


CITY ATTORNEY'S OFFICE

OAKLAND CITY COUNCIL

RESOLUTION NO. _____ C.M.S.

RESOLUTION AUTHORIZING AND DIRECTING THE CITY ATTORNEY TO COMPROMISE AND SETTLE THE CASE OF SCOTT MORRIS; SARAH BELLE LIN; BRIAN KRANS, MICHAEL KATZ AND OAKLAND PRIVACY V. CITY OF OAKLAND; OAKLAND POLICE DEPARTMENT; SUSAN MANHEIMER, IN HER OFFICIAL CAPACITY; AND ED REISKIN, IN HIS OFFICIAL CAPACITY, ALAMEDA COUNTY SUPERIOR COURT CASE NO. RG20072029, CITY ATTORNEY'S FILE NO. X05223, IN THE AMOUNT OF ONE HUNDRED TWENTY-SEVEN THOUSAND FIVE HUNDRED DOLLARS AND NO CENTS (\$127,500) AS A RESULT OF AN ALLEGED PUBLIC RECORDS ACT VIOLATION (OAKLAND POLICE DEPARTMENT – PUBLIC RECORDS ACT)

WHEREAS, Petitioners in this matter filed a Petition for Writ of Mandate and Class Action Complaint, alleging, individually and on behalf of a putative class, that the City of Oakland and Oakland Police Department violated the Public Records Act, Government Code sections 6250 et seq., and Oakland Sunshine Ordinance, Municipal Code sections 2.20.010 et seq., with respect to Oakland Police Department Records; and

WHEREAS, a requestor who prevails in a Public Records Act suit is entitled to costs and reasonable attorneys' fees under Government Code section 6259(d); and

WHEREAS, the City has considered all evidence, litigation costs, and risk; and

WHEREAS, the City has determined, without any admission of wrongdoing, to compromise and settle the matter on a class-wide basis, pending preliminary and final settlement approval from the court, for \$127,500 in costs in attorneys' fees and other non-monetary relief, including an agreement to produce records in response to outstanding Public Records Act requests and to make prompt records determinations in response to future requests, as set out in the attached agreement; now, therefore, be it

RESOLVED: That the City Attorney is authorized and directed to compromise and settle the case of Scott Morris; Sarah Belle Lin; Brian Krans, Michael Katz and Oakland Privacy v. City of Oakland; Oakland Police Department; Susan Manheimer, in her official capacity; and Ed Reiskin, in his official capacity, Alameda County Superior Court No. RG20072029; and be it

FURTHER RESOLVED: That the City Attorney is further authorized and directed to take whatever steps that may be necessary to effect said settlement.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - FIFE, GALLO, KALB, KAPLAN, REID, TAYLOR, THAO AND PRESIDENT
FORTUNATO BAS

NOES –

ABSENT –

ABSTENTION –

ATTEST: _____
ASHA REED
City Clerk and Clerk of the Council of the City of
Oakland, California

CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE

Scott Morris, et al. v. City of Oakland, et al.
Case No. RG20072029
Superior Court of California, County of Alameda

This Document is subject to Public Disclosure

This class action settlement agreement (“Agreement” or “Settlement”) is entered into between Defendants CITY OF OAKLAND, OAKLAND POLICE DEPATRMTNET, SUSAN MANHEIMER and ED REISKIN (“Defendants”); Plaintiffs SCOTT MORRIS, SARAH BELLE LIN, BRIAN KRANS, MICHAEL KATZ, and OAKLAND PRIVACY (“Plaintiffs”) on behalf of a putative class, (collectively the “Parties,” or each singularly a “Party”); and counsel for Plaintiffs THE MEADE FIRM and REISER LAW (“Class Counsel”).

RECITALS

This Agreement is made with reference to the following facts:

A. On August 19, 2020 Plaintiffs filed a Class Action Complaint in the Superior Court of California, County of Alameda, Case No. RG20072029, under the Public Records Act (“PRA”), Government Code section 6250 *et seq.*, the Oakland Sunshine Ordinance, Municipal Code section 2.20.010 *et seq.*, and Code of Civil Procedure section 526A. Plaintiffs, on behalf of a putative class, sought to compel Defendants to respond to an alleged backlog of more than 5,700 outstanding PRA requests. The Plaintiffs alleged that Defendants unlawfully provide records requesters with boilerplate responses to PRA requests rather than provide an individualized records determination response as required under Gov. Code section 6253(c). Plaintiffs further alleged that Defendants provide boilerplate estimated deadlines for production that are routinely extended and which Defendants have no expectation of satisfying. Plaintiffs further alleged that Defendants’ failure to properly respond to thousands of PRA requests violated the Oakland Sunshine Ordinance and sought taxpayer standing to require Defendants to clear the backlog. The Plaintiffs sought to represent a class of records requesters to require Defendants to provide a proper records determination to the backlog of outstanding records requests and promptly provide documents where applicable.

B. On October 14, 2020, Defendants answered, denying most material allegations in Plaintiffs’ complaint. Defendants raised numerous affirmative defenses, including that the action could not be maintained as a class.

C. Plaintiffs obtained written discovery responses. On November 17, 2020, Plaintiffs propounded their first request for production of documents. Defendants responded on January 11, 2021. Plaintiffs also propounded their first requests for admission, first set of special interrogatories, second request for production of documents and first set of form interrogatories on March 3, 2021. Defendants responded to the requests for admission, second request for production of documents and special interrogatories on April 19, 2021, and responded to the form interrogatories on April 26, 2021.

D. Defendants ultimately produced over 28,000 pages of documents in response to Plaintiffs' requests for production.

E. Plaintiffs conducted depositions of personnel from the Records Division of the Oakland Police Department on May 6 and May 17, 2021.

F. Plaintiffs have not filed any dispositive motions in the case and have not yet sought class certification.

G. Between May and September 2021, the Parties engaged in extensive settlement discussions by phone and over email. As a result of those discussions, and the ongoing risks and expense to all Parties should this Action continue, the Parties desire to settle this lawsuit on the terms and conditions stated herein, subject to the Court's preliminary and final approval.

H. After due investigation and after carefully considering the relevant circumstances, including, without limitation, analyzing the relevant facts and applicable law, recognizing the burdens, risks, uncertainties, and time and expense of litigation, and the significant relief the Settlement provides the Class, Class Counsel and Plaintiffs have concluded that it is in the best interests of Plaintiffs and the Class to enter into this Settlement to avoid the uncertainties of litigation and to assure that the benefits reflected herein are obtained for Plaintiffs and the Class and further, that Class Counsel consider this Settlement is a fair, equitable, and just resolution of the dispute.

I. The Defendants have not conceded or admitted any liability and have denied, and continue to deny, each and every one of Plaintiffs' claims. Defendants have denied and continue to deny all charges of wrongdoing or liability against them arising out of any of the conduct, statements, acts or omissions alleged in the complaint and maintain that if this lawsuit had proceeded that they would have defeated class certification and prevailed against Plaintiffs.

J. Defendants have concluded, despite their belief that they are not liable for the claims asserted against them in the Complaint, that they will enter into this Settlement Agreement to avoid further expense, inconvenience, and the distraction of burdensome and protracted litigation, and thereby to put to rest this controversy with respect to Plaintiffs and the Class, and to avoid the risks inherent in litigation.

NOW THEREFORE, in consideration of the covenants and promises herein set forth, the Parties hereto agree as follows, subject to preliminary and final approval of the Court:

TERMS

1. **Incorporation of Recitals.** Paragraphs A through J of the Recitals are incorporated as though fully set forth herein.
2. **Definitions.**
 - 2.1 “Action” means *Morris, et al. v. City of Oakland, et al.*, Alameda Superior Court Case number RG20072029.
 - 2.2 “Agreement” or “Settlement” means this Class Action Settlement Agreement.
 - 2.3 For purposes of this Settlement, “Class” or “Settlement Class” means all Persons with a pending records request which was submitted after August 19, 2017 and which has been outstanding with the Oakland Police Department for more than 20 days at the time of Preliminary Approval. The Class excludes the Petitioners’ PRA requests at issue in *BondGraham, et al. v. City of Oakland, et al.*, Alameda County Superior Court Case No. RG20071657, and any other Opt-Outs.
 - 2.4 “Class Counsel” means The Meade Firm p.c. and Reiser Law, P.C.
 - 2.5 “Class Member” means any member of the putative Class identified in paragraph 2.3 that Plaintiffs and Class Counsel sought to represent.
 - 2.6 “Claim” or “Claims” means the allegations raised by Plaintiffs and Class Members that OPD’s failure to respond to outstanding PRA requests violates the PRA and the Oakland Sunshine Ordinance.
 - 2.7 “Court” means the Superior Court of Alameda County.
 - 2.8 “Fairness Hearing” means the hearing to be conducted by the Court at least ninety (90) days after the Motion for Preliminary Approval is filed and after Notice to the Class pursuant to the Notice Program, for the purpose of considering Final Approval of this Settlement.
 - 2.9 “Final Approval Order” means the order to be entered by the Court in this Action finally approving the Settlement and expressly incorporating this Agreement without material modification.
 - 2.10 “Notice” means the notice to the Settlement Class approved by the Court and distributed pursuant to the Notice Program. The Parties will agree to a Notice Program to be presented to the Court at the Preliminary Approval Hearing.
 - 2.11 “Notice Program” refers to the plan proposed by Class Counsel and agreed to by the Defendants and approved, without material modification, by the Court, to give

Class Members adequate notice of this Settlement. The Parties anticipate that Notice will be provided to the Class primarily through NextRequest, Oakland's online PRA portal where most Class Members submitted their PRA requests. Where Class Members cannot be contacted through NextRequest, the Parties will propose reasonable alternative Notice.

2.12 To "Object" refers to an objection by any Class member to the proposed Settlement by the deadlines set by the Court.

2.13 "OPD" means the Oakland Police Department.

2.14 To "Opt-Out" means for a Person who would otherwise remain a Class Member of the Settlement Class to successfully request exclusion from the Class in accordance with the procedures and deadlines set by the Court. The term "Opt-Out(s)" as a noun refers to Persons who have successfully Opted-Out of the Class and who have not later decided to withdraw their decision to Opt-Out in order to remain in the Class.

2.15 "Person" means a natural person, marital community, corporation, partnership, limited partnership, limited liability company, mutual company, association, joint stock company, estate, legal representative, trust, unincorporated organization, government official, entity, department or agency (whether federal, state, local or other), public service corporation, and any other type of legal entity.

2.16 "PRA" means the Public Records Act, Government Code sections 6250 *et seq.*

2.17 "Preliminary Approval Order" means the Court's order preliminarily approving the Settlement, and "Preliminary Approval" refers to that order.

2.18 "Records Determination" means the communication an agency must send a PRA requester under Government Code section 6253(c) within 10 days (or up to 24 days if an extension is invoked), and as further detailed in sections 7.5 and 7.6.

2.19 "Released Claims" means any and all manner of claims, demands, rights, actions, suits, causes of action (whether class, individual or otherwise), or liabilities of any nature whatsoever that each Plaintiff or any Class Member (excluding Opt-outs) ever had, now has or hereafter can, shall or may have, arising out of or related in any way in whole or in part to any facts, circumstances, acts, or omissions arising out of or related to each of their individual PRA requests submitted to OPD which were outstanding more than 20 days prior to the Preliminary Approval Order, including but not limited to claims related to the timeliness of OPD's response, the timeliness of OPD's production of documents, and the sufficiency of OPD's initial records determination pursuant to Government Code section 6253(c). "Released Claims" also includes any and all claims, demands, rights, actions, suits, causes of action or liability arising out of the adequacy of a past or future Records Determination that satisfies the criteria in Section 7.5, except the estimated timeframes in Section 7.5(e). "Released Claims" excludes claims that Plaintiffs or putative Class Members may have under the PRA or Oakland Sunshine Ordinance against other departments or agencies within the City of Oakland. "Released Claims"

also excludes those non-waived claims described in section 23. Nothing herein shall be construed as a release of any claims that the Plaintiffs or any Class Member may have regarding future PRA requests submitted after 20 days prior to the Preliminary Approval Order relating to matters not governed by section 7.5. For purposes of illustration, “Released Claims” do not include whether any exemptions to disclosure communicated to any Class Member are proper, nor whether OPD’s estimated timeframes for production under section 7.5 are sufficiently “prompt.” No Plaintiff nor individual Class Member may submit a PRA request that duplicates, in whole or in part, their individual outstanding PRA request that was pending more than 20 days prior to the Preliminary Approval Order.

2.20 “Settlement Administration Costs” means all costs associated with the implementation and administration of this Settlement, including, without limitation, the costs of providing Notice to the Class. Notwithstanding the foregoing, Settlement Administration Costs do not include payments to Class Counsel.

2.21 “Unknown Claims” means any Released Claim that a Plaintiff and/or putative Class Member does not know or suspect to exist in his or her favor at the time of the release that if known by him, her or it, might have affected his, her or its settlement with and release of the Released Claims, or might have affected his, her or its decision not to object to this Settlement. Such Unknown Claims include claims that are the subject of California Civil Code § 1542 and equivalent, similar, or comparable laws or principles of law. California Civil Code § 1542 provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

The Parties acknowledge that they have read all of this Agreement, including the above Civil Code section, that they fully understand both the Agreement and the Civil Code section, and that they have had the opportunity to consult with legal counsel regarding its meaning and effect. The Parties expressly waive any benefits and rights granted to them pursuant to California Civil Code section 1542 as well as any other state or federal statute or common law principle of similar effect of any applicable jurisdiction.

3. **Preliminary Approval.**

3.1 Promptly after this Agreement is fully executed by all signatories, the Class Representatives shall move the Court for the entry of a Preliminary Approval Order. The Parties will endeavor to cooperate so that Plaintiffs can file the motion by November 15, 2021 for a hearing currently reserved for December 9, 2021. Each of the Parties will approve the final language for the [Proposed] Preliminary Approval Order before it is submitted to the Court, which approval shall not be unreasonably withheld or delayed.

3.2 The Motion for Preliminary Approval shall include the following, among other things:

- (a) A requested Notice Program;
- (b) A request for a preliminary finding that this Settlement is fair, reasonable and adequate;
- (c) A request to schedule a date for a Fairness Hearing at least ninety (90) days after Preliminary Approval to determine whether the proposed Settlement should be approved as fair, reasonable, and adequate to the Class;
- (d) A requested procedure for Class Members to Object to the proposed Settlement, and the setting of a deadline for the filing of any such Objections;
- (e) A recital, and request to the Court to find, that the proposed form of and method for dissemination of Notice to the Class constitutes valid, due and sufficient notice to the Class, constitutes the best notice practicable under the circumstances, and complies fully with the requirements of California Rule of Court 3.766;
- (f) A requested procedure and the establishment of a deadline for Persons to Opt-Out from the Class;
- (g) The entry of a stay of all proceedings in this Action pending Final Approval, except as may be necessary to implement the Settlement or comply with the terms of the Settlement; and
- (h) A request that the Court enjoin Plaintiffs and putative Class Members (other than Opt-Outs) from commencing, instituting, or continuing to prosecute any action or any proceeding in any court of law or equity, arbitration tribunal, administrative forum, or other forum of any kind worldwide based on the Released Claims after the Court enters Preliminary Approval of the Settlement and while the Settlement is pending Final Approval.

4. **Notice Program.**

4.1 Plaintiffs will submit the Notice Program to the Court for approval. The Notice Program shall be fashioned to give members of the Class reasonable notice of the material terms of this Settlement in accordance with governing law and the requirements of due process.

4.2 In advance of the Motion for Preliminary Approval, Defendants shall supply Class Counsel with a declaration from Vijay Norfleet, Police Services Manager with the Oakland Police Department, that most PRA requesters with the City of Oakland who have an outstanding PRA request are registered on NextRequest and that notice to such Class Members through NextRequest is reasonably calculated to reach them. Defendants shall also supply to Plaintiffs a list of all available contact information for Class Members upon Preliminary Approval to ensure adequate notice to Class Members not registered on Nextrequest.

4.3 Settlement Administration Costs, including the costs of the Notice Program, shall be paid for by Defendants.

5. **Objections and Opt-Outs.**

5.1 Any Class member may Opt-Out of the proposed Settlement or object to the proposed Settlement, or to any aspect thereof pursuant to procedures and deadlines ordered by the Court in its Preliminary Approval Order. Unless otherwise ordered by the Court, Objections shall be sent to Class Counsel, the Defendants and the Court. Unless otherwise ordered by the Court, requests to Opt-Out shall be submitted to Class Counsel, who will provide copies to the Court and the Parties in advance of the Final Approval Hearing.

5.2 The Defendants may not terminate this Agreement based on Opt-Outs. Class Counsel will act in good faith and consistent with all applicable laws and ethical duties to minimize the number of Opt-Outs from the Settlement.

6. **Final Approval Order.**

6.1 On a date to be set by the Court for the Fairness Hearing, Plaintiffs and Class Counsel will seek from the Court a Final Approval Order granting Final Approval of the Settlement.

6.2 Each of the Parties will approve the final language for the [Proposed] Final Approval Order before it is submitted to the Court with the motion for Final Approval, which approval shall not be unreasonably withheld or delayed.

6.3 The motion for Final Approval will request the following determinations by the Court, among other things:

- (a) That this Action is properly maintained as a class action for settlement and enforcement purposes only;
- (b) That Plaintiffs and Class Counsel fairly and adequately represent the interests of the Class;
- (c) That the Notice Program constituted the best notice practicable under the circumstances and complies in all respects with the requirements of California Rule of Court 3.766, and otherwise satisfied the requirements of Due Process, the California Code of Civil Procedure, the California Rules of Court, and any other applicable laws;
- (d) That the Settlement is fair, reasonable and adequate within the meaning of California Rule of Court 3.769(g), and that the Defendants, and each Class member shall be bound by the Settlement, except as noted herein;
- (e) That the Settlement represents a fair resolution of all Claims asserted, and fully and finally resolves all such Claims; and
- (f) That the Court retain continuing and exclusive jurisdiction pending Defendants' clearance of the backlog of outstanding requests as of Final Approval and production of requests received after Final Approval within estimated timeframes in 80% of cases as noted in section 8 below, at which time the parties shall jointly request a Judgment releasing Defendants of all Released Claims, dismissing the Complaint with prejudice, and permanently barring and enjoining the institution and prosecution by Plaintiffs and putative Class Members of any other action against Defendants in any court asserting any claims relating to the Released Claims.

7. **Settlement Consideration.**

Backlog Clearance

7.1 Within six months of the Final Approval Order, Defendants shall close all PRA requests outstanding with OPD that have been pending for more than 20 days at the time of the Final Approval Order, except for S.B. 1421 requests as described in section 7.2.

7.2 Within 15 months of the Final Approval Order, Defendants shall close all S.B. 1421 requests outstanding with OPD that have been pending for more than 20 days at the time of the Final Approval Order. OPD shall produce S.B. 1421 records on a rolling basis every two weeks over these 15 months.

7.3 For records requests subject to 7.1 or 7.2, Defendants shall provide, prior to closing each request, a determination as to whether any responsive records will be withheld in their entirety, and, if so, provide a general description of the records so withheld, to the extent it is possible to do so without revealing non-disclosable information, and the specific statutory justifications for withholding such records. If any records are withheld, OPD shall also provide a brief explanation why any statutory exemption applies to the records withheld, to the extent it is possible to do so without revealing non-disclosable information.

7.4 If the Preliminary Approval hearing is delayed beyond October 31, 2021 for whatever reason, the 6- and 15-month deadlines in sections 7.1 and 7.2 above, respectively, shall be reduced for every day beyond October 31 the Preliminary Approval hearing is delayed. It is currently anticipated that the Preliminary Approval hearing will be held on December 9, 2021, meaning the 6- and 15-month deadlines shall be reduced by 39 days.

Records Determination

7.5 For requests received on or after the date of the Final Approval Order, OPD shall adopt the following procedures regarding Records Determinations to meet its obligations under Government Code section 6253:

- (a) Upon receipt of every PRA request, OPD shall perform a search for the requested documents within the time specified in Government Code section 6253(c) (including permissible extensions, as outlined below).
- (b) In dispatching a Records Determination to a PRA requester after a records search under Government Code section 6253(c), OPD shall communicate to records requesters the general categories of documents identified in its search and provide requesters both a rough quantity and a description of the documents located, if any. This description must enable the records requester to verify that a search for records was performed, including any departments or divisions who were contacted during the search for records.
- (c) OPD shall also communicate in the Records Determination if any records are being withheld in their entirety, and, if so, provide a general description of the records so withheld, to the extent it is possible to do so without revealing non-disclosable

information, and the specific statutory justifications for withholding such records. If any documents are withheld, OPD shall also provide a brief explanation why any statutory exemption applies to the records withheld, to the extent it is possible to do so without revealing non-disclosable information. Nothing in this section shall be construed as waiving any right of Defendants to withhold a document in whole or in part should a basis for withholding become apparent to OPD after it has dispatched the Records Determination, nor shall this section be construed as waiving any right of Plaintiffs or Class Members to challenge Defendants' entitlement to withhold documents for which no exemption was invoked in the Records Determination.

- (d) The Records Determination shall also notify the records requester of an estimated date of production. The estimated timeframe for production shall be tailored to each individual request, though OPD may utilize presumptive timeframes for routinely requested categories of documents.
- (e) For the following categories of documents, the timeframes listed below shall be presumptively prompt:
 - a. Crime reports (aside from homicide reports): within 15 days of receipt of the PRA request.
 - b. Tow reports: within 10 days of receipt of the PRA request (i.e. by the time of the records determination).
 - c. CAD purges for a single incident: within 20 days of receipt of the PRA request.
 - d. Requests for calls for service at a single address: within 20 days of the PRA request.
- (f) Subdivision (e) of this section shall not be construed in any manner as an admission by Defendants that documents produced outside the timeframes in that subdivision are not made promptly available within the meaning of Gov. Code § 6253(b).
- (g) For the period of time running from the date of Final Approval through dismissal, OPD shall not provide an estimated time for production that exceeds the timeframes in subdivision (e) of this section for the categories of documents to which that subdivision applies.
- (h) The Records Determination shall also notify requesters of the availability of mediation within 10 days before Oakland's Public Ethics Commission under Oakland Municipal Ordinance section 2.20.270(C) if OPD denies a request for documents.

7.6 If OPD invokes an extension to provide a records determination under Government Code section 6253(c) it may do so only in unusual circumstances within the

meaning of section 6253(c). If OPD invokes the extension, it shall provide the specific reasons why an extension is necessary in response to a specific request, not simply cite statutory language to justify an extension. In other words, Defendants shall explain why based on the specific request an extension is necessary.

Training

7.7 Within one month of Final Approval (or before), the City Attorney's Office for the City of Oakland shall provide a training for all PRA staff within the Records Division of OPD to inform them of their obligations under this Agreement, including but not limited to the obligations under sections 7.1-7.6.

7.8 For the next ten years, the City Attorney's Office shall also provide training when there is turnover in the Records Manager position within the Records Division of OPD. If supervisory responsibility for the Public Records Unit shifts from the Records Manager to some other position, this City Attorney's Office shall provide training to any successor to the Records Manager.

7.9 The City Attorney's Office shall also draft a training manual for PRA personnel within OPD regarding their obligations under the PRA within two weeks of Final Approval (or before). The training manual shall include, amongst other instructional information, the scope and limits of common exemptions invoked by OPD. The City Attorney's Office shall share a draft of the training manual with Class Counsel. Class Counsel may offer suggested changes or modifications within seven days of receipt, which the City Attorney's Office shall consider in good faith. The initial final version of the training manual shall be completed within one month of Final Approval. The training manual may be updated from time to time. The final version of the training manual provided to OPD personnel, and any subsequent revisions or amendments, shall be a public document.

Updated Regulations and Command Responsibility

7.10 Departmental General Orders ("DGO") M-9 and M-9.1 shall be updated within one month of Final Approval to reflect the relevant terms of this Agreement. Subject to Defendants' meet and confer obligations with the Oakland Police Officers Association, these DGOs shall also be updated to reflect that a commanding officer of each division (or non-sworn equivalent) shall be responsible for ensuring officers within their division comply with PRA requests, including requests from other divisions or units for information, and the Appendix to DGO M-9.1 shall be updated as necessary to reflect the current contacts within OPD for frequently requested records. While PRA requests are processed by the PRA Unit within the Records Division, officers or civilian personnel in other divisions are sometimes responsible for collecting and compiling documents that must ultimately be processed and produced by the PRA Unit. Commanding officers in each division shall ensure prompt compliance with requests from the PRA Unit for documents. The amended policies shall specify, subject to meet and confer obligations, that failure to adequately comply with the PRA may result in discipline.

7.11 For two years from the date of Final Approval, the Records Manager of the Records Division shall submit a report every other week to the commanding officer in each division and also the executive team of the Chief of Police identifying all pending

delinquent requests in each division. This report shall include a summary of the number of delinquent requests outstanding in each division and within OPD overall.

Periodic Reports to City and Court

7.12 Within four months after Final Approval, the City Attorney's Office shall prepare a report for the Oakland City Council and the Court regarding progress towards implementing this settlement and clearing the backlog of outstanding requests pursuant to sections 7.1 and 7.2. The report shall be based on the first three months after Final Approval. Defendants shall have as a benchmark clearing 40% of the outstanding non-SB 1421 requests older than 20 days as of Final Approval by the three-month mark. The report shall also include, beginning from the date of Final Approval until the three-month mark, the average and median times OPD takes to send its initial records determination for PRA requests; the average and median timeframe for an estimated date of production communicated in the Records Determination, and the percentage of requests that are fulfilled within OPD's initial estimated timeframe. The report may separate S.B. 1421 from non-S.B. 1421 requests. A substantially final draft of the report shall be shared with Class Counsel at least seven days before finalizing for the parties to meet and confer on its content.

7.13 The City Attorney and the Chief of Police (not a designee of either) shall attend the next available City Council meeting after submission of the four-month report under section 7.12 to answer questions in an open session regarding implementation of this Agreement and the report. The City of Oakland agrees to calendar an agenda item at a City Council meeting concerning the report as soon as is practical after completion of the four-month report.

7.14 Similar reports shall be prepared within one month of the six- and twelve-months marks regarding completion of clearing non-S.B. 1421 outstanding requests (if any), though a public hearing at Oakland City Council is not required after completion of these reports. At the six and twelve-month marks, the City Attorney's Office shall also provide a report regarding its progress towards clearing the backlog of S.B. 1421 requests. This report shall provide information regarding the number of requests for which Defendants have completed or substantially completed production; the number of requests for which Defendants have produced at least some records; and the number of requests for which Defendants have not produced records. For the requests for which the Defendants have not completed or substantially completed production, the report shall describe the progress, if any, Defendants have made to determine whether disclosable records exist and to collect and review any disclosable records.

7.15 The Parties agree to request that the Court hold status conferences after the four, six and twelve month reports are prepared pursuant to sections 7.12 and 7.14 to discuss the reports or any other issues that may arise with respect to Settlement administration.

7.16 The timeframes for the reports contemplated in sections 7.12 and 7.14, as well as timeframe for the 40% benchmark in 7.12, shall be adjusted pursuant to section 3.1 if the Preliminary Approval Hearing is held beyond October 31, 2021. However, in no event shall the report required under section 7.12 be based on less than the first two months from Final Approval.

Other Consideration

7.17 OPD shall, on an ongoing basis, publish rosters of the department on the City's website as they are updated from time to time.

7.18 OPD shall ensure that all public policies and DGOs are posted to the City's website and shall ensure that such policies and DGOs are current versions.

8. **Continuing Jurisdiction.** The Court shall retain jurisdiction until Defendants have cleared the backlog of outstanding PRA requests, including S.B. 1421 requests. "Outstanding PRA requests" means all requests that were pending with OPD more than 20 days as of the date of Final Approval. If after the outstanding PRA requests are cleared Defendants have produced documents within estimated timeframes 80% of the time between either (i) one month from Final Approval through the motion for dismissal, or (ii) the latest six months before Defendants' motion for dismissal, the Court shall dismiss the case with prejudice. Class Counsel shall provide Defendants with seven days' advanced notice if they intend to raise any issues with the Court regarding the adequacy of Defendants' compliance with this Settlement to provide Defendants an opportunity to cure during the Court's period of continuing jurisdiction. Plaintiffs may only raise issues regarding Defendants' compliance with this settlement after the parties have met and conferred.

9. **Dismissal with Prejudice.** Upon dismissal with prejudice, Plaintiffs and the putative Class, by virtue of this Settlement Agreement, shall be deemed to have, and by operation of the Judgment shall have fully, finally and forever released, relinquished and discharged all Released Claims against Defendants.

10. **No Future Actions Following Release.** Plaintiffs shall not, after dismissal of the Complaint, seek (directly or indirectly) to commence, institute, maintain or prosecute any suit, action, administrative proceeding or complaint or collect from or proceed against any Defendant based on the Released Claims in any forum worldwide, whether on his, her, or its own behalf or as part of any putative, purported or certified class.

11. **Waiver of California Civil Code § 1542 and Similar Laws.** Plaintiffs and the putative Class acknowledge that, by virtue of the execution of this Settlement Agreement, and for the consideration received hereunder, it is their intention to release, and they are releasing, all Released Claims, even Unknown Claims. In furtherance of this intention, Plaintiffs and the putative Class expressly waive and relinquish, to the fullest extent permitted by law, any rights or benefits conferred by the provisions of California Civil Code § 1542, as set forth in **Paragraph 2.21**, or equivalent, similar or comparable laws or principles of law. Plaintiffs acknowledge that they have been advised by Class Counsel, as applicable, of the contents and effects of California Civil Code § 1542, and hereby expressly waive and release with respect to the Released Claims any and all provisions, rights and benefits conferred by California Civil Code § 1542 or by any equivalent, similar or comparable law or principle of law in any jurisdiction. Plaintiffs may hereafter discover facts other than or different from those which they know or believe to be true with respect to the subject matter of the Released Claims, but Plaintiffs hereby expressly waive and fully, finally and forever settle and release any known or unknown, suspected or unsuspected,

foreseen or unforeseen, asserted or unasserted, contingent or non-contingent, and accrued or unaccrued claim, loss or damage with respect to the Released Claims, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such additional or different facts. The release of unknown, unanticipated, unsuspected, unforeseen, and unaccrued losses or claims in this paragraph is not a mere recital.

12. **Attorney's Fees and Costs.** City of Oakland agrees to pay the sum of \$127,500.00 to Class Counsel within thirty (30) calendar days of entry of the Final Approval Order from the Court. The check shall be made payable to "The Meade Firm p.c." The Meade Firm shall be solely responsible for dividing these attorneys fees with all Class Counsel. This amount shall cover attorney's fees and costs incurred up to and including all work in advance of Final Approval and all scheduled appearances at periodic status conferences contemplated under section 7.15. For purposes of clarity, the amount shall cover fees incurred by both The Meade Firm and Reiser Law. The settlement of attorney's fees and costs shall not cover time incurred by Class Counsel if it must expend time to enforce the terms of this Agreement. Both parties reserve all rights with respect to Class Counsel's entitlement to attorney's fees if enforcement work is necessary, including whether Class Counsel would be entitled to any fees in connection with such work. This agreement to pay fees does not constitute an admission by Defendants that Plaintiffs are or would be entitled to Attorney's fees under Gov. Code § 6259(d).

13. **No Liability for Fees and Expenses of Class Counsel.** Defendants shall have no responsibility for, and no liability whatsoever with respect to, any payment(s) to Class Counsel pursuant to this Agreement and/or to any other Person who may assert some claim thereto or any fee and expense award that the Court may make in the Action, other than as set forth in this Agreement. Plaintiffs and Class Counsel agree that the satisfaction of any of Plaintiffs' or Class Counsels' outstanding bills, including bills for transcripts, printing, and legal services performed by other firms, and existing or future liens or reimbursement or subrogation interests (whether statutory, equitable, or contractual), shall be their sole responsibility.

14. **No admission of Liability.** Neither this Agreement nor any part of this Agreement shall be construed to be an admission by any Party of any violation of law, nor shall this Agreement nor any part of it, nor any settlement negotiations or earlier drafts of this Agreement, be admissible in any proceeding as evidence of such an admission.

15. **No waiver as to Prevailing Party Status.** Nothing in this agreement is an admission by the Defendants that Plaintiffs are the prevailing party within the meaning of Gov. Code section 6259(d) or any other applicable law or that any fees, costs and expenses, whether or not settled or waived by this agreement, are or would be compensable by Defendants. Nothing in this agreement is an admission by Plaintiffs or Class Counsel that they are not the prevailing party within the meaning of Gov. Code section 6259(d) or any other applicable law or that any fees, costs and expenses, except as settled by this Agreement, are not or would not be compensable under applicable law. Neither Party waives any future claim regarding their status as the prevailing party for purposes of future attorneys fees or for any other reason.

16. **Warranty of Non-Assignment.** The Parties warrant that they have not assigned any of the outstanding fees or costs that are the subject of this Agreement.
17. **No Unwritten Representations.** Each Party represents that in executing this Agreement, the Party does not rely upon and has not relied upon any representation, promise, or statement not expressly contained herein.
18. **Complete Agreement.** This Agreement is the complete agreement between the Parties and supersedes any prior agreements or discussions between the Parties.
19. **California Law.** This Agreement is executed and delivered in the State of California, and the rights and obligations of the Parties hereunder shall be construed and enforced in accordance with the laws of the State of California.
20. **Interpretation and Construction.** Any ambiguities or uncertainties herein shall be equally and fairly interpreted and construed without reference to the identity of the Party or Parties preparing this document or the documents referred to herein, on the understanding that the Parties participated equally in the negotiation and preparation of the Agreement and the documents referred to herein or have had equal opportunity to do so. This Agreement has been arrived at through negotiation and none of the Parties is to be deemed the party which prepared this Agreement or caused any uncertainty to exist within the meaning of Civil Code section 1654. The headings used herein are for reference only and shall not affect the construction of the Agreement.
21. **Binding Effect.** This Settlement Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the Parties. Without limiting the generality of the foregoing, each and every covenant and agreement herein by Plaintiffs and Class Counsel shall be binding upon all Class Members.
22. **Breach, Waiver and Amendment.** No breach of this Agreement or of any provision herein can be waived except by an express written waiver executed by the Party waiving such breach. Waiver of any one breach shall not be deemed a waiver of any other breach of the same or any other provision of this Agreement. This Agreement may only be amended, altered, modified or otherwise changed in any respect or particular only by a writing duly executed by the Parties hereto or their authorized representatives. Once the Court has granted Preliminary Approval, the Agreement may only be amended, altered, modified or otherwise changed in any respect or particular with the authorization of the Court.
23. **Scope of Settlement Agreement.** Nothing in this Agreement shall be construed as waiving the rights of any Class Member to object to the substantive adequacy of Defendants' document production, including but not limited to whether exemptions to disclosure are properly invoked. Such individual issues are not addressed by this Agreement and may be pursued by any member of the Class or other PRA requester regardless of any benefits conferred upon them by this Agreement. For purposes of clarity, nothing in this Agreement shall be construed to limit in

any way the rights of (i) any Persons who are not Class Members, or (ii) any Class Member's non-Released Claims.

24. **Authority to Execute.** Each party hereto warrants to the other Parties that he/she has the full power and authority to execute, deliver and perform under this Agreement and all documents referred to herein, and that any needed consent or approval from any other person has been obtained. Defendants warrant that they have obtained authorization from City Council to enter into this agreement.

25. **Counterparts.** This Agreement may be executed by the Parties in any number of counterparts, all of which taken together shall be construed as one document. Any facsimile signature shall be valid and acceptable for all purposes as if it were an original.

26. **Effective Date.** This Settlement shall take effect immediately after entry of Final Approval. Obligations required to be performed prior to the Effective Date under the terms of this Settlement may be enforced prior to the Effective Date.

27. **Right to Terminate Based on Material Modification.** The Parties, each at their sole discretion, may terminate this Settlement if the Preliminary Approval Order, Final Approval Order, or any appeal materially modifies the terms of this Settlement Agreement.

28. **Notice of Termination.** If either Party contends a modification to this Settlement or Settlement Agreement is material, then both or either may terminate this Settlement on that basis. The terminating Party must provide a notice of termination to all Parties within fifteen (15) days of the order (e.g., Preliminary Approval Order or Final Approval Order) or appellate decision that it or they contend materially modifies the Settlement.

29. **Return to Status Quo Ante.** In the event that the Agreement is not granted Preliminary Approval, Final Approval, and/or is reversed on appeal, the Parties shall return to the status quo ante as of May 17, 2021, as if no Agreement had been negotiated or entered into. Moreover, the Parties shall be deemed to have preserved all of their rights or defenses as of May 17, 2021 and shall not be deemed to have waived any substantive or procedural rights of any kind that they may have against any Person. The Parties agree that they may conduct an additional four months of discovery in the event that the Agreement is not granted Preliminary Approval, Final Approval, and/or is reversed on appeal.

30. **Change of Law.** In the event that any legislative, regulatory, judicial, or other action ("New Law") affects the rights or obligations of the parties related to any term of this agreement, at either party's request, the parties will meet and confer in good faith on whether any modification to this agreement is appropriate. If the parties are unable to reach agreement, then the parties shall agree to present the issue to the Court. The parties further agree that, in such

instance, the Court may, upon consideration of the arguments presented by the parties, issue an order modifying the terms of the agreement in light of the New Law.

31. **Duty to Act in Good Faith.** The Parties shall act in good faith and use their reasonable good faith efforts after the execution of this Agreement to ensure that their respective obligations hereunder are fully and punctually performed. The Parties shall promptly perform any further acts and execute and deliver any other documents or instruments that may be reasonably necessary to carry out the provisions of this Agreement.

32. **No Duplicate Class Member Request.** The Parties agree that, upon Preliminary Approval, no Plaintiff or Class Member shall file a request for OPD records that duplicates, in whole or in part, that Plaintiff or Class Member's own records request which is outstanding for more than 20 days prior to Preliminary Approval.

33. **Savings Clause.** If any term, condition, provision or part of this Agreement is determined to be invalid, void or unenforceable for any reason, the remainder of this Agreement will continue in full force and effect.

34. **Notices/Communications.** All requests, demands, claims and other communications hereunder shall: (a) be in writing; (b) be delivered by U.S. Mail with a copy via email; (c) be deemed to have been duly given on the date received; and (d) be addressed to the intended recipient as set forth below:

If to Class Representatives, the Class, or Class Counsel:

Sam Ferguson
THE MEADE FIRM P.C.
12 Funston Ave., Suite A
San Francisco, CA 94129
Telephone: (415) 724-9600
Email: sam@meadefirm.com

If to Defendants:

Erin Bernstein
BRADLEY BERNSTEIN SANDS LLP
3811 Harrison St.
Suite 100
Oakland, CA 94611
Telephone: (510) 380-5801
Email: MorrisSettlement@bradleybernsteinllp.com

Each of the Parties may change the address to which requests, demands, claims or other communications hereunder are to be delivered by giving the other Parties notice in the manner set forth herein.

35. **Counting of Days.** When the last day to complete a task falls on a weekend or holiday, the deadline to complete the task shall be extended to the following business day.

IN WITNESS WHEREOF, the Parties hereto have executed this Settlement Agreement and Release:

Dated: _____

SCOTT MORRIS, Plaintiff

Dated: _____

SARAH BELLE LIN, Plaintiff

Dated: _____

BRIAN KRANS, Plaintiff

Dated: _____

MICHAEL KATZ, on behalf of himself and
OAKLAND PRIVACY, Plaintiffs

Dated: _____

SAM FERGUSON
THE MEADE FIRM
Class Counsel

Dated: _____

MICHAEL REISER
REISER LAW
Class Counsel

Dated: _____

CYNTHIA STEIN
OFFICE OF THE OAKLAND CITY
ATTORNEY
Attorneys for Defendants City of Oakland,
Oakland Police Department, Susan Manheimer and
Ed Reiskin