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

Defendants.

Case No. C05-02324 JCS

**ORDER FOR PRELIMINARY APPROVAL
OF SETTLEMENT OF CLASS ACTION**

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

WHEREAS, plaintiff Katherine Ermitano, on behalf of herself and all persons similarly situated,
by and through her attorneys, Mark E. Merin of the Law Office of Mark E. Merin, and Andrew C.
Schwartz of the firm Casper, Meadows, Schwartz & Cook, and defendants, CONTRA COSTA
COUNTY, CONTRA COSTA COUNTY PROBATION DEPARTMENT, CONTRA COSTA COUNTY
CHIEF PROBATION OFFICER LIONEL CHATMAN, in his official capacity, CONTRA COSTA
COUNTY CHIEF DEPUTY PROBATION OFFICER FOR JUVENILE HALL, NANCY MILLER, in

1 her official capacity, by and through their counsel, James Fitzgerald, III, of the firm McNamara, Dodge,
2 Ney, Beatty, Slattery, Pfalzer, Borges & Brothers, and Peter Obstler of the firm Bingham McCutchen,
3 LLP, have entered into a Stipulation of Settlement intending to resolve all claims raised in this class
4 action pending in this Court;

5 WHEREAS, the Stipulation of Settlement, together with the supporting materials, sets forth the
6 terms and conditions for a proposed settlement and dismissal with prejudice of the pending above-
7 captioned class action against all defendants;

8 WHEREAS, the Court has before it and has reviewed the parties' Stipulated Motion for
9 Preliminary Approval of Settlement of Class Action together with the Stipulation of Settlement and
10 supporting materials; and

11 WHEREAS, the Court is satisfied that the terms and conditions set forth in the Stipulation of
12 Settlement were the result of good faith, arms' length settlement negotiations between competent and
13 experienced counsel for both plaintiffs and defendants, after mediation before the Honorable Fern M.
14 Smith (Retired);

15 IT IS HEREBY ORDERED AS FOLLOWS:

16 **I. PRELIMINARY APPROVAL OF SETTLEMENT**

17
18 1. The terms of the Stipulation of Settlement are hereby preliminarily approved and the class
19 is preliminarily certified, subject to further consideration thereof at the Fairness Hearing provided for
20 below. The Court finds that the settlement is sufficiently within the range of reasonableness and that
21 notice of the proposed settlement should be given as provided in this Order.

22 2. The Court has previously found and now reiterates that plaintiff Katherine Ermitano is an
23 adequate class representative for the settlement class.

24 3. The Court further finds that plaintiffs' counsel Mark E. Merin of the Law Office of Mark
25 E. Merin and Andrew C. Schwartz of the firm Casper, Meadows, Schwartz & Cook are adequate class
26 counsel.

27 4. The Court approves the Notice of Proposed Settlement of Class Action Strip Search Case
28 attached hereto as Exhibit A and further approves the method by which notice is proposed to be given.

1 5. If, pursuant to the terms of the Stipulation of Settlement, the settlement is not
2 consummated, the preliminary approval of the Stipulation of Settlement and the preliminary certification
3 of the class shall be void and the parties shall have reserved all of the rights to continue with any
4 litigation or further mediation or settlement discussions.

5 6. The Bar Date, as defined in paragraph 2 of the Stipulation of Settlement shall be **January**
6 **19, 2010.**

7 **II. NOTICE TO SETTLEMENT CLASS MEMBERS, APPROVAL OF CLASS**
8 **COUNSEL, AND EMPLOYMENT OF CLASS CLAIM ADMINISTRATOR**

9 7. Counsel for the class (“class counsel”) is as follows:

10
11 Mark E. Merin, Esq.
12 Law Office of Mark E. Merin
13 2001 P Street, Suite 100
14 Sacramento, CA 95811
(916) 443-6911 - Telephone
(916) 447-8336 – Facsimile

15 Andrew C. Schwartz, Esq.
16 Casper, Meadows, Schwartz & Cook
17 2121 North California Blvd., Suite 1020
18 Walnut Creek, California 94596
(925) 947-1147 - Telephone
(925) 947-1131 - Facsimile

19 8. Counsel for defendants are as follows:

20 James Fitzgerald, III, Esq.
21 McNamara, Dodge, Ney, Beatty,
22 Slattery, Pfalzer, Borges & Brothers
1211 Newell Avenue
Walnut Creek, CA 94596
(925) 939-5330 - Telephone
(925) 939-0203 - Facsimile

24 Peter Obstler, Esq.
25 Bingham McCutchen, LLP
26 Three Embarcadero Center
San Francisco, CA 94111-4067
(415) 393-2578 - Telephone
(415) 262-9244 - Facsimile

1 9. Class Claims Administrator is as follows:

2 Gilardi and Company, LLC
3 P.O. Box 8060
4 San Rafael, CA 94912-8060
5 (415) 461-0410 - Telephone
6 (800) Toll Free Number to be arranged.
7 (415) 461-0412 – Facsimile

8 10. On or before October 19, 2009, counsel for the parties acting with the Class Claims
9 Administrator shall cause to be disseminated the Notice and Claim Form, substantially in the form
10 attached hereto as Exhibits A and B, in the manner set forth in paragraphs 54 through 59 of the
11 Stipulation of Settlement. Such summary notice as the parties agree will be published in accordance with
12 the Stipulation of Settlement and the parties may make announcements following a script approved by
13 the parties to be made on such radio stations with the frequency provided in the Stipulation of Settlement,
14 as well as have the option of posting the announcement on billboards in Contra Costa County for the
15 duration of the claims period. Class members will have up to and including January 19, 2010, in which to
16 object to this settlement or file claims. Prior to the Fairness Hearing, the Claims Administrator shall file
17 and serve a sworn statement attesting to compliance with the provisions of this paragraph.

18 11. The notice to be provided as set forth in the Stipulation of Settlement is hereby found to
19 be the best means practicable of providing notice under the circumstances and, when completed, shall
20 constitute due and sufficient notice of the proposed settlement and of the Fairness Hearing to all persons
21 and entities affected by and/or entitled to participate in the settlement, in full compliance with applicable
22 statutes and Constitution of the state of California, due process, the Constitution of the United States and
23 all other applicable laws. The notices are accurate, objective, informative and provide class members
24 with all of the necessary information to make an informed decision regarding their participation in the
25 settlement and its fairness.

26 12. Counsel for the respective parties are authorized to retain Gilardi and Company, LLC,
27 P.O. Box 8060, San Rafael, CA 94912-8060, as Class Claims Administrator in accordance with the
28 Stipulation of Settlement and this Order.

1 **III. REQUESTS FOR EXCLUSION FROM THE SETTLEMENT CLASS**

2 13. Any member of the Settlement Class who wishes to be excluded (“Opt Out”) from the
3 Settlement Class must send a written request for exclusion to the Court at the address indicated in the
4 Notice, postmarked on or before the Bar Date. The request for exclusion shall fully comply with the
5 requirements set forth in the Stipulation of Settlement. Members of the Settlement Class may not exclude
6 themselves by filing requests for exclusions as a group or class, but must, in each instance, individually
7 and personally execute a request for exclusion and timely transmit it to the Court.

8 14. Any member of the Settlement Class who does not properly and timely request exclusion
9 from the Settlement Class shall be bound by all of the terms and provisions of the Stipulation of
10 Settlement, including but not limited to the releases, waivers, and covenants described in the Stipulation
11 of Settlement, whether or not such person objected to the settlement and whether or not such person
12 made a claim under the terms of the Stipulation of Settlement.

13
14 **IV. THE FAIRNESS HEARING**

15 15. A hearing on final approval, the “Fairness Hearing,” is hereby scheduled to be held before
16 this Court on **March 19, 2010, at 9:30 a.m.**, to consider the fairness, reasonableness, and adequacy of the
17 proposed settlement, the dismissal with prejudice of this class action complaint with respect to the
18 released parties herein, and the entry of final judgment in the class action. Class counsels’ application for
19 an award of attorneys’ fees and costs shall be heard at the time of the Fairness Hearing. The motion for
20 final approval and class counsels’ application for an award of attorneys’ fees and costs shall be filed no
21 later than February 19, 2010.

22 16. The date and time of the Fairness Hearing shall be set forth in the Notice, but the Fairness
23 Hearing shall be subject to adjournment by the Court without further notice to the members of the
24 settlement class other than that which may be issued by the Court.

25 17. Any person who does not elect to be excluded from the settlement class may, but need
26 not, enter an appearance through his or her own attorney. Settlement class members who do not enter an
27 appearance through their own attorneys will be represented by class counsel.

1 18. Any person who does not elect to be excluded from the settlement class may, but need
2 not, submit comments or objections to the proposed settlement. Any class member may object to the
3 proposed settlement, entry of the final order and judgment approving the settlement, and class counsels'
4 application for fees and expenses by filing and serving a written objection.

5 19. Any class member making the objection (an "objector") must sign the objection
6 personally. Any objection must state why the objector objects to the proposed settlement and provide the
7 basis to support such position. If an objector intends to appear personally at the Fairness Hearing, the
8 objector must include with the objection a notice of the objector's intent to appear at the hearing.

9 20. Objections, along with any notice of intent to appear, must be filed with the Court no later
10 than January 19, 2010. If counsel is appearing on behalf of more than one class member, counsel must
11 identify each such class member and each class member must have complied with the requirements of
12 this order. The documents must be filed with the clerk of the Court at the following address: United
13 States District Court, Northern District of California, 450 Golden Gate Avenue, 16th Floor, San
14 Francisco, California 94102.

15 21. Objections, along with any notice of intent to appear, must also be mailed to class counsel
16 and counsel for defendants at the addresses listed below:

17 Counsel for the class ("class counsel") is as follows:

18 Mark E. Merin, Esq.
19 Law Office of Mark E. Merin
20 2001 P Street, Suite 100
21 Sacramento, CA 95811
(916) 443-6911 - Telephone
(916) 447-8336 – Facsimile

22 Andrew C. Schwartz, Esq.
23 Casper, Meadows, Schwartz & Cook
24 2121 North California Blvd., Suite 1020
25 Walnut Creek, California 94596
(925) 947-1147 - Telephone
(925) 947-1131 - Facsimile

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1 Counsel for defendants are as follows:

2 James Fitzgerald, III, Esq.
3 McNamara, Dodge, Ney, Beatty,
4 Slattery, Pfalzer, Borges & Brothers
5 1211 Newell Avenue
6 Walnut Creek, CA 94596
7 (925) 939-5330 - Telephone
8 (925) 939-0203 - Facsimile

9 Peter Obstler, Esq.
10 Bingham McCutchen, LLP
11 Three Embarcadero Center
12 San Francisco, CA 94111-4067
13 (415) 393-2578 - Telephone
14 (415) 262-9244 – Facsimile

15 22. Only class members who have filed and served valid and timely notices of objection shall
16 be entitled to be heard at the Fairness Hearing. Any class member who does not timely file and serve an
17 objection in writing to the settlement, entry of final order and judgment, or to class counsels' application
18 for fees and expenses, in accordance with the procedure set forth in the class notice and mandated in the
19 order, shall be deemed to have waived any such objection by appeal, collateral attack, or otherwise.

20 23. Persons wishing to be heard at the Fairness Hearing are required to file written comments
21 or objections and indicate in their written comments or objections their intention to appear at the Fairness
22 Hearing. Settlement class members need not appear at the hearing or take any other action to indicate
23 their approval.

24 24. All members of the settlement class who do not personally and timely request to be
25 excluded from the class are enjoined from proceeding against the defendants until such time as the Court
26 renders a final decision regarding approval of the settlement and, if the settlement is approved, enters
27 final judgment as provided in the Stipulation of Settlement.

28 **V. OTHER PROVISIONS**

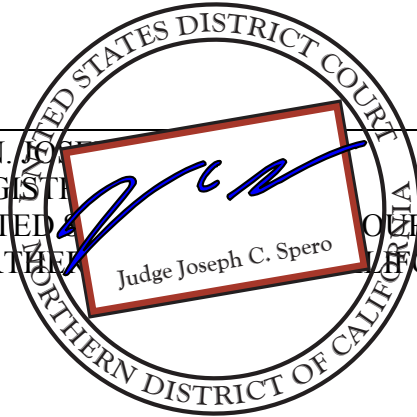
29 25. Upon approval of the settlement provided for in the Stipulation of Settlement, each and
30 every term and provision thereof shall be deemed incorporated herein as if expressly set forth and shall
31 have the force and effect of an order of this Court.

26. All reasonable costs incurred in notifying members of the settlement class as well as administering the Stipulation of Settlement shall be paid as set forth in the Stipulation of Settlement.

IT IS SO ORDERED.

DATED: Sept. 8, 2009

HON. JUDGE
MAGISTRATE
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
Judge Joseph C. Spero



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