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

DUNCAN ROY, *et al.*,

Plaintiffs,

vs.

COUNTY OF LOS ANGELES, *et al.*,

Defendants.

Case No. CV 12-09012 (FFMx)

[Honorable André Birotte, Jr.]

**~~PROPOSED~~ PRELIMINARY
APPROVAL ORDER; EXHIBITS**

Date: November 20, 2020
Time: 10:00 a.m.
Place: Courtroom 10A

1 The parties have submitted this joint Preliminary Approval Order of the
2 Class Settlement for the Court’s review. Upon review and consideration of the
3 Settlement Agreement (Exhibit A hereto) (the “Settlement Agreement”) and the
4 exhibits attached thereto made and entered into by counsel for the parties, who
5 represent that their respective clients have approved the settlement.

6 The Named Plaintiffs/Class Representatives are Alain Martinez-Perez and
7 Clemente de la Cerda. Plaintiffs are former prisoners of the Los Angeles County
8 Sheriff’s Department (“LASD”), whose claims arose from the LASD’s policy of
9 detaining inmates beyond the expiration of their state criminal charges on the basis
10 of immigration detainers (“detainers” or “ICE holds”), which are issued by
11 Immigration and Customs Enforcement (“ICE”) for suspected immigration
12 violations. Plaintiffs specifically challenged: 1) LASD’s practice of holding
13 inmates on detainers after they became due for release on criminal matters (i.e.
14 after they were acquitted or otherwise ordered released by a judge, or after serving
15 a jail sentence); 2) LASD’s practice of incarcerating arrestees with bail of less
16 than \$25,000 who, in the absence of an immigration detainer, would have been
17 released on their own recognizance pursuant to LASD policy; and 3) LASD’s
18 (disputed) practice of refusing to accept bail on behalf of inmates with immigration
19 detainers.

20 While Defendants continue to dispute the validity of Plaintiffs’ allegations,
21 the parties have agreed to enter into a Settlement Agreement to avoid the mutual
22 risks of litigation.

23 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:**

24 **I. PRELIMINARY APPROVAL OF SETTLEMENT**

25 1. This Order incorporates by reference the definitions in the Settlement
26 Agreement, a copy of which is attached to this Order as Exhibit A, and also
27 incorporates Exhibits B through D, thereto. All terms defined therein shall have
28 the same meaning in this Order.

1 2. The Settlement Agreement is hereby preliminarily approved, subject
2 to further consideration thereof at the Fairness Hearing provided for below. The
3 Court finds that the class settlement fund of \$14,000,000 and its proposed
4 allocation, and the other provisions contained within the Settlement Agreement,
5 are within the range of what would constitute a fair, reasonable, and adequate
6 settlement in the best interests of the Class as a whole, and that the terms of the
7 Settlement Agreement otherwise satisfy the Federal Rules of Civil Procedure 23(e)
8 and due process requirements.

9 **II. DEADLINES FOR NOTICE, FILING OBJECTIONS AND OPT-**
10 **OUTS, AND DATE OF FAIRNESS HEARING**

- 11 3. The Court has set the following dates for purposes of this class action:
- 12 (a) Final class identifying information, to the extent not already provided,
13 will be provided to Class Administrator Heffler Claims Group no later
14 than Friday, November 27, 2020;
- 15 (b) Friday, November 27, 2020: Class member website shall be
16 established and reflect preliminary approval order and provide a
17 means for Class Members to submit claims online;
- 18 (c) Friday, January 8, 2021 (or earlier): Class Notice shall be issued by
19 U.S. mail, and electronically by email, text message and social media
20 (for all Class Members whose contact information can be obtained);
21 skip tracing shall have been completed prior to that date.
- 22 (d) Friday, January 8, 2021 (or earlier): The LASD will advise on its
23 website of the existence of this Settlement and place a link on the
24 website to connect viewers to the Class Administrator's website. The
25 LASD will also post physical notices (whose content will be agreed
26 on) in all LA County jail facilities, including IRC, MCJ, Twin Towers
27 and CRDF.
- 28 (e) Pursuant to a separately filed motion and order thereon, physical

1 notices be posted at the Adelanto ICE Processing Center, NB18,
2 Musick, Theo Lacey and any other ICE detention facilities in
3 California.

4 (f) Friday, February 5, 2021: The Class Administrator will begin
5 periodically reminding Class Members through email/text blasts to
6 file claims;

7 (g) Friday, March 19, 2021: Filing of Plaintiffs' Motion for Award of
8 Attorneys' Fees and Costs;

9 (h) Friday, August 9, 2021: Deadline to file Class Members' Objections
10 to any aspect of the Settlement (including Plaintiffs' Motion for
11 Award of Attorneys' Fees and Costs): Must be postmarked or
12 received by that date;

13 (i) Friday, August 9, 2021: Deadline to opt-out: Must be postmarked or
14 received by that date;

15 (j) Friday, August 9, 2021: Deadline to file class claims: Must be
16 postmarked or received by that date;

17 (k) Friday, September 3, 2021: Deadline to file Opposition or Reply to
18 Objections (including to objections to award of attorneys' fees and
19 costs);

20 (l) Friday, September 3, 2021: Deadline to file proposed final approval
21 order and motion for final approval of settlement;

22 (m) Friday, October 1, 2021: Final Approval hearing.

23 4. In the event that the class notice is not communicated through text
24 message, email and regular mail by January 8, 2021, the subsequent dates
25 contained herein will be deferred for the number of additional days before such
26 notice occurs without the need for additional Court approval. However, the Court
27 must approve any change of the date of the Final Approval Hearing.

28 5. On September 9, 2016, the Court certified various damages classes.

1 Dkt. 184, 9/9/16 Class Cert Order. The class definitions were later modified to
2 conform to the liability determination. The classes are defined as follows:

3 **Fourth Amendment (“Gerstein”) Class:** All LASD inmates who were detained
4 beyond the time they are due for release from criminal custody, solely on the basis
5 of immigration detainers, excluding inmates who had a final order of removal or
6 were subject to ongoing removal proceedings as indicated on the face of the
7 detainer. (Class period: 10/19/2010 to June 6, 2014).

8 **Equal Protection Class (“No Money Bail Class”):** All LASD inmates on whom
9 an immigration detainer had been lodged, who would otherwise have been subject
10 to LASD’s policy of rejecting for booking misdemeanor defendants with bail of
11 less than \$25,000 (including Order of Own Recognizance (OR)). (Class period:
12 10/19/2010 to June 6, 2014).

13 **No-Bail-Notation Class:** All LASD inmates on whom an immigration detainer
14 had been lodged and recorded in LASD’s AJIS database, and who were held on
15 charges for which they would have been eligible to post bail. (Class period:
16 10/19/2010 to 10/18/2012).

17 6. The Parties have identified exclusively from Los Angeles County Jail
18 records Damages Class Members based on who qualifies as a Class Member. Only
19 persons so identified are Damages Class members. There are an estimated 18,571
20 Class Members and an estimated 71,580 unlawful detention days. (These are
21 estimated because identification of some *Gerstein* Class Members requires more
22 information than is contained in ICE data and will require reviewing LASD
23 booking jackets (which contain an inmate’s jail records) and locating the copy of
24 their immigration detainer form (I-247 form) LASD data.) Thus, class notice will
25 be sent to potential as well as confirmed *Gerstein* class members.

26 7. The “Class Damages Period” refers to the period between October 19,
27 2010 (two years before the filing of the complaint) and June 6, 2014.

28 **III. SETTLEMENT TERMS.**

8. In summary, the settlement’s basic terms, as they relate to Damages
Class Members, are that Defendants will provide payment of a total of Fourteen
Million dollars (\$14,000,000). From that amount, the following awards will be

1 made, subject to court approval:

- 2 a. Incentive awards to the two Named Plaintiffs in the amount of \$10,000
3 each (for a total of \$20,000).
- 4 b. Payment of \$1000 to each claiming Gerstein and Equal Protection (No
5 Money Bail) Class Member for each unlawful detention day, except that
6 no Class Member shall receive more than \$25,000 total (or 25
7 overdetention days) even if their unlawful detention days would
8 otherwise result in more.
- 9 c. In addition, No Notation Bail class members who attest that they had
10 access to financial resources to post bail if had been allowed to do so will
11 receive a flat \$250.
- 12 d. No claiming Class Member will receive less than \$250.
- 13 e. The “Remainder” of the Class Fund, a term referring to the amount
14 available for distribution to Class Members, refers to the amount in the
15 Class Fund *after* payment of attorney’s fees and costs, litigation costs,
16 and mediation costs. The Remainder is a figure used for purposes of
17 determining whether *cy pres* payments (discussed below) are made. The
18 Remainder is estimated to amount to approximately \$8,733,334, based on
19 the estimate of the maximum fees to be sought (1/3 of the \$14,000,000
20 Class Fund), estimated litigation costs (\$200,000) and estimated class
21 administration costs (\$400,000).
- 22 f. Each Class Member’s share of the Remainder of the class fund depends
23 on the number of Class Members who make Timely Claims, multiplied
24 by the number of unlawful detention days attributable to each claiming
25 Class Member. This will be converted into a point system, with one point
26 per unlawful detention day. To the extent that fewer Class Members
27 make a claim, the money per Class Member making a Timely Claim will
28 increase proportionately, up to a per-day maximum of \$1000 and a

1 maximum total payment per Class Member of \$25,000. See Settlement
2 Agreement, ¶¶ 21-25.

- 3 g. Should the Remainder not be consumed by the points allocated to
4 claiming Class Members, limited as indicated in sub-paragraph (b), any
5 residual funds will be allocated as *cy pres* payments as set forth in §VII,
6 below.
- 7 h. The parties and the Court recognize that there is the possibility of an
8 unusually low claims rate in this case, due in large part to the fact that a
9 significant percentage of Class Members were transferred to ICE custody
10 and subsequently deported. These individuals are likely living abroad and
11 may be difficult or impossible to locate. Even those Class Members who
12 were released (and not deported) may be reluctant to come forward to
13 pursue claims against the LASD. Accordingly, as a form of indirect
14 compensation to absent Class Members, if there are funds left after
15 paying out the maximum Class Member compensation (\$1000 per day of
16 overdetention, capped at \$25,000 for any Class Member), the balance of
17 the available funds will be *cy pres* funds split 50/50 between
18 organizations/activities designated by Plaintiffs (and reasonably approved
19 by the County) and organizations/activities designated by the County
20 (and reasonably approved by the Plaintiffs).
- 21 i. Although each party designates the recipient of 50% of *cy pres* funds,
22 those funds may only be used to fund Los Angeles County programs that
23 provide legal representation to persons facing immigration consequences
24 because of a criminal arrest or conviction in Los Angeles County, and
25 must *augment* (emphasis in settlement agreement) the funding already
26 provided by the County of Los Angeles to support activities that these
27 programs would not be able to pursue without the *cy pres* funds. The
28 parties are to work in good faith to reach an agreement regarding the

1 organizations or programs to receive those funds based on the foregoing
2 criteria. If they cannot agree, the Parties will separately brief the Court,
3 and the Court will determine the organizations and/or programs to which
4 the *cy pres* funds will be paid, consistent with identified criteria

5 j. The settlement is non-reversionary. None of the Class Fund shall revert
6 to the LASD or be used to fund LASD programs. No *cy pres* funds may
7 be used to supplant or replace County funding already provided by the
8 Board of Supervisors.

9 k. Payment of the third-party class settlement administration costs to the
10 chosen class administrator, Heffler Claims Group, estimated at a
11 maximum of approximately \$350,000. In addition to the Claims
12 Administrator, Plaintiffs anticipate costs of up to \$50,000 for
13 community-based outreach in Mexico and Central America. However,
14 depending on the response rate to the notice, Plaintiffs' counsel may
15 request additional outreach, which would increase the cost.

16 l. Plaintiffs will file a motion for attorney's fees and costs to be approved
17 by the court. The settlement agreement provides that Plaintiffs' counsel
18 may request up to 1/3 of the class fund but not more, plus reimbursement
19 of litigation costs. The final determination of the appropriate attorney's
20 fee will be made by the Court.

21 m. The remainder of the Class Fund (estimated as a minimum of over \$8
22 Million assuming class notice related costs do not exceed \$400,000) shall
23 be distributed to the Class Members (including Named Plaintiffs/Class
24 Representatives) under the formula contained in sub-paragraph Section
25 VI, ¶¶ 21-25 of the Settlement Agreement (Exhibit A to the proposed
26 Preliminary Approval Order), or to *cy pres* funding.

27 9. Once the claims period closes, the claims administrator will calculate
28 the total points for each Class Member and total points for all claiming Class

1 Members who submitted timely claims. Each Class Member's recovery will be
2 determined based on that Class Member's percentage of the total points for all
3 Class Members, subject to the maximum per diem and per Class Member
4 compensation provided in the Settlement Agreement.

5 **IV. CLASS ADMINISTRATOR**

6 10. The Court approves the retention of Heffler Claims Group as Class
7 Administrator, to administer the distribution of the Class and Settlement Notice
8 and publication of the Class and Settlement Notice, and to distribute the proceeds
9 of the settlement to all eligible Class Members pursuant to the Plan set out in the
10 Settlement Agreement (Exhibit A) should the Court grant final approval. Exhibit
11 D (the Class Administrator bid) includes Heffler's qualifications, notice proposal
12 and pricing.

13 11. The Class Administrator shall preserve all written communications
14 from Class Members in response to the Class and Settlement Notice at least until
15 December 31, 2024, or pursuant to further order of the Court. All written
16 communications received by the Class Administrator from Class Members relating
17 to the Settlement Agreement shall be available at all reasonable times for
18 inspection and copying by Counsel for the Parties, and copies shall be regularly
19 provided to Counsel for the Parties.

20 12. The Class Administrator shall be compensated from the Class
21 Damages Fund for its services in connection with notice and administration and
22 for the costs of giving mailed and published notice, and the other services it
23 performs, pursuant to such orders as the Court may enter from time to time.

24 13. Within two weeks after this Preliminary Approval Order is signed by
25 the Court, the County of Los Angeles shall deposit or cause to be deposited into an
26 account designated by the Class Administrator by check sent by overnight mail an
27 amount of same day available funds equal to the amount requested by the Class
28 Administrator to cover the costs of notice as provided herein, and will provide

1 additional funds for its administrative work pursuant to the terms of its accepted
2 bid, a copy of which is attached as Exhibit D. Prior to entry of the Final Order of
3 Approval of Settlement, the Class Administrator will not accrue any costs not
4 itemized in Exhibit D unless agreed to by the Plaintiffs' counsel and approved by
5 the Court. If the Court does not enter the Final Order of Approval and Settlement,
6 then all such funds paid to the Class Administrator, to the extent they are available
7 after payment of all accrued class administration expenses, shall be returned to
8 Defendants.

9 14. If this settlement does not go through for any reason, a new settlement
10 is not reached, the case goes to trial, and Plaintiffs are not successful in their
11 prosecution of the case, Defendants shall not seek reimbursement from Plaintiffs
12 of class administration funds paid under this settlement.

13 **V. CLASS COUNSEL**

14 15. Barrett S. Litt and Lindsay Battles of Kaye, McLane, Bednarski &
15 Litt, Jennifer Pasquarella and Jessica Bansal of the ACLU of Southern California,
16 and Mark Fleming of the National Immigrant Justice Center and Chris Newman of
17 the National Day Laborer Organizing Network are hereby confirmed as counsel
18 for the Class Representatives and the Class ("Class Counsel").

19 16. Class Counsel are authorized to act on behalf of the Class with respect
20 to all acts or consents required by or which may be given pursuant to the
21 Settlement, and such other acts reasonably necessary to consummate the
22 Settlement.

23 **VI. CLASS AND SETTLEMENT NOTICE**

24 17. Class Counsel shall provide the Class and Settlement Notice to the
25 Class Administrator for distribution according to the schedule set forth above.
26 Such notice shall be in substantially the form as proposed in Exhibit B to the
27 Settlement Agreement and shall be communicated as provided in ¶ 3 (c) above
28 (providing for both text message, email and regular mail notice); returned mail

1 shall be subject to follow up mailings after appropriate searches of the available
2 databases. No notice by publication shall be required because such notice has not
3 proven effective at reaching Class Members, and the resources are better spent on
4 attempting to reach Class Members through electronic email and other means of
5 electronic outreach. See revisions to F.R.Civ.P 23 (c)(2)(B) effective December
6 2019 (acknowledging that notice “may be by ... electronic means, or other
7 appropriate means” in addition to or in lieu of United States mail).

8 18. To the extent not already provided, Defendants will provide the name,
9 address, social security number, date of birth, driver's license information, and any
10 other identifying information of Damages Class Members, to Plaintiffs’ counsel,
11 who will transmit it to the Class Administrator. Such information shall be
12 confidential and may not be disclosed to anyone except counsel of record, the
13 Class Administrator, and designated representatives of Defendants. Should the
14 Defendants discover at any time any additional information containing relevant
15 class information, they shall promptly provide it to Plaintiffs’ counsel and the
16 Class Administrator.

17 19. At least seven days before the Fairness Hearing, Class Counsel and/or
18 the Class Administrator shall serve and file a sworn statement by the Class
19 Administrator attesting to compliance with the provisions of this Order governing
20 Class and Settlement Notice. This shall include a list of all people who have opted
21 out of the class.

22 20. The Court approves the Class and Settlement Notice attached as
23 Exhibit B.

24 21. The Court approves the Claim Form attached as Exhibit C.

25 22. The Court approves the Class Administrator Bid attached as Exhibit
26 D.

27 23. The Court finds that the notice required by the foregoing provisions of
28 this Order is the best notice practicable under the circumstances and shall

1 constitute due and sufficient notice of the Settlement and the Fairness Hearing to
2 all Class Members and other persons affected by and/or entitled to participate in
3 the settlement, in full compliance with the notice requirements of Rule 23 Federal
4 Rules of Civil Procedure and due process.

5 **VII. THE FAIRNESS HEARING**

6 24. A Fairness Hearing shall be held on October 1, 2021, to consider: (a)
7 the fairness, reasonableness, and adequacy of the Settlement; (b) whether a Final
8 Order of Approval and Settlement should be entered in its current or some
9 modified form; and (c) the application by Class Counsel for attorneys' fees and
10 expenses (the "Fee Motion").

11 25. By September 3, 2021, Plaintiffs shall submit a proposed Final
12 Approval Order, which shall be approved by Defendants. That proposed order will
13 contain the final provisions the Parties seek the Court to finally approve and the
14 Parties' proposed court orders related to any objections that have been filed. It will
15 not be necessary to file a separate motion for final approval.

16 26. The date and time of the Fairness Hearing shall be set forth in the
17 Class and Settlement Notice but shall be subject to adjournment by the Court
18 without further notice to the Class Members other than that which may be posted
19 at the Court and on the Court's web site.

20 27. Any Class Member who objects to the approval of the Settlement
21 Agreement, the Fee Motion, the Named Plaintiffs' incentive awards or the
22 proposed allocation of damages among Class Members may appear at the Fairness
23 Hearing and show cause why any one of the foregoing should not be approved as
24 fair, reasonable, and adequate, and why the Final Order of Approval and
25 Settlement should not be entered, except that no such Class Member may appear at
26 the Fairness Hearing unless the Class Member, no later than August 6, 2021 [the
27 date to file objections to the Settlement] (a) files with the Clerk of the Court a
28 notice of such person's intention to appear, a statement that indicates the basis and

1 grounds for such person's objection to the Settlement Agreement, the Fee Petition,
2 the Named Plaintiffs' incentive awards or the proposed allocation of damages
3 among Class Members, and all documentation, papers, or briefs in support of such
4 objection; and by the same date (b) serves upon all Counsel to the Parties (as listed
5 in the Class Notice), either in person or by mail, copies of such notice of intention
6 to appear, statement of objections and all documentation, papers, or briefs that
7 such person files with the Court. The required documentation shall include the
8 information requested on the Claim Form. Final determination of whether any
9 such objector is a Class Member who has standing to object shall be determined
10 solely from the Defendants' records, from which the list of Class Members has
11 been compiled. In the absence of the timely filing and timely service of the notice
12 of intention to appear and all other materials required by this paragraph, any
13 objection shall be deemed untimely and denied.

14 28. Pending final approval of the Settlement Agreement, no Class
15 Member shall, either directly, representatively, or in any other capacity,
16 commence, prosecute against any Defendant or participate in any action or
17 proceeding in any court or tribunal asserting any of the matters, claims, or causes
18 of action that are to be released by the Settlement Agreement upon final approval.

19 29. In the event of final approval of the Settlement Agreement, all
20 Damages Class Members (except those who have opted out, who by virtue of
21 opting out are no longer Class Members) shall be forever enjoined and barred
22 from asserting any of the matters, claims or causes of action released by the
23 Settlement Agreement, and all such Class Members shall be deemed to have
24 forever released any and all such matters, claims and causes of action as provided
25 for in the Settlement Agreement.

26 30. In the event of the final approval of the settlement, the Court will
27 issue an order of final approval of the settlement, which order will provide for the
28 dismissal of the complaint with prejudice and entry of judgment to that effect.

1 **VIII. OTHER PROVISIONS**

2 31. The Court approves the parties' plan to use text messages to both
3 issue class notice and reminder messages for those Class Members for whom the
4 Claims Administrator is able to locate mobile phone numbers. In sending notice
5 and reminders via text, recipients shall have the ability to "unsubscribe"
6 themselves from further messages.

7 32. To the extent not otherwise specifically addressed in this Order,
8 Defendants and Class Counsel shall comply with the provisions of the Settlement
9 Agreement.

10 33. In the event the Settlement is not finally approved or is otherwise
11 terminated in accordance with the provisions of the Settlement Agreement, the
12 Settlement and all proceedings had in connection therewith shall be null and void,
13 except insofar as expressly provided to the contrary in the Settlement Agreement,
14 and without prejudice to the *status quo ante* rights of Plaintiffs, Defendants, and
15 Class Members.

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17 DATED: November 25, 2020

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19 _____
20 ANDRE BIROTTE JR.
21 UNITED STATES DISTRICT JUDGE
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