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16
17 UNITED STATES DISTRICT COURT
18 NORTHERN DISTRICT OF CALIFORNIA
19 OAKLAND DIVISION

20 ROSA MARTINEZ, JIMMY HOWARD,
ROBERTA DOBBS, BRENT
21 RODERICK, SHARON ROZIER, and
22 JOSEPH SUTRYNOWICZ, on behalf of
themselves and all others similarly situated,

23 Plaintiffs,

24 vs.

25 MICHAEL J. ASTRUE, Commissioner of
26 Social Security, in his official capacity,

27 Defendant.
28

CASE NO. 08-CV-4735 CW

STIPULATION OF SETTLEMENT

Date: August 11, 2009
Time: 2:00 p.m.
Dept: Courtroom 2, 4th Floor

The Hon. Claudia Wilken

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RECITALS

WHEREAS, on October 15, 2008, Plaintiffs Rosa Martinez and Jimmy Howard filed this putative class action lawsuit against Defendant Michael J. Astrue, in his official capacity as Commissioner of Social Security;

WHEREAS an Amended Complaint was filed on December 12, 2008 adding Plaintiffs Roberta Dobbs, Brent Roderick, Sharon Rozier, and Joseph Sutrynowicz;

WHEREAS Plaintiffs allege that Defendant’s policy of denying or suspending benefits to persons on the basis of an outstanding felony arrest warrant and not permitting persons with outstanding felony arrest warrants to serve as representative payees violates the Social Security Administration’s governing statutes and regulations;

WHEREAS Defendant denies Plaintiffs’ allegations, denies all liability with respect to the Action, and denies that it committed any violation of law;

WHEREAS the Parties desire to resolve amicably all the claims raised in the above-captioned action without admission of liability in order to avoid the substantial expense, inconvenience, and distraction of protracted litigation;

WHEREAS the Parties have conducted discussions and arm’s length negotiations with Defendant’s Counsel with respect to a compromise and settlement of the Action with a view to settling the issues in dispute and furnishing relief consistent with the interests of the Named Plaintiffs and the Class;

WHEREAS the Parties (1) have concluded that the terms and conditions of this Stipulation of Settlement are fair, reasonable and in the best interests of the Named Plaintiffs and the Class; (2) have agreed that the Released Parties should be released from the Released Claims pursuant to the terms and provisions of this Stipulation of Settlement; (3) and have agreed to the dismissal of the Action with prejudice, after considering the substantial benefits that the Named Plaintiffs and the Class will receive from settlement of the Action, the risks of litigation, and the desirability of permitting the Settlement to be consummated as provided by the terms of this Stipulation of Settlement;

1 NOW THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and
2 among the Named Plaintiffs and Defendant, through their respective attorneys, subject to
3 approval by the Court pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, in
4 consideration of the benefits flowing to the Parties from the Settlement Agreement, that all
5 Released Claims shall be compromised, settled, forever released, barred and dismissed, with
6 prejudice, upon and subject to the following terms and conditions.

7
8 **DEFINITIONS**

9 “Action” means the litigation in the United States District Court, Northern District
10 of California, Case No. 08-CV-4735 CW.

11 The “Benefit Programs” means, collectively, the SSI, SVB, and OASDI benefit
12 programs under the Social Security Act.

13 “Class Counsel” or “Plaintiffs’ Counsel” means: the National Senior Citizens Law
14 Center; Munger, Tolles & Olson, LLP; the Urban Justice Center; Disability Rights California; and
15 the Legal Aid Society of San Mateo County.

16 The “Class” or “Class Members” means: for purposes of this settlement only, a
17 Plaintiff class pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure, comprising: All
18 persons whose SSI, SVB, or OASDI benefits have been suspended or denied, or who have been
19 notified of a proposed suspension or denial of such benefits, for “fleeing to avoid prosecution or
20 custody or confinement after conviction” for a felony or who are not permitted to serve as
21 Representative Payees for SSI, SVB or OASDI benefits for “fleeing to avoid prosecution or
22 custody or confinement after conviction” for a felony. The class shall not include, and this
23 settlement shall not apply to, any individual who has received a final federal court disposition
24 regarding payment or nonpayment of benefits due to fugitive felon status.

25 “Court” means the United States District Court for the Northern District of
26 California.

27 “Defendant” or “the Commissioner” means Michael J. Astrue, the Commissioner
28 of Social Security, in his official capacity.

1 “Effective Date” means 61 days from the Court’s entry of an order granting final
2 approval of the settlement terms or after which the time to file any appeal has concluded and any
3 and all objections have been resolved and appeals have been exhausted, whichever is later.

4 “Final Approval Date” means the date upon which the Court enters an order
5 granting final approval of this Settlement Agreement, after having determined that it is adequate,
6 fair, reasonable, equitable, and just to the Class as a whole after a hearing on the fairness of the
7 settlement.

8 “Lead Class Counsel” or “Lead Plaintiffs’ Counsel” means Gerald McIntyre of the
9 National Senior Citizens Law Center.

10 “Named Plaintiffs” refers to Rosa Martinez, Jimmy Howard, Roberta Dobbs, Brent
11 Roderick, Sharon Rozier, and Joseph Sutrynowicz.

12 “National Crime Information Center (NCIC) codes” refer to the offense codes
13 categorizing felony arrest warrants on the FBI’s national database.

14 “OASDI” means Old Age, Survivors, and Disability Insurance, under Title II of
15 the Social Security Act.

16 “Overpayment” means a determination made by the Commissioner that a program
17 beneficiary has received more than the correct benefit payment due because of a benefit
18 suspension based on an outstanding felony arrest warrant, unless the suspension was based on a
19 warrant with a NCIC felony offense code of 4901 (Escape), 4902 (Flight to avoid prosecution,
20 confinement), or 4999 (Flight-Escape).

21 “Parties” refers to the Named Plaintiffs, the Class, and Defendant.

22 “Plaintiffs” refers to the Named Plaintiffs, acting on their own behalf and on
23 behalf of all Class Members.

24 “Post- 2006 Class Members” means all Class Members for whom SSA made an
25 initial suspension, initial denial, or administrative appeal denial on or after January 1, 2007 based
26 on an outstanding felony arrest warrant unless the determination was based on an outstanding
27 felony arrest warrant with a NCIC code of 4901, 4902, or 4999; or with a pending administrative
28 claim challenging any such suspension or denial as of August 11, 2008.

1 “Pre-2007 Class Members” means all Class Members for whom SSA made an
2 initial suspension or initial denial based on an outstanding felony arrest warrant unless the
3 determination was based on an outstanding felony arrest warrant with a NCIC code of 4901,
4 4902, or 4999, on or after January 1, 2000, but before January 1, 2007, and who did not obtain an
5 administrative appeal denial on or after January 1, 2007; or who did not have a pending
6 administrative claim on August 11, 2008 appealing such a suspension or denial.

7 “Preliminary Approval Date” means the date upon which the Court enters the
8 Order attached as Exhibit A preliminarily approving this Settlement Agreement, and setting a
9 fairness hearing.

10 “Released Claims” means any and all claims asserted in the First Amended
11 Complaint by and/or on behalf of the Class Members, and claims related to the subject matter of
12 this litigation that could have been asserted in the First Amended Complaint.

13 “Released Parties” means Defendant, his predecessors, successors, departments,
14 agencies, past or present agents, employees and contractors.

15 “Releasing Parties” means Plaintiffs, the Class and the Class Members, on behalf
16 of themselves, their heirs, executors, administrators, representatives, attorneys, successors,
17 assigns, agents, affiliates, and partners, and any Persons they represent. Nothing in this definition
18 shall be interpreted to contravene 42 U.S.C. § 407 prohibiting transfer or assignment of claims or
19 benefits.

20 “Representative Payee” means an individual who has been selected or appointed to
21 receive payments on behalf of any beneficiary of the Benefit Programs pursuant to 42 U.S.C. §§
22 405(j), 1007(d), or 1383(a).

23 “SSA” means the Social Security Administration.

24 “Settlement Agreement,” “Settlement,” or “Agreement” means this Stipulation of
25 Settlement, including the attached exhibits.

26 “SSI” means Supplemental Security Income under Title XVI of the Social Security
27 Act.

28 “SVB” means Special Veterans Benefits under Title VIII of the Social Security Act.

1 **AGREEMENT**

2 **ARTICLE I**

3 **APRIL 1, 2009 POLICY CHANGE**

4 1.1 Effective April 1, 2009, SSA suspends/denies benefits/payments to Class
5 Members using the current policy and procedure only for three categories of NCIC Uniform
6 Offense Classification Codes as follows: Escape (4901); Flight to avoid (prosecution,
7 confinement, etc.) (4902); and Flight-Escape (4999). SSA's policy is set forth in Policy
8 Instruction EM-09025. *See* Exhibit B.

9 1.2 Effective April 1, 2009, SSA applies the policy in paragraph 1.1 when considering
10 a person's request to serve as a Representative Payee. However, SSA may use all warrant
11 information in determining an individual's suitability to serve as a Representative Payee. *See*
12 Exhibit C.

13 **ARTICLE II**

14 **RELIEF TO POST-2006 CLASS MEMBERS**

15 2.1 SSA shall provide relief to all Post-2006 Class Members consistent with the
16 following provisions.

17 2.2 SSA shall identify and remove overpayments resulting from initial suspensions,
18 initial denials, or administrative appeal denials SSA made on or after January 1, 2007 based on an
19 outstanding felony arrest warrant unless based on a warrant with NCIC codes of 4901, 4902, or
20 4999 for any period of suspension prior to January 1, 2007 back to the first month of suspension.
21 SSA will repay any sums already collected pursuant to the overpayment determination.

22 2.3 SSA will reinstate benefit payments for any periods of suspension subject to a
23 redetermination of non-medical eligibility criteria. Normal redetermination procedures will apply.
24 Close out procedures consistent with the guidance in existing POMS will apply. SSA may
25 conduct continuing disability reviews (CDRs) pursuant to generally applicable SSA policies after
26 benefits/payments have been reinstated.
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1 2.4 SSA may need to reopen a previously denied claim to assess medical and non-
2 medical eligibility criteria, except that where a medical determination of disability has already
3 been made, the medical determination shall not be reopened except pursuant to generally
4 applicable SSA policies. Normal determination of non-medical eligibility criteria will apply.

5 2.5 Except as stated herein, all payments to Post-2006, Class Members are subject to
6 regular payment, nonpayment, and reduced payment provisions of the Social Security Act.

7 2.6 Following the Effective Date, SSA shall contact the Post-2006 Class Members
8 through individual notices mailed to the last known address on SSA records. SSA shall bear the
9 cost of this notice. The notices generally shall advise that SSA's policy regarding outstanding
10 felony arrest warrants has changed and that the individuals may be entitled to or eligible for
11 benefits or payments for applicable periods of suspension or non-payment.

12 **ARTICLE III**

13 **RELIEF TO PRE-2007 CLASS MEMBERS**

14 3.1 SSA shall provide relief to all Pre-2007 Class Members consistent with the
15 following provisions.

16 3.2 SSA shall cease to collect overpayments of any previous benefit payments made to
17 Pre-2007 Class Members and shall remove any remaining balance. Nothing in this paragraph
18 shall be read to require SSA to reimburse Pre-2007 Class Members for any benefit payments that
19 the Pre-2007 Class Members have already repaid to the SSA, unless the individual meets the
20 conditions required by SSA regulations for reopening a claim.

21 3.3 Except as stated herein, all payments to Pre-2007 Class Members are subject to
22 regular payment, nonpayment, and reduced payment provisions of the Social Security Act.

23 3.4 Following the Effective Date, SSA shall send individual notices, mailed to the
24 most recent address in SSA's records, to each Pre-2007 Class Member who is not receiving
25 benefits as of April 1, 2009 on the basis that they have an outstanding felony arrest warrant other
26 than three categories of NCIC codes of 4901, 4902, and/or 4999. SSA shall bear the cost of this
27 one-time notice and will not conduct any follow-up address search or mailing. The notice will
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1 inform the individual that SSA suspends or denies benefits/payments using the current policy and
2 procedure only for three categories of NCIC codes 4901, 4902 and/or 4999. The notice will state
3 that, if the individual thinks he/she may be eligible for benefits/payments, he/she may contact
4 SSA through the 1-800 telephone number to schedule an appointment for prospective
5 reinstatement of Title II benefits or to file a new application for Title II (if required), Title VIII, or
6 Title XVI benefits. Unless an individual covered by Article II also has a separate suspension or
7 denial in the period January 1, 2000 through December 31, 2006 for an outstanding felony arrest
8 warrant except for warrants with codes of 4901, 4902, and/or 4999, the individual would not
9 receive the notice covered in this paragraph.

10 3.5 If a Pre-2007 Class Member contacts SSA to make an appointment within six
11 months of the date on the notice mailed pursuant to the preceding paragraph, that individual shall
12 receive a “protective filing date” of April 1, 2009, for any subsequent application for benefits or
13 request for reinstatement—i.e., SSA will treat that individual’s application or request as if it had
14 been filed on April 1, 2009.

15 **ARTICLE IV**
16 **PUBLICATION**

17 4.1 Immediately following the Final Approval Date, SSA shall publicize the terms of
18 this Agreement consistent with the following provisions.

19 4.2 SSA shall post a news item on its official, public website, www.socialsecurity.gov,
20 that will summarize the key provisions of this Agreement, including the provisions set forth in
21 ARTICLE I, ARTICLE II, and ARTICLE III.

22 4.3 SSA shall revise the “fugitive felon” webpage, located at
23 www.ssa.gov/oig/investigations/fugitivefelon/fugitivefelon.htm, to reflect the changes in policy
24 set forth in this Agreement.

25 4.4 SSA shall publish a Social Security Ruling in the Federal Register. The Ruling
26 shall explain how SSA will implement the fleeing felon provisions under the terms of this
27 Agreement. The Ruling shall also be made available on SSA’s website, www.socialsecurity.gov.
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ARTICLE V
TIMEFRAMES FOR IMPLEMENTATION

5.1 On June 12, 2009, SSA developed implementation plans to set forth all anticipated timeframes for implementing the terms of this Agreement. The timeframes set forth by SSA reflect due diligence in implementation. Should the court substantively alter the terms of the this Settlement Agreement such that SSA’s implementation plans must be amended, and SSA agrees to the amendment, SSA will have an additional 60 business days from the Final Approval Date to submit final implementation plans.

5.2 If SSA needs to make a significant adjustment to the June 12, 2009, implementation plan either due to changes required by ¶ 5.1 of this agreement or due to currently unknown facts or unanticipated circumstances (including changes in the fairness hearing date or the effective date of the settlement), SSA will notify Lead Class Counsel and explain the facts or circumstances. Upon receipt of any such notice and explanation, Lead Class Counsel may notify SSA of any concerns about the adjustment and the parties will seek to resolve these concerns amicably. If, in Lead Class Counsel’s view, SSA does not adequately respond to the concerns, Lead Class Counsel will follow the dispute resolution procedures described in Article X.

ARTICLE VI
INQUIRIES, COMMENTING, AND REPORTING

6.1 SSA shall designate an individual who will serve as a point of contact for Lead Class Counsel. Said individual will act in good faith to address any inquiries from Lead Class Counsel related to the implementation of this Agreement.

6.2 SSA shall provide to Lead Class Counsel an advance copy of any draft POMS instructions, Emergency Messages, and the one-time draft notices (stipulated in paragraphs 2.6 and 3.4) to Class Members issued in implementation of this Settlement Agreement. Lead Class Counsel will provide comments, if any, to SSA, within two business days of receiving the drafts. SSA is not obligated to respond to Lead Class Counsel’s comments or to incorporate those comments into any POMS instructions, Emergency Messages, or notices that it issues.

- 1 6.3 The SSA shall provide Lead Class Counsel with notification of:
2 (a) the dates that the SSA begins and substantially completes each phase of the
3 implementation plan developed by the SSA pursuant to ARTICLE V of this Settlement
4 Agreement; and
5 (b) the aggregate number of notices sent to individuals pursuant to ARTICLE
6 II and ARTICLE III of this Agreement.

7 **ARTICLE VII**
8 **ENTIRE AGREEMENT**

9 7.1 The terms of this Settlement Agreement and any exhibits thereto are the exclusive
10 and full agreement of the Parties with respect to all claims for relief and attorneys’ fees and costs
11 as set forth in this Settlement Agreement and in the First Amended Class Action Complaint. No
12 representations or inducements or promises to compromise this action or enter into this
13 Settlement Agreement have been made, other than those recited or referenced in this Settlement
14 Agreement.

15 7.2 This Settlement Agreement is not intended to change, modify, or revise SSA’s or
16 the Office of Inspector General’s implementation of sections 202(x)(3)(C) and 1611(e)(5)(A) of
17 the Social Security Act with regard to the disclosure of information to federal, state or local law
18 enforcement.

19 **ARTICLE VIII**
20 **APPROVAL**

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22 8.1 This Settlement Agreement is expressly conditioned upon its approval by the
23 Court.
24 8.2 The terms of this Settlement Agreement are adequate, fair, reasonable, equitable
25 and just.

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ARTICLE IX
FINAL JUDGMENT

9.1 If, after the fairness hearing, the Court approves this Settlement Agreement as adequate, fair, reasonable, equitable and just, the Court shall direct the entry of an order dismissing this action with prejudice, pursuant to the terms of this Settlement Agreement and Fed. R. Civ. P. 41(a)(2), except that the Court shall retain jurisdiction for the limited purposes described in ARTICLE X of this Settlement Agreement. The Court’s order shall incorporate the terms of the Settlement Agreement.

ARTICLE X
CONTINUING JURISDICTION

10.1 The Court will retain jurisdiction over this matter for the purposes of (a) enforcing the provisions of the Settlement Agreement in the event that one of the Parties claims (after following this Agreement’s dispute resolution procedures) that there has been a breach of the Settlement Agreement; (b) modifying the Settlement Agreement if jointly requested by the Parties pursuant to ARTICLE XI and (c) entering any other order authorized by the Settlement Agreement. Both Class Counsel and Defendant’s counsel will make good faith efforts to amicably resolve issues with regard to the Agreement. If the parties are not able to resolve matters, they will engage in good faith mediation discussions before a magistrate judge designated by the court (the parties’ preference is Magistrate Judge Edward Chen), prior to seeking enforcement pursuant to this Article.

ARTICLE XI
MODIFICATION

11.1 At any time while the Court retains jurisdiction over this matter as described in ARTICLE X, Plaintiffs and Defendant may jointly agree to modify this Settlement Agreement. Any request for modification must be in writing, signed by both Class Counsel and Defendant’s counsel, and is subject to approval by the Court.

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ARTICLE XII
CHANGE IN CONTROLLING LAW

12.1 A change in controlling law, e.g., an amendment to the Social Security Act that is inconsistent with the terms of this Agreement, shall supersede the terms of this Agreement.

ARTICLE XIII
RELEASE

13.1 This Settlement Agreement fully and finally resolves all claims asserted in the First Amended Complaint filed by Plaintiffs on December 12, 2008, any and all claims related to the subject matter of this litigation that could have been asserted in the First Amended Complaint. Effective upon the Final Approval Date and subject to the terms of ARTICLE VIII and ARTICLE IX above, the Releasing Parties shall be deemed to have, and by operation of the final judgment shall have, fully, finally and forever released, relinquished, discharged, and dismissed with prejudice the Released Parties of and from any and all of the Released Claims, and the Releasing Parties shall forever be barred and enjoined from bringing or prosecuting any Released Claim against any of the Released Parties. Nothing contained herein shall release the Commissioner or SSA of any obligations arising under this Settlement Agreement.

ARTICLE XIV
NO ADMISSION

14.1 This Settlement Agreement does not constitute an admission by the Defendant of any pattern or practice that violates or fails to comply with applicable law governing the matters alleged in this action.

14.2 This Settlement Agreement, whether or not executed, and any proceedings taken pursuant to it (a) shall not be construed to waive, reduce or otherwise diminish the authority of the Defendant to enforce the laws of the United States against Class Members notwithstanding the terms of this Stipulation, consistent with the Constitution and laws of the United States; (b) shall not be offered or received against the Defendant as evidence of, or construed as or deemed

1 to be evidence of, any presumption, concession, or admission by the Defendant of the truth of any
2 fact alleged by the Plaintiffs or the validity of any claim that had been or could have been asserted
3 in the Action or in any litigation, or the deficiency of any defense that has been or could have
4 been asserted in the Action, or of any liability, negligence, fault, or wrongdoing of the Defendant;
5 or any admission by the Defendant of any violations of, or failure to comply with, the
6 Constitution, laws or regulations; (c) shall not be offered or received against the Defendant as
7 evidence of a presumption, concession, or admission of any liability, negligence, fault, or
8 wrongdoing; and (d) shall not be in any way referred to for any other reason as against any of the
9 Parties in any other civil, criminal, or administrative action or proceeding, other than such
10 proceedings as may be necessary to effectuate the provisions of this Settlement Agreement;
11 provided, however, that if this Settlement Agreement is approved by the Court, Defendant may
12 refer to it and rely upon it to effectuate the liability protection granted it hereunder.

13 **ARTICLE XV**

14 **PAYMENT OF FEES AND COSTS TO CLASS COUNSEL**

15 15.1 As part of this Settlement Agreement, Defendant agrees to pay to Class Counsel
16 the sum of Four Hundred Eighty Three Thousand Dollars (\$483,000.00) in full satisfaction of all
17 attorneys' fees, costs, and expenses for any and all claims Plaintiffs have asserted or could have
18 asserted in this litigation. No further attorneys' fees or costs will be paid for any actions taken by
19 Class Counsel (or any individual plaintiff's counsel) after March 30, 2009. Unless otherwise
20 agreed to in writing by the Parties, this amount shall be payable as follows:

- | | | |
|----|---------------------------------------|-----------|
| 21 | ▪ National Senior Citizens Law Center | \$225,000 |
| 22 | ▪ Munger, Tolles & Olson LLP | \$141,000 |
| 23 | ▪ Urban Justice Center | \$70,000 |
| 24 | ▪ Disability Rights California | \$35,000 |
| 25 | ▪ Legal Aid Society of San Mateo | \$12,000 |

26 15.2 These amounts shall be transmitted by way of an Electronic Funds Transfer in
27 accordance with instructions to be provided to SSA by each of the entities listed in Paragraph
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1 15.1 above. Class Counsel will promptly and fully cooperate with required forms and information
2 necessary for SSA to process payment.

3 15.3 Defendant will use best efforts to arrange for the transfer of these funds within
4 thirty days (30) days following the Effective Date. Defendant shall notify Lead Plaintiffs'
5 Counsel in writing if Defendant learns that there will be a delay beyond this period.

6 **ARTICLE XVI**

7 **ADDITIONAL PROVISIONS**

8 16.1 All of the exhibits attached hereto are hereby incorporated by reference as though
9 fully set forth herein.

10 16.2 The headings herein are used for the purpose of convenience only and are not
11 intended to have legal effect.

12 16.3 The waiver by one party of any breach of this Settlement Agreement by any other
13 party shall not be deemed a waiver of any other prior or subsequent breach of this Settlement
14 Agreement.

15 16.4 This Settlement Agreement may be executed in one or more counterparts. All
16 executed counterparts and each of them shall be deemed to be one and the same instrument
17 provided that counsel for the parties to this Settlement Agreement shall exchange among
18 themselves original signed counterparts.

19 16.5 This Settlement Agreement shall be binding upon, and inure to the benefit of, the
20 successors and assigns of the parties hereto. Nothing in this provision shall be interpreted to
21 contravene 42 U.S.C. § 407 prohibiting transfer or assignment of claims or benefits.

22 16.6 This Settlement Agreement shall not be construed more strictly against one party
23 than another merely by virtue of the fact that it, or any part of it, may have been prepared by
24 counsel for one of the parties, it being recognized by the parties that this Stipulation is the result
25 of arm's length negotiations between the parties and that all parties have contributed substantially
26 and materially to the preparation of this Stipulation.
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1 16.7 All counsel and any other person executing this Settlement Agreement and any of
2 the exhibits hereto, or any related settlement documents, warrant and represent that they have the
3 full authority to do so and that they have the authority to take appropriate action required or
4 permitted to be taken pursuant to the Settlement Agreement to effectuate its terms.

5 16.8 Class Counsel and Defendant's Counsel agree to cooperate fully with one another
6 in seeking preliminary approval from the Court of the Settlement Agreement and to promptly
7 agree upon and execute all such other documentation as may be reasonably required to obtain
8 final approval of the Settlement Agreement.

9 16.9 Class Counsel agree not to encourage any Class Member, non-profit agency,
10 individual or attorney to challenge the Settlement Agreement or interfere with the process of
11 obtaining preliminary or final approval of the Settlement Agreement from the Court.

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DATED: August 18, 2009

NATIONAL SENIOR CITIZENS LAW
CENTER
Attorneys for Plaintiffs, on behalf of Plaintiffs
and all Plaintiffs' Counsel

By: _____
GERALD A. McINTYRE

DATED: August 18, 2009

UNITED STATES ATTORNEY
JOSEPH P. RUSSONIELLO
Attorney for Defendant

By: _____
VICTORIA R. CARRADERO
ASSISTANT UNITED STATES ATTORNEY