 at 8 (re-certifying the class solely with regard to liability under Rule 23(c)(4) and noting that individual damages calculations will be necessary to reach a final conclusion of the litigation). The class faced the possibility that no workable arrangement for establishing classwide damages would be developed, as well as the possibility that any final judgment would lead to reversal on appeal. Moreover, the Court finds that this settlement is fair with respect to $53 million figure given the size of the class, an issue discussed in more detail in the Court's accompanying analysis of Class Counsel's motion for attorney's fees. *See infra* Part 2.II.a.i. The Court finds it sufficient to note here that both the total dollar figure of the settlement fund and the average recovery per class member are in line with similar large-scale settlements involving strip searches at detention facilities. *See* Dkt. 410 at 29-36 (summarizing strip search settlements reviewed by the Court).

The court addresses the method of distributing relief (here monetary claims) in the sections below regarding equitable treatment of class members, and finds it an effective method for distributing relief given the facts of this case. The proposed fee award provided by the Settlement Agreement is subject to the Court's discretion and is addressed at length in the accompanying Order granting Class Counsel attorney's fees. Finally, no side agreements that must be identified under Rule 23(e)(3) have been disclosed by the parties for the Court's consideration. The Court finds that the relief provided by the settlement agreement is adequate for the purposes of Rule 23(e)(2)(C)

d. *Class members are treated equitably.*

The Court also finds that the settlement agreement treats class members equitably. The Court has previously discussed and approved of the points-based distribution formula as an appropriate manner of approximating the severity of the constitutional injuries suffered by individual class members. *See* Dkt. 394 at 12. The Court finds that this formula appropriately seeks to provide more substantial compensation to class members who experienced more frequent searches, and class members who experienced searches in harsher conditions. Dkt. 395-1 at 10-12. It also ensures that those individuals who were searched very frequently receive the highest awards within the settlement class. The $200 minimum claim size is a reasonable figure to incentivize class members to make the effort to participate and submit claim forms, and ensures that as large a fraction of the class participate in the settlement as possible.

e. *Other factors not expressly included in Rule 23(e)(2) favor final approval as well.*

The amendments to Rule 23 do "not 'displace any factor' previously announced by the Ninth Circuit, but instead 'focus the court and the lawyers on the core concerns of procedure and substance that should guide the decision whether to approve the proposal.'" *Shin v. Plantronics, Inc.*, 2019 WL 2515827, at *4 (N.D. Cal. June 17, 2019); *see* Advisory Committee Notes, Fed. R. Civ. P. 23, subdiv. (e)(2) (2018). While the Court believes that its previous analysis has addressed all the other factors the Ninth Circuit has previously instructed district courts to consider at final approval, it also notes that two additional factors not discussed above also favor final approval. *See Churchill Village, L.L.C. v. General Electric*, 361 F.3d 566, 575 (9th Cir. 2004) (citing *Hanlon*, 150 F.3d at 1026) (citing "the presence of a

governmental participant and "the reaction of the class members" as relevant factors in analyzing class settlements). First, the County is a party to this settlement, and supports the proposed settlement. Second, the reaction of the class supports approval of the settlement— more than 40,000 claims have been submitted, approximately 30,000 will be approved given JND's projections, and only twelve individuals (setting aside standing issues that may further reduce that number) have expressed objections to the settlement agreement.

f. *Incentive payments to class representatives*

"[N]amed plaintiffs, as opposed to designated class members who are not named plaintiffs, are eligible for reasonable incentive payments." *Staton v. Boeing Co.*, 327 F.3d 938, 977 (9th Cir. 2003). "Incentive awards are discretionary . . . and are intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general." *Rodriguez v. W. Pub. Corp.*, 563 F.3d 948, 958-59 (9th Cir. 2009).

The settlement agreement calls for incentive payments of $10,000 to nine different lead plaintiffs, for a total of $90,000. Dkt. 395-1 at 9. The Court finds these payments, individually and in total, are appropriate given the overall settlement of $53 million. As the parties note, the large number of lead plaintiffs is justifiable given the need for some lead plaintiffs to have been in custody in order to seek the injunctive relief the class previously sought, and to represent different subclasses created at various points in this litigation. Dkt. 449 at 23-24. Lead plaintiffs were also required to disclose intimate details of their experiences to support their claims at their depositions. *Id.* The Court finds these incentive payments to be reasonable and not disproportionate given the expected average claim of approximately $1000 for unnamed class members, and the fact that the $90,000 constitutes a very small fraction of the total settlement amount of $53 million.

g. *Objections raised by class members*

Having analyzed the specific factors articulated in Rule 23(e)(2), the Court now addresses objections made by class members. JND received a total of five objections, and the Court and Class

Counsel also received letters from individual class members expressing objections as well. *See* Dkt. 450-1 through Dkt. 450-12, excluding Dkt. 450-11 (collecting various objections); *see also* Dkt. 461 (additional letter received by the Court from Tanya Woods).

i. *Concerns beyond the reach of this Court.*

Because of the widespread publication of the Class Notice in an attempt to ensure that as many class members as possible submit claims, a number of individuals who do not appear to be eligible for participation in the class have lodged objections stating that they were strip searched at CRDF before or after the class period of March 5, 2008 to January 1, 2015. *See* Dkt. 450, Ex. B, C, D; Dkt. 461. At summary judgment, Defendants represented to the Court that strip searches were not being used in any substantial manner after January 2015. The Court relied on this representation in dismissing the claims for classwide injunctive relief. Class Counsel state that while they have heard "occasional complaints" regarding strip searches, they have no information that would suggest any widespread course of strip search use after January 2015. Dkt. 449 at 12-13.

The Court finds that (setting aside the standing issue that the Court will discuss later) these objections cannot be given substantial weight with regard to final approval of the class settlement. The Court previously made a finding based on substantial evidence that the appropriate period for consideration of these constitutional claims on a classwide basis ended in January 2015, and individual objections based on allegedly unconstitutional searches that occurred after the end of the class period are not relevant to whether a settlement addressing claims arising from March 2008 to January 2015 should be approved. Similarly, alleged searches that occurred before the class period began (and are time-barred under California's two-year statute of limitations for § 1983 claims) are not relevant to the Court's decision to approve or deny final approval of the settlement before the Court.

ii. *Individualized objections to claim recovery.*

Other objectors raise individualized concerns with regard to their personal experiences being strip searched, or argue that because of those circumstances, they deserve a larger portion of the settlement fund than they are entitled to under the points-based distribution formula in the Settlement Agreement. *See* Dkt. 450, Ex. E, F, G, L (Garcia late opt-out and objection). The Court recognizes that

individual class members may feel strongly that their individual experiences deserve a higher level of monetary compensation, but a more detailed, subjective case-by-case assessment, in a class of approximately 94,000 individuals, would not be feasible and would both erode the settlement fund through additional administrative fees and delay final distribution of the funds to class members. To the extent that these individuals feel that this settlement is inadequate, their proper remedy would be to opt-out, as a small number of other class members have done, an option which is clearly provided in the email and first-class mail notice distributed by JND. *See* Dkt. 451, Ex. A, B, C, and D. Each form of notice also clearly states the approximate range of the claim recovery, with a $200 minimum and the potential for "thousands" of dollars for individuals who endured many searches. *Id.* As discussed above, the Court finds that the points-based distribution formula is an equitable form of "rough justice," intended to approximate the relative severity of the constitutional violations each class member received, but that it cannot perfectly compensate each class member based on their subjective assessment of the extent of their injuries. *In re Volkswagen "Clean Diesel" Mktg., Sales Practices, & Prod. Liab. Litig.*, 895 F.3d 597, 611 (9th Cir. 2018) (internal citation and quotation marks omitted). These objections do not alter the Court's view of the Settlement Agreement.

iii. *Attorney's fees.*

A number of objections were lodged to the size of the attorney's fees proposed in the Settlement Agreement. *See* Dkt. 450, Ex. H, Ex. I. While only a limited number of such objections have been made, and some of these objections misinterpret the maximum size of the proposed attorney's fee award possible under the Settlement Agreement, the Court has considered these objections in conjunction with its independent duty to assess the reasonableness of any proposed fee award. *See* Fed. R. Civ. P. 23(h). The fee award structure in the Settlement Agreement is entirely dependent on this Court's approval and determination of the appropriate award in these circumstances. *See* Dkt. 395-1 at 18. The non-binding structure of the attorney's fee award provided in the Settlement Agreement does not raise concerns with respect to whether final approval of the settlement should be granted.

iv. *Ms. Shorter's objections.*

The Court first notes that it is unclear whether Ms. Shorter, who is a class member but has opted-out of the settlement to pursue her own individual claims, Dkt. 429, has standing to object to the class

settlement. *See* Newberg on Class Actions §13:23 (5th ed.), 13:23 Standing to object—Opt-outs. ("[c]lass members who opt out of the class at certification or at settlement are no longer considered class members, and hence Rule 23 does not give them standing to object to the settlement"); *see also Glass v. UBS Financial Services, Inc.*, 2007 WL 221862, *8 (N.D. Cal. 2007) *aff'd* 331 Fed. Appx. 452 (9th Cir. 2009) (district court held that objector who opted-out lacks standing to object, objector not referenced in Ninth Circuit decision affirming district court). Nevertheless, the Court will construe her objections as equivalent to an amicus brief and address them below.

Ms. Shorter's objections do not raise issues the Court finds compelling. Dkt. 452; Dkt. 429. Her argument that settlement recovery is "miniscule" and her assertion that certain individual class members could instead receive six or seven figure recoveries if they proceeded individually is largely speculative, and does not properly focus on the best result for the class as a whole. Moreover, the Settlement Agreement expressly permitted up to 250 members of the class to opt-out and pursue individual damages— the fact that so few class members have chosen to do so suggests that the settlement represents a reasonable recovery for class members, and that they have little appetite for pursuing these claims individually. The Court also gives substantial weight to Class Counsel's opinion regarding the value of the class claims on this topic, given their specific expertise with this manner of large-scale prisoner litigation and extensive period of negotiation with the County. *See* Dkt. 410 at 3-10, 81-83. The Court also expressly declined to certify a damages class in its prior Orders, and absent a settlement would have required individualized damages determination in order for class members to take these claims to trial.

Ms. Shorter's proposal that JND should instead calculate the points for each individual member prior to the opt-out deadline, and permit class members to go through a second opt-out period after learning their specific point allocation (and resulting monetary recovery) would cause a substantial and unnecessary delay in distribution of funds and incur additional administrative expenses. Her request that independent class counsel be appointed to consult (free of charge) with class members on an individual basis to determine whether they should pursue an alternative course of legal action would erode the funds available to the class and is unsupported by caselaw on Rule 23 regarding circumstances that require appointment of independent counsel. The Court does not find that the issues she has raised regarding the contents of the Class Notice, or the ability of class members to gain access to the full

Settlement Agreement are well-founded and finds that in all aspects Class Counsel's efforts to ensure class members have notice of the settlement and submit claims has been adequate.

h. ***Administrative Issues***

i. ***Opt-Outs***

Six individuals have requested to opt-out of the class settlement. One of the opt-out notices was received late. Dkt. 450-12. The Court acts in its discretion pursuant to the Settlement Agreement to permit this late opt-out, and these individuals are listed below:

1. Valerie Rehling
2. Jessica Rivera Hernandez
3. Lyubox V. Shur a.k.a "Luba Shur"
4. Pik Yue
5. Tammy Lynn Dayton
6. Natalie Elizabeth Garcia

ii. ***Administrative issues arising from COVID-19 and class member letters to the Court.***

The Court also makes note of an administrative issue that arose in the course of the settlement approval process. After notice was mailed to the class, a number of class members sent letters to the Court directly, some expressing objections to the settlement and others describing their experiences, sometimes including personal details regarding the conditions they endured at CRDF. The Court's administrative docketing system interpreted these letters as appearances in the lawsuit, and filed a number of these letters on the docket, resulting in documents filed by the parties in this lawsuit being sent to those class members and their letters being made public. Class Counsel filed an *ex parte* motion to correct the record and strike accounts of personal experiences that included personal details and personal identifying information that should not have been disclosed in this manner. Dkt. 426. The Court granted this motion and struck each of the "appearances" that had been erroneously entered based on

these letters, after assessing each one and determining that it could not be plausibly considered an objection to the settlement. Dkt. 436.

In order to prevent future inadvertent disclosure of personal information, the Court instituted additional measures to review any new letters received in this lawsuit prior to filing on the docket. Since March 2020, the Court has reviewed each new letter mailed to the Court *in camera* and if it could plausibly be construed as an objection to the settlement, ordered it filed on the docket. Other letters sharing detailed personal information, seeking to be included in the claims process, or raising concerns related to CRDF recordkeeping relevant only to specific class members were ordered forwarded to Class Counsel to address with JND's assistance. The Central District issued General Order 20-05 regarding COVID-19 shortly after the Court adopted this policy, and many of the Court's administrative staff transitioned to remote work. As a result, the Court learned only upon reviewing briefing in advance of the final approval hearing that certain letters had not been properly filed on the docket as objections, although they had previously been reviewed and sorted by the Court. The Court has since corrected this internal administrative error. *See* Dkt. 459; Dkt. 460; Dkt. 461; *but see* Dkt. 462 (expressing a desire to be notified of future proceedings, which the Court entered as a notice of appearance rather than an objection). All other letters, which cannot reasonably be construed as objections to the settlement and generally seek inclusion in the class or to share personal experiences, have now been delivered to Class Counsel.[2]

iii. *Late Claims*

Plaintiff state that there have been an additional 129 late claims filed since the June 4 cutoff date in the settlement agreement, and request that these late claims be approved by the Court. Dkt. 449 at 4. Section II ¶ 29 of the revised Settlement Agreement gives the Court the ability approve any late claims that are "filed prior to the Final Approval Hearing." Dkt. 395-1. The Court finds it appropriate given the potential challenges these particular class members (many of whom are currently incarcerated) may

[2] The Court also instructs the parties that pursuant to its equitable powers, the Court finds that any individuals who would otherwise have qualified for the settlement recovery but for the delay in notice or approval resulting from the administrative issues described in this subsection should be deemed members of the class regardless of when their claim is ultimately processed, and are therefore entitled to their *pro rata* share of the settlement fund.

have faced in receiving timely notice and submitting claims, to exercise this power. The Court approves any additional claims filed prior to the final approval hearing, which was held on July 20, 2020.

V. Conclusion

The Court GRANTS final approval to the settlement agreement proposed by the parties. It also adopts by reference the findings and instructions contained in the following sections of the Proposed Order submitted by Plaintiffs: Section IV, Section VI, Section XII, Section XIII, and Section XIV, except to the extent they directly conflict with the terms of this Order. The parties and JND are instructed to proceed with the implementation of the Settlement Agreement as written.

Motion for Attorney's Fees and Costs

I. Legal Standard

In awarding attorney's fees under Federal Rule of Civil Procedure 23(h), "courts have an independent obligation to ensure that the award, like the settlement itself, is reasonable." *In re Bluetooth Headset Prods. Liab. Litig.,* 654 F.3d at 941. In the Ninth Circuit, there are two primary methods to calculate attorney's fees: the lodestar method and the percentage of the fund approach. *Id.* at 941–42. Under the percentage of the fund approach, the attorney's fees equal some percentage of the common settlement fund; in the Ninth Circuit, the benchmark percentage is 25%. *Id.* at 942. The lodestar method requires "multiplying the number of hours the prevailing party reasonably expended on the litigation (as supported by adequate documentation) by a reasonable hourly rate for the region and for the experience of the lawyer." *Id.* at 941.

A district court has discretion in calculating fees, or approving a fee request, but it "abuses that discretion when it uses a mechanical or formulaic approach that results in an unreasonable reward." *In re Mercury Interactive Corp. Sec. Litig.,* 618 F.3d 988, 992 (9th Cir. 2010) (internal quotation marks omitted). One way that a court may demonstrate that its use of a particular method or the amount awarded is reasonable is by conducting a cross-check using the other method. For example, a crosscheck using the lodestar method "can 'confirm that a percentage of recovery amount does not award counsel

an exorbitant hourly rate.'" *In re Bluetooth,* 654 F.3d at 945 (quoting *In re Gen. Motors Corp. Pick–Up Truck Fuel Tank Prods. Liab. Litig.,* 55 F.3d 768, 821 n. 40 (3d Cir. 1995)).

Because the relationship between class counsel and class members turns adversarial at the fee-setting stage, district courts assume a fiduciary role that requires close scrutiny of class counsel's requests for fees and expenses from the common fund. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1052 (9th Cir. 2002); *see also In re Mercury Interactive Corp. Sec. Litig.*, 618 F.3d 988, 994 (9th Cir. 2010) ("As a fiduciary for the class, the district court must 'act with a jealous regard to the rights of those who are interested in the fund in determining what a proper fee award is.'" (internal quotation marks omitted) (quoting *In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1302 (9th Cir. 1994))); Newberg on Class Actions § 13:40 (5th ed. 2012).

II. Analysis

As is customary in large-figure class action settlements, the Court acts within its discretion to first analyze the fee request under the percentage of the fund approach, and then cross-check this analysis with reference to the provided lodestar figures submitted by Class Counsel, to ensure the award is reasonable. *See Acosta v. Frito-Lay, Inc.*, 2018 WL 2088278, at *11-12 (N.D. Cal. May 4, 2018); *Smith v. Am. Greetings Corp.*, 2016 WL 362395, at *8-9 (N.D. Cal. Jan. 29, 2016).

a. Percentage of the Fund

Plaintiffs' motion for attorney's fees seeks 33.33% of the total settlement fund, for a total fee award of $17,490,000.00 to be paid to Class Counsel. Dkt. 409. In the Ninth Circuit, the "benchmark" figure for fee award analysis under the percentage of a common fund approach is 25%. *See In re Bluetooth*, 654 F.3d at 942; *see also In re Hyundai & Kia Fuel Econ. Litig.*, 926 F.3d 539, 570 (9th Cir. 2019). However, Class Counsel argues that "nearly all common fund awards range around 30%. Dkt. 409 at 8-9. The Court disagrees and finds that the benchmark for percentage of a common fund in the Ninth Circuit remains 25%. *See In re Easysaver Rewards Litig.*, 906 F.3d 747, 754 (9th Cir. 2018) (noting that a disputed fee award fell below the "25% benchmark typically used in our circuit"); *In re Hyundai*, 926 F.3d at 570 (same);

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The Ninth Circuit has indicated various factors relevant for consideration of an upwards percentage fee adjustment which include (1) the extent to which class counsel achieved exceptional results for the class; (2) whether the case was risky for class counsel; (3) whether counsel's performance generated benefits beyond the cash settlement fund; (4) the market rate for the particular field of law; (5) the burdens class counsel experienced while litigating the case; (6) and whether the case was handled on a contingency basis and its duration. *See Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048-50 (9th Cir. 2002); *see also In re Optical Disk Drive Products Antitrust Litigation*, 2020 WL 2507359, at *6 (9th Cir. May 15, 2020).

The Court will generally apply these factors in a manner which it believes effectively addresses the relevant circumstances in this class settlement and litigation. The Court will not address Class Counsel's skill and experience (which it finds are more properly analyzed in justifying the lodestar cross-check by establishing an appropriate rate for services rendered) or the reaction of the class (which the Court finds relevant only to the final approval decision analyzed above). The Court agrees with Class Counsel that the "complexity of the litigation" rather than its "riskiness" for Class Counsel better describes that relevant factor. *See* Dkt. 409 at 3. Because the Ninth Circuit has repeatedly emphasized that these factors are not "exhaustive," the Court also acts within its discretion to consider other factors more unique to this lawsuit. *See In re Optical Disk Drive*, 959 F.3d at 930 ("Ultimately, district courts must ensure their fee awards are supported by findings that take into account all of the circumstances of the case") (quotations omitted).

i. Exceptional Result Achieved

Class Counsel argues that the result embodied in this settlement is "exceptional," and strongly justifies an upwards adjustment to the 25% benchmark. Dkt. 409 at 9-10. In support of this argument, Class Counsel provides in its supporting declaration a survey of strip search settlements exceeding $25 million, and asserts that the $53 million figure in this settlement is an "exceptional" result. *See* Dkt. 409 at 9; Dkt. 410 at 28-36 (presenting and analyzing similar strip search settlements). Class Counsel also argues that the average claim size (estimated at $1500 at the time the motion was filed, although revised to $1000 by the time of the final approval hearing due to a high claims rate) also shows that this was an exceptional result for class members. Dkt. 409 at 10.

The Court agrees that this settlement represents a good result for class members, as evidenced by its prior Order granting final approval of the settlement. However, it does not find that it constitutes such an exceptional result as to justify an upwards adjustment from the 25% benchmark. Class Counsel emphasizes the dollar value of the settlement ($53 million) in comparison with other strip search settlements. But many of these settlements were created more than a decade ago, and as a result, the inflation-adjusted values of those settlements are substantially different from the value of the $53 million in 2020. The Court also notes that Class Counsel is generally conscious of inflation, and in justifying its lodestar figure utilizes a 3% annual adjustment to compare the requested hourly fee rates to historical hourly fee rates granted in similar cases. Dkt. 410 at 76-77. Applying the same 3% adjustment rate to the comparison settlements presented by Class Counsel, the Court reaches the following approximate inflation-adjusted figures:

- *Williams v. Block*, (2001) $47,344,000 in 2020 dollars
- *Tyson v. City of New York* (2001) $87,675,000 in 2020 dollars
- *McBean v. City of New York* (2006) $49,915,000 in 2020 dollars
- *Craft v. County of San Bernardino* (2008) $36,356,000 in 2020 dollars
- *Young v. County of Cook* (2010) $73,915,000 in 2020 dollars

Having adjusted those settlement figures for inflation, the Court finds that the $53 million settlement here is a good result, but not such an exceptional result as to justify an upwards adjustment to the 25% benchmark.

The Court does not find that the average size of class member recovery demonstrates that this settlement constitutes an exceptional result relative to similar settlements, because average recovery figures are often subject to circumstances outside the control of Class Counsel, and the claims rates for a settlement can vary dramatically. For example, at the time Class Counsel filed this motion, they asserted that the average claim was likely to be $1500, but as a result of a high claims rate by class members, the average is now estimated to be closer to $1000 per class member. *Compare* Dkt. 409 at 10 *with* Dkt. 449 at 15. This illustrates the difficulties that arise from attempting to compare these large-dollar settlements with large numbers of class members and unpredictable claims rates based on average claim recovery or

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total class members. The Court does not find that the average size of the class member recovery here favors an upwards adjustment to the 25% benchmark.

ii. Complexity of the Litigation

The Court does not believe that this factor favors an upwards adjustment to the lodestar. Class Counsel are specialists in this precise intersection of civil rights law and class action litigation, specifically class action prisoner litigation, and many of the complexities of these lawsuits are issues they are highly familiar with and have repeatedly litigated. *See generally* Dkt. 410 at 5-9. Class Counsel cite *Monell* issues as adding substantial complexity to this case, but the dispositive issue that this settlement ultimately arose from was what LASD indisputably acknowledged was a "policy or procedure" of LASD— in this Court's summary judgment Order for Plaintiffs, *Monell* is not even analyzed. *See generally* Dkt. 361. The complexity of the ultimately unsuccessful claims Class Counsel pursued regarding other allegations of constitutional violations (based on verbal abuse, outside viewers present during searches, and cleanliness) is not relevant to analysis of this factor. *See Amador v. Baca*, 299 F.R.D. 618, 626-27 (C.D. Cal. 2014); *Amador v. Baca*, 2014 WL 10044904, at *7 (C.D. Cal. Dec. 18, 2014) (declining to reconsider the class certification analysis relevant to abuse, privacy, and sanitation subclasses).

The Court recognizes that intervening Supreme Court precedent altered the legal standard regarding the presumed constitutionality of body cavity searches in this context. *See Florence v. Bd. of Chosen Freeholders of Cty. of Burlington*, 566 U.S. 318 (2012). But it also notes that prior Ninth Circuit precedent was consistent with the outcome of *Florence*. *See Bull v. City & County of San Francisco*, 595 F.3d 964, 975 (9th Cir. 2010). Additionally, while *Florence* clearly held that use of visual body cavity ("VC") searches of inmates entering the general population was permissible without reasonable suspicion, it also acknowledged that "substantial" evidence could show that in practice, such policies may constitute an "unnecessary or unjustified" response to jail security concerns. *Florence*, 566 U.S. at 323, 334; *see also* Dkt. 361 at 7-8 (discussing the standard articulated in *Bull* and *Florence*). Class Counsel's efforts in discovery and in arguing for liability were therefore straightforward, although labor-intensive, but not especially complex. Their core argument was that the manner in which LASD's policy was applied was unreasonable given the circumstances and other feasible options available. *See generally* Dkt. 346 (Plaintiffs' motion for summary judgment). The Court granted summary judgment to

Plaintiffs with regard to liability based on a finding that clearly feasible measures to protect class members' privacy during VBC searches were available, that LASD was aware of these measures, and that LASD had no reasonable justification for failing to do so. *See* Dkt. 361.

The Court also finds that some of the asserted complexity of this case was the result of issues Class Counsel could have avoided. The decision to decertify the class made by the Court in July 2016 was made upon discovering while reviewing summary judgment briefing that significant changes had been made to the VBC search procedure during the then-ongoing class period, and that injunctive relief would no longer be appropriate. *See* Dkt. 312 at 5-6. In the briefing on summary judgment, Class Counsel essentially acknowledged that this relief was moot. *Id.* at 4 n.4 (summarizing arguments raised in Plaintiff's supplemental briefing). While the Court did ultimately recertify the class, the fact that these policy changes were not brought to the Court's attention until summary judgment briefing began in December 2015 leads the Court to find that complexities cited by Class Counsel arising from the decertification do not favor a finding that the fee award requires an upwards adjustment. *See* Dkt. 409 at 6 n.3 (arguing that the Court's decertification posed additional challenges for Class Counsel). Similarly, a recurring theme at certain points in this litigation has been Class Counsel's enthusiasm for "attempt[ing[to re-litigate matters already decided in prior orders." *See* Dkt. 312 n.3 (raising the possibility of sanctions for re-arguing issues regarding commonality of subclasses that had already been decided). Additional effort and motion practice linked to these attempts does not demonstrate complexity supporting an upwards adjustment to the 25% benchmark.

As previously discussed, the contours of the legal analysis here were clearly defined by Ninth Circuit and Supreme Court precedent, and exclusively related to an area where Class Counsel specialize heavily. Class Counsel's litigation efforts did not require comprehensive analysis of disparate state law on specific discrete issues, or a lengthy appeals process prior to settlement. *See In re Anthem, Inc. Data Breach Litig.*, 2018 WL 3960068, at *13 (N.D. Cal. Aug. 17, 2018) (finding substantial complexity supporting an upwards adjustment to the benchmark when class counsel addressed technical cybersecurity issues while asserting claims under the law of fifty different states); *In re High-Tech Employee Antitrust Litig.*, 2015 WL 5158730, at *10 (N.D. Cal. Sept. 2, 2015) (complexity favored upwards adjustment where class counsel was repeatedly required to defend the action on interlocutory and mandamus appeal). The Court finds that this factor does not support an upwards adjustment to the 25% benchmark.

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iii. *Burden of Litigating on Class Counsel*

While the litigation of this case lasted approximately ten years, the Court notes that it has not been actively litigated across this entire time period. First, the Court stayed the action for approximately six months pending the Supreme Court's decision in *Florence*. *See* Dkt. 145; Dkt. 152. Following the June 2017 order granting Plaintiffs' motion for summary judgment, the Court moved the case to the inactive calendar pending negotiation of a settlement. Dkt. 364. The case remained on the inactive calendar for approximately 2 years before the parties notified the Court of a tentative settlement agreement. Dkt. 384. The Court acknowledges that Class Counsel expended significant time and energy during this period negotiating the settlement. *See* Dkt. 410 at 64-66 (describing Class Counsel's mediation and settlement efforts). However, it finds that following a grant of summary judgment in a § 1983 case, where attorney's fees are granted as of right to a prevailing plaintiff, 42 U.S.C. § 1988, the risk to Class Counsel based on the contingency nature of its representation of the class was substantially reduced beyond that point. Accordingly, it finds that the relevant period of active litigation for purposes of analyzing the "burden" on Class Counsel is closer to seven years than to ten.

Class Counsel indisputably still experienced a significant burden in the course of litigating this case on a contingency fee basis for a substantial period of time. Class Counsel documents almost 9000 hours of billed time by attorneys, paralegals, and law clerks in the course of this litigation. *See* Dkt. 410 at 84-85 (consolidating billing by Class Counsel and staff). Class Counsel also submits itemized costs of approximately $369,000 incurred during the course of litigation, and not recoverable until settlement. *Id.* at 111-12; Dkt. 410-5 (additional records of costs incurred). Both the costs advanced in this litigation and the substantial investment of hourly work incurred by Class Counsel favor an upwards adjustment to the lodestar.

iv. *Benefits Generated Beyond Settlement Fund*

The Court finds that this factor favors Class Counsel's request for an upwards adjustment. After this lawsuit was filed in 2010, LASD made substantial changes to the search policies employed at CRDF after the lawsuit was filed, first in 2011 and then in 2013. LASD ceased to employ strip searches for inmates willing to be scanned by body scanners in 2015. Dkt. 410 at 66-68 (describing LASD policy changes and emails produced in discovery referencing this lawsuit in adopting these changes). These

changes ultimately mooted the need for continuing injunctive relief in this lawsuit. *See* Dkt. 312 at 5. The settlement agreement does not make any provision for continuing injunctive relief. *See generally* Dkt. 395-1. On this basis the Court finds that Class Counsel has clearly demonstrated that their efforts have generated benefits for the class beyond those contained in the settlement fund.

v. *Market Rate in this Area of the Law*

The Court determines that the appropriate comparison for assessing the "market rate" in this area of law is settlements of similar size to the $53 million settlement amount here. At slightly more than $50 million, the settlement agreement is at the lower edge of what courts have considered a "megafund," which the Ninth Circuit has not yet clearly defined. *See In re Optical Disk Drive*, 959 F.3d at 932-33 (noting that the Ninth circuit has not "identified a bright-line definition for megafund" but that a $124.5 million fund unquestionably is one); *Nitsch v. DreamWorks Animation SKG Inc.*, 2017 WL 2423161 (N.D. Cal. June 5, 2017) (defining megafunds as settlements exceeding $50 million); *Craft v. Cty. of San Bernardino*, 624 F. Supp. 2d 1113, 1127 (C.D. Cal. 2008) (same); *but see* Newberg on Class Actions § 15:81 (5th ed. 2012) (noting that "[m]ost courts define mega-funds as those in excess of $100 million").

Regardless of whether the settlement here should expressly be characterized as a "megafund," the Court follows other district courts in the Ninth Circuit in finding that a $53 million figure is sufficiently large to weigh in favor of a downwards adjustment to the 25% benchmark. *See Rodman v. Safeway Inc.*, 2018 WL 4030558, at *4 (N.D. Cal. Aug. 23, 2018) (citing Theodore Eisenberg, Geoffrey Miller, & Roy Germano, Attorneys' Fees in Class Actions: 2009-2013, 92 N.Y.U. L. Rev. 937 (2017) in support of the conclusion that a $42 million settlement falls in the second-highest decile of class action settlements, and favors a "slight downward adjustment" from the 25% benchmark); *Aichele v. City of Los Angeles*, 2015 WL 5286028, at *5 (C.D. Cal. Sept. 9, 2015) (finding that in settlements between $50-$100 million, "fees more commonly will be under the 25% benchmark"); *Craft*, 624 F. Supp. 2d at 1127 (finding that settlements above $50 million are often adjusted below 25%); *cf. In re Anthem*, 2018 WL 3960068, at *11-16 (N.D. Cal. Aug. 17, 2018) (finding even when multiple factors strongly supported an upwards adjustment to the 25% benchmark, a slight increase to 27% in a megafund case was appropriate). The Court finds that the "market rate" in class action settlements of this size in the Ninth Circuit favors a downwards adjustment from the 25% benchmark.

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vi. *Conclusion*

Having analyzed and weighed each of the factors discussed above, the Court finds that a fee award at the 25% benchmark is appropriate in these circumstances. Accordingly, given the $53 million settlement fund, Class Counsel is entitled to a fee award of $13,250,000.

b. Lodestar Cross-check

To confirm an award's reasonableness through a lodestar cross-check, a court takes "the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate." *Hensley v. Eckhart*, 461 U.S. 424, 33 (1983). "[T]he determination of fees 'should not result in a second major litigation'" and "trial courts need not, and indeed should not, become green-eyeshade accountants." *Fox v. Vice*, 563 U.S. 826, 838, (2011) (quoting *Hensley*, 461 U.S. at 437). Rather, the Court seeks to "do rough justice, not to achieve auditing perfection." *Id.* at 838.

The Court has reviewed the extensive documentation provided by Class Counsel in support of their hours billed, and the hourly rates requested. *See* Dkt. 410 at 81-113. The Court finds that on the whole, the hours billed and rates requested are generally reasonable, but it makes certain adjustments to these figures discussed below.

First, the Court finds that the lodestar figure submitted by Class Counsel is somewhat inflated by the fact Ms. Battles (one of the lead attorneys in the case for Kaye McLane Bednarski and Litt LLP, and a 2008 law school graduate) seeks an hourly rate of $700/hr for the approximately 3100 hours she incurred in litigating this action. *Id.* at 84. The Court finds that Class Counsel has adequately supported her billing rate given her current level of experience. *See id.* at 99-101. However, based on Ms. Battles' year of graduation from law school, a very substantial fraction of her hourly billings were incurred when she would not have been qualified to bill at a rate remotely close to $700/hr. *See generally* Dkt. 410-3 at 124-271 (substantial fraction Ms. Battles' work done in 2010, 2011, 2012, and 2013). Because her hourly rate for the first couple of years of the litigation would likely have been closer to one-half to two-thirds the rate she now requests, the Court finds that applying a $700/hr rate across all of her billed hours results in an inflated figure for her billings.

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Second, the Court notes that the hourly rate requested by Mr. Litt of $1200/hr is higher than the majority of even the "adjusted" rates he presents (which contain a 3% inflation adjustment to prior year fee awards he has received). *Id.* at 89. While upwards adjustments to hourly rates are common in legal practice, none of the submitted fee awards for civil rights lodestars exceed $1150/hr (even for 2018 and 2019 fee awards to Mr. Litt). *Id.* The Court finds that Mr. Litt's requested rate of $1200/hr is not entirely supported by the evidence before the Court.

Finally, the Court notes that Class Counsel seeks $360/hr for work by a senior paralegal, Ms. White, who billed approximately 10% of the total hours in this case. *Id.* at 84. While Class Counsel presents adjusted fee rates based on prior awards to senior paralegals is past years that in some cases are close to $360/hr (and in one case exceed it), most are significantly below that rate. The Court finds that this hourly rate is also not adequately supported by Class Counsel's submitted evidence and the Court's own experience with fee awards to paralegals.

The Court finds that the reasons discussed above justify a moderate "haircut" of 10% to the total hourly billings by Mr. Litt, Ms. Battles, and Ms. White. *See Moreno v. City of Sacramento*, 534 F.3d 1106, 1112 (9th Cir. 2008) (in lodestar calculations, a district court is permitted to impose a 10% "haircut" even without a specific explanation for the reduction). The combined billings of these three individuals, at $4,306,230, are therefore reduced by $430,623. *See* Dkt. 450 at 5-6 (final hourly billings submitted in connection with final approval hearing). After subtracting this sum from the final lodestar provided by Class Counsel of $5,709,924, the Court arrives at a final revised lodestar figure of $5,279,301. *See id.* at 85. Given the Court's determination that a fee award of $13,250,000 is appropriate via the percentage of the fund approach, the Court finds that this award is equivalent to granting a lodestar multiplier of approximately 2.5x the lodestar. The Court finds this to be wholly reasonable, particularly in light of the data provided by Class Counsel's expert, William Rubenstein. *See* Dkt. 413 at 2, 23 (finding an average lodestar multiplier of 2.2 in cases involving a common fund similar in size to this settlement). It is also squarely in the top-half of lodestar multipliers given in large-dollar class action settlements such as this one. *See Vizcaino*, 290 F.3d at 1051 n.6 (finding that in the Ninth Circuit, multipliers generally range from one to four).

The Court finds that a cross-check of the lodestar multiplier against the percentage of the fund award supports the Court's finding that a 25% fee award is reasonable.

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c. Costs

An attorney is entitled to "recover as part of the award of attorney's fees those out-of-pocket expenses that would normally be charged to a fee paying client." *Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (citation omitted). To support an expense award, Class Counsel should file an itemized list of their expenses by category and the total amount advanced for each category, allowing the Court to assess whether the expenses are reasonable. *Smith v. Am. Greetings Corp.*, 2016 WL 362395, at *9 (N.D. Cal. Jan. 29, 2016) (citations omitted).

Class Counsel has submitted evidence adequately documented litigation costs of $379,839.79 incurred during conduct of this litigation. *See* Dkt. 410 at 111-12; Dkt. 410-5. These expenses are properly categorized and reasonable in light of the course of litigation overall, with the majority of expenses incurred hiring experts to assist in the litigation, and the rest of the costs consistent with standard litigation practice in this area. The Court awards $379,839.79 in costs to Class Counsel.

III. Conclusion

The Court GRANTS IN PART Class Counsel's motion for attorney's fees, awarding Class Counsel $13,250,000 in attorney's fees. The Court also GRANTS Class Counsel 379,839.79 in costs.

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APPENDIX I

2017 WL 9472901
Only the Westlaw citation is currently available.
United States District Court, C.D. California.

Mary AMADOR
v.
Leroy D. BACA, et al.

Case No. CV 10-01649-SVW-JEM
Filed 06/07/2017

Attorneys and Law Firms

, , Kaye McLane Bednarski and Litt LLP, Pasadena, CA, , Law Office of Colleen Flynn, , Cynthia M. Anderson-Barker Law Offices, , Attorney at Law, , Mann and Cook, Los Angeles, CA, for Mary Amador.

, , , , Lawrence Beach Allen and Choi PC, Glendale, CA, for Leroy D. Baca, et al.

Proceedings: IN CHAMBERS ORDER GRANTING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTION FOR SUMMARY JUDGMENT [343] [346]

, U.S. DISTRICT JUDGE

I. INTRODUCTION

***1** Seven years ago, Plaintiffs filed this class action complaint alleging that Defendants instigated unconstitutional strip search polices at Century Regional Detention Facility ("CRDF") in Lynwood, California. On November 18, 2016, this Court granted Plaintiffs' renewed motion for class certification. Dkt. 327. The class period runs from March 1, 2008 to January 1, 2015. *See id.* On December 19, 2016, Plaintiffs filed the operative Fourth Amended Complaint. Dkt. 334. On March 10, 2017, the parties filed cross motions for summary judgment as to Plaintiff's claim that Defendants violated the Fourth Amendment rights of female inmates who were ship searched at Bus Bay #3. Dkts. 343, 346.

Plaintiffs do not challenge Defendants' right to institute a blanket strip search policy against inmates without individualized suspicion, since that issue has long been settled by the Supreme Court. *See* . Plaintiffs argue that the conditions of the search, executed without penological justification, give rise to their claim. Further, though the class certification order separates Plaintiffs into two classes and multiple subclasses. Plaintiffs argue that the "core conditions" common to every class establishes their claim. The Court agrees, and GRANTS Plaintiff's motion for summary judgment. Accordingly, the Court DENIES Defendants' motion on these grounds. Defendants also moved for summary judgment against the individual and official capacity claims against individual defendants. The Court GRANTS Defendants' motion for summary judgment on claims against individual defendants.

The Court notes that the "core conditions" of the search are common to both classes and all subclasses. Therefore, members of a subclass that may have experienced even harsher conditions, due to cold weather, menstruation while being searched, larger group size, or other factors, were all subject to the core conditions and thus the summary judgment order applies to subclasses without needing to consider the additional allegations of the subclasses.

II. FACTUAL BACKGROUND

Unless otherwise noted, the Court's statement of facts is taken from the undisputed statements in the parties' separate statements of material facts. *See* dkts. 350. 354. If the Court states a fact was not disputed but the subject of an objection, the Court overrules the objection.

Since 2006, the Los Angeles Comity Sheriff's Department ("LASD") primarily housed the female inmates at CRDF. Inmates who are transported to court are subject to a visual body cavity ("VBC") search upon their return to CRDF. The vast majority of these searches occurred at Bus Bay #3. These searches were conducted in groups of at least twenty inmates, and sometimes exceeding forty.

Though particular details of any given strip search may vary, LASD issued a strip search script in 2013 which the parties agree describe common elements of the search from 2008 to 2015. *See* dkt. 345–1, exh. H; dkt. 284–32, exh. 312.1. The guards instructed the inmates to disrobe down to their panties, and place their clothes and personal items on a table in front of them. The inmates then lifted their arms above their head, lifted their breasts, and ran their fingers through the waistline of their underwear. They were then told to drop their underwear to their knees and leave them there, and to open their belly buttons and lift their stomach and any skin folds. They were then told to lift their underwear and turn around to face the wall.

The Court notes that the script includes reference to several changes that LASD made throughout the years, such as painting squares on the floor and installing tables for inmates to put their clothes on, and thus is not indicative of every female inmate's experience. However, the Court finds these differences inconsequential to the liability analysis.

*2 At this point the guards asked if any inmates were on her period. If so, they were instructed to remove their tampon or pad and were given a new pad, but told not to put it on. The guards then ordered the following:

> [P]ull down your underwear, take a half step back, spread your feet wide, and bend at your waist, not at your knees. Reach behind with your hands, spread open your vagina lips, and . Look between your legs so you can see when we tell you to get up. until you are told to get up. When you are told to get up, face the wall and put your hands behind your back. You should not be talking or looking around.

Dkt. 345–1, exh. H: dkt. 284–32, exh. 312.1. Inmates who requested a pad were then told they could put it on. The guards then searched the clothing on the table, and then the inmates got dressed and exited.

The parties do dispute the extent to which the inmates viewed each other during this search. *See* dkt. 350 ¶ 41. The Court accepts Defendants' factual contentions that inmates were "not forced to watch other women", dkt. 345–3, exh. "X" (Cholewiak Depo.) at 398:8–16, and that the deputies stood in the middle of the room between the two lines partially obstructing the view. Defendants produce no evidence, however, that rebuts Plaintiffs' common sense assertion that the inmates *could not avoid* seeing each other's bare bodies.

Defendants' argument that inmates were "instructed" not to look at each other is misplaced. First, as a factual matter, this does not contradict the assertion that inmates did see each other's bare bodies both during the initial disrobing and during the VBC inspection, and thus that assertion remains undisputed. *See*
(finding that no reasonable fact finder could infer that a group of inmates being strip searched without privacy screens could avoid observing other inmates' naked bodies). Second, as a legal matter, the burden is not on the inmates to fix their gaze in a constitutionally appropriate manner. Rather, the burden is on the Defendants to secure the inmates' privacy—unless there a penological purpose or other justification for not doing so.

The layout of Bus Bay #3 and the amount of individuals searched at a time changed throughout the years. The Court finds some of these changes important to the analysis:

- In April, 2013, 24 numbered squares were painted on the floor Bus Bay #3.
- On July 20, 2013, CDRF implemented a written policy limiting strip searches to a maximum of 24 inmates at a time.
- In October, 2014, a body scanner machine was installed for purposes of searching inmates. Since that time, only inmates who refuse to be body-scanned are strip searched.
- 24 privacy curtains were installed in February, 2015.

The particular strip search at issue, a VBC. is considered to be more invasive than a strip search that does not include a body cavity inspection. Further, a VBC in which the female inmate is told to manually spread her vagina for inspection ("labia lift") is more invasive than the alternative "squat-and-cough" procedure. It is undisputed that the search conducted by LASD is not the standard practice used by other correctional facilities. *See* dkt. 350 ¶¶ 113, 116 (Defendants object but do not dispute). Plaintiff's expert, Wendy Still, is not aware of any other jail that conducts this type of invasive search in a group setting without individualized privacy (regardless of whether the jail uses the "labia lift" or "squat-and-cough" procedure). *Id.* ¶ 117 (Defendants object but do not dispute).

Defendants' objections to these last two points is that "correctional practices of another institution are irrelevant to a determination of whether the strip search procedures at CRDF. specifically, were constitutional." Dkt. 350 ¶¶ 116, 117. As discussed further below, the question is not simply whether or not the strip search "infringes" the constitutional rights of Plaintiffs, but also whether the infringing elements of the search are reasonably related to a legitimate penological interest. *See* ("[E]ven when an institutional restriction infringes a specific constitutional guarantee ... the practice must be evaluated in the light of the central objective of prison administration, safeguarding institutional security."); *see also*
("[W]hen a prison regulation impinges on inmates' constitutional rights, the regulation is valid if it is reasonably related to legitimate penological interests."). Courts have consistently found the practice of other institutions to be relevant under the second inquiry (whether the infringing element is reasonably related to a valid penological purpose). *See*
905 (9th Cir. 2001); *see also,* dkt. 356. Pl. Reply, at n. 4 (collecting cases).
The Court further notes that Defendants' objections to Wendy Still are targeted towards her lack of personal knowledge of CRDF. *See* dkt. 355, Def. Reply, at 10. Defendants do not object to her knowledge of standard practices at other correctional facilities. Further. Defendants have not challenged Still's qualifications as an expert and have not requested a *Daubert* hearing.

III. LEGAL STANDARD

*3 Summary judgment is appropriate if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. . The moving party bears the initial responsibility of informing the court of the basis of its motion, and identifying those portions of the pleadings, depositions, answers to interrogatories, admissions, or affidavits that demonstrate the absence of a triable issue of material fact.
In determining a motion for summary judgment, all reasonable inferences from the evidence must be drawn in favor of the nonmoving party. . A genuine issue exists if "the evidence is such

that a reasonable jury could return a verdict for the nonmoving party," and material facts are those "that might affect the outcome of the suit under the governing law." . However, no genuine issue of fact exists "[w]here the record taken as a whole could not lead a rational trier of fact to find for the non-moving party."

IV. APPLICABLE LEGAL FRAMEWORK

A. *Turner v. Safley*

In , the Supreme Court considered the constitutionality of several inmate regulations promulgated by the Missouri Division of Collections. The Court began by describing "the principles that necessarily frame our analysis of prisoners' constitutional claims." . Among other things, the Court observed:

> [C]ourts are ill equipped to deal with the increasingly urgent problems of prison administration and reform .... [T]he problems of prisons hi America are complex and intractable, and, more to the point, they are not readily susceptible of resolution by decree. Running a prison is an inordinately difficult undertaking that requires expertise, planning, and the commitment of resources, all of which are peculiarly within the province of the legislative and executive branches of government .... Where a state penal system is involved, federal courts have, as we indicated in Martinez, additional reason to accord deference to the appropriate prison authorities.

Id. (internal citations and quotation marks omitted). Furthermore:

> [J]udgments regarding prison security are peculiarly within the province and professional expertise of collections officials, and, in the absence of substantial evidence in the record to indicate that the officials have exaggerated their response to these considerations, courts should ordinarily defer to their expert judgment in such matters.

Id. at 86 (internal citations and quotation marks omitted).

In light of these guiding principles, the Court held that "when a prison regulation impinges on inmates' constitutional rights, the regulation is valid if it is reasonably related to legitimate penological interests." *Id.* at 89. Specifically, the *Turner* Court listed four factors in determining the reasonableness of the regulation at issue. "First, there must be a valid, rational connection between the prison regulation and the legitimate governmental interest put forward to justify it." *Id.* at 89 (internal quotation marks omitted). Second, courts should consider "whether there are alternative means of exercising the right that remain open to prison inmates." *Id.* at 90. "A third consideration is the impact accommodation of the asserted constitutional right will have on guards and other inmates, and on the allocation of prison resources generally." *Id.* "Finally, the absence of ready alternatives is evidence of the reasonableness of a prison regulation. By the same token, the existence of obvious, easy alternatives may be evidence that the regulation is not reasonable, but is an 'exaggerated response' to prison concerns." *Id.*

> The Court cautioned that "[t]his is not a 'least restrictive alternative' test: prison officials do not have to set up and then shoot down every conceivable alternative method of accommodating the claimant's constitutional complaint. But if an inmate claimant can point to an alternative that fully accommodates the prisoner's rights at *de minimis* cost to valid penological interests, a court

> may consider that as evidence that the regulation does not satisfy the reasonable relationship standard." (internal citations omitted).

B. *Bell v. Wolfish*

*4 In , the Supreme Court held that conducting a visual body cavity search of all inmates who had a contact visit with visitors, without probable cause to believe the inmates were concealing contraband, was constitutional. In its decision, the Court set forth the applicable legal framework that must be applied where, as here, an inmate challenges a strip-search policy under the Fourth Amendment:

> The test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application. In each case it requires a balancing of the need for the particular search against the invasion of personal rights that the search entails. Courts must consider the scope of the particular intrusion, the manner in which it is conducted, the justification for initiating it, and the place in which it is conducted.

Id. at 559. The Court concluded that VBC inspections could be conducted with less than probable cause, but specifically reaffirmed that such searches "must be conducted in a reasonable manner." *Id.* at 560.

C. *Bull v. City & County of San Francisco and Florence v. Bd. of Chosen Freeholders*

In (en banc), an en banc panel of the Ninth Circuit held that the VBC inspection of pre-arraignment arrestees, without any individualized reasonable suspicion that they were concealing contraband, was constitutional.

The court reasoned that "[b]ecause the purpose of the search policy at issue was to further institutional security goals within a detention facility, the principles articulated in *Bell v. Wolfish* [cite], and *Turner v. Safley* [cite], govern our analysis." . The court further noted that "[a]lthough *Bell* continues to provide definitive guidance for analyzing detention-facility strip searches under the Fourth Amendment, *Turner v. Safley* is also relevant to our analysis." . The court emphasized the substantial deference that must be given to prison officials in this context, reiterating that

> even if we "disagree [ ] with the judgment of [collections] officials about the extent of the security interests affected and the means required to further those interests," , we may not engage in "an impermissible substitution of [our] view on the proper administration of [a collections facility] for that of the experienced administrators of that facility." . .

Id. at 975. Under this deferential standard, the court found that the suspicionless VBC inspection of inmates was constitutional under both *Bell* and *Turner*. Shortly after the Ninth Circuit's decision in *Bull*, the Supreme Court reached essentially the same result in , upholding the constitutionality of visual body cavity searches, without reasonable suspicion, of inmates entering the general population of a jail. In so holding, the Court reaffirmed the deference owed to collections officials in this context:

> In addressing this type of constitutional claim courts must defer to the judgment of correctional

> officials unless the record contains substantial evidence showing their policies are an unnecessary or unjustified response to problems of jail security.

Id. at 322–23. However, the Court acknowledged that "there may be legitimate concerns" about the manner in which strip searches are conducted, but found that "[t]hese issues are not implicated on the facts of this case". *See id.* at 339.

V. ANALYSIS

*5 The *Bell* Court put forth four factors to analyze the reasonableness of a particular search: "Courts must consider [A] the scope of the particular intrusion, [B] the manner in which it is conducted, [C] the justification for initiating it, and [D] the place in which it is conducted." . The factors in *Turner* are also relevant to the analysis. *See* . Thus, the Court will also consider whether there is a "valid, rational connection between the prison regulation and the legitimate governmental interest put forward to justify it"; "the impact accommodation of the asserted constitutional right will have on guards and other inmates, and on the allocation of prison resources generally"; and "the absence [or existence] of ready alternatives."

A. The Scope of the Intrusion

The VBC inspections in this case involved no touching by jail personnel and were only conducted by female correctional officers. Similar strip searches have been held constitutionally permissible by the Ninth Circuit and Supreme Court. *See, e.g.,* ; (en banc). The Court notes, however, that *Florence* specifically dealt with a "squat-and-cough" inspection. *See* . It is not clear what type of inspection was at issue in *Bull,* likely because the district court decided that the details of the strip search were inconsequential to the analysis of whether a blanket strip search policy without individualized suspicion was constitutional. *See* (noting a "spectrum of possible search practices" but finding "the distinctions ... of searches make no difference in the analysis."). The Supreme Court in *Bell* briefly described the procedure for males, but was more ambiguous as to the procedure for females. *See* ("If the inmate is a male, he must lift his genitals and bend over to spread his buttocks for visual inspection. The vaginal and anal cavities of female inmates also are visually inspected.").

As Defendants point out, the search at issue here seems similar to *Bell* and further similar to the search this Court reviewed in *Solis v. Baca*, Case No. CV 06–1135 SCW(CTx) ("*Solis*"). Defendants note that this more invasive form of a VBC inspection did not change the constitutional analysis in those cases. The Court agrees that the difference between the "labia lift" and "squat-and-cough" searches is not constitutionally significant on its own; however, when accessing the overall reasonableness, this difference should be taken into account. As this Court further notes, Defendants provide no reason why they used a "labia lift" procedure instead of "squat-and-cough" and do not dispute that the "labia lift" is not standard practice at correctional facilities. The Court must consider, under *Turner*, the existence of ready alternatives and the impact to the Defendants in instituting these alternatives. Here, the "squat-and-cough" was undeniably a ready alternative and undeniably less invasive, and Defendants fail to provide any reason for failing to use this approach and fail to state any negative impact that would result from this alternative.

The scope of the intrusion of the VBC inspection at issue is an important factor, even if it is constitutionally permissible under certain conditions. Thus, this factor alone may not render the search unconstitutional, but the use of a highly invasive search is intertwined with the other factors in an overall reasonableness analysis.

B. The Manner in Which it is Conducted

Plaintiffs do not argue that VBC inspections are *per se* unconstitutional. Nor do they argue that group strip searches are *per se* unconstitutional. Rather, the Plaintiffs' claims rely on the manner in which these particular VBC inspections were conducted—particularly the intrusiveness of the search combined with the group setting and the lack of individualized privacy. Plaintiffs argue the particular manner of this search was unconstitutionally invasive for the following reasons:

*6 • Inmates would face the wall, undress down to their underwear, and then be ordered to turn and face the center with their bare breasts exposed.

• In view of the group, they would raise their arms and lift their breasts.

• They would then lower their underwear to their knees and lift their stomachs and rolls of fat.

• The inmates were then ordered to face the wall, bend at the waist, reach behind then bodies, pull apart their labia, and . Specifically, the script for the search memorialized in July 2013 reflects that inmates were told to "spread open your vagina lips."

• They were ordered to look between their legs, not at the wall, so that they could see when an officer signaled them to stand up.

• Further, Plaintiffs argue the intrusiveness is heightened by the lack of privacy, and argue a readily available alternative could have easily accommodated the constitutional errors with little burden on Defendants.

Before the Court analyzes whether the manner of these particular searches were reasonable, the Court notes that Defendants' arguments in this regard miss the point.

Defendants extensively argue that the initiation of the search at issue was reasonable to combat the known contraband problems in jail. However, Plaintiffs concede that it is constitutionally permissible to conduct suspicionless strip searches of all detainees returning to the prison facility. Thus, Defendants' reliance on cases that merely hold group strip searches are not *per se* unconstitutional, or that a particular group search—dissimilar to the search in this case—was not unconstitutional, are unpersuasive to this Court's inquiry. *See, e.g.,* (finding constitutional a blanket policy of non-body cavity group strip searches that were "no more intrusive on privacy interests than those upheld in the *Bell* case"); (finding group strip searches of culinary workers constitutional by deferring to prison officials' judgment that they did not have enough officers to conduct private searches and because employment in the culinary was voluntary); (finding group strip search constitutional due to: (1) "severe security risks in attempting to conduct individual strip-searches"; (2) the random searches would be rendered useless unless all inmates are removed from their cells simultaneously; and (3) the court found the searches were conducted in the "most effective and efficient" manner); (finding group strip searches constitutional due to, in part, "the fact that it is the policy and practice at the institution for an officer to comply with an inmate's request to be searched alone."). Defendants' strip search policy is distinguishable from all these cases.

The cases Defendants rely on are both distinguishable, and bely Defendants' contention that Plaintiffs' "ready alternative" arguments are a red herring. Several of these cases at least partially base their decision in analyzing the proffered ready alternatives, and ultimately rejecting them for various reasons. *See* (in finding defendants protected by qualified immunity, the court rejected plaintiff's proffered alternative of a "more private location" due to officer safety concerns and the potential for prisoners to "discard contraband on the way to the separate area"); (in upholding constitutionality of emergency jail-wide strip search, the court found that plaintiff's proffered alternative of individual searches in private areas would have been "extremely time consuming" when applied to "3,000 individuals" and "would have defeated the purpose of the swift institution-wide shakedown"); (upholding constitutionality of group VBC searches due to "security concerns" of plaintiff's proffered alternatives, including testimony that prisoners could dispose of contraband on the way to private locations and that portable screens would block the view of security cameras—and specifically noting that its holding is "limited to the facts established in this case and should not be read to constitute a carte blanche approval of all VBC searches"). Thus, despite Defendants' objections, it is in fact a mandatory inquiry for the Court

to consider the impact of accommodations that secure constitutional rights, and the absence or existence of ready alternatives.

> Defendants also cite to three S.D.N.Y. cases with questionable persuasive value. *See* *report and recommendation adopted.* ; ; . These opinions are conclusory and involve judgments against *pro se* plaintiffs. In *Smith* the court granted Defendants judgment *on the pleadings* because the plaintiff failed to "allege facts suggesting that the search did not serve a legitimate penological purpose." . In *Israel,* the court granted defendant's *unopposed* motion for summary judgment finding the initiation of the strip searches constitutional without analyzing the manner in which they were conducted. . In *Montgomery,* the court refused to analyze plaintiff's argument that privacy partitions were a readily available alternative by explaining that "the constitutionality of a strip search is not negated by the presence of other inmates and employees of the facility." . Inexplicably, the court's opinion never cited to *Turner* and thus unsurprisingly failed to analyze "the impact accommodation of the asserted constitutional right will have on guards and other inmates, and on the allocation of prison resources generally"; and "the absence [or existence] of ready alternatives." . Similarly. Defendants rely on . The court granted judgment against a *pro se* plaintiff who challenged his strip search in a group by a homosexual male guard. *Id* at *4. The court did not cite *Turner* nor consider proffered alternatives.
>
> If Defendants meant to argue that the search itself does not impinge on Plaintiffs' constitutional rights and therefore does not trigger *Turner* analysis, this argument can be easily dismissed. "[T]he Fourth Amendment does apply to the invasion of bodily privacy in prisons." (citing . 332 (9th Cir. 1988)).

1. "Ready Alternatives" and the Impact of Accommodation

*7 In , a case very similar to the case before this Court, plaintiffs alleged that their Fourth and Fourteenth Amendment rights were violated while they were detained at Cook County Jail. *Id.* at 837. Male plaintiffs were alternatively subject to a "bend-and-spread" search, in which they would bend over and spread their buttocks, or a "squat-and-cough" search. . They were searched in large groups without individualized privacy. . Similar to the case before this Court, the *Young* plaintiffs likewise "concede[d] that it is proper for [Cook County Jail] to conduct strip searches ... in groups. [However,] [t]hey challenge the manner in which those groups searches were conducted." . The *Young* court concluded that

> [B]efore the privacy screens were installed ... [the strip searches] were unreasonable and violated the Fourth Amendment as a matter of law. During that period, the class members, who were undergoing one of the most intrusive types of searches the government may permissibly conduct, were subjected to conditions that greatly enhanced their discomfort and humiliation. They were herded together with dozens of other men and forced to strip and bend over or squat in front of a large group, with less than a foot of space between them.

Id. at 851.

> Female detainees, however, were searched in cubicles that provided privacy, and always through the "squat-and-cough" approach.

Plaintiffs here also argue that privacy screens should have been installed in Bus Bay #3. They argue that, accepting the search itself served a penological purpose, depriving Plaintiffs of individualized privacy during "one of the most intrusive types of searches the government may permissibly conduct", *See id.*, did not serve a penological purpose nor would it have been too burdensome to accommodate. Ultimately, Plaintiff argues that failure to provide such a simple accommodation, with no justification, is conclusive evidence that the manner of the strip search was unconstitutional as a matter of law.

> As an initial matter, this case is distinguishable from the Court's previous decision in *Solis*. In *Solis*, plaintiffs likewise offered partitions or curtains as a ready alternative to ameliorate privacy concerns. The Court rejected this, citing defendants' response that partitions would cause safety issues and be logistically impractical due to cost concerns and the fact they would impede the flow of traffic through the corridor in which the search was conducted. None of these concerns are present here. It is undisputed that installing the curtains costs the Defendants less than $8,000. and that the installation was "simple." *See* dkt. 350 ¶¶ 141–43 (noting Defendants' "dispute" on other grounds). Further, unlike *Solis*, the Bus Bay was primarily used to search inmates and thus Defendants do not argue the curtains impede a normal flow of traffic or are otherwise incompatible with the space. Lastly, Defendants point to no "safety concerns" with the use of privacy curtains—but instead only conclusory state, for the first time in their opposition papers via a single paragraph in a declaration by Cmdr. Gutierrez, that they considered "safety concerns" when instituting their overall search procedure.

The reasons that Defendants offer for not installing privacy curtains sooner can be summarized as follows:

- Installing these curtains did not become feasible until the department installed a body scanner in October, 2014, because use of the body scanner greatly reduced the number of inmates being strip searched at any given time. Dkt. 345, Gutierrez Decl., ¶ 23.

***8** • Privacy curtains obstructed a guard's view of inmates. *Id.*

- The search procedure, as implemented without privacy curtains, was the most "cost-effective" method of conducting strip searches. *Id.* at ¶ 24.

- The search procedure, as implemented without privacy curtains, posed "the least amount of safety concerns" without compromising the effectiveness of the search. *Id.*

> Defendants provide no explanation—financial or logistic—why the body scanner itself could not have been installed earlier. *See* dkt. 284–38, Still Decl. ¶ 58, exh. 605 (noting that Cook Comity prisons installed body scanners in 2011). However, this issue was not briefed by the parties and thus will not be relied on by this Court.

2. Analysis

Prison officials are undoubtedly afforded great deference in their determinations of how to conduct strip searches that serve a legitimate penological purpose. *See* ; . However, this deference is not absolute. ("[D]eference does not mean abdication."). Therefore, courts can reject weak justifications when compared to the significant constitutional rights at issue. *See, e.g.,* (in finding that cross-gender clothed pat-down searches violated the Eighth Amendment, the court rejected excuses that males needed to perform the search to avoid interrupting lunch periods of female guards. The concurring opinion analyzed the case under the Fourth Amendment and applied *Turner* deference, yet nonetheless found a constitutional violation and rejected defendants' weak justifications, *See*). Further, courts must reject contradictory evidence, illogical proclamations, and proffered justifications unsupported by evidence. *See, e.g.,* (noting a "marked contrast" between the "general statements" offered to show a valid penological purpose and the "weak" and "contradictory" evidence offered to support those statements); *see*

also (finding defendants' argument that privacy partitions were not feasible was "undermined" by their later installation and "use[ ] without problems"). This case involves all of the above.

> The fact that the *Jordan* majority rested its decision on the Eighth Amendment helps Plaintiffs' argument, since an Eighth Amendment violation is more difficult to establish than a Fourth Amendment violation.

> The Court notes that *Hrdlicka* dealt with a constitutional claim under the First Amendment. However, this Court finds no reason why *Hrdlicka*'s analysis of *Turner* in rejecting weak and contradictory justifications would be different in the Fourth Amendment context.

Defendant's main contention is that installing privacy curtains was not feasible until they installed the body scanner since prior to the body scanner they had to search many more women at any given time and thus could not provide curtains for all of them in the same amount of space, as it would have been more difficult to monitor every woman and would have taken longer. There are several issues with this excuse. The first and most important issue with this proffered justification is the fact that Defendants began searching inmates in groups of 24 over a year before the body scanner was installed. *See* dkt. 345, De La Tone Decl. ¶ 13 (stating that from July 2013 onward "[o]nly 24 inmates could be searched at one time."). For over a year, between July 2013 and October 2014, every search was conducted with only 24 women present and *without a body scanner.* Thus, Defendants' own evidence shows that they could—and did—search only 24 inmates at a time before the body scanners were installed. By definition, it was feasible. Defendants do not attempt to explain this discrepancy and give no reason why the privacy curtains could not have been installed at least as early as July 2013. Further, if reducing the search group size to 24 women without a body seamier was less efficient and took more time. Defendants should have evidence from July 2013 to October 2014 to show this Court that searches took longer. Yet, Defendants produce no evidence that the searches during this time took longer, were difficult to manage, were unsafe, or were otherwise problematic. *See* .
The Court recognizes that it should give great deference to the justifications of prison officials. However, accepting this contradictory justification would create a rule of *absolute* deference, which no courts has found appropriate. *See, e.g.,* (rejecting general justifications that relied on contradictory evidence). Deference should be given to "informed" decisions. *See* . Plaintiffs contend that Defendants failed to even consider privacy curtains until recently. *See, e.g.,* dkt. 284–22, Cmdr. Gutierrez Dep., exh. 180, 146:2–25 ("if that thought [of privacy curtains] would have come up 20 years ago we wouldn't probably be here today."). Defendants do not specifically state when they first considered adding curtains, but instead simply declare "[t]he installation of such curtains, prior to the installation of the body-scanner, was not a viable option." *See* dkt. 276, Hausser Decl., ¶ 16. Accepting that Defendants considered and rejected privacy curtains, there is no basis on which this Court can find the decision was "informed" and thus the Court cannot be deferential to this decision.

> The Court also notes that Defendants give no reason why they did not reduce the search group size to 24 women from the beginning of the class period.

***9** The explanation that these curtains would obstruct the guard's view of inmates is also unfounded. Privacy curtains have been used for over two years prior to this summary judgment motion. Yet, Defendants provide no real world evidence that the curtains have unreasonably obstructed the guard's view of inmates. *See* dkt. 284–22, Cmdr. Gutierrez Dep., exh. 180, 153:4–20 ("Q: ... [I]n your personal opinion, if you had a ratio of three to one and you had had the curtains installed, it would have gone fine ... A: I think that an attentive, observant employee is definitely going to be able to do a good job."). Again, the Court cannot give deference to a single conclusory explanation accompanied with no evidence or explanation of potential consequences.

The excuse that the search as implemented was the most "cost-effective" is belied by the fact that installing curtains costs under $8,000. *See* dkt. 350 ¶¶ 141–43 (noting Defendants' "dispute" on other grounds). Certainly it was $8,000 cheaper to not install privacy curtains, yet this is the epitome of a weak justification when compared to the significant constitutional rights at issue. *See, e.g.,* . The excuse that the search, before installing curtains, provided the least amount of safety concerns is also unaccompanied with evidence or explanation as to the consequences. There is no evidence

that in the two years since curtains have been implemented there has been any safety concerns. *See*

> Further belying Defendants' contention that privacy curtains were unfeasible is the fact that Plaintiffs' expert, Wendy Still, is unaware of any other jail that conducts invasive strip search without individualized privacy. *See* dkt. 350 ¶ 117. Defendants also do not cite another jail that does so. As noted, *see supra* n. 5, this fact is relevant to the Court's analysis as to whether Defendants' actions served a penological purpose or w ere otherwise justified. Though LASD may have had unique obstacles that prevented them from conforming to the standard practices of other jails, Defendants do not provide evidence that these obstacles existed or that CRDF is unique.

The heart of Defendants' defense cannot be that accommodating Plaintiffs' constitutional rights was not feasible or impractical. They did it. It was feasible. The question, then, is whether Defendants were ignorant of the need to provide such accommodations. However, Defendants cannot reasonably argue that they were unaware of the obvious alternative of privacy curtains. *See, eg.,* dkt. 284–22, Cmdr. Gutierrez Dep., exh. 180, 146:2–25 ("if that thought [of privacy curtains] would have come up 20 years ago we wouldn't probably be here today."). The issue of privacy partitions was initially plead and litigated in *Solis,* a case which involved the same Defendants, same defense counsel, and same plaintiff's counsel. *See Solis,* Case No. CV 06–1135 SCW(CTx), dkt. 76 at ¶¶ 70, 72–73 (this document, filed in 2008, discusses other California jails that use either partitions or curtains to provide privacy to inmates being strip searched). Thus. Defendants were well aware of this alternative. *See also* Still Decl., ¶ 61 (acknowledging that the Federal Bureau of Prisons installed privacy partitions in all of its prisons in 1987); (finding in 2009 that the nonuse of privacy screens during strip searches without justification was a Fourth Amendment violation). This is not a case where the required accommodation was extraordinary or unreasonable. In this case, the accommodation was obvious, cheap, and "simple", *see* dkt. 350 ¶ 143, and Defendants knew it was a ready alternative at *least* as far back as 2008—two years before this case was filed.

C. The Justification for Initiating the Search

***10** Plaintiffs essentially do not dispute that Defendants are within their light to initiate these searches. Plaintiffs do provide evidence, however, that there is minimal justification for the invasive VBC search. *See* dkt. 156 ¶¶ 153–59 (noting that Plaintiffs are supervised at all times when at court, are only out of handcuffs when in a holding tank, go through pat down searches at the court, and otherwise have minimal contact with the public). However, this Court accepts Defendants' justification that the searches are necessary to combat the contraband problem in LASD. *See* dkt. 345, Gutierrez Decl., ¶¶ 5, 7, 16–21, 24; *see also,* Arroyo Decl., ¶ 13; Diaz Decl., ¶ 13; Estrada Decl., ¶ 13; Hausser Decl., ¶ 13; Ponce Decl., ¶ 13; Shambaugh Decl., ¶ 13; Vargas Decl., ¶ 13.

D. The Place in Which it is Conducted

The conditions of Bus Bay #3 are greatly disputed by the parties. Since the Court is granting summary judgment as to the core conditions, *see supra* n. 1, the Court can accept—for purposes of this summary judgment order only—that Bus Bay #3 was a suitable location for the searches.

E. Totality of the Circumstances

Based on the totality of the circumstances, the Court concludes that Plaintiffs' Fourth Amendment rights were violated. This conclusion is based on the invasiveness of the search (i.e. use of the "labia lift" despite less intrusive alternatives), which is one of the most invasive procedures conducted in penological institutions, the group setting of the search, in which inmates

could not avoid viewing each other, the lack of privacy within that group setting, and—most importantly—the lack of a penological purpose or informed justification for not providing individualized privacy. There is substantial evidence in the record that the manner of the search was an "unnecessary [and] unjustified response to problems of jail security."

F. Conclusion

There is no question that Defendants had the right to conduct a VBC search on Plaintiffs. However, under *Turner*, Defendants must justify their refusal to adopt ready alternatives. They have not produced any evidence explaining why they conducted these searches, in this fashion, for seven years. To the contrary, the evidence shows that what Defendants claim was not feasible, was in fact feasible, available, and inexpensive. Since there were readily available alternatives, with minimal costs of accommodation, on this record the Court GRANTS summary judgment in Plaintiffs' favor.

IV. QUALIFIED IMMUNITY

Plaintiffs' complaint also named eight individual defendants in their personal and official capacity who are current or former high-ranking LASD officials. Defendants moved for summary judgment against these claims arguing that the official capacity claims are duplicative of the *Monell* claim against the County, *See*

(official capacity suit against an individual defendant is to be treated as a suit against the employing public entity), and that the individual claims should be dismissed due to qualified immunity.

Plaintiff did not oppose either of these arguments. The Court finds a suit against individual defendants in their official capacity for damages is duplicative of a *Monell* claim, and thus GRANTS summary judgment against these claims. *See id.; see also* (reiterating that individuals sued in their official-capacity for damages, as opposed to injunctive relief, are not "persons" within the meaning of).

As to the individual capacity claims, the complaint makes no allegations as to the actions these individual defendants engaged in. Defendants state, and Plaintiffs do not dispute, that the individual defendants did not conduct any of the unconstitutional searches themselves. As to their role in creating the search policy, there are no allegations as to which defendant created or implemented any aspect of the policy or even which time period these defendants maintained their high-ranking positions within LASD. Thus, the Court cannot discern any individual activity in which any of these defendants would be personally liable, and therefore GRANTS summary judgment in their favor.

*11 Accordingly, the Court GRANTS summary judgment in favor of Plaintiffs on its Fourth Amendment claim and GRANTS summary judgment in favor of the individual Defendants.

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