

LAW OFFICE OF MARK E. MERIN
Mark E. Merin, SBN 043849
2001 P Street, Suite 100
Sacramento, California 95811
Telephone: (916) 443-6911
Facsimile: (916) 447-8336
E-Mail: mark@markmerin.com

CASPER, MEADOWS, SCHWARTZ & COOK
Andrew C. Schwartz, SBN 064578
2121 North California Blvd., Suite 1020
Walnut Creek, California 94596
Telephone: (925) 947-1147
Facsimile: (925) 947-1131
E-Mail: Schwartz@cmslaw.com

Attorneys for Plaintiffs

**MCNAMARA, DODGE, NEY, BEATTY,
SLATTERY, PFALZER, BORGES & BROTHERS**
James Fitzgerald, III, Esq. SBN 55632
1211 Newell Avenue
Walnut Creek, CA 94596
Telephone: (925) 939-5330
Facsimile: (925) 939-0203
E-Mail: james.fitzgerald@mcnamaralaw.com

BINGHAM MCCUTCHEN, LLP
Peter Obstler, SBN 171623
Three Embarcadero Center
San Francisco, CA 94111-4067
Telephone: (415) 393-2578
Facsimile: (415) 262-9244
E-Mail: peter.obstler@bingham.com

Attorneys for Defendants

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

RUSSELL MOYLE, a minor, by and through his
Guardian Ad Litem, his custodial parent, RHONDA
BOWERS; KATHERINE ERMITANO, a minor, by
and through her Guardian Ad Litem, her custodial
parent, MARLON ERMITANO, on behalf of
themselves and all those similarly situated,

Plaintiffs,

vs.

CONTRA COSTA COUNTY; CONTRA COSTA
COUNTY PROBATION DEPARTMENT; CONTRA
COSTA COUNTY CHIEF PROBATION OFFICER
LIONEL CHATMAN, in his official capacity;

Case No. C05-02324 JCS

STIPULATION OF SETTLEMENT

DATE: September 18, 2009
TIME: 9:30 a.m.
CTRM: A, 15th Floor
JUDGE: Hon. Joseph C. Spero

STIPULATION OF SETTLEMENT

1 CONTRA COSTA COUNTY CHIEF DEPUTY
2 PROBATION OFFICER FOR JUVENILE HALL,
3 NANCY MILLER, in her official capacity; and DOES
4 1 THROUGH 100,

5 Defendants.

6 Plaintiff KATHERINE ERMITANO, individually and on behalf of the settlement class defined
7 herein, and Defendants CONTRA COSTA COUNTY, CONTRA COSTA COUNTY PROBATION
8 DEPARTMENT, CONTRA COSTA COUNTY CHIEF PROBATION OFFICER LIONEL CHATMAN,
9 in his official capacity, CONTRA COSTA COUNTY CHIEF DEPUTY PROBATION OFFICER FOR
10 JUVENILE HALL, NANCY MILLER, in her official capacity, (hereinafter referred to as “Parties”), by
11 and through their respective counsel, hereby submit the following Stipulation of Settlement.

12 **I.**

13 **RECITALS**

14 WHEREAS on or about June 8, 2005, Plaintiff RUSSELL MOYLE, a minor, filed a class action
15 complaint against Defendant Contra Costa County (“Contra Costa”) and Chief Probation Officer Lionel
16 Chatman and Chief Deputy Probation Officer For Juvenile Hall, Nancy Miller in their individual
17 capacities.

18 WHEREAS on or about September 15, 2005, Contra Costa revised the strip search policy and has
19 implemented a revised search policy (the “Revised Policy”). The Revised Policy has been implemented
20 and remains in place pending the outcome of certain appeals regarding the constitutionality of blanket
21 strip search policies, including the pending Ninth Circuit en banc review in *Bull v. City and County of*
22 *San Francisco*, Case No. 05-17080, D.C. No. CV-03-01840-CRB (9th Cir. hearing *en banc* on May 26,
23 2009.). Copies of the Contra Costa’s Revised Policies relating to the strip search of juveniles at Contra
24 Costa County Juvenile Hall are attached hereto as **Exhibit 1**.

25 WHEREAS on September 16, 2005, Plaintiffs filed a Second Amended Complaint to add a new
26 class representative, Plaintiff KATHERINE ERMITANO, at that time a minor, challenging the
27 Defendants’ policy of strip searching juveniles at Contra Costa County Juvenile Hall. Defendants filed a
28 timely answer to the First Amended Complaint denying allegations of wrong doing or liability.

\\

STIPULATION OF SETTLEMENT

1 WHEREAS the Parties entered into discovery which included exchange of documents,
2 preparation of and responses to requests for production of documents, on site review of juvenile files, and
3 taking depositions of the Parties and Defendants' employees and administrators.

4 WHEREAS on December 4, 2007, the Honorable Joseph C. Spero, United States Magistrate
5 Judge for the Northern District of California, issued an order granting preliminary certification to a class
6 of juveniles subject to the class definition set forth in that order (the "Certification Order").

7 WHEREAS Plaintiffs voluntarily dismissed with prejudice all claims against Defendants Chatman
8 and Miller, leaving only Contra Costa as the remaining Defendant in this Action. (*See* Class Cert. Order
9 fn. 6 at 10.)

10 WHEREAS, on July 8, 2009 and July 9, 2009, the Parties participated in settlement mediation
11 presided over by the Honorable Fern M. Smith (retired). At the mediation, Contra Costa and Plaintiffs
12 reached an agreement on a Term Sheet, which was approved by the Contra Costa Board of Supervisors
13 on July 21, 2009. The terms reached at the mediation were to be further clarified and incorporated into
14 this Stipulation of Settlement which, subject to the approval of the Court, will constitute a final and
15 binding settlement agreement of all individual and class-wide claims (and related claims) alleged in the
16 action in the manner and upon the terms set forth below and fully resolves the dispute.

17 WHEREAS, at the time of the mediation, the law applicable to the issue of whether Plaintiffs'
18 core claim that Contra Costa's blanket strip search policy violates the Fourth Amendment may be
19 impacted by on-going appellate proceedings, including the en banc review in *Bull v. San Francisco*. As a
20 result, the Plaintiffs and Contra Costa reached a compromise and agreed that in the event that blanket
21 strip search policies involving the intake and placing of a juvenile into the general population at juvenile
22 detention facility are found to be constitutional or the constitutionality of such policies are determined to
23 be different from that argued by the Plaintiffs or defined by the Court in its Class Certification Order in
24 this Action, Contra Costa may modify its existing Search Policy or re-implement its prior policy in
25 compliance with Ninth Circuit or Supreme Court law, and such further revisions and implementation of
26 those policies shall be permitted by and incorporated into this agreement by subsequent written
27 modification to any final settlement agreement reached in this Action.

28 \\\

STIPULATION OF SETTLEMENT

1 WHEREAS, subject to the terms of the original negotiated Term Sheet and approval by the
2 Contra Costa Board of Supervisors and the Court, the parties desire to enter into a final and binding
3 settlement that will resolve all claims for relief and causes of action alleged or related to any individual
4 or class-wide allegations averred in the Second Amended Complaint or Motion for Class Certification,
5 Contra Costa and Plaintiffs enter into this Stipulation of Settlement.

6 NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between the
7 Parties as follows:

8 **II.**

9 **DEFINITIONS**

10 1. "Administrator" means Gilardi and Co., LLC, P.O. Box 8060, San Rafael, CA 94912-
11 8060, to be appointed by the Court to provide notice to the members of the class and to review and
12 determine the validity and value of claims submitted by Settlement Class Members ("SCMs"), according
13 to the procedures set forth herein.

14 2. "Bar Date" is the date established by the Court by which any SCM who wishes to receive
15 payment pursuant to the Stipulation of Settlement must file his/her Claim Form(s), objections to this
16 Stipulation of Settlement, or request to be excluded from the class (opt-out).

17 3. "Charge List" means the list of charges attached hereto as **Exhibit 2**.

18 4. "Claim Form" is the form required to be used to make a claim for payment under this
19 settlement. A copy of the proposed Claim Form is attached as **Exhibit 3**.

20 5. "Class Counsel" means Mark E. Merin, attorney, Law Office of Mark E. Merin, 2001 P
21 Street, Suite 100, Sacramento, CA 95811, and Andrew C. Schwartz, attorney, Casper, Meadows,
22 Schwartz & Cook, 2121 North California Blvd., Suite 1020, Walnut Creek, California 94596.

23 6. The "Class Notice" means the notice in the form attached hereto as **Exhibit 4** (Notice by
24 Mail); such other summary notice(s) and announcements to be published in newspapers serving the
25 Contra Costa County area, announced on radio stations, posted on billboards, and/or posted in juvenile
26 facilities operated by Contra Costa County.

27 7. The "Class Period" ends on September 15, 2005, and includes all juveniles who were
28 booked into Contra Costa County Juvenile Hall prior to that date who had not reached the age of 20 on or

1 before June 8, 2005, the date of filing of the complaint herein.

2 8. The "Database" is the information provided in hard copy and/or electronic form by
3 Defendants to the Administrator and Class Counsel which includes, to the extent practicable, the name,
4 last known addresses, date of birth, social security number, date(s) of booking, charge(s) and information
5 reflecting whether the SCM was on searchable probation at the time of booking of all SCMs arrested
6 during the Class Period, together with the name(s), last known address(es), and social security number(s)
7 of all parents and/or guardians of SCMs arrested during the Class Period. The Parties agree that all of the
8 persons identified in the list attached hereto as **Exhibit 5** are members of the class.

9 a. Notwithstanding the above language set forth in Section II.8 above, this list of
10 eligible claimants may be increased by a number of persons who may have requested that
11 their juvenile files be sealed or purged or expunged. Because the Contra Costa County
12 Juvenile Court Judge has issued an Order on July 29, 2009, pursuant to a joint request to
13 release information relating to those juveniles in the Settlement class, including those
14 Class Members whose files have been expunged (the "Expunged Class Members") to
15 allow all Class Members to receive notice of the settlement in this action, the Juvenile
16 Court Order and findings at the July 29, 2009 hearing are expressly incorporated into the
17 terms of this Agreement and any binding settlement.

18
19 9. "Debts Owed to the County" shall mean any financial obligation which would be
20 collected by the Contra Costa County Central Collections Agency and/or any Debt Owed to the County
21 of Contra Costa or State of California for unpaid child support.

22 10. The "Effective Date" means the date upon which a judgment entered by the Court
23 approving the Stipulation of Settlement becomes final. The judgment will be deemed final only upon
24 expiration of the time to appeal or, if a Notice of Appeal is filed, upon exhaustion of all appeals and
25 petitions for Writ of Certiorari. Notwithstanding the above, an application to the Court or subsequent
26 approval of the Stipulation is expressly subject to the condition precedent of the Contra Costa Board of
27 Supervisors formal approval of this Stipulation and its terms and no such application for final approval
28 by the Court shall be made by any Party unless and until the condition precedent of Board Approval is

1 received.

2 11. A “Non-VDW” Offense for purposes of this Stipulation only means an offense not listed
3 on the Charge List. The parties represent and warrant that the definition of a non-VWD Offense shall
4 have no collateral estoppel and shall not be used by any party or third party as legal precedent in any
5 other legal action or proceeding, other than a proceeding to enforce the terms of a Final Settlement
6 approved by the Court, if any, in this Action.

7 12. An “Opt-Out” is any potential Settlement Class Member who files a timely request for
8 exclusion as specified in **Paragraph 49**.

9 13. “Released Persons” means the Defendants and their predecessors, successors, and/or
10 assigns, together with past, present, and future officials, employees, representatives, attorneys and/or
11 agents of the County of Contra Costa or Contra Costa County Probation Department or any other
12 political subdivision or agency of Contra Costa County, including its Counsel of Record.

13 14. The “Settlement Class” means all persons who were booked at Contra Costa County
14 Juvenile Hall on or before September 15, 2005, who had not reached the age of 20 by June 8, 2005.

15 15. A “Settlement Class Member” (“SCM”) means any member of the Settlement Class,
16 including representatives, successors and assigns, who does not file a valid and timely Request for
17 Exclusion as provided in **Paragraph 49** of this Stipulation of Settlement.

18 16. “Special Master” shall mean the Honorable Fern M. Smith (Ret.) appointed by the Court
19 to preside over this Stipulation of Settlement. The Special Master shall have power to make decisions in
20 all matters pertaining to the administration and enforcement of the Stipulation of Settlement, subject to
21 review by the Court upon request of any party.

22 17. This Stipulation of Settlement is for settlement purposes only, and neither the fact of, nor
23 any provision contained in this Stipulation of Settlement or its exhibits, nor any action taken hereunder
24 shall constitute, be construed as, or be admissible in evidence as an admission of the validity of any claim
25 or any fact alleged by Plaintiff or SCMs in this action or in any other pending action or of any
26 wrongdoing, fault, violation of law, or liability of any kind on the part of Defendants or admission by
27 Defendants of any claim or allegation made in this action or in any other action, nor as an admission by
28 Plaintiff, SCMs or Class Counsel of the validity of any fact or defense asserted against them in this action

1 or in any other action. Defendants deny all allegations of wrongdoing and deny any liability to Plaintiff
2 or to any other Class Members. The Parties have agreed that, in order to avoid long and costly litigation,
3 this controversy should be settled pursuant to the terms of this settlement, subject to the approval of the
4 Court.

5 **III.**

6 **TERMS AND EFFECT OF STIPULATION OF SETTLEMENT**

7
8 18. The Parties will file a proposed stipulated protective order concurrently with the motion
9 for preliminary approval of this Stipulation of Settlement to allow personnel of the Contra Costa County
10 Probation Department to provide the name, last known address, and other necessary data of all SCMs to
11 Class Counsel and the Claims Administrator. This information is privileged and confidential. The
12 Defendants may, in their sole discretion, withdraw from the Stipulation of Settlement if the Court does
13 not enter that order.

14 19. On or about the Effective Date, the Parties will submit all appropriate papers to dismiss
15 Case No. C 05-02324 JCS with prejudice in the United States District Court for the Northern District of
16 California.

17 20. The Parties agree, solely for the purpose of this settlement and its implementation, that
18 this action shall proceed as a class action, with the Settlement Class as defined in **Paragraph 14**, and that
19 attorneys for the class are Class Counsel as defined in **Paragraph 5**; but if such settlement fails to be
20 approved or otherwise fails to be consummated, then this Stipulation of Settlement is hereby withdrawn.

21 21. SCMs who comply with the requirements set forth in this Stipulation of Settlement will be
22 paid specified sums determined by the procedures set forth herein in full satisfaction of all claims.

23 22. The Stipulation of Settlement, as of the Effective Date, resolves in full all claims against
24 the Released Persons by all of the SCMs, including the named Plaintiff KATHERINE ERMITANO,
25 involving violation of their Fourth and Fourteenth Amendment rights or of any other federal, state or
26 local law, regulation, duty, or obligation which are based upon or could be based upon or arise from or
27 relate to the facts alleged in Case No. C 05-02324 JCS filed in the United States District Court, Northern
28 District of California. When the Stipulation of Settlement is final, as of the Effective Date, all SCMs,

1 including the named Plaintiff, hereby provide a full and general release all such claims, including a
2 waiver of rights relating to unknown claims under CCP § 1542 as set forth below in Section III.24.

3 23. The Parties agree that the Court, by preliminarily approving the Stipulation of Settlement,
4 will be certifying the class as defined in **Paragraph 14** as the Settlement Class, subject to final approval
5 of the settlement at the Fairness Hearing, and that the Court shall retain exclusive and continuing
6 jurisdiction of the action, Parties, SCMs, Special Master and the Administrator to interpret and enforce
7 the terms, conditions and obligations under this agreement.

8 24. Upon approval by the Court of this Stipulation of Settlement, and except as to such rights
9 or claims as may be created by this Stipulation of Settlement, Plaintiffs and all SCMs fully release and
10 discharge Defendants and all present and former employees, agents, servants, registered representatives,
11 attorneys, insurers, and successors and assigns from any and all claims, debts, liabilities, demands,
12 obligations, guarantees, costs, expenses, attorney's fees, damages, action or causes of action whatever
13 kind or nature, whether known or unknown, including all rights and benefits afforded by Section 1542 of
14 the State of California as set forth below.

15 25. Plaintiffs and all SCMS agree that any and all of Plaintiffs' claims, rights, and causes of
16 action, damages, punitive or statutory damages, penalties, losses, and issues of any kind or nature
17 whatsoever, asserted or unasserted, known or unknown (including, but not limited to, any and all claims
18 relating to or alleging events described in Paragraph 22, by or on behalf of Plaintiffs and SCMs, the
19 general public, any other or all persons purporting to act on Plaintiffs' and SCMs behalf or purporting to
20 assert a claim under or through Plaintiffs and SCMs, including, but not limited to, any heirs and assigns,
21 children, spouses, significant others, and companions, whether individual, class, representative, legal,
22 equitable, direct or indirect, or any other type of capacity against Defendants (and all Defendants' present
23 and former employees, agents, servants, registered representatives, attorneys, insurers, and successors
24 and assigns), in connection with or that arise out of or relate in any manner whatsoever, in whole, or in
25 part, to the claims that were or could have been asserted in Case No. C 05-02324 JCS filed in the United
26 States District Court, Northern District of California, shall be finally and irrevocably compromised,
27 settled, released, and discharged with prejudice. Plaintiffs and all SCMs agree to release, waive, and
28 discharge, to the fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the

1 California Civil Code, which provides:

2 A general release does not extend to claims which the creditor does not
3 know or suspect to exist in his or her favor at the time of executing the
4 release, which if known by him or her must have materially affected his or
5 her settlement with the debtor.

6 In addition, Plaintiffs and SCMs expressly waive and relinquish, to the fullest extent permitted by law,
7 any and all provisions, rights, and benefits conferred by any law of the United States, or any statute or
8 territory of the United States, or principle of common law or equity that is similar, comparable or
9 equivalent to Section 1542 of the California Civil Code. Plaintiffs and SCMs expressly acknowledge
10 that they may hereafter discover facts in addition to or different from those which they now know or
11 believe to be true with respect to the subject matter of the Released Claims. Plaintiffs and SCMs fully,
12 finally and forever settle, release, and discharge any and all Released Claims, known or unknown,
13 suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, that now
14 exist or heretofore have existed upon any theory of law or equity now existing or coming into existence
15 in the future, including but not limited to Released Claims based on conduct that is negligent, reckless,
16 intentional, with or without malice, or a breach of any duty, law, or rule, without regard to the subsequent
17 discovery or existence of such different or additional facts.

18 26. As of the Effective Date of this Stipulation of Settlement, the SCMs, including the named
19 Plaintiff, hereby waive any and all rights to pursue, initiate, prosecute, or commence any action or
20 proceeding before any court, administrative agency or other tribunal, or to file any complaint with regard
21 to acts or commission or omission by the Released Persons respecting such SCMs with respect to any
22 strip search by Defendants during their confinement at juvenile hall which occurred during the Class
23 Period.

24 27. This Stipulation of Settlement contains all of the terms and conditions agreed upon by the
25 Parties hereto regarding the subject matter of the instant proceeding, and no oral agreement entered into
26 at any time nor any written agreement entered into prior to the execution of this Stipulation shall be
27 deemed to exist, or to bind the Parties hereto, or to vary the terms and conditions contained herein, except
28 as expressly provided herein.

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

2 29. No Opt-Out shall share in any monetary benefits provided by this Stipulation of
3 Settlement.

4 30. This agreement is subject to and conditioned upon the final approval of this Stipulation of
5 Settlement by the Contra Costa Board of Supervisors (approved on July 21, 2009), and the subsequent
6 issuance of the final order and judgment of dismissal, by the United States District Court, Northern
7 District of California, providing the below specified relief, which relief shall be pursuant to the terms and
8 conditions of this Stipulation of Settlement and the Parties' performance of their continuing rights and
9 obligations hereunder. The order and judgment will be deemed final only upon expiration of the time to
10 appeal, or, if a Notice of Appeal is filed, upon exhaustion of all appeals and petitions for writs of
11 certiorari. Such final order and judgment shall:

- 12 a. Dismiss with prejudice all claims for relief, liabilities, or causes of action, or
13 complaints in the Action, whether known or unknown, as to the Released Persons;
- 14 b. Order that all SCMs are enjoined from asserting against any Released Person, any
15 and all claims which the SCMs has, had, or may have in the future arising out of
16 the facts alleged in the related complaints;
- 17 c. Release each Released Person from the claims which any SCM has, had or may
18 have in the future, against such Released Person arising out of the facts alleged in
19 the related complaints;
- 20 d. Determine that this Stipulation of Settlement is entered into in good faith, is
21 reasonable, fair and adequate, and is in the best interest of the Class; and
- 22 e. Reserve the Court's continuing and exclusive jurisdiction over the Parties to this
23 Stipulation of Settlement, including Defendants and all SCMs, to administer,
24 supervise, construe and enforce the Stipulation of Settlement in accordance with
25 the terms for the mutual benefit of all the Parties.
- 26

27 31. The Parties will take all necessary and appropriate steps to obtain preliminary approval of
28 the Stipulation of Settlement, final approval of the settlement, and dismissal of the actions with prejudice.

1 If the Court finally approves this Stipulation of Settlement, and if there is an appeal from such decision,
2 the Defendants will actively cooperate with Plaintiffs in joint efforts to defend the Stipulation of
3 Settlement.

4 **IV.**

5 **RESOLUTION AND PAYMENT OF CLAIMS FOR DAMAGES**

6
7 32. The Parties have agreed that certain sums will be paid by or on behalf of Defendants to
8 resolve all claims of all SCMs as described in **Paragraph 21**, and that the total of all such sums shall not
9 exceed One Million, Seven Hundred Fifty Thousand Dollars (\$1,750,000.00), including the fees and
10 costs of Class Counsel and the cost of administration of this settlement.

11 33. Class Counsel and the SCMs, by and through the Representative Plaintiff, have
12 determined that the following distribution of the sum described in **Paragraph 31** is appropriate, in which
13 determination the Released Persons acquiesce: (1) up to Seven Hundred Thousand Dollars
14 (\$700,000.00) will be allocated to pay verified claims of the SCMs; (2) One Hundred Thousand Dollars
15 (\$100,000.00) will be allocated to compensate Representative Plaintiff; (3) Eight Hundred Thousand
16 Dollars (\$800,000.00) will be allocated to pay class counsels' fees and costs subject to Court approval;
17 and (4) Up to One Hundred Fifty Thousand Dollars (\$150,000.00) will be allocated to pay the costs of
18 administration, including all notices to the class and processing, administration and payment of the
19 SCMs' claims. Any Administration costs that exceed \$150,000.00 allocated for costs of administration
20 shall be the sole responsibility of the Plaintiffs. Distribution of the settlement amount is subject to the
21 following terms and conditions of this Stipulation of Settlement.

22 34. The parties understand and agree that, prior to a final Fairness Hearing, Class Counsel will
23 file an application for approval of attorney's fees and reimbursement of costs in the amount of \$800,000,
24 supporting that application with a memorandum of law and attaching exhibits documenting their time
25 spent on the litigation, and that the Court will have the discretion to award whatever amount it considers
26 appropriate, but in no event will Defendants be obligated to pay any amount in excess of \$800,000.

27 35. No payment shall be made to eligible SCMs before the Effective Date. Claims may be
28 processed between the date of preliminary Court approval and the Effective Date. Claims will only be

1 paid after all verified Claims have been calculated and all disputes relating to Claims have been resolved.

2 36. No payment shall be paid to Class Counsel for fees and costs before the Effective Date as
3 more fully described in **Paragraph 10**.

4 37. The Parties agree to make an application to the Court to appoint the Claims Administrator
5 as an officer of the Court for the purpose of implementing the terms of the Stipulation of Settlement. The
6 Administrator shall be subject to judicial immunity to the fullest extent permitted by law.

7 **V.**

8 **PROCEDURES FOR RECEIVING PAYMENT**
9 **UNDER THIS SETTLEMENT AGREEMENT**

10
11 38. All SCMs who were booked at Contra Costa County Juvenile Hall during the class period
12 who were strip-searched at intake pursuant to Defendants' blanket policy and practice of strip searching
13 all such juveniles prior to their detention hearings, except for: 1) those who were strip searched at intake
14 after being admitted for an alleged violation involving violence, drugs, or weapons (VDW offense); 2)
15 those who had a prior history of being booked on VDW offenses; 3) those who were subject to parole or
16 probationary search conditions at the time of the strip search; and 4) those who were transferred from
17 another detention facility and thus were not under the constant supervision of a Contra Costa County
18 employee, shall receive One Thousand, Seven Hundred Fifty Dollars (\$1,750.00) for each such booking,
19 for a maximum of two (2) bookings.

20 39. The Administrator shall determine whether or not a person who has submitted a Claim
21 Form is an SCM and shall reject claims by persons who are not SCMs.

22 40. After all claims have been validated and values assigned to each claim, the Claims
23 Administrator will total all claims. If the total value of all validated claims is equal to or less than Seven
24 Hundred Thousand Dollars (\$700,000.00), claims shall be paid as set out in Paragraph 37. If the total
25 value of all validated claims exceeds Seven Hundred Thousand Dollars (\$700,000.00), the value of each
26 claim will be proportionately reduced so that the sum of all validated claims equals Seven Hundred
27 Thousand Dollars (\$700,000.00), and such sums shall be paid out as set out in Paragraph 38.

28 \\\

1 41. Upon determination of the total amounts to be paid to all SCMs, the Administrator will
2 notify the Parties of the amount of money necessary to satisfy all SCMs' claims and the Defendants will
3 cause sufficient funds to be deposited in the Administrator's account within thirty (30) days of such
4 notice to permit the Administrator to pay the verified claims.

5 42. Any SCM who fails to submit a Claim Form completed in accordance with the
6 instructions contained therein by the Bar Date or any other Court mandated extension, shall be forever
7 barred from receiving any payment pursuant to the Stipulation of Settlement. Such SCM shall in all
8 other respects be bound by all of the terms of the Stipulation of Settlement, and the judgment entered
9 herein, including but not limited to the release of all Released Persons of all claims resolved herein.

10 43. The Administrator will determine the value to be assigned to each eligible SCMs' claim
11 based upon the Administrator's review of the Claim Forms and the information in the database provided
12 by Defendants.

13 44. Claim Forms of all SCMs who have not attained the age of 18 at the time the Claim Form
14 is submitted shall be signed by a parent or guardian, or by the minor if the minor does not have ready
15 access to a parent or guardian at the time the claim form is submitted. The checks distributed to the
16 SCMs who have not attained the age of 18 at the time the checks are mailed shall be made out jointly to
17 the SCM and the parent or guardian, if any, who signs the Claim Form and the parent or guardian will be
18 instructed that the Court ordered funds are to be placed in a blocked account until the minor turns 18. If
19 the claim submitted was signed only by a minor SCM and the SCM is under the age of 18 at the time the
20 checks are mailed, the check will be made payable to the Law Office of Mark E. Merin in trust for the
21 SCM and mailed to the Law Office of Mark E. Merin to be held in trust for that minor until the minor
22 attains the age of eighteen (18) at which time the funds shall be distributed to the SCM.

23 **VI.**

24 **PAYMENT OF DEBTS OWED TO THE COUNTY FROM AWARDS**

25
26 45. Any award to SCMs shall be subject to any Debts Owed to the County and child support.
27 The Defendants shall provide to the Claims Administrator, with a copy to Class Counsel, a list of all
28 qualified SCMs who have Debts Owed to the County as defined in **Paragraph 9** and who submit valid

1 claims, with the amount of the Debt Owed to the County specified. The Claims Administrator is directed
2 to deduct from each SCM's award the amount of the specified Debt Owed to the County, up to a
3 maximum of fifty percent (50%) of the SCM's award. Copies of the information related to the reduction
4 of claims awards shall be provided to the SCMs with copies to Class Counsel. Any SCM may submit a
5 written objection to the Debt Owed to the County within thirty (30) days of the date that settlement
6 checks are distributed. The written objection shall specify the grounds for the objection and copies shall
7 be sent to Class Counsel and Defendants' Counsel. In the event that the SCM, Class Counsel and
8 Defense Counsel cannot informally resolve the objection then the objection will be submitted to the
9 Special Master.

10 **VII.**

11 **GENERAL CLAIM PROCEDURES**

12
13 46. To receive payment, an SCM shall be required to submit to the Claims Administrator an
14 executed Claim Form, signed under penalty of perjury. If the SCM has not attained the age of 18 by the
15 time the Claim Form is submitted, the Claim Form must be submitted under penalty of perjury by a
16 parent or guardian of the SCM if one is readily available to the SCM at the time the Claim Form is
17 submitted. If a parent or guardian of an SCM under the age of eighteen (18) is not readily available to
18 the SCM, the SCM may sign and submit the Claim Form under penalty of perjury.

19 47. The Claim Form shall be submitted by first class mail and shall be deemed submitted
20 upon the date of the postmark thereon.

21 48. SCMs who submit claims and whose names appear on the database will be paid by mail at
22 the address specified on the Claim Form. The Representative Plaintiff shall be deemed fully
23 compensated by the distribution to her through Class Counsel of One Hundred Thousand Dollars
24 (\$100,000.00) within thirty (30) days of the Effective Date, and she shall not be permitted or required to
25 submit a Claim Form. The check for the Representative Plaintiff shall be made payable to "Casper,
26 Meadows, Schwartz & Cook, Client Trust Account, Moyle, et al. vs. Contra Costa County."

27 \\\

28 \\\

VIII.

EXCLUSION FROM THE SETTLEMENT CLASS

49. Any potential SCM who wishes to be excluded from the Settlement Class must file a Request for Exclusion from the class with the Clerk of the Court, on or before the Bar Date or as the Court may otherwise direct. An SCM who has not attained the age of 18 at the time the Request for Exclusion is filed, must file such a request signed by the SCM's parent or guardian under penalty of perjury. The Representative Plaintiff will not request exclusion pursuant to this paragraph.

50. Any potential SCM who does not timely file a Request for Exclusion shall conclusively be deemed to have become an SCM and to be bound by this Stipulation of Settlement and by all subsequent proceedings, orders, and judgments herein.

51. Any SCM who does not elect to be excluded from the Settlement Class may, but need not, enter an appearance through his or her own attorney. SCMs who do not enter an appearance will be represented by Class Counsel.

52. The Defendants may, in their sole discretion, withdraw from the Stipulation of Settlement if the number of Opt Outs exceeds 10. Defendants will advise the Court of their election within 15 (fifteen) days prior to the fairness hearing. If Defendants withdraw pursuant to this provision of Stipulation of Settlement, the Stipulation of Settlement will be null and void.

IX.

OBJECTING TO THE PROPOSED SETTLEMENT

53. Any SCM who does not elect to be excluded from the Settlement Class may, but need not, submit comments or objections to the proposed settlement. The Court will enter an appropriate order setting forth the procedure for SCMs to submit comments or objections to the proposed settlement.

X.

ATTORNEYS FEES AND COSTS

54. Class Counsel's award of attorney's fees and costs shall be inclusive of any costs and fees incurred in seeking final approval of this Stipulation of Settlement and the defense thereof in any court or

1 jurisdiction. Payment will be made as follows: one half of the total amount of attorney's fees and costs
2 awarded by the Court to Plaintiffs' Counsel will be paid within thirty (30) days of the Effective Date by
3 check made payable to the Law Office of Mark E. Merin and delivered to Class Counsel at 2001 P Street,
4 Suite 100, Sacramento, CA 95811. The remaining half of the total amount of attorney's fees and costs
5 awarded by the Court to Plaintiffs' Counsel will be paid at the time of distribution of settlement funds to
6 the SCMs by delivery of a check made payable and delivered as specified above.

7 **XI.**

8 **NOTICE**

9
10 55. Notice to SCMs defined in **Paragraph 15**, including a Claim Form with a postage pre-
11 paid return envelope, shall be sent by the Administrator by first class mail, postage prepaid, to all
12 individuals whose addresses are on record in databases maintained by Contra Costa County Probation
13 Department and/or to such other, better addresses identified by the Administrator. Defendants will make
14 reasonable and good faith efforts to provide such addresses to the Administrator, subject to the protective
15 order referred to in **Paragraph 18**. Both Parties and the Administrator will exercise their reasonable
16 efforts to update and to verify addresses, including but not limited to addresses of SCMs who are
17 incarcerated. Further efforts to locate persons whose claim packets are returned as undeliverable, shall
18 include, but not be limited to, advanced people finder searches, searches of databases of Contra Costa
19 County juvenile institutions, databases of local jails and state prison systems, and the use of private
20 investigation services. This paragraph shall not limit further appropriate efforts to provide notice, except
21 that all costs incurred with complying with this or any other notice provision shall be deducted from the
22 \$150,000 amount specified for Claims Administration, and in no event shall Contra Costa be required to
23 pay any amount that exceeds the total aggregate amount of the \$1.75 million agreed to by the Parties in
24 the Term Sheet.

25 \\\

26 \\\

27 \\\

28 \\\

XII.**POSTING OF NOTICE/DELIVERY OF CLAIM FORMS**

56. A Summary Notice in a form substantially similar to that attached hereto as **Exhibit 4** shall be posted, prominently, in areas visible to inmates/detainees in the following institutions: Contra Costa County Juvenile Hall (aka John A. Davis Juvenile Hall), the Orin Allen Youth Rehabilitation Center (aka Byron Boys' Ranch), the Chris Adams Girls' Center and Contra Costa County Jails including but not limited to the Martinez Detention Facility, the West County Detention Facility, and the Marsh Creek Detention Facility. The Summary Notices shall be posted within seven (7) days of the Court's preliminary approval of this Stipulated Settlement and be posted continuously until the Bar Date. The Administrator will make available to Defendants for transmittal to each institution at which Summary Notices are published, sufficient numbers of Claim Forms and prepaid postage return envelopes so that the institutions posting notice may provide Claim Forms and prepaid postage return envelopes to persons requesting them.

57. Follow-up reminder post cards shall be sent by the Administrator by first class mail 30 days after the date of mailing of the initial notice described in paragraph 56, to the last known address of all SCMs who have not returned a Claim Form by that date.

58. The Administrator shall cause to be published in the Contra Costa Times and the West County Times, and in such free additional publications calculated to reach the SCMs, once a week in each of three consecutive weeks notices in a form and manner agreed to by the Parties describing this settlement, the claims procedure, and the procedure to object and/or to opt-out of the settlement. If the Parties cannot agree on the wording of the Notice, the Special Master will determine the content of the Notice to be published.

59. The parties shall have the option of making announcements summarizing the proposed settlement on each of the following radio stations at least six times during each of three successive weeks:

94.9 KYLD – WILD 94.9

106.1 KMEL – Hip Hop and R&B

107.7 KSAN – The Bone

60. The parties shall have the option of making an announcement of the proposed settlement by posting on two billboards in Contra Costa County for the duration of the claims period, provided such billboards are available and the costs would not result in the Claims Administration costs exceeding the budgeted maximum. To the extent that any cost incurred in Section XII exceed the \$150,000.00 allotted for Administration and Notice, Plaintiffs shall be solely responsible for payment of those additional costs.

XIII.

ADMINISTRATIVE COSTS

61. All reasonable costs incurred in the administration of this Stipulation of Settlement including, but not limited to, the fees of the Administrator, costs of disseminating notice to class members, by mail, publication, or other means agreed to by the Parties, costs of producing notice to be posted, costs of reviewing and evaluating claims, including the cost of distribution of the monetary payments to the class members, fees, if any, of the Special Master, and any additional ancillary administration fees will be paid up to the total amount of One Hundred Fifty Thousand Dollars (\$150,000.00) allocated for these expenses. Any Administrative Costs that exceed \$150,000.00 shall be the sole responsibility of Plaintiffs or their Counsel. In no event shall Contra Costa have any obligation to incur costs or make any additional payments of administrative costs that exceed the one time payment of \$150,000.00 allocated for the Administrative Costs in this Stipulation or any Preliminary or Final Settlement approved by the Court.

62. Following preliminary Court approval of the Stipulation of Settlement, the Administrator shall submit monthly invoices to Defendants, with copies to Class Counsel, for services rendered and for expense reimbursement. All invoices will indicate the dates upon which services were performed, the titles of the employees performing the services, the number of hours worked by each title on each date, the hourly rate for each such title, and the total fee for the services performed. The rates will be in accordance with the agreement between the Parties and the Claims Administrator.

\\

63. In the event that the total charges against the Administration Fund exceed One Hundred Fifty Thousand Dollars (\$150,000.00), counsel for the Plaintiffs shall pay up to an additional Fifty Thousand Dollars (\$50,000.00) for claims administration. Should the total charges against the Administration Fund not exceed One Hundred Fifty Thousand Dollars (\$150,000.00) after all Claims have been paid, and all Administration has been completed, any remaining funds will be returned to Defendant County of Contra Costa or its designee.

Respectfully submitted,

DATED: August 31, 2009

LAW OFFICES OF MARK MERIN

BY: _____/s/
Mark Merin, Esq.
Attorneys for Plaintiffs

DATED: August 31, 2009

CASPER, MEADOWS, SCHWARTZ & COOK

BY: _____/s/
Andrew C. Schwartz, Esq.
Attorneys for Plaintiffs

DATED: August 31, 2009

McNAMARA, DODGE, NEY, BEATTY, SLATTERY,
PFALZER, BORGES & BROTHERS LLP

BY: _____/s/
James V. Fitzgerald, III, Esq.
Attorneys for Defendants

DATED: August 31, 2009

BINGHAM MCCUTCHEN, LLP

BY: _____/s/
Peter Obstler, Esq.
Attorneys for Defendants

STIPULATION OF SETTLEMENT

ATTORNEY SIGNATURE ATTESTATION

Pursuant to General Order 45, section X.B, I hereby attest that concurrence in the filing of this document has been obtained from each of the other signatories as shown by the /s/ on their signature lines within this e-filed document.

DATED: August 31, 2009

LAW OFFICES OF MARK MERIN

BY: _____/s/
Mark Merin, Esq.
Attorneys for Plaintiffs