MARCUS BYNUM, et al Plaintiffs v. GOVERNMENT OF THE DISTRICT OF COLUMBIA, Defendant	Civil Action No. 02-956 (RCL) RULING ON OBJECTIONS TO APPROVAL OF SETTLEMENT

GOOD CAUSE APPEARING, the Court finds as follows on the objections and other class member filings submitted for the Court's consideration. The documents referred to are all attached as Exhibits to the Declaration of William Claiborne:

DOCUMENTS RECEIVED FROM CLASS MEMBERS THAT DO NOT APPEAR TO BE OBJECTIONS

1. Two documents were received from class members raising issues about the settlement that plaintiffs' counsel considered to be raising individual issues rather than objections to the settlement, each of which is discussed in the following paragraphs.

2. George Keitt filed a document dated December 22, 2005,with the District Court. It was marked received December 23, 2005, by the District Court. Plaintiffs' counsel received a copy from Rosenthal & Co., who received it from the court. It does not appear to actually be an objection,

but more a confused claim. It says that he was 24 hours overdetained, but does not explain what issue he is writing about.

3. Gregory Bess sent a letter dated December 23, 2005, by certified mail. Class counsel received a copy on December 28, 2005. Mr. Bess' letter was addressed to the Clerk of the Court. It was from James A. Fishkin, of Dechert LLP, on behalf of Mr. Bess. There is no date stamp and no docketing of the objection. The letter asserts that the information regarding Mr. Bess' over-detention is incorrect, which he claims is two rather than the one month reflected in the District records. The claim form Mr. Bess submitted indicates that he is not a member of the Overdetention Class and thus he is not entitled to an award for an overdetention claim and he has no standing to object to the settlement.

4. With regard to these two documents, the Court has concluded that they are not objections to the settlement. Given the confusion and concerns reflected in the Bess letter, the Court will allow Mr. Bess the opportunity to opt out of the settlement if he so chooses. Rosenthal & Co. is directed to forthwith send him and his counsel a letter advising them of this opportunity in light of the issue that he raised about the accuracy of his records. The court agrees with the parties who negotiated the settlement that it is not realistic to allow class members to challenge the accuracy of their

records through the mechanism of the class action. Individuals who wish to pursue that issue must opt out and do so. With regard to Mr. Keitt, the court construes that he is just providing information about his situation, not raising issues about either the settlement of his particular situation.

5. If the Bess letter were construed to be an objection to the settlement on the ground that the settlement should allow other records to be considered, Mr. Bess is not a member of the Overdetention Class, so he has no standing to object to the Overdetention Class component of the Bynum Settlement Agreement. Mayfield v. Barr, 985 F.2d 1090, 1092 (D.C. Cir. 1993)(persons who are not class members because they are outside the definition of the class or have opted out lack standing to object to settlement agreements on appeal). At any rate, the Court concludes that resort to any means other than reliance on the District of Columbia's records as reflected in the claim forms would present administrative and practical problems that would be detrimental to the interests of the class as a whole. Such a procedure would eat up substantial resources that would otherwise go to class members. It could lead to substantial delay in distribution of monies to class members while individual class members litigated the time they claim should be allotted them. Accordingly, the Court concludes that the

settlement appropriately allows for District of Columbia records as reflected in the claim forms only.

DOCUMENTS RECEIVED FROM CLASS MEMBERS THAT APPEAR TO BE OBJECTIONS

6. Jerome Hill sent a document dated December 20, 2005, by regular mail, addressed to the Clerk of the Court. Class counsel received a copy on December 28, 2005. There is no date stamp and no docketing of the objection.

   a. The substance of Mr. Hill's objection is that he will receive a very small amount while the attorneys receive a very large amount. He was strip searched twice after being acquitted. He feels that his compensation is not just in light of his actually being acquitted. Plaintiffs construed this to be an objection to the size of the attorney's fees.

7. Wesley Baker sent a document dated December 10, 2005, by regular mail, addressed to the Clerk of the Court. Class counsel received a copy no later than December 23, 2005. There is no date stamp and no docketing of the objection.

   a. The substance of Mr. Baker's objection is that "the amount of money that the attorneys are asking for isn't more important

than the amount the defendants should receive for all that we were put through."

8. Cedric Tonkins sent a letter dated December 23, 2005, addressed to William Claiborne, with copies to the Clerk of the Court and Maria Amato. It has a postmark (and Institution Timestamp) of December 30. It was received in the mail on January 6, 2006, by class counsel. There is no date stamp and no docketing of the objection.

a. The substance of Mr. Tonkin's objection is to the payment of $3,000,000 to District of Columbia programs. He apparently, though it is not clear, also objects to the request for attorney's fees. He also contends that each class member should receive the amount of $200,000.

9. Richard Jones hand served on plaintiffs' counsel a document dated December 23, 2005, addressed to the Clerk of the Court, titled "Motion in Opposition to Settlement and Attorney's Fee." It has a court "Received" stamp of December 23. However, the objection is not docketed. The court received the document after the clerk was advised of its existence by plaintiffs' counsel, who then provided it to the court.

a. Mr. Jones first objects on the ground that none of the settlement money should be devoted to the District's effort to

solve the records office problem that led to the lawsuit. Mr. Jones' second objection is that the settlement improperly uses a formula that gives greater weight to some people's criminal record, background and the nature of their offense than others in determining the number of points awarded. Mr. Jones appears to partially misconstrue the terms of the settlement in that the overdetention formula under the settlement does not consider the factors he objects to (but the strip search formula does). Mr. Jones' last objection is that the requested attorney's fees are too high. He proposed that the attorney's fees should be approximately $250,000, and that a total of $10-$11 Million be distributed to the class members.

10. Kevin Quick submitted a claim form to the Class Administrator on about December 22, 2005. Attached to the claim form was a three page letter setting out Mr. Quick's objections to the Settlement.

a. However, the objection is not docketed and does not have a court stamp, and it was not served on counsel as required by the settlement papers.

b. Mr. Quick first objects on the ground that the attorneys' fees are excessive without saying why. Mr. Quick's second objection

is that the settlement improperly uses a formula that takes into consideration arrest history because he believes the police frequently arrest young black men without probable cause due to racial profiling. Mr. Quick also requests copies of the records on which his award was based.

THE TIMELINESS OF THE OBJECTIONS

11. Plaintiffs' counsel took no position on whether the court should consider particular objections timely filed, and left that solely to the judgment of the court. The Court concludes as follows:

a. _________________

b. _________________

WHETHER OBJECTIONS PRESERVED BY FILING WITH COURT

12. Plaintiffs' counsel took no position on whether the court should consider particular objections that were not filed with the clerk of the court and served on counsel for the parties as the Notice and other settlement papers required, and left that solely to the judgment of the court. The Court concludes as follows:

a. _________________

b. _________________

THE MERITS OF THE OBJECTIONS

13. Regardless of the timeliness of the objections, and whether they were filed with the clerk and served on the parties, the Court has considered the merits of the issues raised, and concludes that none of the objections is well taken. No objections provide any reason to alter the terms of the settlement in any respect, or to alter the amount of attorney's fees requested.

14. There were five documents received by counsel that appear to be objections to either the settlement and/or the Motion for an award of attorneys' fees filed (Jones, Hill, Baker, Quick and Tonkins). Three class members opted out. These figures strongly militate in favor of settlement. For example, in the Neal case, 4 of the 8 named plaintiffs objected to the settlement agreement but the Court still approved the settlement. Neal Memorandum Opinion at page 22. There were 60 comments or objections, from a total of about 250 claimants, of whom 125 were deemed to be class members. Neal Memorandum Opinion at pages 14 and 27. See, e.g., Stoetzner v. U.S. Steel Corp., 897 F.2d 115, 118-119 (3d Cir.1990) ("only" 29 objections in 281 member class "strongly favors settlement"); In re Prudential Ins. Co. of America Sales Practices Litigation, 148 F.3d 283, 318 (3d Cir.1998) (affirming conclusion that class reaction was favorable where 19,000 policyholders out of 8 million opted out and 300 objected). Here, there were three opt outs, and five objections, out of 25,833 mailings. The

percentage of opt outs is slightly lower than that in the Prudential Ins. case, and the percentage of objections is slightly higher. Both are very low. Less than one of every 3,000 people either opted out or objected to the settlement. Thus, the overall class response to the settlement strongly favors its approval without modification from the terms proposed.

15. The first type of objection (made by Jones and Tonkins) is that the District should not receive any of the settlement monies for the programs related to the objectives of the settlement. Mr. Jones asserts that the total to be distributed to class members should be $10-$11 Million, and Mr. Tonkin asserts that each class member should receive $200,000. This was both an injunctive relief and damages action, and it is fully appropriate that the settlement address both. It was both reasonable and necessary for the settlement to address how the problems were going to be solved going forward. The settlement requires the District of Columbia to devote at least $3 Million for specified projects aimed at this issue. As it turns out, the District has now committed to more. From the perspective of the class members, this was preferable to an open ended commitment by the District to solve the problem, and a settlement for less money, which would have been the likely alternative. This approach ensured that the District would have to devote substantial resources to this problem, and unquestionably

spurred the District to upgrade its processing facility, an event that was unlikely absent the settlement. The amounts requested by Mr. Tonkins are obviously unrealistic. Accordingly, this objection is not well taken.

16. The second type of objection (made by Jones, Hill, Baker, Quick and presumably Tonkins) is that the requested attorney's fees are too high. Three comments do not go further, and just assert that they are too high. Mr. Jones is more specific, and asserts that the attorney's fees should be approximately $250,000 (and that, in conjunction with the elimination of the money to the District, the class should receive a total of $10-$11 Million). Mr. Jones conceded that the standard attorneys' fee is 33% but Class Counsel William Claiborne stated in his affidavit that the standard fee for civil rights cases against the District of Columbia is 40% of the plaintiff's total recovery. Plaintiffs presented evidence that the total attorney's fee, without a multiplier, amounts to over $2 Million without any risk enhancement. They also presented evidence regarding market expectation and standards, as well as legal authority in support of our request. Plaintiffs have requested $4 Million (1/3 of the class fund) in fees. This request is reasonable and is consistent with market expectations and governing case law in this Circuit. Swedish Hosp. Corp. v. Shalala, 1 F.3d 1261, 1265, 1272 (D.C. Cir. 1993); In re Vitamins Antitrust Litig., 2001

U.S. Dist. LEXIS 25067, 36 (D.D.C. 2001) (Court awarded approximately 34% of a settlement fund calculated to be approximately $ 360 million); In re Baan Co. Secs. Litig., 288 F. Supp. 2d 14, 21 (D.D.C. 2003)(reducing counsel's requested fees from 32% to 28% because of problems in counsel's performance); In re Lorazepam & Clorazepate Anittrust Litig., 2003 U.S. Dist. LEXIS 12344 (D.D.C. 2003)(award of 30% of the common fund in attorneys' fees is appropriate); In re Baan Co. Secs. Litig., 288 F. Supp. 2d 14, 19 (D.D.C. 2003)(awarding requested percentage award of 32%). The objections reflected no appreciation of the issues involved in making an appropriate attorney's fee determination, of the work involved in crafting a settlement such as this, of the skill and expertise necessary to obtain such a result, of attorney's rates, or of the other relevant factors. For the reasons contained in the Order Awarding Attorney's Fees, the Court concludes that Plaintiffs' request of 1/3 of the Class Fund is reasonable.

17. The third type of objection (Jones and Quick) is that the settlement improperly uses a formula that gives greater weight to some people's criminal record, background and the nature of their offense than others in determining the number of points awarded. First, as a general matter, assigning damages among class members based on a distribution formula does not violate due process concerns. In a false arrest class action

case the District of Columbia Court of Appeals approved assigning damages without individualization by determining damages for the class as a whole, and then allocating the damages to class members according to a damages matrix based on length of detention. Dellums v. Powell, 566 F.2d 167, 189 (D.C. Cir. 1977). Second, Mr. Jones partially misconstrued the terms of the settlement. The variation in points based on record, background and the nature of the offense is only for strip searches, not overdetentions. Thus, to the extent that this is an objection to the formula for overdetentions, it is not applicable. With regard to the strip searches, the formula Plaintiffs' Counsel proposed presents a calibrated assessment of the factors that they believe would affect a jury's damages determination, based on their experience in settlement, as well as from reviewing jury verdicts. The Court concludes that the formula proposed by Plaintiffs' counsel reasonably takes account of factors that might affect a trier of fact's award of damages, and approves it as a fair and reasonable method of allocating the class fund.

18. To the extent that the Court has not addressed any issues raised in the objections, the Court nonetheless has considered them and concluded that the proposed settlement as originally formulated is a fair and reasonable one. The Court overrules all objections made to the settlement.

DATED: ____________

UNITED STATES DISTRICT JUDGE

Presented by: