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JS-6

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CHERYL AICHELE, ET AL.,

Plaintiffs,

vs.

CITY OF LOS ANGELES, et al.,

Defendants.

Case No CV 12-10863-DMG (FFMx)

**FINAL ORDER APPROVING CLASS
ACTION SETTLEMENT AND
JUDGMENT OF DISMISSAL [195]**

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1 **I. INTRODUCTION**

2 This lawsuit having come before this Court for a hearing on August 28, 2015,
3 pursuant to this Court’s Order Preliminarily Approving Proposed Settlement
4 Between Plaintiffs and Defendant dated April 24, 2015 (the “Preliminary Approval
5 Order,” Doc. # 191) to consider and determine the matters set forth in the
6 Preliminary Approval Order; and due notice of said hearing having been published
7 and given; and all persons who made timely objections to or decisions to opt out of
8 the proposed settlement set forth in the Settlement Agreement, and described in the
9 Class Notice, having been given an opportunity to present such objections to the
10 Court; and the Court having considered the matter, including all papers filed in
11 connection therewith, and the oral presentations of counsel at said hearing; and
12 good cause appearing,

13 IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

14 **II. DEFINITIONS**

15 1. Each term and phrase used in this Final Order Approving Class Action
16 Settlement shall have the same definition and meaning as in the Settlement
17 Agreement, as follows.

18 2. “Administrator” means the claims administrator chosen by Plaintiffs
19 and Defendants jointly and to be appointed by the Court to administer the claims
20 process, pay class claims, issue deficiency notices, publish summary Class Notice,
21 discharge other duties set forth in this Settlement Agreement and handle other tasks
22 necessary and appropriate to completing the claims process. No provision is made
23 for Spanish translation of the relevant documents because Plaintiffs’ counsel’s
24 understanding is that there are no mono-lingual Spanish speakers among the class
25 members.

26 3. “Damages Class Member” means all members of the damages class as
27 recited above; members of the various sub-classes are referred to by the names
28 assigned them in the class certification order, as recited above (Vicinity Sub-Class,
OR Sub-Class, City Bus Sub-Class and County Bus Sub-Class); members of the

1 injunctive relief class are those who meet that class definition, as defined above.

2 4. "Class Counsel" means the four firms certified as class counsel in the
3 Court's August 26, 2013 class certification order (modified, where applicable, to
4 reflect the current firm names): Kaye, McLane, Bednarski and Litt, LLP; Carol A.
5 Sobel Law Offices; Schonbrun DeSimone Seplow Harris & Hoffman, LLP; and
6 Hadsell Stormer and Renick, LLP.

7 5. "Matters Alleged in the Lawsuit" refers to the claims for relief and
8 allegations in the Amended Complaint filed April 11, 2013.

9 6. "Released Persons" means Defendants and their affiliates, subsidiaries,
10 predecessors, successors, and/or assigns, together with past, present and future
11 officials, employees, representatives, attorneys, and/or agents.

12 7. "LAPD" refers to the Los Angeles Police Department.

13 8. "Class Notice" means the notice in a form substantially similar to that
14 attached to the Motion for Preliminary Approval as Exhibit B [Doc. # 184], with
15 such modifications as were provided by the Court.

16 9. "Effective Date" means the date upon which this Final Order
17 Approving Class Action Settlement and Judgment of Dismissal ("Judgment of
18 Dismissal") entered by the Court approving the Settlement Agreement becomes
19 final. If a class member objects to the settlement, the Judgment of Dismissal will
20 be deemed final upon expiration of the time to appeal or, if one or more Notices of
21 Appeal are filed in the Ninth Circuit Court of Appeals, upon exhaustion of all such
22 appeals and any petitions for writs of certiorari. If no class member objects to the
23 settlement, the Judgment of Dismissal will be deemed final upon its entry.

24 10. An "Opt-Out" is any Class Member who files with the Administrator a
25 timely request for exclusion from this Settlement Agreement.

26 11. "Proof of Claim Form" means the Proof of Claim and Release Form
27 that Class Members must use to make a claim for payment from the Class Fund, as
28 that term is defined in Paragraph 11, under this Settlement Agreement. A copy of
the proposed Proof of Claim Form is attached as the last page of Exhibit B, referred

1 to *supra*.

2 12. The “Class Fund” is the monetary fund set aside for Class Members
3 who file timely class claims. The Class Fund amounts to \$2,675,000, inclusive of
4 all attorneys’ fees and costs of class administration. The portion of the Class Fund
5 to be paid by the County is \$225,000 (“County Payment”). The portion of the
6 Class Fund to be paid by the City is \$2,450,000 (“City Payment”). Except for the
7 attorneys’ fees and costs awarded by the Court, all monies due under this
8 Agreement shall be paid to the Administrator approved by the Court.

9 13. The “Post-Administration Class Fund” is the Class Fund less awarded
10 attorneys’ fees and costs, the costs of class administration, and the amount of the
11 Class Representative Incentive Payments authorized to be paid to the Class
12 Representatives.

13 14. “Class Attorney’s Fees and Costs” are the attorneys’ fees and costs
14 that Plaintiffs have requested the Court award Class Counsel pursuant to the
15 Settlement Agreement. The amount of attorneys’ fees that Class Counsel have
16 requested shall be 25% of the Class Fund (\$668,750) plus costs. These fees and
17 costs are all inclusive of either statutory and class fund fees available on both the
18 federal and state claims brought in this case. The apportionment of such fees
19 among Class Counsel shall be agreed to among the Class Counsel.

20 15. The “Claim Cut-off Date”, which was July 27, 2015, is the date by
21 which any Class Member who wishes to receive payment from the Class Fund must
22 file his/her Proof of Claim Form (attached as the last page of Exhibit B referred to,
23 *supra*).

24 16. The “Bar Date”, which was June 26, 2015, is the date by which any
25 class member had to file objections, if any, to the Settlement Agreement, or any
26 class member had to request exclusion from the settlement. A Class Member was
27 to request exclusion from the settlement by sending a request to the Administrator
28 consistent with the terms of Paragraph 49 of the Settlement Agreement.

1 **III. OBJECTIONS AND OPT-OUTS**

2 17. There have been no objections to the settlement in general, and no
3 objection to the request for an award of attorneys' fees filed. Declaration of Steven
4 Powell, ¶ 9.

5 18. There are four opt-outs. Two of the opt-outs – Robert Miliam and
6 Tyson Heder – are individuals who have their own pending individual lawsuits for
7 the events in question. Mr. Heder is expressly excluded under the terms of the
8 Settlement Agreement from being considered an opt-out for purposes of the City's
9 right to rescind the settlement agreement due to his pending lawsuit.¹ A third opt-
10 out is Patrick Meighan, who excluded himself from "this settlement and from my
11 [his] share of the settlement funds" because the "people of Los Angeles have more
12 important things to do with their money than giving it to me." The fourth opt-out,
13 Denita Huerta, gave no explanation for her exclusion, but did not express
14 dissatisfaction with the settlement both in writing and at the hearing. See
15 Declaration of Barrett S. Litt, dated August 12, 2015 and Ex. A thereto; Powell
16 Declaration, ¶ 8 and Ex. C thereto.

17 19. Under ¶¶ 52 *et seq.* of the Settlement Agreement, a portion of the
18 City's contribution to the total settlement will be diverted to an Opt-Out Fund, to be
19 held by the Class Administrator. The amount to be so held will be determined by
20 including in the calculation and distribution of funds the points to which Robert
21 Miliam, Patrick Meighan and Denita Huerta (the "countable opt-outs") would have
22 been entitled had they not opted out.² Those funds shall be placed in the Opt-Out
23 Fund and shall be available to the City and County (if the County is a defendant in
24 any lawsuit filed or to be filed by a countable opt-out) proportionally to each's
25 contribution to the total settlement, and may be used to pay the costs of defense or
26 damages to the extent available for that countable opt-out had that person

27 ¹ Melissa Balin was also so listed, but she has not opted out.

28 ² Tyson Heder is not counted because he was not considered a countable opt-out in the Settlement Agreement in that he already had an individual pending lawsuit at the time of settlement.

1 participated in the settlement. Any Opt-Out Fund money that is either partially or
2 wholly unused will be treated pursuant to the provisions of ¶ 43, *infra*.

3 20. To the extent that no lawsuits are filed within 13 months of entry of
4 this Final Order by a countable opt-out, the money shall be considered available
5 and paid according to the provisions of ¶ 43, *infra*. If one or more new lawsuits are
6 filed within 13 months from the date of this order by a countable opt-out, the
7 money shall be handled according to the immediately preceding ¶ 19.

8 21. The lack of any objection and the limited opt-outs, at least three of
9 which facially are unrelated to the merits of the settlement, and one of which
10 expresses no view on that issue (or any intention to proceed separately), strongly
11 support the fairness and adequacy of the settlement. “The negligible number of
12 opt-outs and objections indicates that the class generally approves of the
13 settlement.” *In re Toys R Us-Delaware, Inc.--Fair & Accurate Credit Transactions*
14 *Act (FACTA) Litig.*, 295 F.R.D. 438, 456 (C.D. Cal. 2014) (citing *Churchill*
15 *Village, L.L.C. v. General Electric*, 361 F.3d 566, 577 (9th Cir. 2004) (affirming the
16 approval of a class action settlement where 90,000 members received notice and 45
17 objections were received); *Rodriguez v. West Publishing*, 563 F.3d 948, 967(9th
18 Cir. 2009) (“The court had discretion to find a favorable reaction to the settlement
19 among class members given that, of 376,301 putative class members to whom
20 notice of the settlement had been sent, 52,000 submitted claims forms and only
21 fifty-four [.014 percent] submitted objections”); *Chun-Hoon v. McKee Foods*
22 *Corp.*, 716 F. Supp. 2d 848, 852 (N.D.Cal.2010) (concluding, in a case where “[a]
23 total of zero objections and sixteen opt-outs (comprising 4.86% of the class) were
24 made from the class of roughly three hundred and twenty-nine (329) members,”
25 that the reaction of the class “strongly supports settlement”).

26 **IV. THE CLASS**

27 22. The Class Representative Plaintiffs filed the above-captioned action in
28 the United States District Court for the Central District of California (“Court”) on
December 20, 2012. The Class Representative Plaintiffs asserted they represented,

1 and the Court ultimately certified, a class and several subclasses of persons who
2 were allegedly subjected to violation of their First, Fourth, and Fifth/Fourteenth
3 Amendment due process rights, as well as other federal constitutional rights and
4 rights under California state law, as a result of actions by Defendants surrounding
5 the arrest, detention, and release of Plaintiffs on November 30, 2011, in or around
6 the vicinity of City Hall. Plaintiffs alleged that some or all Defendants violated
7 their rights by, among other things, declaring an unlawful assembly, making
8 unlawful arrests, holding Plaintiffs in unconstitutional conditions of confinement,
9 and unlawfully denying Plaintiffs release from custody on their own recognizance
10 (“OR”).

11 23. Over the objections and opposition of Defendants, the Court certified a
12 damages class and several damages sub-classes, and an injunctive relief class on
13 August 26, 2013. The respective classes and sub-classes were defined as follows,
14 which definition the Court reaffirms:

15 **Damages Class:** All persons who were arrested in or around the
16 vicinity of City Hall (in the area between Los Angeles Street and Broadway
17 Street and between Cesar Chavez Avenue and Second Street) on November
18 30, 2011 between the hours of midnight to 3:00 a.m. in connection with law
19 enforcement agencies’ efforts to disperse the Occupy Los Angeles protest.

20 **Vicinity Sub-Class:** All persons who were arrested in or around the
21 vicinity of City Hall on November 30, 2011, although they were not
22 participating in the Occupy protest at Los Angeles City Hall at all, or had
23 removed themselves from it at the direction of the police.

24 **OR Sub-Class:** All persons who were arrested in or around the
25 vicinity of City Hall on November 30, 2011; who had no objective
26 disqualifications from entitlement to release OR pursuant to Penal Code
27 §853.6, and who were not released OR before or immediately after the
28 booking process was completed.

City Bus Sub-Class: All persons who were arrested in or around the

1 vicinity of City Hall on November 30, 2011, and who were transported on
2 buses driven to the LAPD's Metropolitan Detention Center.

3 **County Bus Sub-Class:** All persons who were arrested in or around
4 the vicinity of City Hall on November 30, 2011, and who were transported to
5 Van Nuys jail on buses driven by members of the Los Angeles County
6 Sheriff's Department.

7 **Injunctive Relief Class:** All individuals who were arrested on or after
8 November 30, 2011 for unlawful assembly and who were denied, and who
9 may in the future be denied, release on their own recognizance pursuant to
10 Penal Code § 853.6, who have no objective disqualifications from
11 entitlement to release OR pursuant to Penal Code § 853.6, without a
12 particularized and individualized determination that they are not eligible for
13 OR release.

14 24. The parties reached this agreement to resolve the damages claims, and
15 agreed that, at the time the settlement terms were agreed to, no injunctive relief was
16 necessary. Accordingly, no injunctive relief is included in this Order.

17 **V. CLAIMS FILED**

18 25. A total of 243 claim forms were sent to class members by the Class
19 Administrator. Other claim forms were sent to those who requested them, but there
20 were many such requests from individuals who did not qualify as class members.
21 (See Declaration of Steven Powell on behalf of Class Administrator Gilardi & Co.,
22 ¶¶ 4, 7.) In addition, class counsel engaged independently in substantial outreach
23 efforts to reach class members to encourage them to file claims. (See Declaration
24 of Carol A. Sobel, dated July 21, 2015.) A total of 287 timely claims were filed.
25 Of those timely claims, 188 were filed by qualified class members, and 99 were
26 filed by non-class members. (Powell Declaration, ¶ 7.) In addition, there were
27 three late claims. *Id.* Thus, the claims made represent approximately 77-78.5% of
28 class members reached (depending on whether late claims are included). *Id.*

1 **VI. SETTLEMENT AGREEMENT FAIR, ADEQUATE, AND**
2 **REASONABLE**

3 26. The settlement of this lawsuit was not the product of collusion between
4 Plaintiffs and Defendants or their respective counsel, but rather was the result of
5 bona fide and arm's-length negotiation conducted in good faith by the Parties and
6 their counsel, with the assistance of an independent mediator, who is a sitting
7 United States Magistrate Judge.

8 27. The Settlement Agreement and the settlement set forth therein are
9 hereby approved and found to be fair, adequate, reasonable, in the best interest of
10 the Class as a whole, and in satisfaction of Rule 23 of the Federal Rules of Civil
11 Procedure and due process requirements.

12 28. The financial terms of the settlement are favorable to class members.
13 Every class member receives no less than \$4000. Those who were bystanders and
14 were arrested, or were held without OR – which is most class members – receive
15 substantially more with a maximum possible recovery of well over \$10,000. These
16 amounts are exclusive of attorneys' fees and costs. The mean recovery, based on
17 the number of claims made, exceeds \$10,000.

18 29. The settlement compares well with other protest cases. The Court is
19 aware of no protest cases that have gone to trial, and this settlement compares
20 favorably with other protest settlements. The most comparable case appears to be
21 one involving arrests of people involved in protests over the shooting of Oscar
22 Grant in Oakland, California. Participating class members in Oakland, who were
23 arrested and held for 14 to 24 hours before being released in circumstances similar
24 to the class here, received an average of approximately \$4200. *See* Doc. # 188
25 (Declaration of Carol A. Sobel). Here the average (referring to the mean) recovery,
26 based on the 191 claims filed and determined to be valid in this case, well exceeds
27 \$10,000. *See id., supra*, for elaboration regarding other protest and similar
28 settlements. The settlement is supported by highly experienced Class Counsel, who

1 thoroughly investigated the case and successfully litigated the class certification.

2 **VII. NOTICE**

3 30. As required by this Court in its Preliminary Approval Order: (a) Class
4 Notices were sent by the Class Administrator to all persons identified from law
5 enforcement records as class members; and (b) Class and Settlement Notice was
6 published in a summary fashion as set forth in the Settlement Agreement and in the
7 Preliminary Approval Order, all as more fully set forth in the Declaration of Steven
8 Powell on behalf of the Class Administrator Gilardi & Co, dated August 10, 2015.

9 31. The notice given to the Class Members is hereby determined to be
10 fully in compliance with the requirements of Rule 23 of the Federal Rules of Civil
11 Procedure and due process and is found to be the best notice practicable under the
12 circumstances and to constitute due and sufficient notice to all parties entitled
13 thereto

14 32. Due and adequate notice of the proceedings having been given to the
15 Class and a full opportunity having been offered to the Class to participate in this
16 hearing, it is hereby determined that all Class Members, except for those who have
17 opted out, are bound by this Final Order Approving Class Action Settlement.

18 **VIII. TERMS OF PAYMENTS FROM THE CLASS FUND**

19 33. The total monetary settlement comprising the total Class Fund is
20 \$2,675,000, inclusive of attorneys' fees, costs and all costs of class administration,
21 of which the County Payment is \$225,000 and the City Payment is \$2,450,000.

22 34. Pursuant to the Settlement Agreement, Defendants have compensated
23 or will compensate the Class Administrator for its services. Under the terms of the
24 Settlement Agreement, the Class Administrator will not accrue any costs for
25 figuring points for Claimants or any other activities beyond the "Notice
26 Procedures" and "Claims Processing" described until after entry of the Final Order
27 Approving Class Action Settlement. Thus, the precise amounts that the class
28 member claimants will receive cannot be determined, but the approximate amount
can and is addressed further on in this Final Order.

1 35. Since there have been no objections to the Settlement, there can be no
2 appeals taken. *See* Newberg on Class Actions §14:13 (5th ed.) (“Class members
3 who object but whose objections are rejected by the district court may seek to
4 appeal that rejection.”); *Devlin v. Scardelletti*, 536 U.S. 1, 1, 122 S. Ct. 2005
5 (2002) (holding that absent class members who object in a timely manner to
6 approval of a settlement at a fairness hearing have the power to bring an appeal
7 without first intervening; rejecting the contention that only Named Plaintiffs and
8 formal interveners qualify as parties). Since no class member timely objected, no
9 class member may appeal. Accordingly, the effective date of settlement is the date
10 of this Order (see definition of “Effective Date”, ¶ 9, *supra*), and, pursuant to the
11 provisions of Paragraph 22 of the Settlement Agreement, the City and County
12 Defendants shall each deposit or cause to be deposited into the Settlement Fund
13 their respective shares of the settlement within thirty (30) calendar days of the date
14 of entry of this order, as follows:

- 15 a. The County shall make a single payment to the Administrator of
16 \$225,000, less the amount already advanced to the Class
17 Administrator.
- 18 b. The City shall make two payments, the total of which shall be
19 \$2,450,000, less the amount already advanced by the City to the Class
20 Administrator. It shall deposit or cause to be deposited the total of the
21 attorneys’ fees and costs awarded by the Court to Class Counsel,
22 payable to the Client Trust Account of Kaye, McLane, Bednarski &
23 Litt. The remainder of the funds due from the City after deduction of
24 said attorneys’ fees and costs, and Class Administrator advances, shall
25 be paid to the Administrator.

26 36. To extent the City and County have not already done so, each shall
27 provide any such additional information requested by the Class Administrator
28 related to the case. Such information shall be confidential, and may not be
disclosed to anyone except counsel of record, the Class Administrator, and

1 designated representatives of the Parties.

2 37. As indicated previously in ¶ 25, there have been three late claims filed
3 by qualified class members of which the Court has been apprised. The Court will
4 allow these, and any other late claims filed by qualified class members postmarked,
5 or received by the Class Administrator, August 28, 2015 or earlier, and they are to
6 be included in the allocation of funds to class members provided in this Order. The
7 phrase “valid claims” as used in the remainder of this Order includes such late
8 claims.

9 38. The Allocation and Distribution Plan formula for distribution of the
10 Post-Administration Class Fund to class members shall be as follows. The total
11 number of points is to be calculated by determining the points awarded to class
12 members who filed valid claims, (including, for the reasons stated in ¶¶ 19 and 20,
13 points for the countable opt-outs). The value of a point shall be determined by
14 taking the Post Administration Class Fund (defined in ¶ 13) and dividing it by the
15 total number of awarded points. The points awarded shall be based on the
16 following formula:

- 17 a. Each class member who filed a valid claim shall be allocated four
18 points. This covers claims for the arrest and conditions on the bus.
- 19 b. Each class member who filed a valid claim who qualifies as a member
20 of the Vicinity Sub-Class shall be allocated an additional four points.
- 21 c. Each class member who filed a valid claim who qualifies as a member
22 of the OR Sub-Class and spent 36 hours or less in custody (measured
23 from the time of arrest) shall be allocated an additional two points.
- 24 d. Each class member who filed a valid claim who qualifies as a member
25 of the OR Sub-Class and spent more than 36 hours in custody shall be
26 allocated an additional four points.
- 27 e. No class member who filed a valid claim shall receive less than
28 \$4,000. (Although it appears to be moot because it appears that the
minimum payout will exceed \$4000 without adjustment, the

1 distribution formula will be adjusted if necessary so that all members
2 who are allocated four points will receive \$4,000, and the remaining
3 funds will be distributed pro rata even if that means the class members
4 receiving four points end up receiving more per point than other class
5 members.)

6 39. Each Named Plaintiff shall receive the amount due to him or her under
7 the foregoing formula plus a \$5,000 Class Representative Payment (aka “incentive
8 award”) for his or her special contributions to the case as Named Plaintiffs. Each
9 Named Plaintiff’s award will be as follows:

- 10 a. Cheryl Aichele: 8 points plus \$5,000 Class Representative Incentive
11 Payment
- 12 b. James Weitz: 10 points plus \$5,000 Class Representative Incentive
13 Payment
- 14 c. Jonathan Alexander: 8 points plus \$5,000 Class Representative
15 Incentive Payment
- 16 d. Michael Prysner: 6 points plus \$5,000 Class Representative Incentive
17 Payment
- 18 e. Carina Clemente: 6 points plus \$5,000 Class Representative Incentive
19 Payment

20 40. The Court finds that the foregoing incentive awards are justified and
21 consistent with well-established law. Class representatives contributed to the
22 outcome in this case in various ways, including providing information, filing
23 declarations, making themselves available to be deposed, and exposing themselves
24 to the consequences of a potentially adverse judgment. “Incentive awards are fairly
25 typical in class action cases. *See* 4 William B. Rubenstein et al., *Newberg on Class*
26 *Actions* §11:38 (4th ed.2008); Theodore Eisenberg & Geoffrey P. Miller, Incentive
27 Awards to Class Action Plaintiffs: An Empirical Study, 53 U.C.L.A. L.Rev. 1303
28 (2006) (finding twenty-eight percent of settled class actions between 1993 and 2002

1 included an incentive award to class representatives). Such awards are
2 discretionary, *see In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 463 (9th
3 Cir.2000), and are intended to compensate class representatives for work done on
4 behalf of the class, to make up for financial or reputational risk undertaken in
5 bringing the action, and, sometimes, to recognize their willingness to act as a
6 private attorney general. Awards are generally sought after a settlement or verdict
7 has been achieved.” *Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 958-59 (9th Cir.
8 2009)

9 41. The proposed incentive awards to the class representatives (\$5000 in
10 addition to the amount to which they would be entitled under the Settlement
11 Agreement) is well within the range of acceptable incentive payments to class
12 representatives for which the Court has discretion in recognition of work done on
13 behalf of the class and in consideration of the risk undertaken in bringing the
14 action. *Id. See also Glass v. UBS Fin. Servs., Inc.*, 2007 WL 221862, at *16
15 (N.D.Cal. Jan. 26, 2007) (approving payments of \$25,000 to each named plaintiff);
16 *Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 299 (N.D.Cal.1995)
17 (awarding \$50,000 to a lead plaintiff); *Weeks v. Kellogg Co.*, No. CV 09-08102
18 MMM RZX, 2013 WL 6531177, at 37 (C.D. Cal. Nov. 23, 2013) (“An incentive
19 award of \$5,000 per class representative is in line with other awards approved in
20 this circuit.”).

21 42. The Class Notice advised class members of this proposed incentive
22 award, thereby allowing them the opportunity to object to it, and none did.

23 43. The Class Administrator shall have sole responsibility for distribution
24 of the Class Fund to class members. To the extent that valid claims are filed, but
25 the checks issued pursuant to such claims are not cashed, the funds for that person
26 shall be held by the Class Administrator for one year, after which any such
27 remaining funds will be distributed pro rata to class members who made claims,
28 and received and cashed their checks. If, after that second round distribution, there

1 are still funds remaining, the parties will discuss and attempt to reach agreement on
2 a *cy pres* beneficiary (with subsequent approval by the Court of any such
3 agreement), absent which the funds will escheat to the State of California.

4 **IX. CLASS FUND ATTORNEYS' FEES**

5 44. Plaintiffs have filed a Motion for Attorneys' Fees requesting payment
6 of \$668,750 in attorneys' fees, plus litigation costs of \$5,608.93. The costs figure
7 does not include Class Administration costs. The Court approves this request and is
8 entering a separate order addressing it.

9 **X. CLASS ADMINISTRATOR**

10 45. The Court reaffirms the appointment of Gilardi & Co. as Class
11 Administrator (hereby "Gilardi"). The Court authorizes Gilardi to take from the
12 Class Fund any outstanding payments due, and authorizes Gilardi to take such
13 additional funds as may become due under its contract to handle the claims in this
14 case, not to exceed \$20,000 (per the terms of its contract with the parties).

15 46. The Claims Administrator shall preserve all written communications
16 from Class Members in response to the Class at least until December 31, 2016, or
17 pursuant to further order of the Court. All written communications received by the
18 Claims Administrator from Class Members relating to the Settlement Agreement
19 shall be available at all reasonable times for inspection and copying by Counsel for
20 the Parties.

21 47. The Class Administrator has performed all tasks required of it,
22 including establishing a website and call-in numbers, posting the relevant materials
23 to the website, publishing a summary notice in the LA Weekly on three separate
24 occasions, mailing class notices and following up, and processing claims. *See*
25 Declaration of Steven Powell.

26 48. At the conclusion of the Class Distribution, the Class Administrator
27 shall submit a report to the Court summarizing the payments made to the Class.
28

1 **XI. GENERAL PROVISIONS**

2 49. Claim forms not received or postmarked by August 28, 2015, shall not
3 be paid, although such persons shall nonetheless be bound by this Order.

4 50. All class members except those who timely filed opt-out forms shall be
5 bound by this Order.

6 51. Except as otherwise provided in this Order, each party shall bear its
7 own costs, expenses and attorneys' fees.

8 52. The Class Administrator will prepare a list of all rejected claims, with
9 the reasons for rejection, and maintain the list in its case file.

10 53. The Court reserves and maintains jurisdiction over this settlement and
11 its provisions, and over the claims administration and distribution of the funds.

12 Disagreements between the parties on any disputes or unresolved aspects of this
13 Final Order as it relates to monetary relief shall be subject to mediation before the
14 mediator who has mediated this case to date, United States Magistrate Judge
15 Woehrle, if she is available, or before the United States Magistrate Judge otherwise
16 assigned to the case if she is not. If mediation is not successful, the matter shall be
17 brought to this Court for resolution.

18 54. The use of the masculine gender herein is construed to include the
19 feminine and/or the neuter where applicable. The use of the singular herein is to be
20 construed to include the plural where applicable. The use of the plural herein shall
21 be construed to include the singular where applicable.

22 **XII. FINAL RESOLUTION**

23 55. The monetary relief provided for in this Order shall compensate for all
24 alleged violations of rights and all claims by the Damages Class Members on
25 matters alleged in the lawsuit under any theory of liability related to the events of
26 November 30, 2011, that come within the Damages Class definition, except as to
27 monetary damages for those class members who opted out.

28 56. The Court hereby dismisses the lawsuit on the merits, with prejudice,

1 and without further costs, with such dismissal subject only to compliance by the
2 Parties with the terms and conditions of the Settlement Agreement, the Order on the
3 injunctive relief class claims, and this Final Order Approving Class Action
4 Settlement.

5 57. The Damages Class Members, and their agents, attorneys and assigns,
6 are hereby severally and permanently barred and enjoined, to the fullest extent
7 permitted by law, from filing, commencing, instituting, maintaining, prosecuting,
8 asserting or participating in a lawsuit or any other proceeding against the
9 Defendants, including the employees, entities, agents, attorneys and insurers of
10 Defendants and all Released Persons as defined in ¶ 6, involving or based on any of
11 the claims encompassed by the complaint in this case, or in any way arising out of
12 the facts alleged, or in any way related to the claims for relief pleaded, in the
13 operative Complaint, which are fully incorporated herein by reference.

14 58. The Named Plaintiffs and each Class Member waive all rights or
15 benefits which he or she now has or in the future may have under the terms of
16 California Civil Code §1542, arising from, alleged in, or pertaining to the matters
17 alleged in the Lawsuit, specifically claims related to the events of November 30,
18 2011, that come within the Damages Class definition, except as to monetary
19 damages for those class members who have opted out. Section 1542 reads:

20 “A general release does not extend to claims which the creditor does not
21 know or suspect to exist in his or her favor at the time of executing the
22 release, which if known by him or her must have materially affected his or
23 her settlement with the debtor.”

24 59. Each Defendant and other Released Person are hereby released from
25 all claims for damages or other relief which any Class Member (other than opt outs)
26 had, has, or may have in the future, against such Defendant or other Released
27 Person in any way arising out of the facts alleged, or in any way related to the
28 claims for relief pleaded, in the operative Complaint;

1 60. Defendants, and all of their agents, attorneys and assigns, waive and
2 release any and all claims or rights to pursue, initiate, prosecute, or commence any
3 action or proceeding before any court, administrative agency or other tribunal, or to
4 file any complaint regarding acts or omissions by Plaintiffs in any of the cases
5 covered in this Settlement, by any Represented Individuals as defined herein, and
6 by any Class Members, with respect to any matters related to the matters alleged in
7 the lawsuit complaint, including waiver of the right to file a malicious prosecution
8 action; and further, as it relates to this waiver or Release, expressly waive the
9 provisions of California Civil Code §1542 recited in the previous paragraph.

10 61. Plaintiffs have not relied upon the advice of Class Counsel as to the
11 legal and/or tax consequences of this settlement, the payment of any money by the
12 Defendants, or the distribution of the Settlement Funds.

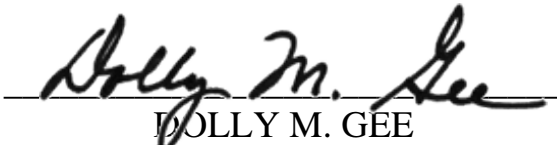
13 62. Neither this Final Order Approving Class Action Settlement, the
14 Settlement Agreement, nor any of its terms or the negotiations or papers related
15 thereto shall constitute evidence or an admission by any Defendant that any acts of
16 wrongdoing have been committed, and they shall not be deemed to create any
17 inference that there is any liability therefore. Neither this Final Order Approving
18 Class Action Settlement, nor the Settlement Agreement, nor any of its terms or the
19 negotiations or papers related thereto shall be offered or received in evidence or
20 used for any purpose whatsoever, in this or any other matter or proceeding in any
21 court, administrative agency, arbitration, or other tribunal, other than as expressly
22 set forth in the Settlement Agreement.

23 63. Pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the Court
24 finds that there is no just reason for delay and therefore directs entry of this Final
25 Order Approving Class Action Settlement. Inasmuch as this disposes of all

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1 claims asserted in the Lawsuit, the Court further directs the Clerk to enter this
2 Judgment of Dismissal with prejudice pursuant to Fed. R. Civ. P. 41(a)(2).

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4 DATED: September 9, 2015


5 HOLLY M. GEE
6 UNITED STATES DISTRICT JUDGE
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