

**NOTICE OF SETTLEMENT TO THE CLASS OF ALL PERSONS IN THE CITY OF FRESNO WHO WERE OR ARE HOMELESS, WITHOUT RESIDENCE, AFTER OCTOBER 17, 2003 AND WHOSE PERSONAL BELONGINGS WERE UNLAWFULLY TAKEN AND DESTROYED IN A SWEEP, RAID, OR CLEAN UP BY ANY CITY OF FRESNO OR CALTRANS EMPLOYEE ON OR AFTER OCTOBER 17, 2003:**

You may be affected by the settlement in a lawsuit if you were homeless in the City of Fresno after October 17, 2003 and either City of Fresno or Caltrans employees took and destroyed your personal property.

The lawsuit is called *Kincaid, et al. v. City of Fresno, et al.*, No. 06-CV-1445, and is in the United States District Court in Fresno. The parties have agreed to settle this case, and you may be entitled to proceeds from this settlement. This notice describes those who are entitled to benefit from the settlement (who are members of the plaintiff "Class") and also explains what you must do to make a claim to participate in the settlement.

**This notice is not an opinion by the court as to which side of the lawsuit is right or wrong. This notice is to tell you about the settlement so that if you are a verified member of the Class, you can participate in the settlement.**

**WHAT IS A CLASS ACTION AND WHO IS INVOLVED?**

In a class action lawsuit, people called "Class Representatives" (in this case Pamela Kincaid, Doug Deatherage, Charlene Clay, Cynthia Greene, Joanna Garcia, Randy Johnson, Sandra Thomas, Alphonso Williams, and Jeannine Nelson) sue on behalf of other people who have similar claims. The Class Representatives and all the other people with similar claims are called a "Class," "Class Members," or "Plaintiffs." The settlement in this case will apply to the entire Class.

The City of Fresno and the City and Caltrans employees that were sued (in this case City of Fresno Mayor Alan Autry, Police Chief Jerry Dyer, Police Captain Greg Garner, Police Specialist Reynaud Wallace, Community Sanitation employee John Rogers, Community Sanitation employee Phillip Weathers, Caltrans Director Will Kempton, Caltrans employee James Province, and Caltrans employee Daryl Glenn) are called the Defendants. The case is pending in the United States District Court, Eastern District of California, before U.S. District Judge Oliver W. Wanger.

Pamela Kincaid died during the course of this case. However, the case has retained the title of *Kincaid, et al. v. City of Fresno, et al.*

**WHO IS THE CLASS AND ARE YOU AFFECTED?**

The Class is 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

<b>Who's Affected?</b>
<b>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 City of Fresno or Caltrans employees.</b>
<b>Who's Not Affected?</b>
<b>People who have never had personal property taken and destroyed by City of Fresno or Caltrans employees.</b>
<b>People whose personal property was taken and destroyed by City of Fresno or Caltrans employees before October 17, 2003 only.</b>

sweep, raid, or clean up by any City of Fresno or Caltrans employee. The Class includes people who are not homeless now or do not now live in Fresno, as long as they were homeless in Fresno any time after October 17, 2003, AND had their personal belongings taken and destroyed in a sweep, raid, or clean up by City of Fresno or Caltrans employees. People who have never had personal property taken and destroyed by City of Fresno or Caltrans employees are NOT included. People whose personal property was taken and destroyed by City of Fresno or Caltrans employees only *before* October 17, 2003 are NOT included.

If you are unsure whether you are in the Class, you can get free help by writing to the Settlement Administrator in this case at the address in this Notice.

If you are a member of the Class or you think you might be a Class member, you should read this Notice because it will affect your rights.

**WHAT WERE THE CLAIMS MADE IN THE LAWSUIT?**

The Class Representatives sued the Defendants on October 17, 2006. The Plaintiffs claimed that the City of Fresno and the City and Caltrans employees conducted sweeps in different locations in the City of Fresno during which they took and destroyed the personal property of homeless people. The Court issued a court order (a "preliminary injunction") that stopped the City of Fresno and the City employees from taking and destroying the personal belongings of homeless people in the future. The City of Fresno Defendants and the Caltrans Defendants have denied all liability in the case. The parties have agreed to settle these claims before trial.

**WHAT ARE THE TERMS OF THE SETTLEMENT?**

Each of the Defendants has entered into a Settlement Agreement and agreed to a Settlement Plan which governs the distribution of the proceeds from the Settlement. Under these Settlement Agreements, the Defendants have agreed to contribute money to two bank accounts for the benefit of the Class: the "Cash Fund" and the "Living Allowance Fund." The Cash Fund will contain four hundred eighty-five thousand dollars (\$485,000), funded by a four hundred thousand dollar (\$400,000) contribution by the City of Fresno and an eighty-five thousand dollar (\$85,000) contribution by Caltrans. The Living Allowance Fund will contain one million dollars (\$1,000,000), funded entirely by the City of Fresno.

If you qualify to receive money from the Cash Fund, you will receive periodic installment payments in cash or check form, based on the level of your award. As a part of the Settlement Agreements, the Court will appoint Liza Apper as the Settlement Administrator to distribute the proceeds of both the Cash Fund and the Living Allowance Fund. Large amounts of cash will not be distributed at any one time unless the Settlement Administrator determines that it is safe to do so. Distributions from the Cash Fund can be made to individual bank accounts and, if you do not have a bank account, the Settlement Administrator will assist you in opening one if you are interested in doing so.

If you qualify to receive proceeds from the Living Allowance Fund, you may direct the Settlement Administrator to issue payments directly to third parties on your behalf to cover living expenses. Examples of what you may use your award from the Living Allowance Fund on include: rent, including pre-paid rent; move-in costs (such as first and last month's rent and security deposits); utilities, including pre-paid utilities; transportation costs; and other necessities of life.

In addition, the City of Fresno has agreed to follow to the terms of its Administrative Order No. 6-23 which resulted from this case and which sets forth the procedures for handling the personal property of homeless people for the next five years.

The City of Fresno has also agreed to pay one hundred thousand dollars (\$100,000) in out-of-pocket expenses and seven hundred fifty thousand dollars (\$750,000) in attorneys' fees to Class counsel for their work on this case.

In addition to its cash payment, Caltrans has also agreed to follow the principles in the preliminary injunction for five years. The Court will retain jurisdiction of the case for five years to resolve any disputes that may arise about compliance with this part of the Settlement.

Further, as a part of the settlement with Caltrans, all homeless people in Fresno are encouraged not set up camps or otherwise trespass or illegally encroach upon Caltrans property.

If the Settlement Agreements are given final approval by the Court, the case will be dismissed and the Settlement Agreements will govern the rights of the parties.

### **HOW DO I PARTICIPATE IN THE SETTLEMENT AND WHAT BENEFITS AM I ENTITLED TO?**

In order to participate in this Settlement, you must file a claim with the Settlement Administrator. If the Settlement Administrator determines that your claim is valid, she will determine the level of your award based upon the criteria described in the Settlement Plan.

There are five levels of awards:

- Level 1: five hundred dollars (\$500) from the Cash Fund;
- Level 2: one thousand dollars (\$1000) from the Cash Fund;
- Level 3: one thousand dollars (\$1000) from the Cash Fund and one thousand five hundred dollars (\$1500) from the Living Allowance Fund;
- Level 4: one thousand five hundred dollars (\$1500) from the Cash Fund and three thousand five hundred dollars (\$3,500) from the Living Allowance Fund;
- Level 5: five thousand dollars (\$5,000) from the Cash Fund and nine thousand dollars (\$9,000) from the Living Allowance Fund.

**Important:** these levels may change – either up or down -- depending upon how many valid claims are filed. The Settlement Administrator will determine the validity of the claim, the level at which the claim should be allowed, and whether any change in these levels may be required.

### **WHO ARE THE LAWYERS IN THIS CASE?**

The Class is represented by the Lawyers' Committee for Civil Rights (San Francisco, CA), and the American Civil Liberties Union (ACLU) of Northern California (San Francisco, CA), and lawyers from the law firms of Howrey, LLP and Heller Ehrman, LLP. These lawyers are experienced in handling similar cases and have been representing the Plaintiffs from the beginning of this case. More information about Class Counsel is available at [www.lccr.com](http://www.lccr.com), and [www.aclunc.org](http://www.aclunc.org), [www.hellerehrman.com](http://www.hellerehrman.com), and [www.Howrey.com](http://www.Howrey.com).

The City of Fresno Defendants are represented by the law firm Betts & Wright and the City Attorney's Office. The Caltrans Defendants are represented by the Legal Division of the California Department of Transportation.

### **Should I Get My Own Lawyer?**

You do not need to hire your own lawyer because Class Counsel is working for you already. If you want to hire your own lawyer you may do so. You will have to pay that lawyer and ask him or her to go to Court for you.

### **HOW DO I FILE A CLAIM?**

In order to file a claim and seek to receive an award from the settlement,

1. **You must submit the attached Class Member Claim Form ("claim form") to the Settlement Administrator, in person or by mail. If you choose to mail your claim form, it must be postmarked by JULY 18, 2008 or you will not receive any award. The address for claim forms to be mailed to is: KINCAID SETTLEMENT ADMINISTRATOR, 4460 W. SHAW AVE., Suite 233, FRESNO, CA, 93722. Claim forms may also be delivered in person to 149 North Fulton, Fresno, CA, 93722.**
2. If your claim is determined to be valid by the Settlement Administrator, and the Court approves the settlement, you will be later notified about how to get any part of that money that you are entitled to receive.

**YOU SHOULD KEEP ALL RECORDS AND PAPERS YOU MAY HAVE THAT RELATE TO THE CITY OF FRESNO AND THE CITY AND CALTRANS EMPLOYEES' DESTRUCTION OF THE PERSONAL PROPERTY OF HOMELESS PEOPLE.**

You can see and copy the papers filed in the Court and all other records of this lawsuit any time during regular office hours in the office of the Clerk at the U.S. District Court, 2500 Tulare Street, Fresno, CA 93721. **Do not call or write the Clerk of the court with questions. Ask all questions to the attorneys for the Class or the Settlement Administrator.**

### **HOW CAN YOU GET MORE INFORMATION?**

If you have questions or want more details or other documents about this lawsuit and your rights, you can email the Settlement Administrator at [Lizaosb@aol.com](mailto:Lizaosb@aol.com) or leave a message for Liza Apper at 559-237-0851, or write to: Settlement Administrator, Kincaid v. City of Fresno Class Action, 4460 W. Shaw Ave., Suite 233, Fresno, CA., 93722.

### **IS THERE A FINAL COURT HEARING ON THE SETTLEMENT? CAN I OBJECT TO IT?**

On July 25, 2008 at 3:00 p.m. the Court will hold a hearing and decide whether to grant final approval to the Settlement Agreements and the Settlement Plan as fair and reasonable to the Class. If you have any objection to all or any part of the Settlement Agreement with the City of Fresno defendants or the Settlement Agreement with the Caltrans Defendants, or the Settlement Plan, you must either submit your objection in writing to the Court before that date or appear at the hearing on the Motion for Final Approval at the U.S. District Court, 2500 Tulare Street, Fresno, CA 93721, Courtroom 3, at 3:00 p.m. on July 25, 2008 to state your objection.