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FILED
ALAMEDA COUNTY

JUL 14 2020

CLERK OF THE SUPERIOR COURT

By *chj* Deputy

SUPERIOR COURT OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA

KIMBERLEE SANCHEZ,
JAMES LEONE, PATRICIA MOORE, on
behalf of themselves and all others
similarly situated,
HOMELESS ACTION CENTER,
WESTERN REGIONAL ADVOCACY
PROJECT, SUSAN HALPERN, and
NATALIE LEIMKUHLER,

Plaintiffs,

v.

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

Defendants.

Case No. RG16842117

ASSIGNED FOR ALL PURPOSES TO HON.
WINIFRED Y. SMITH; DEPARTMENT 21

~~[PROPOSED]~~ FINAL JUDGMENT

1 The parties to this action entered into a Settlement Agreement, attached hereto as Exhibit
2 1, on or about February 18, 2020. The Court granted preliminary approval to the Agreement after
3 a duly noticed hearing on March 10, 2020 and set the matter for hearing on July 10, 2020 on the
4 parties' motion for final settlement approval. Notice of the settlement was given to Class
5 members in a manner that constituted the best means practicable under the circumstances.
6 Following the Court's issuance of its tentative ruling on Plaintiffs' Motion for Final Approval of
7 Class Action Settlement, the parties negotiated and signed an Addendum to Settlement
8 Agreement to modify certain terms that the Court had suggested were not acceptable.

9 The Court, having reviewed the submissions of the parties, and no objections to the
10 settlement having been presented by class members, and having reviewed the agreement of the
11 parties for the payment of attorney's fees and costs, and good cause appearing, it is hereby
12 ORDERED, ADJUDGED and DECREED as follows:

- 13 1. The Settlement Agreement attached hereto as Exhibit 1, as modified by the Addendum
14 to Settlement Agreement attached hereto as Exhibit 2, is hereby approved as fair,
15 reasonable, and in the best interests of the class, pursuant to California Rules of Court,
16 Rules 3.769(a) and 3.769(g).
- 17 2. The Court hereby approves the payment aggregate costs and attorney's fees and costs
18 to the attorneys for Plaintiffs upon the agreement of the parties in the amount of
19 \$3,500,000 pursuant to California Rule of Court, Rule 3.769(b). The Court orders that
20 \$293,200, which is 10% of the implied fee amount of \$2,932,000, is to be paid into the
21 Settlement Fund but held back and not disbursed by the Class Settlement
22 Administrator until the completion of the claims distribution process and Court
23 approval of a final accounting. The Court sets a compliance hearing for _____.
24 Plaintiffs' counsel must submit a summary accounting of how the funds have been
25 distributed to the class members and the status of any unresolved issues. If the
26 distribution has been completed, the Court will at that time release the hold-back of
27 attorney's fees.
- 28 3. Judgment is hereby entered on the Settlement Agreement attached hereto as Exhibit 1,

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as modified by the Addendum attached hereto as Exhibit 2, pursuant to California Rules of Court, Rule 3.769(h).

- 4. This Final Judgment, and all papers related thereto, shall not be construed as an admission by any Party of liability or of any fact that might give rise to liability for any purpose whatsoever.
- 5. This Judgment is not intended to confer third-party beneficiary rights upon any person who is not a party to this action, including any collateral estoppel effects.
- 6. The Court retains jurisdiction for a period of seven (7) years from the date hereof to enforce the terms of this Judgment pursuant to California Rules of Court, Rule 3.769(h).

Dated: July 14, 2020


Winifred Y. Smith
Judge of the Superior Court

EXHIBIT 1

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SUPERIOR COURT OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA

KIMBERLEE SANCHEZ,
JAMES LEONE, PATRICIA MOORE, on
behalf of themselves and all others
similarly situated, HOMELESS ACTION
CENTER, WESTERN REGIONAL
ADVOCACY PROJECT, SUSAN
HALPERN, and NATALIE
LEIMKUHNER Plaintiffs,

Plaintiffs,

v.

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

Defendants.

Case No. RG16842117

ASSIGNED FOR ALL PURPOSES TO HON.
MICHAEL M. MARKMAN; DEPARTMENT
16

SETTLEMENT AGREEMENT

1 This Settlement Agreement, effective as of the entry of Final Judgment as set forth in
2 Section 1.12, is made and entered into by and among: (i) Plaintiffs Kimberlee Sanchez, James
3 Leone, and Patricia Moore (collectively, "Class Representatives") on behalf of themselves and
4 each Plaintiff Class member; (ii) Susan Halpern and Natalie Leimkuhler (collectively, "Taxpayer
5 Plaintiffs"); (iii) Homeless Action Center ("HAC"); and (iv) Defendant State of California, by
6 and through the Department of Transportation ("Caltrans") ("Defendant") relating to all claims
7 alleged in, or related to, an action entitled *Kimberlee Sanchez, et al. v. California Department of*
8 *Transportation, et al.*. Alameda County Superior Court Case No. RG16842117 (the "Action").
9 The parties listed in (i)-(iii) above shall be referred to collectively as "Plaintiffs." Plaintiffs and
10 Defendant shall be referred to collectively as the "Parties."

11 RECITALS

12 WHEREAS in the First Amended Complaint ("FAC") in the Action, Class
13 Representatives on behalf of Plaintiff Class allege causes of action for Right to be Secure From
14 Unreasonable Seizures in violation of 42 U.S.C. Section 1983 - Fourth Amendment of the United
15 States Constitution and Article I, Section 13 of the California Constitution (First Cause of
16 Action); Right to Due Process of Law in violation of 42 U.S.C. Section 1983 - Fourteenth
17 Amendment of the United States Constitution and Article I, Section 7 of the California
18 Constitution (Second Cause of Action); Violation of the Bane Act, California Civil Code Section
19 52.1 (Fifth Cause of Action); and Conversion and Trespass to Chattels (Sixth Cause of Action);

20 WHEREAS HAC alleges causes of action and seeks injunctive relief under the First and
21 Second Causes of Action of the FAC;

22 WHEREAS the Taxpayer Plaintiffs allege a taxpayer action under Code of Civil
23 Procedure Section 526a to prevent illegal expenditure of public funds (Ninth Cause of Action);

24 WHEREAS the Court granted Plaintiffs' Second Amended Motion for Class Certification
25 on June 13, 2019, and subsequently amended the class definition by order dated October 9, 2019,
26 allowing Plaintiffs to proceed on behalf of a class of "All persons whose personal belongings
27 were unreasonably taken from them by the Defendants in the Cities of Berkeley, Oakland, or
28 Emeryville and later destroyed, and who were homeless at the time, from December 13, 2014

1 through October 31, 2019” on the First, Second, and Sixth causes of action only;

2 WHEREAS Plaintiffs allege, as more specifically set forth in the First Amended
3 Complaint, that in connection with “sweeps” or cleanup operations conducted at Homeless
4 Encampments, Defendant Caltrans and its former Director, Malcolm Dougherty, have
5 systematically taken and destroyed homeless individuals’ property, in violation of the United
6 States and California Constitutions, and California statutory and common law; and Defendant
7 denies said allegations; WHEREAS Defendant contends that Government Code Section 14030
8 provides Caltrans with authority to plan, design, construct, operate, and maintain California’s
9 state highway system;

10 WHEREAS Defendant contends that Sections 90, 91 and 92 of the California Streets and
11 Highways Code allow Caltrans to possess, construct, improve, maintain and use the State
12 highways; and that the degree and type of maintenance is within the discretion of the State under
13 Streets and Highways Code Section 27;

14 WHEREAS Defendant contends that encampments of homeless persons on its rights of
15 way are illegal and that Caltrans Maintenance Policy Directive 1001 regarding Illegal
16 Encampment Removal is constitutional under the United States and California Constitutions;

17 WHEREAS Christopher Craner, Scott Russell, and the Western Regional Advocacy
18 Project have previously dismissed their claims in the Action separate and apart from this
19 Settlement Agreement, and Malcolm Dougherty has been dismissed as a Defendant from the
20 Action;

21 WHEREAS Caltrans agrees that in the event the Settlement Agreement is not finally
22 approved by the Court and litigation re-commences, it will not oppose the substitution of its then-
23 current Director as a defendant in the Action;

24 WHEREAS the Parties wish to avoid the expense, inconvenience and uncertainty of
25 continued pretrial proceedings and trial in the Action, and have therefore agreed to compromise
26 and settle their respective claims and defenses as set forth herein, and to request entry of
27 judgment pursuant to Cal. R. Ct. 3.769(h);

28 NOW, THEREFORE, the Parties stipulate and agree as follows:

SETTLEMENT AGREEMENT

SECTION 1: DEFINITIONS AS USED IN THE SETTLEMENT AGREEMENT

For purposes of this Settlement Agreement and the attached Exhibits A and B, which are expressly incorporated herein, the following terms shall have the meanings specified below:

1.1 “Annuity Fund” shall mean the portion of the Settlement Fund that will be allocated to the purchase of an annuity to fund periodic payments to HAC, as set forth in Section 2.2.1 below.

1.2 “Attorneys’ Fees and Costs Payment” shall mean the portion of the Settlement Fund that will be paid to Class Counsel, as set forth in Section 2.2.8 below.

1.3 “Claims Payment Fund” shall mean the portion of the Settlement Fund that will be allocated to payment of the claims of the Settlement Class, as more fully described in Section 2.2.6 hereof.

1.4 “Class Counsel” shall mean the Lawyers’ Committee for Civil Rights of the San Francisco Bay Area, the East Bay Community Law Center, Wilmer Cutler Pickering Hale & Dorr, and the ACLU Foundation of Northern California.

1.5 “Class Representatives” shall mean Kimberlee Sanchez, James Leone, and Patricia Moore, who are also members of Plaintiff Class.

1.6 “Class Settlement Administrator” shall mean a person agreed by the Parties and/or approved by the Court to administer the claims process, evaluate, accept, or deny claims submitted and determine the amounts to be awarded, if any, pursuant to the Settlement Plan attached hereto as Exhibit A.

1.7 “Contractors” shall mean any entity and/or individual other than an employee of Caltrans who performs work on behalf of Caltrans.

1.8 “Defendant” shall mean State of California, by and through the Department of Transportation (“Caltrans”).

1.9 “Directive 1001” shall mean Caltrans Maintenance Policy Directive Number 1001, issued and effective August 16, 2010, and its successor policies.

1.10 “Final Approval Hearing” means a hearing by the Court, after the notice period

1 has expired, to approve the Settlement Agreement as set forth herein.

2 1.11 "Final Approval Motion" shall mean a motion filed with the Court requesting that
3 the Court consider and, if it finds the settlement to be fair and reasonable, finally approve the
4 Settlement Agreement.

5 1.12 "Final Judgment" shall mean a judgment entered by the Court upon final approval
6 of the Settlement, pursuant to California Code of Civil Procedure § 3.769(h).

7 1.13 "Homeless Encampment" shall mean a site where one or more unhoused persons
8 lives outside in a tent or other form of shelter.

9 1.14 "Operation" shall mean a cleanup or removal by Caltrans of a Homeless
10 Encampment.

11 1.15 "Pilot Project Area" shall mean the Cities of Berkeley, Oakland, and Emeryville.

12 1.16 "Plaintiff Class" shall mean "all persons whose personal belongings were
13 unreasonably taken from them by the Defendant in the Cities of Berkeley, Oakland, or Emeryville
14 and later destroyed, and who were homeless at the time, from December 13, 2014 through
15 October 31, 2019."

16 1.17 "Preliminary Approval Hearing" means a hearing by the Court to preliminarily
17 approve the Settlement Agreement as set forth herein, and set a hearing date for a Final Approval
18 Hearing.

19 1.18 "Preliminary Approval Motion" shall mean a motion filed with the Court
20 requesting that the Court consider and preliminarily approve the Settlement Agreement.

21 1.19 "Settlement Class" refers to all members of the Plaintiff Class who do not opt out
22 of this Settlement Agreement.

23 1.20 "Settlement Fund" shall mean the total monetary relief paid in full and final
24 settlement of all claims in the Action in connection with this Settlement Agreement, consisting of
25 (i) the Annuity Fund; (ii) the Claims Payment Fund; and (iii) the Attorneys' Fee Payment.

26 1.21 "Settlement Plan" shall mean the plan, attached as Exhibit A to this Settlement
27 Agreement, by which the Claims Payment Fund shall be maintained, administered, and paid.

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1 **SECTION 2: MONETARY CONSIDERATION**

2 2.1 Within 90 days of the entry of Final Judgment, Defendant shall pay the total sum
3 of \$5,500,000 as the entire Settlement Fund, as set forth below.

4 2.2 Subject to Court approval, the Parties agree that the Settlement Fund will be
5 allocated and disbursed as follows:

6 2.2.1 Caltrans shall issue a check in the amount of \$700,000 payable to MetLife
7 Assignment Company, Inc. to purchase an annuity that will fund the periodic payment obligation
8 mentioned herein to Payee Homeless Action Center ("HAC") for seven (7) years, for the purpose
9 of assisting homeless individuals residing in Oakland, Berkeley and Emeryville, including the
10 Plaintiff Class. The periodic payments will be used to fund a staff position for the purpose of
11 providing outreach and supportive services for the benefit of the Plaintiff Class; assisting
12 homeless individuals who are currently located on, or who have been or will be removed from
13 Caltrans right of way in Alameda County to access transitional and permanent housing
14 opportunities; assisting homeless persons to connect with other HAC staff to obtain benefits for
15 which they are eligible; and assisting homeless persons to recover personal property that is
16 collected during any Operations in Homeless Encampments on Caltrans right of way. HAC will
17 have discretion to implement the funds from this term, consistent with this Settlement Agreement,
18 in the best interest of the Plaintiff Class. HAC shall report to Caltrans concerning its use of these
19 funds as set forth in Section 3.4.1(6) hereof.

20 2.2.2 Payee HAC acknowledges that the Periodic Payments cannot be accelerated,
21 deferred, increased or decreased by the Plaintiffs or any Payee; nor shall Plaintiffs or any Payee
22 have the power to sell, mortgage, encumber, or anticipate the Periodic Payments, or any part
23 thereof, by assignment or otherwise.

24 2.2.3 Payee HAC acknowledges and agrees that Defendant Caltrans, will make a "non-
25 qualified assignment," of Defendant's liability to make the Periodic Payments set forth in Section
26 2.2.1 to MetLife Assignment Company, Inc. ("the Assignee"). The Assignee's obligation for
27 payment of the Periodic Payments shall be no greater than that of Defendant (whether by
28 judgment or agreement) immediately preceding the assignment of the Periodic Payments

1 obligation. Any such assignment, if made, shall be accepted by Payee HAC without right of
2 rejection and shall completely release and discharge Defendant from the Periodic Payments
3 obligation assigned to the Assignee. The Payee HAC recognizes that, in the event of such an
4 assignment, the Assignee shall be the sole obligor with respect to the Periodic Payments
5 obligation, and that all other releases with respect to the Periodic Payment obligation that pertains
6 to the liability of Defendant thereupon become final, irrevocable and absolute. The final annuity
7 payout schedule, which will be determined at a later time, will be inserted into the Non-Qualified
8 Assignment and Release agreement.

9 2.2.4 The Defendant itself or through its Assignee reserves the right to fund the liability
10 to make the Periodic Payments through the purchase of an annuity policy from Metropolitan
11 Tower Life Insurance Company ("MetLife"). Defendant or the Assignee shall be the sole owner
12 of the annuity policy and shall have all rights of ownership. Defendant or the Assignee may have
13 MetLife mail payments directly to the Payee HAC. Payee shall be responsible for maintaining a
14 current mailing address for Payee with MetLife. The obligation of Defendant Caltrans and/or
15 Assignee to make each Periodic Payment shall be discharged upon the mailing of a valid check in
16 the amount of such payments to the designated address of the Payee named in Section 2.2.1 of
17 this Settlement Agreement.

18 2.2.5 In the event of the dissolution of HAC, any remaining guaranteed payments shall
19 be made to such person or entity as shall be designated in writing by HAC to the Defendant and
20 the Defendant's Assignee, which person or entity shall be the successor to the obligations of HAC
21 set forth in Section 2.2.1. No such designation, nor any revocation thereof, shall be effective
22 unless it is in writing and delivered to Defendant and Defendant's Assignee. The designation
23 must be accepted in writing by Defendant and Defendant's Assignee before such payments are
24 made.

25 2.2.6 The amount of \$1,300,000 shall be made payable to WILMER CUTLER
26 PICKERING HALE & DORR INTEREST ON LAWYER TRUST ACCOUNT, and deposited
27 into an interest-bearing account to establish the Claims Payment Fund for the purpose of making
28 payments to members of the Settlement Class, incentive payments to the Class Representatives,

1 compensating the Class Settlement Administrator, and paying other costs of administration,
2 pursuant to the Settlement Plan attached as Exhibit A hereto.

3 2.2.7 With respect to the funds paid to establish the Claims Payment Fund, Wilmer
4 Cutler Pickering Hale & Dorr shall provide a completed, executed Payee Data Record (“PDR”),
5 State of California Form STD 204.

6 2.2.8 Subject to the approval of the Court, Class Counsel will receive a separate
7 Attorneys’ Fees and Costs Payment in the amount of \$3,500,000 to be made payable to WILMER
8 CUTLER PICKERING HALE & DORR INTEREST ON LAWYER TRUST ACCOUNT.
9 Plaintiffs shall not recover any other costs.

10 SECTION 3: OTHER CONSIDERATION

11 3.1 Statewide Compliance with Specified Policies and Procedures.

12 3.1.1. Caltrans will, for a period of not less than five (5) years from the entry of Final
13 Judgment, comply throughout the State with the following policies and procedures, referred to
14 hereafter as the “Minimum Protections,” derived from Directive 1001, except to the extent
15 superseded by procedures applicable to the Pilot Project as set forth in Section 3.2 hereof:

16 (a) Notices of Operations shall provide a single date upon which the Operation shall
17 occur, and shall be posted not less than 48 hours prior to the commencement of the Operation. If
18 the Operation does not begin on the noticed date, a new notice shall be required. Any remaining
19 occupants on site shall be allowed a reasonable time to remove possessions before the Operation
20 begins. Any health or safety hazard may be removed immediately.

21 (b) Notices shall provide a telephone number for people to call to arrange for the
22 retrieval of possessions that have been collected from the site, and the length of time that Caltrans
23 will store such possessions.

24 (c) Personal property of apparent value that is not a health or safety hazard shall be
25 collected, labelled, and stored.

26 (d) Personal property that is stored shall be retained by Caltrans for at least 60 days
27 from the clean-up date.

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1 3.1.2 During the time within which the Court retains jurisdiction to enforce the terms of
2 this Settlement Agreement (as set forth in Section 6 below), to the extent that any dispute arises
3 out of an alleged breach of the terms of this Settlement Agreement, the Parties' sole recourse for
4 such a dispute shall be a proceeding in this Court to enforce the terms of the Settlement
5 Agreement.

6 3.1.3 To the extent the Parties have a dispute concerning the implementation of the
7 policies and procedures set forth in this Section 3.1, they shall attempt to resolve their
8 disagreements through the procedures set forth in Sections 7.5 – 7.6 hereof.

9 **3.2 Pilot Project in the Cities of Berkeley, Oakland, and Emeryville**

10 3.2.1 In addition to the obligations set forth in Section 3.1 hereof, Caltrans will, for a period of
11 not less than four (4) years from the entry of Final Judgment, implement a Pilot Project for
12 Homeless Encampments in the Pilot Project Area, as set forth in Exhibit B to this Settlement
13 Agreement.

14 3.2.2 In the Pilot Project Area, Caltrans will post the notices described in Exhibit B, at
15 locations which it reasonably determines appropriate, and paper notices at all other locations.

16 3.2.3 Caltrans shall establish a uniform format for collecting and storing information
17 concerning all personal property that Caltrans or its Contractors remove from a Homeless
18 Encampment that Caltrans is required to store pursuant to Exhibit B. Caltrans shall endeavor in
19 good faith to store such information in an electronically searchable database to the extent
20 practicable.

21 3.2.4 Caltrans shall establish a telephone number, to be included on all notices of
22 Operations, that will be answered by a person during regular business hours (8:00 a.m. to 4:00
23 p.m., excluding weekends and holidays), who will provide information about personal property
24 that Caltrans has collected from Homeless Encampments, including where and how to retrieve the
25 property collected.

26 3.2.5 Caltrans agrees to post current schedules of Operations in the Pilot Project Area on
27 the Caltrans District 4 website once a month, at least one week in advance of the beginning of the
28 following month. These schedules are for informational purposes only.

1 3.2.6 Caltrans intends to use hazmat Contractors at the greatest number of Operations
2 feasible. Caltrans will make reasonable efforts to meet this goal taking into account budgeting,
3 funding, scheduling, bargaining agreement, and contracting limitations.

4 3.2.7 Caltrans may seek to modify the specific procedures required by the Pilot Project,
5 following notice and consultation with Class Counsel, for the following reasons: (1) to the extent
6 required by changes in controlling law; and (2) as needed with regard to changes in operational
7 needs, including budget, manpower, CHP resources, and bargaining agreements, so long as
8 Caltrans made reasonable efforts to avoid the need for them. To the extent the Parties disagree
9 with any proposed change to the Pilot Project, they shall attempt to resolve their disagreements
10 through the procedures set forth in Sections 7.5 – 7.6 hereof.

11 3.2.8. Plaintiffs agree that Caltrans has a legitimate governmental interest in employee
12 and public safety and that its agents or Contractors may open a backpack or closed container to
13 determine the presence of hazardous materials during an Operation. Plaintiffs and Plaintiff Class
14 will not assert that such action constitutes a violation of any person's right to privacy or right to
15 be free from unconstitutional search and seizure, and specifically waive any right to sue Caltrans,
16 its employees or Contractors for such action.

17 **3.3 Training**

18 3.3.1 Caltrans shall implement a statewide training program for all maintenance workers
19 and supervisors employed by Caltrans in the conduct of Operations regarding procedures
20 identified in Directive 1001 or its successor, and additional training for such persons employed in
21 Berkeley, Oakland and Emeryville regarding the Pilot Project Procedures attached as Exhibit B to
22 this Settlement Agreement. Caltrans shall provide Class Counsel the materials used in such
23 training programs, except for materials designated as attorney-client privileged materials, in
24 which case any redaction shall be visibly noted. The training program will conform with
25 guidelines and best practices recommended by the Caltrans Maintenance Manual. Caltrans will
26 periodically audit each maintenance facility engaged in Operations in Berkeley, Oakland, and
27 Emeryville to ensure that maintenance workers and supervisors are trained as required under this
28 Paragraph.

1 3.3.3 The initial training required by this Section 3.3 has already commenced as of the
2 entry of Final Judgment and shall be completed by a date no later than 180 days from the entry of
3 Final Judgment. Thereafter, training shall recur at least once annually for every maintenance
4 employee who performs work on Operation(s) at any Homeless Encampment, until the expiration
5 of the Settlement Agreement.

6 3.3.4 Following the initial training, Defendant shall ensure that any newly hired
7 maintenance employee who performs work on Operation(s) at any Homeless Encampment
8 receive such training within 30 days of hire or prior to commencing such work and participates in
9 the annual training required in Section 3.3.3.

10 3.3.5 Caltrans shall inform its Contractors who are engaged in Operations of the
11 Minimum Protections. In addition, Caltrans shall inform Contractors engaged in Operations in
12 Berkeley, Oakland or Emeryville of the terms of the Pilot Project.

13 **3.4 Reporting and Monitoring**

14 3.4.1 Beginning on a date that is no later than 300 days after the entry of Final Judgment, and
15 recurring every 365 days thereafter until the expiration of this Settlement Agreement, the Parties
16 shall report to each other as follows:

17 (1) For a period of four (4) years for the duration of the Pilot Project, Caltrans shall
18 provide to Plaintiffs' Counsel a log of all Operations in the Pilot Project Area,
19 which log shall include the dates, times, and locations of such Operations and
20 whether the action was carried out by Caltrans or any of its Contractors.

21 (2) For a period of four (4) years for the duration of the Pilot Project, Caltrans shall
22 provide to Plaintiffs' Counsel a log showing all property that Caltrans and/or its
23 Contractors have collected from any Homeless Encampment in the Pilot Project
24 Area; whether any request was received from any person for the return of such
25 property; whether such property was returned; and whether such property was
26 eventually discarded.

27 (3) For a period of four (4) years for the duration of the Pilot Project, Caltrans shall
28 provide to Plaintiffs' Counsel a written report setting forth the data, if any, it has

1 collected from the Pilot Project and what procedures, if any, it intends to
2 implement statewide as a result of its experience with the Pilot Project. The Pilot
3 Project shall continue in effect at least until the delivery of the annual report that
4 corresponds to the final year of the agreed term of the Pilot Project.

5 (4) For a period of five (5) years for the duration of the Statewide Minimum
6 Protections, Caltrans shall verify that the Contractors involved in Operations have
7 been advised of the Minimum Protections applicable to their work, and for a
8 period of four (4) years for the duration of the Pilot Project, that it has informed all
9 Contractors engaged in Operations in Berkeley, Oakland or Emeryville of the
10 terms of the Pilot Project.

11 (5) For a period of seven (7) years for the duration of the Settlement Agreement,
12 Caltrans shall provide to Plaintiffs' counsel information sufficient to show the
13 percentage of employees involved in Operations who attended the training
14 required by Section 3.3 above.

15 (6) For a period of seven (7) years for the duration of the Settlement Agreement,
16 HAC shall report annually through counsel, to counsel for Caltrans, beginning no
17 later than 365 days after it receives the initial payment from the Annuity Fund to
18 the Caltrans District Director of Maintenance, regarding the number of unhoused
19 persons who have benefited by this fund and the nature of the assistance provided.
20 Such reporting shall continue thereafter for the duration of the Settlement
21 Agreement.

22 3.4.2 Starting on a date that is no later than 365 days after the entry of Final Judgment
23 and at least 30 days after the date when the Parties provide reporting as set forth in Section 3.4.1
24 above, the Parties shall meet, through Counsel, for the purpose of reviewing and discussing the
25 results of said reporting.

26 3.4.3 For the remainder of the Settlement Agreement, the Parties will continue to meet,
27 through Counsel, at least annually on a date that is at least 30 days after the date when the Parties
28 provide the required reporting for that calendar year.

1 **SECTION 4: RELEASE**

2 4.1 Effective upon entry of Final Judgment as set forth in Section 5.2 hereof all claims
3 and matters raised in this Action shall be fully resolved, to include any and all claims of each and
4 every Plaintiff, which includes the Class Representatives and Plaintiff Class, except that the Court
5 will retain jurisdiction over this matter and the Parties during the seven-year duration of this
6 Settlement Agreement for the purpose of enforcing the Settlement Agreement and issuing any
7 orders necessary to implement this Settlement Agreement and the relief provided herein, as set
8 forth in Section 6 below.

9 4.2 As of entry of Final Judgment, Plaintiffs and the Class Representatives on behalf
10 the Settlement Class, and each of their heirs, predecessors, successors, representatives or assigns,
11 release, relinquish and forever discharge any and all claims, causes of action, demands, rights, or
12 liabilities that were asserted in the Action or that relate to the Action against the Defendant,
13 including but not limited to its heirs, predecessors, successors, employees, affiliates, divisions,
14 parent or sister agencies, or any other person or entity related or affiliated with the Defendant, up
15 through and including the date of entry of Final Judgment.

16 4.3 Plaintiffs and each member of the Settlement Class, on behalf of themselves and
17 each of their heirs, predecessors, successors, representatives or assigns hereby waive and
18 relinquish to the fullest extent permitted by law, the provisions, rights and benefits of Section
19 1542 of the California Civil Code, which provides:

20 A general release does not extend to claims that the creditor or releasing party does not
21 know or suspect to exist in his or her favor at the time of executing the release and that, if
22 known by him or her, would have materially affected his or her settlement with the debtor
or released party.

23 **SECTION 5: NOTICE OF SETTLEMENT AGREEMENT, FAIRNESS HEARING
24 AND FINAL JUDGMENT**

25 5.1 Within 60 days of the execution of this Settlement Agreement, pursuant to
26 California Rules of Court Rule 3.769, Plaintiffs will submit a Preliminary Approval Motion that
27 will ask the Court to:

28 ///

1 5.1.1 Approve the proposed class notices and a proposed plan for giving notice to
2 Plaintiff Class;

3 5.1.2 Set dates for individuals to submit objections to this Settlement Agreement;

4 5.1.3 Issue a preliminary fairness evaluation; and

5 5.1.4 Set a date for a Final Approval Hearing at the earliest practicable date.

6 5.2 At the Final Approval Hearing, the Parties will request the Court to enter Final
7 Judgment pursuant to Cal. R. Ct. 3.769(h), substantially in the form agreed by the parties which
8 will be submitted with the Motion for Preliminary Approval, or such other form as the Court may
9 direct that is consistent with the terms of this Agreement.

10 **SECTION 6: DURATION AND COURT JURISDICTION**

11 6.1 This Settlement Agreement will expire on the date that is seven years from the
12 entry of Final Judgment.

13 6.2 The Superior Court for the County of Alameda shall retain jurisdiction of this
14 matter under Code Civil Procedure Section 664.6 for a seven-year period commencing with the
15 entry of Final Judgment to enforce the terms of the Settlement Agreement, and to resolve any
16 disputes that may arise between the parties concerning this Settlement Agreement.

17 **SECTION 7: GENERAL PROVISIONS**

18 7.1 The Parties acknowledge that Caltrans may elect to hire Contractors to conduct or
19 participate in Operations subject to the requirements of Sections 3.1 and 3.2 hereof. References in
20 those sections to "Caltrans" shall be understood to include Contractors hired by Caltrans to
21 conduct or participate in Operations. Caltrans does not waive the protection of Government Code
22 § 815.4.

23 7.2 The Parties intend this Settlement Agreement to be a final and complete resolution
24 of all disputes between and among the Parties with respect to the Action. The Settlement
25 Agreement compromises claims that are contested and it shall not be deemed an admission by any
26 Party as to the merits of any claim or defense. The Settlement Agreement was negotiated in good
27 faith by the Parties and reflects a settlement that was reached voluntarily after consultation with
28 competent legal counsel. The Parties agree that this Settlement Agreement is a fair, adequate and

1 reasonable resolution of the declaratory, injunctive, damages and attorneys' fees claims of the
2 First Amended Complaint. The Parties agree that any individual claims for damages arising after
3 October 31, 2019 are not affected by this Settlement Agreement.

4 7.3 This Settlement Agreement constitutes the full and entire agreement among the
5 Parties with regard to the subject thereof and supersedes any prior promises, representations, or
6 warranties (oral or otherwise) made by any Party. No Party shall be liable or bound to any other
7 Party for any prior or contemporaneous representation, promise or warranty (oral or otherwise)
8 except for those expressly set forth in this Settlement Agreement.

9 7.4 This Settlement Agreement shall not be amended or modified orally. It may only
10 be amended or modified by a writing signed by the Parties or their authorized representatives, and
11 approved by the Court where necessary. Plaintiffs hereby authorize Class Counsel to make any
12 and all changes to this Settlement Agreement and to sign any and all amendments and
13 modifications on their behalf.

14 7.5 At the written request of any Party, the Parties will attempt to resolve any dispute
15 arising under or relating to this Settlement Agreement through the informal means described in
16 this section.

17 7.6 If a dispute occurs each Party shall notify the following by email and U.S. Mail:

18 To Plaintiffs:

19 Elisa Della-Piana (edellapiana@lccrsf.org)
20 Lawyers' Committee for Civil Rights of the San Francisco Bay Area
21 131 Steuart Street, Suite 400
22 San Francisco, CA 94105

23 William S. Freeman (wfreeman@aclunc.org)
24 Abre' Conner (aconner@aclunc.org)
25 Jamie Crook (jcrook@aclunc.org)
26 ACLU Foundation of Northern California
27 39 Drumm St.
28 San Francisco, CA 94111

Thomas Osha Neumann (oneumann@ebclc.org)
East Bay Community Law Center
1950 University Ave. Suite 200
Berkeley, CA 94704

1 Robert M. Galvin (robert.galvin@wilmerhale.com)
2 Laura M. Goodall (laura.goodall@wilmerhale.com)
3 Wilmer Cutler Pickering Hale & Dorr LLP
4 950 Page Mill Road
5 Palo Alto, CA 94304

6 To Defendant:

7 Jeanne Scherer Chief Counsel (jeanne.e.scherer@dot.ca.gov)
8 G. Michael Harrington, Deputy Chief Counsel (mike.harrington@dot.ca.gov)
9 Ardine Zazzeron, Assistant Chief Counsel (ardine.zazzeron@dot.ca.gov)
10 Landa Low (landa.low@dot.ca.gov)
11 Alex F. Pevzner (alex.pevzner@dot.ca.gov)
12 Tiffany S. Ikeda (tiffany.ikeda@dot.ca.gov)
13 California Department of Transportation – Legal Division
14 P.O. Box. 24325
15 Oakland, CA 94623-1325

16 Upon receipt of a notice of dispute, each Party will appoint a representative for the dispute. The
17 representatives will furnish to each other all non-privileged information with respect to the
18 dispute that the Parties believe to be appropriate and germane. The representatives will negotiate
19 to resolve the dispute without the necessity of any formal proceeding. Formal proceedings for the
20 resolution of the dispute may not be commenced until the earlier of: (i) the designated
21 representatives conclude that resolution through continued negotiation does not appear likely; or
22 (ii) thirty (30) days after sending of the notice of dispute.

23 7.7 The Parties agree that nothing contained in this Settlement Agreement, and no
24 action taken by any Party hereto with regard to this Settlement Agreement, shall be construed as
25 an admission by any Party of liability or of any fact that might give rise to liability for any
26 purpose whatsoever.

27 7.8 All Exhibits to this Settlement Agreement are material and integral parts hereof
28 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.

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

1 7.10 Each Counsel executing the Settlement Agreement or any of its exhibits on behalf
2 of any Party hereby warrants that he or she is fully authorized to enter into, and to execute, this
3 Settlement Agreement.

4 7.11 Each and every term of this Settlement Agreement shall be binding upon, and
5 inure to the benefit of, the Plaintiffs and the Settlement Class, any of their successors and
6 personal representatives, all of which persons and entities are intended to be the beneficiaries of
7 this Settlement Agreement.

8 7.12 The terms and provisions of this Settlement Agreement are intended solely for the
9 benefit of the Parties hereto, and it is not intended to confer third-party beneficiary rights upon
10 any person not a Party to this Agreement.

11 7.13 The Parties acknowledge that it is their intent to consummate this Settlement
12 Agreement: they agree to cooperate to the extent reasonably necessary to effectuate and
13 implement all terms and conditions of the Settlement Agreement; and they agree to undertake
14 their best efforts, including all steps and efforts that may become necessary, by order of the Court
15 or otherwise, to accomplish the terms and conditions of the Settlement Agreement.


16 7.14 This Settlement Agreement and the Exhibits hereto shall be considered to have
17 been negotiated, executed and delivered, and to be wholly performed, in the State of California,
18 and the rights and obligations of the Parties shall be construed and enforced in accordance with,
19 and governed by, the internal substantive laws of the State of California, without giving effect to
20 that State's choice of law principles.

21 7.15 For the purpose of construing or interpreting this Settlement Agreement, the
22 Settlement Agreement is deemed to have been drafted equally by all Parties hereto and shall not
23 be construed strictly for or against any Party.

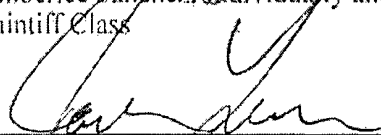
24 7.16 This Settlement Agreement may be executed in one or more counterparts. All
25 executed counterparts, and each of them, shall be deemed to be one and the same instrument,
26 provided that no Party shall be bound hereby until all Parties have executed the Settlement
27 Agreement. The undersigned Counsel for the Parties shall exchange among themselves original
28 signed counterparts, and a complete set of original executed counterparts shall be filed with the

1 Court together with the Preliminary Approval Motion.

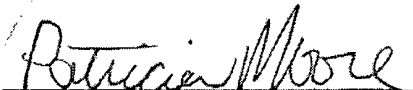
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3 Dated: 2/13/2020


Kimberlee Sanchez, Individually and on Behalf of
Plaintiff Class

4
5 Dated: 2/13/2020


James Leone, Individually and on Behalf of Plaintiff
Class

6
7 Dated: 2/13/2020


Patricia Moore, Individually and on Behalf of
Plaintiff Class

8
9 Dated: _____

Homeless Action Center, Plaintiff
Patricia E. Wall, Executive Director

10
11 Dated: _____

Susan Halpern, Plaintiff

12
13 Dated: _____

Natalie Leimkuhler, Plaintiff

14
15 Dated: _____

Steve Takigawa
Deputy Director, Maintenance and Operations
Defendant California Department of Transportation

16
17 Dated: _____

Tony Tavares
District 4 Director
Defendant California Department of Transportation

18
19 Approved as to form:

20
21 Dated: _____

Elisa Della-Piana
LAWYERS' COMMITTEE FOR CIVIL RIGHTS
OF THE SAN FRANCISCO BAY AREA
Attorney for Plaintiffs

1 Court together with the Preliminary Approval Motion.

2

3 Dated: _____

Kimberlee Sanchez, Individually and on Behalf of
Plaintiff Class

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6 Dated: _____

James Leone, Individually and on Behalf of Plaintiff
Class

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8 Dated: _____

Patricia Moore, Individually and on Behalf of
Plaintiff Class

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11 Dated: _____

Homeless Action Center, Plaintiff
Patricia E. Wall, Executive Director

12

13 Dated: 2/12/2020


Susan Halpern, Plaintiff

14

15 Dated: _____

Natalie Leimkuhler, Plaintiff

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18 Dated: _____

Steve Takigawa
Deputy Director, Maintenance and Operations
Defendant California Department of Transportation

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21 Dated: _____

Tony Tavares
District 4 Director
Defendant California Department of Transportation

22

23 Approved as to form:

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25 Dated: _____

Elisa Della-Piana
LAWYERS' COMMITTEE FOR CIVIL RIGHTS
OF THE SAN FRANCISCO BAY AREA
Attorney for Plaintiffs

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Court together with the Preliminary Approval Motion.

Dated: _____

Kimberlee Sanchez, Individually and on Behalf of
Plaintiff Class

Dated: _____

James Leone, Individually and on Behalf of Plaintiff
Class

Dated: _____

Patricia Moore, Individually and on Behalf of
Plaintiff Class

Dated: _____

Homeless Action Center, Plaintiff
Patricia E. Wall, Executive Director

Dated: _____

Susan Halpern, Plaintiff

Dated: 2/13/2020



Natalie Leimkuhler, Plaintiff

Dated: _____

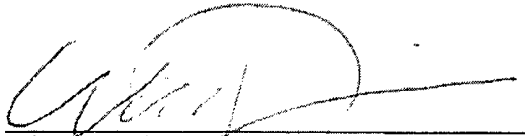
Steve Takigawa
Deputy Director, Maintenance and Operations
Defendant California Department of Transportation

Dated: _____

Tony Tavares
District 4 Director
Defendant California Department of Transportation

Approved as to form:

Dated: 2/13/2020



Elisa Della-Piana
LAWYERS' COMMITTEE FOR CIVIL RIGHTS
OF THE SAN FRANCISCO BAY AREA
Attorney for Plaintiffs

1 Court together with the Preliminary Approval Motion.

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Dated: _____

Kimberlee Sanchez, Individually and on Behalf of Plaintiff Class

Dated: _____

James Leone, Individually and on Behalf of Plaintiff Class

Dated: _____

Patricia Moore, Individually and on Behalf of Plaintiff Class

Dated: _____

Homeless Action Center, Plaintiff
Patricia E. Wall, Executive Director

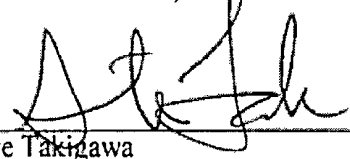
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Susan Halpern, Plaintiff

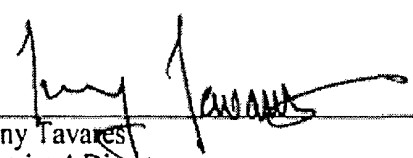
Dated: _____

Natalie Leimkuhler, Plaintiff

Dated: 1/12/2020


Steve Takigawa
Deputy Director, Maintenance and Operations
Defendant California Department of Transportation

Dated: 2/18/2020


Tony Tavares
District 4 Director
Defendant California Department of Transportation


Approved as to form:

Dated: _____

Elisa Della-Piana
LAWYERS' COMMITTEE FOR CIVIL RIGHTS
OF THE SAN FRANCISCO BAY AREA
Attorney for Plaintiffs

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Dated: 2/13/20



Robert Galvin
WILMER CUTLER PICKERING HALE & DORR
LLP
Attorney for Plaintiffs

Dated: _____

Thomas Osha Neumann
EAST BAY COMMUNITY LAW CENTER
Attorneys for Plaintiffs

Dated: _____

William S. Freeman
ACLU FOUNDATION OF NORTHERN
CALIFORNIA
Attorneys for Plaintiffs

Dated: _____

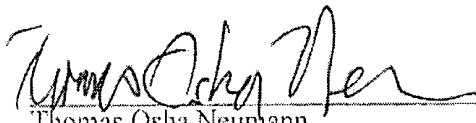
Landa Low
Deputy Attorney
California Department of Transportation
Attorneys for Defendant

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Robert Galvin
WILMER CUTLER PICKERING HALE & DORR
LLP
Attorney for Plaintiffs

Dated: 2/13/2020



Thomas Osha Neumann
EAST BAY COMMUNITY LAW CENTER
Attorneys for Plaintiffs

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ACLU FOUNDATION OF NORTHERN
CALIFORNIA
Attorneys for Plaintiffs

Dated: _____

Landa Low
Deputy Attorney
California Department of Transportation
Attorneys for Defendant

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Dated: _____

Robert Galvin
WILMER CUTLER PICKERING HALE & DORR
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Attorney for Plaintiffs

Dated: _____

Thomas Osha Neumann
EAST BAY COMMUNITY LAW CENTER
Attorneys for Plaintiffs

Dated: 2/13/2020



William S. Freeman
ACLU FOUNDATION OF NORTHERN
CALIFORNIA
Attorneys for Plaintiffs

Dated: _____

Landa Low
Deputy Attorney
California Department of Transportation
Attorneys for Defendant

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Dated: _____

Robert Galvin
WILMER CUTLER PICKERING HALE & DORR
LLP
Attorney for Plaintiffs

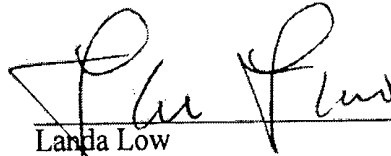
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Thomas Osha Neumann
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Attorneys for Plaintiffs

Dated: _____

William S. Freeman
ACLU FOUNDATION OF NORTHERN
CALIFORNIA
Attorneys for Plaintiffs

Dated: 2/12/20



Landa Low
Deputy Attorney
California Department of Transportation
Attorneys for Defendant

**EXHIBIT A
THE SETTLEMENT PLAN**

This Settlement Plan shall set forth and govern the maintenance, administration and distribution of the Claims Payment Fund created pursuant to Section 2.2.6 of the Settlement Agreement reached in *Sanchez v. Caltrans*, Alameda County Superior Court Case No. RG16842117 (the "Settlement Agreement"). Capitalized Terms in this Settlement Plan shall have the meanings set forth in the Settlement Agreement.

SECTION 1. MAINTENANCE AND ADMINISTRATION OF CLAIMS PAYMENT FUND

- 1.1 The Claims Payment Fund shall be administered solely by the Class Settlement Administrator approved by the Court. Costs of administration will be borne by the Claims Payment Fund as provided herein but shall be maintained at the lowest level that is practicable. The Claims Payment Fund shall be deposited in an interest-bearing account, and all interest earned thereon shall remain in the Claims Payment Fund.
- 1.2 It is contemplated that the Class Settlement Administrator shall serve throughout the payment of the Claims Payment Fund to the Plaintiff Class. In the event that the Class Settlement Administrator shall resign or be disqualified, the Parties will propose a new Class Settlement Administrator for approval by the Court. It is also contemplated that the Class Settlement Administrator shall, to the extent permitted by law, seek advice and counsel in connection with the reports required under this Settlement Plan.
- 1.3 The Class Settlement Administrator is authorized to draw upon the account or accounts in which the Claims Payment Fund is maintained for all payments to be made to or on behalf of every person certified by the Class Settlement Administrator to be a valid member of the Settlement Class, 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 the Plaintiff Class, the Class 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 end of the Claims Period (as that term is defined in Section 3.2 hereof).

SECTION 2. THE ALLOCATION OF THE CLAIMS PAYMENT FUND

- 2.1 Payments shall be made from the Claims Payment Fund for (i) Approved Claims; (ii) Any incentive payments to Class Representatives as set forth in Section 3.1 hereof; (iii) compensation of the Class Settlement Administrator; and (iv) other costs of administration.
- 2.2 To the extent that the total amount of Approved Claims exceeds the amount of the funds in the Claims Payment Fund available for payment of Approved Claims after deduction for the

payments described in Section 2.1(ii)-(iv) above (the “Claims Payment Amount”), the amount payable with respect to each Approved Claim will be reduced, pro rata, by the percentage by which the total amount of Approved Claims exceeds the Claims Payment Amount.

- 2.3 To the extent that the total amount of Approved Claims, incentive payments, compensation of the Class Settlement Administrator and other costs of administration is less than the amount of the Claims Payment Fund, all unused funds shall be returned to Caltrans within 60 days after the payment of all Approved Claims.

SECTION 3. THE DETERMINATION AND VERIFICATION OF SETTLEMENT CLASS MEMBERS AND THEIR ENTITLEMENT TO RECEIVE FUNDS

- 3.1 Each Class Representative shall receive an incentive payment in the amount of \$4,000.00, in addition to any other payment to which he or she may be entitled under this Settlement Agreement, as compensation for their willingness to serve as Class Representatives and the time, effort and burden associated with that service.
- 3.2 Any potential member of the Settlement Class who seeks funds under this Agreement shall file with the Class Settlement Administrator a verified claim form, using the form attached as Exhibit A.1 hereto, stating under penalty of perjury that he or she falls within the Plaintiff Class, defined as “all persons whose personal belongings were unreasonably taken from them by the Defendant in the Cities of Berkeley, Oakland, or Emeryville and later destroyed, and who were homeless at the time, from December 13, 2014 through October 31, 2019.” The verified claim form should include all information that the claimant believes will assist the Class Settlement Administrator in deciding the claim, including information about the location of each claimed loss; the approximate date and time of each claimed loss; the nature of the loss suffered; identities of any witnesses; a description of the incident; whether the claimant was present when the property was taken; whether the claimant made any effort to retrieve the property after it was collected (or if not, why not); and any documents supporting ownership and value of the property. To the extent claimant seeks recovery of damages for emotional distress, the claimant should describe the nature and extent of their distress, and may (but is not required to) provide copies of supporting medical records. Verified claim forms must be received by the Class Settlement Administrator within 3 months from the entry of Final Judgment (hereinafter “Claims Period”). Notice of the Claims Period will be included in the Notice of this Settlement Agreement provided to the Plaintiff Class. Claimants may additionally request to meet with the Class Settlement Administrator in person to supplement their claims orally.
- 3.3 In determining the validity of claims, the Class Settlement Administrator may consider: (1) the submitted verified claims forms; (2) previously prepared administrative claims; (3) declarations prepared in connection with *Sanchez v. Caltrans*; (4) any evidence that the claimant in fact stayed at the identified Caltrans encampment during the alleged time period, including testimony from other established class members; (5) available schedules of Caltrans removals of illegal encampment conducted; (6) communication with the claimant, if appropriate; and (7) any other relevant evidence available. All documents and evidence

received in written or electronic form must be maintained until the completion of the claim review process.

3.4 The Class Settlement Administrator shall determine which claims are valid and at which Level, as set forth below in Section 3.5. A claim determined by the Class Settlement Administrator to be valid shall be considered to be an Approved Claim. Except for the procedures set forth in Sections 3.8 and 5.5 below, the determination of the Class 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 Class Settlement Administrator concerning membership in the Plaintiff Class, the determination of Approved Claims, or eligibility to receive settlement funds except as expressly stated in this Settlement Plan.

3.5 For purposes of payments to Settlement Class Members, there will be three levels of Approved Claims, Level 1, Level 2, and Level 3, as follows:

3.5.1 A **Level 1 Approved Claim** shall be an Approved Claim of a member of the Settlement Class who, in the judgment of the Class Settlement Administrator, lost property as a result of conduct by Caltrans, who was not present when their property was lost, whose property was of a nature that can be reasonably be replaced for \$200 or less, and who did not suffer any significant emotional distress or injury as a result of events alleged in the Action.

3.5.2 A **Level 2 Approved Claim** shall be an Approved Claim of a member of the Settlement Class who, in the judgment of the Class Settlement Administrator, suffered a more substantial property loss than Level 1, including multiple incidents of destruction of personal property, or whose property was of a nature that can reasonably be replaced for \$1,000 or less, and who did not suffer any significant emotional distress or injury as a result of the events alleged in this action. A member of the Settlement Class claiming multiple incidents of destruction shall set forth all incidents in a single claim.

3.5.3 A **Level 3 Approved Claim** shall be an Approved Claim of a member of the Settlement Class who, in the judgment of the Class Settlement Administrator, suffered more substantial total loss and injury than a Level 1 or Level 2 Settlement Class Member, including emotional distress, whether caused by the manner in which the property was lost or the nature and value of the property that was lost (for example whether the property that was destroyed was irreplaceable or of great personal and sentimental value), and any other factor that increases the degree of loss suffered.

3.6 After the close of the Claims Period, the Class Settlement Administrator shall determine the total amount of all Approved Claims for verified members of the Settlement Class in each Level. The Administrator shall then preliminarily apportion the funds for individuals in the Settlement Class as described in Section 4 below, subject to further proportional adjustment as set forth in Section 2.2 above.

3.7 Following the completion of the allocation procedures set forth in Sections 2-4 hereof, the Class Settlement Administrator will provide each claimant and Caltrans with a written notice that specifies the Class Settlement Administrator's determination of: (a) whether or not the

claimant is a member of the Settlement Class; and (b) if so, at which Level; and (c) a brief description of the reasons for the determination. The written notice shall also describe the procedures for accessing the Claims Payment Fund and what assistance is available to assist in the process.

3.8 Within 30 days of the date on which the Class Settlement Administrator provides notice to a claimant of the determination of the claimant's claim, the claimant may submit a written request to the Class Settlement Administrator, seeking reconsideration of the decision by the Class Settlement Administrator as to whether the individual is a member of the Settlement Class and the determination of the applicable Level. The Class Settlement Administrator shall issue a written decision on the request for reconsideration within 15 days of receipt of the request. No further appeal may be made by any Class Member with respect to the decision.

SECTION 4. THE DISTRIBUTION OF THE FUNDS TO PLAINTIFF CLASS MEMBERS

4.1 The Class Settlement Administrator shall preliminarily apportion the sum of \$200 with respect to each Settlement Class Member with a Level 1 Approved Claim, subject to any reduction in allocation pursuant to Section 2.2 hereof.

4.2 The Class Settlement Administrator shall preliminarily apportion the sum of \$1,000 with respect to each Settlement Class Member with a Level 2 Approved Claim, subject to any reduction in allocation pursuant to Section 2.2 hereof.

4.3 The Class Settlement Administrator shall preliminarily apportion the sum of the actual value of the claim, up to \$5,500, with respect to each Settlement Class Member with a Level 3 Approved Claim, subject to any reduction in allocation pursuant to Section 2.2 hereof.

4.4 Once the amount payable with respect to all approved claims has been determined and the time for submission of any requests for reconsideration has expired, the Class Settlement Administrator will pay funds to verified members of the Settlement Class in a manner set forth below in such a manner as to maximize the benefit of the funds to each such member.

4.5 Payments shall be made as follows, at the election of the claimant: by check, cashiers' check, VISA pre-paid card, as a transfer to a bank or trust, as a voucher for housing, food or medical assistance, or, upon the written request of the claimant, to a verified third party.

4.6 Once a Settlement Class member's claim has been approved, at any given Level, he or she shall not lose this right even if temporarily unable to receive the benefit for any reason. If a person whose claim has been approved dies before all of his or her distributions have been made, then any undistributed amount would revert to the Claims Payment Fund.

4.8 To the extent that the Court approves an incentive award for the Class Representatives pursuant to Section 3.1 hereof, that amount shall be paid by the Class Settlement

Administrator as promptly as possible following the entry of Final Judgment, in accordance with Sections 4.5 through 4.6 above.

SECTION 5. COSTS OF ADMINISTRATION AND REPORTING

- 5.1 The costs of administering the Claims Payment Fund shall be maintained at the lowest possible level and shall not exceed \$150,000.
- 5.2. Every three months from the date of Preliminary Approval Order, the Class Settlement Administrator shall prepare and provide copies to counsel for both parties a written report identifying (i) the number of claims submitted; (ii) the number of claims provisionally approved at each Level; (iii) the number of claims rejected; and (iv) the aggregate amount of payments associated with provisionally approved claims.
- 5.3 Within 30 days of the completion of the allocation procedure the Class Settlement Administrator shall submit a detailed written report to the Court, with copies to counsel for all parties. listing the name of each claimant, the location(s) of the incident, whether the claim was approved or denied, a brief analysis of the claim, and the distribution amount for each claim.
- 5.4 The Class Settlement Administrator shall establish and maintain a reasonable accounting system that enables all counsel and the Court to readily identify the amount of funds distributed to Settlement Class Members and the Class Settlement Administrator, and to any other person with respect to costs of administration. All parties and their authorized representatives shall have the right to examine, and make copies of or extracts from all financial and related records (in whatever form they may be kept, whether written, electronic, or other) relating to or pertaining to Settlement Administration. Such records shall be made available to all parties and their representatives at a time and location that is convenient for the requesting party and the Class Settlement Administrator.
- 5.5 In the event that counsel for any Party reasonably believes that the Class Settlement Administrator is deciding or has decided claims, in the aggregate, in a manner that is fundamentally inconsistent with the intent of the Parties to have the proceeds of the Claims Payment Fund distributed to Class Members as set forth herein, such counsel may petition the Court to review the actions of the Claims Administrator. Such a petition will not lie to review any individual decision.

Sanchez v. Caltrans Claim Form

Please write as clearly as you can. Use one form for each incident for which you are making a claim.

Total number of claim forms you are submitting in this case: _____
--

If you need help, please call (415) 814 – 7634

Drop completed forms off at Homeless Action Center (HAC) or East Bay Community Law Center (EBCLC).
 HAC is located at: 3126 Shattuck Avenue in Berkeley and 2601 San Pablo Avenue in Oakland.
 EBCLC is located at: 1950 University Ave., Ste 200 in Berkeley and 2921 Adeline St. in Berkeley.

SECTION 1. CLAIMANT

Name (Last/First/Middle)	
Nickname/Street Name (if any)	
Date of Birth	
Address or current place you are staying	
Phone or message number	
Email address or other contact info	
Social Media contact	
What is the best way for the Claims Administrator to reach you?	

SECTION 2. CLAIMANT'S REPRESENTATIVE (IF ANY)

Name	
------	--

Name of Organization or Firm	
Address	
Email	
Phone number	
Who, if anyone, assisted in preparing this form?	

SECTION 3. GENERAL QUESTIONS	
Have you had your personal belongings taken by Caltrans in Berkeley, Oakland, or Emeryville between December 13, 2014 and October 31, 2019?	Yes ___ No ___
Do you believe your belongings were destroyed by Caltrans?	Yes ___ No ___ Don't know ___
If yes, why do you believe it was Caltrans that destroyed your property?	
Between December 13, 2014 and October 31, 2019, how many times do you believe Caltrans unreasonably took and destroyed your belongings while you were homeless in Berkeley, Oakland, or Emeryville?	

SECTION 4. INFORMATION ABOUT THE INCIDENT ON WHICH YOU BASE THIS CLAIM

Date of the incident		Time	
Were you homeless on the date of the incident?	Yes ___ No ___	Location (with nearest cross-street or intersection)	
Why do you believe it was Caltrans that took your belongings?			
Why do you think it was unreasonable for Caltrans to take your belongings?			
Did you know Caltrans would be coming on the date of the incident?	Yes ___ No ___	Were you present when your belongings were taken?	Yes ___ No ___
Did you see Caltrans remove your property?	Yes ___ No ___		
If yes, what happened when your property was removed?			
If you were present, did CHP or anyone from Caltrans ask you to move your possessions before Caltrans began the clean-up?	Yes ___ No ___	If yes, how much time did you have between when you were asked to move and when Caltrans removed or discarded your possessions?	

List names of people who witnessed Caltrans taking your belongings. (use the attached sheet if needed)		
Name (legal and/or street name)	Phone Number	Email or Contact Information

For each item that was taken that can be replaced, state: (use additional sheet if needed)			
Description of the item	Condition at the time of the Incident (New, Lightly used; Damaged but usable; or Not Usable)	The reasonable cost to replace the item	How you estimated the value of the item

For each item that cannot be replaced (for example, because it has sentimental value), describe the item and explain why the item is valuable to you and what value you claim for it.

1. _____
2. _____
3. _____
4. _____
5. _____

<p>Did you make any effort to retrieve your property after it was collected?</p>	<p>Yes ____ No ____</p>
<p>If no, explain why not.</p>	
<p>If yes, were you successful in retrieving your property?</p>	<p>Yes ____ No ____</p>
<p>If no, explain what steps you took to try to retrieve your property.</p>	

<p>Did you experience emotional distress because Caltrans took and destroyed your belongings?</p>	<p>Yes ____ No ____</p>
<p>If you experienced emotional distress because Caltrans took and destroyed your belongings, describe the nature and extent of your emotional distress.</p>	
<p>If you sought medical care for your emotional distress, provide the dates and locations for each provider.</p>	
<p>Other than these forms, have you submitted a claim to Caltrans regarding any incident where Caltrans took your possessions?</p>	<p>Yes ____ No ____</p>
<p>Provide any other information that may assist with evaluating your claim:</p>	<p>Do you have any documentation you're attaching to support this claim? Yes ____ No ____</p>

I hereby certify under penalty of perjury that the facts set forth in this Claim Form are true and correct to the best of my knowledge and belief.

Signature: _____ Date: _____

If the Claims Administrator has questions, they may ask to speak with you

Sanchez v. Caltrans Claim Form

ADDITIONAL SPACE

Please attach this sheet to the claim it belongs to.

Name _____ Date of the incident _____ Time _____

List names of people who witnessed Caltrans taking your belongings.		
Name (legal and/or street name)	Phone Number	Email or Contact Information

For each item that was taken that can be replaced, state:		
Description of the item	Condition at the time of the Incident (New, Lightly used; Damaged but usable; or Not Usable)	The reasonable cost to replace the item
		How you estimated the value of the item

(CONTINUED) For each item that was taken that can be replaced, state:

Description of the item	Condition at the time of the Incident (New, Lightly used; Damaged but usable; or Not Usable)	The reasonable cost to replace the item	How you estimated the value of the item

For each item that cannot be replaced (for example, because it has sentimental value), describe the item and explain why the item is valuable to you and what value you claim for it.

- _____
- _____
- _____
- _____

If you have additional information you believe should be considered, please attach an additional sheet.

EXHIBIT B

PILOT PROJECT PROCEDURES RELATING TO NOTICE AND COLLECTION

In connection with the Pilot Project for the Cities of Berkeley, Oakland and Emeryville, pursuant to *Sanchez v. Caltrans*, the following procedures will be implemented. The term "Operation" shall mean a clean-up or removal by Caltrans of a homeless encampment.

1. NOTICES

- a. Caltrans will install permanent signs in areas where homeless persons are known to congregate, as determined in its sole discretion.
- b. The signs will state the following:

NO TRESPASSING
THIS IS STATE PROPERTY

This area is cleaned every _____ of the month beginning at ___ am. All persons on site at that time will be required to leave. All property left on the premises will be removed and may be destroyed. All property that is collected will be discarded if not claimed within 60 days of the date of cleaning. For information about items collected, please contact _____ [phone number].
Cal. Streets & Highways Code Sections 27 & 90

- c. The permanent signs will provide day(s) of the month and a specific time when an Operation will begin and may continue day to day until the Operation is complete. If the Operation does not begin within 4 hours of the date and time stated on a permanent sign, Caltrans will post a paper notice of a new date and time for the Operation as stated in paragraph 1(g) below.
- d. If Caltrans timely arrives on site and is prevented from commencing an Operation because of protests, hostility, refusal to vacate or move possessions or any other actions of persons at the site, Caltrans may return later the same day or the following day to conduct the Operation without any additional notice.
- e. All items found on the premises during the Operation will be collected or disposed of according to the guidelines listed in paragraphs 2, 3 and 4 below.
- f. All items collected will be tagged for date, time and location and delivered to a maintenance yard or other designated facility and stored for a period of 60 days. All unclaimed items will thereafter be recycled, destroyed, or otherwise disposed of in accordance with Caltrans policy and state law.
- g. Where posting permanent signs is not feasible, or where there is occasional homeless activity and no permanent sign has been posted, Caltrans will post paper notices 48 hours in advance of an Operation in the same format as set forth in paragraph 1(b) above, stating the exact date and starting time for the Operation. Caltrans will begin the Operation within 4 hours of the date and time stated on the notice. If Caltrans does not start the Operation within 4 hours of the date and time on the posted notice, Caltrans will post a new notice identifying the new date and time of the Operation, except that if the Operation

did not commence due to actions on the part of persons at the site, in which case Caltrans will proceed as set forth in paragraph 1(d).

- h. No notice of Operation is required where immediate action is necessitated by public health or safety or to maintain the integrity of the facility.

2. PROCEDURES PRIOR TO OPERATIONS

- a. Not less than 2 hours before conducting an Operation at a homeless encampment, Caltrans or its contractors will drop off trash bags to enable occupants to separate and pick up trash.
- b. Before conducting an Operation at a location where a permanent sign has been posted, Caltrans and/or its contractors will give occupants of a homeless encampment up to 30 minutes from the time Caltrans employees or contractors first arrive, to remove their personal property from the right-of-way and to vacate the right-of-way.
- c. Before conducting an Operation at a location where a paper notice has been posted, Caltrans and/or its contractors will give occupants of a homeless encampment 30 minutes from the time Caltrans employees or contractors first arrive, to remove their personal property from the right-of-way and to vacate the right-of-way.

3. ITEMS TO BE COLLECTED (BAGGED AND TAGGED) AND STORED

Caltrans employees and contractors shall collect the following items:

- a. Items of apparent value – defined as items valued at \$50 or more
- b. Items of apparent personal value that are unattended and in plain sight including but not limited to:
 - i. eyeglasses, medications in secured containers, operational wheelchairs, walkers, crutches, other medical equipment
 - ii. tents (habitable and uncontaminated)
 - iii. personal papers such as photographs, albums, ID's, bank statements
 - iv. bicycles, scooters, strollers in good repair
 - v. backpacks and containers that appear to be in good condition and have been determined by a Caltrans hazmat contractor to be free of materials described in Section 4(a)(i)-(vi) below.

4. ITEMS THAT WILL BE DISCARDED AND NOT STORED

- a. Items that present an immediate health or safety risk, such as:
 - i. toxic sharps: needles, scissors, knives
 - ii. chemicals: bleach, paint, oils, etc.
 - iii. items (including bedding and clothing) soiled by infectious materials: human waste, bodily fluids
 - iv. moldy, mildewed items
 - v. items that may be infested by rodents and insects: rats, mice, fleas, lice, bed bugs

- vi. items that pose a risk of fire or explosion
- vii. backpacks and closed containers that have been determined by a Caltrans hazmat contractor to contain items listed in (i)-(vi) above. Such items may be discarded where no hazmat contractor is present to make a determination.

NOTE: If personal belongings are co-mingled or littered with needles, human waste, or other health risks, employees/contractor may dispose of the entire pile of belongings and are not required to sort through and attempt to remove the health or safety risks. The presence of clothing in a backpack or container shall not be the sole reason to discard the backpack or container.

- b. Furniture, mattresses, sheds, rolling structures, and bulky items. A “bulky item” is any single item that is over 50 pounds and requires more than two persons to safely lift.
- c. Perishable items, perishable food
- d. Contraband and illegal items
- e. Trash, garbage, and/or debris. This includes property that appears to have been discarded by its owner and broken appliances or broken furniture which constitutes abandoned property or trash.
 - i. If employees/contractors have a reasonable doubt as to whether an item constitutes trash, it should be collected and stored.
Employees/contractors should exercise their best judgment in determining which items should be collected and stored.

5. RETRIEVAL OF ITEMS COLLECTED DURING AN OPERATION

Caltrans or its contractors shall deliver bagged and tagged property collected during each Operation to the Caltrans maintenance yard located nearest to the encampment, or to a facility designated by Caltrans for storage. Persons wishing to retrieve stored items should contact the Caltrans Homeless Liaison at the number listed on the Notice, or alternatively, contact the HAC liaison, to discuss retrieval of the property.

EXHIBIT 2

EXHIBIT 2

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA
UNLIMITED JURISDICTION

KIMBERLEE SANCHEZ,
JAMES LEONE,
PATRICIA MOORE, on behalf of themselves
and all others similarly situated,
HOMELESS ACTION CENTER,
WESTERN REGIONAL ADVOCACY
PROJECT, SUSAN HALPERN, and
NATALIE LEIMKUHNER,

Plaintiffs,

v.

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

Defendants.

Case No.: RG16842117

**ADDENDUM TO SETTLEMENT
AGREEMENT**

1 Pursuant to Section 7.4 of the Settlement Agreement in the above-captioned litigation,
2 filed June 24, 2020, as Exhibit 1 to the Declaration of William S. Freeman in Support of
3 Preliminary Approval of Class Action Settlement (“Settlement Agreement”), the Parties thereto
4 amend the Settlement Agreement by this Addendum. Pursuant to Section 7.4 of the Settlement
5 Agreement, Class Counsel are authorized to make these changes, and to sign this Addendum on
6 behalf of Plaintiffs and the Plaintiff Class. All capitalized terms in this Addendum shall have
7 the same meanings as in the Settlement Agreement.

- 8 1. Due to the recent death of Class Representative James Leone, Mr. Leone is removed from
9 the list of Plaintiffs in the opening paragraph of the Settlement Agreement. The relevant
10 portion of the opening paragraph of the Agreement shall now read: “This Settlement
11 Agreement, effective as of the entry of Final Judgment as set forth in Section 1.12, is
12 made and entered into by and among: (i) Plaintiffs Kimberlee Sanchez and Patricia
13 Moore (collectively, “Class Representatives”) on behalf of themselves and each Plaintiff
14 Class member...”
- 15 2. The Parties acknowledge that it is presently uncertain whether any person or persons will
16 assert a claim to the incentive payment in the amount of \$4,000.00 that would have been
17 payable to Mr. Leone had he been living at the time of entry of judgment, pursuant to
18 Section 3.1 of Exhibit A to the Settlement Agreement. If such a claim is asserted prior to
19 the completion by the Class Settlement Administrator of the allocation process set forth
20 in Sections 2-4 of Exhibit A to the Settlement Agreement, the amount of \$4,000.00 shall
21 be held back from the allocation and distribution out of the Claims Payment Fund
22 pending resolution of such claim. If no such claim is asserted by that time, there will be
23 no such holdback. To the extent the full amount of the Claims Payment Fund is
24 disbursed, Plaintiffs shall hold Caltrans harmless from any liability for payment of such
25 incentive payment outside of the Claims Payment Fund.
- 26 3. Section 4.2 of the Settlement Agreement is amended to replace the words “or that relate
27 to the Action” with “or that are based on the facts alleged in the Action.” Section 4.2 of
28

1 the Settlement Agreement shall now read. in its entirety: "As of entry of Final Judgment,
2 Plaintiffs and the Class Representatives on behalf the Settlement Class, and each of their
3 heirs, predecessors, successors, representatives or assigns, release, relinquish and forever
4 discharge any and all claims, causes of action, demands, rights, or liabilities that were
5 asserted in the Action or that are based on the facts alleged in the Action against the
6 Defendant including but not limited to its heirs, predecessors, successors, employees,
7 affiliates, divisions, parent or sister agencies, or any other person or entity related or
8 affiliated with the Defendant, up through and including the date of entry of Final
9 Judgment."

- 10 4. Section 4.3 of the Settlement Agreement is amended to delete the words "and each
11 member of the Settlement Class." Section 4.3 of the Settlement Agreement shall now
12 read, in its entirety: "Plaintiffs, on behalf of themselves and each of their heirs,
13 predecessors, successors, representatives or assigns hereby waive and relinquish to the
14 fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the
15 California Civil Code, which provides:

16 A general release does not extend to claims that the creditor or releasing
17 party does not know or suspect to exist in his or her favor at the time of
18 executing the release and that, if known by him or her, would have
materially affected his or her settlement with the debtor or released party."

19 Dated: 7/9/2020

Cory Binns

20 _____
Cory Binns
21 Deputy Director, Maintenance and Operations
Defendant California Department of Transportation

22 Dated: _____

Tony Tavares

23 _____
Tony Tavares
24 District 4 Director
25 Defendant California Department of Transportation
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Dated: July 9, 2020

Elisa Della-Piana *by WSP with permission*
Elisa Della-Piana
LAWYERS COMMITTEE FOR CIVIL RIGHTS
OF THE SAN FRANCISCO BAY AREA
Attorneys for Plaintiffs

Dated: _____

Robert Galvin
WILMER CUTLER PICKERING HALE AND
DORR LLP
Attorneys for Plaintiffs

Dated: July 9, 2020

Thomas Osha Neumann *by WSP with permission*
Thomas Osha Neumann
EAST BAY COMMUNITY LEGAL CENTER
Attorneys for Plaintiffs

Dated: July 9, 2020

William S. Freeman
William S. Freeman
ACLU FOUNDATION OF NORTHERN
CALIFORNIA
Attorneys for Plaintiffs

Approved as to form:


Dated: _____

Landa Low
Assistant Chief Counsel
California Department of Transportation-Legal
Division
Attorneys for Defendant

1 Dated: _____

Elisa Della-Piana
LAWYERS COMMITTEE FOR CIVIL RIGHTS
OF THE SAN FRANCISCO BAY AREA
Attorneys for Plaintiffs

2
3
4
5 Dated: 07/09/2020


Robert Galvin
WILMER CUTLER PICKERING HALE AND
DORR LLP
Attorneys for Plaintiffs

6
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9 Dated: _____

Thomas Osha Neumann
EAST BAY COMMUNITY LEGAL CENTER
Attorneys for Plaintiffs

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William S. Freeman
ACLU FOUNDATION OF NORTHERN
CALIFORNIA
Attorneys for Plaintiffs

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Landa Low
Assistant Chief Counsel
California Department of Transportation-Legal
Division
Attorneys for Defendant

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Dated: _____

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OF THE SAN FRANCISCO BAY AREA
Attorneys for Plaintiffs

Dated: _____

Robert Galvin
WILMER CUTLER PICKERING HALE AND
DORR LLP
Attorneys for Plaintiffs

Dated: _____

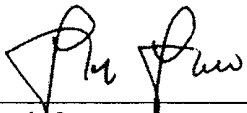
Thomas Osha Neumann
EAST BAY COMMUNITY LEGAL CENTER
Attorneys for Plaintiffs

Dated: _____

William S. Freeman
ACLU FOUNDATION OF NORTHERN
CALIFORNIA
Attorneys for Plaintiffs

Approved as to form:

Dated: July 9, 2020



Landa Low
Assistant Chief Counsel
California Department of Transportation-Legal
Division
Attorneys for Defendant