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

**ROBERT BERNHARD, et
al.,**

Plaintiffs,

v.

CITY OF ONTARIO, et al.,

Defendants.

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

**[PROPOSED] ORDER RE:
JOINT STIPULATION OF
CLASS ACTION
SETTLEMENT AND
RELEASE**

vry

Ctrm: 2, Riverside

Judge: Hon. Virginia Phillips

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1 The Plaintiffs' Motion for an order granting preliminary approval of the settlement of this
2 action, certifying the proposed class for settlement purposes only, approving the form of notice
3 to the class, and setting a final approval hearing, came on for hearing in Courtroom 2 of this
4 Court on April 6, 2009. The defendants filed a response to the motion but did not oppose the
5 material terms of the proposed settlement. In addition, the motion for attorneys fees of Lackie
6 & Dammeier came on for hearing at the same time and day. No opposition or reply was filed to
7 that document.

8 Having read the motion, the points and authorities, and the declarations filed by the
9 parties, this Court finds that the proposed settlement appears fair, reasonable and adequate, and
10 that a hearing should be held after notice to the Plaintiff Class of the proposed settlement to
11 determine if the Settlement Agreement and settlement are fair, reasonable and adequate, and if a
12 Settlement Approval order and Final Judgment should be entered in this action based upon the
13 Settlement Agreement;

14 IT IS THEREFORE ORDERED THAT:

15 1. This Order incorporates by reference the parties' Stipulated Settlement
16 Agreement, and all terms defined herein shall have the same meaning as set forth in the
17 Stipulated Settlement Agreement ("Settlement Agreement").

18 2. The Settlement Agreement and the settlement contained therein are preliminarily
19 approved as fair, reasonable and adequate.

20 3. A hearing ("Settlement Fairness Hearing" or "Final Approval Hearing") shall be
21 held before this Court in Courtroom 2 of the above encaptioned court located at Twelfth Ave.,
22 Riverside, California on ~~June~~^{August 24}, 2009 at 10:00 a.m., to determine: whether the proposed
23 settlement of the Class Action on the terms and conditions provided for in the Settlement
24 Agreement is fair, reasonable and adequate; whether said settlement should be finally approved
25 by the Court; and whether the Order and Final Judgment, as provided in the Settlement
26 Agreement, should be entered herein. The Court may adjourn or continue the Settlement
27 Fairness Hearing without further notice to the Settlement Class.

28

1 4. The Court hereby approves, as to form and content, the Class Notice and Claim
2 Forms annexed as Exhibits C and D respectively to the Settlement Agreement and the List of
3 Class Members filed under seal as Exhibit A.

4 5. The Court finds that the publication of the Class Notice for Publication and the
5 mailing of the Class Notice and Claim Form substantially in the manner and form as set forth in
6 the Settlement Agreement and this Order meet the requirements of Fed. Rule Civ. Proc. 23 and
7 28 U.S.C. Section 1715 and due process, and is the best notice practicable under the
8 circumstances, and shall constitute due and sufficient notice to all persons entitled thereto.

9 6. Mail delivery shall be by First Class mail, postage prepaid, by the City of Ontario,
10 costs to be paid by the City of Ontario. The Class Notice and Claim Form shall be mailed to the
11 last known address of the Settlement Class member as reflected in Defendants' records as of the
12 date of mailing or as provided to defendants by plaintiffs based on their most recent information.
13 Any Class Notices returned to the city of Ontario as non-deliverable shall be sent to the
14 forwarding address affixed to the returned Class Notice, if any. If no forwarding address is
15 affixed to the returned Class Notice, the City of Ontario shall make one further attempt to locate
16 the individual by any reasonable means. If after this attempt, the City of Ontario is unable to
17 locate the individual(s), the Defendants shall inform Class Counsel of the Class Members who
18 have not been located and allow Class Counsel another 30 days to locate and provide the City
19 with a valid address. A final attempt will then be made by First Class mail to that address. After
20 that final attempt, defendants shall be deemed to have fully satisfied their obligation to provide
21 the Class Notice to the affected member of the Settlement Class.

22 7. The Court hereby finds that Class Members, as that term is defined in the
23 Settlement Agreement, who wish to participate in the settlement provided for in the Settlement
24 Agreement must complete, sign and return by mail the Claim Form (attached as Exhibit D to the
25 Settlement Agreement) to the Class Counsel, in accordance with the instructions and deadline
26 specified on the Claim Form no later than 60 days after mailing of Class Notice and Claim Form.
27 The City of Ontario will forthwith send out the checks to the Class Members, as provided in the
28 Settlement Agreement, from the \$1,540,000 allocation.

1 8. On the date provided below, the appropriate official of the City of Ontario shall
2 file a sworn statement evidencing its compliance with the provisions of this Preliminary Order
3 and the terms of the Settlement Agreement.

4 9. Plaintiffs' Attorney Fees and Costs from the \$1,210,000 allocation shall be
5 approved per separate order of this court. ~~No fees shall be awarded to the law firm of Lackie &~~ *The application for fees by*
6 *Dammeier is denied. See Order dated May 13, 2009.* *mp*

7 10. Any Settlement Class Member who has not timely elected to be excluded from
8 the Settlement Class, and who timely objects to the proposed settlement, including any
9 application for attorney fees and expenses and incentive awards to the named Plaintiffs, may
10 appear at the Settlement Fairness Hearing in person or through counsel to show cause why the
11 proposed settlement should not be approved as fair, reasonable and adequate or why the Order
12 and Final Judgment should or should not be entered on the proposed Settlement Agreement.

13 11. No Settlement Class Member or any other person shall be heard or entitled to
14 contest the approval of the terms and conditions of the proposed settlement, or, if approved, the
15 Order and Final Judgment to be entered by the Court, unless the Settlement Class Member filed
16 his/her objections, papers and briefs with the Clerk of this Court as specified in the Class Notice.
17 In order to be valid, the objections must state the name and number of this action, and the papers
18 must be filed with the Clerk of this Court and served on counsel no later than 30 days after
19 mailing of Class Notice and Claim Form. Copies of any written objections, papers, or briefs
20 contesting the settlement must be filed with this Court and served ~~by personal delivery or by~~
21 *or personal delivery* First Class Regular U.S. Mail to the following: Hadsell Stormer Keeny Richardson & Renick,
22 Attn. Dan Stormer, 128 North Fair Oaks Avenue, Pasadena, California 91103; ACLU of
23 Southern California, Attn. Peter Eliasberg, 1313 W. Eighth Street, Los Angeles, CA 90017,
24 Rinos & Martin LLP, Attn. Celeste Brustowicz, 17862 17th Street, Tustin, California 92780 and
25 Kinkle Rodiger & Spriggs, Attn.: Bruce Disenhouse, 3333 Fourteenth Street, Riverside,
26 California 92501. *mp*

27 12. Any Settlement Class Member who does not make his/her objection in the manner
28 provided for in this order shall be deemed to have waived such objection and shall forever be

1 foreclosed from making any objection to or appeal of the fairness, reasonableness or adequacy of
2 the proposed Settlement, to the calculation and distribution of any Settlement Award or an
3 enhancement payment to a named Plaintiff, and to the award of fees and costs to Class Counsel,
4 and all other costs as set forth in the Settlement Agreement, the Preliminary Order, and the Order
5 and Final Judgment.

6 13. All other proceedings in this action are stayed and suspended until further order of
7 this Court, except such actions as may be necessary to implement the Settlement Agreement and
8 this Order.

9 14. The Court reserves the right to adjourn or continue the date of the Settlement
10 Fairness Hearing without further notice to the Settlement Class, and retains jurisdiction to
11 consider all further applications arising out of or connected with the proposed settlement.

12 15. In the event the proposed settlement as provided in the Settlement Agreement is
13 not approved by the Court, or for any reason the parties fail to obtain a Settlement Approval
14 order and Final Judgment as contemplated in the Settlement Agreement, or the Settlement
15 Agreement is terminated or voided pursuant to its terms, the Settlement Agreement and all orders
16 in connection therewith shall become null and void and of no further force and effect, and shall
17 not be used or referred to for any purpose whatsoever. In such event, the Settlement Agreement,
18 and all negotiations and proceedings relating thereto shall be withdrawn without prejudice as to
19 the rights of any and all parties thereto.

20 16. Dates for performance:

21 (a) The parties shall provide the necessary information to the City of Ontario for
22 publishing the Class Notice for Publication and mailing the Class Notice and Claim Form to
23 members of the settlement class by ^{May 22} ~~April 24~~, 2009.

24 (b) City of Ontario shall mail the Class Notice and Claim Form to class members
25 in English within ¹⁰ ~~14~~ business days from receipt of the list from the Class Counsel.

26 (c) Objections to the settlement by class members are to be in writing and filed
27 no later than 30 days after mailing of Class Notice and Claim Form and served on Plaintiffs'
28 Class Counsel and Defendants' counsel.

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(d) Claim Forms must be postmarked no later than ⁶⁰~~45~~ days after mailing of Class Notice and Claim Form to be effective.

(d) Final Approval Hearing/Settlement Fairness Hearing is to be held on ~~June~~ ^{August 24}, 2009 at 10:00 a.m.

(e) The City of Ontario shall file with this court and serve on Plaintiffs' Class Counsel a sworn written report detailing its compliance with the terms of this Order and the Settlement Agreement, including the publication of the Class Notice for Publication, the mailing of the Class Notice and Claim Form to class members, the number of written requests for exclusion received, and the number of claim forms received. The report shall be filed no later than seven court days prior to the Final Approval Hearing/ Settlement Fairness Hearing.

(f) Defendants to file their papers in support of settlement by fourteen court days prior to the Final Approval Hearing/Settlement Fairness Hearing.

(g) Response to objections, if any, of class members are to be filed by five court days prior to the Final Approval Hearing/Settlement Fairness Hearing.

IT IS SO ORDERED.

DATE: May 14, 2009

Virginia A Phillips
Hon. Virginia Phillips
United States District Court Judge