

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION

BEAU BANGERT, et al.,

Plaintiffs,

vs.

COUNTY OF PLACER, et al.,

Defendants.

Case No. 2:17-cv-01667-KJN

**ORDER GRANTING MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT, FINAL JUDGMENT, AND
DISMISSAL WITH PREJUDICE**

This matter having come before the Court by application of Plaintiffs Beau Bangert and the Settlement Class (collectively, "Plaintiffs") for preliminary approval of the class action settlement agreement between Plaintiffs and Defendants Placer County, Placer County Sheriff's Office, Devon M. Bell, Robert L. Madden, Megan C. Yaws, and "Doe" Defendant 1 to 50 (collectively, "Defendants"), set forth in the Class Action Settlement Agreement and Mutual Release ("Settlement Agreement" or "Settlement") (ECF No. 57-4); the Court having previously entered the Preliminary Approval Order: (1) preliminarily approving the Settlement; (2) provisionally certifying the Settlement Class; (3) approving the proposed form and dissemination of Class Notice and Claim Form; and (4) setting a hearing for Final Approval of the Settlement (the "Preliminary Approval Order") (ECF No. 59). Plaintiffs having now demonstrated compliance with the Preliminary Approval Order, and now requesting that the Settlement should be finally approved as fair, reasonable, and adequate; and good cause appearing therefore, the Court now makes the findings of fact and conclusions of law set forth in this Final Approval Order,

1 Order of Dismissal, and Judgement (“Final Approval Order”), which constitutes a final adjudication of
2 the above-captioned action on the merits, and

3 HEREBY ORDERS, ADJUDGES AND DECREES THAT:

4 1. All of the definitions contained in the Settlement Agreement shall apply to this Final
5 Approval Order and are incorporated by this reference as if fully set forth herein.

6 2. This Court has jurisdiction over the subject matter of this litigation and over all members
7 of the Class and over those persons and entities undertaking affirmative obligations under the Settlement
8 Agreement, pursuant to paragraph 53 of the Settlement Agreement.

9 3. This Court hereby approves the Settlement set forth in this Final Approval Order and finds
10 that the Settlement is, in all respects, fair, reasonable, adequate and in compliance with all applicable
11 requirements Rule 23 of the Federal Rules of Civil Procedure, the California and United States
12 Constitutions (including the Due Process Clause), and all other applicable laws, and in the best interests
13 of the parties and the Settlement Class. Any objections have been considered and are hereby overruled,
14 except as expressly set forth to the contrary herein. Accordingly, the Court directs the parties and their
15 counsel to implement and consummate the Settlement in accordance with the terms and conditions of all
16 portions of the Settlement Agreement.

17 4. Pursuant to Rule 23(b)(1) and (b)(2) of the Federal Rules of Civil Procedure, the Jail
18 Changes Settlement Class, as defined in the Settlement Agreement and the Preliminary Approval Order,
19 consists of all individuals incarcerated in Placer County Jail at any point during the CLASS PERIOD
20 (August 11, 2015 through August 14, 2018). The Jail Changes Settlement Class, as previously
21 provisionally certified, satisfies all the requirements contained in Rule 23(b)(1) and (b)(2), the California
22 and United States Constitutions, and any other applicable law as more fully set forth in the Court's
23 Preliminary Approval Order, which is incorporated into this Final Approval Order by this reference.

24 5. Pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure, the Force Settlement
25 Class, as defined in the Settlement Agreement and the Preliminary Approval Order, consists of all
26 individuals, except for the Related Actions Plaintiffs, incarcerated in Placer County Jail at any point
27 during the Class Period (August 11, 2015 through August 14, 2018) who submitted a Claim Form.

28 Pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure, the Force Settlement Award Class, as

1 defined in the Settlement Agreement and the Preliminary Approval Order, consists of those Force
2 Settlement Class Members whose Claim was deemed Compensable under the terms of the Settlement
3 Agreement. The Force Settlement Class and the Force Settlement Award Class, as previously
4 provisionally certified, satisfies all the requirements contained in Rule 23(b)(3) of the Federal Rules of
5 Civil Procedure, the California and United States Constitutions, and any other applicable law as more
6 fully set forth in the Court's Preliminary Approval Order, which is incorporated into this Final Approval
7 Order by this reference.

8 6. In total, one (1) Class Member objected to the Settlement and fourteen (14) Class
9 Members requested exclusion from the Settlement. Except for the individual claims of those who duly
10 requested exclusion from the Class (see ECF No. 80-28), this Court hereby dismisses with prejudice—
11 and with the same force and effect as if dismissed under Rule 41(b) of the Federal Rules of Civil
12 Procedure—each and every Released Claim (as defined in paragraph 52 of the Settlement Agreement)
13 against Defendants (as defined in paragraph 9 of the Settlement Agreement).”

14 7. Plaintiffs, including all Settlement Class Members, and their respective representatives,
15 assigns, heirs, executors, administrators, and custodians, are hereby forever barred and enjoined from
16 commencing, prosecuting or continuing, either directly or indirectly, against Defendants, including their
17 present or former elective and/or appointive boards, agents, servants, employees, consultants,
18 departments, commissioners, attorneys, officials and officers, and all other individuals and entities,
19 whether named or unnamed in the Action, any and all individual, representative or class claims or any
20 such lawsuit, action, arbitration, or other legal proceeding that he had or has related in any way to the
21 Released Claims as defined in the Settlement Agreement.

22 8. Plaintiffs, including all Settlement Class Members, and their respective representatives,
23 assigns, heirs, executors, administrators, and custodians, are hereby forever barred and enjoined from
24 commencing, prosecuting or continuing, either directly or indirectly, against Defendants, including their
25 present or former elective and/or appointive boards, agents, servants, employees, consultants,
26 departments, commissioners, attorneys, officials and officers, and all other individuals and entities,
27 whether named or unnamed in the Action, any and all individual, representative or class claims or any
28 such lawsuit, action, arbitration, or other legal proceeding that he had or has related in any way to the use

1 of excessive force in the Placer County Jail.

2 9. The Class Notice given to the Class was the best notice practicable under the
3 circumstances. Such Class Notice provided due and adequate notice of the proceedings and of the
4 matters set forth therein, including the proposed settlement set forth in the Settlement Agreement, to all
5 persons entitled to such notice and said notice fully satisfied the requirements of the Rule 23 of the
6 Federal Rules of Civil Procedure, as well as the California and United States constitutions, including the
7 requirement of due process.

8 10. The Claim Form given to the Class was fair and reasonable and fully complied with the
9 requirements of Rule 23 of the Federal Rules of Civil Procedure, as well as the California and United
10 States constitutions, including the requirement of due process.

11 11. The Award Calculation Methodology used to calculate the Settlement Awards was fair
12 and reasonable and fully complied with the requirements of Rule 23 of the Federal Rules of Civil
13 Procedure, as well as the California and United States Constitutions, including the requirement of Due
14 Process.

15 12. Members of the Settlement Class who have submitted a Compensable Claim pursuant to
16 the terms of the Agreement, and who are therefore members of the Force Settlement Award Class, as
17 defined in paragraph 21 of the Settlement Agreement, shall be entitled to a Settlement Award, calculated
18 pursuant to the terms of the Settlement Agreement, including pursuant to the Award Calculation
19 Methodology, and the Force Dispute Resolution Process. Within thirty (30) days of the Effective Date,
20 the Settlement Administrator shall mail Settlement Award checks to each Force Settlement Award Class
21 Member. If the total amount of the Settlement Awards exceeds the available balance in the Settlement
22 Fund, following deduction of the Incentive Fee, Fee and Expense Award, Administration Costs, and Tax
23 Expenses, each Settlement Award shall be reduced proportionately so that the total amount of Settlement
24 Awards does not exceed the available funds in the Settlement Fund. Should the total amount of the
25 Settlement Awards, Fee and Expense Award, Incentive Fee, Administration Costs, and Tax Expenses
26 paid by the Settlement Administrator be less than \$1,449,700.00, all remaining amounts, plus accrued
27 interest thereon, shall revert back to Placer County—*i.e.*, to be returned by the Settlement Administrator
28 to Placer County. This residue, if any, shall be returned to Placer County within 210 days following the

1 Effective Date.

2 13. Class Counsel are hereby awarded the sum of \$478,401.00 in legal fees and costs, which
3 sum the Court finds to be fair and reasonable in that the legal fees awarded are approximately 33% of the
4 Settlement Fund Class Counsel created and that the 33% accurately reflects the percentage figures of
5 contingency fees attorneys commonly receive in the marketplace. The fee and expense amounts shall be
6 paid by check to Law Office of Mark E. Merin and delivered to the Law Office of Mark E. Merin, 1010
7 F Street, Suite 300, Sacramento, CA 95814, from the Settlement Fund within 30 days after the Effective
8 Date. The Fee and Expense Award shall then be allocated among Class Counsel by Law Office of Mark
9 E. Merin in a fashion which, in the sole opinion of Class Counsel, fairly compensates Class Counsel for
10 their respective contributions to the prosecution of, and results obtained in, the Action.

11 14. Plaintiffs shall also be paid by check made payable to Beau Bangert and delivered to the
12 Law Office of Mark E. Merin, 1010 F Street, Suite, 300, Sacramento, CA 95814, an Incentive Fee of
13 \$50,000 from the Settlement Fund, with payment to be made within 30 days after the Effective Date.

14 15. Without affecting the finality of the Judgment in any way, this Court hereby retains
15 Continuing Jurisdiction over: (a) implementation of this Settlement, pursuant to Rule 23 of the Federal
16 Rules of Civil Procedure; (b) this action until the Judgment contemplated herein has become effective
17 and each and every act agreed to be performed by the Parties has been performed; and (c) the Parties and
18 all parties to the Settlement Agreement for the purpose of enforcing and administering the Settlement
19 Agreement. Furthermore, despite the limitations imposed by paragraphs 6 through 8 of this Final
20 Approval Order, neither Plaintiffs nor Defendants shall be barred from pursuing claims for breach of the
21 Settlement Agreement before this Court.

22 16. In the event that the Settlement Agreement does not become effective in accordance with
23 the terms of the Settlement Agreement, then this Final Approval Order shall be rendered null and void
24 and be vacated and the Settlement Agreement and all orders entered in connection therewith shall be
25 rendered null and void, the Class shall be decertified, and Plaintiff's complaint shall be reinstated as it
26 existed prior to the making of the Settlement Agreement. In that case, all communications, documents,
27 filings, negotiations and other actions taken by the Parties to negotiate and pursue a settlement through
28 the Settlement Agreement shall be considered confidential settlement communications which cannot be


1 used in evidence by any Party against another Party.

2 17. Nothing in this Final Approval Order or the Settlement Agreement shall be construed as
3 an admission or concession by any Party. Defendants have denied all of the Plaintiffs' allegations and
4 continue to deny such allegations. Plaintiffs continue to believe their allegations have merit. The
5 Settlement Agreement and this resulting Final Approval Order represent a compromise of disputed
6 allegations.

7 18. Except as expressly provided herein, all Parties are to bear their own costs.

8 IT IS SO ORDERED.

9 Dated: March 29, 2019

10
11 
12 KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

13 bangert.final
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28