

First Report of Settlement Administrator

Kincaid v. City of Fresno

November 21, 2008

Following the approval of the Kincaid Settlement Agreement by the Court on July 25, 2008 the Settlement Administrator began administering the settlement in accordance with the terms of both the Settlement Agreement and the Settlement Plan. Pursuant to the Plan, this report is the First Report of the Settlement Administrator. It covers the period from the inception of the administration of the settlement through October 31, 2008.

Overview of the Process

As reflected in this Report, after publication of the settlement and the claim form in the manner called for by the Settlement Agreement, the Settlement Administrator ultimately received 352 claim forms by the August 22 deadline established by the court. Although the settlement allows the Settlement Administrator to make determinations based solely on the claim forms, the Settlement Administrator was additionally able to conduct personal interviews with the majority of claimants in order to obtain additional assurances that the claims were valid. The Settlement Administrator assessed the property loss, circumstances of loss, and psychological impact of the loss suffered by each claimant. Where appropriate, the Settlement Administrator took additional steps, including consulting with others knowledgeable about the homeless community in Fresno, interviews with landlords (to confirm homeless status during the class period), and the like to reach a conclusion about the validity of the claim.

The Settlement Administrator began personal interviews with claimants on Monday, July 30, 2008 and continued through Friday, September 19, 2008. The interview process involved formidable challenges, including attempts to contact 352 homeless people to schedule individual appointments with the Settlement Administrator. Nonetheless, the Settlement Administrator completed 226 personal interviews.

Outreach efforts to set up interviews included publication of the Settlement Administrator's home phone number in the Labor Community Alliance in an article that encouraged claimants to check on the status of their claims, posting of notices about interviews that included the contact phone number at Poverello, Holy Cross Women's Center, and Catholic Charities (the Rescue Mission chose not to allow the notice to be posted), 24/7 information regarding the status of the claims process and voicemail at the contact number, and individual attempts to contact claimants using information provided on the claim forms.

A total of 84 claim forms were received between July 25 and August 22. Interviews were scheduled through September 19 so that all claimants would have an opportunity to participate in the interview process.

Phone interviews were made available for out-of-area, out-of-state, out-of-country, disabled, and hospitalized claimants. There was correspondence with claimants in jail and various prisons. All other interviews were face-to-face. Catholic Charities was able to make free office space

available through August 21. Interviews from the end of August through September 19 were conducted at a semi-secluded table at Courthouse Square.

Final Assignment of Claimants to Levels 1-5 or Disqualification

Between September 20 and September 25 the Settlement Administrator completed the final tasks of claim validation and reviewed the reasons for disqualification of six claims with counsel. Of the 352 claims received by the deadline, 2 claimants opted out of the process and 6 were disqualified, leaving 344 claimants.

The Settlement Administrator then made the final determination on the Level of each claim. As set forth in the settlement, there were 5 Levels to which claimants could be assigned, depending upon the severity of their loss, with claimants in Level 5 being those who had suffered the greatest loss. The Settlement Administrator determined that these claims should be assigned to Levels 1-5 as follows:

- Level 1: 198
- Level 2: 52
- Level 3: 48
- Level 4: 24
- Level 5: 22

Calculation of Settlement Payments

The calculation of settlement payments was completed on September 26 in accordance with paragraph 4.9 of the *Settlement Plan* which provides that the anticipated payments can be varied “provided that the proportions set forth in paragraphs 4.4 through 4.8 above are, as nearly as practicable maintained.”

After consultation with counsel and careful consideration, the Settlement Administrator concluded that confirmed successors of certain decedents as defined in Section 13006 of the California Probate Code were entitled to Cash Allowance payments from the *Kincaid v. City of Fresno, et al., Class Settlement Cash Fund*. However, because the *Kincaid v. City of Fresno, et al., Class Settlement Living Allowance Fund* is specifically designated to help particular class members move from the street to housing, the Settlement Administrator determined that Living Allowance Funds should be directed to this purpose (and not paid to successors). This more closely implemented the overall purpose of the Settlement Agreement. Claims were filed by relatives of three Level 5 class members and one Level 4 class member.

One issue that has arisen relates to distribution of settlement funds to successors. In reviewing the Settlement Plan, there is a provision indicating generally that, in the event a claimant dies, undistributed funds would revert to the settlement funds. The Settlement Plan also provides that

the Settlement Administrator may vary from the plan so long as its overall purpose is served. In reviewing and administering the Cash Fund, the Settlement Administrator has made distributions of \$3,772.23 plus two \$1,000 incentive payments to two successors of valid claimants, and has determined that additional cash payments totaling \$15,866.66 will be made to one of these successors and two additional successors of valid claimants. These payments are from the Cash Fund only. No payments to successors have been or will be made out of the Living Allowance Fund. No further payments to successors from the Cash Fund are contemplated. The limited payments to successors from the Cash Fund have been in particularly compelling circumstances that, in the opinion of the Settlement Administrator, justified these payments. The Settlement Administrator believes these payments are proper, but will be pleased to address this matter in greater detail at an informal hearing before the Court pursuant to the provisions of paragraph 6.10 of the Settlement Plan, if such a hearing is requested.

Kincaid v. City of Fresno, et al., Class Settlement Cash Fund

After receipt of the claim forms and completion of the evaluation process described in this Report, the Settlement Administrator made final calculations for payment of the Cash Fund. The final calculations resulted in an upward adjustment of actual cash payments under the Cash Fund by a factor of 1.3797101 resulting in the following levels of compensation from that fund:

Level 1: \$689.85
Level 2: \$1,379.71
Level 3: \$1,379.71
Level 4: \$2,069.56
Level 5: \$6,898.55

These cash payments will be made to 344 people until the entire Cash Fund, less any costs of administration, is paid out. The current status of the actual cash payments made (and remaining to be made) out of the Cash Fund is set forth in Exhibit A to this Report.

Kincaid v. City of Fresno, et al., Class Settlement Living Allowance Fund

After receipt of the claim forms and completion of the evaluation process described in this Report, the Settlement Administrator made final calculations for payment of the Living Allowance Fund. The final calculations resulted in an upward adjustment of payments made pursuant to the Living Allowance Fund a factor of 2.9301177 resulting in the following levels of compensation from that fund:

Level 3: \$4,395.17
Level 4: \$10,255.41
Level 5: \$26,371.05

At this rate of compensation, \$950,000.00 of the *Kincaid v. City of Fresno, et al., Class Settlement Living Allowance Fund* would be paid directly to class members. Any remaining

funds in the Living Allowance Fund, together with any interest received and less any actual administrative cost, will be paid for the benefit of valid claimants who were determined to be eligible for Living Allowance payments as part of the final payment of the Living Allowance Fund. All of these Living Allowance payments have been made by check. Each has been made payable to various landlords and vendors to provide for rent, deposits, transportation and other essentials of life to maximize the actual benefit of these payments for homeless class members who qualified for Living Allowance payments.

Administrative Costs

Although the settlement provides that administrative costs may be up to 3% of the total in the Cash Fund and Living Allowance Fund, the Settlement Administrator has donated 100% of her time and has obtained volunteer time from numerous others to keep the costs of administering the settlement at the lowest level possible. She has arranged for cost-free office space and has used her own home and resources for record-keeping where possible and has absorbed some of the costs of administration herself. As a result of these efforts, as of October 31, debited administrative expenses amounted to \$1,449.76 or 0.281% (less than 3/10 of 1%) of disbursements to class members through the same period.

In spite of this, the Settlement Administrator has realized that it may become necessary to incur administrative expenses in the future as the administration of the settlement continues. Although she has been able to secure volunteer help for the considerable effort involved in implementing this settlement up to this point, that may not always be possible. To make provisions for this potential need, the Settlement Administrator created the *Kincaid v. City of Fresno, et al., Class Settlement Administrative Expense Fund* with \$45,000.00 from the *Living Allowance Account*. The Settlement Administrator plans to continue her efforts to keep administrative costs as low as possible, and any unused balance in the *Administrative Expense Fund*, as well as any remaining interest from the *Living Allowance Fund* at account close-out would be paid out to class members in Levels 3-5 in the same proportion as provided for in the Settlement Plan.

The details of the actual payments made from the *Kincaid v. City of Fresno, et al., Class Settlement Living Allowance Fund*, as well as the amount remaining to be paid, are set forth in Exhibit B. In addition, a reporting of the status of the *Kincaid v. City of Fresno, et al., Class Settlement Administrative Expense Fund* can be found in Exhibit C.

Disbursement of Settlement Funds

The disbursement of benefits to class members began on October 2, 2008 (other than the *Incentive Payments to Class Representatives Pursuant to Court Order* that were paid on August 21).

The practical considerations of serving hundreds of class members anxious to collect cash benefits or to draw on living allowance *at the same time*, was carefully considered by the

Settlement Administrator in consultation with office personnel at the donated office space. A security guard was hired to handle class member sign-in, the flow of class members from the waiting room (Floor 7) to Settlement Administrator (Floor 6), and to advise class members on waiting time. The security guard also intervened when tempers flared in the waiting room and in one case when a mentally ill class member's behavior was threatening toward the Settlement Administrator.

To reduce the waiting time associated with the first rush of class members, class members were assigned by the first letter of their last name to one of the first four days of check-writing. The remaining check writing days in October were open to all class members. A total of \$240,270.40 from the *Cash Fund* and \$263,727.01 from the *Living Allowance Fund* was paid out in October.

Because 186 cash claims were paid-out in October, the demand for checks although still heavy has diminished. It has been possible to switch to payments by scheduled appointments in November. By December it is anticipated that a security guard will no longer be needed except in the case of appointments with the mentally ill claimant who is still capable of violence toward the Settlement Administrator.

The Settlement Administrator is looking for new office space for December; the building manager will not allow the Settlement Administrator to stay in the current location after November 21.

Settlement Administrator Assists in Establishment of Bank Accounts and Housing

The Settlement Administrator worked with a banker at United Security Bank (the bank that has the Kincaid accounts) to help class members set up checking or savings accounts. The Settlement Administrator also worked closely with Level 3, 4, and 5 class members to help them plan for and secure housing and other items largely comprising household goods, clothing, and transportation. She worked with landlords when necessary to have credit checks waived because of pre-payment of rent. Of the 48 Level 3-5 class members assisted in October, 37 of them received housing assistance. Others already had housing and needed help with other bills, for example, PG& E. A few chose to obtain transportation before looking for an apartment. All 48 currently have housing. The Settlement Administrator also worked out arrangements with retail sales organizations regarding the acceptance of Kincaid checks.

Accounting and Record-keeping

An accountant who specializes in trust accounting assisted in the development of accounting schedules, a file system for accounting records, and security protocols in the delivery of checks. The Settlement Administrator used the assistance of her husband, Bryan Apper, in setting up the accounting schedules, which is gratefully acknowledged. Bryan Apper's time and assistance has also been provided free of any charge. Using this important assistance, an accounting schedule is maintained for each Level and Fund type (5 cash schedules and 3 living allowance schedules),

for each account's interest and fees, and for administrative expenses. These schedules are summarized in Exhibits A, B, and C. In addition, a photo copy of each check and class member's ID is date-stamped and signed as received by each class member. Back-up documentation, e.g., rental agreements or invoices, are attached to these receipts in the case of expenditures from the *Living Allowance Fund*. In this way, the Settlement Administrator ensures that money is going to identified class members only and for purposes covered by the *Settlement Plan*. Individual accounting records are maintained for each class member for each Fund type. In this way the Settlement Administrator has a running balance of how much money each class member has remaining in his or her account.

Goals of Settlement Plan Achieved

Finally, the Settlement Administrator wishes to note the tremendous effect that the settlement has had on many class members' lives. Many are now in housing for the first time in many years; others have reunited with their families; still others have found employment or purchased work tools. Many have expressed gratitude at the chance for a fresh start in life.

Dated this 21st day of November, 2008.

/s/ Liza Apper
Liza Apper
Settlement Administrator