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SOUTHERN CALIFORNIA  
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Attorneys for Plaintiffs  
Mark Sipprelle, Helen Ayres, Felipe Ruiz,  
Robert Carmichael and Paul Ishak

UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA

MARK SIPPRELLE, HELENE  
AYRES; FELIPE RUIZ; ROBERT  
CARMICHAEL; and PAUL ISHAK,

Plaintiffs,

v.

CITY OF LAGUNA BEACH; THE  
LAGUNA BEACH POLICE  
DEPARTMENT; and THE CITY  
COUNCIL OF THE CITY OF  
LAGUNA BEACH,

Defendants.

ACLU FOUNDATION OF  
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Case No. SACV 08-1447 CJC  
(AGRx)

REQUEST FOR DISMISSAL

[Honorable Cormac J. Carney]

REQUEST FOR DISMISSAL

1  
2 Pursuant to the settlement reached on June 19, 2009 by and between  
3 Plaintiffs Mark Sippelle, Helene Ayres, Felipe Ruiz, Robert Carmichael, and Paul  
4 Ishak ("Plaintiffs") on the one hand and Defendants City of Laguna Beach,  
5 Laguna Beach Police Department, and the City Council of the City of Laguna  
6 Beach ("Defendants") on the other hand, the terms of which are memorialized in  
7 the Settlement Agreement, a fully executed copy of which is attached hereto as  
8 Exhibit 1, all claims by Plaintiffs against Defendants are hereby dismissed, with  
9 prejudice.

10 The United States District Court for the Central District of California Judge  
11 Cormac J. Carney will retain jurisdiction over this case for a term of three years to  
12 enforce the settlement agreement, with the condition that no party may bring  
13 litigation to enforce the settlement without first providing the other side notice of  
14 any alleged violation and a reasonable opportunity to cure the alleged violation.

15  
16 Dated: June 24, 2009

Respectfully submitted,

IRELL & MANELLA LLP

17  
18  
19 By:   
Andra Barmash Greene  
Attorneys for Plaintiff

20 Dated: June 25, 2009

21 ACLU FOUNDATION OF SOUTHERN  
CALIFORNIA

22  
23 By:   
Mark D. Rosenbaum  
Attorneys for Plaintiff  
24  
25  
26  
27  
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REQUEST FOR DISMISSAL

## **EXHIBIT 1**

### SETTLEMENT AGREEMENT

This SETTLEMENT AGREEMENT (the "Agreement") is entered into by and between Plaintiffs Mark Sipprelle, Helene Ayres, Felipe Ruiz, Robert Carmichael, and Paul Ishak ("Plaintiffs") and the City of Laguna Beach, the Laguna Beach Police Department, and the City Council of the City of Laguna Beach (collectively "Defendants"). Each Plaintiff and Defendant is a "Party" and collectively, Plaintiffs and Defendants are the "Parties."

### RECITALS

WHEREAS, on December 23, 2008, Plaintiffs filed a complaint (the "Complaint") against Defendants in U.S. District Court (the "Action"). The Complaint alleges, among other things, that Defendants' enforcement of Laguna Beach Municipal Code (hereinafter "LBMC") section 18.04.020 violated the Eighth Amendment's ban on cruel and unusual punishment by criminalizing the involuntary condition of homelessness.

WHEREAS, Defendants filed an Answer to the Complaint that, among other things, denies all allegations of wrongdoing.

WHEREAS, the Parties wish to avoid the costs, burdens, time and uncertainties associated with protracted litigation and they desire to compromise and settle their differences, fully and completely, on the terms set forth in this Agreement.

NOW, THEREFORE, for good and valuable consideration, including the mutual promises and covenants herein, the Parties agree to settle their disputes on the following terms:

### AGREEMENT

1. Effective Date. The "Effective Date" of this Agreement shall be the date upon which the last signatory Party executes this Agreement.

2. Effective Period. This agreement will remain in effect for three (3) years from the Effective Date ("Effective Period").

3. Laguna Beach Municipal Code.

A. The Parties acknowledge that on March 3, 2009, Defendant City Council of the City of Laguna Beach adopted an ordinance repealing those portions of LBMC section 18.04.020 relating to camping and sleeping in public places within the City.

B. For a period of three (3) years following the Effective Date of this Agreement, Defendants agree to furnish Plaintiffs' counsel with written notice at least thirty (30) days prior to any City Council public meeting at which action is proposed to add or revise provisions of the Laguna Beach Municipal Code pertaining to the prohibition of, or restriction on, camping or sleeping in public places within the City.

C. Nothing in this Agreement shall prohibit Defendants (including their officers, employees and agents) from stopping, detaining, issuing citations or making arrests, or threatening to issue citations or make arrests, to persons reasonably believed to be in violation of the current provisions of Laguna Beach Municipal Code section 18.04.020 with respect to awnings, canopies, umbrellas, and other such covers.

4. Disposition of Prior Arrests and Citations.

A. Plaintiffs intend, within twenty-one (21) days of the Effective Date of this Agreement, to move the Court for an order directing Defendants to seal, expunge or destroy permanently all records created on and after June 18, 2007 relating to arrests of or citations to Plaintiffs and other persons for violation of the former provisions of Laguna Beach Municipal Code section 18.04.020 with regard to camping or sleeping on public property. Plaintiffs further intend to move the Court for an order directing Defendants to seal, expunge or destroy permanently all records created on and after January 1, 2004 relating to arrests of or citations to Plaintiffs, or any of them, for violation of the former provisions of Laguna Beach Municipal Code section 18.04.020 with regard to camping or sleeping on public property.

B. Defendants agree not to oppose such motion by Plaintiffs, provided that the order requested and obtained substantially conforms to the following:

- i. Defendants shall have thirty (30) days of the receipt of the order to undertake and complete the sealing, expungement or destruction of the described records and to furnish Plaintiffs' counsel with written notice of such completion.
- ii. Defendants shall have thirty (30) days from the receipt of the order to request in writing to their City Attorney and the Orange County District Attorney that any copies of the described records in their possession either be sealed, expunged or destroyed or be returned to the City. Such requests shall include a copy of the Court's order. Defendants shall furnish Plaintiffs' counsel with a copy of such requests and any written response to such requests.

C. During the Effective Period of this Agreement, Defendants will not oppose the petition to the Superior Court of Orange County of any person to expunge a conviction, occurring on or after December 23, 2006, of a violation of the former provisions of Laguna Beach Municipal Code section 18.04.020 with regard to camping or sleeping on public property. Defendants will not oppose the petition of any Plaintiff to expunge a conviction, occurring on or after January 1, 2004, of a violation of the former provisions of Laguna Beach Municipal Code section 18.04.020 with regard to camping or sleeping on public property.

5. California Penal Code section 647(e).

A. Except as otherwise provided below, and for a period of two (2) years following the Effective Date of this Agreement, Defendants agree to furnish Plaintiffs' counsel with written notice at least thirty (30) days prior to the City's resumption of enforcement of California Penal

Code section 647(e) with respect to lodging in any City public building, structure or place without the permission of the City.

B. Prior to such time as Defendants may determine to resume enforcement of California Penal Code section 647(e), Defendants (including their officers, employees and agents), except as otherwise provided below, shall not issue citations or make arrests, or threaten to issue citations or make arrests, for violation of California Penal Code section 647(e) with respect to lodging in any City public building, structure or place without the permission of the City.

C. Prior to such time as Defendants may determine to resume enforcement of California Penal Code section 647(e), Defendants (including their officers, employees and agents), except as otherwise provided below, shall not rely on a violation of California Penal Code 647(e) with respect to lodging in any City public building, structure or place without the permission of the City for the purpose of establishing probable cause to believe that a person is engaged in or is about to engage in criminal activity.

D. Nothing in this Agreement shall prohibit Defendants (including their officers, employees and agents) from issuing citations or making arrests, or threatening to issue citations or make arrests, for violation of California Penal Code section 647(e) with respect to lodging in any private building, structure or place within the City without the permission of the private owner, or with respect to lodging in any building, structure or place owned by a public entity other than the City without the permission of that other public entity.

E. Nothing in this Agreement shall prohibit Defendants (including their officers, employees and agents) from issuing citations or making arrests, or threatening to issue citations or make arrests, for violation of California Penal Code section 647(e) with respect to lodging in any City public building, structure or place without the permission of the City in circumstances presenting reasonable public health, safety and welfare concerns with respect to possible harm or injury to persons and/or damage to property (e.g., fire hazard).

F. Nothing in this Agreement shall prohibit consensual encounters between Defendants (including their officers, employees and agents) and persons who are reasonably believed to be in violation of California Penal Code section 647(e) with respect to lodging in any City public building, structure or place without the permission of the City, provided that such encounters are not used unlawfully for the purpose of harassing or intimidating any such person, and provided further that Defendants shall have specific, articulable facts regarding a sleeping person's health, safety or welfare to justify awakening the person and initiating a consensual encounter.

G. Nothing in this Agreement shall prohibit Defendants (including their officers, employees and agents) from stopping, detaining, issuing citations or making arrests, or threatening to issue citations or make arrests, or taking other law enforcement action when there is probable cause to believe that a person is violating some local law or other provision of state law.



6. Dismissal of Action.

A. Within seven (7) days of the Effective Date of this Agreement, Plaintiffs agree to file a motion for voluntary dismissal of the Action with prejudice.

B. Defendants acknowledge and agree that upon entry, such voluntary dismissal shall not operate as a bar or estoppel to any future legal proceedings arising from any acts or omissions of Defendants subsequent to the date of this Agreement.

7. Enforcement of the Agreement.

A. Notwithstanding the voluntary dismissal of this Action, the Parties agree that the Court shall retain jurisdiction for the purpose of enforcement of the terms of this Agreement.

B. The Court shall retain jurisdiction for the Effective Period of the Agreement.

C. No party may seek to enforce the Agreement without first providing the other side notice of any alleged violation and a reasonable opportunity to cure the alleged violation and without meeting and conferring in good faith.

8. Attorneys' Fees.

A. Within thirty (30) days of the Effective Date of this Agreement, Defendants agree to pay, and Plaintiffs and their counsel agree to accept, the total sum of \$9,000.00 to Plaintiffs for attorneys' fees incurred in connection with the initiation, prosecution and resolution of the Action, including but not limited to the negotiation, drafting and effectuation of this Agreement, and any related proceedings, efforts and activities that preceded the commencement of the Action.

B. Except as expressly provided above, the Parties and their respective counsel agree to bear their own attorneys' fees, costs and other expenses incurred in connection with the initiation, prosecution and resolution of the Action, including but not limited to the negotiation, drafting and effectuation of this Agreement, and any related proceedings, efforts and activities that preceded the commencement of the Action.

9. Time of Essence. Time is of the essence with respect to each and every provision of this Agreement.

10. Full Settlement and Release. The Parties agree that this Agreement is in full settlement and release of all claims outlined in the Complaint.

11. Civil Code Section 1542. To the extent that the foregoing release is a release to which Section 1542 of the California Civil Code applies, it is the intention of the Parties that the foregoing release shall be effective as a bar to any and all actions, fees, damages, losses, claims, liabilities and demands of whatsoever character, nature and kind, known or unknown, suspected or unsuspected, related in any way to the Complaint or the litigation of the Action.

12. Non-Admission of Liability. This Agreement is entered into as a compromise of disputed claims. This Agreement does not constitute, nor shall it be construed as, an admission of any liability or wrongdoing by any party.

13. Notification. Any notice or communication to any Party permitted or required by this Agreement shall be made in writing, and shall be addressed to the following:

A. Plaintiffs:

- i. Andra Greene  
Irell & Manella, LLP  
840 Newport Center Drive  
Suite 400  
Newport Beach, CA 92660  
Facsimile: 949-760-5200
- ii. Mark Rosenbaum  
ACLU Foundation of Southern California  
1313 West Eighth Street  
Los Angeles, CA 90017  
Facsimile: 213-977-5297

B. Defendants:

Philip Kohn  
611 Anton Boulevard  
Suite 1400  
Costa Mesa, California 92626  
Facsimile: 714-546-9035

14. Applicable law. The provisions of this Agreement shall be governed by the laws of the State of California.

15. Counterparts. This Agreement may be executed in separate counterparts, each of which is deemed to be an original and all of which taken together constitute one and the same agreement.

16. Facsimile Signatures. The signatures to this Agreement may be evidenced by facsimile copies reflecting the signatures hereto, and any such facsimile copy shall be sufficient to evidence the signature just as if it were an original signature.

17. Authority. Each individual executing this Agreement on behalf of an entity represents and warrants that he or she is a duly authorized representative of that entity with full authority to bind it to each and every term and condition thereof.

18. Voluntary Action With Advice of Counsel: Each Party represents that it has been represented throughout all negotiations that preceded execution of this Agreement by counsel of its own independent choice. The Parties have entered into this Agreement freely and voluntarily



and after having consulted with legal counsel and having had the terms contained in this Agreement explained to each of them by counsel. The Parties have read, appreciate and understand the terms contained in this Agreement and are fully satisfied with those terms as set forth herein.

19. Entire Agreement. Each of the Parties acknowledges that no person has made any promise, representation or warranty whatsoever, express or implied, not contained herein concerning the subject matter hereof, to induce the execution of this Agreement, and each signatory hereby acknowledges that said signatory has not executed this Agreement in reliance upon any such promise, representation or warranty. This Agreement constitutes the entire understanding between the Parties and supersedes all prior negotiations, representations or agreements between the Parties, either written or oral, on the subject hereof.

20. Modifications. There shall be no modifications or amendments to this Agreement unless they are in writing, signed by the Parties.

21. Severability Clause. If any provision or provisions of this Agreement shall be held to be invalid, illegal, unenforceable or in conflict with the law of any jurisdiction, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

APPROVED AND AGREED:

PLAINTIFFS

MARK SIPPRELLE

Dated: 02/06, 2009

By: Mark Sipprelle

HELENE AYRES

Dated: \_\_\_\_\_, 2009

By: \_\_\_\_\_

FELIPE RUIZ

Dated: \_\_\_\_\_, 2009

By: \_\_\_\_\_

ROBERT CARMICHAEL

Dated: \_\_\_\_\_, 2009

By: \_\_\_\_\_

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APPROVED AND AGREED:

PLAINTIFFS

MARK SIPPRELLE

Dated: \_\_\_\_\_, 2009

By: \_\_\_\_\_

HELENE AYRES

Dated: 5/27, 2009

By: Helene M. Ayres

FELIPE RUIZ

Dated: \_\_\_\_\_, 2009

By: \_\_\_\_\_

ROBERT CARMICHAEL

Dated: \_\_\_\_\_, 2009

By: \_\_\_\_\_

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APPROVED AND AGREED:

PLAINTIFFS

MARK SIPPRELLE

Dated: \_\_\_\_\_, 2009

By: \_\_\_\_\_

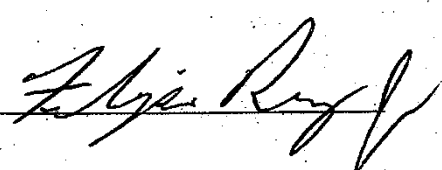
HELENE AYRES

Dated: \_\_\_\_\_, 2009

By: \_\_\_\_\_

FELIPE RUIZ

Dated: 5-27, 2009

By: 

ROBERT CARMICHAEL

Dated: \_\_\_\_\_, 2009

By: \_\_\_\_\_

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APPROVED AND AGREED:

PLAINTIFFS

MARK SIPPRELLE

Dated: \_\_\_\_\_, 2009

By: \_\_\_\_\_

HELENE AYRES

Dated: \_\_\_\_\_, 2009

By: \_\_\_\_\_

FELIPE RUIZ

Dated: \_\_\_\_\_, 2009

By: \_\_\_\_\_

ROBERT CARMICHAEL

Dated: 5/22/2009 

By: 

PAUL ISHAK

Dated: 6 19, 2009

By: Paul Ishak

DEFENDANTS:

CITY OF LAGUNA BEACH

Dated: \_\_\_\_\_, 2009

By: \_\_\_\_\_

LAGUNA BEACH POLICE DEPARTMENT

Dated: \_\_\_\_\_, 2009

By: \_\_\_\_\_

CITY COUNCIL OF THE CITY OF LAGUNA BEACH

Dated: \_\_\_\_\_, 2009

By: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Andra Greene

\_\_\_\_\_  
Philip Kohn

Counsel for Defendants

\_\_\_\_\_  
Mark Rosenbaum

Counsel for Plaintiffs

PAUL ISHAK

Dated: \_\_\_\_\_, 2009

By: \_\_\_\_\_

DEFENDANTS:

CITY OF LAGUNA BEACH

Dated: 5-19, 2009

By: Kelly H. Boyd

LAGUNA BEACH POLICE DEPARTMENT

Dated: 5/19, 2009

By: Kenneth Tuck

CITY COUNCIL OF THE CITY OF LAGUNA BEACH

Dated: 5-19, 2009

By: Kelly H. Boyd

APPROVED AS TO FORM:

\_\_\_\_\_  
Andra Greene

  
Philip Kohn

Counsel for Defendants

\_\_\_\_\_  
Mark Rosenbaum

Counsel for Plaintiffs



PAUL ISHAK

Dated: \_\_\_\_\_, 2009

By: \_\_\_\_\_

DEFENDANTS:

CITY OF LAGUNA BEACH

Dated: \_\_\_\_\_, 2009

By: \_\_\_\_\_

LAGUNA BEACH POLICE DEPARTMENT

Dated: \_\_\_\_\_, 2009

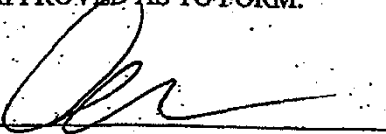
By: \_\_\_\_\_

CITY COUNCIL OF THE CITY OF LAGUNA BEACH

Dated: \_\_\_\_\_, 2009

By: \_\_\_\_\_

APPROVED AS TO FORM:



Andra Greene

Philip Kohn  
Counsel for Defendants

Mark Rosenbaum

Counsel for Plaintiffs

PAUL ISHAK

Dated: \_\_\_\_\_, 2009

By: \_\_\_\_\_

DEFENDANTS:

CITY OF LAGUNA BEACH

Dated: \_\_\_\_\_, 2009

By: \_\_\_\_\_

LAGUNA BEACH POLICE DEPARTMENT

Dated: \_\_\_\_\_, 2009

By: \_\_\_\_\_

CITY COUNCIL OF THE CITY OF LAGUNA BEACH

Dated: \_\_\_\_\_, 2009

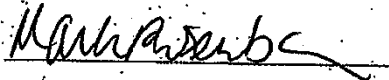
By: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Andra Greene

\_\_\_\_\_  
Philip Kohn

Counsel for Defendants



Mark Rosenbaum

Counsel for Plaintiffs

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Newport Beach, CA  
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Orange, California 92868  
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Irvine, California 92697-8000  
Telephone: (949) 824-7722

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

MARK SIPPRELLE, HELENE  
AYRES; FELIPE RUIZ; ROBERT  
CARMICHAEL; and PAUL ISHAK,

Plaintiffs,

v.

CITY OF LAGUNA BEACH; THE  
LAGUNA BEACH POLICE  
DEPARTMENT; and THE CITY  
COUNCIL OF THE CITY OF  
LAGUNA BEACH,

Defendants.

Case No. SACV 08-1447 CJC  
(AGRx)

ORDER DISMISSING CASE

ORDER DISMISSING CASE

**ORDER**

Pursuant to the settlement reached on June 19, 2009 by and between Plaintiffs Mark Sippelle, Helene Ayres, Felipe Ruiz, Robert Carmichael, and Paul Ishak on the one hand ("Plaintiffs"), and Defendants City of Laguna Beach, Laguna Beach Police Department, and City Council of the City of Laguna Beach on the other hand ("Defendants"), all claims by Plaintiffs against Defendants are hereby dismissed, with prejudice.

The Court shall retain jurisdiction over this case for a term of three years to enforce the terms of the settlement agreement, with the condition that no party may bring litigation to enforce it without first providing the other side notice of any alleged violation and a reasonable opportunity to cure the alleged violation.

IT IS SO ORDERED.

DATED: \_\_\_\_\_

By: Judge Cormac J. Carney  
United States District Court