

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

DUNCAN ROY, *et al.*,

Plaintiffs,

vs.

COUNTY OF LOS ANGELES, *et al.*,

Defendants.

Case No. CV 12-01012 (FFMx)

[Honorable André Birotte, Jr.]

**SETTLEMENT AGREEMENT**

Plaintiffs Alain Martinez-Perez and Clemente de la Cerda (individually and on behalf of the classes previously certified in this case (see Dkt. Nos. 184, 395, 396) (collectively “Plaintiffs”)) and Defendants County of Los Angeles, the Los Angeles Sheriff’s Department (“LASD”), its prior Sheriff, Leroy Baca (collectively, “Defendants”), by and through their respective counsel, hereby enter into the following Settlement Agreement (“Settlement Agreement”).

**I. RECITALS**

1. Plaintiffs are former inmates of the Los Angeles County Sheriff’s Department (“LASD”). On October 19, 2012, Plaintiffs filed this action in United States District Court for the Central District of California (“Court”) on behalf of themselves and a class of similarly situated inmates. Their claims arose from the LASD’s policy of detaining inmates beyond the expiration of their state criminal charges on the basis of immigration detainers (“detainers” or “ICE holds”), which are issued by Immigration and Customs Enforcement (“ICE”) for suspected

immigration violations. Plaintiffs specifically challenged:

- LASD’s practice of holding inmates on detainers after they became due for release on criminal matters (i.e. after they were acquitted or otherwise ordered released by a judge, or after serving a jail sentence);
- LASD’s practice of incarcerating arrestees with bail of less than \$25,000 who, in the absence of an immigration detainer, would have been released on their own recognizance pursuant to LASD policy; and
- LASD’s (disputed) practice of refusing to accept bail on behalf of inmates with immigration detainers.

Based on these claims, Plaintiffs alleged various causes of action under the Federal and State Constitutions, of 42 U.S.C. §1983, and California Civil Code § 52.1.

2. On September 9, 2016, the Court certified various damages classes. Dkt. 184, 9/9/16 Class Cert Order. The class definitions were later modified to conform to the liability determination (described below). The classes are defined as follows:

**Fourth Amendment (“Gerstein”) Class:** All LASD inmates who were detained beyond the time they are due for release from criminal custody, solely on the basis of immigration detainers, excluding inmates who had a final order of removal or were subject to ongoing removal proceedings as indicated on the face of the detainer. (Class period: 10/19/2010 to June 2014).

**Equal Protection Class (“No Money Bail Class”):** All LASD inmates on whom an immigration detainer had been lodged, who would otherwise have been subject to LASD’s policy of rejecting for booking misdemeanor defendants with bail of less than \$25,000 (including Order of Own Recognizance (OR)). (Class period: 10/19/2010 to June 2014).

**No-Bail-Notation Class:** All LASD inmates on whom an immigration detainer had been lodged and recorded in LASD’s AJIS database, and who were held on charges for which they would have been eligible to post bail. (Class period: 10/19/2010 to 10/18/2012).

3. On February 8, 2018, Judge André Birotte granted summary judgment to Plaintiffs on their Fourth Amendment and Equal Protection claims. There was no

liability determination regarding the No-Bail-Notation Class. However, the Parties agree that this Settlement includes the No-Bail-Notation Class.

4. Following the Court's summary judgment ruling, the Parties subsequently entered into a protracted arm's length mediation process with the assistance of the mediator Antonio Piazza. The Parties have reached a proposed Settlement subject to the approval of the Los Angeles County Board of Supervisors ("the Board"), and thereafter, the Court. In entering into this Settlement, Defendants deny that they have done anything wrong whatsoever, deny all liability to the defined Classes and do not concede any infirmity in the defenses that they have asserted or could present in these proceedings or any future appeal, but are also cognizant of the time and expense of further litigation and the potential exposure Defendants may have.

5. In the interest of avoiding expense, delay and inconvenience of further litigation of issues raised in this action, and without any admission of liability by Defendants, and in reliance upon the representations contained herein, and in consideration of the mutual promises, covenants and obligations in this Settlement Agreement, and for good and valuable consideration, Plaintiffs and Defendants, through their undersigned counsel, enter into this Settlement Agreement, subject to the approval of the Board and the Court.

6. In summary, this Settlement provides for dismissal of this case with prejudice in exchange for a class damages fund of \$14,000,000, from which costs of administration, litigation costs and attorney's fees, class member awards, and *cy pres* distributions will be paid.

7. The Remainder of the Class Fund (defined in Section "q," below) will be distributed to class members who file claims, subject to certain requirements for a maximum *per-diem* recovery, the schedule for which is set forth in Section IV. Should the claims rate be so low that the total number of unlawful detention days corresponding to timely claims, multiplied by the per-diem maximum, plus payments to timely claims by No Bail Designation Class members, does not

consume the entire Remainder, surplus funds will be distributed to the designated *cy pres* organizations (as further discussed in ¶¶ 26-30 *infra*). Such funds shall be referred to as the Unclaimed Remainder.

## II. DEFINITIONS

8. The listed terms used throughout this Stipulation of Settlement and Dismissal are intended to have the following meanings:

- a) “Administrator” means the Class Administrator, as agreed upon (or to be agreed upon) by the Parties and appointed by the Court to issue notice, and review claims submitted by a Settlement Class Member (“SCM”) (as defined herein), according to the procedures set forth herein.
- b) The “Bar Date” is the deadline for filing a Proof of Claim and Release Form, objections to the Settlement Agreement, or request to be excluded from this Settlement (opt-out). The Bar Date shall be calculated as the close of business eight (8) months after the last day of issuing of the Class Notice, which is scheduled to occur within two consecutive business days.
- c) “Class Counsel” herein refers to Barrett S. Litt and Lindsay Battles of Kaye, McLane, Bednarski & Litt; Jennifer Pasquarella of the ACLU Foundation of Southern California; Jessica Bansal of the National Day Laborer Organizing Network and Mark Fleming of the National Immigration Justice Center.
- d) The “Class Fund” refers to the amount of \$14,000,000, to be paid by Defendants to the Administrator, and out of which administration costs, Plaintiffs’ counsel expert/consulting, litigation, and mediation fees and costs, Plaintiffs’ counsel’s attorney’s fees, incentive awards and compensation to damages Class Members will be paid.
- e) The “Class Period” refers to the period between October 19, 2010 and June 6, 2014.
- f) “Class Notice” means the notice to the Class regarding the Settlement, to be sent to Class Members in a form substantially similar to that attached hereto as Exhibit “A”, or as otherwise approved by the Court, and such other summary notice to be published in accordance with the terms of this Settlement Agreement.

- g) A “Class Member” is any member of the certified classes defined in ¶2, *supra*.
- h) The “Effective Date” is the date on which the District Court issues an order granting final approval of the Settlement Agreement if no objections are filed. If any objections to the Settlement are submitted to the Court, the Effective Date is the date of the final resolution of any appeal of the Final Approval of this Settlement Agreement, or if no such appeal is filed, thirty days after Final Approval (the expiration of the deadline for filing a Notice of Appeal).
- i) The “Final Order of Approval and Settlement” is the Order finally approving the Settlement, entered by the Court (which may also be referred to herein as “Final Order”).
- j) The “Lawsuit” refers to the action styled *Roy v. County of Los Angeles.*, Case No. CV 12-9012 AB (FFMx).
- k) The “Named Plaintiffs” or “Class Representatives” refers to the Plaintiffs Alain Martinez-Perez and Clemente de la Cerda. For purposes of this Settlement, no distinction is made between them.
- l) “Preliminary Approval” is the Court's determination that this Settlement is within the range of possible approval and therefore that a Class Notice should be sent to the Class and a hearing should be held with respect to fairness.
- m) The “Preliminary Approval Order” is an order entered by the Court preliminarily approving the Settlement, after which Class Notice, the opportunity to object and Opt Out, and a Final Approval hearing are to occur.
- n) An “Opt-Out” is any Class Member who files a timely request for exclusion, pursuant to the terms of this Settlement Agreement, to be excluded from this Settlement. (If used as a verb, it refers to the process of filing such exclusion.)
- o) The “Claim Form” means the Proof of Claim and Release Form required to be used in order to make a claim for payment under this Settlement. A copy of the proposed Claim Form is attached as Exhibit “B”. The pre-prepared

Claim forms shall be bar coded to link with the Class Member's database information.

p) "Released Person" means the Defendants and their affiliates, subsidiaries, predecessors, successors, and/or assigns, together with all past, present and future officials, employees, representatives, attorneys, outside counsel, and/or agents of Los Angeles County. "Released Persons" also includes any and all insurance carriers, and/or their representatives and attorneys, for the Released Persons.

q) "Remainder" refers to the amount in the Class Fund *after* payment of attorney's fees and costs, litigation costs, and mediation costs. The Remainder is a figure used for purposes of determining whether *cy pres* payments are made.

The Remainder is thus estimated to amount to approximately \$8,733,334, based on the estimate of the maximum fees to be sought (1/3 of the \$14,000,000 Class Fund), estimated litigation costs (\$200,000) and estimated class administration costs (\$400,000).

r) The "Unclaimed Remainder" means any portion of the Class Fund that goes unclaimed after all valid claims, attorney's fees and costs described herein have been paid.

s) The "Settlement" refers to this agreement.

t) A "Settlement Class Member" ("SCM") means any Class Member of the as defined herein (whether or not that person files a Timely Claim form), including representatives, successors and assigns, who does not file a valid and timely Request for Exclusion as provided for in this Settlement Agreement.

u) The "Settlement Fund" is the fund established by the Administrator with funds transferred from Defendants from which the damages to the Class Representatives and Class Members will be paid. The Defendants will pay all moneys they are obligated to pay under the Preliminary Approval Order, and the Settlement approved by the Court, if any, into the Settlement Fund.

v) A "Timely Claim" is one filed a) within the six (6) month window stated in the Class Notice, and b) to the extent the Court so approves, any late claims

(i.e., claims filed after the Class Notice period) that are filed before the Final Approval Order is issued.

### **III. DISCLAIMER OF LIABILITY**

9. The Parties acknowledge and agree that all undertakings and agreements contained in this Settlement Agreement have been agreed to solely for the purpose of finally compromising all questions, disputes and issues between them relating to the Lawsuit. This Settlement Agreement and any proceedings taken pursuant hereto shall not in any event be construed as, interpreted as, or deemed to be evidence of an admission or concession by either party for any purpose, or deemed to constitute a waiver of any legal position or any defenses or other rights which either of the Parties might otherwise assert in any context. Neither this Settlement Agreement nor any provision contained therein, nor any documents related hereto, nor any negotiations, statements or testimony taken in connection herewith may be offered or received as evidence, or used for any other purpose, or in any suit, action or legal proceeding which either of them have or in the future may have with any other person, as an admission or concession of liability or wrongdoing on the part of either party, except in connection with any action or legal proceeding to enforce this settlement agreement. The Parties have reached this Settlement through arms-length negotiations and to avoid the costs and delays of further disputes, litigation and negotiations among them and after extensive negotiations with an independent mediator, subject to approval by the Board and the Court. This Settlement Agreement has been entered into without any concession of liability or nonliability whatsoever and has no precedential or evidentiary value whatsoever.

### **IV. FINANCIAL TERMS OF SETTLEMENT AGREEMENT AND CLASS DAMAGES ALLOCATION FORMULA**

10. Plaintiffs intend to submit a separate Motion for Attorney's Fees to be heard at the Final Approval Hearing, to be analyzed under the standards for an award of fees and costs to a prevailing plaintiff under the percentage of the fund

doctrine. While the motion will seek a percentage of the fund as a fee award, subsumed within that request will be any statutory attorney's fee to which Plaintiff's counsel would be entitled under 42 U.S.C. § 1988. The Class Notice will advise Class Members of this motion and their right to object to it.

11. It is not currently possible to determine the amount of the Remainder before the Final Approval Hearing where the full attorney's fee award, and class administration costs will be finally determined.

12. The Remainder of the Class Fund shall be distributed to the Class Members under the formula provided in this Agreement. Subject to the Court's approval, Named Plaintiffs shall receive Incentive awards in addition to their share of the Class Fund.<sup>1</sup> Incentive awards are proposed at Class Counsel's initiative and are intended to reflect the Named Plaintiffs' commitment to, and active assistance in advancing, this lawsuit since it was filed in 2012:

<b>NAME</b>	<b>INCENTIVE AWARD</b>
Alain Martinez-Perez	\$10,000
Clemente de la Cerda	\$10,000
<b>TOTAL</b>	<b>\$20,000</b>

13. The County represents that it will provide all electronic data in its possession necessary to both identify and contact class members that it is legally authorized to produce. Such information shall include date of birth, social security number (SSN), driver's license/state ID number, and most recent contact information (address, phone and any other available contact information). This data shall include any fields previously produced in this litigation subject to protective order. This information may only be used to reach out to class members to ensure they receive the Class Notice and are aware of how to file a claim pursuant to this Agreement.

14. In connection with the Preliminary Approval Order, Plaintiffs intend to seek an order (either by way of stipulation with ICE or by way of a noticed motion)

<sup>1</sup> Plaintiffs' counsel represent that they have no prior agreement with any Named Plaintiff to seek such awards, nor do they have any commitment to propose them.

compelling ICE to provide database information reflecting the addresses and contact information provided by deported Class Members at the time of their removal.

## V. IDENTIFICATION OF CLASS MEMBERS & CALCULATION OF UNLAWFUL DETENTION DAYS

15. Using data produced by the LASD, Plaintiffs have identified 3,622 members of the Equal Protection (aka No-Money-Bail) Class. There are 6 individuals whose records must be individually reviewed.<sup>2</sup>

16. Plaintiffs have also identified 16,486<sup>3</sup> persons detained by the LASD, solely on the basis of an ICE hold, after they were due for release on all criminal matters. These individuals are comprised of both confirmed and “potential” *Gerstein* Class Members. (Membership in the Class depends on whether the immigration detainers lodged against them by ICE were supported by a final order of removal or ongoing removal proceedings. This information can be ascertained from checkboxes on the face of the I-247 detainer forms which will be reviewed as part of the Administrator’s duties.)

17. Of the 16,486 *Gerstein* class members, Plaintiffs have identified 11,364 confirmed *Gerstein* class members by cross referencing LASD and ICE data. This leaves 5,122 *potential* class members who could not be matched to ICE data. Confirming class membership for these 5,122 will require reviewing LASD booking jackets (which contain an inmate’s jail records) and locating the copy of their immigration detainer form (I-247 form). According to the LASD, this process will take 1-2 minutes per form. Instead of reviewing booking jackets for all 5,122 potential *Gerstein* Class Members before sending Class Notice, the Parties agree that it is more efficient to send Class Notice to potential *Gerstein* class members, advising that they *may* be entitled to financial compensation depending on whether their detainer was supported by a final order of removal or ongoing removal

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<sup>2</sup> The LASD agrees to provide booking jackets for these 6 individuals so the parties can determine each person’s number of unlawful detention days.

<sup>3</sup> Numbers in this section are subject to modification after re-inclusion of individuals with out-of-county warrants who were over-detained beyond five days on the warrant.

proceedings, which will be determined should they file a claim. Should the Parties receive responses from any potential *Gerstein* class members, LASD agrees to review the booking jacket for any such Class Members, and retrieve the subject’s I-247 form, so the Administrator can determine whether the individual qualifies as a Class Member. LASD will provide a copy of the I-247 form to the Administrator.

18. Defendants have reviewed Plaintiffs’ analysis and concur in the methodology used to identify Class Members and calculate the total number of over-detention days per Class Member. Based on the data, a very small minority of Class Members appear to have been over-detained for longer than 30 days. The Parties agree that it is necessary to ensure that database errors do not produce erroneous results with regard to these outliers. The Parties agree that, for any timely claimant whose LASD data indicates they were over-detained for more than 10 days, the LASD reserves the right to conduct an individual review of the booking jacket for that claimant to ensure that any over-detention is accurately calculated and to verify that a lawful basis did not exist for the claimant’s detention.

19. Estimated class sizes and over-detention days are below:

	<b>Members</b>	<b>Unlawful Detention Days</b>
<b>Confirmed <i>Gerstein</i> Class Members</b>	11,364	39,890
<b>70% of Potential <i>Gerstein</i> Class Members</b>	3,585	15,846
<b>No Money Bail Class Members</b>	3,622	15,844
<b>TOTAL</b>	18,571	71,580

20. Plaintiffs have identified 5,776 members of the No-Bail-Notation Class. This calculation excludes individuals who are members of the No Money Bail Class and who will be compensated for each day of pretrial incarceration as members of that Class. All of these individuals had bail in excess of \$25,000. It is not possible to determine from jail records whether they would have posted bail or, in fact, whether they actually attempted to post bail. In response to the notice, these individuals will be asked to attest, under penalty of perjury, whether they had

access to over \$2,500 and would have posted bail had it not been for LASD's policy, and notwithstanding their immigration hold.

## **VI. DISTRIBUTION FORMULA**

21. Each No-Bail-Notation Class member who responds to the notice by attesting that they would have posted bail will receive \$250 total regardless of the potential number of over-detention days. This figure is consciously set relatively low because it is unknown whether the individual class member would in fact have been able to post bail.

22. Each *Gerstein* and No-Money-Bail Class Member's share of the Remainder will be determined based on the number of days they were over-detained. Days incurred by both the *Gerstein* and No-Money-Bail classes receive the same *per-diem* award.

23. Each *Gerstein* and No-Money Bail Class Member who makes a Timely Claim will receive one point per day of over-detention. Each class member's distribution will be based on their total points, divided by the total points for all Class Members who make Timely Claims. (As a purely hypothetical example, if Class Member X had 5 points for 5 days of over-detention, and the total points for all Class Members submitting Timely Claims were 1000, Class member X would receive .05% (or .0005) of the Remainder).

24. Under this model, each *Gerstein* and No-Money-Bail Class Member's share of the Remainder depends on the number of Class Members who make Timely Claims. To the extent that fewer Class Members make a claim, the money per Class Member making a Timely Claim will increase proportionately, up to a per-day maximum of \$1000. Should the Remainder not be consumed by the total number of claimed days (over-detention days corresponding to total claims, multiplied by \$), any residual funds will be allocated as *cy pres* payments as set forth in §VII, below.

25. No Class Member shall receive more than \$25,000, or 25 over-detention days. The chart below reflects maximum recoveries if class members

were to receive the per-day maximum. (The chart reflects the total number of individuals in each group, but the monies will only be distributed to those who make timely claims.)

<b>MAXIMUM RECOVERIES FOR CONFIRMED <i>GERSTEIN</i> CLASS MEMBERS</b>		
<b># Incarceration Days</b>	<b>Maximum Recovery per Class Member</b>	<b># of Confirmed Gerstein Class Members</b>
1 day	\$1000	1,159
2 days	\$2000	3,725
3 days	\$3000	2,184
4 days	\$4000	2,124
5 days	\$5000	1,368
6 – 10 days	\$6000-\$10,000	735
10+ days	\$10,000 plus	69 <sup>4</sup>

<b>MAXIMUM RECOVERIES FOR NO-MONEY-BAIL CLASS MEMBERS</b>		
<b>Days</b>	<b>Maximum Recovery per Class Member</b>	<b># of Class Members</b>
1 day	\$1000	1725
2 days	\$2000	535
3 days	\$3000	365
4 days	\$4000	278
5 days	\$5000	118
6 – 10 days	\$6000-\$10,000	280
10+ days	\$10,000 plus	322

**VII. *CYPRES* DISTRIBUTION**

26. While Plaintiffs are hopeful that the claims rate in this case will reflect

<sup>4</sup> Booking records will be individually reviewed to confirm the total over-detention days for any *Gerstein* class member whose database information indicates 10 or more days of over-detention. This review will ensure the accuracy of calculations for the very few class members entitled to larger than average recoveries.

claims rates that have occurred in other jail cases, the Parties recognize that there is the possibility of an unusually low claims rate in this case, due in large part to the fact that a significant percentage of Class Members were transferred to ICE custody and subsequently deported. These individuals are likely living abroad and may be difficult or impossible to locate. Even those Class Members who were released (and not deported) may be reluctant to come forward to pursue claims against the LASD.

27. In the event that the claims rate is sufficiently low that there are funds remaining after paying the maximum *per-diem* to claiming Class Members, the balance of the available funds will be *cy pres* funds split 50/50 between organizations/activities designated by Plaintiffs (and reasonably approved by the County) and organizations/activities designated by the County (and reasonably approved by the Plaintiffs). *Cy pres* funds shall be used to fund Los Angeles County programs that provide legal representation to persons facing immigration consequences because of a criminal arrest or conviction in Los Angeles County.

28. *Cy pres* funds may only be used to *augment* the funding already provided by the County of Los Angeles to support activities that these programs would not be able to pursue without the *cy pres* funds. The *cy pres* funds may not be used to supplant or replace County funding provided by the Board of Supervisors.

29. At the time that it is determined that any additional *cy pres* funds are to be distributed, the Parties will work in good faith to reach an agreement regarding the organizations or programs to receive those funds based on the criteria set forth in the preceding paragraphs. If they cannot agree, the Parties will separately brief the Court, and the Court will determine the organizations and/or programs to which the *cy pres* funds will be paid, consistent with identified criteria.

30. This is a non-reversionary Settlement. None of the Class Fund shall revert to the LASD or be used to fund LASD programs. No *cy pres* funds may be used to supplant or replace County funding already provided by the Board of Supervisors.

**VIII. RESOLUTION AND PAYMENT OF CLAIMS**

31. Defendants agree to the foregoing division of funds between Incentive Awards and the Remainder subject to the approval of the Court.

**IX. RELEASES AND OTHER SETTLEMENT TERMS**

32. The Parties enter into this agreement solely for the purposes of this settlement and implementation of the settlement. If the settlement fails to be approved or otherwise fails consummation, then this Settlement Agreement is hereby withdrawn.

33. An SCM who complies with the requirements set forth in this Settlement Agreement and files a Timely Claim form will be paid specified sums determined by the Settlement distribution process set forth above, which payment shall be in full satisfaction of all claims of that SCM.

34. The Settlement Agreement, as of the Effective Date, resolves in full all claims against the Released Persons by all of the SCMs, including the Named Plaintiffs, involving violations of law or constitutional rights, including, without limitation, their equal protection rights under federal and California law, their rights under 42 U.S.C. § 1983 and California Civil Code § 52.1, any other rights under any other federal, state or local law, regulation, duty, or obligation, or any other legal theory, action or cause of action, which arise from the class-wide factual allegations alleged in the complaint (hereafter “Covered Claims”).

35. When the Settlement Agreement is final, as of the Effective Date, all SCMs, including the Named Plaintiffs, waive all rights to any and all claims relating to damages or reimbursement of any kind for the Covered Claims. This waiver and release shall include a full release and waiver of unknown rights regarding the Covered Claims that may exist as of the Effective Date.

36. As of the Effective Date, the SCMs, including the Named Plaintiffs, hereby waive any and all rights to pursue, initiate, prosecute, or commence any action or proceeding before any court, administrative agency or other tribunal, or to file any complaint regarding acts or omissions by the Released Persons with respect

to the Covered Claims; and further, as it relates to this waiver or Release, expressly waive the provisions of California Civil Code § 1542, which provides that “a general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.”

37. Each SCM shall be deemed to have submitted to the jurisdiction of the Court.

38. This Settlement Agreement is subject to and conditioned on a Final Approval Hearing conducted by the Court and entry of a Final Order of Approval of Settlement by the Court, providing the specified relief as set forth below, which relief shall be pursuant to the terms and conditions of this Settlement Agreement and the Parties’ performance of their continuing rights and obligations hereunder. The Final Order of Approval of Settlement shall be deemed final on the Effective Date as defined previously. Such Final Order of Approval of Settlement shall:

- a. Dismiss with prejudice all claims in the action as to the Released Persons including all claims for monetary damages, declaratory relief and injunctive relief, each side to bear its own costs and fees except as otherwise provided for in this Settlement Agreement;
- b. Order that all SCMs are enjoined from asserting against any Released Person any and all claims that any SCM had, has or may have in the future arising out of or based on the Covered Claims;
- c. Release each Released Person from the claims that any SCM has, had or may have in the future against such Released Person arising out of or based on the Covered Claims ;
- d. Determine that this Settlement Agreement is entered into in good faith, is reasonable, fair and adequate, and in the best interest of the Class; and
- e. Reserve the Court’s continuing and exclusive jurisdiction over the Parties to this Settlement Agreement, including Defendants and SCMs, to

administer, supervise, construe and enforce the Settlement Agreement in accordance with its terms for the mutual benefit of all Parties.

39. The Parties will take all necessary and appropriate steps to obtain preliminary and final approvals of the Settlement Agreement, and dismissal of the action with prejudice, all parties bearing their own fees and costs unless otherwise set forth in this Settlement Agreement. If the Court gives final approval of this Settlement Agreement, and if there is an appeal from such decision, the Parties will defend the Settlement Agreement.

#### **X. CLASS COUNSEL FEES**

40. Class counsel will file a Motion for Attorney's Fees and Costs on a percentage of the fund basis, and the payment of said fees and costs is subject to court approval. Class counsel will not seek more than 1/3 of the \$14,000,000 Class Fund as the amount of attorney's fees requested; Class Counsel may seek less but may not seek more. (This 1/3 cap is separate from Class Counsel's costs, i.e., Class Counsel may request up to 1/3 of the class fund plus costs.)

#### **XI. CLASS ADMINISTRATOR SELECTION**

41. The parties agree that contacting Class Members may require the expenditure of larger than normal costs with respect to administration. Accordingly, the Parties have agreed that the money set aside for Class Notice and outreach will exceed the amount typically set aside in class actions of similar sizes.

42. Requests for bids will be sent to at least three established Class Administrators. The candidates will be provided with one month to devise proposed strategies for locating Class Members, including Class Members who may be residing abroad. The selection process will focus on the candidates' past experience with challenging classes, including international classes, the strength of their specific proposals for notifying class members in this case, and the relative costs contained in each bid.

43. Based on the capabilities and reputation of the Administrator Plaintiffs will make a recommendation subject to Defendants' reasonable approval.

44. In addition to conventional claims administration, a portion of the claims administration budget will be set aside to retain the services of Justice in Motion, an organization that specializes in outreach efforts to locate migrant class members of employment and civil rights class actions who reside in Mexico and Central America. This organization will work closely with the Administrator to devise effective strategies for reaching Class Members residing abroad, including networking through community, humanitarian and religious organizations. The combined estimated budget for the work of the Class Administrator and Justice In Motion is \$450,000.

## **XII. CLASS NOTICE**

45. The Administrator shall be responsible for taking any steps deemed appropriate and necessary by class counsel to notify Class Members of their rights to file claims, and to assist them in doing so subject to the limitations of the administration budget.

46. Before Class Notice issues, the Administrator shall conduct research using a skip-trace vendor (e.g., TransUnion) to locate as many Class Member addresses, phone numbers and email addresses as possible. Depending on the success of the first skip-trace effort, the Administrator may use a second vendor in an effort to generate additional contact information. Before the preliminary approval hearing, the Administrator will advise the Parties and the Court of how much time it needs to perform skip-trace research to obtain available Class Member email addresses, mobile phone numbers, and mailing addresses. The date for mailing the Class Notice shall be set with that time in mind.

47. Class Notice shall be issued by U.S. mail, and electronically by email, text message and social media (for all Class Members whose contact information can be obtained).

48. The Administrator shall complete the initial Class Notice mailing within two consecutive business days. The second day of such mailing is the first day of the period for calculating the “Bar Date” (defined previously in ¶ 10(b)).

That mailing shall occur as soon as practicable after the Settlement has been preliminarily approved and no later than the date set by the Court. Throughout the class period, the Administrator shall send follow-up text, email and social media reminders to any Class Members who have not responded.

49. The Class Notice shall describe the particulars of the case, provide the class definition, provide information for claimants to contact the Administrator for a claim form, notify Class Members of the establishment of a case website, and contain other usual and customary information. Each Class Member's notice will include one or more of the following notice provisions, depending on whether they are a confirmed or potential member of each class. There will be three class notices:

- a. Notice for *confirmed Gerstein* and/or No-Money-Bail Class Members advising that they are entitled to financial compensation based on the number of days of over-detention (some individuals are confirmed members of both classes and will therefore receive notice containing provisions relevant to both classes);
- b. Notice for *potential Gerstein* class members, which will explain that entitlement to compensation depends on whether their detainer was supported by a final order of removal or NTA;
- c. No-Bail-Notation Class Members, requesting that they indicate whether they had access to at least \$25,000 and would have posted bail.

The draft Class Notices for each version of the Notice are attached to this Settlement Agreement as **Exhibit A**.

50. The Administrator shall set-up and maintain a class website, which shall be designed for mobile phone accessibility and will permit claimants to submit their claim directly via the website. All pages of the website shall toggle between English and Spanish. The Administrator will also maintain a toll-free number for claimant questions, staffed by bilingual, live operators.

51. The LASD will advise on its website of the existence of this Settlement and place a link on the website to connect viewers to the Class Administrator's website. The LASD will also post physical notices (whose content will be agreed on) in all LA County jail facilities, including IRC, MCJ, Twin Towers and CRDF. In connection with the preliminary approval motion, Plaintiffs intend to seek a court order that physical notices be posted at the Adelanto ICE Processing Center, NB18, Musick, Theo Lacey and any other ICE detention facilities in California.

**XIII. CLASS ADMINISTRATION FOR PROOF OF CLAIM FORMS AND PAYMENT SCHEDULE**

52. The Administrator shall be responsible for processing Proof of Claim Forms in paper and electronic format. The Administrator shall confirm class membership and determine the amount of funds due to each timely claiming Class Member based on the formula contained in Section VI.

53. A Proof of Claim Form shall be deemed timely submitted under ¶ 10(v) (Definition of "Timely Claim") when received by the Administrator, or postmarked, on or before the Bar Date. Claim Forms received after the Bar Date shall be processed by the Administrator and paid as ultimately ordered by the Court, has the discretion under this Agreement to extend the Bar Date. Based on prior experience, the parties anticipate that claims will be presented after the Bar Date. Although the Class Notice will advise SCMs of the Bar Date, Plaintiffs' counsel will request that the Court allow claims after the Bar Date through at least the Final Approval Hearing, which the Court will be free to accept or not in its discretion. The Administrator will notify claimants of the rejection of untimely Claims after Final Approval occurs.

54. If a Class Member submits a Claim form that is deficient in some respect, the Administrator shall provide written notice and a 30-day time limit to provide a proper claim form, which notice shall inform the Class Member of what she must do in order to submit a proper claim. Failure to cure the deficiency within

the 30-day time limit will bar any further rights for consideration of eligibility. So long as the original claim is received on or before the Bar Date, it shall be considered timely under ¶ 10(v) (Definition of “Timely Claim”) if any deficiency is cured within 30 days of the mailing of a notice of deficiency.

55. The Administrator shall make payments to SCMs who have filed Timely Claims as ultimately determined by the Court in accordance with this Settlement Agreement within a reasonable time not to exceed 90 days after the Effective Date.

56. If a check to an SCM is not cashed within three months of its mailing, the Administrator shall hold the funds for nine additional months, during which time it shall make reasonable efforts to contact the person to whom the uncashed check was written to make arrangements for its cashing or reissuance. The Administrator shall not make any payment to any SCM until all claims have been submitted to the Administrator, and there has been a determination of whether it is finally approved, pursuant to the terms of this Settlement Agreement.

57. Where an SCM’s check is not cashed within one year, that SCM shall be eliminated as a qualifying Class Member, and that SCM’s past and future funds shall become part of the fund for future distribution to Class Members, and allocated to the remaining SCM’s during a second round of payments according to the Class Fund Allocation Formula contained in Section VI.

58. Uncashed funds remaining in the Class Fund one year after the third round of payments shall be given as a donation to the *Cy Pres Fund* (see ¶ 30), to be allocated equally among the qualifying organizations/ programs.

#### **XIV. EXCLUSION FROM SETTLEMENT CLASS—OPT OUTS**

59. Any Class Member who wishes to be excluded from the Settlement Class must submit a request to be excluded from the class, a process defined herein as “Opt-Out.” The request for exclusion must be delivered to the Administrator, or postmarked, on or before the Bar Date or as the Court may otherwise direct.

60. Although Named Plaintiffs are entitled to opt out of the Settlement,

Plaintiffs' counsel has conferred with them, and they approve of and support the Settlement, and have advised that they do not intend to opt out.

61. Each Class Member who chooses to Opt-Out from or object to this Settlement shall be deemed to have submitted to the jurisdiction of the Court with respect to his/her claim.

62. Any Class Member who does not Opt-Out as set forth in this Settlement Agreement, shall be deemed conclusively to have become an SCM and to be bound by the Settlement Agreement and all subsequent proceedings and orders herein, regardless of whether s/he files a claim form.

63. Any Class Member who exercises an Opt-Out shall not share in any monetary benefits provided by this Settlement Agreement.

64. The Administrator will periodically report to Defendants' counsel and Class Counsel regarding all Opt-Outs received and will determine and report to counsel the total number of Opt-Outs no later than 10 days after the Bar Date.

#### **XV. APPROVALS REQUIRED**

65. The Los Angeles County Board of Supervisors have all approved the terms of this settlement although, after Final Approval, it will have to finally approve the Final Approval Order.

#### **XVI. DISPUTE RESOLUTION**

66. In the event of any disputes regarding implementation of the Settlement Agreement as set forth herein, they shall be resolved by the Court.

#### **XVII. INTEGRATION**

67. This Settlement Agreement, together with its exhibits, contains all the terms and conditions agreed upon by the Parties regarding the subject matter of the instant proceeding, and no oral agreement entered into at any time nor any written agreement entered into prior to the execution of this Settlement Agreement shall be deemed to exist, or to bind the Parties, or to vary the terms and conditions contained herein, except as expressly provided herein.

68. This Settlement Agreement supersedes all prior communications

regarding the matters contained herein between the Parties or their representatives. This Settlement Agreement is an integrated agreement and contains the entire agreement regarding the matters herein between the Parties, and no representations, warranties or promises have been made or relied on by any party hereto other than as set forth herein. This Settlement Agreement was drafted by counsel for the parties hereto, and there shall be no presumption or construction against any party.

**XVIII. FAIRNESS HEARING AND FINAL ORDER OF APPROVAL**

69. Before this settlement agreement becomes final and binding on the Parties, the Court shall hold a Fairness Hearing to determine whether to enter the Final Order of Approval of Settlement. A proposed Final Order of Approval of Settlement shall be submitted to the Court incorporating the terms of this Settlement Agreement and addressing related information such as Objections and Opt-Outs.

**XIX. NO THIRD-PARTY BENEFICIARIES INTENDED**

70. This Settlement Agreement does not and is not intended to create any rights with respect to any third parties, except as otherwise provided herein.

**XX. CAFA NOTICE**

71. Defendants will provide notice to the appropriate state and federal officials within 10 days of the filing of the motion for preliminary approval of the Settlement pursuant to the provisions of 28 U.S.C.A. § 1715.

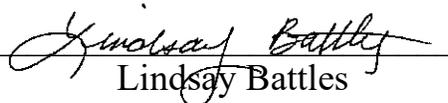
**XXI. COUNTERPARTS**

72. This Settlement Agreement may be signed in counterparts.

DATED: 5/14/20

KAYE, MCLANE, BEDNARSKI &  
LITT

By:   
Barrett S. Litt

By:   
Lindsay Battles

Attorneys for Plaintiffs

DATED: 5/14/20\_\_\_\_\_

ACLU of SOUTHERN CALIFORNIA

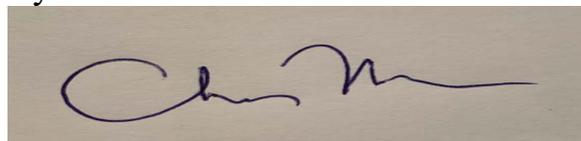
By: 

\_\_\_\_\_  
Jennifer Pasquarella  
Attorneys for Plaintiffs

DATED: 5/14/20\_\_\_\_\_

NATIONAL DAY LABORER  
ORGANIZING NETWORK

By:



\_\_\_\_\_  
Chris Newman  
Attorneys for Plaintiffs

DATED: 05/14/2020\_\_\_\_\_

NATIONAL IMMIGRANT JUSTICE  
CENTER

By:



\_\_\_\_\_  
Mark Fleming  
Attorneys for Plaintiffs

CONFIDENTIAL SETTLEMENT COMMUNICATION

DATED: 11/10/2020

GLASER WEIL

By: 

Andy Baum  
Attorneys for Defendants

DATED: \_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_

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Attorneys for Defendants

LIST OF EXHIBITS TO SETTLEMENT AGREEMENT

Exhibit A	Class Notices
Exhibit B	Proof of Claim and Release Form