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FILED
11 APR -5 PM 2:24
CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES
BY: _____

8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION

10 TONY LAVAN, CATERIUS SMITH,
11 WILLIE VASSIE, ERNEST
SEYMORE, LAMOEN HALL,
12 SHAMAL BALLANTINE, BYRON
REESE, REGINALD WILSON,

13 Plaintiffs,

14 vs.

15 CITY OF LOS ANGELES,

16 Defendants.
17
18
19 _____/

Case No.: **CV11 02874 PSG AJWx**

COMPLAINT: CIVIL RIGHTS

**CLASS ACTION: F.R.CIV.P.
23(b)(2)**

**42 U.S.C. § 1983 AND FOURTH,
FIFTH AND FOURTEENTH
AMENDMENTS**

**CALIFORNIA CONSTITUTION
ARTICLE I, §§ 7 AND 13**

**CALIFORNIA CIVIL CODE §§52,
52.1**

**CALIFORNIA CIVIL CODE § 2080
CONVERSION**

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1 **JURISDICTION AND VENUE**

2 1. This is an action for injunctive relief pursuant to 42 U.S.C. § 1983 and
3 F.R.Civ.P. 23(b)(2), as well as damages, based upon the ongoing violations by the
4 Defendant of the rights secured to Plaintiffs by the Fourth, Fifth and Fourteenth
5 Amendments of the United States Constitution. Jurisdiction exists based on 28 U.S.C.
6 § 1331 and 1343 in that this case is brought pursuant to 42 U.S.C. §1983 and raises
7 questions of federal constitutional law under the Fourth, Fifth and Fourteenth
8 Amendments. Jurisdiction also exists under the Declaratory Judgment Act, 28 U.S.C.
9 §§ 2201(a) and 2202. The court has supplemental jurisdiction over Plaintiffs’ state law
10 claims pursuant to 28 U.S.C. §1367.

11 2. Venue is proper in the Central District in that the events and conduct
12 complained of in this action all occurred in the Central District.

13 **INTRODUCTION**

14 3. This case represents a road the CITY has traveled down before. In 1987
15 and again in 2000, injunctions were issued against the defendant City of Los Angeles
16 (“CITY”), barring the CITY from summarily confiscating and destroying the property
17 of homeless individuals in the Skid Row area without due process. In 2006, the City
18 settled a class action lawsuit brought on behalf of a number of homeless individuals
19 whose property was confiscated and destroyed in a single sweep at the Venice Beach
20 on Labor Day weekend in 2004. Then, as now, if the individuals were present and
21 attempted to save their property, they were threatened by the police with arrest. Despite
22 these repeated injunctions and actions against the CITY, once again, the most
23 vulnerable population in our community comes to court to request yet another order
24 directing the CITY to stop seizing and demolishing the few belongings they have left.

25 4. Plaintiffs are eight homeless individuals living in the City of Los Angeles.
26 Over the course of the last two months, their personal possessions were confiscated and
27 immediately destroyed by CITY Public Works employees at the direction of the Los
28 Angeles Police Department (“LAPD”) as a part of an ongoing practice targeting the

1 homeless on Skid Row. Plaintiffs seek to represent a class of similarly situated
2 homeless men and women who have suffered and will continue to suffer the same type
3 of loss as a result of the same unlawful practice and policy.

4 5. As a result of the illegal seizures, Plaintiffs have lost indispensable
5 personal property such as shelters, medicine, clothing, personal papers, family photos
6 and portable electronics. Some of the property is irreplaceable. There is no legitimate
7 reason to seize the property in the first place, much less immediately destroy it, often
8 while Plaintiffs are present, pleading to spare their possessions and watching helplessly
9 as what little they have is swept up and crushed. The only real reason for this policy is
10 to destroy the property of individuals such as Plaintiffs, who are homeless and who are
11 regarded by the CITY as nothing more than garbage to be removed from City streets.

12 6. A Temporary Restraining Order is needed to prevent imminent harm to
13 Plaintiffs. Defendant has made clear through the repeated seizure and destruction of
14 Plaintiffs' property that this is part of an ongoing campaign on Skid Row. As recently
15 as March 17, 2011, LAPD officers destroyed Plaintiffs' property as they attended to
16 such basics as taking a shower at the Union Rescue Mission, going to court, and getting
17 a meal. Unless restrained by an Order of this Court, these unlawful acts will continue.

18 **DEFENDANT'S PAST UNLAWFUL CONDUCT**

19
20 **The 1987 Temporary Restraining Order**

21 7. On February 25, 1987, the Los Angeles Superior Court issued a Temporary
22 Restraining Order in *Adam Young Bennion v. City of Los Angeles*, C637718. The terms
23 of the restraining order included a requirement that the City give 12 hours written notice
24 before removing property on the presupposition that it has been abandoned on the
25 public streets of Skid Row. Exhibit A, p.28 ("III. Notice Requirements"). The *Bennion*
26 Order required City employees to post a "prominent notice in a conspicuous place on
27 the cite. The notice shall include the specific citation to the law allegedly violated and
28 state that the property will be subject to disposal if the violation is not corrected within

1 twelve hours from the time the notice is posted. *Id.*

2 **The Justin Case**

3
4 8. In 2000, the City again began a campaign of confiscating the property of
5 homeless persons, ordering them to move away from their belongings, and then
6 immediately crushing all of the property in dump trucks. In response to the CITY's
7 unlawful actions, several individuals filed a lawsuit entitled *Justin v. City of Los*
8 *Angeles*, CV 00-12352 LGB (AIJx). On November 5, 2001, the Honorable Lourdes
9 Baird entered a permanent injunction against the City, in incorporating the terms of the
10 *Bennion* restraining order and enjoining, *inter alia*, the City would "not confiscate
11 personal property that does not appear abandoned and destroy it without notice. Where
12 applicable, defendants will give notice in compliance with the temporary restraining
13 order issued in *Bennion v. City of Los Angeles* (C637718). Any personal property that
14 does not appear intentionally abandoned collected by defendants will be retained for 90
15 days as provided in California Civil Code section 2080.2." Exhibit A, p.18, ¶5. At the
16 request of the CITY, the injunction expired after 48 months. *Id.* at lines 23-28.

17 **The Noe Case**

18 9. Shortly after midnight just before Labor Day in 2004, the LAPD conducted
19 a sweep of the Venice Beach area, seizing and immediately destroying the property of
20 several dozen homeless individuals. None of the property was abandoned. Many of
21 the owners of the property were present and were allowed to take some of their
22 property, but were threatened with arrest when they asked to take additional items. A
23 class action lawsuit was filed seeking compensation for the injuries resulting from the
24 loss of personal possessions. *Richard Noe v. City of Los Angeles*, cv 05-08374. In
25 November, 2006, the Honorable Andrew Guilford approved a settlement for the class
26 of individuals whose property was destroyed in the *Noe* case. Exhibit C.

PARTIES

Plaintiffs:

10. Plaintiff TONY LAVAN is an homeless individual currently residing on the streets of the Skid Row area of Los Angeles. On March 17, 2011, his EDAR was confiscated and destroyed while Mr. LAVAN was at the Union Rescue Mission using the shower facilities. He was gone from his property for no more than 30 minutes, if that. His property was not abandoned. He sues on behalf of himself and all similarly situated individuals.

11. Plaintiff CATERIUS SMITH is an homeless individual currently residing on the streets of the Skid Row area of Los Angeles. On March 17, 2011, his EDAR was confiscated and destroyed while Mr. SMITH was present. Mr. SMITH had just returned from court, observed the LAPD officers and Public Works employees seizing the EDARS. Mr. SMITH pleaded to rescue his property but was not permitted to gather more than a few items. His property was not abandoned. He sues on behalf of himself and all similarly situated individuals.

12. Plaintiff WILLIE VASSIE is an homeless individual currently residing on the streets of the Skid Row area of Los Angeles. On March 17, 2011, his EDAR, bicycle and shopping cart with all of his possessions was confiscated and destroyed by LAPD officers and Public Works employees. He lost medications and all of his personal property. Mr. VASSIE's property was not abandoned. He sues on behalf of himself and all similarly situated individuals.

13. Plaintiff SHAMAL BALLANTINE is an homeless individual currently residing on the streets of the Skid Row area of Los Angeles. On March 17, 2011, his EDAR with all of his possessions was confiscated and destroyed by LAPD officers and Public Works employees. Mr. BALLANTINE had gone to the bank a few blocks from where his EDAR was located. He was away from this property for no more than about 20 minutes; his property was not abandoned. He sues on behalf of himself and all

1 similarly situated individuals.

2 14. Plaintiff ERNEST SEYMORE is an homeless individual presently residing
3 on the streets of the Skid Row area of Los Angeles. On February 6, 2011, his shopping
4 cart with all of his possessions was confiscated and destroyed by LAPD officers and
5 Public Works employees. Mr. SEYMORE was just a few feet from his cart, about to
6 cross the street, when the officers and a skip loader came down the street and grabbed
7 his cart. There were five other carts he had been watching for other individuals. All
8 were taken and everything in them was destroyed as Mr. SEYMORE watched
9 helplessly. His property was not abandoned. He sues on behalf of himself and all
10 similarly situated individuals.

11 15. Plaintiff LAMOEN HALL is an homeless individual presently residing on
12 the streets of the Skid Row area of Los Angeles. On February 24, 2011, his shopping
13 cart with all of his possessions was confiscated and destroyed by LAPD officers and
14 Public Works employees. Mr. HALL had left his cart on the corner of 6th and Gladys
15 Streets for no more than 10 minutes to fill several jugs with water at the Hippie Kitchen.
16 When he returned, he observed LAPD officers and a skip loader in the street. All of
17 his property had been dumped out of his carts. He was not permitted to recover any of
18 his property, even though it was in the street and had not yet been put in the skip loader
19 and destroyed. His property was not abandoned. He sues on behalf of himself and all
20 similarly situated individuals.

21 16. Plaintiff BYRON REESE is an homeless individual currently residing on
22 the streets of the Skid Row area of Los Angeles. He works as a custodian to support
23 himself. On February 24, 2011, his shopping cart with all of his possessions was
24 confiscated and destroyed by LAPD officers and Public Works employees. Mr.
25 REESE's cart was located on the corner of 6th and Gladys Streets. He left his cart for
26 a few minutes to use the restroom at the park across the street. When he returned, he
27 observed LAPD officers and a skip loader taking his cart and that of Plaintiff HALL.
28

1 All of Mr. Reese's important personal papers, identification documents, and other
2 crucial personal belongings were in a leather satchel. The satchel was visible and
3 within reach. When Mr. Reese attempted to retrieve he satchel, he was threatened with
4 arrest by Officer Acosta. He was told that he would have to go to the City dump to
5 retrieve his possessions. Mr. REESE then immediately rode his bicycle out to the City
6 dump. When he arrived there, it was closing and he was informed by the staff that
7 everything brought in was destroyed. His property was not abandoned when it was
8 taken by Defendant's employees. He sues on behalf of himself and all similarly situated
9 individuals.

10 17. Plaintiff REGINALD WILSON is an individual who is homeless and was
11 residing on the streets of the Skid Row area of Los Angeles on March 17, 2011. On that
12 morning, his EDAR was confiscated and destroyed while Mr. WILSON was away from
13 the area for a short while. His property was not abandoned. Everything he had was lost
14 when his property was confiscated and summarily destroyed, including his clothes,
15 hygiene products and personal papers. He sues on behalf of himself and all similarly
16 situated individuals.

17 **Defendant:**

18
19 18. The City of Los Angeles is a municipal entity organized under the laws of
20 the State of California. The CITY is a legal entity with the capacity to sue and be sued.
21 The departments of the City of Los Angeles include the Los Angeles Police Department
22 and the Los Angeles Department of Public Works, employees of which have engaged
23 in the acts constituting the violations of plaintiffs' rights alleged in this action.

24 **GENERAL ALLEGATIONS**

25 19. Beginning in February, 2011, CITY employees from the LAPD and the
26 Department of Public Works began seizing and summarily destroying any property they
27 came upon on the public sidewalks of Skid Row without notice to the property owners.
28 When individuals leave their property in the care of others, the CITY seizes it, warning

1 that no one may leave their property, even momentarily, and even if someone else is
2 present and watching the property. The property so seized is not abandoned and the
3 CITY knows it. Even when individuals are present or return prior to the time that the
4 property is crushed by the skip loader, LAPD officers threaten arrest if the individuals
5 attempt to save their property from destruction. The intent is clear: destroy what little
6 homeless have in this world as a means of forcing them out of the CITY.

7 20. Each of the acts complained of herein was taken, and each violation of
8 plaintiffs' rights occurred, pursuant to the policies, practices or customs of the
9 defendant CITY, as executed by one or more the subdivisions of the CITY.

10 21. In doing each of the constitutional violations complained of herein,
11 Defendant CITY, its officials, agents, and employees were acting under color of law.

12 22. Plaintiffs are informed and believe and on such basis allege that at all times
13 relevant to this action, each of the individuals who seized and destroyed their property
14 were the agents, servants and /or employees of the defendant CITY, and were acting at
15 all times within the scope of their agency and employment and with the knowledge and
16 consent of their principal and employer, the City of Los Angeles.

17 23. Each plaintiff has timely filed a claim for damages with the defendant
18 CITY, pursuant to Government Code section 910, et seq.

19 24. Plaintiffs are informed and believe that the acts complained of herein were
20 done in the furtherance of the customs, policies and practices of authorized
21 policymakers of the defendant CITY and were joined in and/or implemented by the
22 CITY's agents and employees who seized and destroyed Plaintiffs' property. Each of
23 these individual LAPD officers and Public Works employees were acting as the agent
24 and employee in concert with each other. Each of the defendant CITY's agents and
25 employees caused the violation of Plaintiffs' constitutional and statutory rights and the
26 resulting injuries by, among other things, participating personally in the unlawful
27 conduct; by authorizing, acquiescing or setting in motion the policies, plans and actions
28

1 that led to the unlawful conduct, by failing to take action to prevent the unlawful
2 conduct, by demonstrating deliberate indifference to the need to maintain adequate
3 training and supervision, and by failing to take remedial and disciplinary action. The
4 CITY was on notice of the need for training in this instance based on the three past legal
5 actions brought against the CITY. Moreover, the confiscation of some of the Plaintiffs'
6 property was reported in the Los Angeles Times when Senior Lead Officer Deon Joseph
7 brought Sandy Banks of the Times on a tour of Skid Row in which he violated the
8 Fourth Amendment rights of the Plaintiff class with impunity by invading their tents
9 without a warrant and without exigent circumstances for the sole purpose of making a
10 point to the reporter.

11 CLASS ALLEGATIONS

12 25. The individual plaintiffs named above filed claims against the CITY both
13 as individuals and as representatives of the class. They bring this action pursuant to
14 F.R.Civ.P. 23(b)(2) to certify an injunctive relief class. The class is defined as:

15 all individuals who are homeless and reside in the Skid Row area whose
16 personal belongings have or will be taken and immediately destroyed by
17 the agents and employees of the defendant CITY without any notice and
18 opportunity to retrieve the property, which was not abandoned by the
19 plaintiff class members.
20

21 25. The class consists of approximately 3,000 individuals, which is the
22 approximately number of individuals who reside in the Skid Row but who have no
23 daytime shelter or other location at which to store their property while they attend to the
24 basics of life, including showering, eating, and obtaining services at various government
25 offices and private facilities. The members of the class are so numerous as to make
26 joinder impracticable.

27 26. There are common questions of law and fact that predominate over any
28 questions affecting individual class members. Among the common questions of law

1 and fact are the following:

2 a. Whether defendant CITY's policies, practices and conduct of seizing
3 and destroying the personal property of individuals who are homeless, without
4 providing any prior notice or an opportunity to retrieve vital personal possessions
5 before they are destroyed violated and continue to violate the class members' state and
6 federal constitutional rights against unreasonable seizure;

7
8 b. Whether these same policies, practices and conduct violated and
9 continue to violate the class members' state and federal constitutional rights to due
10 process;

11 c. Whether these same policies, practices and conduct violated and
12 continue to violate the class members' rights pursuant to California Civil Code §§ 52
13 and 52.1, Civil Code § 2080; and,

14 d. Whether injunctive relief should issue to enjoin the policy, practice
15 and conduct of the CITY's agents and employees in seizing and immediately destroying
16 the property of homeless individuals on Skid Row when the property is not abandoned.

17
18 27. The claims of the class representatives are typical of those of the class
19 members with respect to the constitutionality and legality of the CITY's policies,
20 practices and conduct at issue here. The prosecution of individual actions against the
21 CITY by individual class members would create a risk of inconsistent and varying
22 adjudications, which would result in variable standards of conduct for defendant.

23 28. The class representatives will fairly and adequately protect the interests
24 of the class members and are unaware of any conflict among or between the class
25 members that would preclude their fair and adequate representation. Class counsel is
26 an experienced litigator who has brought several class actions on behalf of homeless
27 individuals in the City of Los Angeles, including *Fitzgerald v. City of Los Angeles*,
28 2003 U.S. Dist. LEXIS 27382 (C.D. CA 2003) (approving attorney fees separate from

1 common fund award to damages class) and *Noe v. City of Los Angeles*, discussed at
2 paragraph 9, above.

3 **FIRST CAUSE OF ACTION**

4 **Right to Be Secure From Unreasonable Seizures**

5 **42 U.S.C. §1983 - Fourth Amendment; Art. 1, §13, California Constitution**

6 29. Plaintiffs reallege and incorporate the allegations set forth in paragraphs
7 1 through 28 as though fully set forth hereat.

8 30. Defendant CITY violated Plaintiffs' Fourth Amendment rights to be free
9 from unreasonable seizure of their property by confiscating and then destroying
10 Plaintiffs' property without a warrant and often under threat of arrest if Plaintiffs
11 attempted to retrieve the property before it was crushed by the skip loader.

12 31. Defendant's unlawful actions, through the conduct of its employees from
13 the LAPD and the Dept. of Public Works was done with the specific intent to deprive
14 Plaintiffs of their constitutional rights to be secure in their property.

15 32. Plaintiffs are informed and believe that the acts of the CITY's employees
16 and agents were intentional in failing to protect and preserve their property and that, at
17 minimum, the CITY was deliberately indifferent to the likely consequence that the
18 property would be seized and destroyed unlawfully, based on the past circumstances of
19 similar constitutional and statutory violations of the law.

20
21 33. As a direct and proximate consequence of the acts of Defendant's agents
22 and employees, Plaintiffs have suffered and continue to suffer loss of their personal
23 property and are entitled to compensatory damages for their property and other injury
24 to their person.

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SECOND CAUSE OF ACTION

Right to Due Process of Law

42 U.S. C. §1983, Fifth and Fourteenth Amendments;

Art. I, §7 Calif. Constitution

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5 34. Plaintiffs reallege and incorporate the allegations set forth in paragraphs
6 1 through 28 as though fully set forth hereat.

7 35. Defendant CITY owed Plaintiffs a duty under the due process clause of
8 the Fifth and Fourteenth Amendments to the U.S. Constitution and Article I, sec. 7 of
9 the California Constitution, and the statutory law of the State of California, to protect
10 the personal property of Plaintiffs that was known not to be abandoned.

11 36. Defendant provided Plaintiffs with no notice that their property was at
12 risk of being seized and/or destroyed. Defendant did not preserve the property and
13 provide any means of reclaiming it in a timely manner, even though Defendant has been
14 put on notice by the Los Angeles Superior Court and the United States District Court
15 for the Central District of California that such notice and preservation of property was
16 required. Even when Defendant was specifically put on notice that the property was not
17 abandoned and given an opportunity to cease the seizure and destruction of the personal
18 items of Plaintiffs, Defendant denied Plaintiffs that due process under threat of arrest.

19
20 37. Plaintiffs are informed and believe that the acts of the CITY's employees
21 and agents were intentional in failing to protect and preserve their property and that, at
22 minimum, the CITY was deliberately indifferent to the likelihood that the property
23 would be seized and destroyed without due process based on the past occurrences of
24 these same constitutional and statutory violations of the law.

25
26 38. As a direct and proximate consequence of the acts of Defendant's agents
27 and employees, Plaintiffs have suffered and continue to suffer loss of their personal
28 property and are entitled to compensatory damages for their property and other injury

1 to their person.

2 **THIRD CAUSE OF ACTION**

3 **Violation of Civil Rights: Interference By Threat, Intimidation or Coercion**
4 **California Civil Code § 52.1**

5 39. Plaintiffs reallege and incorporate the allegations set forth in paragraphs
6 1 through 28 as though fully set forth hereat.

7
8 40. Defendant’s agents and employees have used threats of arrest and
9 intimidation to interfere with Plaintiffs’ rights to maintain their personal possessions in
10 the exercise of Plaintiffs’ rights secured by the Constitution of the United States, the
11 Constitution of the State of California, and the statutory laws of the State of California.

12 41. Plaintiffs are entitled to an injunction pursuant to California Civil Code
13 §52.1. Plaintiffs are also entitled to damages pursuant to Civil Code §§ 52 and 52.1.
14 Plaintiffs have filed tort claims with the defendant CITY on behalf of themselves and
15 all similarly situated persons. Plaintiffs will amend this action to include damages
16 under this provision once they have exhausted their administrative remedies.

17 **FOURTH CAUSE OF ACTION**
18 **California Civil Code §2080, et seq.**

19 42. Plaintiffs reallege and incorporate the allegations set forth in paragraphs
20 1 through 28 as though fully set forth hereat.

21
22 43. Defendant’s policies, practices and conduct challenged herein violated
23 California Civil Code § 2080 *et seq.*, in that Defendant’s agents and employees failed
24 to protect and preserve the personal property of Plaintiffs and members of the plaintiff
25 class when the property was on the public sidewalk and streets; failed to provide notice
26 that the property had been taken; and failed to provide an opportunity for the owners
27 of the property to reclaim it within a reasonable time. California Code of Civil
28 Procedure § 2080 *et seq.* imposes a mandatory duty to maintain property that is not

1 abandoned.

2 **FIFTH CAUSE OF ACTION**

3 **Conversion**

4 44. Plaintiffs reallege and incorporate the allegations set forth in paragraphs
5 1 through 28 as though fully set forth hereat.

6 45. Plaintiffs were in possession of their personal property at the time that
7 Defendant's agents and employees ordered that the property be seized and immediately
8 destroyed without notice. Defendant's agents and employees unlawfully prohibited
9 Plaintiffs from securing their personal property and the personal property of others left
10 in their care. Plaintiffs were threatened with forcible arrest if they attempted to retrieve
11 their belongings.
12

13 46. Defendant and its agents and employees had a duty owed to Plaintiffs to
14 protect their personal property under Los Angeles Municipal Code §52.55 and
15 California Civil Code §§ 2080.2, 2080.4 and 2080.6. Plaintiffs' property was not
16 abandoned at the time that Defendant seized it and immediately destroyed in and
17 Defendant's agents and employees knew that the property was not abandoned.
18 Defendant breached its duty to protect Plaintiffs' personal property when its agents and
19 employees wrongly exerted dominion over the property and denied Plaintiffs' their
20 constitutional and statutory rights.
21

22 47. Defendant had no legitimate governmental interest that gave its agents
23 and employees the legal right or justification for confiscating Plaintiffs' property and
24 then immediately demolishing it without prior notice to Plaintiffs and without a
25 procedure to permit Plaintiffs to recover their property, and without fair compensation
26 to Plaintiffs.

27 48. As a direct and proximate consequence of the acts of Defendant's agents
28 and employees, Plaintiffs have suffered and continue to suffer loss of their personal

1 property and are entitled to compensatory damages for their property and other injury
2 to their person.

3 **INJUNCTIVE RELIEF**

4
5 49. Plaintiffs reallege and incorporate the allegations set forth in paragraphs
6 1 through 28 as though fully set forth hereat.

7 50. A real and immediate difference exists between Plaintiffs and Defendant
8 regarding Plaintiffs' rights and Defendant's duty owed to Plaintiffs to protect Plaintiffs'
9 personal property present on public sidewalks and streets in Skid Row. Defendant's
10 policies and actions have resulted and will result in irreparable injury to Plaintiffs.
11 There is no plain, adequate or complete remedy at law to address the wrongs described
12 herein. Defendant has made it clear that it intends to continue these practices of
13 confiscating and immediately destroying the property of homeless individuals from the
14 public streets and sidewalks without a warrant and without notice. Unless restrained
15 by this Court, Defendant will continue to implement this policy and practice of
16 confiscating and summarily destroying the personal property of Plaintiffs and members
17 of the plaintiff class.

18
19 51. Defendant's acts alleged above violate established constitutional rights
20 of Plaintiffs and Defendant could not reasonably have thought that the conduct of its
21 agents and employees in seizing and destroying Plaintiffs' property was lawful.

22 52. An actual controversy exists between Plaintiffs and Defendant in that
23 Defendant's agents and employees have engaged in the unlawful and unconstitutional
24 acts alleged herein and intend to continue to do so. Plaintiffs claim that these acts are
25 contrary to law and seek a declaration of their rights with regard to this controversy.
26

27 53. As a direct and proximate consequence of the acts of Defendant's agents
28 and employees, Plaintiffs have suffered and will continue to suffer damages through

1 injury to their person and the loss of their personal property, including all of their
2 clothing, bedding, medication, personal papers and other personal possessions, stripping
3 them of the essential Plaintiffs' need for their well-being and personal dignity.

4 **WHEREFORE**, Plaintiffs pray as follows:

- 5
- 6 1. For a temporary restraining order, preliminary injunction and permanent
7 injunction, enjoining and restraining defendants from engaging in the policies,
8 practices and conduct complained of herein;
 - 9 2. For a declaratory judgment that Defendant's policies, practices and
10 conduct as alleged herein violates Plaintiffs' rights under the United States
11 Constitution, the California Constitution and the laws of California;
 - 12 3. For an order certifying the injunctive relief class pursuant to F.R.Civ.P.
13 23(b)(2);
 - 14 4. For damages in an amount to be determined according to proof but in no
15 event less than \$4,000 per incident pursuant to Cal. Civ. Code §§ 52, 52.1 and
16 Cal. Government Code § 815.6.
 - 17 5. For costs of suit and attorney fees as provided by law;
 - 18 6. For such other relief as the Court deems just and proper.

19
20 Dated: April 5, 2011

Respectfully submitted,

21 LAW OFFICE OF CAROL A. SOBEL

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23 _____
24 /S/ CAROL A. SOBEL
25 Attorneys for Plaintiffs
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27
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EXHIBIT A

ORIGINAL
FILED
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NOV - 6 2001
CENTRAL DISTRICT OF CALIFORNIA
BY *[Signature]* DEPUTY

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16 Attorney for Plaintiffs

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

LODGED

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CLERK OF COURT
CENTRAL DISTRICT OF CALIFORNIA

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20 MICHAEL JUSTIN, et al.,
21 Plaintiffs,
22 v.
23 CITY OF LOS ANGELES, et al.,
24 Defendants.

) CASE NO. CV 00-12352 LGB (AJX)
)
) NOTICE OF SETTLEMENT AND
) STIPULATED REQUEST FOR ENTRY
) OF A PERMANENT INJUNCTION
) AND JUDGMENT ORDER THEREON,
) WITH A RESERVATION OF
) JURISDICTION

✓ Docketed
✓ Copies NTC Sent
✓ JS - 5 / JS - 6
— JS - 2 / JS - 3
— CLSD

44

1 The parties hereby file this joint notice of settlement and order of
2 permanent injunction thereon in the above-captioned action, with a reservation of
3 the Court's jurisdiction to enforce the terms of the settlement. The executed
4 Settlement Agreement and Release entered into by the parties is attached as
5 Exhibit 1 and incorporated as though fully set forth herein.

6 This action was filed on November 20, 2000. The Court entered a
7 temporary restraining order on December 5, 2000, which, by stipulation of the
8 parties, has remained in effect since that date. On June 11, 2001, the Court
9 granted plaintiffs' motion for certification of this matter as a class action pursuant
10 to Federal Rules of Civil Procedure 23(b)(2). By stipulation of the parties, the
11 Court now enters a permanent injunction in accord with the terms of the
12 Settlement Agreement entered into by the parties.

13 Defendants do not admit any liability, as it is defendants' understanding and
14 belief that defendants' current policies are consistent with the terms of this
15 injunction and with the First and Fourteenth Amendments to the United States
16 Constitution. Nevertheless, defendants are hereby enjoined as follows with
17 respect to all members of the Class, when such Class members are in the Skid Row
18 area as described in the Complaint filed in this action:

19 IT IS ORDERED AND ADJUDGED that defendants, their agents,
20 employees and successors, are hereby permanently enjoined from doing the
21 following:

- 22 1. Officers will not conduct detentions or "Terry" stops without
23 reasonable suspicion. However, officers may continue to engage in consensual
24 encounters with persons in the Skid Row area, including members of the Class;
- 25 2. Officers will not demand identification upon threat of arrest or
26 arrest individuals solely due to their failure to produce identification in
27 circumstances where there is no reasonable suspicion to stop or probable cause to
28 arrest;

1 3. Officers will not conduct searches without probable cause to do
2 so, except by consent or for officer safety reasons as permitted by law;

3 4. Officers will not order individuals to move from their position on
4 the sidewalk on the basis of loitering unless they are obstructing or unreasonably
5 interfering with the free passage of pedestrians on the sidewalk or "loitering" for a
6 legally independent unlawful purpose as specified in California Penal Code
7 section 647;

8 5. Defendants will not confiscate personal property that does not
9 appear abandoned and destroy it without notice. However, defendants may
10 continue to clean streets and sidewalks, remove trash and debris from them, and
11 immediately dispose of such trash and debris. Where applicable, defendants will
12 give notice in compliance with the temporary restraining order issued in *Bennion*
13 *v. City of Los Angeles* (C637718). Any personal property that does not appear
14 intentionally abandoned collected by defendants will be retained for 90 days as
15 provided in California Civil Code section 2080.2;

16 6. Officers will not cite individuals for violation of either Penal Code
17 section 647(e) (loitering) or that portion of Los Angeles Municipal Code section
18 41.18 which makes it unlawful to "annoy or molest" a pedestrian on the sidewalk.
19 However, officers may cite for obstructing or unreasonably interfering with the
20 free passage of pedestrians on the sidewalk;

21 Notwithstanding these injunctions, defendants will continue to be permitted
22 to engage in lawful conduct necessary to protect the public safety and welfare in
23 times of national emergency, natural disaster, or immediate threat to public health.

24 IT IS FURTHER ORDERED that this injunction will remain in force for 48
25 months from the date on which it is signed by the court. However, plaintiffs may
26 move for an extension of the injunction upon a showing of good cause presented
27 by way of a motion filed within the last 90 days prior to expiration. The duration
28 of any extension granted by the court will be subject to the court's discretion, but

1 in any case will not exceed 48 months.

2 Upon entry of the permanent injunction, the court further orders that this
3 shall constitute the final judgment in this action, with an express reservation of the
4 court's jurisdiction to enforce the terms of the settlement agreement and the
5 permanent injunction entered in this action.

6

7 Dated: November 5, 2001

Jurda H. Quinn
UNITED STATES DISTRICT JUDGE

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9

10

11 Lodged by:

12 ACLU FOUNDATION OF SOUTHERN
13 CALIFORNIA
14 LAW OFFICE OF DIANA GREENE GORDON
15 LAW OFFICE OF CAROL A. SOBEL
16 DOUGLAS E. MIRELL

Carol A. Sobel
By: CAROL A. SOBEL
Attorneys for Plaintiffs

17 ROCKARD DELGADILLO, City Attorney
18 DEBRA GONZALES, Asst. City Attorney
19 JAMES AXTELL, Deputy City Attorney

James Axtell
By: JAMES AXTELL
Attorneys for Defendants

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1 in any case will not exceed 48 months.

2 Upon entry of the permanent injunction, the court further orders that this
3 shall constitute the final judgment in this action, with an express reservation of the
4 court's jurisdiction to enforce the terms of the settlement agreement and the
5 permanent injunction entered in this action.

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7 Dated: _____ UNITED STATES DISTRICT JUDGE
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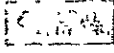
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12 ACLU FOUNDATION OF SOUTHERN
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16 DOUGLAS E. MIRELL

17
18 By: CAROL A. SOBEL
19 Attorneys for Plaintiffs

20
21 ROCKARD DELGADILLO, City Attorney
22 DEBRA GONZALES, Asst. City Attorney
23 JAMES AXTELL, Deputy City Attorney

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SETTLEMENT AGREEMENT
(Justin v. City of Los Angeles CV00-12352)

This Settlement Agreement and Release ("Agreement") is made by and between (1) plaintiffs Michael Justin, Troy B., Todd P., Jo Jo Brown, and Bruce Snyder, and (2) defendants City of Los Angeles, Chief Bernard C. Parks, and Captain Stuart A. Maislin.

BACKGROUND:

A. On November 20, 2000, plaintiffs filed their complaint in case number CV00-12352 alleging that defendants were acting in violation of the First and Fourth Amendment rights of "homeless" persons in the "Skid Row" area of Los Angeles by engaging in the following practices: stopping homeless persons on public sidewalks and demanding identification on threat of arrest; arresting homeless persons for failure or refusal to produce identification; searching the possessions of homeless persons without probable cause; threatening citation or arrest for "loitering"; writing improper citations for jaywalking or blocking the sidewalk; and seizing personal property and destroying it without notice. Skid Row was defined as that area between Third and Seventh Streets and between Main and Alameda in Downtown Los Angeles. Plaintiffs sought injunctive relief only.

B. On December 5, 2000, the Honorable Lourdes G. Baird, Federal District Court Judge, issued a Temporary Restraining Order enjoining defendants from engaging in many of the activities alleged by plaintiffs. The TRO has been in effect since that time.

C. On June 11, 2001, Judge Baird issued an order certifying the case as a Class Action. Members of the Class include all homeless persons present in the Skid Row area of Downtown Los Angeles who are subject to any unlawful policy of defendants as alleged in plaintiffs' complaint.

D. Defendants deny the existence of any of the unlawful policies alleged in plaintiffs' complaint and assert that their current policies are consistent with both the First and Fourth Amendment rights of homeless persons and of all other people in Los Angeles. Nothing in this settlement agreement constitutes an admission of liability by defendants.

E. Nevertheless, at this time the parties desire to resolve this matter without further litigation and therefore intend with this Settlement Agreement to resolve all issues pertaining to case number CV00-12352 upon the terms and conditions set forth in this Agreement.

THEREFORE, in consideration for the recitals, promises, representations, covenants, terms, conditions, and releases contained in this Agreement, the parties agree as follows:

1. Injunctive Relief. A stipulated permanent injunction will issue containing the following substantive language:

“Defendants do not admit any liability, as it is defendants’ understanding and belief that defendants’ current policies are consistent with the terms of this injunction and with the First and Fourth Amendments to the United States Constitution. Nevertheless, defendants are hereby enjoined as follows with respect to all members of the Class, when such Class members are in the Skid Row area as described in plaintiffs’ complaint :

1. Officers will not conduct detentions or “Terry” stops without reasonable suspicion. However, officers may continue to engage in consensual encounters with citizens, including members of the Class.

2. Officers will not demand identification upon threat of arrest or arrest individuals solely due to their failure to produce identification in circumstances where there is no reasonable suspicion to stop or probable cause to arrest.

3. Officers will not conduct searches without probable cause to do so, except by consent or for officer safety reasons as permitted by law.

4. Officers will not order individuals to move from their position on the sidewalk on the basis of loitering unless they are obstructing or unreasonably interfering with the free passage of pedestrians on the sidewalk or “loitering” for a legally independent unlawful purpose as specified in California Penal Code section 647.

5. Defendants will not confiscate personal property that does not appear abandoned and destroy it without notice. However, defendants may continue to clean streets and sidewalks, remove trash and debris from them, and immediately dispose of such trash and debris. Where applicable, defendants will give notice in compliance with the temporary restraining order issued in *Bennion v. City of Los Angeles* (C637718). Any personal property that does not appear intentionally abandoned collected by defendants will be retained for 90 days as provided in California Civil Code section 2080.2.

6. Officers will not cite individuals for violation of either Penal Code section 647(e) (loitering) or that portion of Los Angeles Municipal Code section 41.18 which makes it unlawful to “annoy or molest” a pedestrian on any sidewalk. However, officers may cite for obstructing or unreasonably interfering with the free passage of pedestrians on the sidewalk.

Notwithstanding these injunctions, defendants will continue to be permitted to engage in lawful conduct necessary to protect the public safety and welfare in times of national emergency, natural disaster, or immediate threat to public health.”

2. Duration of Injunction. The injunction will not be of indefinite duration. Rather, the injunction will include the following language pertaining to expiration:

"This injunction will remain in force for 48 months from the date on which it is signed by the court. However, plaintiffs may move for an extension of the injunction upon a showing of good cause presented by way of a motion filed within the last 90 days prior to expiration. The duration of any extension granted by the court will be subject to the court's discretion, but in any case will not exceed 48 months."

3. Attorneys fees and costs. Within 30 days after this agreement is executed by all parties, defendant City of Los Angeles will pay plaintiffs attorneys fees and costs in the amount of \$206,000. Plaintiffs accept this amount as full payment for any and all monetary amounts owed in connection with case number CV00-12352, and, on behalf of themselves and all other members of the Class, hereby release all defendants, as well as all other employees and entities of the City of Los Angeles, from any further obligations to pay any further amounts.

4. Release of defendants. Except as provided for in this Agreement, plaintiffs, on behalf of themselves and all other members of the Class, hereby release defendants, as well as all other employees and entities of the City of Los Angeles from any and all obligations and liabilities in connection with the injunctive relief claims in case number CV00-12352 and the allegations made therein.

5. Release of Plaintiffs. Except as provided for in this Agreement, defendants, on behalf of themselves and all other employees and entities of the City of Los Angeles, hereby release plaintiffs, as well as all other persons and entities from any and all obligations and liabilities in connection with the injunctive relief claims in case number CV00-12352 and the allegations made therein.

6. Exhibits. A true and correct copy of the temporary restraining order issued in *Bennion v. City of Los Angeles* is attached as Exhibit A to this Agreement.

7. Counterparts and Facsimile. This Agreement may be executed in counterparts and by facsimile. Each executed counterpart will be deemed an original, and all executed counterparts, when taken together, shall constitute one and the same document.

8. Authorization. Each undersigned warrants that it has the authority to execute this agreement on behalf of its respective parties and that it has read and understood and agrees to all of the terms and conditions of this Agreement.

MICHAEL JUSTIN

Dated: 10/15, 2001

By: Michael Justin

TROY B.

Dated: _____, 2001

By: _____

TODD P.

Dated: _____, 2001

By: _____

JO JO BROWN

Dated: _____, 2001

By: _____

BRUCE SNYDER

Dated: 10/11, 2001

By: Bruce Snyder

**CITY OF LOS ANGELES
CHIEF BERNARD C. PARKS
CAPTAIN STUART MAISLIN**

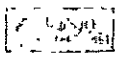
Dated: 11/01, 2001

JAMES AXTELL, DEPUTY CITY ATTORNEY

By: [Signature]

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September 28, 2001

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1 ACLU FOUNDATION OF SOUTHERN CALIFORNIA
2 PAUL L. HOFFMAN
3 MARK D. ROSENBAUM
4 CATHERINE LESLIE
5 633 South Shatto Place
6 Los Angeles, California 90005
7 213/487-1720

ORIGINAL FILED
FEB 25 1987
COUNTY CLERK

8 O'DONNELL & GORDON
9 JEFFREY S. GORDON, P.C.
10 601 West Fifth Street, Suite 1200
11 Los Angeles, California 90017
12 Attorneys for Plaintiffs

13 SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

14 ADAM YOUNG BENNION, JR.,) No. C 637718
15 et al.,)
16 Plaintiffs,) TEMPORARY RESTRAINING ORDER
17 vs.)
18 CITY OF LOS ANGELES, et al.,)
19 Defendants.)

20 The Court having considered the declarations, pleadings and
21 arguments of counsel, and good cause having been shown, issues
22 the following order:

23 ORDER TO SHOW CAUSE

24 Defendants are hereby ordered to appear on March 12, 1987,
25 in Department 86 at 9:00 a.m. to show cause why a preliminary
26 injunction should not be issued, in the form of the Temporary
27 Restraining Order below.

28 It is further ordered that the complaint, points and
authorities, declaration and this Order to Show Cause and
Temporary Restraining Order be served on defendants twelve days
prior to the hearing. Depositions can be taken and requests for

1 documents can be made upon seven days notice. Opposition papers
2 are due seven days before the hearing and all reply papers are
3 due three days before the hearing, *by hand delivery.*

4 TEMPORARY RESTRAINING ORDER

5 I. BOUNDARIES

6 The area affected by this order is the Skid Row area of the
7 City of Los Angeles -- that area bordered on the north by Third
8 Street, on the South by Eighth Street, on the east by Central
9 Avenue, and on the west by Spring Street. The order applied to
10 both sides of each of the named streets that make up its
11 boundaries.

12 II. PERSONS RESTRAINED

13 The persons who are restrained under this order are all
14 employees of the City of Los Angeles (and their agents and
15 representatives), including but not limited to, the Los Angeles
16 Police Department and the Department of Public Works (hereafter
17 collectively and individually referred to as City employees):

18 III. NOTICE REQUIREMENTS

19 In the event a City employee determines that specific
20 personal property is placed, stored or kept in such a manner
21 that it is in violation of applicable ordinances, statutes or
22 other legislation, the City employee must post a prominent
23 notice in some conspicuous place on the site, ~~from which the~~
24 ~~property is to be seized.~~ The notice shall include the specific
25 citation to the law allegedly violated and state that the
26 property will be subject to ~~seizure~~ *disposal* if the violation is not
27 corrected within twelve hours from the time the notice is

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posted. The notices can only be posted between the hours of
12:00 a.m. and 12:00 p.m.

Dated: February 25, 1987

ts/

Honorable Ricardo A. Torres
Judge of the Superior Court

(H)

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STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 429 Santa Monica Boulevard, Suite 550, Santa Monica, CA 90401

On November 1, 2001, I served the foregoing document described as: NOTICE OF SETTLEMENT AND REQUEST FOR ENTRY OF A PERMANENT INJUNCTION in this action by placing a true copy thereof in a sealed envelope, with postage fully affixed, and addressed as follows:

James Axtell
Deputy City Attorney
200 N. Main Street
1700 City Hall East
Los Angeles, CA. 90012


 X **BY U.S. MAIL** I caused such envelope to be deposited in the mail, with postage thereon fully prepaid, at Santa Monica, California. [I am "readily familiar" with this firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one (1) day after the date of deposit for mailing in the affidavit.]

 BY PERSONAL SERVICE I personally delivered such envelope to the office of the person shown above.

 BY OVERNIGHT DELIVERY. I caused such envelope to be deposited in a box or other facility regularly maintained by an overnight delivery express service carrier, or delivered this envelope to an authorized courier or driver authorized by the express service carrier to receive documents, in an envelope or package designated by the express service carrier with delivery fees prepaid or provided for, addressed to the person on whom it is to be served, at the office address as last given by that person on any document filed in the cause and served on the party making service.

 BY FACSIMILE SERVICE. Transmitted to the number shown above.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct and that this declaration was executed on November 1, 2001, at Santa Monica, California.



CAROL A. SOBEL

EXHIBIT B

LODGED

ORIGINAL

CAROL A. SOBEL, State Bar No. 84483
LAW OFFICE OF CAROL A. SOBEL
429 Santa Monica Boulevard, Suite 550
Santa Monica, California 90401
T. (310) 393-3055; F. (310) 393-3605
E. carolsobel@aol.com

FILED - SOUTHERN DIVISION
CLERK, U.S. DISTRICT COURT
SEP 26 2006
CENTRAL DISTRICT OF CALIFORNIA
BY DEPUTY

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Priority
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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

RICHARD NOE, on behalf of himself
and the class of similarly situated persons,

Plaintiffs,

vs.

CITY OF LOS ANGELES, et al.,

Defendants.

CASE NO. CV 05-08374 AG (SSx)

[PROPOSED] ORDER RE CERTI-
FICATION OF A DAMAGES
CLASS, APPOINTMENT OF CLASS
COUNSEL AND A CLASS
REPRESENTATIVE, PRELIMI-
NARY APPROVAL OF THE
SETTLEMENT AND SCHEDULE
FOR A FAIRNESS HEARING

Date: September 25, 2006
Time: 10:00 a.m.
Ctmm: 11 (Hon. Andrew Guilford)

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On August 29, 2006, plaintiff filed a Notice of Settlement and a motion for the approval of a preliminary settlement of this matter on behalf of the putative class. The Notice of Settlement advised the Court that an accord had been reached, agreeing to pay the sum of \$50,000 to resolve the case, inclusive of a¹¹ fees and costs to class counsel. In addition, plaintiffs filed a proposed Notice o proposed Class Settlement and a Claim Form to be distributed to the potential

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1 Settlement Class members.

2 The Court has considered the request to approve the Settlement of this
3 action. The Court finds that there is good cause for preliminary approval. The
4 proposed settlement appears to be within the range of reasonableness and
5 accordingly shall be submitted to the class members for their consideration and for
6 a hearing under Fed. R. Civ. P. 23(e). The terms of the Settlement, as set forth in
7 the Notice of Settlement, are incorporated as though fully set forth in this Order.

8 1. Class Certification:

9 The Court finds that certification of the proposed damages Settlement Class
10 pursuant to F.R.Civ.P. 23(b)(3) is proper. The damages class would readily satisfy
11 all of the requirements of F.R.Civ.P. 23(a). Accordingly, the Court certifies the
12 following class for settlement purposes:

13 All persons who were homeless at or near Venice Beach in the City of
14 Los Angeles in the early morning hours of September 2, 2004 and
15 whose property was seized at Venice Beach, without warrant, and
16 destroyed by the Los Angeles Police Department and other City of
17 Los Angeles employees. The term "homeless" as defined under
18 federal law, means someone who is without a fixed, regular and
19 adequate night-time residence, or a person who was residing in a
20 shelter, welfare hotel, transitional program or place not ordinarily
21 used for sleeping accommodations, such as the streets, automobiles,
22 abandoned buildings, etc. 42 U.S. C. 11302 (Stewart B. McKinney
23 Homeless Assistance Act)

24 The Court finds that settlement of the damages class in this instance is
25 sufficient to protect the interests of the plaintiffs.

26 2. Class Counsel; Class Representative:

27 In accord with the requirements of FRCP 23(a)(4), the Court appoints Carol
28 A. Sobel as Settlement Class Counsel and Richard Noe as the class representative.

1 The Court finds that there is no evidence of any potential or actual conflict
2 between class counsel and the class representative, or between the class
3 representative and any other member of the class.

4 3. Preliminary Approval of Statutory Fees and Costs

5 The Court has considered the statutory fees and costs to be paid to
6 Settlement Class Counsel. Under the Court's independent obligation to do so, the
7 Court has reviewed the time and costs records submitted by Plaintiffs' counsel, as
8 well as the Declaration of Carol A. Sobel filed in support of the fees and costs.
9 Following the analysis applied to a contested motion for statutory fees pursuant to
10 42 U.S.C. §1988, the Court finds that the number of hours sought and the billing
11 rates for Plaintiff's counsel are reasonable. The Court also finds that the costs of
12 litigation sought by Plaintiff's counsel are reasonable.

13 4 Hearing

14 The Court sets a hearing on the final approval of the Settlement in this
15 action for November 20, 2006 at 10:00 a.m. in Courtroom 10D of the United
16 States District Court, located at 411 West Fourth Street, Santa Ana, California.

17 a. Plaintiff's counsel is to give notice of the proposed Class Settlement
18 by distributing copies of the Notice to all previously identified putative class
19 members, and by distributing copies to all "shelters, welfare hotels and transition
20 programs" in Santa Monica, Venice, West Los Angeles, Hollywood and
21 downtown Los Angeles. Plaintiff's counsel shall file a report with the Court prior
22 to the hearing regarding the specifics of the Notice of the hearing given.

23 b. Objections by class members who do not timely move to exclude
24 themselves from the class to the proposed class settlement should be considered if
25 filed in writing with the Clerk of the Court on or before November 6, 2006.

26 c. Class members who do not move to exclude themselves from the
27 class may be heard in support of or in opposition to the settlement at the hearing,
28 provided that they file with the Clerk of the Court a written notice of the intention

1 to appear personally, indicating briefly the nature of their objection, if any.

2 d. Counsel for the class and counsel for defendants should be prepared
3 at the hearing to respond to objections filed by such class members and to provide
4 other information, as appropriate, bearing on whether or not the settlement should
5 be approved.

6 5. Exclusion from the Class Settlement

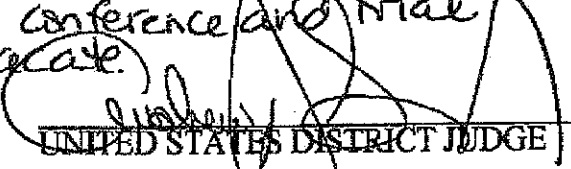
7 Class members may exclude themselves from the class by filing with the
8 Settlement Class Counsel within 30 days of the date of this Order, the form
9 appended to Attachment A or some other appropriate written indication that they
10 request exclusion from the class.

11 6. Notice of Proposed Settlement and Hearing

12 By ~~October 2, 2006~~ Class Counsel shall mail in the name of the Clerk of the
13 Court by first class mail, postage prepaid, to all class members who can be
14 identified through reasonable efforts, a notice in substantially the same form as
15 Exhibit D. Class Counsel shall cause to be "published" a notice in substantially
16 the same form as Exhibit D by distributing as set forth above at paragraph 4a.

17 7. List of Class Members

18 One week prior to the hearing date, Class Counsel will file with the clerk an
19 affidavit setting forth the individuals identified as class members and who have
20 not timely requested exclusion.

21 *8. The Final Pretrial conference and trial*
dates are ordered vacate.
22 DATED: SEPT 25, 2006 
UNITED STATES DISTRICT JUDGE

23 Lodged by:

24 LAW OFFICE OF CAROL A. SOBEL
25 LAW OFFICE OF REBECCA F. THORNTON

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27 By: CAROL A. SOBEL
Attorneys for Plaintiff NOE and class
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