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2 **C. WHEREAS**, subsequently the Court held a hearing on March 6, 2017 followed by a
3 March 7, 2017 site inspection at the Santa Ana riverbed. Counsel and parties met on March
4 7, 2017 in the afternoon immediately after the site inspection and stipulated to a Preliminary
5 Injunction and which remains in place today.

6 **D. WHEREAS**, the Parties now desire, without admission of wrongdoing, fault or
7 liability of any Party to any other Party, and solely for the purpose of resolving the Action
8 in an economic and efficient manner, to settle the entire Action pursuant to the terms and
9 conditions of this Agreement.

10 **NOW, THEREFORE**, in consideration of the recitals, promises, representations, covenant,
11 terms, conditions, and releases contained in this agreement, and for good and valuable
12 consideration, the adequacy and sufficiency of which is acknowledged, the Parties agree as
13 follows:

14 **1. SETTLEMENT AREA:** The terms of this agreement shall be limited to the
15 following area of the Santa Ana River which is defined by the following two
16 locations and shall hereafter be referred to as "Settlement Area": 900 feet
17 north of the railroad tracks north of Katella and 750 feet south of Chapman
18 (this is before the 5 Freeway).

19 **2. PRE-DEPRIVATION NOTICE:**

- 20 a. Unless otherwise delineated in this agreement, before any personal property
21 items (with the exception of non-essential items in the Buffer Zone as
22 defined in paragraph 7 or hazardous materials, which are items which
23 constitute an immediate threat to health and safety) are impounded by the
24 County a minimum of 24-hours notice shall be posted;
- 25 b. The pre-deprivation notice shall include the date and time by which
26 property must be moved; and
- 27 c. Notice is waived in exigent circumstances as defined in this settlement.
28

1 **3. IMPOUNDMENT OF PROPERTY:**

- 2 a. No personal property items shall be impounded by the County within one
3 hour before the end of the posted business hours, except in the case of
4 exigent circumstances, as defined below;
- 5 b. If personal property is impounded, a post-deprivation notice shall be left at
6 the location where the property was impounded detailing retrieval
7 procedures; and
- 8 c. If personal property is impounded, the County shall keep track of the area
9 where the property was impounded, the date it was impounded, and a
10 general description of the property.

11 **4. STORAGE:** The County will store any impounded property from the
12 Settlement Area for 90 days in an organized fashion (to allow for retrieval of
13 property by the owner) in the following locations:

- 14 a. Storage location No. 1: The County will keep one storage location on the
15 west side of the Settlement Area which is located: North of Orangewood
16 and South of the 57 Freeway, near the Big "A" or Angels Stadium. All
17 items impounded on the west bank will be stored at this location;
- 18 b. Storage location No. 2: In the event the County begins impounding
19 property along the east side of the Settlement Area, the County will provide
20 a second Storage location identified as storage location No. 2 located on the
21 east side in proximity to the railroad tracks north of Katella;
- 22 c. The County shall keep records of all impounded property for at least the 90
23 days of storage; and

24 **5. RETRIEVAL OF IMPOUNDED PROPERTY:** Persons seeking to retrieve
25 property which has been impounded by the County in the Settlement Area shall
26 adhere to the following procedures:

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- a. Call the number listed on the notice provided and posted on the storage facilities or flag down any clearly identifiable County employee actively working in the Settlement Area and request property; and
- b. The County shall allow a person seeking to retrieve their personal property access to the storage location within one hour of receiving said request during posted business hours, which shall be for a minimum of 8 hours per day, 5 days per week, with the exception of County holidays.

6. TRASH:

- a. The County agrees to provide large orange trash bags to the occupants living in the Settlement Area. The County shall distribute the bags by (1) ensuring that on-duty personnel with County vehicles in the Settlement Area either have the bags and distribute upon request or will cause delivery of bags within a reasonable time of the request and (2) allowing community outreach workers to obtain and distribute them, at the County's option;
- b. The County shall add dispensaries for the orange bags at the designated trash areas, and shall maintain them as long as the dispensaries are not emptied in an unreasonable rate or manner;
- c. If an issue arises regarding any aspect of trash bag distribution, the Parties agree to meet and confer and work out a mutually agreeable solution;
- d. All Parties agree that items placed in these orange bags shall be designated as trash and may be disposed of by the County without any notice or storage regardless of their location and contents; and
- e. The County shall maintain the current designated trash pick-up areas and may add additional areas at its discretion. The County shall remove trash from these areas a minimum of one-time per week.

7. BUFFER ZONE: The Parties agree that a buffer zone shall be designated where all Parties understand that property may not be stored.

- a. The buffer zone shall be defined as five feet from the edge of the pavement

1 on both sides of the public recreation trails/access roads in the Settlement
2 Area;

3 b. Items in the buffer zone are subject to removal by County staff in the
4 following ways when the demarcations of the buffer zone are visible:

5 i. **Non-essential items and any items in Orange trash bags** may be
6 treated as trash and disposed of without applying the notice and
7 storage rules;

8 ii. **Essential items are:** tents, tarps, sleeping bags, blankets, bicycles,
9 trailers/carts, identification, medical papers or devices, and
10 medications; and

11 iii. **Essential items** shall be subject to the regular notice and storage
12 requirements;

13 iv. **If items are within the white lines of the bike lane/public**
14 **trail/access road, meaning on the pavement itself within the lane**
15 **of traffic, the County may ask nearby persons to remove the**
16 **items.** If no one is present or claims the items, non-essential items
17 may be immediately disposed of and essential items may be
18 immediately removed and stored.

19 c. County staff will endeavor to maintain a clear line delineating the buffer
20 zone in the Settlement Area.

21 **8. RIVERBED BOTTOM, LEVEE SLOPES AND LOW UNDERPASSES:**

22 The Plaintiffs agree that they shall not store property in these designated areas
23 of the riverbed.

24 a. The riverbed bottom is defined as the actual channel in which the river
25 flows and the land immediately adjacent to the river and at the same level as
26 that river;

27 b. The Levee slopes are defined as the steep areas leading down from the bike
28 path to the riverbed bottom.

1 c. The low underpasses are defined as those areas where the bicycle path dips
2 down almost to the level of the actual channel of the river. These low
3 bridges can be found at Chapman Avenue, Orangewood Avenue, and
4 Katella Avenue;

5 d. In exigent circumstances, items placed in these areas are subject to
6 immediate removal and storage without notice. In non-exigent
7 circumstances, regular notice and storage rules apply.

8 **9. EXIGENT CIRCUMSTANCES:**

9 When there is an immediate threat to health and safety, pre-removal notice may
10 be waived. Regular storage procedures will remain in place.

11 **10. MEET AND CONFER:**

12 Both parties agree to meet and confer regarding issues that may arise
13 concerning this agreement in an effort to reach a mutually agreeable solution if
14 possible prior to seeking any court intervention.

15 **11. MAILING ADDRESS**

16 Any documents required to be provided to Plaintiffs or Plaintiffs' Counsel
17 pursuant to this agreement shall be sent to the Plaintiffs at the following
18 address, or any subsequent address or person designated in writing by those
19 parties, via First Class mail, overnight mail, or email:

20 Brooke Weitzman
21 Elder Law and Disability Rights Center
22 1535 E 17th Street
23 Suite 104
24 Santa Ana, CA 92705

25 **12. COUNTERPARTS AND ELECTRONIC COPIES:** This Agreement may
26 be executed in counterparts and by electronic production. Each executed
27 counterpart will be deemed an original and all executed counterparts, when
28 taken together, shall constitute one and the same document.

13. NO ADMISSION OF FAULT. The Parties, nor any officer, employees, or
agent of the Parties are not by way of this Agreement admitting to fault or

1 wrongdoing in relation to the Action.

2 **14. PAYMENT TO PLAINTIFFS:** The County shall pay each named Plaintiff,
3 with the Exception of For Him Ministries, the sum of \$3000.00 (per person) in
4 settlement of this case. For Him Ministries will not be receiving a financial
5 settlement. The County agrees to pay this amount solely to resolve a disputed
6 claim and to avoid the cost and uncertainty of litigation. Payment to be made
7 within 30 days after the Agreement is fully executed.

8 **15. ATTORNEYS' FEES RELATED TO ACTION.** In exchange for dismissal
9 of the Action with prejudice, the County agrees to pay Plaintiffs' attorneys'
10 fees and costs, in the amount of \$160,000.

11 **16. MUTUAL RELEASE OF CLAIMS.** The Parties agree to release their
12 respective claims against one another as follows: Except for the obligations
13 created under this Agreement, and with regard to the Action only, the
14 Releasing Parties, on behalf of themselves, their respective legislative bodies
15 and councils, members, board members, shareholders, partners, elected or
16 appointed officers, directors, members, agents, employees, representatives,
17 contractors, attorneys, predecessors, affiliates (including the Orange County
18 Flood Control District), successors, assigns, hereby release and discharge each
19 other and each and all of their respective legislative bodies and councils,
20 members, board members, shareholders, partners, elected or appointed officers,
21 directors, agents, employees, representatives, contractors, attorneys,
22 predecessors, successors and assigns, from any and all claims, liabilities, rights,
23 complaints, actions, causes of action, obligations, promises, contracts,
24 agreements, controversies, suits, debts, expenses, costs, damages, attorneys'
25 fees, losses, and demands and any other liability whatsoever, known or
26 unknown, administrative, judicial or otherwise, arising out of, based upon, in
27 connection with, or relating in any manner to the Action (collectively,
28 "Claims").

1 **17. WAIVER OF CIVIL CODE SECTION 1542.** The Parties acknowledge and
2 agree that the release of the Claims provided for in this Agreement shall extend
3 to any and all Claims related to property seizure in the Santa Ana riverbed that
4 exist at this time, whether known or unknown, suspected or unsuspected,
5 disclosed or undisclosed, legal or equitable, and expressly waive and relinquish
6 any and all rights the Parties may have under California Civil Code Section
7 1542, which provides that:

8 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE**
9 **CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR**
10 **HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH**
11 **IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED**
12 **HIS OR HER SETTLEMENT WITH THE DEBTOR.**

13 The Parties expressly waive and release any and all rights and benefits which
14 they have, or may have, under Civil Code Section 1542. Each of the Parties
15 understands, acknowledges and agrees that it may later discover facts in
16 addition to, or different from, those which it now knows or believes to be true
17 as to the seizure of property in the Settlement Area during 2016, but it is the
18 intention of each of the Parties, through and in accordance with this Agreement
19 and with the advice of counsel, to fully, finally and forever settle and release
20 any and all Claims related to the seizure of property in the Settlement Area
21 during 2016. The releases of the Claims provided for under this Agreement
22 shall be, and are to remain in effect as, full and complete releases of any and all
23 Claims notwithstanding the discovery of any additional claims or facts relating
24 to such releases.

25 **18. ENTIRE AGREEMENT/MODIFICATIONS.** This Agreement contains the
26 entire agreement and understanding between the Parties and supersedes any
27 and all prior agreements, arrangements or understandings of any kind or nature
28 between the Parties with regard to the subject matters hereof. The Agreement

1 may not be amended or modified except by written agreement signed by all
2 Parties.

3 **19. MUTUAL DRAFTING/TITLES.** The Parties and signatories hereto, and
4 each of them, agree and acknowledge that the terms and language of this
5 Agreement have been jointly drafted by all Parties and that the provisions of
6 this Agreement are to be construed without regard to which Party or its counsel
7 may have drafted the same. Headings and titles are used throughout this
8 Agreement solely for the convenience of the Parties and in no way define,
9 limit, extend, or describe the scope of this Agreement or the intent of any
10 provision herein.

11 **20. ENFORCEMENT OF TERMS OF THE AGREEMENT.** This Agreement
12 shall be effective on the date signed by each of the parties and approved by the
13 Court. Once this Agreement is signed by all parties and the Court, the
14 Agreement shall replace the preliminary injunction. The parties agree that the
15 Court shall retain jurisdiction over this matter for a period of two years for the
16 sole purpose of enforcing the terms of this Agreement. If either party believes
17 that the other party has violated the terms of the Agreement, the party shall
18 notify the other party and make a good faith effort to resolve the matter before
19 making a motion with the Court to enforce the terms of the Agreement. This
20 Agreement shall remain in effect for two years from the date of its execution.
21 Should Plaintiffs believe that the Agreement terms should be enforced for a
22 longer period of time, the Plaintiffs have the right to file a motion with the
23 Court, with proper notice to the County, to seek a continuation of the
24 Agreement.

25 **21. ENTIRE AGREEMENT/MODIFICATIONS.** This Agreement contains the
26 entire agreement and understanding between the Parties and supersedes any
27 and all prior agreements, arrangements or understandings of any kind or nature
28 between the Parties with regard to the subject matters hereof. The Agreement

OFFICE OF THE COUNTY COUNSEL,
COUNTY OF ORANGE

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may not be amended or modified except by written agreement signed by all Parties or by a motion made before this Court.

The undersigned agree to the terms of this Agreement:

County of Orange,

Dated: June 6, 2017

By: *Shane Z. Sibby*

Title: DIRECTOR OF OC PUBLIC WORKS

Dated: June 3, 2017

Tammy Schuler
Plaintiff Tammy Schuler

Dated: June 3, 2017

Gloria Shoemake
Plaintiff Gloria Shoemake

Dated: June 3, 2017

Mel Payne
Plaintiff, Melanie Payne

Dated: June 3, 2017

Sara Weaver
Plaintiff Sara Leanne Weaver

Dated: June 3, 2017

Nick Mastro
Plaintiff Nick Mastrosciano

For Him Ministries

Dated: June 3, 2017

By: *Danny Somerville*
Danny Somerville

1 **Approved as to form:**

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3 DATED: June 5, 2017

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LEON J. PAGE, COUNTY COUNSEL
MARIANNE VAN RIPER, Senior Assistant
LAURA D. KNAPP, Supervising Deputy

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By Marianne Van Riper
MARIANNE VAN RIPER,
Senior Assistant County Counsel
Attorneys for Defendant County of Orange

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DATED: June 5, 2017

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ELDER LAW AND DISABILITY RIGHTS
CENTER

11

LAW OFFICES OF CAROL SOBEL

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SCHONBRUN SEPLOW HARRIS &
HOFFMAN

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14

By Brooke Weitzman
BROOKE WEITZMAN
Attorney for Plaintiffs

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