

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

8 HELLER EHRMAN LLP
9 ROBERT B. HAWK (SBN 118054)
10 MELYSSA E. MINAMOTO (SBN 245458)
11 ERIC LLOYD (SBN 254390)
12 275 Middlefield Rd.
13 Menlo Park, CA 94025-3506
14 Telephone: (650) 324-7000
15 Facsimile: (650) 324-0638
16 E-mail: robert.hawk@hellerehrman.com

17 LAWYERS' COMMITTEE FOR CIVIL RIGHTS
18 OREN SELLSTROM (SBN 161074)
19 ELISA DELLA-PIANA (SBN 226462)
20 131 Steuart Street
21 San Francisco, CA 94105
22 Telephone: (415) 543-9444
23 Facsimile: (415) 543-0296
24 E-mail: osellstrom@lccr.com

25 ACLU OF NORTHERN CALIFORNIA
26 ALAN L. SCHLOSSER (SBN 49957)
27 MICHAEL T. RISHER (SBN 191627)
28 39 Drumm Street
San Francisco, CA 94111
Telephone: (415) 621-2493
Facsimile: (415) 255-8437
E-mail: mrisher@aclunc.org

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA: FRESNO DIVISION

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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.

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

CLASS ACTION

**ORDER PRELIMINARILY
APPROVING SETTLEMENT
AGREEMENTS, SETTLEMENT
PLAN, NOTICE AND NOTICE
PROCEDURE**

11 WHEREAS the Plaintiffs Pamela Kincaid, Doug Deatherage, Charlene Clay, Cynthia
12 Greene, Joanna Garcia, Randy Johnson, Sandra Thomas, Alphonso Williams, and Jeannine Nelson,
13 on behalf of themselves and each Plaintiff Settlement Class Member (as defined herein), by and
14 through their counsel of record, have asserted claims for damages and injunctive relief against the
15 City of Fresno, Alan Autry, Jerry Dyer, Greg Garner, Reynaud Wallace, John Rogers, Phillip
16 Weathers (collectively the “City Defendants”), Will Kempton, James Province and Daryl Glenn
17 (collectively the “Caltrans Defendants”), alleging violations of federal and state constitutional
18 rights as well as violations of applicable state law;

19 WHEREAS the Plaintiffs and the City Defendants and the Caltrans Defendants, respectively
20 entered into separate settlement agreements which have been filed with the Court;

21 WHEREAS the Plaintiffs have filed with the Court a Motion for Preliminary Approval of
22 the Settlement Agreement, together with supporting documents, which includes a Settlement Plan
23 for providing notice of the Settlement Agreements to the Class, a plan for administering the
24 settlement, if finally approved, and a claim form;

25 WHEREAS the Court has considered the Settlement Agreement between the Plaintiffs and
26 the City Defendants, the Settlement Agreement between the Plaintiffs and the Caltrans Defendants,
27 the proposed Notice Plan, the claim form and the pleadings and documents submitted in connection
28 with the parties’ request for preliminary approval of the Settlement Agreement, and good cause
appearing therefore;

 WHEREAS, the Court held a further hearing on June 10, 2008, at which each of the City
Defendants formally in open Court agreed to the Settlement Agreement with the City Defendants.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. This Court has jurisdiction over this Litigation and each of the parties to the
Settlement Agreement.

2. The Court preliminarily finds that Settlement Agreement with the City Defendants,
the Settlement Agreement with the Caltrans Defendants, and the Settlement Plan incorporated in

1 those Settlement Agreements, are fair, reasonable and adequate and in the best interests of the
2 members of the Plaintiff Class.

3 3. The Court preliminarily finds that both the Settlement Agreements and the
4 Settlement Plan appear to have resulted from arms-length negotiations by and among counsel who
5 were reasonably skilled and prepared and who represented the best interests of their respective
6 clients in negotiating the Settlement Agreement and the Settlement Plan. Further, it appears that the
7 settlement negotiations took place in a mediation session supervised by Magistrate Judge Snyder,
8 which provides the Court with further assurance that the negotiations leading to the Settlement
9 Agreements and Settlement Plan were good faith, arms-length negotiations, taking into
10 consideration the risks of trial, the potential recovery, and all other relevant factors leading to the
11 Settlement Agreements.

12 4. The Court preliminarily finds that the incentive payment of \$1,000 for each of the
13 eight named plaintiffs who have served as class representatives, in addition to any other
14 consideration they may receive under the Settlement Agreements, is fair and reasonable, in light of
15 the numerous court hearings that the class representatives have attended, their attendance at
16 numerous meetings with Class counsel, their personal efforts to give notice of the lawsuit and
17 information about the lawsuit to potential class members, and their personal efforts on behalf of the
18 class.

19 4. The Court preliminarily finds that the attorneys fees and costs provisions in the
20 Settlement Agreement with the City Defendants were reached after the primary terms of that
21 settlement were reached and were also the product of arms-length and good faith negotiations near
22 the end of the mediation session supervised by Magistrate Judge Snyder. The attorneys fees and
23 costs provisions appear to take into consideration the right of counsel for the Class to seek an award
24 of fees that could well be substantially higher than the amount agreed do, the risks of trial, and all
25 other relevant factors. The attorneys fees and costs are paid as additional consideration and are not
26 taken from the consideration paid to the Class.

27 5. The Court further finds that the form and content of the proposed Notice attached
28 hereto as Exhibit A and the Claim Form attached hereto as Exhibit B comply with the requirements

1 of Federal Rule of Civil Procedure 23 and satisfy due process. The Court approves the Notice and
2 and the Claim Form and hereby orders that the Notice and the Claim Form be distributed and
3 published to class members beginning on or before June 15, 2008 and completed as soon as
4 practicable, with the goal of completing the distribution of the Notice and Claim for by July 15,
5 2008. The costs of the notice will be advanced by counsel and shall be recoverable out of the costs
6 provided for in the City Settlement. The distribution and publication of the Notice and Claim Form
7 shall be accomplished in the following manner:

8 (a) The Class Representatives shall make a reasonable and diligent effort to
9 provide the Notice and Claim Form to potential class members at shelters or places where homeless
10 people who may be potential class members are generally known by them to be located;

11 (b) Plaintiffs shall provide copies of the Notice and Claim Form to the St.
12 Benedict Catholic Worker, the Poverello House, Naomi's House, the Fresno Rescue Mission,
13 Central California Legal Service, California Rural Legal Services, and Marjorie Mason Center for
14 distribution to homeless persons who come into contact with those organizations;

15 (c) Plaintiffs shall publish the Notice in the Community Alliance, a free
16 newspaper that is generally distributed to and read by homeless persons, among others, which will
17 provide instructions on how to obtain copies of the Claim Form; and

18 (d) To the extent that Class Members have a known mailing address, Plaintiffs
19 shall mail the Notice and Claim Form to that known address by first class mail.

20
21 **WHEREFORE, IT IS HEREBY ORDERED AS FOLLOWS:**

22 1. The Settlement Agreement with the City Defendants, the Settlement Agreement with the
23 Caltrans Defendants, and the Settlement Plan incorporated therein are hereby ordered preliminarily
24 approved as fair, reasonable, and in the best interests of the Class.

25 2. The form of Notice and Claim Form attached hereto as Exhibit A and Exhibit B,
26 respectively, are hereby approved and counsel for the Class are hereby ordered to proceed with that
27 Notice in accordance with the provisions of paragraph 5 (a) through (d) above.

28 3. A hearing is hereby scheduled for July 25, 2008 at 3:00 p.m. in Courtroom 3, Fresno

1 Federal Courthouse, 2500 Tulare Street, Fresno, California, to consider whether this Court should
2 grant Final Approval of the Settlement Agreement with the City Defendants, the Settlement
3 Agreement with the Caltrans Defendants, and the Settlement Plan incorporated therein, pursuant to
4 Federal Rule 23(e) and any objection to any of the foregoing that may be filed either before or at the
5 time of the hearing. At this hearing, the Court will consider and decide: (a) the fairness,
6 reasonableness and adequacy of each of the Settlement Agreements; (b) whether the Settlement
7 Plan should be approved; (c) the reasonableness of the attorneys' fees and costs to be paid by the
8 City Defendants as agreed in the Settlement Agreement with the City Defendants; and (d) whether
9 to enter a Final Approval Order and Judgment.

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Dated this 13th day of June, 2008.

/s/

Hon.
United

OLIVER W. WANGER
Oliver W. Wanger
States District Judge