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6 UNITED STATES DISTRICT COURT
7 EASTERN DISTRICT OF CALIFORNIA
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9 PAMELA KINCAID, DOUG DEATHERAGE,)
CHARLENE CLAY, CYNTHIA GREENE,)
10 JOANNA GARCIA, AND RANDY)
JOHNSON, INDIVIDUALLY ON BEHALF)
11 OF THEMSELVES AND ALL OTHERS)
SIMILARLY SITUATED,)

12 Plaintiffs,)
13)

14 v.)

15 CITY OF FRESNO, CALIFORNIA)
DEPARTMENT OF TRANSPORTATION,)
ALAN AUTRY, JERRY DYER, GREG)
16 GARNER, REYNAUD WALLACE, JOHN)
ROGERS, PHILLIP WEATHERS AND)
17 WILL KEMPTON, INDIVIDUALLY AND)
IN THEIR OFFICIAL CAPACITIES;)
18 DOES 1-100, INCLUSIVE,)

19 Defendants.)
20)
21)

1:06-cv-1445 OWW

CLASS ACTION

ORDER TO SHOW CAUSE WHY ALL
PROCEEDINGS REGARDING
SETTLEMENT SHOULD NOT BE
TERMINATED AND FOR PERSONAL
APPEARANCE OF INDIVIDUAL
DEFENDANT ALAN AUTRY

Hearing Date: 6/10/08
Time: 10:00 a.m.
Courtroom: 3

22 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

23 TO DEFENDANT, ALAN AUTRY, AND HIS ATTORNEY OF RECORD:

24 The City of Fresno and the individual Defendants Alan Autry,
25 Jerry Dyer, Greg Garner, Reynaud Wallace, John Rogers, and
26 Phillip Weathers and all remaining parties to this case shall
27 show cause, if any they have, at the hour of 10:00 a.m. on June
28 10, 2008, in Courtroom 3 of this Court, why all settlement

1 proceedings in this case should not be terminated and why the
2 case should not proceed to jury trial on June 17, 2008, to
3 preserve the previously scheduled trial date of June 10, 2008.

4 Individual Defendant Alan Autry shall appear on June 10,
5 2008, at 10:00 a.m. in Courtroom 3 of the United States District
6 Court at 2500 Tulare Street, Fresno, California 93721, with his
7 attorney of record.

8 On June 6, 2008, at 10:15 a.m., the parties in this case
9 appeared and requested the Court's preliminary approval of the
10 settlement agreements reached between Plaintiffs and Plaintiff
11 Class and Defendant City of Fresno, and the individual Defendants
12 above-named and individual Defendants Will Kempton, James
13 Province, and Daryl Glenn, individually, and in their official
14 capacities as officers and/or agents of the California Department
15 of Transportation.

16 On the representations of the parties and their joint motion
17 heard on June 6, 2008, the Court tentatively decided to grant
18 preliminary approval of the two settlement agreements between
19 Plaintiffs and the Plaintiff class and Defendants City of Fresno,
20 Alan Autry, Jerry Dyer, Greg Garner, Reynaud Wallace, John
21 Rogers, and Phillip Weathers, and the Caltrans Defendants, Will
22 Kempton, James Province, and Daryl Glenn, subject to entry of a
23 written order.

24 Later, on June 6, 2008, the Mayor of the City of Fresno,
25 Alan Autry, issued the following public statement:

26 The City of Fresno will comply with the Court's order
27 and look forward to continuing our ten year plan to end
28 chronic homelessness. However, this white collar
exploitation of the homeless by the court and the
lawyers is unconscionable. I am calling upon the ACLU

1 and Judge Wanger to require half of the exorbitant
2 lawyer fees of \$750,000.00 to be donated to homeless
3 programs.

4 Previous public statements by City Officials, including City
5 Councilmember Mike Dages, were to the effect that "Councilmember
6 Dages did not like the settlement."

7 "Exploitation" means "unethical utilization for selfish
8 purposes." The word "exploit" means "to use selfishly for one's
9 own ends." The term exploitation is defined as "use or
10 utilization esp. for profit; selfish utilization." Webster's
11 Unabridged Dictionary 2d ed. (1999) p. 682. "Exploit" means "to
12 make unethical use of for one's own advantage or profit; turn
13 selfishly or unfairly to one's own account; hence." Webster's
14 New World Dictionary of the American Language (College Ed. 1957).

15 The Mayor and City Councilmember statements have wrongfully
16 suggested that the Court has "ordered" a settlement and the Court
17 has exploited the homeless.

18 1. The publically issued statements of Defendant Alan
19 Autry, the Mayor and Chief Executive Officer of the City of
20 Fresno, call into question the good faith of the City Defendants
21 in entering into a settlement;

22 2. The public statements of the Mayor and City
23 Councilmember of the City of Fresno call into question whether in
24 fact a complete settlement agreement has been reached and whether
25 each and every Defendant who has entered into that agreement
26 intends to perform it;

27 3. Public statements have been issued accusing the Court
28 of wrongdoing, challenging the integrity of the United States
Court, and bringing the Court into disrepute;

1 4. The City's statements and conduct have evinced public
2 disrespect for a coordinate branch of government, the federal
3 judiciary;

4 5. The assigned Judge had no role in the settlement before
5 it was presented in open court for preliminary approval. It is
6 the parties who reached settlement agreements;

7 6. Under the totality of the circumstances where a long
8 term settlement agreement calls for performance in good faith and
9 obedience to the law, with which the City clearly continues to
10 disagree, as evidenced by counsel's statement at the preliminary
11 settlement approval hearing on June 6, 2008, to the effect the
12 City conceded nothing, a substantial question is raised whether
13 the Court can make a finding that the settlement is fair,
14 adequate, and reasonable in view of the publically stated
15 position by the Mayor of the City.

16 IT IS ORDERED:

17 1. That all parties shall show cause, if any they have,
18 why the Court should not rescind its oral tentative decision
19 preliminarily approving the settlement;

20 2. Reinstating the trial date for June 17, 2008, at 9:00
21 a.m. in Courtroom 3;

22 3. Individual Defendant, Alan Autry, shall, on June 10,
23 2008, provide evidence as to any basis in fact or in law to
24 support his statement that the Court has exploited the homeless.

25 4. This matter shall be heard on June 10, 2008, at 10:00
26 a.m. in Courtroom 3 of the United States District Courthouse at

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1 2500 Tulare Street, Fresno, California 93721.

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3 SO ORDERED.

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5 DATED: June 9, 2008.

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7 /s/ Oliver W. Wanger
8 Oliver W. Wanger
9 UNITED STATES DISTRICT JUDGE
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