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16 SUPERIOR COURT OF THE STATE OF CALIFORNIA

17 COUNTY OF ALAMEDA

18 UNLIMITED JURISDICTION

19 KIMBERLEE SANCHEZ,
20 JAMES LEONE,
21 SCOTT RUSSELL,
22 CHRISTOPHER CRANER,
23 PATRICIA MOORE, on behalf of themselves
24 and all others similarly situated,
25 HOMELESS ACTION CENTER,
26 WESTERN REGIONAL ADVOCACY
27 PROJECT,
28 SUSAN HALPERN, and
NATALIE LEIMKUHNER,

Plaintiffs,

v.

CALIFORNIA DEPARTMENT OF
TRANSPORTATION,
MALCOLM DOUGHERTY, and
DOES 1-50, inclusive,

Defendants.

Case No.: RG16842117

CLASS ACTION

**FIRST AMENDED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF AND DAMAGES FOR:**

**Violation of 42 U.S.C. § 1983 and
Fourth and Fourteenth Amendments;
California Constitution Art. I, §§ 7, 13;
California Civil Code §§ 2080 et seq.,
2080.10; California Civil Code §§ 52,
52.1; Common Law Conversion,
Trespass to Chattels, and Negligent
Infliction of Emotional Distress;
California Streets and Highways Code §
720; and Government Code § 815.6**

DEMAND FOR JURY TRIAL

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1 **INTRODUCTION**

2 1. Homeless individuals represent one of the most vulnerable populations in modern
3 society. As housing has become less available and more expensive across the state, homeless
4 populations have increased in size and vulnerability. The circumstances leading individuals into
5 homelessness – job loss, prolonged unemployment or underemployment, illness, physical or
6 mental disability, death of a family member, and/or interaction with the criminal justice system –
7 present formidable obstacles to recovery and a return to housed status. Once on the street, the
8 magnitude of these obstacles is compounded by poor access to health care, unsafe environments,
9 insufficient nutrition, and overwhelming stress. Amid such conditions, homeless individuals are
10 able to possess very little in the way of personal property. But because of their plight, the few
11 possessions they do have are all the more critical to these individuals’ health, well-being, and
12 any hope of finding the stable shelter that so many people take for granted.

13 2. The California Department of Transportation (“Caltrans”), Caltrans Director
14 Malcolm Dougherty, and Does 1-50 (together, “Defendants”) are systematically taking and
15 destroying homeless individuals’ personal property, in violation of the United States and
16 California State Constitutions, and California statutory and common law. Defendants have
17 regularly engaged in “sweeps” of areas where homeless individuals live, intentionally and
18 indiscriminately taking and destroying these individuals’ personal property. When people try to
19 save their belongings, or those of a friend or family member, they are often threatened with arrest
20 by officers from the California Highway Patrol (“CHP”), acting in concert with Caltrans.

21 3. Defendants’ illegal actions deprive homeless individuals of personal belongings
22 that are critical to their survival, such as clothing, medication, cooking utensils, tents, and
23 blankets, as well as of irreplaceable personal possessions, such as family photographs, personal
24 records, and other critical documents. Defendants’ sweeps are conducted with no notice,
25 inadequate notice, or misleading notice and in a manner that prevents homeless persons from
26 saving their possessions from destruction. Frequently, Defendants provide no means for
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1 individuals to reclaim or recover their personal possessions – many times this property is
2 immediately and summarily destroyed.

3 4. This taking and destruction of property violates homeless individuals’ state and
4 federal constitutional rights to be free from unreasonable seizure and/or deprivation of property
5 without due process of law. It also violates their rights under California Civil Code §2080, *et*
6 *seq.*, Civil Code § 52.1, and other statutory and common-law rules. The taking and destruction
7 further violates Defendants’ own policies, including Caltrans’ “Illegal Encampment Removal
8 Policy.”

9 5. Plaintiffs Kimberlee Sanchez, James Leone, Scott Russell, Christopher Craner,
10 and Patricia Moore are homeless individuals who have had their personal property – including
11 tents, sleeping bags, clothing, tool sets, and family heirlooms – taken and destroyed by
12 Defendants. These Plaintiffs request preliminary and permanent injunctive relief on behalf of
13 themselves and other similarly situated homeless persons to prevent Defendants from taking and
14 destroying their personal property in violation of their constitutional, statutory, and common-law
15 rights.

16 6. In addition to their primary claims on behalf of the class for injunctive and
17 declaratory relief, the class Plaintiffs seek statutory, actual, and punitive damages resulting from
18 Defendants’ intentional destruction of their personal property in violation of Plaintiffs’
19 constitutional rights, under the United States and California Constitutions, as well as under
20 California Civil Code § 2080, *et seq.*, California Civil Code § 52.1, California Streets and
21 Highways Code § 720, and the common-law doctrines of conversion, trespass to chattels, and
22 negligent infliction of emotional distress.

23 7. Plaintiffs also seek a declaratory judgment that the practices and conduct of
24 Defendants as alleged herein are unlawful under state and federal law.

1 8. In addition to the named Plaintiffs, more than fifty-five homeless people have
2 filed claims in the last twelve months against Caltrans for taking and destroying their belongings,
3 and Caltrans has summarily denied or failed to act upon every single one.

4 9. These incidents are symptomatic of a broader problem throughout the San
5 Francisco Bay Area and the State of California. Indeed, a Caltrans spokesperson has admitted to
6 a local newspaper that under what he called Caltrans' "policy," property found during these
7 sweeps "often will be thrown in the garbage" and that workers discard bags containing homeless
8 people's possessions without even inspecting their contents.¹ (See Exhibit C.)

9 10. This is not the first time that Caltrans has violated homeless people's
10 constitutional rights: Caltrans and Caltrans officials have been sued at least twice before for
11 committing these same types of violations. *See Lee v. California Department of Transportation*
12 *et al.*, No. C-92-3131 SBA (N.D. Cal. 1992); *Kincaid v. City of Fresno et al.*, No. 06-CV-1445
13 (E.D. Cal. 2006). In both cases, in order to resolve the litigations, Caltrans agreed to stop seizing
14 and summarily destroying homeless individuals' personal property for a specified period of
15 years. However, after those settlements expired, Caltrans and Caltrans officials resumed their
16 unlawful activities. A permanent injunction is therefore necessary.

17 11. For these reasons, Plaintiffs Susan Halpern and Natalie Leimkuhler bring suit as
18 citizens and taxpayers of Alameda County and the State of California to prevent further illegal
19 and unconstitutional expenditure of state funds, seeking to permanently enjoin these activities
20 throughout the State and a declaration that the activities violate the law.

21 12. Similarly, Plaintiffs Homeless Action Center and Western Regional Advocacy
22 Project – both of which work on behalf of homeless people in California – request injunctive and
23 declaratory relief to protect the rights of these homeless individuals.

24
25 ¹ Darwin Bond Graham, *East Bay Homeless Campers Accuse Caltrans of Illegally Confiscating*
26 *and Destroying Valuable Property – and Even Family Heirlooms*, EAST BAY EXPRESS, Aug. 9,
27 2016, <http://www.eastbayexpress.com/oakland/east-bay-homeless-campers-accuse-caltrans-of-illegally-confiscating-and-destroying-valuable-property-and-even-family-heirlooms/Content?oid=4932571>.

1 **JURISDICTION AND VENUE**

2 13. This Court has jurisdiction under Article VI, § 10 of the California Constitution
3 and California Code of Civil Procedure § 410.10.

4 14. Venue is proper in this Court because the acts giving rise to this action occurred
5 in substantial part in the County of Alameda, State of California, and because Defendant Caltrans
6 maintains offices and transacts business in Alameda County. *See* Cal. Civ. Proc. Code §§
7 393(b), 394(a), 395(a).

8 15. In addition, this suit may be brought in Alameda County because this suit could
9 be brought in Sacramento. *See* Code Civ. Pro. § 401(1). Defendants Caltrans and Dougherty
10 reside in Sacramento, and thus, this suit may be brought in Sacramento. *See* Code Civ. Pro. §
11 395(a). And because the California Attorney General has an office located in Alameda County,
12 any suit against the Defendant that may be brought in Sacramento may also be commenced and
13 tried in this Court. Code Civ. Pro. § 401(1).

14 **PARTIES**

15 **I. Plaintiffs**

16 16. Plaintiff Kimberlee Sanchez has been homeless since 2011. Defendants have
17 taken her personal belongings more than five times in the last five years. In May 2016, Ms.
18 Sanchez was living on Caltrans property near the corner of 7th Street and Castro Street in
19 Oakland. Defendants had posted a notice of intent to clear out the site, so Ms. Sanchez and other
20 residents moved their tents onto the nearby city-owned sidewalk. On May 18, 2016, Defendants
21 arrived with a compactor truck and proceeded to throw away and destroy shopping carts full of
22 personal property, including almost all of Ms. Sanchez’s personal belongings, even though
23 neither she nor her belongings were on Caltrans property and even though she was present and
24 would have moved her property to safety if she had been given time to do so. That day, Ms.
25 Sanchez lost a gold necklace, a Coleman stove, food and groceries, all of her bedding and
26 clothing, and a large tent.
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1 17. On October 12, 2016, Ms. Sanchez filed an administrative claim against Caltrans
2 for loss of property. Caltrans has not responded to Ms. Sanchez's claim, and claims are deemed
3 denied 45 days after filing. Cal. Gov. Code § 912.4(c). Thus, Ms. Sanchez's claim has been
4 denied as a matter of law, and Ms. Sanchez has exhausted her administrative remedies.

5 18. Plaintiff James Leone has been homeless since 2010. Twice in the past six years,
6 Mr. Leone has lost all of his possessions in Defendants' operations. In April 2016, Mr. Leone
7 was living on a piece of land in Oakland between Brush Street and the freeway, and between
8 11th Street and 7th Street. At some point during the week before April 19, 2016, Defendants had
9 posted a notice of intent to clear out the site within a week, but did not specify a particular day.
10 Then, on April 19, Caltrans crews, along with CHP officers carrying guns and Tasers, arrived
11 with a compactor truck and stated that Mr. Leone and others had only five minutes to remove
12 their property from the piece of land. Before the five minutes expired, Defendants proceeded to
13 throw away many of Mr. Leone's personal belongings, including his tent, a down sleeping bag,
14 all his clothing, a camp stove, a Walkman, a flashlight, a sleeping mat, two comforters, his tool
15 set necessary for his work as a mechanic, and a family photo album. When Mr. Leone
16 successfully pulled his bicycle out of the compactor before it could be destroyed, a CHP officer
17 pulled out his Taser and threatened to use it if Mr. Leone did not back away from the compactor.

18 19. On October 7, 2016, Mr. Leone filed an administrative claim against Caltrans for
19 loss of property. On October 24, 2016, Mr. Leone's claim was denied. Thus, Mr. Leone has
20 exhausted his administrative remedies.

21 20. Plaintiff Scott Russell has been homeless since 2008. Over the last six years,
22 Defendants have seized and destroyed everything he owns on at least four occasions on both
23 Caltrans property and on city-owned sidewalks. In several of these instances, Defendants
24 provided no notice. For example, in early 2016, Mr. Russell was living on a parcel of Caltrans
25 property at the corner of 7th Street and Castro Street in Oakland. One day, in February or
26 March, a Caltrans crew arrived at the site. Caltrans had not provided any notice that they were
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1 planning to conduct a sweep that day. The Caltrans crew then proceeded to take Mr. Russell's
2 property, including his tent, clothing, and a heater.

3 21. On another occasion, in May 2016, Mr. Russell was living on the same parcel of
4 Caltrans property at the corner of 7th Street and Castro Street in Oakland. Without any notice,
5 approximately twenty Caltrans employees arrived on May 2, 2016 with two compactor trucks.
6 Within five minutes, the Caltrans employees ordered him away and began taking and destroying
7 his personal belongings. Even though Mr. Russell was present during the clean-up and tried to
8 move his belongings to safety, Defendants seized and destroyed his bike, tent, and a shopping
9 cart full of clothes.

10 22. On June 14, 2016, Mr. Russell filed an administrative claim against Caltrans for
11 loss of property. On August 9, 2016, Mr. Russell's claim was denied. Thus, Mr. Russell has
12 exhausted his administrative remedies.

13 23. Plaintiff Christopher Craner has been homeless since 2014. In March 2015, Mr.
14 Craner was living on a parcel of Caltrans property on the corner of 7th Street and Castro Street in
15 Oakland. During that time, Defendants posted a notice, stating its intent to clear out the
16 encampment within three days, but the notice did not specify the day on which clean-up would
17 occur. When Defendants arrived to clear out the encampment, Mr. Craner began to remove his
18 tent and other personal belongings from the site. However, once Mr. Craner stepped off
19 Caltrans' property and onto the sidewalk, a CHP officer informed him that if he continued to
20 remove his belongings from Caltrans' property, he would be arrested for trespassing. Mr. Craner
21 watched helplessly as Defendants tossed his sleeping bags, jackets, tool set, and family antiques
22 into a trash compactor.

23 24. In order to retrieve any personal property that might not have been destroyed, Mr.
24 Craner attempted to contact Defendants by calling the telephone number provided on the posted
25 notice. However, despite several calls, Mr. Craner was never able to reach a live person and his
26 voice messages went unreturned.

1 25. Plaintiff Patricia Moore has been intermittently homeless since 2006. In early
2 2016, Ms. Moore was living with a group of other homeless individuals under the Interstate-580
3 overpass on Gilman Street in Berkeley. Defendants came to the encampment at least five times
4 while Ms. Moore lived on Gilman Street. On many of those occasions, Defendants posted a
5 notice of intent to clear out the site within the following four or five days. However, upon
6 arrival, Defendants would often give the residents less than five minutes to move their
7 belongings. Anything not cleared within that timeframe was summarily thrown into a compactor
8 truck or driven directly to the dump.

9 26. For example, on March 17, 2016, Defendants began to confiscate personal
10 belongings less than five minutes after their arrival. One employee pried Ms. Moore's tent poles
11 from her hands and threw them into the compactor. Other employees seized and destroyed her
12 tent, cot, sleeping bags, food, colored markers, a bike lock, clothing, games, shoes, a coat, nail
13 polish, and toiletries. In another instance, Defendants posted a notice of intent to clear out the
14 Gilman Street site, stating that Defendants would arrive the following week at 9:00 AM.
15 However, Defendants arrived at 8:00 AM. Expecting Caltrans at 9:00 AM, Ms. Moore was still
16 moving her belongings when Defendants arrived, and again Caltrans personnel pried Ms.
17 Moore's tent poles out of her hands to throw away. At the same time, other Caltrans employees
18 threw her bicycle into the trash compactor. During the incident, Ms. Moore became physically
19 exhausted from trying to save her belongings, and she fell to the ground gasping for air. Had
20 Defendants come at the posted time of 9:00 AM, Ms. Moore would have already moved all of
21 her belongings.

22 27. On March 30, 2016, Ms. Moore filed an administrative claim against Caltrans for
23 loss of property from the March 17 incident. On August 9, 2016, Ms. Moore's claim was denied.
24 Thus, Ms. Moore has exhausted her administrative remedies.

25 28. Plaintiff Homeless Action Center ("HAC") is a non-profit organization that
26 provides free public benefits advocacy to homeless and mentally ill individuals residing in
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1 Alameda County. In addition to helping clients obtain sustainable income and health insurance,
2 HAC also works with community stakeholders to reduce the harms associated with a lack of
3 housing and healthcare.

4 29. HAC has clients who currently live or have lived in encampments on or adjacent
5 to Caltrans property. Many of HAC's clients have reported to HAC lawyers and advocates that
6 Defendants have periodically conducted sweeps, whereby Defendants have seized and destroyed
7 the personal property of homeless individuals.

8 30. The periodic seizing and destruction of property by Defendants has had a negative
9 effect on the well-being of HAC's clients. Many of these individuals are in fragile physical and
10 mental health, and the loss of their property has put them at significant risk.

11 31. In addition to the direct effect on HAC's clients, Defendants' practice of seizing
12 and destroying the property of homeless individuals has made the organization's work more
13 difficult. Individuals who have lost property due to Defendants' unconstitutional actions are
14 motivated to move away from the locations where the loss took place. Consequently, the
15 individuals may move out of Alameda County or even out of the State. When these individuals
16 move, HAC must expend additional and considerable resources to maintain contact with them.
17 Due to difficulty in maintaining contact, the services that HAC provides to these individuals may
18 be interrupted. These interruptions increase the risk of homeless individuals losing their benefits
19 altogether, or having to begin the process of applying for benefits all over again. Helping clients
20 re-apply for benefits also requires HAC to expend substantial additional resources to fulfill its
21 mission of helping clients obtain sustainable income and health insurance. HAC brings this suit
22 for injunctive and declaratory relief to protect the rights of these homeless individuals.

23 32. Plaintiff Western Regional Advocacy Project ("WRAP") is a non-profit
24 organization that seeks to expose and eliminate the root causes of homelessness and combat the
25 civil and human rights abuses of people experiencing poverty and homelessness across
26 California.

1 33. Its California member organizations are Los Angeles Community Action
2 Network, Street Spirit, San Francisco Coalition on Homelessness, and Sacramento Homeless
3 Organizing Committee. Both WRAP and its California member organizations have expended
4 substantial time and resources responding to Defendants' actions. For example, when Caltrans
5 seizes and destroys homeless individuals' belongings, member organizations have responded to
6 the immediate need by trying to help individuals get their belongings back, working to prevent
7 future destruction by Caltrans, and helping to replace basic essentials, such as food, clothing, and
8 shelter. WRAP brings this suit for injunctive and declaratory relief to protect the rights of these
9 homeless individuals.

10 34. Plaintiff Susan Halpern is a retired social worker and a grandmother who lives in
11 a home that she owns in Alameda County.

12 35. Plaintiff Natalie Leimkuhler is a retired photographer and grandmother who also
13 lives in a home that she owns in Alameda County.

14 36. Over at least the past 14 the years, both Ms. Halpern and Ms. Leimkuhler have
15 worked tirelessly on behalf of homeless individuals, including preparing meals, organizing
16 volunteers, and advocating for greater funding for services that address the plight of these
17 individuals. Approximately 15 years ago, Ms. Leimkuhler co-founded a youth shelter in
18 Berkeley, called the Youth Engagement Advocacy and Housing ("YEAH!") shelter. Ms.
19 Halpern joined the YEAH! Board of Directors one year after its inception. In addition to serving
20 on the YEAH! Board of Directors and working to promote the organization's goals, Ms. Halpern
21 and Ms. Leimkuhler have helped young individuals as they transition from public shelters into
22 private dwellings by providing groceries, furniture, and other supplies.

23 37. Ms. Leimkuhler and Ms. Halpern own real property in Alameda County and have
24 been assessed and paid property taxes to the County within the last year. They have also paid
25 income taxes assessed by the State of California within the last year. They bring this suit as
26 citizens and taxpayers of Alameda County and the State of California.

1 **II. Defendants**

2 38. Defendant Caltrans is a public entity of the State of California, doing business in
3 the County of Alameda.

4 39. Defendant Malcolm Dougherty is the Director of Caltrans, and in that capacity is
5 responsible for the enforcement, operation, and execution of all duties vested by law in that
6 agency, and is responsible for the conduct of Caltrans as alleged herein.

7 40. Defendants Does 1 through 50 are agents, employees, contractors, or
8 representatives of Caltrans. In doing the acts complained of herein, Defendants Does 1 through
9 50 were acting in the course and scope of their agency, employment, or representative capacity,
10 and were acting as the agents of each other, whose real names are not now known because
11 Plaintiffs have not yet had the opportunity to conduct discovery to identify the particular
12 employees, contractors, or representatives involved in the sweeps in Berkeley, Oakland, and
13 Emeryville. Accordingly, these Defendants are sued by their fictitious names. Plaintiffs will
14 move the court for an order permitting this complaint to be amended to insert the true names of
15 the individuals sued herein by fictitious names when the same are ascertained.

16 **CLASS ACTION ALLEGATIONS**

17 41. Class Plaintiffs bring this action on behalf of themselves and the following
18 proposed class:

19 All homeless persons in the City of Berkeley, the City of Oakland, and the City of
20 Emeryville whose personal belongings have been or will be taken and destroyed
21 by one or more of the Defendants, from December 13, 2014 to the present.

22 42. The precise number of members in this class is unknown to Plaintiffs. Plaintiffs
23 are aware of over fifty-five individuals that have filed administrative claims against Caltrans in
24 the last twelve months and that fall within this class, but the precise number of members can only
25 be determined by appropriate discovery. Plaintiffs are informed and believe that the class is so
26 numerous, consisting of scores of homeless persons with virtually no financial resources, that
27

1 joinder of all members of the class in a single action is impractical and that disposition of claims
2 through the procedure of class action will be of benefit to the parties and the Court.

3 43. Plaintiffs will fairly and adequately represent and protect the interests of the
4 members of the class. Plaintiffs are committed to the vigorous prosecution of this action and
5 have retained counsel who are competent and experienced in both class actions and tort
6 litigation.

7 44. Plaintiffs' claims are typical of the claims of the members of the class because:
8 the Plaintiffs and the other members suffered the same or similar injury of seizure and
9 destruction of personal property; the action is based on Defendants' conduct in carrying out
10 "sweeps," which is not unique to the named Plaintiffs; and other class members have been
11 injured by the same course of Defendants' conduct.

12 45. Common questions of law and fact exist as to all members of the class and
13 predominate over the questions, if any, affecting only individual members of the class. The
14 common questions include, but are not limited to, the following:

- 15 i. Whether Defendants' practices and conduct of taking and destroying the
16 personal property of homeless individuals, without providing either
17 adequate notice or the opportunity to retrieve personal possessions before
18 they are destroyed, and without a legitimate government interest, violate
19 the class members' rights against unreasonable seizure under the
20 California and United States Constitutions;
- 21 ii. Whether Defendants' practices and conduct of taking and destroying the
22 personal property of homeless individuals, without providing either
23 adequate notice or a meaningful opportunity to retrieve personal
24 possessions before they are destroyed, and without a legitimate
25 government interest, violate the class members' due process rights under
26 the California and United States Constitutions;
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1 iii. Whether Defendants' practices and conduct of taking and destroying the
2 personal property of homeless individuals, without providing either
3 adequate notice or a meaningful opportunity to retrieve personal
4 possessions before they are destroyed, and without a legitimate
5 government interest, violate the class members' rights under California
6 Civil Code §§ 52 and 52.1, Streets and Highways Code § 720, and the
7 common law torts of conversion, trespass to chattels, and negligent
8 infliction of emotional distress;

9 iv. Whether declaratory relief declaring that Defendants' practices and
10 conduct are unconstitutional and unlawful should be ordered by the Court;
11 and

12 v. Whether injunctive relief restraining further unconstitutional and unlawful
13 acts by defendants should be ordered by the Court and, if so, the nature of
14 that injunctive relief.

15 46. A class action is superior to other available methods for the fair and efficient
16 adjudication of the claims asserted in this action. Were separate actions to be brought
17 individually by members of the class, the resulting duplication of lawsuits would cause undue
18 hardship and expense to the Court and the litigants. The prosecution of separate individual
19 actions would also impair the interests of individual plaintiffs and create a risk of inconsistent
20 rulings against the defendants, thus substantially prejudicing all litigants. Absent a class action,
21 Defendants would likely continue their wrongdoing and there would be a failure of justice.

22 47. Plaintiffs know of no difficulty that would be encountered in the management of
23 this litigation that would preclude its maintenance as a class action. Notice can be provided to
24 the members of the class by posting signage at encampments, shelters, and other places where
25 homeless individuals who may be potential class members are generally known to be located; by
26 distributing information directly to encampment residents and to organizations that provide
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1 services to homeless individuals; and by publishing information in the *Street Spirit*, a free
2 newspaper that is generally distributed to and read by some homeless individuals, among others.
3 To the extent that class members have a known mailing address, notice can be provided by
4 mailing information to that known address by first class mail.

5 GENERAL ALLEGATIONS

6 48. An estimated 4,040 of Alameda County's residents are homeless, according to a
7 March 2016 report by the Alameda County Public Health Department in collaboration with the
8 organization EveryOne Home.² Of those estimated 4,040 homeless individuals, 985 (24.4%)
9 were part of families with at least one child, 950 (23.5%) reported being victims of family
10 violence at some point in their lives, and 388 (9.6%) reported being military veterans.³ Further,
11 714 (17.7%) of the surveyed homeless individuals suffer from serious mental illness.⁴ The study
12 found that "the number of people becoming newly homeless has increased as the economic
13 recovery has failed to improve incomes for most individuals and families, vacancy rates have
14 decreased, rents have increased significantly, and public resources to ensure adequate housing
15 for all are diminishing."⁵ Without adequate housing and other social services, Alameda
16 County's homeless population remains one of the county's most vulnerable.

17 **I. Caltrans has agreed in two prior cases to stop seizing and immediately destroying** 18 **homeless people's property.**

19 49. In 1992, a group of homeless individuals in Alameda County sued Caltrans, along
20 with other defendants, for seizing and summarily destroying homeless individuals' personal
21 property. *See Lee v. California Department of Transportation et al.*, No. C-92-3131 SBA (N.D.
22 Cal. 1992). As part of a settlement in that case, Caltrans agreed that for a period of at least two
23

24 ² EVERYONE HOME & ALAMEDA COUNTY PUBLIC HEALTH DEPARTMENT, A REPORT ON THE 2015
25 ALAMEDA COUNTY POINT IN TIME COUNT, (Mar. 2016), *available at*
26 http://www.issuelab.org/resource/2015_alameda_countywide_homeless_count_and_survey_repo
27 rt.

28 ³ *Id.* at 3, 8.

⁴ *Id.* at 9.

⁵ *Id.* 10.

1 years it would provide 48 hours' notice before removing homeless individuals' property from a
2 state right of way, and would then store any property that it did seize for at least 20 days so that
3 the owners could recover their property. (See Exhibit A.)

4 50. In October 2006, a class of homeless individuals in the City of Fresno sued
5 Caltrans officials, among other defendants, for its ongoing policy and practice of confiscating
6 and summarily destroying the homeless individuals' property with little or no notice.⁶

7 51. Later that same year, the court issued a preliminary injunction against some of the
8 defendants, prohibiting them from "seizing and immediately destroying the property of homeless
9 persons, absent probable cause to believe that the property is evidence of a crime, contraband, or
10 presents an immediate threat to public health or safety; unless the City provides constitutionally
11 adequate notice and a meaningful opportunity to be heard concerning the seizure and destruction
12 of such person[al] property before the property is destroyed."⁷

13 52. The court further stated, "Absent an immediate threat to public health or safety,
14 any property of the homeless that is seized that is not hazardous or contraband, may not be
15 destroyed without prior written notice that such property will be seized and destroyed and a
16 constitutionally adequate pre- or post-deprivation remedy provided to record such property."⁸

17 53. In June 2008, Caltrans settled with the plaintiffs. In addition to paying into a
18 Settlement Fund, Caltrans agreed to follow the rules set forth in the court's preliminary
19 injunction for at least five years.⁹ (See Exhibit B.)

20 **II. As a result of that litigation, Caltrans adopted a policy meant to ensure that its**
21 **employees do not seize and immediately destroy homeless individuals' property.**

22 54. In August 2010, in light of "federal legal precedence governing the actions that
23 shall be performed before the removal of personal property from an encampment," Caltrans
24 promulgated a new Maintenance Policy Directive, titled "Illegal Encampment Removal Policy"

25 _____
26 ⁶ *Kincaid v. City of Fresno*, No. 06-CV-1445 (E.D. Cal. Oct. 17, 2006), ECF No. 1.

27 ⁷ *Kincaid v. City of Fresno*, No. 06-CV-1445 (E.D. Cal. Dec. 11, 2006), ECF No. 92.

28 ⁸ *Id.*

⁹ *Kincaid v. City of Fresno*, No. 06-CV-1445 (E.D. Cal. June 5, 2008), ECF No. 304-3.

1 (“the Policy”). The “goal” of the Policy was stated as “removal of illegal encampments and the
2 mitigation of health, safety, access and concealment issues while respecting the rights of
3 occupants and informing them of alternatives within the community.”

4 55. Pursuant to the Policy, prior to the clean-up of the site, Caltrans is required to post
5 conspicuous “Notices to Vacate” signs at least 72 hours prior to any clean up and/or removal of
6 personal property. The signs must note that items with apparent value will be stored for a
7 minimum of 90 days. Additionally, the signs must include a contact phone number.

8 56. The Policy dictates that prior to commencing a sweep, all remaining occupants
9 must be allowed to remove possessions before any clean-up begins to prevent the illegal seizure
10 of personal property.

11 57. During the clean-up, items of apparent value must be collected and stored for a
12 minimum of 90 days. Items with apparent value are personal belongings that are not obviously
13 trash or fouled with human waste. This includes clothing, camping gear, electronics, and
14 personal items such as glasses, photos, medicine, books, and strollers.

15 **III. Caltrans has been violating the law as well as its own policy by seizing and**
16 **immediately destroying homeless individuals’ property.**

17 58. Yet now, three years after the expiration of the *Kincaid* settlement and six years
18 after Caltrans enacted its Policy, Caltrans is again seizing and summarily destroying homeless
19 individuals’ property, in violation of its Policy and state and federal law. In many of its sweeps
20 conducted in Oakland, Berkeley, and Emeryville, Defendants arrive with compactor trucks and
21 immediately destroy all of the personal property left at the encampment, regardless of the
22 apparent value of the items.

23 59. For example, as discussed above, Plaintiffs Sanchez, Leone, Russell, Craner, and
24 Moore all had personal belongings – including tents, sleeping bags, camping stoves, and tool sets
25 – destroyed by Defendants. Defendants provided no notice, insufficient notice, or misleading
26 notice, and Defendants often failed to give residents an opportunity to remove their belongings
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1 from the site. For example, a Caltrans notice that was posted July 8, 2016, at 9:00 AM declared
2 that “all personal property” must be removed by that exact same date and time, and that “any
3 personal property left at this site after this time will be considered abandoned.” That same
4 “notice” failed to include the required contact number for people to reclaim their property. (See
5 Exhibit F.) And even when Defendants posted contact information, Plaintiffs were unable to
6 reach a live person and voice messages were never returned, obviating any opportunity for
7 recovery of these belongings.

8 60. The named Plaintiffs are not the only individuals who have experienced
9 unconstitutional property loss from Defendants’ actions. Along with Plaintiffs Sanchez, Leone,
10 Russell, and Moore, 55 other homeless individuals have submitted administrative claims to
11 Defendants within the last twelve months, alleging property loss, from sweeps conducted at
12 various locations across Berkeley, Oakland, and Emeryville. Caltrans has either denied or failed
13 to act upon each of these claims.

14 61. In addition, Katherine Perkins has filed an administrative class claim on behalf of
15 herself and those similarly situated. Specifically, Ms. Perkins filed a claim on behalf of: all
16 homeless persons in the City of Berkeley, the City of Oakland, and the City of Emeryville whose
17 personal belongings have been taken and destroyed by Caltrans personnel, from June 10, 2016 to
18 the present. Caltrans has not responded to Ms. Perkins’ class claim, and claims are deemed
19 denied 45 days after filing. Cal. Gov. Code § 912.4(c). Thus, Ms. Perkins’ claim has been
20 denied as a matter of law.

21 62. Ms. Perkins has camped near Brush Street for approximately four years. In
22 November 2016, in particular, Ms. Perkins was living with her husband on Caltrans property in
23 Oakland between Highway 980 and Brush Street. When she returned to the campsite on
24 November 15, 2016, her husband informed her that he witnessed a Caltrans crew sweep the site
25 and watched Caltrans take many of their possessions, including a pair of sturdy boots; their
26 bedding (which consisted of blankets, one small child’s comforter, two king-sized comforters,
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1 and a foam mattress); a rolling flat cart; a large 30' x 20' tarp; and an "E-Z Up" canopy that
2 protects her from the rain. During the sweep, her husband attempted to reclaim the property
3 from the Caltrans personnel, but was unsuccessful.

4 63. Caltrans has taken and destroyed Ms. Perkins' belongings on numerous other
5 occasions as well. Caltrans has taken blankets, clothes, a guitar, bicycles, family photos, almost
6 \$100 in cash, cell phones, a laptop, a PDA, and other electronics. Caltrans has also taken all of
7 her identification documents, including her Social Security card and her birth certificate, on
8 many of these occasions.

9 64. News articles confirm that Defendants' illegal actions are commonplace in
10 Alameda County, and represent a pattern and practice of Defendants in conducting its sweeps.
11 The *East Bay Express* reported that on January 27, 2016, a homeless woman who had stored her
12 personal property in plastic bins hidden behind a freeway-bridge column in West Oakland lost
13 almost all of her personal belongings when Defendants cleared her campsite and threw all of her
14 boxes into a trash compactor.¹⁰ The story explains that the woman "pleaded for them to return
15 her boxes, but . . . the crew threw it all into a trash compactor." The property that Defendants
16 summarily destroyed included her grandmother's necklaces, her mother's cashmere jacket, and
17 many other valuables and heirlooms. (See Exhibit C.)

18 65. Likewise, earlier this year, the *East Bay Express* reported that an occupant of an
19 encampment in Oakland under Interstate 880 spotted Defendants and rushed across the street to
20 beg them to stop throwing away his property.¹¹ Despite his presence during the sweep, the vast
21 majority of his personal belongings were thrown into a garbage truck, including his shoes,
22 clothing, and tools. (See Exhibit C.)

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25 ¹⁰ Darwin Bond Graham, *East Bay Homeless Campers Accuse Caltrans of Illegally Confiscating*
26 *and Destroying Valuable Property – and Even Family Heirlooms*, EAST BAY EXPRESS, Aug. 9,
27 2016, <http://www.eastbayexpress.com/oakland/east-bay-homeless-campers-accuse-caltrans-of-illegally-confiscating-and-destroying-valuable-property-and-even-family-heirlooms/Content?oid=4932571>.

28 ¹¹ *Id.*

1 66. In December 2015, Defendants, acting in concert with the CHP, evicted homeless
2 individuals from underneath an 880 Freeway bridge in downtown Oakland in the middle of a
3 rainstorm.¹² Defendants used state prison parolees, working through the Golden State Works
4 program, to dispose of tents, mattresses, and other belongings. As reported by the *East Bay*
5 *Express*, at least one camp resident was unable to save or recover many of his belongings
6 because they were thrown into a garbage truck's compactor. (See Exhibit D.)

7 67. As reported by the *East Bay Express*, Caltrans spokesperson Bob Haus admitted
8 that the current policy is to throw away many or all of the items left behind. Specifically, Haus
9 stated that the "policy is [that] anything left behind after the 72-hour notice often will be thrown
10 in the garbage."¹³ Mr. Haus further explained that although workers are supposed to store items
11 that are worth more than \$50 for 90 days so that their owners can reclaim them, they in fact
12 discard bags containing homeless people's possessions without even inspecting their contents:
13 "[i]t's best to limit physical contact with the items, so if it's a backpack, we'll just throw it
14 away." (See Exhibit C.)

15 68. In addition to failing to collect and store items of apparent value and/or permitting
16 individuals present during sweeps to remove and recover their personal belongings, Defendants'
17 conduct continues to violate the Policy as well as state and local law in other respects. For
18 instance, many of the "Notice to Vacate" signs posted in Oakland, Berkeley, and Emeryville
19 during Defendants' sweeps have failed to contain phone numbers necessary for occupants to call
20 to recover their personal belongings, rendering recovery of these items (to the extent they are
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23 ¹² Darwin Bond Graham, *Caltrans and CHP Oust Homeless from Camp in Pouring Rain in*
Oakland, EAST BAY EXPRESS, Dec. 3, 2015,
24 [http://www.eastbayexpress.com/SevenDays/archives/2015/12/03/caltrans-and-chp-oust-](http://www.eastbayexpress.com/SevenDays/archives/2015/12/03/caltrans-and-chp-oust-homeless-from-camp-in-pouring-rain-in-oakland)
[homeless-from-camp-in-pouring-rain-in-oakland](http://www.eastbayexpress.com/SevenDays/archives/2015/12/03/caltrans-and-chp-oust-homeless-from-camp-in-pouring-rain-in-oakland).

25 ¹³ Darwin Bond Graham, *East Bay Homeless Campers Accuse Caltrans of Illegally Confiscating*
and Destroying Valuable Property – and Even Family Heirlooms, EAST BAY EXPRESS, Aug. 9,
26 2016, [http://www.eastbayexpress.com/oakland/east-bay-homeless-campers-accuse-caltrans-of-](http://www.eastbayexpress.com/oakland/east-bay-homeless-campers-accuse-caltrans-of-illegally-confiscating-and-destroying-valuable-property-and-even-family-heirlooms/Content?oid=4932571)
27 [illegally-confiscating-and-destroying-valuable-property-and-even-family-](http://www.eastbayexpress.com/oakland/east-bay-homeless-campers-accuse-caltrans-of-illegally-confiscating-and-destroying-valuable-property-and-even-family-heirlooms/Content?oid=4932571)
28 [heirlooms/Content?oid=4932571](http://www.eastbayexpress.com/oakland/east-bay-homeless-campers-accuse-caltrans-of-illegally-confiscating-and-destroying-valuable-property-and-even-family-heirlooms/Content?oid=4932571).

1 actually stored) impossible. This is contrary to the Policy, which requires Caltrans to post a
2 phone number in order to enable homeless individuals to retrieve their property.¹⁴

3 69. Defendants' illegal seizure and destruction of homeless individuals' property is
4 part of a routine pattern of such conduct throughout California. For example, on September 22,
5 2016, Defendants, in concert with the CHP and Stockton Police Department, conducted a sweep
6 of an encampment along Interstate 5 in Stockton.¹⁵ *RecordNet* reported that an encampment
7 resident, who had been living there since February, owned a rolling cooler with items she had
8 neatly packed and made ready to go the night before. However, when she arrived at the Weber
9 Avenue gate Thursday morning, she was told she could take only what she could carry in her
10 hands. She was thus forced to leave her cooler and most of her personal belongings behind.
11 Volunteers who arrived with trucks to help residents move their belongings were also denied
12 access into the camp. Unable to cart away items, individuals left behind their food, blankets,
13 clothes, utensils, medication, photos, and personal documents, which were piled up and then
14 disposed of by Defendants. (*See Exhibit E.*)

15 70. Caltrans has also conducted sweeps across San Francisco. During a February 23,
16 2016 sweep of an encampment along Division Street in San Francisco, Defendants, in concert
17 with the CHP and the San Francisco Department of Public Works, threw a walker that belonged
18 to a disabled veteran into a Caltrans trash compactor. A bystander, who captured an image of the
19 walker in the back of the compactor, asked whether the seized walker would be returned to the
20 veteran. Instead of returning the item, the walker was summarily crushed by the Caltrans truck.
21 (*See Exhibit G.*)

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25 ¹⁴ *See, e.g.*, Exhibit F (a "Notice to Vacate" posted by Caltrans that failed to include a phone
26 number).

27 ¹⁵ Almendra Carpizo, *Illegal Homeless Encampment Near I-5 Cleared Out Again*, RECORDNET,
28 Sept. 22, 2016, <http://www.recordnet.com/news/20160922/illegal-homeless-encampment-near-i-5-cleared-out-again>.

1 71. As these sweeps in Stockton and San Francisco suggest, Defendants are
2 systematically violating its Policy throughout the State, and are engaging in state and federal
3 constitutional violations department-wide.

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1 **FIRST CAUSE OF ACTION**

2 **Right to be Secure from Unreasonable Seizures**

3 **42 U.S.C. § 1983 – Fourth Amendment**

4 **(KIMBERLEE SANCHEZ, JAMES LEONE, SCOTT RUSSELL, CHRISTOPHER**
5 **CRANER, PATRICIA MOORE, AND ALL OTHERS SIMILARLY SITUATED, AND**
6 **HAC AND WRAP AGAINST MALCOLM DOUGHERTY AND THE DOE**
7 **DEFENDANTS)**

8 **Art. I, § 13, California Constitution**

9 **(KIMBERLEE SANCHEZ, JAMES LEONE, SCOTT RUSSELL, CHRISTOPHER**
10 **CRANER, PATRICIA MOORE, AND ALL OTHERS SIMILARLY SITUATED, AND**
11 **HAC AND WRAP AGAINST ALL DEFENDANTS)**

12 72. The allegations of paragraphs 1 through 71 are incorporated by reference as if set
13 forth in their entirety herein.

14 73. Defendants have violated, and will continue to violate, Plaintiffs' constitutional
15 rights to be secure from unreasonable seizures of their property by confiscating and destroying
16 these individuals' property without a warrant.

17 74. Defendants' unlawful actions, often conducted in concert with the agents and
18 employees of the California Highway Patrol, have unlawfully deprived Plaintiffs of their right to
19 be secure from unreasonable seizures of their property.

20 75. Plaintiffs are informed and believe that the acts of the Defendants have been
21 intentional in seizing and destroying Plaintiffs' property without a warrant and/or deliberately
22 indifferent to the likely outcome that Plaintiffs' property would be seized and destroyed without
23 a warrant.

24 76. As a direct and proximate consequence of the acts of the Defendants, Plaintiffs
25 have suffered and continue to suffer from the seizure and destruction of their personal property,
26 and thus are entitled to injunctive, declaratory, and compensatory relief.

1 **SECOND CAUSE OF ACTION**

2 **Right to Due Process of Law**

3 **42 U.S.C. § 1983 – Fourteenth Amendment**

4 **(KIMBERLEE SANCHEZ, JAMES LEONE, SCOTT RUSSELL, CHRISTOPHER**
5 **CRANER, PATRICIA MOORE, AND ALL OTHERS SIMILARLY SITUATED, AND**
6 **HAC AND WRAP AGAINST MALCOLM DOUGHERTY AND THE DOE**
7 **DEFENDANTS)**

8 **Art. I, § 7, California Constitution**

9 **(KIMBERLEE SANCHEZ, JAMES LEONE, SCOTT RUSSELL, CHRISTOPHER**
10 **CRANER, PATRICIA MOORE, AND ALL OTHERS SIMILARLY SITUATED, AND**
11 **HAC AND WRAP AGAINST ALL DEFENDANTS)**

12 77. The allegations of paragraphs 1 through 71 are incorporated by reference as if set
13 forth in their entirety herein.

14 78. Defendants owe Plaintiffs a duty under the Due Process Clause of the U.S.
15 Constitution and California Constitution to not deprive Plaintiffs of their property without due
16 process of law.

17 79. Defendants have provided Plaintiffs with no notice, insufficient notice, or
18 misleading notice that Plaintiffs’ property would be seized and destroyed. Defendants’ practices
19 and conduct in contravention of Caltrans’ Policy have violated, and will continue to violate,
20 Plaintiffs’ right to due process of law.

21 80. Plaintiffs are informed and believe that the acts of the Defendants have been
22 intentional in seizing and destroying Plaintiffs’ property without due process of law and/or have
23 been deliberately indifferent to the likely outcome that Plaintiffs’ property would be seized and
24 destroyed without due process of law.

1 81. As a direct and proximate consequence of the acts of the Defendants, Plaintiffs
2 have suffered and continue to suffer from the seizure and destruction of their personal property,
3 and thus are entitled to injunctive, declaratory, and compensatory relief.
4

5 **THIRD CAUSE OF ACTION**

6 **Loss and Return of Property**

7 **California Civil Code § 2080, et seq.**

8 **(KIMBERLEE SANCHEZ, JAMES LEONE, SCOTT RUSSELL, CHRISTOPHER**
9 **CRANER, PATRICIA MOORE, AND ALL OTHERS SIMILARLY SITUATED, AND**
10 **HAC AND WRAP AGAINST ALL DEFENDANTS)**

11 82. The allegations of paragraphs 1 through 71 are incorporated by reference as if set
12 forth in their entirety herein.

13 83. California Civil Code § 2080, *et seq.*, imposes a duty to maintain property that is
14 not abandoned. Section 2080 requires: “Any person or any public or private entity that finds and
15 takes possession of any money, goods, things in action, or other personal property, . . . shall,
16 within a reasonable time, inform the owner, if known, and make restitution without
17 compensation” Section 2080.6 requires public agencies to either (1) elect to be governed by
18 the provisions of § 2080, *et seq.*, or (2) “adopt reasonable regulations for the care, restitution,
19 sale or destruction of unclaimed property in its possession.” If the public agency elects to be
20 governed by § 2080, *et seq.*, then, upon finding an individual’s property, the public agency is
21 required under § 2080.1 to turn over such property to the police or sheriff’s department and make
22 an affidavit describing the property as well as when and where it was found. The police and
23 sheriff’s department are then required to store the property for 90 days, per § 2080.2. If the
24 public agency instead decides to adopt its own reasonable regulations, then § 2080.6 requires that
25 such regulations must provide that the agency will hold the unclaimed property in its possession
26 “for a period of at least three months.” Thus, when Defendants take possession of Plaintiffs’
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1 property that is unattended but not abandoned, § 2080, *et seq.*, requires Defendants to keep that
2 property safe, by either turning it over to the police/sheriff or holding the property for at least
3 three months.

4 84. In direct contravention of § 2080, *et seq.*, Defendants have failed to protect and
5 preserve the unattended but not abandoned personal property of Plaintiffs found on public land.
6 Specifically, Defendants have failed to turn over any collected property to the police or sheriff's
7 department and make an affidavit. Defendants have also failed to hold property that they have
8 found for at least three months pursuant to a regulation adopted in compliance with § 2080.6.

9 85. Because Defendants failed to comply with their statutory duty to maintain
10 Plaintiffs' property under § 2080, *et seq.*, Plaintiffs are entitled to injunctive and declaratory
11 relief.

12
13 **FOURTH CAUSE OF ACTION**

14 **Maintenance of Property When Taken from Owner for Temporary Safekeeping**

15 **California Civil Code § 2080.10**

16 **(KIMBERLEE SANCHEZ, JAMES LEONE, SCOTT RUSSELL, CHRISTOPHER**
17 **CRANER, PATRICIA MOORE, AND ALL OTHERS SIMILARLY SITUATED, AND**
18 **HAC AND WRAP AGAINST ALL DEFENDANTS)**

19 86. The allegations of paragraphs 1 through 71 are incorporated by reference as if set
20 forth in their entirety herein.

21 87. California Civil Code § 2080.10 imposes a duty to maintain property that is taken
22 directly from the owner for temporary safekeeping for 60 days. Section 2080.10 requires that the
23 public agency: (1) "Take responsibility for the storage, documentation, and disposition of the
24 property"; and (2) "Provide the person from whom the property was taken with a receipt and
25 instructions for the retrieval of the property" Thus, when Defendants take Plaintiffs'
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1 property directly from Plaintiffs for temporary safekeeping, § 2080.10 requires Defendants to
2 maintain such property.

3 88. In direct contravention of § 2080.10, Defendants have failed to take responsibility
4 for the storage, documentation, and disposition of the property taken directly from Plaintiffs for
5 temporary safekeeping, and failed to provide Plaintiffs with a receipt and instructions for the
6 retrieval of the property.

7 89. Because Defendants failed to comply with their statutory duty to maintain
8 Plaintiffs' property under § 2080.10, Plaintiffs are entitled to injunctive and declaratory relief.

9
10 **FIFTH CAUSE OF ACTION**

11 **Violation of Civil Rights: Interference by Threat, Intimidation or Coercion**

12 **California Civil Code § 52.1**

13 **(KIMBERLEE SANCHEZ, JAMES LEONE, SCOTT RUSSELL, CHRISTOPHER**
14 **CRANER, PATRICIA MOORE, AND ALL OTHERS SIMILARLY SITUATED,**
15 **AGAINST DEFENDANT CALTRANS AND THE DOE DEFENDANTS)**

16 90. The allegations of paragraphs 1 through 71 are incorporated by reference as if set
17 forth in their entirety herein.

18 91. Defendants have used threats and intimidation, and will continue to use threats
19 and intimidation, to interfere with Plaintiffs' right to maintain their personal possessions in the
20 exercise of Plaintiffs' rights secured by the U.S. Constitution, the California Constitution, and
21 the statutory laws of California.

22 92. Plaintiffs are entitled to damages pursuant to California Civil Code §§ 52, 52.1,
23 and are entitled to an injunction pursuant to California Civil Code § 52.1.

1 **SIXTH CAUSE OF ACTION**

2 **Conversion and Trespass to Chattels; California Government Code § 815.2**
3 **(KIMBERLEE SANCHEZ, JAMES LEONE, SCOTT RUSSELL, CHRISTOPHER**
4 **CRANER, PATRICIA MOORE, AND ALL OTHERS SIMILARLY SITUATED,**
5 **AGAINST DEFENDANT CALTRANS AND THE DOE DEFENDANTS)**

6 93. The allegations of paragraphs 1 through 71 are incorporated by reference as if set
7 forth in their entirety herein.

8 94. Plaintiffs were at all relevant times the owners of personal property seized and
9 destroyed by Defendants. Plaintiffs remain entitled to the possession of their personal property.
10 The personal property seized and destroyed includes tents, sleeping bags, bicycles, clothing, tool
11 sets, and family heirlooms, all of which were particularly valuable to Plaintiffs in part because
12 these belongings amounted to much if not all of the relatively few possessions that Plaintiffs
13 owned.

14 95. Defendants' practices and conduct in contravention of Caltrans' Policy have
15 denied, and will continue to interfere with and deny, Plaintiffs' possession of their property and
16 constitutes an unlawful conversion of that property to the possession and control of Defendants.
17 Defendants have since refused to return this personal property to Plaintiffs and have since
18 destroyed this property.

19 96. As a direct and proximate consequence of the acts of the Doe Defendants,
20 Plaintiffs have suffered and continue to suffer from the seizure and destruction of their personal
21 property, and thus are entitled to injunctive, declaratory, and compensatory relief from the Doe
22 Defendants.

23 97. Because Defendant Caltrans is vicariously liable for the tortious acts of the Doe
24 Defendants committed in the scope of their employment, Plaintiffs are further entitled to
25 injunctive, declaratory, and compensatory relief from Defendant Caltrans.
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1 **SEVENTH CAUSE OF ACTION**

2 **Violation of California Streets and Highways Code § 720; California Government Code**
3 **§ 815.6**

4 **(KIMBERLEE SANCHEZ, JAMES LEONE, SCOTT RUSSELL, CHRISTOPHER**
5 **CRANER, PATRICIA MOORE, AND ALL OTHERS SIMILARLY SITUATED, AND**
6 **HAC AND WRAP AGAINST ALL DEFENDANTS)**

7 98. The allegations of paragraphs 1 through 71 are incorporated by reference as if set
8 forth in their entirety herein.

9 99. California Streets and Highways Code § 720 states that Caltrans “shall” provide
10 five days’ notice upon determining to remove personal property from around any state highway,
11 unless that property obstructs or prevents the use of the highway, or consists of refuse. Thus, §
12 720 imposes a mandatory duty upon Caltrans to provide such notice.

13 100. In requiring substantial and meaningful notice prior to the removal of an
14 encroachment, § 720 was designed to protect against the particular kind of injury, i.e., property
15 seizure without sufficient notice, that Plaintiffs have suffered and continue to suffer.

16 101. Defendants are violating their mandatory duty by removing homeless individuals’
17 property from the side of the roadway without providing the required notice, in direct
18 contravention of the clear intent of § 720 to protect against seizure of property without sufficient
19 notice.

20 102. Defendants’ failure to discharge their mandatory duty of providing the requisite
21 notice proximately caused Plaintiffs’ injuries, and Plaintiffs are thus entitled to injunctive,
22 declaratory, and compensatory relief.

1 **EIGHTH CAUSE OF ACTION**

2 **Negligent Infliction of Emotional Distress; California Government Code § 815.2**
3 **(KIMBERLEE SANCHEZ, JAMES LEONE, SCOTT RUSSELL, CHRISTOPHER**
4 **CRANER, PATRICIA MOORE, AND ALL OTHERS SIMILARLY SITUATED,**
5 **AGAINST DEFENDANT CALTRANS AND THE DOE DEFENDANTS)**

6 103. The allegations of paragraphs 1 through 71 are incorporated by reference as if set
7 forth in their entirety herein.

8 104. Defendants owe a duty of care to Plaintiffs.

9 105. Defendants knew or should have known that failure to exercise due care would
10 cause Plaintiffs severe emotional distress.

11 106. Defendants' practice of providing no notice, insufficient notice, or misleading
12 notice that Plaintiffs' property would be seized and destroyed, coupled with Defendants' taking
13 and destroying of Plaintiffs' personal property is a breach of Defendants' duty.

14 107. As a proximate result of the Doe Defendants' actions, Plaintiffs have suffered
15 severe emotional distress and mental suffering, and Plaintiffs are thus entitled to injunctive,
16 declaratory, and compensatory relief from the Doe Defendants.

17 108. Because Defendant Caltrans is vicariously liable for the tortious acts of the Doe
18 Defendants committed in the scope of their employment, Plaintiffs are further entitled to
19 injunctive, declaratory, and compensatory relief from Defendant Caltrans.
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1 **NINTH CAUSE OF ACTION**

2 **Taxpayer Action Under Code Civ. Pro. § 526A to Prevent Illegal Expenditure of Funds**
3 **(SUSAN HALPERN AND NATALIE LEIMKUHNER AGAINST ALL DEFENDANTS)**

4 109. The allegations of paragraphs 1 through 71 are incorporated by reference as if set
5 forth in their entirety herein.

6 110. Defendants are illegally expending public funds by performing their duties in
7 violation of the constitutional and statutory provisions described above.

8
9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiffs request that the Court enter the following orders against
11 Defendants:

12 a. an order certifying the proposed Plaintiff class together with any necessary
13 and appropriate sub-classes under California Code of Civil Procedure § 382;

14 b. a temporary restraining order and/or preliminary injunction enjoining and
15 restraining Defendants from continuing or repeating the unlawful practices and conduct
16 complained of herein;

17 c. a statewide permanent injunction enjoining and restraining Defendants
18 from continuing or repeating the unlawful practices and conduct complained of herein;

19 d. declaratory judgment that Defendants' practices and conduct violate the
20 constitutional and statutory provisions cited above;

21 e. return of Plaintiffs' property;

22 f. damages from Defendant Caltrans and the Doe Defendants – to all Class
23 Plaintiffs for the causes of action under federal law, to all Class Plaintiffs who filed an
24 administrative claim with Caltrans for the causes of action under California law, and to all Class
25 Plaintiffs who are covered under an administrative class claim filed with Caltrans for the causes
26 of action under California law – in an amount according to proof, but in no event less than
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1 \$4,000 per incident experienced by a class member under California Civil Code § 52.1 and
2 California Government Code § 815.6;

- 3 g. For attorney's fees as provided by law;
4 h. For costs of suit; and
5 i. For such other and further relief as the Court may deem just and proper.

6
7 **JURY TRIAL DEMAND**

8 Plaintiffs demand a jury trial of all issues triable by a jury.

9
10 Dated: May 16, 2017

11 By: 

12
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26
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28 FOUNDATION OF NORTHERN CALIFORNIA, INC.
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Attorneys for Plaintiffs

VERIFICATION

I, Patricia Wall, am the Executive Director for the Homeless Action Center. I have read this Verified First Amended Complaint in the matter of *Kimberlee Sanchez et al. v. California Department of Transportation et al.* I am informed, and do believe, that the matters herein are true. On that ground, I allege that the matters stated herein are true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed in Berkeley, California on May 15, 2017.



Patricia Wall

Exhibit A

ORIGINAL
FILED

MAY 14 1993

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ISAAC LEE; JAMES LARRY FIELDS;
FREDERICK CARSON; GENTRIS PAUL;
MARTHA R. CHANEY; BILLY
CALDWELL; JAMES A. JONES; and
OAKLAND UNION OF THE HOMELESS,

Plaintiffs,

vs.

CALIFORNIA DEPARTMENT OF
TRANSPORTATION; JAMES W. VAN
LOBEN SELS, an individual; CITY OF
OAKLAND; OAKLAND POLICE
DEPARTMENT; GEORGE HART, an
individual; OAKLAND OFFICE OF
PUBLIC WORKS; TERRY ROBERTS, an
individual; CALIFORNIA STATE POLICE;
DUANE LOWE, an individual,

Defendants.

No. C-92-3131 SBA

PRELIMINARY SETTLEMENT
APPROVAL ORDER

Upon the application of the parties, and good cause appearing therefore, the
court HEREBY ORDERS as follows:

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1. The proposed Settlement Agreements, attached hereto as Exhibits "A" and "B," are hereby granted preliminary approval.

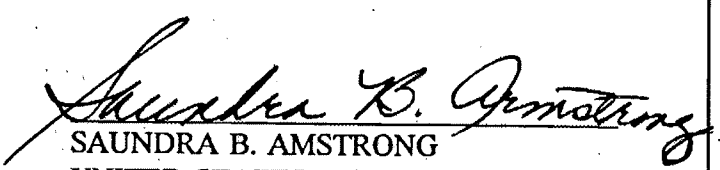
2. The proposed form for Settlement Notice, attached hereto as Exhibit "C", is approved.

3. Plaintiffs shall complete posting of the Settlement Notice, at their expense, by ~~May 20~~^{June 14}, 1993.

4. The hearing for final settlement approval is hereby set for ~~June 15~~^{July 13}, 1993, at 10:00 a.m., in the above-entitled Court before the undersigned. Said hearing, may from time to time, without further notice, be continued or adjourned by order of this Court.

5. This Court will consider written comments, in support of or in opposition to the approval of the proposed settlement, provided that those who wish to be heard must timely file and serve written statements by filing with the Clerk of this Court and serving said papers upon all Plaintiffs' Counsel no later than ~~June 8~~^{July 6}, 1993 under the procedure set forth in the approved Settlement Notice.

DATED: May 12, 1993


SAUNDRA B. AMSTRONG
UNITED STATES DISTRICT COURT JUDGE

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[Names and Addresses of Counsel
Appear on Signature Page]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ISAAC LEE; JAMES LARRY FIELDS;
FREDERICK CARSON; GENTRIS PAUL;
MARTHA R. CHANEY; BILLY
CALDWELL; JAMES A. JONES; and
OAKLAND UNION OF THE HOMELESS,

Plaintiffs,

vs.

CALIFORNIA DEPARTMENT OF
TRANSPORTATION; JAMES W. VAN
LOBEN SELS, an individual; CITY OF
OAKLAND; OAKLAND POLICE
DEPARTMENT; GEORGE HART, an
individual; OAKLAND OFFICE OF
PUBLIC WORKS; TERRY ROBERTS, an
individual; CALIFORNIA STATE POLICE;
DUANE LOWE, an individual,

Defendants.

No. C-92-3131 SBA

SETTLEMENT AGREEMENT
BETWEEN PLAINTIFFS
AND DEPARTMENT OF
TRANSPORTATION AND JAMES W.
VAN LOBEN SELS

This Stipulation and Agreement of Settlement ("Settlement Agreement") is
entered into by and between Isaac Lee, James Larry Fields, Frederick Carson, Gentry Paul,
Martha R. Chaney, Billy Caldwell, James A. Jones, and the Oakland Union of the Homeless

1 ("Plaintiffs") and the California Department of Transportation ("Department of
2 Transportation") and James Van Loben Sels. (Plaintiffs and the Department of Transportation
3 and James W. Van Loben Sels are collectively referred to as the "Parties.")

4 **WHEREAS**, Plaintiffs Isaac Lee, James Larry Fields, Gentriss Paul, Martha
5 Chaney, Billy Caldwell, James A. Jones, Frederick Carson, and the Oakland Union of the
6 Homeless filed a Complaint against, among others, the State of California Department of
7 Transportation and James W. Van Loben Sels, alleging various theories regarding the
8 handling by the Department of Transportation of Plaintiffs' property on state land;

9 **WHEREAS**, the Department of Transportation and James W. Van Loben Sels
10 deny and dispute the theories advanced by Plaintiffs and that Plaintiffs were damaged in any
11 legally recognizable manner;

12 **WHEREAS**, the Parties hereto desire to avoid the expense, inconvenience, and
13 uncertainty attendant upon litigation; and

14 **WHEREAS**, the Parties have agreed by this settlement and release to
15 compromise and resolve the matter fully and finally;

16 **NOW, THEREFORE, THE PARTIES DO STIPULATE AND AGREE AS**
17
18 **FOLLOWS:**

19
20 1. The terms of this agreement shall be in effect for a period of two years
21 from the date of executing the agreement. However, in recognition that these procedures are
22 novel and untested, either party may seek court modification after one (1) year should any of
23 the procedures herein prove to be unworkable or unreasonable.
24

1 2. Upon finding encampment property on State right of way, the
2 Department of Transportation will post the location, as described below, for 48 hours before
3 property (except immediate hazards) is removed.

4 (a) The posting shall contain i) the date and approximate time of the
5 expected removal of the property; ii) an advisement that property is subject to confiscation,
6 and possible disposal, if not removed, iii) a brief explanation of how to reclaim confiscated
7 property; and iv) a Department of Transportation public information telephone number.

8 (b) The notice shall be conspicuously posted.

9 (c) The notice shall be written in Spanish as well as in English.

10 After the 48 hour period, property remaining on a Department of Transportation right of way
11 is subject to disposal, except as described in paragraph three below.
12

13 3. Upon finding encampment property on State right of way, employees of
14 the Department of Transportation will conduct a quick field review of the scene to determine
15 if the following items are present: portable objects such as watches, jewelry, tents, stoves,
16 backpacks, audio equipment, medications, toiletries, eye glasses, personal photographs, ~~books~~
17 personal records, handbags, duffle bags, bedrolls, blankets, and usable clothing that does not
18 appear to be used solely for bedding. If such items are apparent and reasonably appear to be
19 safe, and not a sanitary hazard, under the circumstances, the Department of Transportation
20 will retain the items for 20 days. Department of Transportation employees will not be
21 required to sift through piles of garbage to find items of value. Individuals can contact the
22 Department of Transportation public information number to inquire as to the location of the
23 stored property. The possessions shall be released to persons who can identify them. The
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1 Department of Transportation shall not be responsible for insuring that the property is
2 released to the actual owners.

3 4. Plaintiffs Isaac Lee, James Larry Fields, Frederick Carson, Gentry Paul,
4 Martha R. Chaney, Billy Caldwell, and James A. Jones shall not trespass or illegally lodge on
5 Department of Transportation property listed in the attached schedule.

6 5. It is anticipated that most, if not at all, property left on State right of
7 way will in fact be removed by its owners within 48 hours after the posting of the notices
8 referred to in paragraph 2 above, and that the Department of Transportation will not spend
9 inordinate time or resources collecting or storing property.

10 6. In the course of its operations, the Department uses maintenance daily
11 forms or their equivalent. These forms reflect the date and location of the posting of notice
12 and removal of property. Counsel for Plaintiffs will be given an opportunity to inspect those
13 forms upon request.

14 7. On those occasions that law enforcement makes arrests of homeless
15 persons on state rights of ways, the Department of Transportation will not interfere with such
16 agencies' handling of arrestees' personal property. At the same time, the Department has no
17 objection to arrestees, if authorized by the arresting agency, taking their personal belongings
18 with them at the time of the arrest.

19 8. In exchange for the commitments in paragraphs 2 and 3 above,
20 Plaintiffs hereby release and forever discharge the Department of Transportation and
21 James W. Van Loben Sels from all claims, demands, causes of action, and liabilities of any
22 kind or description, whether in law or in equity, in contract or in tort, and whether or not
23 presently known, suspected, claimed, or alleged, which may be based upon or arise from the
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1 events alleged in the complaint. Specifically, any and all claims, allegations, or demands for
2 violation of California Civil Code section 2080, denial of due process, unreasonable search
3 and seizure, denial of equal protection, conversion, infliction of emotional distress, or any
4 other causes of action based upon the events alleged in the complaint, are hereby finally
5 compromised and settled.
6

7 9. Liability for all claims mentioned in this release is disputed. This
8 Agreement by the Department of Transportation and James W. Van Loben Sels is made to
9 settle this matter and is not, and may not be construed as, an admission of liability or
10 responsibility on the part of the Department of Transportation, James W. Van Loben Sels, or
11 the Department of Transportation's employees or agents.

12 10. The Parties shall bear their own costs and expenses, including any
13 attorneys' fees, incurred in this matter.
14

15 11. The procedures set forth in the Settlement Agreement cover only the
16 Department of Transportation's District Four.

17 12. Director James W. Van Loben Sels is, subject to Court approval,
18 dismissed from this lawsuit upon the Court's final approval of the Settlement Agreement.
19 Motions, if any, for enforcement of this agreement will be made against the Department of
20 Transportation only, and not against James W. Van Loben Sels.
21

22 13. The Parties to this Settlement desire to avoid unnecessary further
23 litigation. Therefore, Plaintiffs shall give at least thirty (30) days written notice to the
24 Department of Transportation's Legal Office in San Francisco citing the specific
25 circumstances of any alleged violation of this agreement and the Parties will meet, confer, and
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attempt to informally resolve the matter before judicial enforcement of this order may be requested. Monetary claims shall be handled through the normal Board of Control process.

14. This Court shall have jurisdiction to enforce the terms of this Settlement Agreement for two years from the date of execution of this agreement.

15. This Settlement Agreement is contingent upon payment of a total of \$13,000.00 by the City of Oakland to named Plaintiffs Lee, Fields, Paul, Chaney, Caldwell, Jones and Carson, and will become effective when such payment is received.

16. The Parties to this Agreement shall make joint media releases and statements regarding this Agreement and shall present it as a cooperative resolution.

17. Those who sign this Settlement Agreement on behalf of the California Department of Transportation and James W. Van Loeben Sels represent that they have the full authority of those parties to execute this Settlement Agreement.

18. This Settlement Agreement may be signed in counterpart.

DATED: May __, 1993

ISAAC LEE

May __, 1993

JAMES LARRY FIELDS

May __, 1993

GENTRIS PAUL

May __, 1993

MARTHA CHANEY

May __, 1993

BILLY CALDWELL

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May __, 1993

JAMES JONES

May __, 1993

FREDERICK CARSON

DATED: May __, 1993

OAKLAND UNION OF THE HOMELESS

By: _____

DATED: May __, 1993

CALIFORNIA DEPARTMENT OF TRANSPORTATION
and JAMES W. VAN LOBEN SELS

By: _____

Ronald W. Rogers

By: _____

Vanessa Spears

APPROVED AS TO FORM

DATED: May __, 1993

JAMES M. FINBERG
WILLIAM M. AUDET
STEVEN E. FINEMAN
LIEFF, CABRASER & HEIMANN
Embarcadero Center West
275 Battery Street, 30th Floor
San Francisco, CA 94111
Telephone: (415) 956-1000

By: _____

JAMES M. FINBERG

Attorneys for Plaintiffs

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DATED: May __, 1993

STEPHEN RONFELDT
LAURIE SHIGEKUNI
STEPHANIE GARRABRANDT
ALAMEDA COUNTY LEGAL AID SOCIETY
1440 Broadway, Ste. 700
Oakland, CA 94612
Telephone: (510) 451-9261

By: _____
STEPHEN RONFELDT

Attorneys for Plaintiffs

DATED: May __, 1993

OSHA NEUMANN
Attorney at Law
1840 Woolsey Street
Berkeley, California 94703
Telephone: (510) 644-2429

By: _____
OSHA NEUMANN

Attorney for Plaintiffs

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DATED: May __, 1993

DANIEL C. MURPHY
DONALD M. VELASCO
JOHN F. DONOVAN
RONALD W. ROGERS
VANESSA SPEAR
595 Market St., Ste. 1700
P.O. Box 7444
San Francisco, CA 94105
Telephone: (415) 982-3130

By: _____
RONALD W. ROGERS

By: _____
VANESSA SPEAR

Attorneys for Defendants
STATE OF CALIFORNIA DEPARTMENT OF
TRANSPORTATION and JAMES W. VAN
LOBEN SELS

1 JAYNE W. WILLIAMS, City Attorney (State Bar #063203)
2 RANDOLPH W. HALL, Assistant City Attorney (State Bar #080142)
3 R. MANUEL FORTES, Deputy City Attorney (State Bar #139249)
4 505 14th Street, 12th Floor
5 Oakland, California 94612
6 Telephone: (510) 238-2291 FAX: (510) 238-6565
7 Our File No. 92233
8 RMF:cmh
9 H:\rmf\lee\release.510

10 Attorneys for Defendants
11 CITY OF OAKLAND, OAKLAND POLICE DEPARTMENT, GEORGE HART,
12 OAKLAND OFFICE OF PUBLIC WORKS, sued as OAKLAND DEPARTMENT
13 OF PUBLIC WORKS and TERRY ROBERTS

14 IN THE UNITED STATES DISTRICT COURT

15 IN AND FOR THE NORTHERN DISTRICT OF CALIFORNIA

16 ISAAC LEE; JAMES LARRY FIELDS;) Case No. C 92 3131 SBA
17 DAVID DOE; GENTRIS PAUL; MARTHA)
18 R. CHANEY; BILLY CALDWELL; JAMES)
19 A. JONES; and OAKLAND UNION OF)
20 THE HOMELESS,)

21 Plaintiffs,)

22 v.)

23 DEPARTMENT OF TRANSPORTATION;)
24 JAMES W. VAN LOBEN SELS,)
25 Director, California Department)
26 of Transportation; CITY OF)
OAKLAND; OAKLAND POLICE)
DEPARTMENT; GEORGE HART, Police)
Chief of the City of Oakland;)
OAKLAND DEPARTMENT OF PUBLIC)
WORKS; Terry Roberts, Director)
of Public Works of the City of)
Oakland; CALIFORNIA STATE)
POLICE; DUANE LOWE, Chief of the)
California State Police; Does 1)
through 100,)

27 Defendants.)

SETTLEMENT AGREEMENT

28 ///

29 ///

1 WHEREAS, plaintiffs Isaac Lee, James Larry Fields,
2 Gentris Paul, Martha Chaney, Billy Caldwell, James A. Jones,
3 Frederick Carson (plaintiffs) filed a complaint against, among
4 others, defendants City of Oakland, George Hart, Police Chief of
5 the City of Oakland, City of Oakland Office of Public Works, and
6 Terry Roberts, Director of City of Oakland Office of Public Works,
7 (City of Oakland defendants), alleging that plaintiffs' personal
8 property was improperly seized, confiscated, and destroyed by
9 defendants arising out of two incidents, which occurred on March
10 5, 1993, and March 12, 1993, on property not owned by the City of
11 Oakland;

12 WHEREAS, plaintiffs and City of Oakland defendants
13 desire to avoid the expense, inconvenience, and uncertainty
14 attendant upon litigation;

15 WHEREAS, plaintiffs and City of Oakland defendants have
16 agreed to compromise and resolve the matter fully and finally by
17 this Settlement Agreement (Agreement); and

18 WHEREAS, the undersigned plaintiffs understand that the
19 liability for said incidents is disputed by the City of Oakland
20 defendants, and this Agreement is a compromise and shall not be
21 construed as an admission of liability on the part of City of
22 Oakland defendants;

23 NOW, THEREFORE, THE PARTIES DO STIPULATE AND AGREE AS
24 FOLLOWS:

25 1. In the event that the Oakland Police (OPD) arrest a
26 person within the City of Oakland, but not on City owned property,

1 and transport him/her to the Oakland City Jail (jail), for
2 unlawful lodging, [e.g. violation of California Penal Code section
3 647(i)], on private and/or California Department of Transportation
4 (CalTrans) property, the arresting officer(s) shall take the
5 following course of action:

6 a. provide reasonable time and reasonable
7 opportunity to the arrestee, before transporting him/her to the
8 jail, to gather personal possessions that the arrestee intends to
9 keep with his/her person; and

10 b. allow the arrestee to take into custody all
11 portable personal property that can reasonably fit into two 32
12 gallon plastic waste bags with the bag tied closed, or a
13 reasonable equivalent.

14 2. Portable personal property as referred to in this
15 Agreement shall include but not be limited to the following items:
16 clothing; sleeping bags; bed rolls; blankets; backpacks; towels;
17 duffel bags; watches; jewelry; audio equipment; cosmetics;
18 medications; eye glasses; purses/handbags; personal papers;
19 camping type equipment; photographs; books and other reading
20 material.

21 3. Portable personal property as referred to in this
22 Agreement shall not include the following items: illegal drugs/
23 controlled substances; illegal drug paraphernalia; items
24 reasonably suspected to be stolen property; weapons, the
25 possession of which requires a lawful permit (if the person
26 claiming ownership does not have the requisite permit for

1 possession); any item, the possession of which is illegal;
2 perishable goods; and items reasonably determined to be a safety
3 risk to OPD.

4 4. All portable personal property taken into custody
5 pursuant to this Agreement shall be treated in accordance with the
6 Oakland Police Department Manual of Rules, General Orders and all
7 other applicable regulations, ordinances and/or statutes.

8 5. The OPD shall not otherwise destroy or assist in the
9 destruction of the personal property of arrestees whether or not
10 the personal property is transported to the jail with the
11 arrestee, except as specifically authorized by and executed
12 pursuant to ordinance and/or statute, including but not limited to
13 OPD General Orders H-3 and H-10.

14 6. The parties to this Agreement desire to avoid
15 unnecessary further litigation. Therefore, plaintiffs shall give
16 30 days written notice to the City of Oakland defendants citing
17 specific circumstances of any alleged violation of this Agreement.
18 The parties, thereafter, shall meet, confer and attempt to
19 informally resolve the matter before seeking judicial enforcement
20 of this Agreement. The Court shall have jurisdiction for the
21 period of one year from the date of this Agreement to enforce the
22 terms of this Agreement and thereafter this Agreement shall become
23 contractually enforceable.

24 7. For and in consideration of the sum of **Thirteen**
25 **Thousand Dollars (\$13,000.00)**, by draft made payable to the Legal
26 Aid Society of Alameda County, as trustee for plaintiffs Isaac

1 Lee, James Larry Fields, Gentriss Paul, Martha Chaney, Billy
2 Caldwell, James Jones and Frederick Carson, the undersigned
3 plaintiffs forever release and discharge the City of Oakland, the
4 Oakland Police Department, the Oakland Office of Public Works,
5 George Hart and Terry Roberts, of and from any and all claims,
6 demands, actions, or causes of action, including any claims for
7 attorneys' fees and costs, arising out of or in any way connected
8 with a certain incidents which occurred on or about March 5, 1992,
9 and March 12, 1992, on or near California Department of
10 Transportation property in Oakland, California. Specifically, any
11 and all claims, allegations, or demands for violation of
12 California Civil Code section 2080, denial of due process,
13 unreasonable search and seizure, denial of equal protection,
14 conversion, infliction of emotional distress, or any other causes
15 of action of any kind, relating to the events that occurred on or
16 about March 5, 1992, and March 12, 1993, are hereby finally
17 compromised and settled.

18 8. The parties shall each individually bear their own
19 costs and expenses, including any attorneys' fees, incurred in
20 this matter.

21 9. Due to the number of parties involved, this
22 Agreement may be signed in counterpart.

23 10. Additionally, in consideration of said \$13,000
24 draft and as a further consideration for this Agreement, the
25 undersigned agree, represent, and warrant as follows:

26 ///

1 (1) This is a full and final settlement and
2 release applying to all unknown and unanticipated claims,
3 injuries, or damages arising out of said incidents as well as
4 those now known or disclosed, and the undersigned waive all rights
5 or benefits which the undersigned now have or in the future may
6 have under the terms of Section 1542 of the Civil Code of the
7 State of California, which Section reads as follows:

8 A general release does not extend to
9 claims which the creditor does not
10 know or suspect to exist in his
11 favor at the time of executing the
12 release, which if known by him must
13 have materially affected his
14 settlement with the debtor.

15 (2) The undersigned dismiss with prejudice as to
16 all name plaintiffs, and without prejudice as to the class, all
17 causes of action growing out of the incidents, including Action
18 No. C 92 3131 SBA, filed in the United States District Court of
19 the Northern District of California, and authorizes said
20 dismissals of said action.

21 (3) This Agreement contains the entire agreement
22 between the parties hereto. The terms of this Agreement are
23 contractual and not a mere recital. This Agreement is executed
24 without reliance upon any misrepresentation by any person
25 concerning the nature or extent of injuries or legal liability
26 therefor, and the undersigned have carefully read and understand
the contents of this Agreement and signed the same as to their own
free act. This Agreement was entered into following negotiations
between the attorneys for the releasees and the releasors.

(4) The Agreement is contingent upon approval of
the Oakland City Council. The attorneys for the releasees will
recommend that the City Council approve said settlement.

DATE: _____ ISAAC LEE

DATE: _____ JAMES LARRY FIELDS

DATE: _____ GENTRIS PAUL

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DATE: _____

MARTHA CHANEY

DATE: _____

BILLY CALDWELL

DATE: _____

JAMES A. JONES

DATE: _____

FREDERICK CARSON

DATE: _____

OAKLAND UNION OF THE HOMELESS

By: _____

DATE: _____

LEGAL AID SOCIETY OF ALAMEDA COUNTY
STEPHEN E. RONFELDT
LAURIE SHIGEKUNI
STEPHANIE GARRABRANT
Attorney for Plaintiffs
1440 Broadway, Suite 700
Oakland, CA 94612

By: _____

DATE: _____

LIEFF, CABRASER & HEIMANN
JAMES M. FINBERG
STEVEN E. FINEMAN
Attorneys for Plaintiffs
275 Battery Street, 30th Floor
San Francisco, CA 94111

By: _____

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DATE: _____

JAYNE W. WILLIAMS, City Attorney
RANDOLPH H. HALL, Asst. City Atty.
R. MANUEL FORTES, Deputy City Atty.

By: _____

R. MANUEL FORTES
Attorneys for City of Oakland
Defendants
505 14th Street, 12th Floor
Oakland, CA 94612

Exhibit B

1 HOWREY LLP
PAUL ALEXANDER (SBN 49997)
2 1950 University Ave., 4th Floor
East Palo Alto, CA 94303
3 Telephone: (650) 798-3500
Facsimile: (650) 798-3600
4 E-mail: alexanderp@howrey.com

5 HELLER EHRMAN LLP
ROBERT B. HAWK (SBN 118054)
MELYSSA E. MINAMOTO (SBN 245458)
6 ERIC LLOYD (SBN 254390)
275 Middlefield Rd.
7 Menlo Park, CA 94025-3506
Telephone: (650) 324-7000
8 Facsimile: (650) 324-0638
E-mail: robert.hawk@hellerehrman.com

9 LAWYERS' COMMITTEE FOR CIVIL RIGHTS
OREN SELLSTROM (SBN 161074)
10 ELISA DELLA-PIANA (SBN 226462)
131 Steuart Street
11 San Francisco, CA 94105
Telephone: (415) 543-9444
12 Facsimile: (415) 543-0296
E-mail: osellstrom@lccr.com

13 ACLU OF NORTHERN CALIFORNIA
ALAN L. SCHLOSSER (SBN 49957)
14 MICHAEL T. RISHER (SBN 191627)
39 Drumm Street
15 San Francisco, CA 94111
Telephone: (415) 621-2493
16 Facsimile: (415) 255-8437
E-mail: mrisher@aclunc.org

17 UNITED STATES DISTRICT COURT

18 EASTERN DISTRICT OF CALIFORNIA: FRESNO DIVISION

19 Civil Action No.: 06-CV-1445-OWW

CLASS ACTION

20 Pamela Kincaid, Doug Deatherage, Charlene Clay,
Cynthia Greene, Joanna Garcia, Randy Johnson,
21 Sandra Thomas, Alphonso Williams, and Jeannine
Nelson, Individually on Behalf of Themselves and
22 All Others Similarly Situated,

23 Plaintiff,

v.

24 City of Fresno, Alan Autry, Jerry Dyer, Greg
Garner, Reynaud Wallace, John Rogers, Phillip
25 Weathers, Will Kempton, James Province, Daryl
Glenn, Individually and in Their Official Capacities;
26 DOES 1-100, inclusive,

27 Defendant.

**SETTLEMENT AGREEMENT
BETWEEN PLAINTIFFS AND THE
PLAINTIFF CLASS AND
DEFENDANTS WILL KEMPTON,
JAMES PROVINCE, AND DARYL
GLENN**

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SETTLEMENT AGREEMENT

This Settlement Agreement, effective as of May 20, 2008, is made and entered into by and among: (i) Plaintiffs Doug Deatherage, Charlene Clay, Cynthia Greene, Joanna Garcia, Randy Johnson, Sandra Thomas, Alphonso Williams, and Jeannine Nelson on behalf of themselves and each Plaintiff Class Member, defined in the Court’s Order dated August 14, 2007 as “all persons in the City of Fresno who were or are homeless, without residence, after October 17, 2003, and whose personal belongings have been unlawfully taken and destroyed in a sweep, raid or clean up by any of the Defendants” and (ii) Defendants Will Kempton, James Province and Darryl Glenn (collectively “Caltrans Defendants”).

SECTION 1. THE LITIGATION

Plaintiffs filed the original Complaint on against the Caltrans Defendants and against the City of Fresno, Alan Autry, Jerry Dyer, Greg Garner, Reynaud Wallace, John Rogers and Phillip Weathers (collectively “City of Fresno Defendants”) October 17, 2006, and filed a Second Amended Complaint on March 1, 2007. Plaintiffs’ Complaint asserted that Defendants violated Plaintiffs’ Fourth Amendment right against unreasonable searches and seizures, Fourteenth Amendment rights to Due Process and Equal Protection of the Law, all pursuant to 42 U.S.C. § 1983. The Complaint also asserted that some Defendants violated the Bane Act, Cal. Civ. Code § 52.1, Cal. Gov. Code. § 2080, and committed unlawful conversion. Judge Wanger granted a Temporary Restraining Order against the City of Fresno Defendants on October 25, 2006. In November 2006, Judge Wanger held a Hearing on the Preliminary Injunction, and granted a Preliminary Injunction against the City Defendants on December 8, 2006.

On March 16, 2007, Judge Wanger denied Defendant Will Kempton’s motion to dismiss all causes of action pursuant to Eleventh Amendment immunity. Subsequently, Judge Wanger held a settlement conference for all Parties in his chambers on April 12, 2007. These settlement discussions were unsuccessful.

Judge Wanger granted Plaintiffs’ Motion for Class Certification on August 14, 2007,

1 allowing Plaintiffs to proceed on behalf of a class of “All persons in the City of Fresno who were
2 or are homeless, without residence, after October 17, 2003, and whose personal belongings have
3 been unlawfully taken and destroyed in a sweep, raid or cleanup by any of the Defendants.”

4 On February 28, 2008, the Caltrans Defendants filed motions for summary judgment as
5 to liability. Plaintiffs also filed a Motion for Summary Judgment as to Liability against the City
6 of Fresno Defendants and Defendants Daryl Glenn and James Province on February 28, 2008.

7 On May 12, 2008, Judge Wanger issued decisions on the parties’ motions for summary
8 judgment, which, among other things, granted in part and denied in part Plaintiffs’ motion for
9 summary judgment as to liability against the City of Fresno. Judge Wanger dismissed all state
10 law based causes of action against Province and Glenn and denied all Caltrans Defendants’
11 Motions as to their Federal law based defenses. The Court also denied Plaintiffs’ Motion as to
12 Defendants Province and Glenn in its entirety and denied Defendant Kempton’s Motion in its
13 entirety.

14 All Parties, through their respective counsel of record, participated in a mediation session
15 before Magistrate Judge Snyder on May 20, 2008, beginning at 9:30 a.m., and ending 6:00 p.m.
16 Also in attendance for some or all of the mediation session were many of the Plaintiff class
17 representatives, and City Manager Andy Souza, Senior Risk Manager Kerry Trost, and Assistant
18 City Attorney Francine Kanne on behalf of the City of Fresno Defendants. This session resulted
19 in a settlement agreement between the Plaintiffs and the Caltrans Defendants as set forth below.

20 21 **SECTION 2. DEFINITIONS AS USED IN THE SETTLEMENT AGREEMENT**

22 **2.1 Definitions**

23
24 For purposes of this Settlement Agreement, the following terms shall have the meanings
25 specified below:

26 2.1.1 “Class Representatives” shall mean Doug Deatherage, Charlene Clay,
27 Cynthia Greene, Joanna Garcia, Randy Johnson, Sandra Thomas, Alphonso
28 Williams, and Jeannine Nelson.

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2.1.2 “Caltrans Defendants” shall mean Will Kempton, James Province, and Darryl Glenn.

2.1.3 “Class Settlement Administrator” shall mean Liza Apper.

2.1.4 “Final Approval Hearing” means a hearing by the Court, after the notice period has expired, to approve the Settlement Agreement as set forth herein.

2.1.5 “Final Approval Motion” shall mean a motion filed with the Court requesting that the Court consider and, if it finds the settlement to be fair and reasonable, finally approving the Settlement Agreement.

2.1.6 “Plaintiff Class” shall mean “all persons in the City of Fresno who were or are homeless, without residence, after October 17, 2003, and whose personal belongings have been unlawfully taken and destroyed in a sweep, raid or clean up by any of the Defendants,” as defined in the Court’s Order dated August 14, 2007 other than an Excluded Person.

2.1.7 “Preliminary Approval Motion” shall mean a motion filed with the Court requesting that the Court consider and preliminarily approve the Settlement Agreement.

2.1.8 The “Settlement Plan” shall mean the plan, attached as Exhibit A to this Settlement Agreement, by which the Settlement Consideration paid pursuant to this Settlement Agreement to the Plaintiffs and the Plaintiff Class shall be maintained, administered and paid to Plaintiffs and the Plaintiff Class.

2.1.9 “The Litigation” or “This Litigation” shall mean this lawsuit and its procedural history as set forth in Section 1 above.

2.1.10 “The Settling Parties” shall mean the parties to this settlement agreement, who are the Plaintiffs and the Plaintiff Class and the Caltrans Defendants.

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2 **SECTION 3. THE TERMS OF THE SETTLEMENT**

3 **3.1 The Settlement Consideration**

4 3.1.1 The Caltrans Defendants shall pay the sum of \$85,000 to the Plaintiffs and
5 the Plaintiff Class which shall be paid within twenty (20) business days after
6 issuance of the Order of Final Approval by the Court or twenty (20) business days
7 after Plaintiffs and the Plaintiff Class provide a completed, executed Payee Data
8 Record ("PDR", State of California Form STD. 204), whichever is later, payment to
9 be made to each recipient(s) designated in a completed, executed PDR. Plaintiffs
10 and the Plaintiff Class shall deposit the \$85,000 into an interest bearing account to
11 be designated by the Settlement Administrator and maintained for the exclusive
12 benefit of and paid to the Plaintiffs and the Plaintiff Class as provided in the
13 Settlement Plan. If this sum is not paid on the date called for by this paragraph, the
14 amount shall bear interest at the California statutory rate from the date payment is
15 due until the date paid. This sum of \$85,000 shall include all costs and attorney fees
16 otherwise recoverable against the Caltrans Defendants in this action.

17
18 3.1.2 The Caltrans Defendants will, for a period of not less than 5 years from the
19 date this Settlement Agreement is finally approved by the Court, follow its written
20 procedures for handling the personal property of homeless persons as set forth in
21 Exhibit B hereto. The Caltrans defendants will also follow the legal principles set
22 forth in the Court's Preliminary Injunction in this case for the same five year period.
23 The Court will retain jurisdiction to resolve any dispute that may arise with respect
24 to compliance with this paragraph.

25 3.1.3 There will be included in the Notice provided to the Plaintiff Class proposed
26 in Plaintiffs' motion for preliminary approval of the Settlement Agreement a
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1 statement encouraging the homeless in Fresno not to set up camps or otherwise
2 trespass or illegally encroach upon Caltrans property.

3 3.1.4 Plaintiffs and the Plaintiff Class agree that they shall call no official or
4 employee of the California Department of Transportation as a witness at a trial on
5 the merits if this action should proceed to trial against the City Defendants.
6

7 **3.2 Release**

8 3.2.1 Effective upon payment of the Settlement Consideration as called for by
9 paragraphs B.1 and B.2 above, Plaintiffs and each member of the Plaintiff Class, on
10 behalf of themselves and each of their heirs, predecessors, successors,
11 representatives or assigns, release, relinquish and forever discharge any and all
12 claims, causes of action, demands, rights, or liabilities of any kind that either were or
13 could have been asserted in the Litigation against any of the Caltrans Defendants,
14 including but not limited to their respective heirs, predecessors, successors,
15 employees, affiliates, divisions, parent or sister agencies, or any other person or
16 entity related or affiliated with the Caltrans Defendants.
17

18 3.2.2 Plaintiffs and each member of the Plaintiff Class, on behalf of themselves
19 and each of their heirs, predecessors, successors, representatives or assigns hereby
20 waive and relinquish to the fullest extent permitted by law, the provisions, rights and
21 benefits of Section 1542 of the California Civil Code, which provides:

22 "A general release does not extend to claims which the creditor does not
23 know or suspect to exist in his or her favor at the time of executing the
24 release, which if know by him or her must have materially affected his or
her settlement with the debtor."

25 **3.3 Notice of the Settlement**

26 3.3.1 The Settling Parties will submit at the earliest possible opportunity to the
27 Court a motion for preliminary approval of this Settlement Agreement (along with a
28 request for a short continuance of the trial date in this matter to permit time for this

1 Settlement Agreement to be finally approved), which will set forth the procedure and
2 a schedule for Notice of the Settlement Agreement and for a hearing on final
3 approval of the Settlement Agreement pursuant to Federal Rule 23.

4 **3.4 Approval of the Settlement**

5 3.4.1 Pursuant to rule 23(e) of the Federal Rules of Civil Procedure, the parties will,
6 after providing Notice of the Settlement Agreement, file a motion initially seeking
7 preliminary approval of this Settlement Agreement and a stay of this matter as
8 against the Caltrans defendants, and thereafter file a motion seeking final approval of
9 this Settlement Agreement as fair and reasonable.

10 3.4.2 Each Class Representative will receive an incentive payment of \$1,000.00 in
11 addition to any other payment to which he or she may be entitled under this
12 Settlement, to compensate the Class Representatives for their willingness to serve as
13 Class Representatives and the time, effort and burden associated with that service,
14 provided that the total amount of incentive payment from this settlement and any
15 settlement with the City Defendants shall not exceed one thousand dollars (\$1,000).
16

17 3.4.3 This Court shall retain jurisdiction of this matter after these claims are
18 dismissed for a five year period commencing with the date of final approval of this
19 Settlement to enforce the terms of the settlement, and to resolve any disputes that
20 may arise between the parties concerning this Settlement Agreement.
21

22 **3.5 General Provisions**

23 3.5.1 The Settling Parties intend this Settlement to be final and complete resolution
24 of all disputes between and among the parties hereto with respect to the Litigation.
25 The Settlement compromises claims that are contested and it shall not be deemed an
26 admission by any Settling Party as to the merits of any claim or defense. The
27 Settlement Agreement was negotiated in good faith by the Settling Parties and
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reflects a settlement that was reached voluntarily after consultation with competent legal counsel. The Settling Parties agree that this Agreement is a fair, adequate and reasonable resolution of the declaratory, injunctive, damages and attorneys fees claims of the complaint.

3.5.2 This Settlement Agreement constitutes the full and entire agreement among the parties hereto with regard to the subject thereof and supersedes any prior promises, representations, or warranties (oral or otherwise) made by any party. No party shall be liable or bound to any other party for any prior or contemporaneous representation, promise or warranty (oral or otherwise) except for those expressly set forth in this Settlement Agreement.

3.5.3 This Settlement Agreement shall not be amended or modified orally. It may not be amended or modified without the consent or approval of all signatories by a writing signed by all signatories hereto, and approved by the Court where necessary. Plaintiffs have authorized Plaintiffs' Counsel to make any and all changes to this Settlement Agreement and to sign any and all amendments and modifications on their behalf.

3.5.4 All of the exhibits to this Settlement Agreement, except the proposed forms of orders, are material and integral parts hereof and are fully incorporated herein by this reference. Entry of the proposed orders substantially in the form of the exhibits attached to this Settlement Agreement is material and integral to the Settlement Agreement.

3.5.5 The headings herein are for convenience only and shall not effect the interpretation or construction of this Settlement Agreement.

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3.5.6 Each counsel executing the Settlement Agreement or any of its exhibits on behalf of any Settling Party hereby warrants that he or she is fully authorized to enter into, and to execute, this Settlement Agreement.

3.5.7 Each and every term of this Settlement Agreement shall be binding upon, and inure to the benefit of, the Plaintiffs and the Plaintiff Class, any of their successors and personal representatives, all of which persons and entities are intended to be the beneficiaries of this Settlement Agreement.

3.5.8 The Settling Parties acknowledge that it is their intent to consummate this Settlement Agreement; they agree to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of the Settlement Agreement; and they agree to undertake their best efforts, including all steps and efforts that may become necessary, by order of the Court or otherwise, to accomplish the terms and conditions of the Settlement Agreement.

3.5.9 This Settlement Agreement and the exhibits hereto shall be considered to have been negotiated, executed and delivered, and to be wholly performed, in the State of California, and the rights and obligations of the parties to the Settlement Agreement shall be construed and enforced in accordance with, and governed by, the internal substantive laws of the State of California, without giving effect to that State's choice of law principles.

3.5.10 For the purpose of construing or interpreting this Settlement Agreement, the Settlement Agreement is deemed to have been drafted equally by all parties hereto, and shall not be construed strictly for or against any party.

3.5.11 This Settlement Agreement may be executed in one or more counterparts. All executed counterparts, and each of them, shall be deemed to be one and the same instrument, provided that no party shall be bound hereby until all parties have

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executed the Settlement Agreement. The undersigned counsel for the Settling Parties shall exchange among themselves original signed counterparts, and a complete set of original executed counterparts shall be filed with the Court together with the Preliminary Approval Motion.

IN WITNESS WHEREOF, the Settling Parties hereto, through their respective counsel of record, have executed this Settlement Agreement on the dates indicated below:

Dated: June 4, 2008

Doug Deatherage
Plaintiff

Charlene Clay
Plaintiff

Cynthia Greene
Plaintiff

Joanna Garcia
Plaintiff

Randy Johnson
Plaintiff

Sandra Thomas
Plaintiff

Alphonso Williams
Plaintiff

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Jeannine Nelson
Plaintiff

David P. Harris
On Behalf of Defendants Will Kempton,
James Province and Daryl Glenn

APPROVED

/s/ Paul Alexander
Paul Alexander
Howrey LLP
Attorneys for Plaintiffs

Robert B. Hawk
Heller Ehrman LLP
Attorneys for Plaintiffs

Michael Risher
ACLU of Northern California
Attorneys for Plaintiffs

Oren Sellstrom
Lawyers' Committee For Civil Rights
Attorneys for Plaintiffs

David P. Harris
Attorney for Defendants Will Kempton,
James Province and Daryl Glenn

Exhibit A

EXHIBIT A

THE SETTLEMENT PLAN

This Settlement Plan shall set forth and govern the maintenance, administration and distribution of the Settlement Fund created pursuant to the Settlement Agreement reached in *Kincaid et al v. City of Fresno*, et al, Action No. 06-CV-1445-OWW.

SECTION 1. MAINTENANCE AND ADMINISTRATION OF SETTLEMENT FUND.

1.1 As provided for in the Settlement Agreement, the Settlement Fund shall be sequestered in a separate, interest-bearing account or accounts to be maintained by the City of Fresno and solely administered by the Settlement Administrator approved by the Court. Costs of administration will be borne by the Settlement Fund as provided herein but shall be maintained at the lowest level that is practical. All interest earned on the accounts into which the Settlement Fund is transferred shall be for the benefit of the Class members.

1.2 The Settlement Administrator shall be Liza Apper. It is contemplated that Liza Apper shall serve as Settlement Administrator throughout the payment of the Settlement Fund to the Plaintiff Class. In the event that Liza Apper shall resign or be disqualified, counsel for Plaintiffs and the Plaintiff class will propose a new Settlement Administrator for approval by the Court. It is also contemplated that Liza Apper shall, to the extent permitted by law, seek legal advice and counsel in connection with the reports required under this Settlement Plan.

1.3 The Settlement Administrator is authorized to draw upon the account or accounts in which the Settlement Fund is maintained for all payments to be made to or on behalf of every person certified by the Settlement Administrator to be a valid Class member in accordance with the terms of this Settlement Plan. It is anticipated that these payments will be made in the manner set forth in this Settlement Plan. In the event of an unusual or unanticipated need of a member of a member of the Plaintiff Class, the Settlement Administrator is authorized to seek approval of the Court to respond to such unanticipated need.

1.4 It is anticipated that the actual payments under this Settlement Plan will commence as soon as practicable after the claims period ends.

SECTION 2. THE ALLOCATION OF THE SETTLEMENT FUND

2.1 The Settlement Fund shall be allocated into two separate amounts, which shall be referred to as the "Cash Fund" and the "Living Allowance Fund." The amounts in these two funds shall be paid in accordance with the provisions of this Settlement Plan solely to or for the benefit of members of the Plaintiff Class and for administration of the Settlement Plan as provided herein.

2.2 The initial amount of the Cash Fund shall be \$485,000. The initial amount of the Living Allowance Fund shall be \$1,000,000.

SECTION 3. THE DETERMINATION AND VERIFICATION OF CLASS MEMBERS AND THEIR ENTITLEMENT TO RECEIVE THE CASH FUND AND THE LIVING ALLOWANCE FUND

3.1 Any potential member of the Plaintiff Class who seeks to participate in payments from the Cash Fund and/or the Living Allowance Fund shall file with the Settlement Administrator a verified claim form, stating under penalty of perjury that he or she falls within the Class, defined as "all persons in the City of Fresno who were or are homeless, without residence, after October 17, 2003, and whose personal belongings have been unlawfully taken and destroyed in a sweep, raid or clean up by any of the Defendants." The verified claim form shall also describe the nature of the loss suffered. The form shall be as set forth as an attachment to the motion for preliminary approval of the Settlement Agreement. Claims forms may but need not include attachments such as receipts, declarations, or transcripts of testimony. The timing and deadline for filing such a claim shall be as set forth in the Order of the Court giving preliminary approval to the Settlement Agreement and will be included in the Notice of this Settlement Agreement provided to the class. Claimants may additionally request to meet with the Settlement Administrator in person to supplement their claims orally and/or to seek the assistance of the Settlement Administrator in completing a written claim form. Verified Claim forms must be received by the Settlement Administrator within 30 days after final approval of the Settlement Agreement

3.2 The Settlement Administrator shall review the claim forms submitted and shall determine which claims are valid and at which Level, as set forth below. Once the Settlement Administrator has made that determination, the individual who submitted the claim shall be a verified Class member for purposes of the Settlement Agreement and this Settlement Plan. The determination of the Settlement Administrator as to the validity of the claim shall be final and none of the Parties shall retain any right to object to any determination of the Settlement Administrator concerning membership in the Plaintiff Class or eligibility to receive either the Cash Fund or the Living Allowance Fund except as expressly stated in this Plan.

3.3 For purposes of payments of the Cash Fund and the Living Allowance Fund, there will be three levels of verified Class members, Level 1, Level 2, Level 3, Level 4 and Level 5 as follows:

3.3.1 Level 1 class members shall be those members of the Plaintiff Class who, in the judgment of the Settlement Administrator, had their property seized and destroyed in a sweep or clean up by any of the Defendants after October 17, 2003; who were not present when their property was seized and destroyed, whose property was of a nature that can be reasonably be replaced for \$500 or less, and who did not suffer any significant emotional trauma or injury as a result of the seizure and destruction of their property.

3.3.2 Level 2 class members shall be those members of the Plaintiff Class who, in the judgment of the Settlement Administrator, had their property seized in a sweep or cleanup and suffered a more substantial loss than a Level 1 Class member, but who appear not to have suffered significant emotional harm or trauma associated with that destruction.

3.3.3 Level 3 class members shall be those members of the Plaintiff Class who, in the judgment of the Settlement Administrator, suffered a more substantial loss of property than either a Level 1 or Level 2 Class member, who appear not to have suffered significant emotional loss or trauma, and who, considering the number of destructions he or she suffered and the nature of those destructions, appear to have suffered total injury and damage at a level lower than a Level 4 or Level 5 Class member as described below.

3.3.4 Level 4 class members shall be those members of the Plaintiff Class who, in the judgment of the Settlement Administrator, suffered more substantial total loss and injury than a Level 1, 2 or 3 Class member, including multiple destructions of his or her property, destruction of his or her property in a manner causing emotional harm or trauma, destruction of his or her property in a situation in which he or she was present, and other factors indicating a total loss and injury greater than a Level 1, 2 or 3 Class member, but not as great as a Level 5 Class members.

3.3.5 Level 5 class members shall be those members of the Plaintiff Class who, in the judgment of the Settlement Administrator suffered the most substantial injury and damage and therefore have the largest claims. The following factors will be used to determine whether an individual class member is a Level 5 class member: i. whether the individual was present at the time of the seizure and destruction of his or her property, ii. whether the individual suffered multiple seizures and destructions of his or her property, iii. the nature and value of the property that was seized and destroyed, iv. whether the seizure and destruction of

the property appear to have caused significant emotional pain and suffering, and v. any other factor that heightens or worsens the degree of loss suffered.

3.4 After the close of the claims period, the Administrator shall determine the total number of verified Class members in each Level. The Administrator shall then apportion the Living Allowance and the Cash Fund as described below in Section 4 below.

3.5 The Claims Administrator will provide each claimant with a written notice that specifies the Administrator's determination of: a) whether or not the claimant is a Class member; b) if so, at which Level; c) the amount of Cash Fund and Living Allowance Fund, if any, the claimant is entitled to. The written notice shall also describe the procedures for accessing the Fund(s) and what assistance is available to assist in the process.

SECTION 4. THE DISTRIBUTION OF THE CASH FUND AND THE LIVING ALLOWANCE FUND

4.1 The Cash Fund shall be distributed in cash or cash equivalent (such as a transfer to a bank account as set forth below) to members of the Plaintiff Class whose membership in the Plaintiff Class has been verified pursuant to the terms of this Settlement Plan, in accordance with the provisions of this Settlement Plan.

4.2 The Settlement Administrator will pay the Cash Fund to verified members of the Plaintiff Class in a manner set forth below and designed to meet the immediate cash needs of the individual, to respect his or her dignity, and to provide for his or her needs for cash in a safe and responsible manner. While the Settlement Administrator shall have authority to vary from the terms set forth below, in general the cash payments shall be made as follows:

4.2.1 Members of the Plaintiff Class will be encouraged to and assisted in the establishment of bank accounts to which cash can be transferred by the Settlement Administrator, so that Class members can obtain the cash as they determine. If a bank account is established, the Settlement Administrator shall be authorized to transfer a Class member's entire allocation of the Cash Fund to his or her bank account.

4.2.2 Members of the Plaintiff Class who do not have bank accounts shall be paid their allocation of the Cash Fund in a check or currency, over time. Such payments shall generally be limited to \$100 per week but may be larger in the discretion of the Settlement Administrator.

4.2.3 Any Member of the Plaintiff Class may elect to place all or any portion of his or her allocation of the Cash Fund into the Living Allowance Fund, if he or she wishes for both sums to be distributed as set forth for the Living Allowance Fund below.

4.3 The Settlement Administrator will pay the Living Allowance to third parties on behalf of verified members of the Plaintiff Class in the manner set forth below and designed to maximize the actual benefit of the Living Allowance to each verified Class member entitled to receive a share of the Living Allowance. Any of the following may be paid from the Living Allowance: i. rent, including pre-paid rent; ii. move-in costs (e.g., first and last months' rent and security deposit); iii. utilities, including pre-paid utilities; iv. transportation costs, including but not limited to payments for an automobile or recreational vehicle, and v. any other payment to a third party for necessities of life for the Class member. The Parties shall not be entitled to object to the determination of the Settlement Administrator as to the propriety or entitlement to Living Allowance payments.

4.4 The Settlement Administrator shall, subject to the limitation in paragraph 4.9 below, pay the sum of \$500 from the Cash Fund to each Level 1 Class member, said sum to be paid either in two or three payments and on a date or dates (if the Level 1 payment is made in periodic payments) that balance the needs of the Level 1 Class member while keeping any cost of administration as low as reasonably possible.

4.5 The Settlement Administrator shall, subject to the limitation set forth in paragraph 4.9 below, pay the sum of \$1000 from the Cash Fund to each Level 2 Class member, in such a manner as to maximize the benefit of both amounts to each such Class member.

4.6 The Settlement Administrator shall, subject to the limitation set forth in paragraph 4.9 below, pay the sum of \$1,000 from the Cash Fund to and \$1,500 from the Living Allowance fund each Level 3 Class member in such a manner as to maximize the benefit of both amounts to each such Class member.

4.7 The Settlement Administrator shall, subject to the limitation set forth in paragraph 4.9 below, pay the sum of \$1,500 from the Cash Fund to each Level 4 Class member and make Living Allowance Payments of \$3,500 from the Living Allowance fund for each Level 4 Class member in such a manner as to maximize the benefit of both amounts to each such Class member.

4.8 The Settlement Administrator shall, subject to the limitation set forth in paragraph 4.9 below, pay the sum of \$5,000 from the Cash Fund to each Level 5 Class member and make Living Allowance Payments of \$9,000 from the Living Allowance fund for each Level 5 Class member in such a manner as to maximize the benefit of both amounts to each such member.

4.9 To the extent that either more or fewer Class Members are certified as valid by the Settlement Administrator than anticipated or and to the extent that the Class members at each Level vary from that anticipated, the payments from the Cash Fund and the Living Allowance Fund may be varied, provided that the proportions set forth in paragraphs 4.4 through 4.8, above are, as nearly as practicable, maintained. It is the intent of this Settlement Plan that the entire Cash Fund and the entire Living Allowance Fund shall go to benefit the Plaintiff Class in the manner set forth in this Settlement Plan.

4.10 Once a Class member has been verified by the Settlement Administrator as a Class member at any given Level, he or she shall be entitled to receive both the payments from the Cash Fund and the payments from the Living Allowance Fund and shall not lose this right if temporarily unable to receive the benefit for any reason. If a person who has been certified by the Settlement Administrator as a valid Class member dies before all of his or her distributions have been made, then any undistributed amount would revert to either the Cash Fund or the Living Allowance Fund.

4.11 Three years from the final approval of the Settlement Agreement, or any time thereafter, the Settlement Administrator may distribute all remaining money in the Cash and Living Allowance Funds to Level 1, 2, 3, 4 or 5 Class members in amounts determined by the Settlement Administrator to be in keeping with the overall distribution set forth in this Settlement Plan.

4.12 To the extent that the Court approves an incentive award for the Class representative plaintiffs pursuant to the Settlement Agreement, that amount shall be paid by the Settlement Administrator from the Cash Fund in the manner set forth in paragraph 4.2 and its subparagraphs above.

SECTION 5. COSTS OF ADMINISTRATION AND REPORTING

5.1 The costs of administering both the Cash Fund and the Living Allowance Fund shall be maintained at the lowest possible level and shall not exceed 3% of the total, and shall be paid out of the two Funds in proportion to the size of the Funds, and the Settlement Administrator is authorized to make such payments on a monthly basis until both the Cash Fund and the Living Allowance Fund are fully paid out.

5.2 The Settlement Administrator shall prepare and file with the Court a written report of all payments from the Cash Fund and from the Living Allowance Fund within three months of the date the first payment is made from either Fund, and shall prepare and file with the Court and with all counsel of record such a written report each six months thereafter until both the Cash Fund and the Living Allowance Fund are fully distributed. Such reports shall set forth in summary fashion the manner of and purpose for which the Cash Fund and Living Allowance Fund were expended during the period of the report.

SECTION 6. RESOLUTION OF DISPUTES

6.1 The Court shall retain jurisdiction to resolve any issue that may arise that is not anticipated in connection with the administration of this Settlement Plan, including but not limited to any change contemplated by paragraph 4.9 above. Should such an issue arise, it may be resolved at an informal hearing by the Court, without the necessity of briefing but in a manner designed to facilitate practical and effective resolution of any dispute or issue. The determination of the Court resolving any issue that may arise in connection with the administration of this Settlement Agreement shall be final and binding.

END OF DOCUMENT

Exhibit B

MAINTENANCE MANUAL

VOLUME I

CHAPTER 1

ORGANIZATIONAL AND GENERAL DETAILS

**CHAPTER 1
ORGANIZATION AND GENERAL DETAILS**

July 2006

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- (3) The public shall not be allowed to pick up wood within maintenance work zones during working hours.
- (4) In areas where wood must be removed, it will be loaded and transported to the nearest wide area that is safe for the public to stop and pick it up. If such a spot is not within a reasonable distance, the wood shall be hauled to the nearest suitable disposal sites. Select the method that is the most efficient and results in the least cost to the State.
- (5) State Maintenance yards are not authorized tree wood disposal sites. However, State employees acting as private citizens, on their own time and using their personal vehicles, may pick up and utilize the wood at the appropriate sites described above. In certain areas, the Maintenance station may be deemed the safest, most suitable, and cost-effective location for disposal of tree wood. If so, it is permissible to use the Maintenance station as a disposal site.

1.07.3 Handling of Privately Owned, Lost, Discarded, Wrecked, Abandoned and Stolen Property on the State Right of Way.

The District Maintenance Division will provide a reasonable lost and found service to the public. Employees are to turn in, to their supervisor, all items of value found in the course of their employment along highways or in facilities such as Safety Roadside Rest Areas, vista points, Maintenance stations, and other locations within Caltrans rights of way.

Maintenance employees shall not claim items found on or along highways or in State facilities. This is never permitted. Employees who take possession of items found on or along highways or in State facilities are subject to disciplinary action, up to and including dismissal.

Civil Code 2080 provides that a person who finds property shall inform the owner within a reasonable time and return the property to the owner.

Civil Code 2080.1 provides direction regarding property with a value of more than \$100 when the owner of such property is unknown. The property shall be turned over to the city police department if found within the city limits, or to the sheriff's department if found outside the city limits.

Civil Code Section 2080.3 provides that if the owner of property cannot be located, the person who finds the property takes title "*unless the property was found in the course of employment by an employee of any public agency, in which case the property shall be sold at public auction.*" (Emphasis added.)

**CHAPTER 1
ORGANIZATION AND GENERAL DETAILS**

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(A) Based on the above, the following procedure shall be used for items found by employees in the course of their work:

(1) Value less than ten dollars:

When the value of the item found is estimated at less than ten dollars, the employee will assume custody and turn it in to his or her supervisor. The items will be retained at the Maintenance Region Manager's or Area Superintendent's office.

If the owner of the item can be identified by means of identification, a reasonable effort shall be made to notify the owner of its finding and location, so arrangements can be made to return the property. Such property is generally personal property such as keys, billfolds, pocketbooks, important papers, jewelry, and luggage.

If ownership cannot be determined, or no one claims the property, the item shall be destroyed or donated to any charitable organization after three (3) months. A Form **MTC-900** (Lost and Found Report) of each incident, whether the item was returned or disposed of, must be kept in the region office files for 24 months.

(2) Value of ten dollars or more:

When the value (purchase or replacement price) of the found item found is estimated at ten dollars or more, the employee will assume custody and turn the item in to his or her supervisor. The item shall be held in the Maintenance Region Manager's or Area Superintendent's office for not less than five (5) days or more than 15 days, pending claim by the owner.

Bulky items may be held at the most convenient crew supervisor or Area Superintendent station. If ownership can be determined, a reasonable attempt will be made to notify the owner of its finding and location.

If no one claims the property within the above time frames, the property shall be turned over to either the police department if found within city limits, or the sheriff's department if found in an unincorporated area.

A signature from the person receiving the item should be obtained on the Form MTC-900 and should be filed in the region office.

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ORGANIZATION AND GENERAL DETAILS**

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Page 1-15

In jurisdictions where the law enforcement agency will not accept the item found from Caltrans, such property shall be retained at the Maintenance Region Manager's office for at least three (3) months. If the property is still unclaimed, the property shall be turned over to the District Property Controller, who will make arrangements for its disposition.

Items found on State right of way shall not be retained by an employee under any circumstances.

(B) Miscellaneous Items and Materials

- (1) Many materials and junk type items that are found along the State highways such as hubcaps, pipe, and tire chains, have scrap or junk value. Such items, when picked up or salvaged are to be added to the accumulations of salvage material as described previously under 1.07.2. They shall be disposed of as State property.
- (2) The separation of recyclable litter such as aluminum cans or returnable bottles from other litter cannot normally be justified on a cost benefit basis. Such items are to be picked up and disposed of as trash under normal disposal procedure.

Private individuals may collect items such as aluminum cans from along conventional roadsides, but not from freeways. They may also collect aluminum cans or returnable bottles from trash barrels at Safety Roadside Rest Areas.

Any separation of such items from routine litter must be authorized in writing by the Maintenance Region Manager. Such authorization will generally be associated with special public relations or volunteer projects.

1.07.4 Use of State Maintenance Facilities

Maintenance facilities cannot be used as recreation or storage areas by employees or the public. Maintenance facilities are not to be used for servicing, repairing or storage of private vehicles, boats, trailers or other privately owned equipment. These activities must be restricted to the residential areas of State facilities with dormitories or employee housing.

1.08 Departmental Personnel Policy

The Division of Human Resources, Office of Transaction Services will furnish information or answer questions concerning any specific problem that may arise in connection with civil service procedures or Departmental personnel policy.

Exhibit C

East Bay Homeless Campers Accuse Caltrans of Illegally Confiscating and Destroying Valuable Property — and Even Family Heirlooms

'People who have lost almost everything, why take their last things and throw them away?'

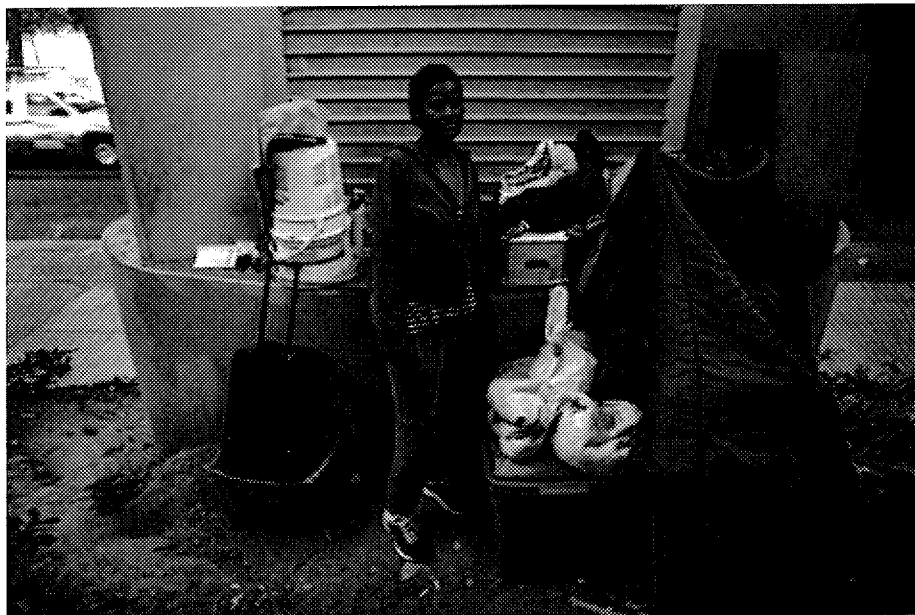
By Darwin BondGraham @Darwinbondgraha

Email

Tweet

Print

[click to enlarge](#)



Joel Angel Juarez

Bridgette Parker is suing Caltrans for illegally throwing her property in the trash, including treasured valuables given to her by her mother and grandmother.

Bridgette Parker sat in the back of an Alameda County courtroom

on a recent Thursday morning, waiting to argue her case in small-claims court against the California Department of Transportation, or Caltrans. She lives on the streets of this once affordable city, and stores her property in suitcases and plastic Rubbermaid bins behind a freeway-bridge column in West Oakland. On January 27, Parker lost almost everything when a Caltrans crew swept her campsite. She pleaded for them to return her boxes, but she said the crew threw it all into a trash compactor.

"They left no notice saying they'd been by and taken my stuff," Parker explained. "Other times, when they'd been by, they'd let me move my stuff off their property before they cleaned."

She said she lost her grandmother's necklaces, her mother's cashmere jacket, and many other valuables and heirlooms worth thousands of dollars. She believes Caltrans assumed her things were worthless because, to the agency, she's just another nameless transient.

Her case is unusual, however, because she's suing Caltrans. But numerous people who live near the freeways of Oakland and Berkeley say Caltrans frequently destroys their belongings during routine sweeps of homeless camps.

Many have lost their most valuable possessions, as well as family pictures and important records such as identification cards or medical documents.

Homeless campers say the agency almost always gets away with it. And advocates argue that what Caltrans is doing is illegal.

“Under the Constitution, the Fourth and Fourteenth Amendments, the government cannot unreasonably seize people’s belongings,” argued Elisa Della-Piana, the legal director for the Lawyers Committee for Civil Rights of the San Francisco Bay Area. She said that courts repeatedly find the practice of taking or throwing away homeless people’s belongings unconstitutional.

“Caltrans has done it to me at least three times,” explained Jeffery Hill, a sixty-year-old man who lives in one of Oakland’s larger camps under Interstate 880 at Brush Street. “It really hurts. It’s like somebody burned down your house and you can never replace all your stuff.”

Hill said losing everything when you have so little to begin with is demoralizing. “It’s downright dirty what they’re doing.”

Caltrans officials told the Express the sweeps are necessary, and that workers try their best to be respectful and humane. Caltrans said there are growing numbers of people who live near the highways, which creates health and safety problems. Regular cleaning of the sites where campers congregate is essential, the agency said.

But Caltrans spokesman Bob Haus reminded that freeway property isn’t designed for human habitation. He said they’d need to install running water and sanitation to make it safe. “What you have is bottles of urine, feces, and it’s attracting vermin,” he said of the homeless camps. “After we remove all the detritus, we have to clean the area with bleach because there’s bio-waste on the ground.”

Haus also noted that anyone living on Caltrans property is trespassing, and that the agency has the right to restrict access.

Many of the homeless campers actually don’t mind the recurring cleanings. There are few public trash cans and hardly any public bathrooms within walking distance of most camps. At night, they say trucks often pull up to illegally dump leftovers from evictions, construction sites, and even hazardous waste such as used motor oil. Some of the homeless campers even complain about piles of trash from their neighbors.

But nearly every person camping at East Bay freeways has a story of losing precious items during the sweeps.

Throwing Away Memories

A couple months ago, Jeffery Hill said that he returned to the Brush Street encampment and spotted a Caltrans crew. He ran across the street and “begged” them to stop throwing his stuff away.

“A supervisor came over after maybe three-quarters of my stuff had already been thrown in the garbage truck,” Hill recalled. “I’m talking boots, clothing, tools. Some of those tools were given to me by my best friend, Jeremy White.”

White, a beloved resident of the Brush Street camp and a respected mechanic, was profiled in an Express story two years ago. He recently died in an accident, and the tools were the only objects Hill had to remind him of his departed

friend.

That day, Hill was unable to retrieve his belongings. “People who have lost almost everything, why take their last things and throw them away?” he asked.

[click to enlarge](#)



Joel Angel Juarez

Homeless camper Jeffery Hill said Caltrans has trashed his belongings three times.

Krislyn, who didn't give her last name but is known to her friends as Stormie, stays in a tent not far from Hill. She claimed to have lost a collection of Grateful Dead memorabilia, a motorcycle, and \$400 in cash when a Caltrans work crew destroyed her property earlier this year.

The memorabilia included vinyl records of the Dick's Picks collection, a 36-volume set her mom handed down to her. Stormie said they were worth thousands.

But it was also the sentimental value that mattered. “They were leaving when I saw them with all my stuff in the truck. I immediately knew it was ruined,” she remembered.

She said she tried pulling her belongings from the jaws of the compactor, but a California Highway Patrol officer put her in handcuffs as the truck drove away.

Also pulverized in the trash was a purse containing \$400 and a key to a storage unit where she kept a motorcycle, she said. She couldn't make the next payment on the unit, so she lost the cash and the motorcycle.

Lance Caruthers, another Brush Street camper, lost a laptop computer, clothing, a tent, pictures of his children, and the only photographs he had of his wife, who died four years ago. He was unable to move his stuff during the 72-hour warning period Caltrans gives before they conduct a sweep.

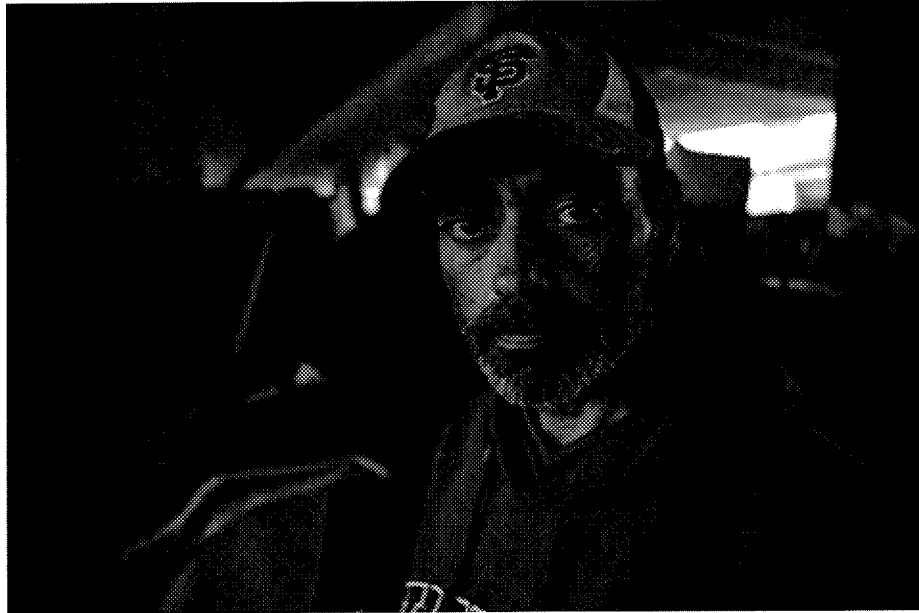
“I had been in the hospital,” Caruthers explained. “I was going back to my tent — I still had the hospital wristband on — and I saw them throwing my stuff away.”

Caruthers asked the Caltrans workers if he could grab some of his remaining things from his campsite and off the

trucks, but workers allegedly told him no. But before they left, Caruthers said a Caltrans worker grabbed his backpack out of the garbage truck and handed it to him.

“She was really sweet,” said Caruthers, who appreciated this act of humanity. “My identification, my birth certificate — that was in [the bag].”

[click to enlarge](#)



Joel Angel Juarez

Lance Caruthers lost his laptop, tent, pictures of his children — and the only photo of his departed wife — when Caltrans conducted a sweep of the homeless camp at Brush Street near Interstate 880.

Caltrans spokesperson Haus said that work crews have to throw bags, boxes, and other containers in the trash because they are dangerous. “We’ve opened up bags and they’ve had battery acid in them,” he explained. This is why policy is for anything left behind after the 72-hour notice often will be thrown in the garbage. Items with apparent value above \$50 are taken to a regional storage facility, where they’re kept for ninety days. For Berkeley and Oakland, this is the Caltrans yard at Telegraph Avenue and Interstate 580.

The problem is that Caltrans workers can’t know if there are valuables inside, say, a backpack. “For health and safety reasons, we can’t look inside,” Haus explained. “It’s best to limit physical contact with the items, so if it’s a backpack, we’ll just throw it away.”

But many homeless campers say they hide valuables in clothing or other seemingly worthless objects, otherwise thieves will strike.

Brush Street camp resident Marjo said he had tools destroyed by Caltrans in June. He was sleeping at a nearby friend’s house when another resident of the camp alerted him to a sweep. He biked to the camp and saw a trash truck parked in front of his tent; workers were throwing garbage, but also his belongings, in the truck.

“I lost three sets of sails, tools, bike parts, and a lot of new clothes I had gotten,” Marjo said. A lot of what he lost was packed in bags.

“If it’s not Caltrans taking your shit, it’s other thieves,” he said.

He said he'd never witnessed Caltrans crews tell anyone at the Brush Street camp how to recover confiscated items from storage.

"Caltrans is very, very gangster about it," he described the sweeps.

Displaced From Everywhere

Back at Bridgette Parker's hearing, the court clerk waived his arms to get everyone's attention. There was no judge, the clerk explained, and their cases would instead be argued before a local attorney acting as a temporary judge.

But Parker wanted a judge, not some replacement. "My case is too important," she told the clerk.

Osha Neumann, a human-rights attorney from the East Bay Community Law Center who accompanied Parker to the hearing, also told the clerk that Parker wanted a real judge, so the clerk rescheduled. Two Caltrans attorneys got up from the front row and hastily left the courthouse ahead of Parker and Neumann.

The attorney said he's documented upward of forty instances where Caltrans, and sometimes the cities of Oakland and Berkeley, has taken and destroyed people's property. "The stories we're hearing from people are just astounding," he said.

Della-Piana with the Lawyers Committee for Civil Rights explained that she has seen this pattern of behavior previously from Caltrans. In 2006, she was part of a team of attorneys who helped roughly 350 people sue the City of Fresno and Caltrans over the confiscation and immediate destruction of their property. Fresno and Caltrans weren't posting advanced notices for sweeps, either.

A federal judge wrote that the city and state both violated constitutional protections against unreasonable seizure. In a 2008 settlement, Caltrans agreed to a set of rules meant to protect people's property against immediate destruction, including the guidelines that any sweep would be noticed 72 hours in advance, and that belongings would be stored for ninety days. But the settlement agreement expired after five years, and now homeless advocates say that Caltrans and local governments are back to their old ways.

"A federal judge told them what they're doing is illegal, and they entered into a consent decree, but they just keep doing it," Della-Piana said. She worries that what's being documented right now in the Bay Area is happening again all over the state.

Caltrans says that it is still following the letter of the agreement, however, and that the agency is simply being asked to deal with a problem — homelessness — that is not its responsibility. Haus said the agency is working with partners to try to find some solutions.

But Caltrans is also making life harder for those on the streets.

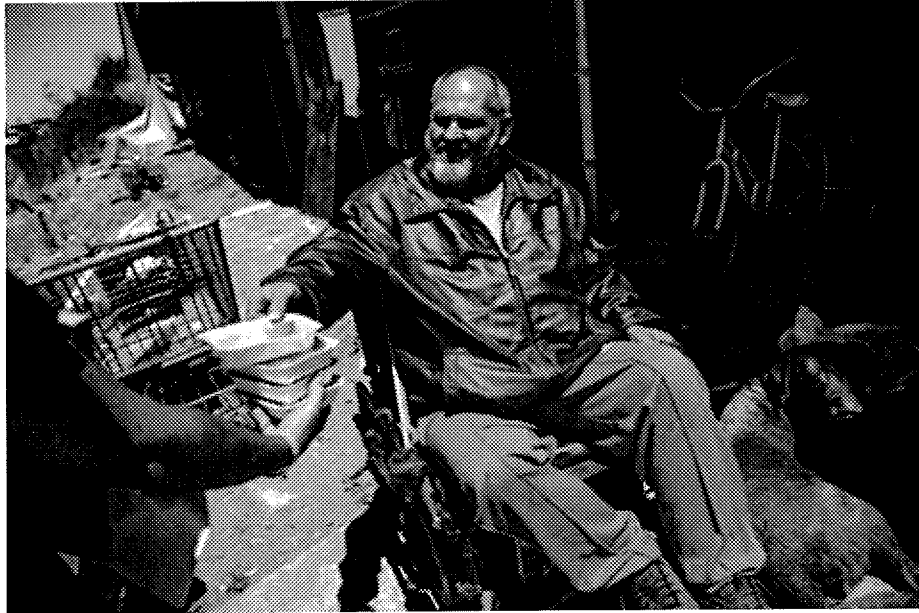
Last week in Berkeley, where Gilman Street dips below Interstate 80, a Caltrans crew installed a fence under the south side of the underpass. The links in the fence are smaller than usual, designed to make it more difficult to scale or cut. The fence closed off half of the covered area where several dozen people recently made their homes.

"This is happening because homeless people are being pushed out of everywhere else — the parks, streets, all the

gentrification — the last place they can be is under the freeways,” Neumann explained.

The Gilman underpass became crowded after the 2014 closure of the Bulb by the Albany police. An old landfill jutting into the Bay, the Bulb was once an unsanctioned camp, a kind of autonomous “bum’s paradise” developed with ramshackle cabins and beautified with scrap-metal sculptures.

[click to enlarge](#)



Joel Angel Juarez

Joseph Rose said its difficult enough to defend ones belongings on the street, let alone worrying about sweeps by Caltrans.

On the north side of the underpass, Joseph Rose sat with his dog watching the traffic go by. “They come once every two weeks,” he said of the Caltrans crews. “They usually give people enough time to move their stuff off the property.”

But Rose said that Caltrans recently notified campers of a sweep scheduled at 9 a.m., but workers arrived at 8 a.m. instead. Some camp residents weren’t around and lost valuables as a result.

“When they clean here, we go onto city streets,” Rose said, adding that the streets aren’t as safe, because it’s even more difficult to defend your possessions.

In the end, many campers sounded frustrated and defeated. “With Caltrans, it’s a serious problem,” said Marjo, the Brush street bike mechanic.

“They’re showing no regard for personal property, for our sovereignty as humans.”

Exhibit D

Caltrans and CHP Oust Homeless from Camp in Pouring Rain in Oakland

By Darwin BondGraham

Email

Tweet

Print



The California Department of Transportation and the California Highway Patrol evicted a homeless camp from underneath the 880 Freeway bridge in downtown Oakland today in the middle of a rainstorm. CalTrans used state prison parolees working through the **Golden State Works** program to throw away tents, mattresses, and other belongings in order to clear the camp.

"We got nowhere else to go, and it's raining," said a man who identified himself as Kevin. Kevin has been living under the bridge for several months along with at least a dozen other people. "We had something under the bridge, out of the rain. We cleaned up the area, and we're not bothering nobody," Kevin said.



click to enlarge

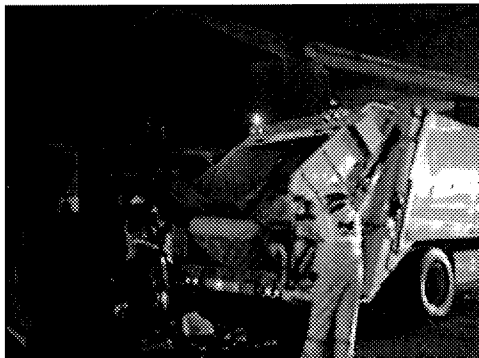
DARWIN BONDGRAHAM

Residents of the camp gather in the rain after being removed from under the 880 Freeway bridge.

Officer Sean Wilkenfeld of the CHP said the camp's residents had been given advanced notice that a cleaning crew would be coming sometime between November 30 and December 4, and that they would be ordered to move out from under the bridge. "We got complaints," said Wilkenfeld.

"This is our property," said a Caltrans supervisor at the scene who did not give his name. "They're trespassing."

click to enlarge



DARWIN BONDGRAHAM

Golden State Works employees throw a mattress and suitcase into a trash compactor.

Officer Wilkenfeld said the homeless camp was creating a biological hazard by scattering drug needles around the area, and that some residents of the camp had tapped into electrical lines.

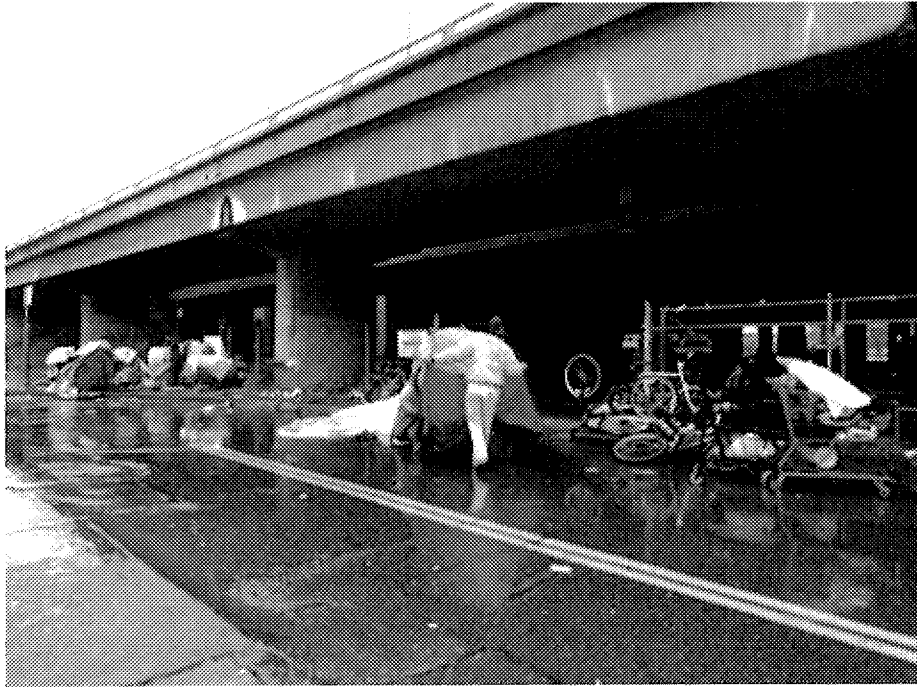
Another homeless man who did not give his name said he had left the camp to buy food for himself and others when the Caltrans crew and CHP arrived. "It's messed up, them doing this to us in the pouring rain," he said. The man claimed that he was unable to save some of his belongings because they were thrown into a garbage truck's compactor.

"If feels safer over here than it does just out walking the streets," said a woman who lived in the camp. She said she and her husband, who are both homeless, have been attacked while living and sleeping at other locations around Oakland, but that the Caltrans site, an empty and unused parking lot under the bridge, was a place where people looked out for each other.

About two dozen Golden State Works employees were at the camp for more than an hour clearing the site and throwing homeless people's belongings into a trash compactor. The Golden State Works program is run by the California Department of Corrections and Rehabilitation in cooperation with Caltrans. Parolees from state prisons enroll in Golden State Works and can earn the city's minimum wage of \$12.25 an hour while cleaning up litter, but

the crews are sometimes used to remove homeless encampments.

[click to enlarge](#)



DARWIN BONDGRAHAM

A Caltrans official drags a tent out into the rain.

Exhibit E

Recordnet.com

News worth sharing *online*

Illegal homeless encampment near I-5 cleared out again

Thursday

Posted Sep 22, 2016 at 8:40 PM

Updated Sep 22, 2016 at 8:40 PM

By **Almendra Carpizo**

Record Staff Writer

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STOCKTON — The people illegally camping along Mormon Slough have come to anticipate the monthly uprooting during Caltrans' cleanup efforts, but homeless individuals and advocates said enforcement has become more aggressive.

On Thursday morning — just short of a month since the last visit — Caltrans and law enforcement officers from the California Highway Patrol and Stockton Police Department arrived at a stretch of land bordered by the slough and Interstate 5 to evict anyone who was illegally camping. It was one of five sites in Stockton cleared out that day.

Mary Foshee, a volunteer with Stockton 209 Cares, arrived with her fiance and red F-150 truck just after 5 a.m. Thursday to help people pack up their belongings and move out.

They were able to take out four truckloads of items before Stockton police arrived and denied access to the path, she said.

Foshee, who drove from her home in Tracy, said she was on her way out of the area when her truck was surrounded by uniformed officers, who she said had been waiting at an entrance off of Weber Avenue.

"They questioned me for 15 to 20 minutes telling me that I was trespassing," she said, her voice breaking.

Nancy Lamb, founder of Stockton 209 Cares, who was also at the site, said volunteers who tried to help the homeless people were threatened with arrest. Lamb said she told an officer she was there to help, but his response was that it was illegal for them to help the homeless remove their items.

"It's getting worse," she said. "I will work with the police in any aspect, but today was very callous."

The Police Department had eight officers at the time of the cleanup at the request of Caltrans and the CHP, said Stockton police spokesman Officer Joe Silva. Stockton officers were not there to take enforcement action but to make sure that none of the people who were being vacated were coming onto city property to leave their belongings or set up a new encampment, he said.

One woman was seen driving on the private property and was told she was not allowed to be there, Silva said. And there were also people who tried to get back onto the property but were turned away because that's considered trespassing, he said.

According to Caltrans, notices were given to residents of that specific camp on Monday. In the notice, which is customary, the people staying there were informed they had 72 hours to remove their property and leave.

Greg Lawson, Caltrans public information officer for District 10, said people illegally camping are aware that Caltrans is coming and it is best to pack of their belongings and move before they arrive, but he added that Caltrans won't stop people from taking items once the agency is there.

"They're more than welcome to do that," he said.

Advocates and three homeless women who were there Thursday morning said that wasn't the case.

Patricia Henderson, 46, who has been living there since February, said she had a rolling cooler with items neatly packed and ready to go the night before, but when she arrived to the Weber Avenue gate Thursday morning she was told she

could take only what she could carry in her hands.

“They wouldn’t let us roll anything out,” she said, adding that with the help from one “kind” Stockton police officer, she was able to grab her tent, sleeping bag and food for her dog, Champ.

Unable to cart away items, people said they left behind food, blankets, clothes, utensils, medication, photos and documents, which were reportedly piled up and then thrown away by Caltrans.

“I don’t know why they target us the hardest,” Henderson said.

By Thursday afternoon, some people had already returned to rebuild their camps.

As Henderson walked the dirt path toward her spot, she pointed out the litter and garbage left behind. Caltrans isn’t here for the trash, she said.

“They just go after our personal items — what I don’t get is what’s the reason?” she asked.

The enforcement efforts are making people do crazy things, Henderson said. People are digging holes to hide their possessions, they’re hiding it in water, and they’re doing whatever they can to hold on to the few things they own.

“Today was one of the hardest days, because I watched people lose their stuff,” said 50-year-old Ana Montes, who also lived near the slough. “I watched their faces.”

Montes herself lost many items, including a necklace with her husband’s ashes.

Thursday’s experience was degrading, Foshee said. People arrived with strollers, wagons, carts and bikes to the gate only to be told they couldn’t take their items. The homeless people didn’t anticipate that law enforcement would come out in force like they did, she added.

The CHP, which is the law enforcement agency responsible for responding, said they had three officers in the encampments, but those officers didn’t have contact with people.

CHP spokesman Dan Sepulveda said Stockton police officers were at the scene before the CHP, and by the time CHP officers arrived, there were no incidents, arrests or citations, he said.

Lawson said Caltrans doesn't prevent people from taking their items, but if someone is seen with a shopping cart, someone from the city will tell them to remove their items, because the cart is private property.

As far as why people weren't allowed to leave with their items on stroller, wagons or any other rolling mechanism, neither the CHP, Caltrans or Stockton police answered whether it was unlawful past the 72-hour period.

Homeless people are tired of losing their belongings, Foshee and Lamb said. More than 30 people living near the slough were affected by Thursday's cleanup.

Stockton 209 Cares said recent actions by Caltrans and law enforcement and inaction from the city of Stockton have prompted the nonprofit group to consider holding a protest outside City Hall.

Foshee said: "Stockton keeps making promises that they can't keep."

— *Contact reporter Almendra Carpizo at (209) 546-8264 or acarpizo@recordnet.com. Follow her on Twitter @AlmendraCarpizo.*

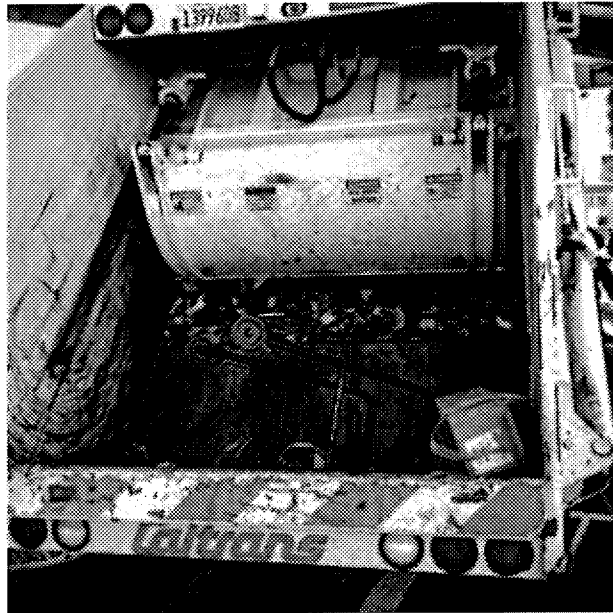
Exhibit F

STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION	
NOTICE TO VACATE ILLEGAL CAMPSITE	
Every person who camps or lodges or stores property on State property without permission of the owner is guilty of a misdemeanor violation of California law.	
POSTING DATE: 7-8-16	TIME: 9:44
LOCATION: 36 MLK	
INSTRUCTIONS TO OCCUPANTS:	
1. ALL PERSONAL PROPERTY AND CAMP DEBRIS IS TO BE REMOVED BY THE TIME AND DATE NOTED BELOW.	
2. ANY PERSONAL PROPERTY LEFT AT THIS SITE AFTER THIS TIME WILL BE CONSIDERED ABANDONED.	
3. ANY PERSONAL PROPERTY NOT DISPOSED OF WILL BE STORED FOR NINETY (90) DAYS. TO RECLAIM PROPERTY CALL: FAILURE TO RECLAIM BY ___(DATE)___ WILL RESULT IN IT'S DISPOSAL.	
4. CONTINUED VIOLATIONS WILL RESULT IN CITATION AND/OR ARREST.	
VACATE BY DATE: 7-8-16	TIME: 9:17
VIOLATIONS NOTED AT THIS TIME:	
<input type="checkbox"/> CALIFORNIA PENAL CODE Section 647(e). Unlawful camping or lodging. Every person who commits any of the following acts is guilty of disorderly conduct, a misdemeanor, who: (a) lodges in any building, structure, vehicle, or place, whether public or private, without permission of the owner or person entitled to the possession or in control of it.	
<input type="checkbox"/> CALIFORNIA VEHICLE CODE Section 23112. (b). Depositing litter, debris or garbage on State Right of Way: No person shall place, deposit, or dump, or cause to be placed, deposited, or dumped, any rocks, refuse, garbage, or dirt in or upon any highway, including any portion of the right of way thereof, without the consent of the state or local agency having jurisdiction over the highway.	
Local Ordinances may be inserted below. Check with local law enforcement for codes for your specific area.	
Examples may be:	
<input type="checkbox"/> Unlawful storage of personal property	
<input type="checkbox"/> Unlawful refuse disposal	
<input type="checkbox"/> Unlawful camping	
<input type="checkbox"/> Unlawful camp fire	
<input type="checkbox"/> Unlawful defecation in public place	
<input type="checkbox"/> Unlawful restraining of animal	
There may be site-specific local ordinances or codes for the municipalities in your district. Check with local governmental units or law enforcement.	
COMMUNITY SERVICE ASSISTANCE IS AVAILABLE AT:	
Local law enforcement substation or neighborhood office. (insert address and telephone##)	
Salvation Army (Insert address and telephone##)	
County Emergency Shelter (Insert address and telephone##)	
Religious services and shelters. (Insert address and telephone##)	
W.E.A.V.E. (Insert address and telephone##)	
Local Traveler's Aid services. (Insert address and telephone##)	
Local meals/medical services for indigents and their pets. (Insert address and telephone##)	
Women's or Men's only Centers. (Insert address and telephone##)	

(See page 2 for instructions for template use.)

Exhibit G

facebook



Previous

Next

Kelley Cutler

See the walker in the back of the dump truck? That belongs to a senior who is a disabled veteran who is experiencing homelessness. I told the DPW worker that I know the man who owns this walker and asked if they would tag this property so he could come pick it up. They said no and ended up crushing it up in the dump truck. So wrong! — at San Francisco

Feb 23 · Public · in Mobile Uploads
[View Full Size](#)

<p>ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Keith L. Slenkovich (SBN: 129793) Wilmer Cutler Pickering Hale and Dorr LLP 950 Page Mill Road Palo Alto, California 94304</p> <p>TELEPHONE NO.: (650) 858-6110 FAX NO. (Optional): (650) 858-6100 E-MAIL ADDRESS (Optional): keith.slenkovich@wilmerhale.com ATTORNEY FOR (Name): Plaintiffs</p>	<p>FOR COURT USE ONLY</p>
<p>SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA</p> <p>STREET ADDRESS: 1221 Oak Street</p> <p>MAILING ADDRESS: CITY AND ZIP CODE: Oakland, CA 94612 BRANCH NAME: Rene C. Davidson Courthouse</p>	
<p>PETITIONER/PLAINTIFF: Kimberlee Sanchez, et al.</p> <p>RESPONDENT/DEFENDANT: California Department of Transportation, et al.</p>	
<p>PROOF OF SERVICE BY FIRST-CLASS MAIL—CIVIL</p>	<p>CASE NUMBER: RG16842117</p>

(Do not use this Proof of Service to show service of a Summons and Complaint.)

1. I am over 18 years of age and **not a party to this action**. I am a resident of or employed in the county where the mailing took place.
2. My residence or business address is:
Wilmer Cutler Pickering Hale and Dorr LLP, 950 Page Mill Road, Palo Alto, CA 94304
3. On (date): **5/16/2017** I mailed from (city and state): **Palo Alto, CA**
 the following **documents** (specify):
FIRST AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND DAMAGES

The documents are listed in the *Attachment to Proof of Service by First-Class Mail—Civil (Documents Served)* (form POS-030(D)).

4. I served the documents by enclosing them in an envelope and (check one):
 - a. **depositing** the sealed envelope with the United States Postal Service with the postage fully prepaid.
 - b. **placing** the envelope for collection and mailing following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.


5. The envelope was addressed and mailed as follows:
 - a. **Name** of person served: **Ankush Agarwal, Esq.**
 - b. **Address** of person served:
California Department of Transportation - Legal
111 Grand Avenue, Suite 11-100, Oakland, CA 94612

The name and address of each person to whom I mailed the documents is listed in the *Attachment to Proof of Service by First-Class Mail—Civil (Persons Served)* (POS-030(P)).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: **May 16, 2017**

Carlotta Burgos
 (TYPE OR PRINT NAME OF PERSON COMPLETING THIS FORM)


 (SIGNATURE OF PERSON COMPLETING THIS FORM)