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24 **UNITED STATES DISTRICT COURT**

25 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

26 ROBERT BERNHARD, et al.,

27 Plaintiffs,

28 v.

CITY OF ONTARIO, et al.,

Defendants.

Case No.: ED CV 04-01015
VAP (PJWx)

**JOINT STIPULATION OF
CLASS ACTION
SETTLEMENT AND
RELEASE**

Ctrm: 2, Riverside
Judge: Hon. Virginia Phillips

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I.
PREAMBLE

1. This Class Settlement Agreement (“Settlement” or “Agreement”) is entered into between plaintiffs Steve Trujillo, Scott Anderson, Craig Pefferle, Craig Ansman, Robert Bernhard, and Will Rivera (collectively, the “Named Plaintiffs”) individually and as class representatives on behalf of all individuals defined in Section III of this Agreement (collectively, with the Named Plaintiffs, the “Settling Class”), on the one hand, and defendant The City of Ontario, Lloyd Scharf, Tony Del Rio, Michael Thompson, and Brad Schneider (collectively, “the Defendants”), on the other hand. The Settling Class and the Defendants will be referred to collectively herein as the “Settling Parties.”

2. On August 13, 2004, plaintiffs Mike Kelley, Scott Anderson, Robert Bernhard, Will Rivera, Jeff Quon, Steven Trujillo, Steven Hurst, Jim Renstrom, Ron Dupuis, Keith Henderson, Craig Pefferle, Nicko Carcich, Rick Carroll, Salvador Garcia, Christopher Alvarez, Fred Ruiz, Steve Guderian, Mike Bors, and Craig Ansman (the “Original Plaintiffs”) filed an action against the City of Ontario, Brad Schneider, Lloyd Scharf, Tony Del Rio and Joe Sifuentes. On October 28, 2004, the complaint was amended to include class action allegations, and at that time, many of the Original Plaintiffs were taken off the pleadings and replaced by the Named Plaintiffs. On September 29, 2005, plaintiffs filed a second amended complaint, which added Michael Thompson as a defendant in place of Joe Sifuentes. Both the first and second amended complaint list Steve Trujillo as the first plaintiff, and the Court’s decision on summary judgment has the caption *Trujillo v. City of Ontario*, and bears case number EDCV 04-01015. For purposes of this settlement agreement,

1 the case *Trujillo v. City of Ontario*, CV 04-0101, shall be referred to as the
2 “Lawsuit”.¹

3 3. Both the original and the amended complaints were based on video
4 surveillance that was initiated by Brad Schneider, then a Detective with the City of
5 Ontario Police Department, with the assistance of Michael Thompson in the men’s
6 locker room at the Police Department. Plaintiffs alleged the responsibility of the City
7 and of the other named defendants. Defendants denied liability and damages.

8 4. The Lawsuit generally alleges that the covert videotaping in the men’s
9 locker room violated the privacy of all individuals who used the locker room during
10 the time that the videotaping occurred. The Lawsuit seeks damages, including
11 emotional and punitive damages, attorneys’ fees and costs, interest, and such other
12 relief as the Court may award.

13 5. On April 14, 2005, the Court issued a written order granting the motion
14 certifying a class under FRCP 23(b)(3) defined as follows:

15 all persons who were employed by the Ontario Police Department or
16 volunteered for the Ontario Police Department used the men’s locker room
17 during the period the surveillance equipment was installed and were recorded
18 by the surveillance equipment.

19 6. The Settling Parties attended several mediations prior to trial, none of
20 which resulted in a settlement. Trial was set for February 17, 2009. Immediately
21 prior to trial, the Settling Parties again engaged in settlement discussions, and
22 plaintiffs issued a Demand on or about February 14, 2009. On or about February 17,
23 2009, the Defendants’ counsel informed the Court that Defendants’ counsel and the
24 City Manager would recommend to the City Council that evening that plaintiffs’
25 demand be accepted. That evening, the City of Ontario City Council met and
26 approved settlement in the total amount of \$2,750,000. The Plaintiff class is to be
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28 ¹ The Ninth Circuit apparently referred to the original complaint, which listed Bob Bernhard as the first plaintiff, and its decision in this case bears the name *Bernhard v. City of Ontario*, Ninth Circuit Case No. 06-55736.

1 awarded damages and Enhancement Awards, as described more fully below in
2 Paragraph 31, in the amount of \$1.54 million. Attorneys fees and costs are to be
3 awarded on a lodestar basis, out of a separate fund, but with the parties agreeing that
4 the amount of fees and costs will not exceed \$1.21 million.

5 7. On February 18, 2009, the Joint Statement of Agreement among the
6 parties was read into the record in open Court in the presence of all the Named
7 Plaintiffs, not including Jeff Quon who does not appear on the videotape and thus is
8 not a class member. All Named Plaintiffs had previously been informed of the terms
9 of the Joint Statement of Agreement and approved them.

10 8. The Settling Parties have agreed to avoid further litigation and to settle
11 and resolve all existing and potential disputes, actions, lawsuits, charges and claims
12 that the Settling Class has or may have against Defendants, arising from the
13 allegations in this lawsuit, as provided more fully herein in paragraph 44. The
14 Named Plaintiffs and their counsel have concluded that the Settlement is fair,
15 reasonable, and in the best interests of the class members and respectfully request that
16 the Settlement be approved by the Court.

17 9. This Agreement shall become effective upon the "Effective Date," as set
18 forth in Section VI below. The Settling Parties hereby agree to do all things and to
19 engage in all procedures reasonably necessary and appropriate to obtain final Court
20 approval of this Agreement, in consideration for: (a) the payment by the City of
21 Ontario of the consideration described herein, subject to the terms, conditions and
22 limitations of this Agreement; and (b) the release and dismissal with prejudice of all
23 claims by members of the Settling Class; and (c) the releases by Defendants as
24 described in Paragraphs 44-48 of this Agreement.
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2 **II.**
3 **PAYMENTS TO THE SETTLING CLASS, CLASS COUNSEL, NAMED**
4 **PLAINTIFFS, AND THE CLAIMS ADMINISTRATOR**

5 10. Subject to Court approval, and the provisions of this Agreement, the
6 City of Ontario shall make available two funds, one for \$1.54 million for damages
7 and the other for a maximum of \$1.21 million for attorneys fees and costs for a total
8 of two million seven hundred fifty thousand and no cents (\$2,750,000.00) to be paid
9 in consideration for the settlement and dismissal with prejudice of the Lawsuit and
10 the related release of all claims the members of the Settling Class may have against
11 Defendants, as contained in Paragraphs 44 and 45 of this Agreement.

12 11. The City of Ontario shall deposit \$1,540,000 in an interest-bearing
13 escrow account to be established by the City of Ontario and the other \$1,210,000 in
14 an interest-bearing escrow account to be established by Class Counsel no later than
15 ten (10) business days after receipt of notice of the Court's entry of an order of
16 preliminary approval of the settlement. The funds shall remain in said
17 interest-bearing escrow accounts, pending occurrence of the Effective Date as
18 defined in Section VI of the Agreement. The City of Ontario shall not disburse any
19 portion of these funds until after the Effective Date.

20 12. The maximum amount that City of Ontario shall be required to pay for
21 settlement of the Lawsuit shall be \$2,750,000. This will cover compensation to the
22 Settling Class, additional compensation, also referred to as incentive awards or
23 Enhancement Awards, to the Named Plaintiffs and Original Plaintiffs, and attorneys'
24 fees and reimbursement of litigation costs and expenses to Class Counsel (as defined
25 in Sections VIII and IX.
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III.
CLASS CERTIFICATION

13. On or about April 11, 2005, the Court certified a class defined as follows: “all persons who were employed by the Ontario Police Department or volunteered for the Ontario Police Department who used the men’s locker room during the period the surveillance equipment was installed and were recorded by the surveillance equipment.” Any putative class members who submitted Opt-Outs in response to any notice regarding this Case will not be deemed to be Class Members in this matter nor receive any compensation therein.

14. The individuals who were identified as appearing on the videotape in question by representatives of the Ontario Police Department, the Ontario Police Management Group and the Ontario Police Officers Association are listed in Exhibit A. This exhibit will be submitted separately under seal, in order to protect their identity as peace officers.

15. The Settling Parties’ settlement of the Lawsuit, and their rights and obligations hereunder, are contingent upon final approval by the Court of this Agreement as to the Settling Class. The Settling Class recognizes and agrees that – in consideration of the covenants undertaken herein by City of Ontario herein, including, without limitation, City of Ontario’s agreement to pay the full amount of the settlement – this Agreement settles any and all claims, known and unknown concerning the secret video surveillance of the mens’ locker room at the Ontario Police Department headquarters building on North Cherry Avenue in 1996, the Settling Class has or may have against City of Ontario as provided herein.

IV.
CLASS COUNSEL

16. In its April 11, 2005 class certification order, the Court appointed the Peter Eliasberg of the ACLU Foundation of Southern California, Della Bahan of

1 Bahan & Associates, and Michael Lackie of Lackie & Dammeier as class counsel
2 pursuant to FRCP 23(g).

3 17. On August 17, 2005, the Court granted Defendants' motion to
4 disqualify Lackie & Dammeier on the ground that it had a conflict under California
5 Rule of Professional Conduct 3-310(E) because it had previously represented
6 Defendant Brad Schneider in his interview with the San Bernardino County Sheriff's
7 Department concerning the video surveillance that is the subject of the Lawsuit. The
8 Court held that there was a "substantial relationship" between the subject of the
9 representation of Schneider and the Lawsuit. Accordingly, the Court ordered that
10 Lackie & Dammeier "cease all representation of the Plaintiffs."

11 18. On July 23, 2008, the Court granted Plaintiffs' motion to substitute
12 counsel, permitting Bahan & Associates to withdraw and designating Hadsell
13 Stormer Keeny Richardson & Renick LLP as co-lead counsel.

14 19. "Class Counsel" are the ACLU Foundation of Southern California and
15 Hadsell Stormer Keeny Richardson & Renick LLP, as provided by the Court's class
16 certification order of April 14, 2005 and its subsequent order of July 23, 2008
17 granting plaintiffs' motion for substitution of class counsel. All notices or
18 correspondence for class counsel are to be sent to Peter Eliasberg, Esq, state bar
19 number 189110, of the ACLU Foundation of Southern California located at 1313 W.
20 Eighth Street, Los Angeles, and Dan Stormer, Esq., state bar number 101967, of
21 Hadsell Stormer Keeny Richardson & Renick LLP, located at 128 North Fair Oaks
22 Avenue, Pasadena, California, as class settlement counsel ("Class Counsel") with
23 respect to all members of the Settling Class.

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25 **V.**
26 **SETTLEMENT APPROVAL PROCEDURES**
27 **AND NOTICE TO CLASS MEMBERS**
28

1 20. The Settling Parties' settlement of the Lawsuit, and their rights and
2 obligations hereunder, are expressly conditioned on both the Court's preliminary and
3 final approval of this Settlement as to the class defined in Section III of this
4 Agreement. Preliminary approval shall be through the entry of an "Order of
5 Preliminary Approval," substantially in the form and content of Exhibit B hereto.

6 21. On or before March 16, 2009, Class Counsel shall file a motion with the
7 Court for preliminary approval of the Settlement Agreement. As soon as possible
8 thereafter, and in advance of the Preliminary Approval Hearing date, Class Counsel
9 shall submit this Agreement and supporting papers, which shall set forth the terms of
10 this Agreement, and will include proposed forms of all notices and other documents,
11 as attached hereto, necessary to implement the Settlement Agreement. The Order for
12 Preliminary Approval shall provide for notice of the Agreement and related matters
13 ("Class Notice") to be sent to the Settlement Class as specified herein. Class Notice
14 shall be in the form attached hereto as Exhibit C, and as further described in
15 Paragraph 29 of this Agreement.

16 22. Not later than ten (10) business days after receipt of notice of the
17 Court's entry of an Order of Preliminary Approval, and to the extent possible based
18 on the presence of information in its records, City of Ontario shall prepare, in
19 electronic form, a spreadsheet that contains the name, social security number, dates
20 of employment, and last known mailing address of every individual listed on Exhibit
21 A to this Agreement. Class Counsel will also provide all updated address
22 information in their possession with respect to all the individuals listed on Exhibit A.

23 a) City of Ontario shall meet-and-confer with Class Counsel to
24 discuss what information and procedures are reasonable and necessary to give
25 Class Notice, allocate and distribute the Settlement Fund among Class
26 members, and otherwise administer this Agreement.

1 b) City of Ontario shall also provide a verification to Class Counsel,
2 under penalty of perjury, that the information provided in said spreadsheet will
3 be complete and accurate to the best of its ability to determine from its available
4 records.

5 23. Not later than fifteen (15) business days after completion of the
6 preparation of the spreadsheet and receipt by Class Counsel of the verification as
7 described in Paragraph 22 of this Agreement, the City of Ontario shall mail the Class
8 Notice to all members of the Settling Class whose address information is known.
9 This mailing will be sent by first-class U.S. mail. Before mailing the Class Notice,
10 the City of Ontario shall run the Class member addresses through the U.S. Postal
11 Service's Change of Address Database.

12 24. The City of Ontario, with the assistance of Class Counsel, shall make
13 such further efforts, as are reasonable and expedient in their judgment, to provide
14 Class Notice to all members of the Settling Class, and to follow up as appropriate,
15 provided that all such efforts shall be completed by the thirty-fifth (35th) calendar
16 day after the Class Notice is mailed. The City of Ontario shall document all efforts
17 under this Section V, and keep such documentation for a period of four (4) years from
18 the date of the Court's final approval of the settlement.

19 25. In addition, the City of Ontario will provide notice to all appropriate
20 State Officials in compliance with 28 U.S.C. Section 1715(b), though not required to
21 do so, as the statute post-dates the filing of the complaint in this action.
22

23 **VI.**
24 **THE EFFECTIVE DATE**

25 26. This Agreement shall become final and effective (the "Effective Date")
26 on the occurrence of all of the following events described in subparagraphs a through
27 d of this Paragraph 26:
28

1 a) Entry by the Court of an Order of Preliminary Approval as
2 discussed in Paragraph 21 of this Agreement;

3 b) Defendants' Counsel's filing, at or before the Final Approval
4 Hearing, a declaration from the employee or independent contractor of the
5 City of Ontario responsible for mailing the Class Notice Certifying that Class
6 Notice to each member of the Settling Class was sent in accordance with
7 Sections V and VIII of this Agreement and the Order of Preliminary Approval;
8 and

9 c) Entry by the Court of an Order and Judgment Granting Final
10 Approval and dismissing the Lawsuit with prejudice. The parties shall jointly
11 prepare a proposed Order and Judgment to this effect, which shall reflect, inter
12 alia, the dismissal of the Lawsuit with prejudice and the Court's approval of
13 the settlement pursuant to the terms of this Agreement, including but not
14 limited to the releases set out in Paragraphs 44 and 45. Said proposed Order
15 and Judgment shall be lodged with the Court no later than sixteen (16)
16 calendar days before the Final Approval Hearing.

17 d) The occurrence of the "Effective Date of Judgment," which shall
18 be deemed to be the last to occur of the following:

19 (i) If an appeal or other review is not sought from the Order
20 and Judgment Granting Final Approval and Dismissing Lawsuit with
21 Prejudice, the sixty-fifth (65th) calendar day after entry of the judgment;
22 or

23 (ii) If an appeal or other review is sought from the Order and
24 Judgment Granting Final Approval and Dismissing Lawsuit with
25 Prejudice by a member of the Settling Class, the day after the trial court's
26 judgment is affirmed or the appeal or other review is dismissed or denied,
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1 and the judgment is no longer subject to judicial review or other
2 challenge.

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4 **VII.**
5 **EFFECT OF NON-APPROVAL, OR**
6 **FAILURE OF THE EFFECTIVE DATE TO OCCUR**

7 27. If any one of the events specified in Section VI do not occur, this
8 Agreement shall be void, and any portion of the Settlement Fund previously
9 deposited in the escrow account described in paragraph 10 above shall immediately
10 be returned to City of Ontario. In such event:

11 a) Nothing in this Agreement shall be construed as a determination,
12 admission, or concession of any substantive or procedural issue in the Lawsuit,
13 and nothing in this Agreement may be offered into evidence in any hearing or
14 trial, or in any subsequent pleading or in any subsequent judicial, arbitral, or
15 administrative proceeding;

16 b) The Settling Parties expressly reserve their rights with respect to
17 the prosecution and defense of the Lawsuit as if this Agreement never existed.

18 **VIII.**
19 **DETERMINATION OF THE AMOUNT, PROCESSING,**
20 **AND PAYMENT OF CLASS MEMBER CLAIMS, AND ENHANCEMENT**
21 **AWARDS**

22 28. The Class Notice sent to each member of the Class shall be
23 accompanied by a separate Claim Form, which is attached hereto as Exhibit D. The
24 Claim Form shall be individualized for each member of the Settling Class with
25 information reflecting any incentive awards. The Class Notice and Claim Form shall
26 direct that, in order to submit a claim for distribution of a portion of the Settlement
27 Fund, each member of the Settling Class must return the completed Claim Form with
28 a postmark reflecting a date within sixty (60) calendar days from the date of mailing

1 of the Notice and Claim Form (the “Claim Filing Deadline”). The Claim shall be
2 mailed back to Peter Eliasberg, ACLU of Southern California, 1313 W. Eighth Street,
3 Los Angeles, CA 90017. A stamped envelope with said address shall be included
4 with the Notice and Claim Form to facilitate return of Claim Forms by members of
5 the Settling Class, with payment of the costs of said envelope and postage to be made
6 by the City of Ontario.

7 29. The Class Notice shall contain the release and waiver of claims against
8 City of Ontario (including the waiver of California Civil Code § 1542) contained in
9 Paragraphs 44 and 45 of this Agreement, and an easily understood statement alerting
10 putative members of the Settling Class that the individual is executing a release and
11 waiver of all such claims the employee may have against City of Ontario, whether or
12 not he submits a Claim Form.

13 30. Those Class members who have not properly returned a completed
14 Claim Form shall not share in the distribution of any payment, but nevertheless shall
15 be bound by the dismissal with prejudice of the Lawsuit and the release of claims set
16 forth in Paragraphs 44 and 45 of this Agreement.

17 31. The disbursement to each member of the Settling Class who returns a
18 timely and complete Claim Form (the “Member Payment”) shall be a minimum of
19 \$10,000 for all members of the class (the “Minimum Payment”), plus an incentive
20 award of either a) \$10,000 to those “Original Plaintiffs” who are not also Named
21 Plaintiffs; or b) \$30,000 to the Named Plaintiffs, as described more fully below in
22 Paragraph 32 below.

23 32. The City of Ontario recognizes that, at the same time the application for
24 attorneys fees and costs is made under Paragraph 40 below is made, Class Counsel
25 will apply to the Court for an additional award to the Original Plaintiffs of \$10,000
26 each, and to the Named Plaintiffs, of an additional \$30,000, (with the understanding
27 that no person shall obtain more than \$40,000 even if he was both an Original and a
28

1 Named Plaintiff) as reasonable additional compensation for the time and effort
2 expended by them in connection with the initiation and maintenance of the Lawsuit
3 and in consideration for the general release set out in Paragraphs 44 and 45 (the
4 “Enhancement Award”). City of Ontario will not oppose Class Counsel’s application
5 under this Paragraph 32. Any Enhancement Award will be in addition to the Original
6 and Named Plaintiffs’ Minimum Payment as set forth in Paragraph 31. The Named
7 Plaintiffs, Original Plaintiffs, Class Counsel, and putative or actual members of the
8 Settling Class shall not seek payment of any additional enhancement awards except
9 as set forth herein.

10 33. Any awards pursuant to Paragraphs 31 and 32 will be funded solely and
11 completely from the \$1.54 million fund set aside for damages to the Plaintiff Class.

12 34. If the Court does not award the full amount of Enhancement Awards
13 requested by Class Counsel pursuant to Paragraph 32 above, any remaining portion
14 of the requested award shall be allocated to the Member Payment to be received by
15 the Plaintiff class. And the remaining portion of the requested award shall be
16 allocated on an equal per capita distribution, regardless of whether the class member
17 is also an Original Plaintiff or Named Plaintiff.

18 35. The City of Ontario shall provide counsel for the Settling Parties with a
19 Final Accounting and Report of the amount to be distributed to the Class Members
20 not later than ten (10) calendar days after the Effective Date

21 36. The City of Ontario shall make payments pursuant to this Section VIII
22 as soon as possible after the Effective Date but in any event no later than twenty (20)
23 days after the Effective Date.

24 37. The amounts received by the Class Members, Named Plaintiffs, and
25 Original Plaintiffs, will not have any taxes withheld. Class Members, Named
26 Plaintiffs, and Original Plaintiffs will be solely responsible for any taxes owing on
27 the amounts received.
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2 43. Any proceedings or Court decisions related to Class Counsel’s
3 application for attorneys’ fees, costs and expenses, and/or Enhancement Awards
4 shall not terminate or cancel this Agreement, or otherwise affect the finality of the
5 Court’s Order and Judgment Granting Final Approval or the settlement of this
6 Lawsuit.

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8 **X.**
9 **RELEASES**

10 44. In exchange for the consideration, undertakings, and covenants
11 undertaken by City of Ontario in this Agreement, and to the extent permitted by
12 applicable law, the Settling Class hereby releases, discharges, and covenants not to
13 sue The City of Ontario, Lloyd Scharf, Tony Del Rio, Michael Thompson, and Brad
14 Schneider, and all of their respective past and present employees, directors, officers,
15 attorneys, representatives, insurers, agents, successors, and assigns (individually and
16 collectively “the City of Ontario Releasees,”) from and with respect to any and all
17 actions, causes of action, suits, liabilities, claims, and demands whatsoever, and each
18 of them, whether known or unknown, from the beginning of time to April 15, 2009,
19 which the Settling Class, or individual members thereof, has, had, or hereafter may
20 claim to have, against the City of Ontario Releasees, or any of them, which are based
21 on, or in any way related to, violations of the Fourth Amendment of the Constitution,
22 Article I, Section 1 of the California Constitution, the common law claim of Invasion
23 of Privacy, as pertains to the secret videotaping in the Ontario Police Department
24 men’s locker room, or any other allegation contained in, related to, or subsumed by,
25 the Lawsuit (the “Released Claims”). The parties intend the Settling Class’ release to
26 be general and comprehensive in nature and to release all claims and potential claims
27 against the City of Ontario Releasees which were or could have been brought by the
28 Lawsuit to the maximum extent permitted at law. The Released Claims include

1 specifically, by way of further description, but not by way of limitation, any and all
2 claims arising out of or in any way related to any:

3 a) Any and all allegations set forth in the pleadings in Case No. CV
4 04-01015 VAP (PJWx), on file with United States District Court for the Central
5 District of California;

6 b) Any and all alleged violations arising out of video surveillance of
7 the inside of the men's locker room at the City of Ontario Police Department,
8 and/or

9 c) Claims for attorneys' fees, costs or expenses arising from this
10 lawsuit, and/or any and all claims based on calculations, distributions or
11 payments made in accordance with this Agreement.

12 45. **Waiver of California Civil Code Section 1542.** All members of the
13 Settling Class (including, without limitation, the Named Plaintiffs) acknowledge
14 and/or are deemed to acknowledge that they may hereafter discover claims or facts in
15 addition to or different from those which they now know or believe to exist with
16 respect to the subject matter of this Agreement and/or this release, and which, if know
17 or suspected at the time of executing this Agreement, may have materially affected
18 this release. Nevertheless, the members of the Settling Class will waive any right,
19 claim, or cause of action that might arise as a result of such different or additional
20 claims or facts. In addition, all members of the Settling Class intend and/or are
21 deemed to intend that this Agreement should be effective as a bar to any and all of the
22 claims released by the Settling Class. In furtherance of this intention, all members of
23 the Settling Class expressly waive any and all rights or benefits conferred on them by
24 the provisions of Section 1542 of the California Civil Code, which provides as
25 follows:

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27 **“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
28 WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO
EXIST IN HIS OR HER FAVOR AT THE TIME OF**

1 **EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR**
2 **HER MUST HAVE MATERIALLY AFFECTED HIS OR HER**
3 **SETTLEMENT WITH THE DEBTOR.”**

4 All members of the Settling Class understand fully the statutory language of Civil
5 Code § 1542, and, with this understanding, assume all risks for claims released
6 hereunder that have already arisen or may in the future arise, whether known or
7 unknown, suspected or unsuspected, and specifically waive all rights they may have
8 under California Civil Code § 1542. The members of the Settling Class understand
9 that, if any of the facts relating in any manner to the Lawsuit, or to the release and
10 dismissal of claims as provided in this Agreement, are hereafter found to be other
11 than or different from the facts now believed to be true, they have expressly accepted
12 and assumed that risk and agree that this Agreement and the release of claims
13 contained herein shall nevertheless remain effective. The Settling Class desires and
14 intends, or is are deemed to desire and intend, that this Agreement shall be given full
15 force and effect according to each and all of its express terms and provisions,
16 including those relating to unknown and unsuspected claims, if any, as well as those
17 relating to the claims referred to above.

18 46. In exchange for the consideration, undertakings, and covenants
19 undertaken by the Settling Class in this Agreement, and to the extent permitted by
20 applicable law, the City of Ontario, Lloyd Scharf, Tony Del Rio, Michael Thompson,
21 and Brad Schneider, and all of their respective past and present employees, directors,
22 officers, attorneys, representatives, insurers, agents, successors, and assigns
23 (individually and collectively “the City of Ontario Releasers,”) hereby release,
24 discharge, and covenant not to sue the Settling Class, any of its member including the
25 Named Plaintiffs, its attorneys, representatives, insurers, agents, successors, and
26 assigns (individually and collectively “the Plaintiff Releasees,”) from and with
27 respect to any and all actions, causes of action, suits, liabilities, claims, and demands
28 whatsoever, and each of them, whether known or unknown, from the beginning of

1 time to April 6, 2009, which the City of Ontario Releasors, or individual members
2 thereof, has, had, or hereafter may claim to have, against the Plaintiff Releasees, or
3 any of them, which are based on, or in any way related to, violations of the Fourth
4 Amendment of the Constitution or State Law Invasion of Privacy, in connection with
5 the videotaping of the men's locker room, or any other allegation contained in,
6 related to, or subsumed by, the Lawsuit (the "Released Claims"), as well as and all
7 actions, causes of action, suits, liabilities, claims, and demands whatsoever, and each
8 of them, whether known or unknown, which the City of Ontario Releasors, or
9 individual members thereof, has, had, or hereafter may claim to have, against the
10 Plaintiff Releasees, or any of them, which are based on, or in any way related to,
11 Plaintiff Releasees' filing or prosecution of the Lawsuit. The parties intend the City
12 of Ontario Releasors' release to be general and comprehensive in nature and to
13 release all claims and potential claims against the Plaintiff Releasees which were or
14 could have been brought by a cross-claim or counter-claim in the Lawsuit to the
15 maximum extent permitted at law. The Released Claims include specifically, by way
16 of further description, but not by way of limitation, any and all claims arising out of
17 or in any way related to any:

18 a) Any and all allegations set forth in the pleadings in Case No. CV
19 04-01015 VAP (PJWx), on file with United States District Court for the Central
20 District of California;

21 b) Any and all alleged violations arising out of video surveillance of
22 the inside of the men's locker room at the City of Ontario Police Department,
23 and/or

24 c) Claims for either attorneys' fees, or attorneys' costs/expenses,
25 arising from this lawsuit, and/or any and all claims based on distributions or
26 payments made in accordance with this Agreement.
27
28

1 47. The members of the City of Ontario Releasors acknowledge and/or are
2 deemed to acknowledge that they may hereafter discover claims or facts in addition
3 to or different from those which they now know or believe to exist with respect to the
4 subject matter of this Agreement and/or this release, and which, if known or
5 suspected at the time of executing this Agreement, may have materially affected this
6 release. Nevertheless, the members of the City of Ontario Releasors hereby waive
7 any right, claim, or cause of action that might arise as a result of such different or
8 additional claims or facts-

9 48. **Waiver of California Civil Code Section 1542.** All members of the
10 City of Ontario Releasors (including, without limitation, the Defendants) intend
11 and/or are deemed to intend that this Agreement should be effective as a bar to any
12 and all of the claims released by Paragraphs 46 and 47. In furtherance of this
13 intention, all of the City of Ontario Releasors expressly waive any and all rights or
14 benefits conferred on them by the provisions of Section 1542 of the California Civil
15 Code, which provides as follows:

16 **“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
17 WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO
18 EXIST IN HIS OR HER FAVOR AT THE TIME OF
19 EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR
20 HER MUST HAVE MATERIALLY AFFECTED HIS OR HER
21 SETTLEMENT WITH THE DEBTOR.”**

22 All members of the City of Ontario Releasors understand fully the statutory language
23 of Civil Code § 1542, and, with this understanding, assume all risks for claims
24 released hereunder that have already arisen or may in the future arise, whether known
25 or unknown, suspected or unsuspected, and specifically waive all rights they may
26 have under California Civil Code § 1542. The members of the City of Ontario
27 Releasors understand that, if any of the facts relating in any manner to the Lawsuit, or
28 to the release and dismissal of claims as provided in this Agreement, are hereafter

1 found to be other than or different from the facts now believed to be true, they have
2 expressly accepted and assumed that risk and agree that this Agreement and the
3 release of claims contained herein shall nevertheless remain effective. The City of
4 Ontario Releasors desires and intends, or is are deemed to desire and intend, that this
5 Agreement shall be given full force and effect according to each and all of its express
6 terms and provisions, including those relating to unknown and unsuspected claims, if
7 any, as well as those relating to the claims referred to above.
8

9 **XII.**
10 **ADDITIONAL TERMS AND CONDITIONS**

11 49. Settlement Fair and Reasonable

12 Class Counsel have considerable experience in litigating and settling
13 class actions for violations of constitutional and/or civil rights, and they are
14 sufficiently familiar with the facts of this case and the applicable laws and regulations
15 to make an informed judgment as to the fairness of this Settlement. In light of this
16 experience, and for reasons that will be more fully explained in Class Counsel's
17 motion for preliminary approval, Class Counsel believe that the settlement terms
18 herein are fair and reasonable with regard to the interests of the Settling Class.

19 50. Settlement the Result of Arm's-Length Bargaining.

20 The terms of the settlement of this Suit resulted from approximately four
21 and a half years of litigation and numerous settlement discussions at mediations over
22 that time, and a final period of approximately six weeks' arm's-length negotiations
23 regarding this Agreement in particular.

24 51. Notices.

25 Except for Class member notices which are required herein to be made
26 to or by the City of Ontario, all notices, requests, demands and other communications
27 related to or in connection with this Agreement shall be in writing, and shall be
28

1 provided by appropriate method depending on the urgency (e.g., personal delivery,
2 facsimile, overnight delivery, or first-class U.S. mail) to:

3
4 **TO THE SETTLING CLASS:**

5 Dan Stormer
6 Hadsell Stormer Keeny
7 Richardson & Renick, LLP
8 128 North Fair Oaks
9 Avenue
10 Pasadena, California
11 91103-3645
12 Telephone: 626-585-9600
13 Facsimile: 626-577-7079

TO THE CITY OF ONTARIO

Jim Rinos
Rinos & Martin
17862 17th Street, Suite 104
Tustin, CA 92780
Tel (714) 734-0400
Fax (714) 734-0480

TO BRAD SCHNEIDER:

12 Peter Eliasberg
13 ACLU Foundation of
14 Southern California
15 1313 West 8th Street
16 Los Angeles, CA 90017
17 Telephone: 213-977-9500
18 ext 228
19 Facsimile: 213-977-5299

Bruce Disenhouse
Kinkle Rodiger & Spriggs
3333 Fourteenth Street
Riverside, CA 92501
Tel (951) 683-2410
Fax (951) 683-7759

20 52. No Admission of Liability.

21 Nothing herein shall constitute any admission by City of Ontario of
22 wrongdoing or liability or of the truth of any factual allegations in the Lawsuit. To
23 the contrary, City of Ontario has denied and continues to deny each and every
24 material factual, procedural, and/or legal allegation and alleged claim asserted in the
25 Lawsuit.

26 53. Modification by Writing Only.

27 This Agreement, and its terms and Exhibits, may be modified only in a
28 writing signed by all counsel of record for the parties, and will not become effective
unless and until approved by the Court or otherwise as ordered by the Court.

1 54. Representations.

2 a) The Named Plaintiffs and Class Counsel represent that they are
3 presently unaware of any other lawsuit or administrative proceeding which alleges
4 any of the claims asserted by the Lawsuit.

5 b) The Named Plaintiffs, on behalf of themselves and the Settling
6 Class, have expressly authorized Class Counsel to take all appropriate action
7 required or permitted to be taken pursuant to this Agreement to effectuate its
8 terms.

9 c) Each attorney executing this Agreement or any of its Exhibits on
10 behalf of any party hereto hereby warrants that full authority to do so has been
11 given by his/her client(s).

12 d) City of Ontario, Class Counsel, and the Named Plaintiffs waive
13 their right to file an appeal, writ, or any challenge whatsoever to the terms of
14 this Agreement; provided, however, that Class Counsel may appeal the Court's
15 determinations with regard to the requests set out in Paragraphs 32 and 40. This
16 Agreement neither condones nor prohibits an appeal by Plaintiffs' prior
17 attorneys, Lackie & Dammeier, who have indicated an intent to file an appeal of
18 the Order Disqualifying them as Counsel. Consistent with Paragraph 43,
19 however, any such appeals will have no effect whatsoever on the other terms
20 and provisions of this Agreement, including, by way of example but not of
21 limitation, the releases set out in Paragraphs 44 through 48.

22 e) The Settling Parties represent and agree that none of them has
23 received and/or relied upon any advice and/or representations from the other
24 parties and/or their attorneys as to the necessity for withholding or the taxability
25 of the consideration paid pursuant to this Agreement, whether pursuant to
26 federal, state or local income tax statutes or otherwise.

1 55. Further Cooperation.

2 The Settling Parties and their respective counsel of record shall proceed
3 diligently to prepare and execute all documents, to seek the necessary Court
4 approvals, and to do all other things reasonably necessary to conclude this
5 Settlement.

6 56. Construction and Integration.

7 This Agreement, including its exhibits, constitutes the entire agreement
8 and understanding between the parties, and supersedes any previous agreements or
9 understandings between the Settling Parties. No representations, warranties or
10 inducements have been made to any party concerning the subject matter of this
11 Agreement and/or exhibits other than the representations, warranties and covenants
12 contained in such documents. This Agreement and related exhibits shall be
13 construed each as a whole, and with reference to one another, according to their fair
14 meaning and intent. Each of the Settling Parties represent that its/her counsel has
15 participated and cooperated in the drafting and preparation of this Agreement and
16 related exhibits; hence, in any construction to be made of this Agreement and/or
17 exhibits, the same shall not be construed against any party on the basis that said party
18 was the drafter.

19 57. Governing Law.

20 This Agreement and the Exhibits hereto shall be deemed to have been
21 negotiated, executed and delivered, and to be wholly performed, in the State of
22 California. The rights and obligations of the parties under the Agreement shall be
23 construed and enforced in accordance with, and be governed by, the substantive and
24 procedural laws of the Ninth Circuit.

25 58. Counterparts.

26 This Agreement may be executed in one or more faxed counterparts,
27 which may be filed with the Court. All executed counterparts, and each of them, shall
28

1 be deemed to be one and the same instrument. Once available, a complete set of
2 executed counterparts shall be filed with the Court. Copies of the complete set of
3 executed counterparts may be used for all purposes in lieu of the originals, and shall
4 have the same force and effect as the originals.

5 59. Attorneys' Fees, Costs and Expenses.

6 Except as otherwise specifically provided for herein, each party shall
7 bear its/her own attorneys' fees, costs and expenses, taxable or otherwise, incurred by
8 them in or arising out of the Lawsuit, including all costs of administration, notice, and
9 distribution of payments, and shall not seek reimbursement thereof from any other
10 party to this Agreement.

11 60. Continuing Jurisdiction.

12 Except as otherwise specifically provided for herein, the Honorable
13 Virginia Phillips of the Central District of California shall retain jurisdiction to
14 construe, interpret and enforce this Agreement and the settlement, to supervise all
15 notices, the administration of the settlement and this Agreement and distribution of
16 the Settlement Fund, and to hear and adjudicate any dispute arising from or related to
17 the settlement and/or this Agreement.

18 61. Arms-Length Negotiations


19 This agreement is deemed to have been drafted by all parties as a result of an
20 arms length negotiations. It shall not be construed more strictly against one Party
21 than another.

22 62. No Other Agreement


23 This agreement contains all agreements, conditions, promises and covenants
24 among the settling parties regarding the matters set forth in it and supersedes all prior
25 or contemporaneous agreements, drafts, representations or understandings, either
26 oral or written, with respect to the subject matter of the present agreement.
27
28

1 **IN WITNESS WHEREOF**, Class Counsel,
2 on behalf of the Plaintiffs Class, and
3 Defendants' duly-authorized representatives
4 accept and agree to the terms of this
5 Agreement and hereby execute it voluntarily
6 and with a full understanding of its
7 consequences.

8 **HADSELL STORMER**
9 **KEENY RICHARDSON**
10 **& RENICK, LLP**

11 
12 By: Dan Stormer 4/14/09
13 Class Counsel and Date
14 Attorneys for Plaintiffs
15 Steve Trujillo, et al.

16 **RINOS & MARTIN LLP**

17 
18 By: Celeste Brustowicz 4.14.2009
19 Attorneys for The City of Date
20 Ontario et al.

21
22 **KINKLE RODIGER &**
23 **SPRIGGS LLP**

24
25
26 By: Bruce Disenhouse _____ Date
27 Attorneys for Brad
28 Schneider

1 **IN WITNESS WHEREOF**, Class Counsel,
2 on behalf of the Plaintiffs Class, and
3 Defendants' duly-authorized representatives
4 accept and agree to the terms of this
5 Agreement and hereby execute it voluntarily
6 and with a full understanding of its
7 consequences.

8 **HADSELL STORMER**
9 **KEENY RICHARDSON**
10 **& RENICK, LLP**

11 _____
12 By: Dan Stormer
13 Class Counsel and
14 Attorneys for Plaintiffs
15 Steve Trujillo, et al.

_____ Date

16 **RINOS & MARTIN LLP**

17
18
19 _____
20 By: Celeste Brustowicz
21 Attorneys for The City of
22 Ontario et al.

_____ Date

23 **KINKLE RODIGER &**
24 **SPRIGGS LLP**

25 _____
26 By: Bruce Disenhouse
27 Attorneys for Brad
28 Schneider

_____ 4/15/09
Date