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 10 REGINALD OLIVER, et al.

11 UNITED STATES DISTRICT COURT
 12 NORTHERN DISTRICT OF CALIFORNIA

13 REGINALD OLIVER, et al.,)	
)	MASTER CASE NO: C00-4599 TEH
14 Plaintiffs,)	OLIVER CASE NO: C08-04914 TEH
15 vs.)	
)	STIPULATION FOR APPROVAL OF
)	MOTION TO SETTLE NON-MONETARY
)	RELIEF CLAIMS, INCLUDING
)	PUTATIVE CLASS CLAIMS IN THE
17 CITY OF OAKLAND, et al.,)	MATTER OF OLIVER, ET AL V. CITY
)	OF OAKLAND, ET AL MASTER CASE
18 Defendants.)	NO. C00-4599 TEH AND OLIVER CASE
)	NO. C08-04914 TEH AND [PROPOSED]
)	ORDER

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 22 STIPULATED MOTION FOR APPROVAL OF NON-MONETARY RELIEF SETTLEMENT
 23 OLIVER V. CITY OF OAKLAND, CASE NO. C08-04914 TEH

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3 **I. INTRODUCTION**

4 The *Oliver, et al.* Plaintiffs commenced this action as a putative class action under
5 F.R.C.P. 23. The class was never certified and this matter did not proceed as a class action. The
6 Court previously approved the settlement of the monetary relief claims of the identified putative
7 class members and dismissed the claims of the absent class members without prejudice.
8 Following the settlement of the monetary relief claims, counsel for the parties continued to
9 negotiate the non-monetary relief settlement to eliminate any unconstitutional practices
10 pertaining to City employees seeking or executing remedy search warrants.

11 The parties have reached a tentative settlement agreement (“the Agreement”) of the
12 remaining non-monetary relief claims and are moving the Court for an Order approving the
13 settlement of the non-monetary relief claims. Counsel for both parties believe that the proposed
14 settlement of the non-monetary relief claims is fair and reasonable and hope that the procedures,
15 supervision, training and auditing requirements under the revised search warrant and confidential
16 informant policies will avoid a recurrence of the searches and seizures that led to the alleged
17 violation of the Plaintiffs’ Fourth Amendment rights in this case.

18 **A. THE AGREEMENT SHOULD BE DEEMED A SETTLEMENT OF THE**
19 **PUTATIVE CLASS MEMBERS CLAIMS PURSUANT TO FEDERAL RULE OF**
20 **CIVIL PROCEDURE 23(E)**

- 21 1. This action was commenced as a class action. The class was not certified.

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- 1 2. Until 2003, F.R.C.P. 23 (e) provided that a pre-certification settlement in a
2 putative class action was subject to the approval of the Court to ensure that the
3 settlement was not collusive or prejudicial. See e.g., *Diaz v. Trust Territory of the*
4 *Pacific Islands*, 876 F.2d 1401, 1408 (9th Cir.1989). In 2003, F.R.C.P. 23(e) was
5 amended as follows: "The claims, issues, or defenses *of a certified class* may be
6 settled, voluntarily dismissed, or compromised only with the court's approval."
7 (Emphasis added).
- 8 3. Rule 23, as amended, does not expressly state that approval of settlements in
9 uncertified cases is not required and the Ninth Circuit has not yet clarified this
10 issue. See, e.g., *Holmes v. Collection Bureau of America, Ltd.*, 2010 U.S. Dist.
11 LEXIS 5108 (N.D. Cal. 2010).
- 12 4. The Agreement resolves the injunctive relief claims and provides that the Court
13 retains jurisdiction for two years, during which time the parties may petition for
14 redress pertaining to compliance with the Agreement.
- 15 5. Due to the uncertainty of the current state of the law in the Ninth Circuit with
16 respect to whether Court approval is still required for pre-certification settlements
17 in putative class actions, the parties believe it is necessary to obtain the Court's
18 approval of the Agreement in order to establish that the settlement, without formal
19 notice to the putative class, is fair and reasonable and does not prejudice the
20 absent class members and was not the product of collusion if the Ninth Circuit

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1 determines that Court approval is required for settlements in putative class actions
2 which have not been certified.

3 6. The parties cite *Miller v. Hygrade Food Products Corporation*, 2002 U.S. Dist.
4 LEXIS 9329 (E.D. PA, May 23, 2002), in which the Court approved a pre-
5 certification *damages* settlement of a putative class action without notice to the
6 putative class where the claims of the absent putative class members were being
7 dismissed without prejudice. In that case, just as in the instant case, Plaintiffs'
8 counsel sought to identify as many of the individual, putative class members as
9 possible, obtained the agreement of all the identified class members to the
10 monetary relief settlement, and the Court previously determined that the proposed
11 monetary settlement terms were fair and reasonable under the circumstances.

12 13 **II. STATEMENT OF FACTS**

14 **A. BACKGROUND OF THE UNDERLYING CASE**

15 The *Oliver, et al.* Plaintiffs alleged that the subject case arose from a pattern and practice
16 by members of the Oakland Police Department of submitting warrant affidavits that contained
17 deliberately false or recklessly inaccurate information to the Alameda Superior Court in support
18 of the issuance of search warrants in narcotics cases. Plaintiffs further alleged that as a result of
19 customs, policies and practices of the City of Oakland, they suffered the violation of their rights
20 under the Fourth Amendment to the United States Constitution when they were subjected to
21 unreasonable searches and seizures.

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1 **B. TERMS OF AGREEMENT**

2 1. City of Oakland Departmental Training bulletin (“TB I-F”), Search Warrant Tracking
3 Sheet (“TF-3343”) and Drug analysis Examination Request (“TF-3341”) and Oakland
4 Chief of Police Anthony Batts’ Order dated November 12, 2010 (“Chief Batts’
5 Order”) are incorporated by reference into the terms and conditions of this Agreement
6 and the City agrees to comply in the entirety with the requirements of each of the
7 above set forth documents.

8 2. A true and accurate copy of each of these documents is attached to this Agreement.
9 Chief Batts’ Order is attached as Exhibit 1. TB I-F is attached as Exhibit 2. TF-3343
10 is attached as Exhibit 3 and TF-3341 is attached as Exhibit 4.

11 3. Compliance with the requirements of each of the above set forth documents in their
12 entirety, means, inter alia, that the City agrees to comply with all reviews, document
13 preservation and audit provisions set forth in these documents, including any review,
14 document preservation and audit requirements set forth in any document, for example
15 the City Confidential Informant Policy (DGO-04), that governs procedures that City
16 employees must follow when seeking a search warrant. DGO-04 is attached as
17 Exhibit 5, by way of example.

18 **a. A summary of some of the essential terms that are incorporated into and**
19 **made an integral part of this Agreement is:**

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- 1 • TB I-F requires, inter alia, supervisors and commanders to review the affidavit
2 prepared by her or his subordinate in support of each search warrant prepared.
- 3 • This review must be completed prior to allowing the affidavit to be submitted to a
4 judicial officer and, inter alia, must: 1. verify that the information contained in the
5 affidavit can be verified by the affiant; 2. seek to determine if there are any
6 misstatements, errors, inaccuracies or omissions of the factual basis for the
7 seeking the warrant.
- 8 • Prior to submitting a search warrant affidavit to a judicial officer, the reviewing
9 supervisor and commander must complete form TF-3343. Form TF-3343
10 documents that the supervisors and commanders have discharged their duties
11 pursuant to TB I-F to review the affidavits and other documents prepared by their
12 subordinates to seek a search warrant and that the documents comport with the
13 requirements of TB I-F.
- 14 • TB I-F also mandates the procedure to which City employees must adhere when
15 requesting that the Criminalistics Division conduct drug evidence testing.
- 16 • All requests for testing suspected narcotics related to an Oakland Police
17 investigation are made by the Narcotics Charging Unit. The Narcotics Charging
18 Unit must submit, in writing to the Criminalistics Division, all requests for drug
19 testing. The submission must be made using form TF-3341.
- 20 • The Criminal Investigation Division Commander is the custodian of records for
21 copies of search warrant affidavits, search warrants and other documents

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1 generated by the search warrant application process or directly pertaining to such
2 records.

- 3 • The City shall comply in the entirety with the review and audit provisions set
4 forth in TB I-F, including all forms, training requirements and Orders referenced
5 in TB I-F. The training requirement specifically requires POST search warrant
6 training for all sworn members of the Oakland Police Department.
- 7 • The City shall comply with Chief Batts' Order, establishing that supervisors and
8 commanders are responsible for ensuring their subordinates read and understand
9 the revised search warrant policy and that they access the POST Learning Portal
10 for the required search warrant training.
- 11 • Pursuant to Chief Batts' Order, the Commander of the Bureau of Investigation is
12 the "evaluation coordinator" responsible for assessing implementation and
13 compliance with TB I-F. Compliance includes forwarding the required six-month
14 evaluation report to the Chief of Police.
- 15 • The City shall provide Plaintiffs' counsel with copies of the relevant parts of the
16 Monthly Management Reports and annual internal and external audits
17 documenting monthly inspections and annual audits generated by or incident to
18 TB I-F, including summaries of the source documents, within 30 days of the
19 completion of any such audit and/or inspection for a period of two years
20 beginning the date that the court approves this Agreement.

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- 1 • The Court shall retain jurisdiction of *Oliver, et al* case for a period of two years
2 beginning the date on which the Court affixes its seal of approval to this
3 Agreement.
- 4 • During the time that the Court retains jurisdiction of *Oliver, et al*, either party may
5 petition the Court for relief as is appropriate. Plaintiffs' counsel has the right to
6 move the Court for appropriate remedies, including contempt, if there is legally
7 sufficient evidence establishing that City employees failed to fully implement TB
8 I-F; or have failed to comply with the terms of TB I-F, including failure to
9 conduct the required audits, reviews and/or inspections required by TB I-F.
- 10 • Failure to fully implement, enforce and comply with TB I-F, including failure to
11 fully implement the audit, review and/or inspect functions pursuant to TB I-F
12 shall, absent good cause, constitute a material breach of this Agreement, entitling
13 Plaintiffs' counsel to move the Court for any and all appropriate relief that the
14 Court may deem to be just and proper. Prior to making any such motion to the
15 Court, Plaintiffs' counsel shall meet and confer in good faith with counsel for the
16 City of Oakland to attempt to resolve the issues of concern to Plaintiffs.
- 17 • If Plaintiffs demonstrate that members of the City of Oakland have failed, absent
18 good cause, to implement, enforce, comply with and/or audit, inspect and/or
19 review the revised warrant policy, Plaintiffs' counsel shall, at the discretion of the
20 Court, be entitled, pursuant to motion, to an award of reasonable attorney fees and
21 costs. The City shall, at the discretion of the Court, be entitled to its reasonable

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1 attorney fees and costs to be paid by Plaintiffs if a motion brought by Plaintiffs'
2 counsel is not granted.

3 • The parties seek to avoid having to petition the Court for redress of issues arising
4 out of this Agreement. To that extent, the parties will endeavor to resolve any
5 such disputes informally and expeditiously.

6 • The parties expressly agree that any award of attorney fees and/or costs rests
7 solely at the discretion of the Court.

8 • If either party brings a motion arising out of this Agreement ^{and} ~~or~~ that motion is
9 withdrawn or if the issue that is the subject of such motion is resolved prior to
10 adjudication, then neither party shall be awarded attorney fees and each party
11 shall bear its own costs incident to prosecuting or responding to such motion.

12 • The City of Oakland agrees to provide Plaintiffs' counsel with copies of all audits,
13 reviews and inspections, within thirty days of the completion of any such audit,
14 review and/or inspection for a period of two years.

15 • Upon agreement by the parties or pursuant to Court Order, the City will provide
16 Plaintiffs with source documents that are necessary to assess compliance with this
17 Agreement.

18 • Source documents are the basic data recordings and compilations upon which all
19 documents pertaining to obtaining search warrants by the City employees is
20 based. Source documents are defined to include, but are not limited to: search
21 warrants affidavits, search warrants, chemical analysis reports from the lab, crime
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1 reports and such other documents that reflect fact intensive information gathered
2 and compiled in the course of business at, during or shortly after the initial stages
3 of field operations incident to seeking, executing or prosecution incident to
4 obtaining search warrants.

- 5 • The City reserves the right, absent court order, to withhold from disclosure to
6 Plaintiffs any document or material, the disclosure of which presents a reasonable
7 threat to the life or safety of persons or which could compromise the ability of the
8 City to use constitutionally permissible law enforcement methods.
- 9 • If the City withholds any documents or other materials from disclosure from the
10 Plaintiffs, the City shall provide Plaintiffs' counsel with a privilege log in a timely
11 manner which describes the materials being withheld and the reasons with
12 sufficient specificity to enable Plaintiffs' counsel to determine whether a motion
13 to compel the disclosure of such documents and/or materials is warranted. Any
14 such privilege log shall be produced to Plaintiffs' counsel at the time when the
15 City's disclosure would otherwise be required by this Agreement.
- 16 • The City reserves its right not to disclose all source documents to Plaintiffs on the
17 ground that to do so will be unduly administratively burdensome.
- 18 • The City will produce summaries of source documents attesting compliance as set
19 forth in this Agreement.
- 20 • The City agrees that, on or before February 18, 2011, it will provide Plaintiffs
21 with a description of the source materials that are not being produced. The
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1 description will be of sufficient specificity to enable Plaintiffs to seek additional
2 information if Plaintiffs believe it is necessary to so do.

- 3 • The parties agree to submit unresolved questions regarding disclosure of any
4 information, including, but not limited to source documents and confidential
5 information to the court for “in camera” inspection and resolution.

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7 **III. STIPULATION**

8 THE PARTIES, BY AND THROUGH THEIR COUNSEL OF RECORD, DO HEREBY
9 STIPULATE AND AGREE THAT the proposed non-monetary relief settlement, including
10 settlement of the putative class injunctive relief claims, described in the Agreement should be
11 approved and that the Court shall retain jurisdiction in this matter for a period of two (2) years
12 beginning the date on of Court approval, to entertain motions or requests by the parties
13 pertaining to compliance with the terms of the non-monetary relief settlement by the City of
14 Oakland and to grant relief as appropriate, to the parties.

15 IT IS SO STIPULATED:

16 Dated: February 9, 2011

/s/

JOHN L. BURRIS
Attorney for the Oliver Plaintiffs

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18 Dated: February 9, 2011

/s/

JAMES B. CHANIN
Attorney for the Oliver Plaintiffs

19
20 *February*
Dated: ~~January~~ 8, 2011

DAN LINDHEIM
City Administrator, City of Oakland

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Dated: January 27, 2011

Randolph W. Hall
RANDOLPH W. HALL
Attorney for Defendants

I hereby attest that I have on file all holograph signatures for any signatures indicated by a "conformed" signature (/s/) within this efiled document.

Dated: February 8, 2011

Randolph W. Hall
RANDOLPH W. HALL
Attorney for Defendants

ORDER

PURSUANT TO THE STIPULATION OF THE PARTIES,
IT IS SO ORDERED

Dated: February 14, 2011



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