

1 **BARRETT S. LITT, SBN 45527**  
E: blitt@littlaw.com  
2 **LITT, ESTUAR, HARRISON &**  
**KITSON, LLP**  
3 **1055 Wilshire Boulevard, Suite 1880**  
**Los Angeles, California 90017**  
4 **T: (213) 386-3114; F: (213) 380-4585**

5 **CAROL A. SOBEL, SBN 84483**  
E: carolsobel@aol.com  
6 **LAW OFFICE OF CAROL A. SOBEL**  
7 **429 Santa Monica Boulevard, Suite 550**  
8 **Santa Monica, California 90401**  
9 **T: (310) 393-3055; F: (310) 393-3605**

10 **ROBERT MANN, SBN 48293**  
11 **DONALD W. COOK, SBN 116666**  
E: doncook@earthlink.net  
12 **3435 Wilshire Boulevard, Suite 2900**  
13 **Los Angeles, California 90010**  
14 **T: (213) 252-9444; F: (213) 252-0091**

15 **ROBERT M. MYERS, SBN 66957**  
E: rmmyers@ix.netcom.com  
16 **NEWMAN.AARONSON.VANAMAN**  
17 **14001 Ventura Boulevard**  
18 **Sherman Oaks, California 91423**  
19 **T: (818) 990-7722; F: (818) 501-1306**

**PAUL L. HOFFMAN, SBN 71244**  
**BENJAMIN SCHONBRUN, SBN**  
**118323**  
**JAMES DeSIMONE, SBN 119668**  
E: hoffpaul@aol.com  
**SCHONBRUN, DE SIMONE, et al.**  
**723 Ocean Front Walk**  
**Venice, California 90291**  
**T: (310) 396-0731; F: (310) 399-7040**

**CYNTHIA ANDERSON-BARKER**  
**SBN 175764**  
E: cablaw@hotmail.com  
**3435 Wilshire Boulevard, Suite 2900**  
**Los Angeles, California 90010**  
**T: (213) 381-3246; F: (213) 252-0091**

Attorneys for Plaintiffs

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

20 **MULTI-ETHNIC IMMIGRANT**  
21 **WORKERS ORGANIZING**  
22 **NETWORK, et al.,**

23 Plaintiffs,

24 vs.

25 **CITY OF LOS ANGELES, et al.,**  
26 Defendants.

Case No.: CV 07-3072 AHM (FMMx)  
[Hon. A. Howard Matz]

**FINAL ORDER OF APPROVAL OF**  
**CLASS SETTLEMENT AND CONSENT**  
**JUDGMENT**

DATE: June 22, 2009  
TIME: 10:00 A.M.  
COURTROOM: 14

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ADDITIONAL CLASS COUNSEL

**NANCY RAMIREZ, SBN 152629**  
**GLADYS LIMON, SBN 228773**  
**KRISTINA M. CAMPBELL, SBN**  
**248738**  
**E: kcampbell@maldef.org**  
**MEXICAN AMERICAN LEGAL**  
**DEFENSE AND EDUCATIONAL**  
**FUND**  
**634 South Spring Street, 11<sup>th</sup> Floor**  
**Los Angeles, California 90014**  
**T: (213) 629-2512; F: (213) 629-0266**

**CHRIS FORD, SBN 239376**  
**LAW OFFICE OF CHRIS FORD**  
**E: cfordlaw@earthlink.net**  
**3435 Wilshire Boulevard, Suite 2900**  
**Los Angeles, California 90010**  
**T: (213) 487-8000; F: (213) 487-8001**

**ANTONIO RODRIGUEZ, SBN 51443**  
**E: antoniohr@arodriguezlaw.com**  
**LAW OFFICE OF ANTONIO H.**  
**RODRIGUEZ**  
**5429 East Beverly Boulevard**  
**Los Angeles, California 90022**  
**T: (323) 869-9909; F: (323) 869-9911**

**JORGE GONZALEZ, SBN 100799**  
**E: jggorgeous@aol.com**  
**A PROFESSIONAL CORPORATION**  
**2485 Huntington Drive, Suite 238**  
**San Marino, California 91108**  
**T: (626) 683-3922; F: (626) 683-3944**

**OLU ORANGE, SBN 213653**  
**E: o.orange@orangelawoffices.com**  
**ORANGE LAW OFFICES**  
**3435 Wilshire Boulevard, Suite 2900**  
**Los Angeles, California 90010**  
**T: (213) 736-9900; F: (775) 416-9221**

**ADALILA GARCIA, SBN 216281**  
**E: adalila76@yahoo.com**  
**LAW OFFICE OF ADALILA**  
**ZELADA-GARCIA**  
**1475 Echo Park Avenue**  
**Los Angeles, California 90026**  
**T: (213) 250-5500; F: (213) 250-2846**

**REBECCA F. THORNTON**  
**SBN 231128**  
**E: rebecca@humanrightsesq.com**  
**LAW OFFICE OF REBECCA F.**  
**THORNTON**  
**429 Santa Monica Boulevard, Suite 550**  
**Santa Monica, California 90401**  
**T: (310) 393-3055; F: (310) 393-3605**

**LUZ E. HERRERA**  
**E: attorney@luzherrera.com**  
**LAW OFFICE OF LUZ E. HERRERA**  
**1216 East Compton Boulevard**  
**Compton, California 90221**  
**T: (310) 635-8181; F: (310) 638-4644**

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1 **I. INTRODUCTION**

2 This lawsuit having come before this Court for a hearing, pursuant to this  
3 Court's Preliminary Approval Order dated March 14, 2009 (the "Preliminary  
4 Approval Order") to consider and determine the matters set forth in the  
5 Preliminary Approval Order; and due notice of said hearing having been published  
6 and given; and all persons that made timely objections to the proposed settlement  
7 set forth in the Settlement Agreement, and described in the Class Notice, having  
8 been given an opportunity to present such objections to the Court; and the Court  
9 having considered the matter, including all papers filed in connection therewith,  
10 and the oral presentations of counsel at said hearing; and good cause appearing,

11 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:**

12 **II. DEFINITIONS**

13 1. Each term and phrase used in this Final Order of Approval of Class  
14 Settlement and Consent Judgment (the "Consent Judgment") shall have the same  
15 definition and meaning as in the Settlement Agreement, as follows.

16 2. "Administrator" means the claims administrator, Gilardi & Co., LLC,  
17 as agreed upon by the parties and appointed by the Court to administer the claims  
18 process, to pay class claims, and to handle any other tasks appropriate to  
19 completing the claims process.

20 3. A "Damages Class Member" means any class member meeting the  
21 following definition (as set forth in the Class Certification Order of January 8,  
22 2008): "Those persons who were present on May 1, 2007 in the geographic area  
23 bounded by 6th Street (on the north), Alvarado Street (on the east), 7th Street (on  
24 the south), and Park View Street (on the west), or the immediately adjacent areas,  
25 including from 6th Street west to Lafayette Park, at any point between the hours of  
26 5:00 and 7:00 p.m., who did not engage in any conduct justifying Defendants'  
27 dispersal order or the use of force, and who were subjected to the LAPD's use of  
28 force, dispersal order or other unlawful police activity arising from the police  
response to the immigration march and rally."

1           4.     A “Structural Relief Class Member” means any class member meeting  
 2 the following definition (as set forth in the Class Certification Order of January 8,  
 3 2008):

4                     “Those who in the past have engaged in or who in the future may  
 5 engage in peaceful demonstrations or protest in the City of Los Angeles and  
 6 who, at the time they engage in such peaceful demonstrations or protest, were  
 7 or are:

8                     “(a) The following organizations: Multi-Ethnic Immigrant Workers  
 9 Organizing Network, Coalition for Humane Immigrant Rights of Los  
 10 Angeles, Koreatown Immigrant Workers Alliance, Institute for Popular  
 11 Education of Southern California, Pilipino Workers Center, Garment Workers  
 12 Center (“Plaintiff Associations”);

13                     “(b) Officers, representatives, or members of Plaintiff Associations;

14                     “(c) Persons who attend or participate in Plaintiff Associations' events,  
 15 including but not limited to their rallies;

16                     “(d) Organizations that advocate, organize, or both advocate *and*  
 17 organize on behalf of the rights of individuals and associations to engage in  
 18 speech, assembly, and expression within the scope of the First Amendment of  
 19 the United States Constitution.

20                     “(e) Persons who participate in public assemblies organized by the  
 21 organizations described in paragraph (d).”

22           5.     A “Represented Individual” is an individual class member who has  
 23 been represented individually and as a class member in either the above-captioned  
 24 MIWON case, or in any of the following Related Cases:

<b>RELATED CASES</b>	<b>NUMBER</b>	<b>PLAINTFF’S ATTORNEY</b>
<i>Santiago v. City of Los Angeles</i>	2:07 CV-02966	Gregory Yates
<i>Brandon Aguilar v. City of Los Angeles</i>	2:07 CV-04131	Luis Carrillo
<i>Newton v. City of Los Angeles</i>	2:07 CV-04455	Ellen Ellison
<i>Lopez v. City of Los Angeles</i>	2:07 CV-05555	Susan Pintar

<b>RELATED CASES</b>	<b>NUMBER</b>	<b>PLAINTFF’S ATTORNEY</b>
<i>Ajuria v. City of Los Angeles</i>	2:07 CV-08433	Luis Carrillo
<i>Gudiel v. City of Los Angeles</i>	2:08 CV-01370	Louis Krass
<i>Reyes v. City of Los Angeles</i>	2:08 CV-02225	Carl Douglas
<i>Sal Aguilar v. City of Los Angeles</i>	2:08 CV-02301	Jaime Segall-Gutierrez
<i>Ponce v. City of Los Angeles</i>	2:08 CV-02710	Leo Hernandez

The names of, and counsel for, the Represented Individuals are set forth in Exhibit E to the Preliminary Approval Order.

The term “Represented Individuals” in the plural refers collectively to all the Represented Individuals in the MIWON and above listed cases.

6. An “Unrepresented Class Member” is a class member not currently represented by any of the counsel in MIWON or the Related Cases, i.e., a class member who is not a “Represented Individual” as defined in Paragraph 5.

7. “Class Counsel” means Barrett S. Litt, Litt, Estuar, Harrison & Kitson, 1055 Wilshire Blvd., #1880, Los Angeles CA. 90017; Carol A. Sobel, 429 Santa Monica Boulevard, Suite 550, Santa Monica, California 90401; and Paul L. Hoffman, 723 Ocean Front Walk, Venice, California 90291.

8. “Matters Alleged in the Lawsuit” refers to claims for relief and allegations in the MIWON Complaint dated May 9, 2007, as well as claims for relief and allegations in the operative complaints filed in the Related Cases, all of which are based upon actions of the LAPD or its personnel for allegedly violating First or Fourth Amendment rights, as well as other federal and state-law rights, in or surrounding MacArthur Park on May 1, 2007.

9. “Released Persons” means the Defendants and their affiliates, subsidiaries, predecessors, successors, and/or assigns, together with past, present and future officials, employees, representatives, attorneys, and/or agents.

10. “LAPD” refers to the Los Angeles Police Department.

11. “Class Notice” means the notice in a form substantially similar to that attached to the Preliminary Approval Order as Exhibit B.

1           12. “Effective Date” means the date upon which this Consent Judgment  
2 becomes final. Unless the Court entertains the one objection to the settlement that  
3 was filed, see Paragraph 21, *infra*, then the Consent Judgment becomes final at the  
4 time of its entry. If the Court entertains and overrules the objection, then the  
5 Consent Judgment will be deemed final only upon expiration of the time for the  
6 objector to appeal or, if a Notice of Appeal is filed, upon exhaustion of all the  
7 objector’s appeals and petitions for writs of certiorari.

8           13. An “Opt-Out” is any Unrepresented Class Member who files with the  
9 Administrator a timely request for exclusion from the Settlement Agreement.

10           14. “Proof of Claim Form” means the Proof of Claim and Release Form  
11 that Unrepresented Class Members must use to make a claim for payment from the  
12 Post Administration Class Fund, as that term is defined in Paragraph 16, *infra*. A  
13 copy of the proposed Proof of Claim Form is attached to the Preliminary Approval  
14 Order as the last page of Exhibit B thereto.

15           15. The “Class Fund” is the monetary fund set aside for Unrepresented  
16 Class Members who filed timely class claims. The Class Fund amounts to  
17 \$250,000 inclusive of all costs of class administration.

18           16. The “Post Administration Class Fund” is the Class Fund less costs of  
19 class administration.

20           17. The “Represented Individuals’ Fund” encompasses all funds owed to  
21 the Represented Individuals under the Settlement Agreement. The Represented  
22 Individuals’ Fund amounts to \$12,550,000, inclusive of all attorneys’ fees,  
23 medical liens and costs. The amount of \$12,600,000 referenced in the Settlement  
24 Agreement has been reduced by agreement of the parties in light of Plaintiff  
25 Antonio Lopez’ decision to withdraw from the settlement.

26           18. The “Class Attorneys’ Fees” are the attorneys’ fees the MIWON  
27 Plaintiffs have moved the Court to award Class Counsel and the MIWON counsel  
28 team in the total amount \$3,753,000, inclusive of all MIWON-related litigation  
costs, medical liens and medical costs. Class Attorneys’ Fees encompass some

1 additional sums allocated to non-MIWON counsel, sums agreed to between  
2 MIWON counsel and non-MIWON counsel and in turn individually addressed  
3 between non-MIWON counsel and their clients. These fees are all based on both a  
4 statutory and class fund fee award available on both the federal and state claims  
5 brought in this case. Class Attorneys' Fees do not in any way increase the total  
6 settlement amount owed by the City, or impose any payment obligation on any  
7 other Defendant or Released Person.

8 19. The "Claim Cut-Off Date" of May 27, 2009, is the date by which any  
9 Unrepresented Class Member who wishes to receive payment from the Post  
10 Administration Class Fund was required to file his/her Proof of Claim Form.

11 20. The "Bar Date," which is April 27, 2009, is the date by which any  
12 class member was required to file objections, if any, to the Settlement Agreement,  
13 or any class member was required to request exclusion from the settlement. A  
14 Represented Individual was required to request exclusion from the settlement by  
15 either failing to provide his/her counsel with a signed authorization or by  
16 providing written notice to the Court and parties of his/her intent to exclude  
17 himself or herself, in either case no later than the Bar Date.

### 18 **III. OBJECTIONS**

19 21. There has been one objection to the settlement, and no separate  
20 objection to the Motion for an award of attorneys' fees. The one filed objection is  
21 attached as Exhibit 1 hereto. It provides no information whatsoever as to the  
22 ground for the objection; instead, it merely objects to the settlement, stating,  
23 "Objection to settlement in MIWON" etc., and nothing more. Accordingly, the  
24 Court concludes that the objection must be overruled as there is no substance  
25 provided permitting the Court to assess its merits. The Court finds the settlement,  
26 based on all available evidence, to be fair, reasonable and adequate, and in the best  
27 interests of the class.

### 28 **IV. OPT OUTS**

22. There have been no opt-out notices filed by Unrepresented Class

1 Members. Among the Represented Individuals, one – Antonio Lopez, represented  
2 by Luis Carrillo – has withdrawn from the settlement. The parties negotiated how  
3 that affects the settlement and agreed that Mr. Lopez would not be part of the  
4 settlement and would be treated as an Opt-Out. In consideration of the fact that the  
5 City will now have to litigate with Mr. Lopez, the Represented Individuals’ Fund  
6 originally set at \$12,600,000 was reduced by \$50,000. Except for Mr. Lopez, all  
7 class members, including all Represented Individuals, are bound by the terms of  
8 this Consent Judgment and the settlement in this case.

9 **V. CLAIMS FILED.**

10 23. The claims filing postmark deadline for the Class Fund was on May  
11 27, 2009. As of June 11, 2009, the Administrator has received 1324 timely Proof  
12 of Claim Forms and 46 late Proof of Claim Forms. The processing of Proof of  
13 Claims Forms has not been completed.

14 24. Proof of Claim Forms received or postmarked by May 27, 2009, shall  
15 be paid. The Court will not allow late claims to be considered and paid.

16 **VI. SETTLEMENT AGREEMENT APPROVED BECAUSE FAIR,  
17 ADEQUATE, AND REASONABLE.**

18 25. The settlement of this lawsuit was not the product of collusion  
19 between Plaintiffs and Defendants or their respective counsel, but rather was the  
20 result of bona fide and arm’s-length negotiation conducted in good faith by the  
21 parties and their counsel, with the assistance of an independent mediator, who is a  
22 sitting United States Magistrate Judge.

23 26. The Settlement Agreement and the settlement set forth therein are  
24 hereby approved and found to be fair, adequate, reasonable, in the best interest of  
25 the Class as a whole, and in satisfaction of Rule 23 of the Federal Rules of Civil  
26 Procedure and due process requirements. The Court previously certified an  
27 injunctive relief class and damages class after a contested motion, and re-affirms  
28 that certification.

1 **VII. DISTINCTION BETWEEN REPRESENTED INDIVIDUALS AND**  
2 **UNREPRESENTED CLASS MEMBERS**

3 27. The Court is aware that the parties have settled this case as a hybrid  
4 settlement. The MIWON counsel represented both the certified class and 192  
5 individual class members who alleged they had been injured as a result of the  
6 actions of the LAPD on May 1, 2007. In addition, the cases listed in Paragraph 5,  
7 *supra*, represent a combined additional 105 individuals who also alleged they had  
8 been injured as a result of the actions of the LAPD on May 1, 2007. These are  
9 collectively the “Represented Individuals” as defined above. Each of the  
10 Represented Individuals is to receive the same amount of compensation as every  
11 other Represented Individual with similar injuries, but no additional damages have  
12 been awarded based on an individual’s role as a class representative. The Court is  
13 also aware that the Represented Individuals are receiving significantly higher  
14 amounts than are the Unrepresented Class Members. The Court finds this  
15 distinction appropriate under the unique circumstances of this case for the  
16 following reasons:

- 17 A. In the mediation process, the plaintiffs presented evidence that the  
18 Represented Individuals were in fact present at the events in question  
19 through individualized analysis of witness statement, photographs and  
20 the like, which is not the case for the Unrepresented Class Members.
- 21 B. In the mediation process, the plaintiffs presented evidence of the  
22 particular circumstances of each Represented Individual, and all parties  
23 were able to assess damages for those individuals, which is not the case  
24 for the Unrepresented Class Members.
- 25 C. Plaintiffs presented evidence in the mediation process indicating that  
26 most of the Represented Individuals suffered significant physical and  
27 psychological injuries.
- 28 D. It is the assessment of the parties, and the Court concurs, that most of  
those who suffered serious injuries as a result of the Matters Alleged in

1 the Lawsuit were included among the Represented Individuals, especially  
2 in light of the widespread publicity about the events and the ensuing  
3 lawsuits.

4 E. The City's offer to settle the case in the amount it did was driven almost  
5 exclusively by its assessment of the Represented Individuals' claims. It  
6 was Class Counsel who insisted that the Class Fund be established for  
7 those who qualify as Damages Class Members and were not Represented  
8 Individuals.

9 F. The Class Fund established in this settlement is designed to compensate  
10 Damages Class Members who did not receive serious injuries. If there are  
11 a few who did, they had the right to opt out of the settlement. The fact  
12 that there were no Opt-Outs and only one general objection (by an  
13 individual who provided no information establishing that she qualified as  
14 a class member) confirms that the Represented Individuals included all,  
15 or virtually all, those with the more serious generally.

16 **VIII. CLASS NOTICE**

17 28. As required by this Court in its Preliminary Approval Order: (a) Class  
18 Notices were distributed by five Plaintiff Associations to inform as many  
19 individuals as was practicable of the settlement and the claims process; and (b)  
20 Class Notice was published in a summary fashion as set forth in the Settlement  
21 Agreement and in the Preliminary Approval Order. See Declaration of the Claims  
22 Administrator, and Supporting Declarations Re Outreach. The evidence provided  
23 to the Court of the outreach efforts reflects an exceptionally successful outreach,  
24 including email, hand-outs, and other distribution efforts by the organizations that  
25 comprise MIWON. See Declaration of Carol Sobel summarizing outreach effort.  
26 In light of the fact that no individual names and addresses of attendees of the May  
27 1, 2007, activities exist, this effort was both impressive and successful. Between  
28 the Represented Individuals and the class members filing timely claims,  
approximately 25% of those present at the protest have come forward. This is an

1 excellent result given returns in comparable cases. See Declaration of Barrett S.  
2 Litt regarding claims returns in other cases.

3 29. The notice given to the Unrepresented Class Members is hereby  
4 determined to be fully in compliance with the notice requirements of Rule 23 of  
5 the Federal Rules of Civil Procedure and due process and is found to be the best  
6 notice practicable under the circumstances and to constitute due and sufficient  
7 notice to all parties entitled thereto.

8 30. Due and adequate notice of the proceedings having been given, and a  
9 full opportunity having been offered to class members to participate in this  
10 hearing, it is hereby determined that all class members, except Antonio Lopez (a  
11 Represented Individual, who is the sole Opt-Out), are bound by this Consent  
12 Judgment.

13 **IX. CLASS-WIDE PROSPECTIVE RELIEF**

14 31. The Court has entered a separate Structural Relief Order addressing  
15 class-wide prospective relief and retaining jurisdiction to enforce the terms of that  
16 order for a period of no less than four (4) years. A copy of this Structural Relief  
17 order is attached as Exhibit 2 to this Consent Judgment and incorporated as though  
18 fully set forth herein.

19 **X. DAMAGES SETTLEMENT**

20 32. \$12,550,000 of the total settlement of \$12,800,000 shall go to cover  
21 the claims of the Represented Individuals, including statutory attorneys' fees, costs  
22 and any outstanding liens. Counsel for the MIWON Represented Individuals and  
23 counsel for the other Represented Individuals have agreed among themselves as to  
24 how much money will be provided to each of the Represented Individuals.  
25 Counsel for the MIWON Represented Individuals and counsel for the other  
26 Represented Individuals have also agreed among themselves how any Class  
27 Attorney's Fees will be distributed among counsel. In addition, in the case of non-  
28 MIWON Represented Individuals, they may have agreements with their counsel  
regarding percentage division of their settlements. The amount of attorneys' fees

1 and costs approved by the Court is addressed in Paragraph 49 below.

2 33. The Settlement Agreement provides for a total of \$12,600,000 (now  
3 reduced to \$12,550,000 as a result of Mr. Lopez's withdrawal), whether via direct  
4 payment or structured settlement, to be paid to the 297 (now 296 as a result of Mr.  
5 Lopez's withdrawal) Represented Individuals and a residual Class Fund of  
6 \$250,000 (inclusive of costs of class administration). The Plaintiffs' counsel who  
7 are signatories to the Settlement Agreement (Exhibit A to the Preliminary  
8 Approval Order) have warranted 1) that they have authority from each  
9 Represented Individual whom they represent individually to settle the cases on the  
10 terms set forth herein, 2) that each of their clients is aware of and has authorized  
11 the amount each will receive from the settlement, and 3) that each of their clients  
12 are aware of and has approved the attorneys' fee arrangement between counsel and  
13 client.

14 34. There will be one structured settlement for one of the MIWON clients,  
15 Luis Galvez, the particulars of which are currently being worked out. For that  
16 structured settlement to occur, the final structured settlement papers must be  
17 signed by all relevant parties before the payment of the settlement funds to the  
18 various attorney client trust accounts, as set forth in Paragraph 35. In the event the  
19 Galvez structured settlement occurs, the cost of that structure shall be deducted  
20 from the amount of funds to be paid to the Litt, Estuar, Harrison & Kitson Client  
21 Trust Account as set forth in Paragraph 35.

22 35. Payment of the total \$12,800,000 settlement amount shall be the  
23 obligation of the City and no other Defendant or person. The City intends to use  
24 the proceeds from one or more Judgment Obligation Bonds (hereafter the  
25 "Judgment Bond") to fund this Consent Judgment. The City will deposit the funds  
26 required under the Settlement Agreement and Consent Judgment forthwith after it  
27 receives the proceeds of the sale of the Judgment Bond, the purpose of such sale  
28 being to fund the instant settlement. The parties will use their best efforts to  
facilitate receipt of such funds within 120 days of the Effective Date. If, after six

1 months from the Effective Date, the Judgment Bond has not been sold, the City  
2 will provide a report to the Court and Class Counsel regarding how it plans to fund  
3 the settlement. The failure or inability of the City to sell the Judgment Bond shall  
4 not be cause for the City to rescind the Settlement Agreement. The Consent  
5 Judgment is a final non-appealable judgment, collectible under the same legal  
6 standard as any final judgment in federal court that has not been appealed.  
7 Forthwith after the settlement funds are collected from the sale of the judgment  
8 bond, or otherwise pursuant to further order of court, all settlement funds shall be  
9 deposited into the Litt, Estuar, Harrison & Kitson Client Trust Account, and from  
10 there shall be distributed by wire to the trust accounts of the counsel in each of the  
11 Related Cases as agreed to among the parties, and from each respective trust  
12 account shall be distributed to the clients or counsel, as has been agreed to among  
13 the parties and counsel. (The MIWON counsel will determine among themselves  
14 how to distribute the funds to the Represented Individuals they represent.) The  
15 amounts to go to the MIWON and non-MIWON client trust accounts (inclusive of  
16 their proportionate share of the awarded attorney's fees) is as follows:

- 17 A. Gregory Yates: \$525,000
- 18 B. Ellen Ellison: \$40,000
- 19 C. Susan Pintar: \$530,000
- 20 D. Luis Carrillo: \$2,040,000 (having been reduced by \$50,000 to  
21 account for Antonio Lopez's withdrawal from the settlement)
- 22 E. Louis Krass<sup>1</sup>: \$50,000
- 23 F. Carl Douglas: \$352,000
- 24 G. Leo Hernandez: \$38,000

25  
26  
27 <sup>1</sup> If Mr. Krass, or any other non-MIWON counsel, is properly replaced on the  
28 record by new counsel, then the funds shall be paid to the trust account of whoever  
is the current counsel of record.

1 H. Jaime Segall-Gutierrez: \$241,000. At an earlier stage in the  
2 case, Mr. Segall-Gutierrez represented the following  
3 individuals: Summer Reese, for herself and as guardian for her  
4 minor child Patrick Reese; Geneva Reese; Ed Cotton; Pedro  
5 Reyes; Tania Torres; Miguel Guzman; and Nadia Khan. Those  
6 individuals are no longer represented by Mr. Segall-Gutierrez,  
7 and they will be paid directly from the Litt, Estuar, et al. Client  
8 Trust Account their portion of the settlement.

9 I. Litt, Estuar, et al. (for MIWON clients and counsel, and  
10 inclusive of the \$200,000 Post Administration Class Fund):  
11 \$8,934,000.

12 36. Each class member *not* listed in Exhibit E to the Preliminary Approval  
13 Order who filed a timely, valid claim form shall be paid his or her proportional  
14 share of the Post Administration Class Fund. If all the claims timely filed were  
15 paid, there would be \$200,000 divided by 1324 claim forms, or slightly above  
16 \$150 per claimant.

17 **XI. HANDLING OF MINORS' CLAIMS FOR REPRESENTED**  
18 **INDIVIDUALS**

19 37. Included among the Represented Individuals are minors, some of  
20 whose settlements are \$6000 or less and some of whose settlements exceed \$6000.  
21 For those minors who receive, exclusive of attorneys' fees and costs, settlements  
22 of \$6000 or less, blocked accounts need not be opened, and the money shall be  
23 paid to the parents or guardian ad litem of the minor for general use for the  
24 minor's health and well-being in whatever manner the parent or guardian sees fit.  
25 For those minors who receive, exclusive of attorneys' fees and costs, settlements  
26 over \$6000, blocked interest bearing bank accounts shall be opened for those who  
27 will not reach the age of 16 by December 31, 2009. For those minors who will  
28 reach the age of 16 by December 31, 2009, and who receive, exclusive of  
attorneys' fees and costs, settlements over \$6000, their funds shall be maintained

1 in their individual counsel's client trust account so that they can be expeditiously  
2 paid to the client at the time of his/her 18<sup>th</sup> birthday. The names and categories of  
3 minors addressed by this and the next two paragraphs are listed in Exhibit 3 to this  
4 Consent Judgment. A record of each blocked account – which includes the  
5 minor's name, date of birth, parent's or guardian's name, and current address; and  
6 the name and branch of the bank in which the account is opened and the account  
7 number – must be filed with the Court within 90 days from the initial payment of  
8 funds into the Litt, Estuar, et al. Client Trust Account.

9 38. The Court recognizes that there may be circumstances in which a  
10 parent or other guardian has a need for the funds in a blocked account for the  
11 direct and immediate benefit of the minor plaintiff, such as for a medical  
12 emergency or braces. The Court authorizes the withdrawal of funds from the  
13 blocked account for such a purpose with the written concurrence of the counsel for  
14 that minor listed in Exhibit 3 to this Consent Judgment. The written concurrence  
15 shall memorialize the reasons for the withdrawal, and a copy shall be filed with  
16 the financial institution where the funds are maintained, which shall keep such  
17 record until the minor reaches maturity and withdraws the funds. The maximum  
18 allowed number of such withdrawals is two.

19 39. In that regard, the Court authorizes the use of \$5000 for minor  
20 plaintiff NZ (whose GAL is Maria Guadalupe Gonzales) to pay for orthodonture  
21 without further order of Court or approval of counsel.

## 22 **XII. HANDLING OF ABSENT REPRESENTED INDIVIDUALS' CLAIMS**

23 40. There are Represented Individuals whose present whereabouts are  
24 unknown ("Missing Represented Individuals"). Plaintiffs' counsel have ranked  
25 Missing Represented Individuals' settlement within the grid system utilized for the  
26 Represented Individuals, but are unable to secure the consent of the Missing  
27 Represented Individuals to the settlement. The names of the Missing Represented  
28 Individuals, the amounts of their settlement after attorneys' fees and costs, as  
determined by the counsel whom they retained, and the names of their counsel, are

1 contained in Exhibit 4.

2 41. The Court finds that Plaintiffs' counsel made diligent efforts to locate  
3 the Missing Represented Individuals, which efforts were unsuccessful. These  
4 efforts included calling, mailing and trying to make personal contact. See  
5 Declarations of Carol Sobel, Jorge Gonzalez, Colleen Flynn, Do Kim and Luis  
6 Carrillo in Support of Exhibit 4 Re Missing Clients.

7 42. Plaintiffs request that the Court authorize that the funds designated for  
8 the Missing Represented Individuals set forth in Exhibit 4 be placed in a special  
9 trust account because the Court has jurisdiction over, and the authority to bind,  
10 any class member who has not opted out, and none of the Missing Represented  
11 Individuals has opted out.

12 43. Class members must be adequately represented by Class Counsel and  
13 afforded due process in order to be bound by a class settlement or judgment. Thus,  
14 in class actions, personal jurisdiction for judgment purposes may be exercised over  
15 nonresident class members, even those without minimum contacts with the forum,  
16 and without affirmative opt-in consent having been made, so long as there has  
17 been the best notice practicable under the circumstances, and an opportunity for  
18 class members to exclude themselves from the litigation. *Phillips Petroleum Co. v.*  
19 *Shutts*, 472 U.S. 797, 808 (1985). The Court finds that such due process  
20 requirements have been met here, and that it accordingly may bind even those  
21 individuals who are individual plaintiffs who are now absent if they have not  
22 opted out. Accordingly, the Court concludes that Class Counsel's proposal is  
23 proper.

24 44. This is especially so because, without the Court approving the  
25 settlement for the Missing Represented Individuals, the Missing Represented  
26 Individuals, if they are named parties, would be subject to a motion for dismissal  
27 with prejudice for failure to prosecute their case, under F.R.Civ.P. Rule 41(b). *See,*  
28 *e.g., Henderson v. Duncan*, 779 F.2d 1421, 1423 (9th Cir.1986) (in ruling on a  
motion under Rule 41(b), the Court considers several factors, including, "(1) the

1 public's interest in expeditious resolution of litigation; (2) the court's need to  
2 manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy  
3 favoring disposition of cases on their merits and (5) the availability of less drastic  
4 sanctions”); *Aziz v. Wright*, 34 F.3d 587 (8<sup>th</sup> Cir. 1994) (plaintiff twice appeared  
5 for deposition but refused each time to be deposed; case properly dismissed for  
6 failure to prosecute after court ordered plaintiff to be deposed and he failed to  
7 comply). If they were not named parties, they would be bound by the settlement  
8 even though they were receiving no funds.

9 45. The Court finds that it is in the interest of the Missing Represented  
10 Individuals, and of the class as a whole, to include the Missing Represented  
11 Individuals in the settlement on the terms proposed, and that it has the authority to  
12 do so in the context of this class action without the approval of the Missing  
13 Represented Individuals. Accordingly, Class Counsel shall open special interest  
14 bearing trust accounts for each such client. If any Missing Represented Individual  
15 has not claimed his/her funds by December 31, 2012, then the funds in the account  
16 for such individual shall revert to the City. Counsel for any Missing Represented  
17 Individual who opens a trust account pursuant to this paragraph shall, at the time  
18 the trust account is opened, provide the financial institution holding the funds  
19 written notice of the City’s reversionary right and all instructions necessary to  
20 facilitate such reversion on January 2, 2013. Counsel for any Missing Represented  
21 Individual shall also give the City written notice, addressed to Cory Brente of the  
22 Los Angeles City Attorney’s Police Litigations Section, of the financial  
23 institution(s) in which any such account has been opened so that the City may take  
24 steps to exercise its reversionary rights at the appropriate time. It shall then be the  
25 responsibility of the City to initiate the reversionary process and contact any  
26 holders of the trust accounts necessary to accomplish the reversion, with which  
27 process all Plaintiffs’ counsel shall cooperate. Despite the provisions of this  
28 paragraph or any other paragraph herein, between January 1, 2013, and December  
31, 2018, each Missing Represented Individual shall retain the right to receive

1 from the City (and no other person) the amount of net principal and accrued  
2 interest, if any, that was in the trust account at the time the City received funds  
3 from it; provided, however, that said Missing Individual shall not be entitled to  
4 receive interest accrued after December 31, 2012, if any. The names, settlement  
5 amounts, and counsel for the Missing Represented Individuals are provided in  
6 Exhibit 4.

7 46. The Missing Represented Individuals will be bound by this Consent  
8 Judgment in the same manner as any other class member who has not opted out.

9 **XIII. CLASS FUND ATTORNEYS' FEES**

10 47. Plaintiffs have filed a Motion for Attorneys' Fees requesting payment  
11 of \$3,753,000 in attorneys' fees including litigation costs and medical liens and  
12 costs. The Court approves this request and is entering a separate order addressing  
13 it.

14 48. The Court is also advised that, pursuant to contract terms between  
15 attorney and client, some of the non-MIWON attorneys – but not the MIWON  
16 counsel – may receive a percentage of the client's recovery, as negotiated between  
17 attorney and client. Since these agreements are in the non-MIWON cases, they do  
18 not require court approval.

19 **XIV. CLASS ADMINISTRATOR**

20 49. The Court reaffirms the appointment of Gilardi & Co., LLC as  
21 Administrator. The Court authorizes the payment, to be made immediately from  
22 the Litt, Estuar, et al. Client Trust Account, of \$30,617.80 to cover the  
23 Administrator's expenses to date. The Class Administrator estimates an additional  
24 \$11,315 or possibly more to complete the claims administration (excluding  
25 particular efforts that may be requested by the City at its expense), for which the  
26 Court authorizes payment upon completion. When and if the class distribution  
27 goes forward (i.e., if there is no appeal or there is an appeal and the settlement is  
28 approved at the appellate level or abandoned), then Gilardi & Co. LLC will  
receive an additional \$200,000 to distribute to class members as part of the class

1 fund.

2 50. The Administrator shall preserve all written communications from  
3 class members at least until December 31, 2012, or pursuant to further order of the  
4 Court. All written communications received by the Administrator from class  
5 members relating to the settlement shall be available at all reasonable times for  
6 inspection and copying by counsel for the parties.

7 51. In addition to the Administrator, work to distribute the Class Notices  
8 was performed by the Plaintiff Organizations, each of which has filed a  
9 declaration attesting to their outreach efforts. The Court authorizes payment of up  
10 to \$20,000, at \$40 per hour, for these efforts by Plaintiff Organizations.

11 52. Based on the foregoing figures, the Court is aware that the cost of  
12 administration will exceed the original estimate of \$50,000. MIWON counsel has  
13 advised the Court that they have succeeded in reducing some of the liens for their  
14 clients, and that they estimate that the total savings will be somewhere between  
15 \$50,000 and \$100,000. These lien funds are part of the total \$3,753,000 requested  
16 by MIWON counsel. MIWON counsel have further advised the Court that, under  
17 their arrangements with their clients, each client is to receive a specified amount,  
18 and counsel assumed responsibility for the liens. Since the amount to be paid to  
19 MIWON counsel is less than their lodestar, the Court approves that any sums  
20 saved by the reduction of liens shall be deemed fees to the MIWON counsel,  
21 except that from that reduction, MIWON counsel shall pay the additional class  
22 administrative costs so that the funds available for distribution to Unrepresented  
23 Class Members remains \$200,000.

24 **XV. GENERAL PROVISIONS**

25 53. All class members except those who timely filed opt-out forms shall  
26 be bound by this Consent Judgment.

27 54. Except as otherwise provided in this Consent Judgment, each party  
28 shall bear its own costs, expenses and attorneys' fees.

55. The use of the masculine gender herein is construed to include the

1 feminine and/or the neuter where applicable. The use of the singular herein is to be  
2 construed to include the plural where applicable. The use of the plural herein shall  
3 be construed to include the singular where applicable.

4 56. The Court reserves and maintains jurisdiction over this settlement, this  
5 Consent Judgment and its provisions, and over the claims administration and  
6 distribution of the funds. Disagreements between or among parties over aspects of  
7 this Consent Judgment as it relates to monetary relief shall be subject to mediation  
8 before United States Magistrate Judge Carla Woehrle, the mediator who has  
9 mediated this case to date. If mediation is not successful, the matter shall be  
10 brought to this Court for resolution.

11 57. At the conclusion of the distribution of the Post Administration Class  
12 Fund, the Administrator shall submit a report to the Court summarizing the  
13 payments made to the Unrepresented Class Members.

14 **XVI. FINAL RESOLUTION**

15 58. The monetary relief provided for in this Consent Judgment shall  
16 compensate for all alleged violations of rights and all claims by the Damages  
17 Class Members on Matters Alleged in the Lawsuit under any theory of liability  
18 related to the events of May 1, 2007, that come within the Damages Class  
19 definition, except as to monetary damages for those class members who opt out.

20 59. The Court hereby dismisses the lawsuit on the merits, with prejudice,  
21 and without further costs, with such dismissal subject only to compliance by the  
22 parties with the terms and conditions of the Settlement Agreement, the Structural  
23 Relief Order, and this Consent Judgment.

24 60. With the exception of Antonio Lopez, all Damages Class Members  
25 and Structural Relief Class Members, including all the Represented Individuals  
26 and the Unrepresented Class Members, as well as any and all of their agents,  
27 attorneys and assigns, are hereby severally and permanently barred and enjoined,  
28 to the fullest extent permitted by law, from filing, commencing, instituting,  
maintaining, prosecuting or participating in a lawsuit or any other proceeding

1 against any of the Defendants or other Released Person, involving or in any way  
2 arising from any of the Matters Alleged in the Lawsuit, including specifically  
3 claims of any class member whose claims are dismissed by this Consent  
4 Judgment.

5 61. The Represented Individuals and Unrepresented Class Members  
6 waive all rights or benefits which they now have or in the future may have under  
7 the terms of California Civil Code §1542, arising from, alleged in, or pertaining to  
8 the Matters Alleged in the Lawsuit, specifically claims related to the events of  
9 May 1, 2007, that come within the Damages Class Member definition, except as to  
10 monetary damages for those class members who have opted out. Section 1542  
11 reads:

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

16 62. The Defendants, and all of their agents, attorneys and assigns, waive  
17 and release any and all claims or rights to pursue, initiate, prosecute, or commence  
18 any action or proceeding before any court, administrative agency or other tribunal,  
19 or to file any complaint regarding acts or omissions, by the Plaintiffs in any of the  
20 cases covered in the settlement herein, by any Represented Individuals as defined  
21 herein, and by any Unrepresented Class Members, with respect to any Matters  
22 Alleged in the Lawsuit, including waiver of the right to file a malicious  
23 prosecution action; and further, as it relates to this waiver, expressly waive the  
24 provisions of California Civil Code §1542 recited in the previous paragraph.

25 63. Plaintiffs have not relied upon the advice of Class Counsel as to the  
26 legal and/or tax consequences of this settlement, the payment of any money by the  
27 Defendants or the distribution of any settlement funds.

28 64. Neither this Consent Judgment, the Settlement Agreement, nor any of  
its terms or the negotiations or papers related thereto shall constitute evidence or

1 an admission by any Defendant or other Released Person that any acts of  
2 wrongdoing have been committed, and they shall not be deemed to create any  
3 inference that there is any liability therefore. Neither this Consent Judgment, nor  
4 the Settlement Agreement, nor any of its terms or the negotiations or papers  
5 related thereto shall be offered or received in evidence or used for any purpose  
6 whatsoever, in this or any other matter or proceeding in any court, administrative  
7 agency, arbitration, or other tribunal, except insofar as the parties seeks to enforce  
8 the terms of this Consent Judgment or the underlying Settlement Agreement.

9 65. Pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the  
10 Court finds that there is no just reason for delay and therefore directs entry of this  
11 Consent Judgment. Inasmuch as this disposes of all claims asserted in the lawsuit,  
12 the Court further directs the Clerk to enter an order of dismissal, with prejudice,  
13 pursuant to F.R.Civ.P Rule 41(a)(1)(2).

14  
15 DATED: \_\_\_\_\_

16 \_\_\_\_\_  
17 A. HOWARD MATZ  
18 UNITED STATES DISTRICT JUDGE  
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1	Exhibit 1	Objection to Settlement
2	Exhibit 2	Structural Relief Agreement and Order Thereon
3	Exhibit 3	Names of Minor Plaintiffs and Their Counsel and
4		Categories
5	Exhibit 4	Names Of Missing Represented Individuals, And
6		Amounts Of Their Post-Fee Settlement

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