IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

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TRAVIC BRECHER and
RENEE HOUSER (formerly Renee Jensen),
individually and on behalf of all
others similarly situated,

ORDER

Plaintiffs,

02-C-0450-C

v.

ST. CROIX COUNTY, WISCONSIN,
DENNIS D. HILLSTEAD, individually,
and in his capacity as the St. Croix
County Sheriff; KAREN HUMPHREY,
individually, and in her capacity as
"Jail Captain" of the St. Croix County
Jail, KRISTEN ANDERSON, individually and
in her capacity as a St. Croix County
Deputy Sheriff; TERRY LARSON,
individually and in his capacity as a
St. Croix County Deputy Sheriff,
LISA OPEL, individually and in her
capacity as a St. Croix County Deputy
Sheriff, SHELBY LANE, individually and
in her capacity as a St. Croix County
Deputy Sheriff,

Defendants.

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This civil action for declaratory, injunctive and monetary relief was certified as a class action pursuant to Fed. R. Civ. P. 23(b)(3). Class members were determined to be "[a]ll United States citizens arrested for misdemeanors or ordinance offenses unrelated to weapons or illegal drugs who were required by officers of the St. Croix County jail to remove their clothing for visual inspection of their genitals, pubic area, buttocks, or breasts between August 6, 1996, and February 27, 2001."

The court approved the form of notices to class members on April 9, 2003. Class counsel sent out the notices to 2,917 potential class members. 125 persons chose to opt out of the litigation. Many others did not receive the notices because they were returned as undeliverable. In an effort to locate the current addresses of those class members, class counsel used in-house investigators to conduct public record and internet searches, hired an outside contractor to locate class members and mailed notices to multiple addresses for the same persons. The final class numbered 1,983 persons.

Thereafter, the parties reached a settlement of the action. Defendants agreed to pay $6,965,000.00, without admitting liability. After the court gave the settlement preliminary approval on December 15, 2003, class counsel sent out notices to the 1,983 class members they had been able to identify, advising them of the terms of the proposed settlement and of their opportunity to file objections to the proposed settlement. No objections were filed.

Final approval was given to the settlement on February 2, 2004. Class counsel sent each class member a claim form, advising the member how to claim compensation for each of the strip searches covered by the settlement. When the claim forms were returned, class counsel calculated the total number of searches for which claims had been made (giving the members of the class who had been juveniles at the time of the search credit for 1.5 searches for each actual search to which they had been subjected. Using this total number as a divisor, and using $5,500,000 as the amount available for compensation for the members of the class other than the lead plaintiffs, counsel calculated the amount of money each class member would receive. Counsel then sent checks to each class member for his or her portion of the settlement amount. Counsel paid out $4,502.76 more than the $5,500,000 available for some additional claims that had not been taken into account when they made their initial calculation of the individual payments. The additional payment came out of the portion of the settlement award dedicated to the payment of attorney fees and costs. On May 11, 2004, class counsel filed its accounting of the disbursement of the settlement award.

On May 20, 2004, the court received letters from Eric McCane and Richard Lee Surrell, asking to be included in the settlement award. Both said that they had talked to class counsel and had learned that they would not be getting any checks because counsel had been unable to locate them. I will construe their letters as motions to re-open the case to allow them to file late claims. The motions will be denied.

Class counsel made a diligent effort to locate as many class members as possible. "Rule 23 does not require defendants to exhaust every conceivable method of identification." Burns v. Elrod, 757 F.2d 151, 154 (7th Cir. 1985). It is unfortunate but inevitable that they did not locate every class member. Unfair as it may seem to McCane and Surrell and others who could not be located, it is too late for them to obtain any portion of the settlement award. The money has been disbursed. It cannot be recalled and reallocated to accommodate late filers.

McCane and Surrell are not without recourse, however. Although the settlement agreement bars every member of the class from suing defendants over the same events at issue in the class action, persons such as McCane and Surrell who were never located are free to bring suits against defendants for any unconstitutional strip search they underwent.

Also on May 20, 2004, the court received a letter from Wynn Miller, complaining that he was credited for only one search, when he believes he had more. Enclosed with his letter is a form he signed on March 8, 2004, showing that he had been involved in one qualifying strip search. If Miller believed this number was wrong, he should have said so in March, when it was still possible to check out his claim. It is too late now that the settlement award has been disbursed.

ORDER

IT IS ORDERED that the motions of Eric McCane and Richard Lee Surrell to re-open this case to allow them to file class action claims for the strip searches to which they were subject are DENIED. FURTHER, IT IS ORDERED that Wynn Miller's request for a new determination of the number of searches he endured in St. Croix County is DENIED.

Entered this 26th day of May, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge