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8 Attorneys for Plaintiffs
9 STEVEN ANGELL, *et al.* and on
10 behalf of the proposed class

11
12 **UNITED STATES DISTRICT COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA**

14
15 STEVEN ANGELL, MILES AVERY,
16 MOLLY BATCHELDER, SRI LOUISE also
17 known as Louise Coles, CICILY COOPER,
18 SHAREEF ELFIKI, THEODORE
19 HEXTOR, LINDSAY WEBER, individually
20 and on behalf of others similarly situated,

21 Plaintiffs,

22 vs.

21 CITY OF OAKLAND, COUNTY OF
22 ALAMEDA, HOWARD JORDAN,
23 JEFFREY ISRAEL, ERIC BRESHEARS,
24 RON YELDER, DARREN ALLISON,
25 STEVE TULL, EDWARD TRACEY,
26 ANTHONY RACHAL, SEAN WHENT,
27 GREGORY J. AHERN, BRETT KETELES,
28 CARLA KENNEDY, DAVID BRADY,
GREGORY L. MORGADO, KERRY
JACKSON, DOES 1-250,

Defendants.

Case No. C13-0190 NC

EXHIBIT 1 (SETTLEMENT
AGREEMENT) TO JOINT MOTION FOR
PRELIMINARY APPROVAL OF CLASS
SETTLEMENT

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SETTLEMENT AGREEMENT

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SETTLEMENT AGREEMENT

Plaintiffs STEVEN ANGELL, MILES AVERY, MOLLY BATCHELDER, SRI LOUISE AKA LOUISE COLES, CICYLY COOPER, SHAREEF ELFIKI, THEODORE HEXTOR, LINDSAY WEBER, on behalf of themselves and the class; Defendants CITY OF OAKLAND, HOWARD JORDAN, JEFFREY ISRAEL, ERIC BRESHEARS, RON YELDER, DARREN ALLISON, STEVE TULL, EDWARD TRACEY, ANTHONY RACHAL, SEAN WHENT (hereinafter “OAKLAND DEFENDANTS”); and Defendants COUNTY OF ALAMEDA, GREGORY J. AHERN, BRETT KETELES, CARLA KENNEDY, DAVID BRADY, GREGORY L. MORGADO, and KERRY JACKSON, (hereinafter “COUNTY DEFENDANTS”); by and through their respective counsel, agree and stipulate as follows:

I. THE LITIGATION

On January 14, 2013, Plaintiffs filed a class action complaint against the City of Oakland and a number of Oakland police officers, and against the County of Alameda, its Sheriff, and senior deputies of the Sheriff’s Office, asserting violations of their First, Fourth, and Fourteenth Amendment rights, and their rights under California state law, arising from a mass arrest which occurred on January 28, 2012. Approximately 360 Class Members were engaged in a march and demonstration protesting the economic inequalities and the financial disparities between the 99% and the 1%. Three hundred and sixty (360) Class Members were arrested on Broadway between 23rd and 24th Streets. Plaintiffs allege that the arrests were conducted without a dispersal order first having been given at that location or an opportunity to disperse. Plaintiffs allege that the mass arrests were violations of Oakland’s own Crowd Control Policies in addition to being violations of federal and state constitutional protections and state laws. Defendants deny the allegations.

Following the arrests by the Oakland Police, class members were handcuffed, detained on the streets, placed in the custody of the Alameda County Sheriff’s Office, and transported to Alameda County jails, where, they contend, they were held for between 12 and 80 hours

1 before being cited and released for failure to disperse in violation of California Penal Code
2 409, a misdemeanor. Plaintiffs contend the booking and detention violated California state
3 law providing for the citation and release of misdemeanor arrestees, as well as the First,
4 Fourth and Fourteenth Amendments. Plaintiffs also contend that while on the street and
5 during transport, they were painfully restrained by plastic handcuffs, and not given access to
6 toilet facilities. They further contend that they were held in severely overcrowded and
7 unsanitary holding cells that were cold, lacked adequate seating, had no beds or bedding, and
8 lacked telephones. While held in jail, Class Members were unable to contact family or
9 friends, many for up to 24 hours rather than the 3 hours required by Penal Code §851.5.

10 **Defendants deny these allegations.**

11 Plaintiffs requested monetary damages, attorneys' fees and costs, an injunction to
12 prevent defendants from continuing to violate Plaintiffs' rights, and an order requiring
13 Defendants to seal and destroy all records derived from this arrest. (Class Action Complaint
14 Docket No. 1.)

15 While this case was pending, the case of *Spalding v. City of Oakland*, C11-02867,
16 resolved. The *Spalding* case was also a class action arising out of mass arrest involving the
17 City of Oakland and the County of Alameda Sheriff's Offices. Part of the resolution of
18 Spalding included injunctive relief primarily on the application of Cite/Release and Booking
19 Procedures that will be applied in multiple simultaneous arrest situations, which addressed
20 and resolved the injunctive relief issues raised in plaintiffs' complaint. The resolutions
21 included amendment of the Oakland Police Department's Crowd Control and Crowd
22 Management Policy, adopted on October 4, 2013.¹

23 **¹ VIII. CITE/RELEASE AND BOOKING PROCEDURES**

24 A. Individuals arrested for minor offenses may be cited and released in compliance with Penal Code §853.6
25 and Department General Order M-7, CITATIONS FOR ADULT MISDEMEANORS, Part III, A-N.

26 B. When it is impractical to cite arrestees at or near the site of the demonstration because of a substantial risk
27 that this procedure would allow the unlawful activity to continue or because of specific geographic factors,
28 officers may cite and release arrestees from temporary processing stations or police facilities as near the site of
the arrest as possible. While detained during the citation and release process, arrestees shall have reasonable
access to toilet facilities and to appropriate medical attention.

C. No fingerprinting will be done as part of the citation and release process. Arrestees may be instructed to
appear for booking prior to or after arraignment.

OPD Training Bulletin III-G, CROWD CONTROL AND CROWD MANAGEMENT POLICY (Rev. 28 Oct 05),

1 On May 17, 2013, the Alameda County Sheriff’s Office also adopted a mass arrest
2 policy, which resolved plaintiffs’ injunctive relief requests with regard to Alameda County
3 jails and booking policies.²

4 The Parties engaged in preliminary discovery including written discovery, and
5 depositions of all named Plaintiffs and five Sheriff’s personnel. The Parties then agreed to
6 stay discovery and litigation and engage in settlement discussions. Between January 2014
7 and the present, the Parties have participated in four (4) all day and two (2) part day
8 settlement conferences and a number of telephonic conferences with Magistrate Judge Laurel
9 Beeler. In addition, there have been numerous communications between the Parties. As a
10 result of these extensive settlement negotiations, and with Judge Beeler’s assistance, the
11 Parties have now agreed on a complete settlement of this Litigation, the terms of which are
12 set forth below.

13 As part of the Settlement Process, the parties agreed to hold Plaintiffs’ motion for class
14 certification in abeyance. Said motion for class certification is filed as a companion motion
15 to Plaintiffs’ motion for preliminary approval of this settlement.

16 II. The Settlement Agreement and Terms of Stipulation

17 A. Definitions

18 “Effective Date” shall be when the Judgment has become Final as defined below.

19 “Final” means the date on which the Court has entered the Judgment, following
20 submission of this Settlement Agreement and the Final Approval Motion to the Court.

21 “Preliminary Approval Motion” means a motion filed with the Court requesting that the
22 Court consider and preliminarily approve the Settlement Agreement.

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26 ² ACSO Detentions & Correction Policy 11.65 states where 25 or more individuals are arrested for citable
27 offenses, while participating in “planned gatherings for the purpose of exercising rights protected by the First
28 Amendment”, these individuals with identification are not fingerprinted and booked. Instead, a warrant check
will be conducted “within thirty (30) minutes after the arrestee has been identified”, (11.65 (F)6) and when
groups of ten (10) arrestees have been cleared of warrants, “each will be issued a citation and notice to appear
and they and their property will be transferred to the release section of the facility and released.” (11.65 (F)7).

1 “Final Approval Motion” shall mean a motion filed with the Court requesting that the Court
2 consider and, if it finds the settlement to be fair and reasonable, finally approve the
3 Settlement Agreement.

4 “Final Approval Hearing” means the hearing to be held by the Court to consider and
5 determine whether the proposed Settlement of the Litigation as contained in this Stipulation
6 should be approved as fair, reasonable, and adequate, and whether the Judgment should be
7 entered.

8 “Judgment” means the Final Judgment and Order of Dismissal with Prejudice, to be
9 rendered by the court.

10 “Approved Claim” means a claim submitted no later than the Bar Date by a Class
11 Member other than a Representative Plaintiff which is approved by Plaintiffs’ counsel.

12 “Bar Date” means that date specified herein by which Claim Forms submitted by
13 Class Members must be delivered or postmarked in order to be considered for payment
14 pursuant to the terms of the Settlement described in this Stipulation.

15 “Class” means the class as defined in the Court’s March 23, 2012, Order granting
16 class certification: “The approximately 360 people who were arrested in the mass arrest
17 on Broadway between 23rd and 24th Streets in Oakland on January 28, 2012, and
18 who were never charged with any crime related to this arrest.”

19 “Class Members” means all persons within or encompassed by the definition of the Class.

20 “Class Representatives” or “Plaintiffs” means STEVEN ANGELL, MILES AVERY,
21 MOLLY BATCHELDER, SRI LOUISE AKA LOUISE COLES, CICILY COOPER,
22 SHAREEF ELFIKI, THEODORE HEXTOR, and LINDSAY WEBER.

23 “Claimants” means Class Members who actually file claims pursuant to the procedures set
24 forth in the Court’s Preliminary Approval Order.

25 “Class Notice of Settlement Agreement” means the written notice, together with the
26 Publication Notice, which shall include the general terms of the Settlement Agreement, and
27 the date of the Final Approval Hearing. The Class Notice of Settlement shall conform to all
28 applicable requirements of the Federal Rules of Civil Procedure, due process, any other
applicable law, and shall otherwise be in the manner and form approved by the Court.

1 “Claim Form” means that form which Class Members must submit in order to
2 qualify to participate in the settlement described in this Stipulation.

3 “The Parties” means the parties to this settlement agreement, who are the Plaintiffs, the Class,
4 the Oakland Defendants, and the County Defendants, defined above.

5 “Court” means the United States District Court for the Northern District of California.

6 “Class Counsel” or “Plaintiffs’ Counsel” means the class counsel named in Plaintiff’s
7 pending motion for class certification, Daniel Siegel and Yolanda Huang, or as the Court’s
8 Order for Class Certification designates.

9 “Lead Counsel for Plaintiffs” means Yolanda Huang.

10 “Class Settlement Fund” means the sum to be paid by the Defendants, totaling
11 \$1,360,000, not subject to reversion, which will be funded and distributed as further
12 described in this Agreement.

13 B. Monetary Settlement

14 In consideration of the Release set forth in section II.G. of this Stipulation and the
15 entry of Judgment on the claims of all Class Members, the Defendants CITY OF OAKLAND
16 and COUNTY OF ALAMEDA will jointly pay the sum of \$1,360,000 within fifteen (15)
17 days of the Effective Date of this settlement. Said payment shall include all attorneys’ fees
18 and costs of administering the class settlement and shall be made payable to Yolanda Huang,
19 Attorney Client Trust Account, to be distributed to the Class Representatives, Claimants, and
20 Class Counsel by that office as follows:

21 The eight Class Representatives shall each receive \$9,000;

22 Class Counsel shall receive \$350,000 for attorneys’ fees and costs, including all
23 costs associated with the administration of the Class Settlement Fund, transmittal and
24 publication of the Class Notice of Settlement Agreement and Claim Forms, review and
25 approval of Claim Forms, and payment of Approved Claims.

26 Those Claimants who have submitted Approved Claims shall each receive an equal
27 part of \$1,360,000 after attorneys’ fees and costs and the Class Representatives’ distribution
28 have been deducted.

1 C. Non-Monetary Settlement

2 1. Sealing and Destruction of Arrest Records

3 The Parties stipulate to the following and seek the Court's order granting such
4 relief as of the Effective Date:

5 a. All arrest records, police reports, investigative reports, booking information, online
6 data, or any other documentation or information pertaining to the arrests of the
7 Plaintiffs and Claimants who have submitted Approved Claims in the possession of the
8 Oakland Defendants and County Defendants shall be sealed and destroyed.

9 b. The Parties stipulate that the relief shall be the equivalent of a determination of
10 factual innocence pursuant to California Penal Code § 851.8, and that the
11 procedural requirements of that statute shall be waived, including any time deadlines and
12 notice to the District Attorney.

13 c. The Court shall issue an Order in the names of all of the Plaintiffs and
14 Claimants who have submitted Approved Claims, stating that it is the determination of
15 the Court, pursuant to the stipulation of the Oakland Defendants (the arresting agency), that
16 the Plaintiffs and Claimants are factually innocent of the charges for which they were
17 arrested and that they are thereby exonerated. Thereafter, the arrest shall be deemed not
18 to have occurred and the person may answer accordingly any question relating to its
19 occurrence. (See Penal Code § 851.8, subd. (f).)

20 d. Destruction of records of arrest pursuant to the Court's order shall be
21 accomplished by permanent obliteration of all entries or notations upon the records
22 pertaining to the arrest, and the record shall be prepared again so that it appears that the
23 arrest never occurred. However, where the only entries on the record pertain to the arrest
24 and the record can be destroyed without necessarily affecting the destruction of other
25 records, the document constituting the record shall be physically destroyed. (See Penal
26 Code § 851.8, subd. (j).)

27 e. Plaintiffs arrested for felonies which were never charged will be determined to have
28 met the requirements of Penal Code § 299, and will be eligible to have their California State
DNA profile expunged and their DNA sample withdrawn.

1 f. Defendants will provide a copy of the Court order to the California Department
2 of Justice, along with a list of Plaintiffs and of all Class Members who have filed timely
3 Claim Forms, and advise said agency of the fact that the records of their January 28, 2012
4 arrests have been rendered obsolete on the basis of a finding of factual innocence pursuant to
5 Penal Code § 851.8, which shall include expungement of all DNA profiles obtained and
6 withdrawal of all DNA samples.

7 D. Preliminary Approval

8 As soon as possible, and in no event more than ten (10) days after execution of this
9 Stipulation, the Parties shall jointly submit the Stipulation together with its Exhibits to
10 the Court and shall jointly apply for entry of a Preliminary Approval Order substantially
11 in the form set forth in Exhibit C, requesting, *inter alia*, the preliminary approval of the
12 Settlement set forth in this Stipulation, and approval/ dissemination of the Class Notice of the
13 Settlement and the proposed Claim Form. Plaintiffs shall also concurrently file a motion for
14 class certification, and defendants shall file a notice of non-opposition to said motion,
15 including Plaintiffs' request that the Class Notice and right to be excluded from the class be
16 sent in combination with the notice of settlement.

17 As soon as possible after execution of this Stipulation, and in no event more than thirty
18 (30) days, after execution of this Stipulation, Defendant Alameda County shall formalize
19 approval of this settlement through a public Board Resolution. If Defendant City of Oakland
20 requires any additional steps to formalize approval of this settlement agreement, all such steps
21 shall be completed no less than thirty (30) days after execution of this Stipulation.

22 Within ten (10) days after Defendant Alameda County provides Plaintiffs' counsel
23 with a copy of the County of Alameda's public Board Resolution approving this settlement,
24 Plaintiffs shall submit to the Court a stipulation and proposed order dismissing, with
25 prejudice, Defendants GREGORY J. AHERN, BRETT KETELES, CARLA KENNEDY,
26 DAVID BRADY, GREGORY L. MORGADO, and KERRY JACKSON. Within ten (10)
27 days after counsel for the City of Oakland verifies in writing that all necessary steps to
28 formalize approval of this settlement agreement have been completed, Plaintiffs shall submit
to the Court a stipulation and proposed order dismissing, with prejudice, Defendants

1 HOWARD JORDAN, JEFFREY ISRAEL, ERIC BRESHEARS, RON YELDER, DARREN
2 ALLISON, STEVE TULL, EDWARD TRACEY, ANTHONY RACHAL, and SEAN
3 WHENT.

4 In exchange for said dismissal, said individual Defendants hereby waive all rights to
5 recover costs or fees in connection with this lawsuit, as well as any tort claims they may have
6 against Plaintiffs or their counsel arising out of the prosecution of this action, and agree to the
7 Waiver and Covenant Not to Sue contained herein in paragraph H.

8
9 E. Class Notice of the Settlement and Claim Form

10 After Notice of Settlement Agreement, the Class Members shall have 60 days to opt
11 out or file a Claim Form, or to object to the Settlement Agreement following the procedure
12 set forth in the Notice.

13 F. Final Approval

14 A Final Approval Hearing shall be set no less than 45 days after the Court
15 issues its Preliminary Approval Order. The parties jointly request that, at the Final
16 Approval Hearing, the Court approve the settlement of the Litigation and enter Judgment
17 in a form substantially similar to that attached hereto as Exhibit D.

18 G. Releases and Bar Order

- 19 1. Upon the Effective Date, as defined above, the Parties shall be deemed to have, and shall
20 have, fully, finally, and forever waived, released, relinquished, discharged, and dismissed all
21 claims arising from the events alleged in Plaintiffs' Complaint.
- 22 2. Upon the Effective Date, the Plaintiffs and Class Members shall be forever barred and
23 enjoined from commencing, instituting, prosecuting or continuing to prosecute any action or
24 other proceeding in any court of law or equity, arbitration tribunal, or administrative forum,
25 asserting any claims arising from the events alleged in Plaintiffs' Complaint.
- 26 3. Upon the Effective Date, each of the Defendants shall be deemed to have, and by operation
27 of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged
28 Plaintiffs and Plaintiffs' Counsel from all claims (including Unknown Claims) arising out of,
relating to, or in connection with the institution, prosecution, assertion, settlement, or

1 resolution of the Litigation or the determination regarding approval or disapproval of any
2 claim submitted.

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4 H. Waiver and Covenant Not to Sue

5 Upon the Effective Date, each of the Defendants shall be deemed to have, and shall
6 have, fully, finally, and forever waived, released, and relinquished any claim for malicious
7 prosecution in connection with the Litigation. Each such Defendant covenants that he or she
8 will not institute any claim, lawsuit, arbitration, or proceeding of any nature against Plaintiffs,
9 any Class Member, or Plaintiffs' Counsel for any act or omission in connection with this
10 Litigation.

11 I. Conditions of Settlement, Effect of Disapproval

12 This Settlement is subject to the following conditions:

13 1. This Settlement is subject to the approval of the Court as provided in Federal Rules
14 of Civil Procedure Rule 23(e).

15 2. If the Stipulation is not approved by the Court, or otherwise fails to become
16 effective in accordance with its terms and provisions, the terms and provisions of this
17 Stipulation, with the exception of this section, shall have no further force and effect with
18 respect to the Parties and neither this Stipulation nor any submission by any party in
19 connection with the Motion(s) for Preliminary or Final Approval or Appeal therefrom, or
20 any related motions or proceedings, may be used in this Litigation or in any other
21 proceeding for any purpose, and any judgment or order entered by the Court in
22 accordance with the terms of this Stipulation shall be treated as vacated, nunc pro tunc.

23 J. Miscellaneous Provisions

24 1. The Parties (a) acknowledge that it is their intent to consummate the Settlement
25 set forth in this Stipulation, and (b) agree to cooperate to the extent reasonably necessary
26 to effectuate and implement all terms and conditions of the Stipulation and to exercise
27 their best efforts to accomplish and effectuate the terms and conditions of the Stipulation.

28 2. The Parties intend this settlement to be a final and complete resolution of all
disputes between them with respect to the Litigation. The settlement comprises claims, which

1 are contested, and shall not be deemed an admission by any Party as to the merits of
2 any claim or defense. The Parties agree that the terms of the settlement were negotiated in
3 good faith by the Parties, and reflect a settlement that was reached voluntarily after
4 consultation with competent legal counsel and with the assistance of Judge Beeler.

5 3. All of the exhibits to this Stipulation are material and integral parts hereof and
6 are fully incorporated herein by this reference.

7 4. The Stipulation and the exhibits attached hereto constitute the entire agreement
8 among the parties hereto and no representations, warranties, or inducements have been made
9 to any party concerning the Stipulation or its exhibits other than the representations,
10 warranties, and covenants contained and memorialized in such documents.

11 5. This Stipulation may be amended or modified only by a written instrument signed
12 by or on behalf of all Parties. Lead Counsel for Plaintiffs, on behalf of the Class, is expressly
13 authorized by the Plaintiffs to take all appropriate action required or permitted to be taken by
14 the Class pursuant to the Stipulation to effectuate its terms, and also is expressly authorized to
15 enter into any modifications or amendments to the Stipulation on behalf of the Class which
16 she deems appropriate.

17 6. Each attorney or other person executing the Stipulation or any of its exhibits on
18 behalf of any Party hereto hereby warrants that such person has the full authority to do so.

19 7. The Stipulation shall be binding upon, and inure to the benefit of, the successors
20 and assigns of the Parties hereto.

21 8. This Settlement Agreement was drafted with substantial review and input by all
22 Parties and their counsel, and no reliance was placed on any representations other than
23 those contained herein. The Parties agree that this Settlement Agreement shall be construed
24 by its own terms, and not by referring to, or considering, the terms of any other settlement,
25 and not by any presumption against the drafter.

26 NOW, THEREFORE, the foregoing terms are hereby STIPULATED AND
27 AGREED, by and among the Parties, subject to approval of the Court pursuant to Rule
28 23(e) of the Federal Rules of Civil Procedure.

1 DATED: October 8, 2014

BOORNAZIAN, JENSEN & GARTHE
A Professional Corporation

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4
5 By: /S/ _____
6 GREGORY J. ROCKWELL, ESQ.
7 Attorneys for Defendants
8 COUNTY OF ALAMEDA, GREGORY J.
9 AHERN, BRETT KETELES, CARLA KENNEDY,
10 DAVID BRADY, GREGORY L. MORGADO, and
11 KERRY JACKSON

12 DATED: October 8, 2014

BARBARA J. PARKER, CITY ATTORNEY,
CITY OF OAKLAND

13
14 By: /S/ _____
15 OTIS MCGEE
16 Attorneys for Defendants
17 CITY OF OAKLAND, HOWARD JORDAN,
18 JEFFREY ISRAEL, ERIC BRESHEARS, RON
19 YELDER, DARREN ALLISON, STEVE TULL,
20 EDWARD TRACEY, ANTHONY RACHAL,
21 SEAN WHENT

22 DATED: October 8, 2014

YOLANDA HUANG, ESQ.

23 By: /s/ Yolanda Huang
24 YOLANDA HUANG, ESQ.
25 Attorneys for Plaintiffs
26 STEVEN ANGELL, MILES AVERY, MOLLY
27 BATCHELDER, SRI LOUISE also known as
28 Louise Coles, CICILY COOPER, SHAREEF
ELFIKI, THEODORE HEXTOR, LINDSAY
WEBER