

1 Susan E. Coleman (SBN 171832)
E-mail: scoleman@bwslaw.com
2 Nathan A. Oyster (SBN 225307)
E-mail: noyster@bwslaw.com
3 BURKE, WILLIAMS & SORENSEN, LLP
444 South Flower Street, Suite 2400
4 Los Angeles, CA 90071-2953
Tel: 213.236.0600 Fax: 213.236.2700
5

6 Attorneys for Defendants
7 SHERIFF JOHN MCMAHON, GREG
GARLAND, JEFF ROSE, SERGEANT JAMES
8 MAHAN, A. CASTILLO, and COUNTY OF SAN
BERNARDINO (also sued herein as SAN
BERNARDINO COUNTY SHERIFF'S
DEPARTMENT)
9

10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA
12

13 DAN MCKIBBEN, et al.,
14 Plaintiffs,
15 v.
16 JOHN MCMAHON, et al.,
17 Defendants.
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Case No. 5:14-cv-02171-JGB-SP
**STIPULATION FOR AN ORDER
APPROVING ADDITIONAL
CLASS NOTICE AND AMENDED
SETTLEMENT**
[Filed concurrently with [Proposed]
Order Approving Additional Class
Notice and Amended Settlement]
Judge: Hon. Jesus G. Bernal

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22 TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:
23 Plaintiffs DAN MCKIBBEN, PEDRO GUZMAN, NICK OU, SEAN LINT,
24 ANTHONY OLIVER, TIMOTHY WALKER, ILICH VARGAS, WILLIAM
25 KENNEDY, JONATHAN ROBERTSON, STEVE aka LYNN PRICE, BRYAN
26 BAGWELL, CHRISTOPHER CRAWFORD, FREDERICK CROCKAN,
27 TAHEASH WHITE, MICHAEL aka MADISON HATFIELD, and KEVIN aka
28 VERONICA PRATT (hereinafter "Plaintiffs") and Defendants SHERIFF JOHN

1 MCMAHON, GREG GARLAND, JEFF ROSE, SERGEANT JAMES MAHAN,
2 A. CASTILLO, and COUNTY OF SAN BERNARDINO (hereinafter
3 “Defendants”), hereby stipulate, through their respective counsel of record, to the
4 following:

5 1. After extensive discussions amongst counsel and the assistance of
6 mediator Hon. Carla Woehrlé (Ret.), the parties have reached an agreement on how
7 to address the existence of the supplemental class list. The parties previously
8 advised the Court of this issue in stipulations submitted as Docket Nos. 109 and
9 116.

10 2. As explained in the Stipulation submitted as Docket No. 109, the
11 parties discovered a supplemental class list of 406 bookings that fall within the
12 class definition that were omitted from the initial class list provided by Defendants
13 to Plaintiffs and the class administrator. The supplemental class list resulted in a
14 total of 274 supplemental class members.

15 3. The parties have reached an agreement to incorporate the 274
16 supplemental class members into the settlement of this case on the following terms,
17 subject to the approval of the Court:

- 18 a. The County (rather than the Class Fund) will pay JND for the cost
19 of class administration to-date, which amounts to \$40,000.
- 20 b. The County will pay JND for the costs associated with
21 administrating the supplemental class and providing additional
22 notice to the existing claimants.
- 23 c. The County will reimburse Plaintiffs’ counsel for \$36,304.39
24 associated with the costs of mediation, a jail consultant, and a
25 statistics consultant (rather than this amount being paid by the Class
26 Fund).
- 27 d. The effect of these modifications is to increase the post-cost, post
28 Incentive Award Class Fund by \$76,304.39, an approximately 9%

1 increase over the previous size of the post-cost, post Incentive
2 Award Class Fund.

3 e. The settlement payment date will be stayed pending the Court’s
4 amended final approval Order.

5 f. The class administrator shall provide notice to the existing 187
6 class claimants, advising them of the stay in the settlement payment
7 date, the increase in total class members, the net increase in the
8 class damages pool, and of the existing claimants’ renewed right to
9 opt out of the class action settlement or object to the settlement.

10 g. The class administrator shall provide notice to the 274
11 supplemental class members, in a manner that is consistent with the
12 notice provided to the initial class members, advising of the
13 settlement and their right to make a claim, and their right to opt out
14 of the class action settlement or object to the settlement.

15 h. The parties agree that individuals on the initial class list who did
16 not submit claims do not require additional notice. Similarly, the
17 parties agree that the existing claimants, while retaining the right to
18 opt out of the settlement or to object to the settlement, do not have
19 the right to object to the Court’s prior approval of attorney’s fees.

20 4. The agreement in paragraph 3 will result in a net increase of
21 \$76,304.39 in the class member damages pool; the total amount to be allocated to
22 class member damages will increase from \$818,195.51 to \$894,499.90 which is an
23 increase of slightly over 9.3%.

24 5. As set forth in detail in the Settlement Agreement (Docket No. 78,
25 pages 12-14), class member damages are allocated on a basis that awards points for
26 each day in custody, with each day in custody receiving between 20 per diem points
27 and 100 per diem points based on multiple criteria. Plaintiffs retained a statistical
28 consultant to analyze the increase in total per diem points from the initial class list

1 to the supplemental class list. The analysis of the statistical consultant showed that
2 the supplemental class list resulted in an increase of 7% of total per diem points.

3 6. The amount of funds allocated to class member damages will increase
4 by over 9.3%. The total per diem points will increase by approximately 7%.

5 7. The parties submit that this modification to the settlement due to the
6 existence of the supplemental class members represents a fair and appropriate
7 resolution of the issue, which warrants preliminary approval by the Court.

8 8. The parties request the Court enter an Order as follows:

- 9 a. The Court grants preliminary approval of the modified settlement
10 terms in paragraph 3.
- 11 b. The settlement payment date of May 7, 2019 is stayed pending
12 resolution of the issues raised by this stipulation.
- 13 c. By May 13, 2019, the parties shall provide the Court with both a
14 proposed notice to the supplemental class members and a proposed
15 notice to the existing claimants.
- 16 d. By May 13, 2019, the parties shall provide the supplemental class
17 list to the class administrator, JND.
- 18 e. By May 13, 2019, the parties shall prepare correspondence to be
19 posted on the class website advising the initial class members of the
20 change in case status and the delay in distributing the class
21 proceeds. The order associated with this notice will also be so
22 posted.
- 23 f. Notice shall be mailed to the supplemental class members and to
24 the existing claimants no later than May 20, 2019.
- 25 g. The final day for supplemental class members or existing claimants
26 to object to any portion of the settlement agreement shall be July
27 19, 2019.
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- h. The final day for supplemental class members or existing claimants to opt out of the settlement shall be July 19, 2019.
- i. The final day for supplemental class members to file claims shall be July 19, 2019.
- j. The deadlines for the parties' to reply to any opposition to the settlement agreement filed by an existing or supplemental class member shall be July 29, 2019.
- k. The Amended [Proposed] Final Approval Order shall be filed with the Court by July 29, 2019.
- l. The final approval hearing for the supplemental class members shall be held on August 12, 2019 at 9:00 a.m. in Courtroom 1 of the United States District Court for the Central District of California, Eastern Division, which is located at 3470 12th Street, Riverside, California 92501. If there are no objections to the settlement, the hearing shall be vacated.
- m. The effective date of the settlement for purposes of payments by the County shall be ten days after the date upon which a judgment entered by the Court approving the Settlement Agreement becomes final. The Judgment will be deemed final only upon expiration of the time for a Damages Class member who files an objection to file a notice of appeal (30 days after entry of judgment) or, if a Notice of Appeal is filed by an objector, upon exhaustion of all appeals and petitions for writs of certiorari. If no Damages Class member files an objection, then the Judgment shall become final as of the entry of the Final Approval Order.

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IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

Dated: May 6, 2019

KAYE, MCLANE, BEDNARSKI & LITT LLP

AMERICAN CIVIL LIBERTIES UNION OF
SOUTHERN CALIFORNIA

By: /s/ Barrett S. Litt

Barrett S. Litt
David McLane
Lindsay Battles

Attorneys for Plaintiffs
DAN MCKIBBEN, PEDRO GUZMAN, NICK
OU, SEAN LINT, ANTHONY OLIVER,
TIMOTHY WALKER, ILICH VARGAS,
WILLIAM KENNEDY, JONATHAN
ROBERTSON, STEVE aka LYNN PRICE,
BRYAN BAGWELL, CHRISTOPHER
CRAWFORD, FREDERICK CROCKAN,
TAHEASH WHITE, MICHAEL aka
MADISON HATFIELD, and KEVIN aka
VERONICA PRATT

Dated: May 6, 2019

BURKE, WILLIAMS & SORENSEN, LLP

By: /s/ Nathan A. Oyster¹

Nathan A. Oyster

Attorneys for Defendants
SHERIFF JOHN MCMAHON, GREG
GARLAND, JEFF ROSE, SERGEANT
JAMES MAHAN, A. CASTILLO, AND
COUNTY OF SAN BERNARDINO (Also
sued herein as SAN BERNARDINO COUNTY
SHERIFF'S DEPARTMENT)

¹ As the filer of this Stipulation, I attest that Barrett S. Litt concurs in the content of the Stipulation and has authorized its filing.

1 Having reviewed the parties' Stipulation and finding good cause therefor, IT
2 IS HEREBY ORDERED that:

3 1. The Court grants preliminary approval of the modified settlement
4 terms as outlined in paragraph 3 of the parties' Stipulation.

5 2. The settlement payment date of May 7, 2019 is stayed pending
6 resolution of the issues raised by this stipulation.

7 3. By May 13, 2019, the parties shall provide the Court with both a
8 proposed notice to the supplemental class members and a proposed notice to the
9 existing claimants.

10 4. By May 13, 2019, the parties shall provide the supplemental class list
11 to the class administrator, JND.

12 5. By May 13, 2019, the parties shall prepare correspondence to be
13 posted on the class website advising the initial class members of the change in case
14 status and the delay in distributing the class proceeds. The order associated with
15 this notice will also be so posted.

16 6. Notice shall be mailed to the supplemental class members and to the
17 existing claimants no later than May 20, 2019.

18 7. The final day for supplemental class members or existing claimants to
19 object to any portion of the settlement agreement shall be July 19, 2019.

20 8. The final day for supplemental class members or existing claimants to
21 opt out of the settlement shall be July 19, 2019.

22 9. The final day for supplemental class members to file claims shall be
23 July 19, 2019.

24 10. The deadlines for the parties' to reply to any opposition to the
25 settlement agreement filed by an existing or supplemental class member shall be
26 July 29, 2019.

27 11. The Amended [Proposed] Final Approval Order shall be filed with the
28 Court by July 29, 2019.

