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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA: FRESNO DIVISION

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

CLASS ACTION

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

Plaintiff,

v.

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

Defendant.

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

11 **SETTLEMENT AGREEMENT**

2 This Settlement Agreement, effective as of May 20, 2008, is made and entered into
 3 by and among: (i) Plaintiffs Doug Deatherage, Charlene Clay, Cynthia Greene, Joanna Garcia,
 4 Randy Johnson, Sandra Thomas, Alphonso Williams, and Jeannine Nelson on behalf of
 5 themselves and each Plaintiff Class Member, defined in the Court's Order dated August 14, 2007
 6 as "all persons in the City of Fresno who were or are homeless, without residence, after October
 7 17, 2003, and whose personal belongings have been unlawfully taken and destroyed in a sweep,
 8 raid or clean up by any of the Defendants" and (ii) Defendants Will Kempton, James Province
 9 and Darryl Glenn (collectively "Caltrans Defendants").

10
 11 **SECTION 1. THE LITIGATION**

12 Plaintiffs filed the original Complaint on against the Caltrans Defendants and against the
 13 City of Fresno, Alan Autry, Jerry Dyer, Greg Garner, Reynaud Wallace, John Rogers and Phillip
 14 Weathers (collectively "City of Fresno Defendants") October 17, 2006, and filed a Second
 15 Amended Complaint on March 1, 2007. Plaintiffs' Complaint asserted that Defendants violated
 16 Plaintiffs' Fourth Amendment right against unreasonable searches and seizures, Fourteenth
 17 Amendment rights to Due Process and Equal Protection of the Law, all pursuant to 42 U.S.C. §
 18 1983. The Complaint also asserted that some Defendants violated the Bane Act, Cal. Civ. Code
 19 § 52.1, Cal. Gov. Code. § 2080, and committed unlawful conversion. Judge Wanger granted a
 20 Temporary Restraining Order against the City of Fresno Defendants on October 25, 2006. In
 21 November 2006, Judge Wanger held a Hearing on the Preliminary Injunction, and granted a
 22 Preliminary Injunction against the City Defendants on December 8, 2006.

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

27 Judge Wanger granted Plaintiffs' Motion for Class Certification on August 14, 2007,
 28

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.

1 2.1.2 “Caltrans Defendants” shall mean Will Kempton, James Province, and
2 Darryl Glenn.

3 2.1.3 “Class Settlement Administrator” shall mean Liza Apper.
4

5 2.1.4 “Final Approval Hearing” means a hearing by the Court, after the notice
6 period has expired, to approve the Settlement Agreement as set forth herein.

7 2.1.5 “Final Approval Motion” shall mean a motion filed with the Court requesting
8 that the Court consider and, if it finds the settlement to be fair and reasonable, finally
9 approving the Settlement Agreement.
10

11 2.1.6 “Plaintiff Class” shall mean “all persons in the City of Fresno who were or
12 are homeless, without residence, after October 17, 2003, and whose personal
13 belongings have been unlawfully taken and destroyed in a sweep, raid or clean up by
14 any of the Defendants,” as defined in the Court’s Order dated August 14, 2007 other
15 than an Excluded Person.

16 2.1.7 “Preliminary Approval Motion” shall mean a motion filed with the Court
17 requesting that the Court consider and preliminarily approve the Settlement
18 Agreement.
19

20 2.1.8 The “Settlement Plan” shall mean the plan, attached as Exhibit A to this
21 Settlement Agreement, by which the Settlement Consideration paid pursuant to this
22 Settlement Agreement to the Plaintiffs and the Plaintiff Class shall be maintained,
23 administered and paid to Plaintiffs and the Plaintiff Class.

24 2.1.9 “The Litigation” or “This Litigation” shall mean this lawsuit and its
25 procedural history as set forth in Section 1 above.
26

27 2.1.10 “The Settling Parties” shall mean the parties to this settlement agreement,
28 who are the Plaintiffs and the Plaintiff Class and the Caltrans Defendants.

SECTION 3. THE TERMS OF THE SETTLEMENT

3.1 The Settlement Consideration

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

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

3.1.3 There will be included in the Notice provided to the Plaintiff Class proposed in Plaintiffs' motion for preliminary approval of the Settlement Agreement a

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

11 3.4.2 Each Class Representative will receive an incentive payment of \$1,000.00 in
12 addition to any other payment to which he or she may be entitled under this
13 Settlement, to compensate the Class Representatives for their willingness to serve as
14 Class Representatives and the time, effort and burden associated with that service,
15 provided that the total amount of incentive payment from this settlement and any
16 settlement with the City Defendants shall not exceed one thousand dollars (\$1,000).
17

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

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
28

1 reflects a settlement that was reached voluntarily after consultation with competent
2 legal counsel. The Settling Parties agree that this Agreement is a fair, adequate and
3 reasonable resolution of the declaratory, injunctive, damages and attorneys fees
4 claims of the complaint.

5 3.5.2 This Settlement Agreement constitutes the full and entire agreement among
6 the parties hereto with regard to the subject thereof and supersedes any prior
7 promises, representations, or warranties (oral or otherwise) made by any party. No
8 party shall be liable or bound to any other party for any prior or contemporaneous
9 representation, promise or warranty (oral or otherwise) except for those expressly set
10 forth in this Settlement Agreement.

11 3.5.3 This Settlement Agreement shall not be amended or modified orally. It may
12 not be amended or modified without the consent or approval of all signatories by a
13 writing signed by all signatories hereto, and approved by the Court where necessary.
14 Plaintiffs have authorized Plaintiffs' Counsel to make any and all changes to this
15 Settlement Agreement and to sign any and all amendments and modifications on
16 their behalf.

17 3.5.4 All of the exhibits to this Settlement Agreement, except the proposed forms of
18 orders, are material and integral parts hereof and are fully incorporated herein by this
19 reference. Entry of the proposed orders substantially in the form of the exhibits
20 attached to this Settlement Agreement is material and integral to the Settlement
21 Agreement.

22 3.5.5 The headings herein are for convenience only and shall not effect the
23 interpretation or construction of this Settlement Agreement.
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1 3.5.6 Each counsel executing the Settlement Agreement or any of its exhibits on
2 behalf of any Settling Party hereby warrants that he or she is fully authorized to enter
3 into, and to execute, this Settlement Agreement.

4 3.5.7 Each and every term of this Settlement Agreement shall be binding upon, and
5 inure to the benefit of, the Plaintiffs and the Plaintiff Class, any of their successors
6 and personal representatives, all of which persons and entities are intended to be the
7 beneficiaries of this Settlement Agreement.

8 3.5.8 The Settling Parties acknowledge that it is their intent to consummate this
9 Settlement Agreement; they agree to cooperate to the extent reasonably necessary to
10 effectuate and implement all terms and conditions of the Settlement Agreement; and
11 they agree to undertake their best efforts, including all steps and efforts that may
12 become necessary, by order of the Court or otherwise, to accomplish the terms and
13 conditions of the Settlement Agreement.

14 3.5.9 This Settlement Agreement and the exhibits hereto shall be considered to have
15 been negotiated, executed and delivered, and to be wholly performed, in the State of
16 California, and the rights and obligations of the parties to the Settlement Agreement
17 shall be construed and enforced in accordance with, and governed by, the internal
18 substantive laws of the State of California, without giving effect to that State's
19 choice of law principles.

20 3.5.10 For the purpose of construing or interpreting this Settlement Agreement, the
21 Settlement Agreement is deemed to have been drafted equally by all parties hereto,
22 and shall not be construed strictly for or against any party.

23 3.5.11 This Settlement Agreement may be executed in one or more counterparts.
24 All executed counterparts, and each of them, shall be deemed to be one and the same
25 instrument, provided that no party shall be bound hereby until all parties have
26
27
28

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

5 IN WITNESS WHEREOF, the Settling Parties hereto, through their respective
6 counsel of record, have executed this Settlement Agreement on the dates indicated below:
7

8 Dated: June 4, 2008
9

10 _____
11 Doug Deatherage
12 Plaintiff

13 _____
14 Charlene Clay
15 Plaintiff

16 _____
17 Cynthia Greene
18 Plaintiff

19 _____
20 Joanna Garcia
21 Plaintiff

22 _____
23 Randy Johnson
24 Plaintiff

25 _____
26 Sandra Thomas
27 Plaintiff

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Alphonso Williams
Plaintiff

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APPROVED

Jeannine Nelson
Plaintiff

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

/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

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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.)

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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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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.