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19 UNITED STATES DISTRICT COURT  
20 NORTHERN DISTRICT OF CALIFORNIA  
21 SAN JOSE DIVISION

22 CURTIS V. RODRIGUEZ, et al.,  
23 Plaintiffs,  
24 v.  
25 CALIFORNIA HIGHWAY PATROL, et al.,  
26 Defendants.

Case No. C 99-20895-JF/HRL

**TERMS AND CONDITIONS OF  
SETTLEMENT AGREEMENT**

Judge: The Honorable Jeremy Fogel

27

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1 This Settlement Agreement (“Agreement”) is made and entered into by and between  
2 Curtis Rodriguez, Jose Lopez, MacArthur Washington and the Plaintiff Class (as defined below)  
3 (hereinafter “Plaintiffs”) and the California Highway Patrol (“CHP” ) and the Commissioner of  
4 the CHP in his official capacity (hereinafter “Defendants”).

5 WHEREAS, on June 3, 1999, Curtis V. Rodriguez, Jose F. Lopez and MacArthur  
6 Washington filed a class action complaint alleging that the CHP engaged in a continuing pattern  
7 and practice of race-based stops, detentions and searches of African-American and Latino  
8 motorists due, in large part, to discriminatory drug interdiction policies and practices;

9 WHEREAS, Plaintiffs’ claims were brought pursuant to the Fourth and Fourteenth  
10 Amendments to the United States Constitution; Title VI of the Civil Rights Act of 1964 and its  
11 implementing regulations; 42 U.S.C. §§ 1981, 1983, 1985 and 1986; Article I, Sections 7(a) and  
12 13 of the California Constitution; California Civil Code § 52.1; California Government Code  
13 §§ 11135 and 11139; and California common law;

14 WHEREAS, on May 10, 2001, the Honorable Jeremy Fogel, Judge of the United States  
15 District Court for the Northern District of California, granted class certification to a class  
16 consisting of all Latinos and African Americans who, are presently, and in the future will be  
17 stopped while driving by the California Highway Patrol and then detained, interrogated, or  
18 subjected to a search (either of person or vehicle) on any public thoroughfare within the  
19 jurisdiction of CHP’s Central and Coastal Divisions;

20 WHEREAS, Defendants deny all allegations against them; and

21 WHEREAS the parties have given careful consideration to all of the legal and factual  
22 issues raised by plaintiffs’ complaint and, without any admission of liability or fault, enter into  
23 this Settlement Agreement with the intent to fully, finally and fairly resolve all of plaintiffs’  
24 claims and have agreed to settle all matters that were or could have been asserted by plaintiffs in  
25 the above lawsuit.

26 NOW, THEREFORE, in consideration of the terms and conditions set forth below, the  
27 parties hereto agree as follows:  
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**I. TERMS AND CONDITIONS OF AGREEMENT**

**A. Stipulated Order of Dismissal**

By this Agreement, the parties intend to terminate this litigation. The proceeding will be dismissed with prejudice by stipulated order (“Stipulated Order of Dismissal”) pursuant to Federal Rule of Civil Procedure (“F.R.C.P.”) 41(a)(2), subject to any and all required class action settlement approval procedures under F.R.C.P. 23(e).

**B. No Admission of Wrongdoing**

By entering into this Agreement, the CHP and the Commissioner do not admit to any violations of, or failure to comply with, any Federal or State constitutional provisions, statutes, regulations or other laws. The parties acknowledge that this Agreement represents the compromise of disputed claims, and the matters set forth in the document are not to be construed in any respect as an admission of liability.

**C. Binding and Enforceable Agreement**

1. Plaintiffs acknowledge that all legal and factual issues raised in the Complaint have been thoroughly and carefully considered and that this Agreement is fully dispositive of all issues in this lawsuit.
2. The parties acknowledge that this Agreement is fully binding on them and each of their successors.
3. The provisions of this Agreement, inclusive of the terms and conditions contained in Section II of the Agreement, are a fair and equitable resolution of all declaratory relief, injunctive and damages claims stated in the Complaint, as well as all claims for attorneys’ fees and costs.
4. None of the provisions of this Agreement shall be construed in such a manner as to require the CHP, its Commissioner, officers or employees to engage in any conduct that violates the United States or California Constitutions or any federal

1 or state law or regulation. Any provision of this Agreement that violates the  
2 United States or California Constitutions or any federal or state law or regulation  
3 shall be null and void and shall have no effect.  
4

5 **D. Effective Date**

6 The effective date of this Agreement shall be the date on which the Court directs  
7 dismissal of the Complaint (hereinafter “Effective Date”) pursuant to the Stipulated Order of  
8 Dismissal.  
9

10 **E. Reliance on Counsel**

11 The parties to this Agreement acknowledge that they have been competently represented  
12 by counsel of their own choosing in the negotiations for and preparation of this Agreement, that  
13 they have read the Agreement or had it read to them by their counsel, that they are fully aware of  
14 its contents and of its legal effect, and that each party enters into this Agreement freely, without  
15 coercion, based on the party’s own judgment and not in reliance upon any representations or  
16 promises made by any other party not contained herein. The parties further acknowledge that  
17 they have had adequate opportunity to make whatever investigation or inquiry they may deem  
18 necessary or desirable in connection with the subject matter of this Agreement prior to its  
19 execution. Each party expressly waives any and all claims, charges, complaints, actions and  
20 causes of action against any other party arising out of or in any way associated with the  
21 negotiation, preparation or execution of this Agreement.  
22

23 **F. Entire Agreement**

24 This Agreement constitutes the full and complete expression of the Agreement between  
25 the parties. All prior negotiations, agreements or understandings are merged into this written  
26 Agreement. There are no collateral written or oral agreements between the parties which are not  
27 contained herein. The parties acknowledge and agree that they are not relying on any statements,  
28 representations or promises made by any other party except as specifically set forth herein. This

1 Agreement cannot be modified or amended except in writing signed by the parties.

2

3 **G. Length of Agreement**

4 This Agreement, and each of the terms and conditions set forth herein, shall terminate  
5 three (3) years after the effective date of this Agreement unless otherwise specifically stated  
6 herein.

7

8 **H. Future Lawsuits**

9 By entering into this Agreement, plaintiffs and their attorneys of record acknowledge that  
10 the terms of this Agreement affect statewide policies and practices of the CHP. Plaintiffs Curtis  
11 Rodriguez, Jose Lopez and MacArthur Washington agree that as long as the CHP complies with  
12 the terms of this Agreement, they shall not bring suit against the CHP or its Commissioner in  
13 any court that seeks to challenge the statewide policies and practices complained of in the  
14 Complaint and/or are covered by this Agreement. Further, the dismissal with prejudice of the  
15 Complaint in this action shall have res judicata effect on all plaintiffs as required by applicable  
16 law.

17

18 **II. CHP POLICY, PRACTICES AND PROCEDURES**

19 **A. Prohibition of Racial Profiling and Racial Discrimination**

20 1. The CHP agrees that CHP officers may not engage in racial profiling or racial  
21 discrimination of any kind.

22

23 2. The CHP affirms its existing policy prohibiting racial profiling as follows: “CHP  
24 officers shall not engage in racial profiling or racial discrimination of any kind.  
25 Racial profiling and racial discrimination of any kind are prohibited by the  
26 department and will not be tolerated.”

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1 **B. CHP Policy Regarding Traffic Enforcement Stops**

2 1. The CHP agrees that its primary purpose is traffic safety, and that CHP officers  
3 should enforce the Vehicle Code with the primary goal of ensuring and  
4 maximizing the safety of the thousands of motorists who use California roads and  
5 highways every day. CHP officers should always be alert to the possibility of  
6 criminal activity in the course of a traffic stop, or any encounter with the general  
7 public.

8  
9 2. The CHP further agrees that traffic enforcement stops based on a Vehicle Code  
10 violation should be made only if an officer has probable cause to believe that a  
11 Vehicle Code violation has been committed. Traffic enforcement stops where the  
12 primary reason for the stop is drug interdiction shall only be made if an officer  
13 has probable cause or reasonable suspicion to believe a motorist, or an occupant  
14 of a vehicle, is involved in illegal drug-related activity.

15  
16 3. Accordingly, the CHP shall restate its existing policy regarding traffic stops as  
17 follows:

18 It is the policy of the California Highway Patrol that CHP officers  
19 shall not conduct traffic enforcement stops for the primary purpose  
20 of drug interdiction in the absence of probable cause or reasonable  
21 suspicion to believe the motorist or an occupant of the vehicle is  
22 involved in illegal drug-related activity.

23 The primary purpose of the CHP is traffic safety and CHP officers  
24 shall enforce the Vehicle Code with the goal of ensuring and  
25 maximizing the safety of the thousands of motorists on the  
26 California roads and highways everyday. Officers shall not stop  
27 individuals for the primary purpose of drug interdiction unless they  
28 have probable cause or reasonable suspicion of drug-related  
activity. The officer must have specific and articulable facts to  
support his/her determination; a mere suspicion or "hunch" is not  
sufficient.

After a stop has been made, an officer shall not extend the stop  
beyond the time necessary to address the traffic violation unless an  
officer has reasonable suspicion or probable cause of criminal  
activity.

1 **C. Extension of Consent Search Moratorium**

2 1. On April 19, 2001, the CHP issued a six-month moratorium on consent searches,  
3 pending further review, study and evaluation. The moratorium on consent  
4 searches has subsequently been extended through July 31, 2003. The CHP agrees  
5 to continue its existing moratorium on consent searches for three years from the  
6 Effective Date of this Agreement.

7  
8 2. The CHP shall continue to require its officers to complete a form documenting  
9 each and every search of a motorist or vehicle to investigate the possibility of  
10 criminal activity. The form documenting searches by CHP officers shall, at a  
11 minimum, include the following information:

- 12 a. the date and location of the stop;
- 13 b. the name and identification number of the officer who conducted the
- 14 search;
- 15 c. the names and identification numbers of any officers who assisted with the
- 16 stop or search;
- 17 d. the identity of the driver, including the driver's name, age, race/ethnicity
- 18 and gender;
- 19 e. the license plate number of the vehicle and driver license number of the
- 20 driver, if available;
- 21 f. a specific statement of the factors that constituted the probable cause or
- 22 articulable reasonable suspicion that justified the search;
- 23 g. a description of the contraband seized, if any.

24 3. A search is defined as the physical intrusion into one's person or property to seek  
25 potential evidence, weapons or contraband that may be concealed. Merely  
26 looking at that which is open to view is not a search.  
27  
28

1 **D. Data Collection, Documentation and Review**

- 2 1. *Basic Data Collected.* The CHP shall require every officer to record on the  
3 appropriate form the following information concerning all motor vehicle contacts:  
4  
5 a. the name and identification number of the officer(s) who initiated the stop;  
6 b. the name and identification number of the officer(s) who assisted with the  
7 stop;  
8 c. the area office where the stop occurred;  
9 d. the beat where the stop occurred;  
10 e. the date and time at which the stop commenced;  
11 f. the duration of the stop;  
12 g. the state and license plate number of the stopped vehicle or the driver's  
13 license number of the driver;  
14 h. the race/ethnicity, gender and age of the driver;  
15 i. the reason for the stop;  
16 j. whether a search was conducted and the legal bases for the search  
17 (exclusively listed as: probable cause, incident to arrest, vehicle inventory,  
18 parole/probation/warrant, and consent);  
19 k. whether any contraband or property was seized in the course of the search;  
20 l. the specific type(s) of narcotic(s) seized (marijuana, cocaine, heroin,  
21 methamphetamine, other)  
22 m. the result of the stop;  
23 n. the identity of the officer(s)' immediate supervisor.
- 24 2. *E-STAT database.* The CHP has developed a system of data collection for traffic  
25 stops, as well as a database, known as the Ethnicity Statistics ("E-STAT")  
26 database. In addition, the CHP utilizes several forms for the purpose of collecting  
27 data regarding its officers' activities in the field. In accordance with paragraph  
28 II.D.6 below, the CHP agrees to continue its data collection system to ensure that  
data pertaining to traffic stops, detentions and searches is collected and reported  
accurately and comprehensively. The E-STAT database will contain and allow

1 for the compilation of all of the information listed in Sections II.D.1.c, f, h, i, j, k  
2 and m above by the next modification of the form supporting the E-STAT  
3 database, or within six (6) months from the Effective Date of this Agreement,  
4 whichever comes first. Except as provided for in paragraph II.D.3 below, the  
5 only information the CHP shall be required to include in the E-STAT database  
6 pursuant to the terms of this Agreement shall be the information listed in Sections  
7 II.D.1.c, f, h, i, j, k and m above.

8  
9 3. *Collection of officer-specific information.* All Departmental Narcotic Detection  
10 Canine Program Officers will include their name and identification number on the  
11 form supporting the E-STAT database and this information will be included in the  
12 E-STAT database.

13  
14 4. *Supervisory Review.* Each officer's immediate supervisor shall review each  
15 officer's stop and search documentation and data results on a daily basis to ensure  
16 compliance with all policies, prohibitions and documentation requirements.

17  
18 5. *Public Contact Demographic Summary.* All information contained on the form  
19 supporting the E-STAT database (as listed in Sections D.2 and D.3 above) will be  
20 collected & summarized and included in the CHP's Public Contact Demographic  
21 Summary which will be completed by the CHP on, or before, September 1 each  
22 year.

23  
24 6. *Data Collection.* The CHP will collect all data as described in this Section (D)  
25 until three (3) years from the Effective Date of the Agreement.

26  
27 7. *Citizens' Complaints.* As one of its "Category 1" citizens' complaints, the CHP  
28 will create a category for allegations of racial profiling. The CHP will retain

1 records and publish statistical data regarding all allegations, investigations into  
2 allegations, and the outcome of all investigations as part of Section II.D.5.

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4 **III. IMPLEMENTATION OF THE TERMS AND CONDITIONS**

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6 **A. Formal Policy**

7 The CHP agrees to adopt the terms and conditions listed in Section II as its formal policy.

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9 **B. Policy and Training Manuals**

- 10 1. These statements of policy shall be added to and prominently placed in all  
11 relevant CHP policy and training manuals, including but not limited to those  
12 addressing vehicle stops or searches or on-highway drug interdiction.  
13  
14 2. If similarly worded or intended language is currently present in a policy or  
15 training manual, that language will be replaced with the language in Section II.  
16 All contradictory language or instructions that appear to limit this exact language  
17 will be removed from all policy and training manuals.  
18  
19 3. All out-dated policy or training manuals will be removed from circulation.  
20  
21 4. The process of updating all current policy and training manuals to include the  
22 policy language specified in this Agreement, as well as the process of eliminating  
23 all contradictory or limiting language, will be completed no later than ninety (90)  
24 days from the Effective Date.

25  
26 **C. Training**

- 27 1. Within sixty (60) days of the Effective Date, every CHP officer shall receive  
28 training regarding the key elements of this Agreement. Either independently or in

1 conjunction with other scheduled training, each officer shall receive annual  
2 instruction regarding each of these key elements.

- 3  
4 2. The CHP shall commit to training all of its officers in the racial profiling  
5 curriculum provided by the California Commission on Peace Officer Standards &  
6 Training (P.O.S.T.).

7  
8 **D. Internal Auditor**

- 9 1. In an effort to promote accountability, the CHP will create an auditor position  
10 within the CHP reporting directly to the CHP Commissioner whose duties  
11 include, but are not limited to, the following:
- 12 a. Review and analyze CHP-wide, division-specific, area office-specific,  
13 and, as appropriate, officer-specific trends revealed by the data collection  
14 set forth in Section II.D., including, but not limited to, stop rates, search  
15 rates, and results, by race and in comparison to an appropriate baseline  
16 including, but not limited to, a geographic baseline, if feasible.
  - 17 b. Review and analyze trends revealed by, but not limited to, citizens'  
18 complaints, miscellaneous investigations, adverse actions related to racial  
19 profiling and training.
  - 20 c. Review and ensure the quality and accuracy of data collected. Means for  
21 doing so include, but are not limited to, comparing data from databases  
22 such as the E-STAT and MASK 50 and sampling CHP forms 415, 415D,  
23 215, 281 and 202D.
  - 24 d. Provide appropriate input for training regarding data collection to CHP  
25 officers and supervisors.

26  
27 **E. Verification**

28 The CHP agrees to take all steps necessary to implement the terms of this Agreement.  
The CHP agrees to participate in any face-to-face meetings requested by plaintiffs' counsel to  
discuss the steps taken to implement the terms of the Agreement. Said meetings may be  
requested no more frequently than every six (6) months until termination of this Agreement.

Within seven (7) days of their issuance, the CHP agrees to notify and forward copies to

1 plaintiffs' counsel of any revisions to written policies, training materials, manuals or other  
2 guidelines or directives used by the CHP in carrying out the terms of the Agreement. The CHP  
3 also agrees to provide the name and qualifications of any person appointed Internal Auditor, as  
4 well as a job description, organizational chart and any other information necessary to show the  
5 composition of and the nature of the duties and activities of the Internal Auditor. Any written or  
6 oral information provided by CHP to plaintiffs' counsel under this clause will be treated as  
7 strictly confidential on an attorneys' eyes-only basis.

8 Beginning on the Effective Date and thereafter on March 1st and September 1st of every  
9 year until the expiration of any obligation to collect data under this Agreement, the CHP shall  
10 provide to Plaintiffs' counsel a current, up-to-date copy of the E-STAT database.

#### 11 **IV. PUBLICITY**

12 The parties agree to use their best efforts to prepare a joint statement announcing their  
13 entry into this Agreement. The joint statement will reflect the separate views of each respective  
14 party and will accurately report the ultimate legal disposition of the case. Nothing in this  
15 provision should be read to interfere with the right of any party or counsel for any party to make  
16 any statement he or she may wish to make about this Agreement.

#### 17 **V. SETTLEMENT PAYMENT**

18 In full settlement of all of plaintiffs' claims, the CHP shall pay to Plaintiffs and Plaintiffs'  
19 counsel the amount of \$ 875,000 (Eight hundred seventy-five thousand dollars) as attorneys' fees  
20 and costs. The money shall be paid in full to "Keker & Van Nest, L.L.P. in trust for the  
21 American Civil Liberties Union of Northern California" no later than forty-five (45) days from  
22 the effective date of this Agreement. If payment is not made within this period, plaintiffs shall  
23 receive interest at the statutory rate.

#### 24 **VI. ALTERNATIVE DISPUTE RESOLUTION PROTOCOL**

25 In an effort to avoid further litigation between the parties, any dispute or claim arising out  
26 of or in connection with this Agreement will be submitted to former U.S. District Judge Layn R.  
27 Phillips for purposes of non-binding confidential mediation. If mediation is not successful then  
28 the parties are free to pursue independent legal action and/or enforcement of the settlement

1 agreement in any forum they deem appropriate. If for any reason Judge Phillips is unavailable or  
2 has a conflict, the parties will agree on a substitute neutral so that this mediation clause may be  
3 promptly enforced without returning to court. If the parties cannot agree upon a substitute  
4 neutral they will jointly petition either Judge Phillips or a court of competent jurisdiction to  
5 select a neutral for the purpose of enforcing this clause.

6 IN WITNESS WHEREOF, the undersigned have executed this Settlement Agreement, in  
7 counterpart originals.

8  
9 Dated: \_\_\_\_\_ CURTIS V. RODRIGUEZ

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11  
12 Dated: \_\_\_\_\_ JOSE F. LOPEZ

13  
14  
15 Dated: \_\_\_\_\_ MACARTHUR WASHINGTON

16  
17  
18 Dated: \_\_\_\_\_ DWIGHT O. HELMICK, JR.  
19 COMMISSIONER, CALIFORNIA  
20 HIGHWAY PATROL on behalf of the  
21 California Highway Patrol and the  
22 Commissioner of the California Highway  
23 Patrol in his official capacity

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1 **APPROVED as to form.**

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3 Dated: \_\_\_\_\_

THE AMERICAN CIVIL LIBERTIES  
UNION FOUNDATION OF NORTHERN  
CALIFORNIA

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By: \_\_\_\_\_

ALAN L. SCHLOSSER  
MARK SCHLOSBERG  
Attorneys for Plaintiffs

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Dated: \_\_\_\_\_

KEKER & VAN NEST, LLP

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12

13

By: \_\_\_\_\_

JON B. STREETER  
CASSANDRA KNIGHT  
ROBERT A. BONTA  
Attorneys for Plaintiffs

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17

Dated: \_\_\_\_\_

BILL LOCKYER  
ATTORNEY GENERAL OF THE STATE  
OF CALIFONRIA

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19

20

21

By: \_\_\_\_\_

TYLER B. PON  
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S. MICHELE INAN  
WIL FONG  
JUDITY LOACH  
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Deputy Attorneys General  
Attorneys for Defendants

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