

1 JOHN L. BURRIS (SBN #69888)  
LAW OFFICES OF JOHN L. BURRIS  
2 7677 Oakport Street, Suite 1120  
Oakland, California 94621  
3 (510) 839-5200; FAX (510) 839-3882  
Email: john.burris@johnburrislaw.com  
4

JAMES B. CHANIN (SBN# 76043)  
5 JULIE M. HOUK (SBN# 114968)  
Law Offices of James B. Chanin  
6 3050 Shattuck Avenue  
Berkeley, California 94705  
7 (510) 848-4752; FAX: (510) 848-5819  
Email: jbcofc@aol.com  
8

9 Attorneys for Plaintiffs  
REGINALD OLIVER, et al.  
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11 UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
12

13 DELPHINE ALLEN, et al.,  
14 Plaintiffs,

15 CITY OF OAKLAND, et al.,  
16 Defendants.

17 REGINALD OLIVER, et al.,  
18 Plaintiffs,

19 vs.

20 CITY OF OAKLAND, et al.,

21 HAROLD JACKSON, et al.,

22 Plaintiffs,

23 {00811072.PDF} STIPULATED MOTION FOR APPROVAL OF SETTLEMENT  
OLIVER V. CITY OF OAKLAND, CASE NO. C08-04914 TEH

1 )  
 v. )  
 2 )  
 CITY OF OAKLAND, et al., )  
 3 )  
 Defendants. )  
 4 )

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5  
6 **I. INTRODUCTION**

7 The *Oliver, et al.* Plaintiffs commenced this action as a putative class action under  
8 F.R.Civ.P. 23. The Court has not yet certified the case as a class action under F.R.Civ.P. 23.  
9 The parties have now reached a tentative settlement with respect to the monetary claims and are  
10 moving the Court for an Order approving that settlement.

11 Until 2003, F.R.Civ.P. 23 (e) provided for many years that a pre-certification settlement  
12 in a putative class action was subject to the approval of the Court to ensure that the settlement  
13 was not collusive or prejudicial. See e.g., *Diaz v. Trust Territory of the Pacific Islands*, 876 F.2d  
14 1401, 1408 (9th Cir.1989). However, in 2003, F.R.Civ.P. 23(e) was amended as follows: “The  
15 claims, issues, or defenses *of a certified class* may be settled, voluntarily dismissed, or  
16 compromised only with the court's approval.” (Emphasis added). Rule 23 as amended does not  
17 expressly state that approval of settlements in uncertified cases is not required and the Ninth  
18 Circuit has not yet clarified this issue. See, e.g., *Holmes v. Collection Bureau of America, Ltd.*,  
19 2010 U.S. Dist. LEXIS 5108 (N.D. Cal. 2010).

20 Since the instant case also involves non-monetary (injunctive) relief claims which  
21 Plaintiffs contend will require the continued jurisdiction of the Court, and in light of the  
22 uncertainty of the current state of the law in the Ninth Circuit with respect to whether Court

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1 approval is still required for pre-certification settlements in putative class actions, the parties  
2 believe it is necessary to obtain the Court's approval of the proposed settlement and dismissal of  
3 all class based claims for monetary relief while allowing the Court to retain jurisdiction over the  
4 non-monetary relief issues and to establish that the settlement of the claims for monetary relief,  
5 without formal notice to the putative class, is fair, reasonable, does not prejudice the absent class  
6 members and was not the product of collusion if the Ninth Circuit determines that Court  
7 approval is still required for settlements in putative class actions which have not been certified.

## 8 **II. STATEMENT OF FACTS**

### 9 **A. EFFORTS TO IDENTIFY PUTATIVE CLASS MEMBERS**

10 The *Oliver, et al.* Plaintiffs allege that the subject case arose from a pattern and practice  
11 by members of the Oakland Police Department of submitting warrant affidavits to the Alameda  
12 Superior Court in support of the issuance of search warrants in narcotics cases that contained  
13 deliberately false or recklessly inaccurate information, including, false claims that narcotics  
14 allegedly purchased by confidential informants during "X-buys" had been tested with positive  
15 results and other similar falsehoods.

16 During the course of the litigation, counsel for the *Oliver* Plaintiffs reviewed the search  
17 warrants and affidavits, police reports, and consolidated arrest reports for the narcotics search  
18 warrant affidavits which had been identified by the Internal Affairs Division of the Oakland  
19 Police Department as containing the false or misleading information about the drug testing and  
20 other falsehoods.

21 As a result, counsel for the *Oliver* Plaintiffs were able to identify 104 putative class  
22 members who had been the victims narcotics search warrants issued on affidavits that contained

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1 false or recklessly misleading information and who had actionable civil claims because 1) their  
2 claims were not barred by the applicable statutes of limitation; 2) no criminal charges were ever  
3 filed against them; 3) any criminal charges that were filed against them were resolved in their  
4 favor as a result of the dismissal of their cases and/or the granting of writs of corum nobis or  
5 habeas corpus; and/or 4) the putative class member was subjected to excessive force during the  
6 illegal search. (Chanin decl.).

7 Plaintiffs' counsel sent letters and/or made telephone calls to persons identified as  
8 potential putative class members and also retained private investigators to assist in locating  
9 individuals identified through Court records, police reports and other sources as potential  
10 putative class members. (Chanin decl.). These efforts began shortly after the commencement of  
11 the litigation in October 2008 and continued on diligent basis through approximately May 2010  
12 when Plaintiffs' counsel believed that they had exhausted all reasonable efforts to locate putative  
13 class members with actionable claims.

14 Plaintiffs' counsel were also contacted by putative class members who learned about the  
15 litigation through media reports and word of mouth. (Chanin decl.). Plaintiffs' counsel also  
16 assisted some potential putative class members whose criminal cases had not been dismissed by  
17 the Alameda County District Attorney's Office in having their cases dismissed so that they  
18 would be ripe for adjudication civilly. (Chanin decl.).

19 As a result of these efforts, Plaintiffs' counsel believe that they have located and  
20 identified most, if not almost all, of the putative class members with actionable claims. A list of  
21 the specific Plaintiffs and identified putative class members who are the subject of this proposed  
22 settlement is attached and incorporated herein by reference as Exhibit 1. (Chanin decl.).

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1 To date, all of the identified individual Plaintiffs/identified putative class members listed  
2 on Exhibit 1 have signed the settlement release and have approved the settlement. (Chanin  
3 decl.).<sup>1</sup>

#### 4 **C. ESSENTIAL TERMS OF THE PROPOSED SETTLEMENT**

##### 5 **1. Monetary Relief**

6 Defendants have offered to settle the monetary relief claims of the 104 individual  
7 Plaintiffs and putative class members who have been identified on Exhibit 1 for a total gross  
8 settlement sum of \$6,500,000.00 (Six Million, Five Hundred Thousand dollars) inclusive of all  
9 attorney fees and costs. Under the proposed settlement agreement, the distribution of this gross  
10 settlement sum is to be determined between the individual plaintiffs and their attorneys. In  
11 executing the individual releases, the individual plaintiffs/putative class members identified on  
12 Exhibit 1 are also approving their individual shares of the settlement proceeds and the net  
13 amount of the settlements they will receive after payment of attorneys' fees and costs pursuant to  
14 their contingency fee contracts with Plaintiffs' counsel. (Chanin decl.). Some of the settling  
15 Plaintiffs may elect to have their net settlements paid via structured settlements. In addition, the  
16 compromises of the Minors' claims are subject to the approval of the Court. *Id.*

17 The valuation of the individual Plaintiffs' claims is based on an assessment of their  
18 personal injuries, lost wages, time spent in custody, the underlying criminal actions brought  
19 against them, their prior and/or subsequent experience in the criminal justice system, the impact

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21 <sup>1</sup> The *Jackson* Plaintiffs have also entered into separate settlements with Defendants. In addition, the *Jackson*  
22 Plaintiffs have signed separate releases in accordance with those settlements. These Plaintiffs are identified on  
23 Exhibit 1 at numbers 105 and 106. In consideration of the separate payment to the *Jackson* plaintiffs and their  
24 counsel, the *Jackson* plaintiffs will be filing a dismissal with prejudice of any and all claims asserted in that matter.

1 to them as individuals and on their families and any medical expenses or other out of pocket  
2 losses they may have incurred. (Chanin decl.).

3 Under the proposed settlement, Defendants' counsel will issue a settlement draft payable  
4 to the respective Plaintiffs' counsel trust accounts and Plaintiffs' counsel will be responsible for  
5 distributing the settlement proceeds as set forth in written distributions approved by the settling  
6 Plaintiffs. Each individual Plaintiff will also pay attorneys' fees to Plaintiffs' counsel from the  
7 settlement proceeds and a pro-rata share of the litigation costs pursuant to their respective written  
8 attorneys' fee agreements with Plaintiffs' counsel and/or pursuant to Orders issued by this Court  
9 granted the compromises of the Minor Plaintiffs' claims. (Chanin decl.).

## 10 **2. Non-Monetary Relief**

11 In addition to the monetary settlement sum referred to above, the parties are continuing to  
12 negotiate with respect to the non-monetary relief issues which will be intended to address and  
13 remedy training and policy deficiencies which caused or contributed to the cause of the warrant  
14 affidavit problems in this case. In the event the parties reach agreement on the non-monetary  
15 issues, then a separate Settlement Agreement regarding the non-monetary relief issues will be  
16 presented to the Court under separate cover and the Court shall retain jurisdiction over the  
17 enforcement of the non-monetary relief Settlement Agreement for a period of two years from the  
18 date the non-monetary Settlement Agreement is executed by the parties. The *Oliver* Plaintiffs'  
19 counsel have agreed to waive any claim for attorneys' fees against Defendants for work  
20 performed on the non-monetary relief issues through September 15, 2010. (Chanin decl.).

## 21 **3. DISMISSALS PURSUANT TO SETTLEMENT AGREEMENT**

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1 In consideration of the monetary settlement referred to above, the individual  
2 Plaintiffs/putative class members identified on Exhibit 1 have agreed to dismiss both their  
3 individual monetary relief claims and any and all class based monetary relief claims they may  
4 have with prejudice. Under the terms of the settlement, however, the *Oliver* putative class action  
5 will be dismissed *without prejudice* as to the claims of any absent putative class members who  
6 are not specifically identified on Exhibit 1. (Chanin decl.). This will prevent any possible  
7 prejudice to the claims of any absent putative class members since the statute of limitations on  
8 such claims has been tolled during the pendency of the putative class action.

9 **4. THE PROPOSED SETTLEMENT SHOULD BE**  
10 **APPROVED UNDER F.R.Civ.P. 23(e)**

11 As discussed above, F.R.Civ.P. 23(e) was amended in 2003 to state that settlements in  
12 *certified* class actions must be approved by the Court. To date, the Ninth Circuit has not clarified  
13 whether Courts are still required to approve settlements reached in putative class actions prior to  
14 certification as noted by the Honorable Judge William H. Alsup in *Holmes v. Collection Bureau*  
15 *of America, Ltd.*, 2010 U.S. Dist. LEXIS 5108 (N.D. Cal. 2010). Given this uncertainty, and in  
16 light of the fact that the settlement of Plaintiffs' non-monetary relief claims will require the  
17 Court to retain jurisdiction to enforce the non-monetary relief settlement, the parties respectfully  
18 request that the Court exercise its discretion to approve the settlement described herein without  
19 notice to the absent putative class members because it is fair and reasonable, does not prejudice  
20 the absent putative class members, and it was not the product of collusion as evidenced by the  
21 fact that the parties settlement discussions were supervised by both Magistrate Judge James  
22 Larson and the Honorable Raul A. Ramirez (Ret).

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1 In *Miller v. Hygrade Food Products Corporation*, 2002 U.S. Dist. LEXIS 9329 (E.D. PA,  
2 May 23, 2002), the Court approved a pre-certification settlement of a putative class action  
3 without notice to the putative class where the claims of the absent putative class members were  
4 being dismissed without prejudice.

5 In that case, just as in the instant case, Plaintiffs' counsel sought to identify as many of  
6 the individual, putative class members as possible, obtained the agreement of all the identified  
7 class members to the settlement, and the Court determined that the proposed settlement terms  
8 were fair and reasonable under the circumstances.

9 In the instant case, the proposed settlement is fair and reasonable and was not the product  
10 of collusion. Each of the individual Plaintiffs/identified putative class members identified in  
11 Exhibit 1 is receiving a portion of the gross settlement sum based on an individual assessment of  
12 their physical and other damages sustained as a result of the misconduct of the officers in their  
13 individual cases. Each of the individual Plaintiffs/identified putative class members specified on  
14 Exhibit 1 who are taking part in the settlement have approved the settlement agreement and their  
15 specific recovery.

16 In addition to the monetary portion of the settlement, counsel for the parties are  
17 continuing to endeavor to reach an agreement concerning the settlement of the non-monetary  
18 relief claims in the form of specific reforms intended to remedy the kind of police misconduct  
19 that occurred in this case and is of substantial benefit to the putative class as a whole.

20 As noted above, the claims of the absent putative class members who are not identified  
21 on Exhibit 1 will not be prejudiced by the settlement because the class action as to any absent  
22 putative class members is being dismissed without prejudice.

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**DECLARATION OF PLAINTIFFS’ COUNSEL**

I, JAMES B. CHANIN, DECLARE:

1. I am an attorney licensed to practice law in the State of California and have been duly admitted to the bar of this Court. I am one of the attorneys representing the Plaintiffs in this action and in the actions which have been heretofore related by the Court.

2. In October 2008, the action entitled, *Reginald Oliver, et al. v. City of Oakland, et al.*, Case No. C08-04914 TEH was filed in this Court. The Complaint alleged civil rights violations under 42 U.S.C. Section 1983 arising from a course of conduct by members of the City of Oakland Police Department in which officers submitted search warrant affidavits containing false or misleading information about drug testing and other matters to Alameda Superior Courts to obtain narcotics search warrants in cases where the officers claimed “X-buys” of narcotics were made by confidential informants from alleged drug dealers. This action was filed as a putative class action and sought damages and non-monetary relief on behalf of the individually named Plaintiffs as well as on behalf of putative class members having the same or substantially similar claims.

3. After filing the *Oliver* action, Plaintiffs’ counsel reviewed the search warrants and affidavits, police reports, and consolidated arrest reports for the narcotics search warrant affidavits which had been identified by the Internal Affairs Division of the Oakland Police Department as having contained false or misleading information about the narcotics testing and related issues. As a result, counsel for the *Oliver* Plaintiffs were able to identify 104 putative class members who had been the victims narcotics search warrants that contained false or recklessly misleading information and who had actionable civil claims because 1) their claims

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1 were not barred by the applicable statutes of limitation; 2) no criminal charges were ever filed  
2 against them and/or 3) any criminal charges that were filed against them were resolved in their  
3 favor as a result of the dismissal of their cases and/or the granting of writs of corum nobis or  
4 habeas corpus.

5 4. Plaintiffs' counsel sent letters and/or made telephone calls to persons identified as  
6 potential putative class members and also retained private investigators to assist in locating  
7 individuals identified through Court records, police reports and other sources as potential  
8 putative class members. These efforts began shortly after the commencement of the litigation in  
9 October 2008 and continued on diligent basis through approximately May 2010 when Plaintiffs'  
10 counsel believed that they had exhausted all reasonable efforts to locate putative class members  
11 with actionable claims.

12 5. Plaintiffs' counsel were also contacted by putative class members who learned about  
13 the litigation through media reports and word of mouth. Plaintiffs' counsel also assisted some  
14 potential putative class members whose criminal cases had not been dismissed by the Alameda  
15 County District Attorney's Office in having their cases dismissed so that they would be ripe for  
16 adjudication civilly.

17 6. As a result of these efforts, Plaintiffs' counsel believe that they have located and  
18 identified most, if not almost all, of the putative class members with actionable claims. A list of  
19 the specific Plaintiffs and identified putative class members who are the subject of this proposed  
20 settlement is attached and incorporated herein by reference as Exhibit 1. (Chanin decl.).

21 7. After commencing the *Oliver* action, Plaintiffs' counsel propounded extensive  
22 discovery requests on Defendants and obtained thousands of pages of documents concerning the

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1 subject searches, the Oakland Police Department's investigation of into the warrant scandal,  
2 disciplinary proceedings brought against some of the officers implicated in the scandal and the  
3 documents relating to the customs, policies and practices of the Oakland Police Department  
4 pertaining to search warrants, narcotics investigations and confidential informants, among other  
5 subjects.

6 8. This Court subsequently ordered the parties to participate in formal Settlement  
7 Conferences presided over by the Honorable Magistrate Judge, James Larson. Although these  
8 settlement conferences were not successful in resolving the case, the parties did subsequently  
9 agree to Mediate the case before the Honorable Raul A. Ramirez (Ret.).

10 9. As a result, three (3) full day Mediation sessions were held by Judge Ramirez on June  
11 9, 10 and 11, 2010. Several of the Plaintiffs attended the first Mediation session where they were  
12 able to describe the very real impact the searches had on their lives. The settlement negotiations  
13 during these mediation sessions were often contentious and involved a substantial amount of  
14 time, effort and expense on the part of all parties in order for all concerned to understand the  
15 issues of liability, damages and non-monetary relief.

16 10. At the conclusion of the Mediation session before Judge Ramirez on June 11, 2010,  
17 the parties reached a tentative monetary settlement. The proposed monetary settlement,  
18 however, was contingent upon the approval of the compromise of the minor's claims by the  
19 Court, contingent on the approval by the identified individual Plaintiffs/putative class members  
20 specified on Exhibit 1 and contingent upon the parties reaching agreement on the settlement of  
21 the non-monetary relief claims.

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1 11. Since that time, Plaintiffs' counsel have endeavored to have all of the named  
2 Plaintiffs and identified putative class members (or their successor heirs in some cases) referred  
3 to on Exhibit 1, approve the settlement and sign the settlement release, subject to this Court's  
4 final approval. To date, all of the identified individual Plaintiffs/identified putative class  
5 members or their successor heirs listed on Exhibit 1 have signed the settlement release and have  
6 approved the settlement.

7 12. Defendants have offered to settle the monetary damage claims of the individual  
8 Plaintiffs and putative class members specified on Exhibit 1 for a total gross settlement sum of  
9 \$6,500.00.00 (six million, five hundred thousand dollars).

10 13. Under the proposed settlement agreement, the distribution of this gross settlement  
11 sum is to be determined between the individual plaintiffs/putative class members listed on  
12 Exhibit 1 and their attorneys. In executing the individual releases, the individual  
13 plaintiffs/putative class members identified on Exhibit 1 are also approving their individual  
14 shares of the settlement proceeds and the net amount of the settlements they will receive after  
15 payment of attorneys' fees and costs pursuant to their contingency fee contracts with Plaintiffs'  
16 counsel. Some of the settling Plaintiffs/putative class members may elect to have their net  
17 recoveries paid pursuant to structured settlements. The distribution of the Minor's settlements  
18 will be subject to the Court's Orders on the applications for approval of the Minors'  
19 compromises.

20 14. The valuation of the individual claims of the Plaintiffs/putative class members listed  
21 on Exhibit 1 is based on an assessment of their personal injuries, lost wages, time spent in  
22 custody, the underlying criminal actions brought against them, their prior and/or subsequent

1 experience in the criminal justice system, the impact to them as individuals and on their families  
2 and any medical expenses or other out of pocket losses they may have incurred.

3 15. Under the proposed settlement, Defendants' counsel will issue a settlement draft  
4 payable to Plaintiffs' counsel who will then be responsible for distributing the settlement  
5 proceeds pursuant to written distributions approved by the individual Plaintiffs/putative class  
6 members (or their heirs in some cases where the heirs have been substituted for deceased  
7 plaintiffs) identified on Exhibit 1. Each individual settling Plaintiff/putative class member will  
8 also pay a pro-rata share of the litigation costs and attorneys' fees will be distributed from the  
9 settlement funds to Plaintiffs' counsel pursuant to the contingency fee contracts signed by the  
10 Plaintiffs and/or pursuant to the Orders of the Court approving the compromises of the claims of  
11 the Minor Plaintiffs/putative class members.

12 16. In addition to the monetary settlement sum referred to above, the City of Oakland has  
13 agreed to enter into a separate agreement to settle the non-monetary relief claims of the Plaintiffs  
14 which will include specific reforms intended to prevent a recurrence of the kind of misconduct  
15 that occurred in this case. The Settlement Agreement regarding the non-monetary relief issues  
16 will be presented to the Court under separate cover. The Court shall retain jurisdiction over the  
17 enforcement of the non-monetary relief Settlement Agreement. Defendant City of Oakland shall  
18 be responsible for paying all the costs of implementing the terms of the non-monetary relief  
19 Settlement Agreement. The Oliver Plaintiffs' counsel have agreed to waive any claim for  
20 attorneys' fees against Defendants for work performed on the non-monetary relief issues through  
21 September 15, 2010. The Court shall also have jurisdiction to make all appropriate orders which  
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1 are just, proper and which are fair to the parties and their respective counsel with respect to the  
2 enforcement of the non-monetary Settlement Agreement. (Chanin decl.).

3 17. In consideration of the monetary settlement referred to above, the individual  
4 Plaintiffs/putative class members identified on Exhibit 1 have agreed, subject to Court approval,  
5 to dismiss both their monetary relief individual claims and any claims they may have as putative  
6 class members with prejudice.

7 18. Under the terms of the settlement, however, the *Oliver* class action will be dismissed  
8 without prejudice as to the claims of any absent putative class members not identified on Exhibit  
9 1 so as to not prejudice the claims of any absent putative class members.

10 19. I declare under penalty of perjury that the foregoing declaration is true and accurate  
11 of my own personal knowledge. Executed this 5th day of August 2010, at Berkeley, California.

12  
13 /s/ \_\_\_\_\_  
14 JAMES B. CHANIN  
15 Attorney for Plaintiffs  
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