

SETTLEMENT AGREEMENT AND STIPULATION CONTINUING
JURIDICTION - APRIL 2007

Greg Spencer et al. v. City of San Diego, et al.

Case No. 04CV-2314BEN (WMC)

1 SAN DIEGO VOLUNTEER LAWYER PROGRAM
625 Broadway, Suite 925
2 San Diego, California 92101
Telephone: (619) 235-5656

3 (Additional Plaintiffs' Counsel on signature page)

4 MICHAEL J. AGUIRRE, CITY ATTORNEY
5 Office of the City Attorney
1200 Third Avenue, Suite 1100
6 San Diego, California 92101-4100
Telephone: (619) 533-5800

7 Attorney for Defendant CITY OF SAN DIEGO and SAN DIEGO POLICE DEPARTMENT
8

9

10

UNITED STATES DISTRICT COURT

11

SOUTHERN DISTRICT OF CALIFORNIA

12

GREG SPENCER; RANDALL FRENCH;
MARGARET ARMSTRONG; JIMMY
13 WARD; JEFFREY MILES; SYLVIA
14 LEVANOS; JUAN ALEJO; STEVEN GREER;
and ROBERT YBARRA, individually and on
behalf of themselves and all others similarly
15 situated,

) Case No. 04CV-2314BEN (WMC)

) Assigned to Hon. Roger T. Benitez/
Magistrate Judge William McCurine

16

Plaintiffs,

) **SETTLEMENT AGREEMENT AND
STIPULATION TO CONTINUING
JURISDICTION - 28 U.S.C. 636(c)**

17

v.

18

THE CITY OF SAN DIEGO; THE CITY OF
SAN DIEGO POLICE DEPARTMENT, and
19 SAN DIEGO POLICE CHIEF WILLIAM
LANSDOWNE, in his official capacity only,

20

21

Defendants.

22

23

IT IS HEREBY STIPULATED AND AGREED by and between GREG SPENCER and

24

the Class representatives, individually and on behalf of all others similarly situated on the one

25

hand, and Defendants including the CITY OF SAN DIEGO; CITY OF SAN DIEGO POLICE

26

DEPARTMENT; and SAN DIEGO POLICE CHIEF WILLIAM LANSDOWNE, in his

27

///

28

///

1 official capacity only recognizing that this Settlement Agreement and Stipulation for Continuing
2 Jurisdiction is subject to San Diego City Council approval:

3 **DEFINITIONS**

4 **A. Settlement Agreement and Stipulation to Continuing Jurisdiction:** Refers to
5 this document entered into under the auspices of Magistrate Judge William McCurine on
6 February 21, 2007 resolving the claims of the parties on an interim basis and subjecting the terms
7 of the resolution to the continuing jurisdiction of Magistrate McCurine.

8 **B. Class Members:** The Class refers to homeless persons as defined in the Second
9 Amended Complaint including individuals as defined in the Stewart B. McKinney Homeless
10 Assistance Act, 42 U.S.C. Section 11301, et seq., as persons who lack a fixed, regular, and
11 adequate nighttime residence in the City of San Diego.

12 **C. Class Action Complaint ("Complaint")** Refers to the Second Amended Class
13 Action Complaint for Declaratory Relief, Injunctive Relief and Damages under the United States
14 Civil Rights Act (42 U.S.C. section 1983 and California Code of Civil Procedure section 1060)
15 as filed in the United States District Court for the Southern District of California as Civil Case
16 No. 04CV-2314BEN(WMC).

17 **D. Answer:** Refers to the Defendant CITY OF SAN DIEGO'S Answer to Plaintiffs'
18 Complaint as filed on or about May 19, 2006.

19 **E. Preliminary Injunction:** Refers to Plaintiffs' Motion for a Preliminary
20 Injunction Prohibiting Defendants from Issuing Citations for Violation of Penal Code Sections
21 647(j) at night, as filed pursuant to Federal Rules of Civil Procedure 65, originally set for hearing
22 January 29, 2007 and presently off calendar.

23 **F. Defendants:** Refers to CITY OF SAN DIEGO, the SAN DIEGO POLICE
24 DEPARTMENT, and CHIEF OF POLICE WILLIAM LANSDOWNE in his official capacity
25 only.

26 ///

27 ///

28 ///

1 I.

2 SETTLEMENT AGREEMENT

3 This Agreement represents a compromise and settlement of disputed claims. Nothing in
4 this Agreement is intended to or will be construed as an admission by Defendants that the
5 Plaintiffs' claims in the lawsuit have merit nor that it has any liability to Plaintiffs or the Class on
6 those claims nor an admission by Plaintiffs that Defendants' defenses in the action have merit.

7 This Agreement is made for the sole purpose of consummating a settlement that allows
8 the continuing jurisdiction of Magistrate Judge William McCurine, United States District Court,
9 Southern District of California, in this matter to monitor certain altered policies and practices of
10 the SAN DIEGO POLICE DEPARTMENT and the CITY OF SAN DIEGO with periodic
11 review, if necessary, by the Court. By entering into this Agreement, none of the parties admit
12 the allegations or contentions of any other party. Each party is entering into this Agreement for
13 the sole purpose of resolving this matter and avoiding the time and expense incident to protracted
14 litigation before this Court.

15 Plaintiff Class now desires to take its previously scheduled Request for Preliminary
16 Injunction off calendar and to compromise the claims as set forth in the Second Amended
17 Complaint in consideration of the Defendants' agreement to alter certain policies and practices
18 and take certain remedial action, including but not limited to the adoption of policies by the SAN
19 DIEGO POLICE DEPARTMENT to modify enforcement actions regarding Penal Code section
20 647(j) generally, and suspending citations for Penal Code section 647(j) between 9:00 p.m. and
21 5:30 a.m., as set forth in Exhibit A, attached hereto.

22 Attorneys for the Plaintiff Class waive attorneys' fees and costs in this matter.
23 Defendants agree to bear their own fees and costs.

24
25 II.

26 FAIRNESS OF SETTLEMENT

27 The Parties stipulate and agree that the settlement set forth in this Agreement, and its
28 terms, are fair, just, reasonable, adequate and equitable to the Class Members and Defendants,

1 are the product of good faith, arms-length negotiations between the Parties, and are consistent
2 with public policy, and fully comply with applicable provisions of law.

3 **III.**

4 **CLASS CERTIFICATION**

5 A. Although the matter is styled as a Class Action, the parties, Plaintiff and
6 Defendant, recognize that in consideration of the Defendant modifying its procedures and
7 otherwise taking formal action to abate and modify its actions with regard to the Class, that Class
8 certification would remain unnecessary. For purposes of this Class Action, the parties are
9 treating it as Federal Rule of Civil Procedure Rule 23(2) action inasmuch as the CITY is
10 opposing the Class or has acted or refused to act on grounds generally applicable to the Class,
11 vacating appropriate final injunctive relief with respect to the Class as a whole. Because of this
12 provision, no notice to the Class is required.

13 B. The parties agree that the lawsuit shall in all other respects be stayed pending
14 formal approval of the requisite CITY authorities, including but not limited to the CITY Council,
15 Mayor, and Chief of Police, after which the settlement will fall under the jurisdiction of
16 Magistrate McCurine.

17 **IV.**

18 **INJUNCTIVE RELIEF**

19 The parties agree that the SAN DIEGO POLICE DEPARTMENT Training Bulletin
20 dated November 17, 2006 will form the nucleus of the modification of the Defendants' Penal
21 Code section 647(j) practices. The parties specifically agree that provisions of "Illegal Lodging
22 Enforcement Guidelines (2)" shall be modified to read, "Officers will not ordinarily issue Penal
23 Code section 647(j) citations between the hours of 2100 and 0530."

24 The terms and provisions of the Training Bulletin, a document of three pages, are
25 attached hereto and incorporated by reference as Exhibits A1 through A3 and made a part of the
26 settlement as though fully set forth herein.

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

V.

CONTINUING JURISDICTION OF THE DISTRICT COURT

The parties agree and stipulate to continuing jurisdiction of the District Court and specifically consent to the continued jurisdiction under 28 U.S.C. section 636(c) to the binding jurisdictional authority of Magistrate Judge William McCurine, who shall have full and complete authority to interpret the terms of enforcement of the Stipulation, the adherence or lack thereof to the terms of the Settlement Agreement and Stipulation, to alter, amend, and/or terminate the Settlement Agreement and Stipulation upon application and notice to either party. The parties specifically waive their right to appeal any such Order enforcing or interpreting the decree as a portion of the Stipulation to Continue Jurisdiction.

VI.

MUTUAL FULL COOPERATION

The parties agree to fully cooperate with each other to accomplish the terms of this Agreement including but not limited to execution of such documents, or to take other such action as may reasonably be necessary to implement the terms of this Agreement.

The parties to this Agreement shall use their best efforts, including all efforts contemplated by this Agreement, and any and all other efforts that may become necessary by order of the Court, or otherwise to effectuate this Agreement, and the terms set forth herein. In the event the parties are unable to reach agreement on the form and content of any document needed to implement the Settlement Agreement, and any supplemental provisions that may become necessary to effectuate the terms of the Settlement, the parties agree to seek the assistance of the Court, Magistrate William McCurine under the Stipulation to Continue Jurisdiction under 28 U.S.C. section 636(c).

VII.

AGREEMENT NOT ADMISSIBLE

This Agreement between the parties is a settlement document and shall, pursuant to requisite Federal and California Evidence Codes, be inadmissible in evidence in any proceeding,

1 except an action or proceeding to interpret, enforce, or otherwise seek relief under the Agreement
2 pursuant to this Stipulation of Continuing Jurisdiction.

3 **VIII.**

4 **GENERAL PROVISIONS**

5 **A. Entire Agreement.**

6 This Agreement and Stipulation to Continuing Jurisdiction constitute the entire
7 Agreement between the parties and is the result of a mediation session on February 21, 2007
8 under the auspices of Magistrate Judge William McCurine. The transcript of the proceedings
9 before Judge McCurine is incorporated herein as though fully set forth in the event of a
10 disagreement as to the terms or conflict between the terms of the documentation and the
11 proceedings before Judge McCurine who shall retain full jurisdiction to make these
12 interpretations.

13 This Agreement and Stipulation to Continuing Jurisdiction resolves any and all claims,
14 known or unknown, that were or could have been asserted in the second amended complaint or
15 that relate to the enforcement of Penal Code §647(j), prior to the execution of this Agreement as
16 long as the terms of the settlement remain in full force and effect.

17 **B. Authorization to Act.**

18 Class counsel warrants and represents that it is authorized by Plaintiffs, and counsel of
19 record for Defendants warrants that it is authorized by Defendants, to take all appropriate action
20 required to effectuate the terms of this Agreement.

21 ///
22 ///
23 ///
24 ///
25 ///
26 ///
27 ///
28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

C. Entity Signatories.

Any individual executing this Agreement, or any related document, on behalf of a corporation, entity or organization who, as shown by the signature blocks below, is to execute this Agreement, hereby warrants and promises for the benefit of all parties hereto that he or she has been duly authorized by such corporation, entity or organization to execute this Agreement.

IT IS SO AGREED:

SAN DIEGO CITY ATTORNEY

Dated: April 10, 2007


By: Michael J. Aguirre

Dated: _____, 2007

IT IS SO STIPULATED:

**SAN DIEGO VOLUNTEER
LAWYERS PROGRAM**
Attorneys for Plaintiff and the Class

Dated: _____, 2007

COHELAN & KHOURY
605 C Street, Suite 200
San Diego, CA 92101-5307
Telephone: (619) 595-3001

By: Timothy D. Cohelan, SBN 60827

Dated: _____, 2007

DREHER LAW FIRM
835 Fifth Avenue, Suite 202
San Diego, California 92101
Telephone: (619) 230-8828

By: Robert S. Dreher, SBN 120527

1 **C. Entity Signatories.**

2 Any individual executing this Agreement, or any related document, on behalf of a
3 corporation, entity or organization who, as shown by the signature blocks below, is to execute
4 this Agreement, hereby warrants and promises for the benefit of all parties hereto that he or she
5 has been duly authorized by such corporation, entity or organization to execute this Agreement.

6
7 **IT IS SO AGREED:**

SAN DIEGO CITY ATTORNEY

8
9 Dated: _____, 2007

By: Michael J. Aguirre

10
11 Dated: 0327, 2007

Margaret Armstrong

12
13 **IT IS SO STIPULATED:**

14 **SAN DIEGO VOLUNTEER**
15 **LAWYERS PROGRAM**
Attorneys for Plaintiff and the Class

16 Dated: _____, 2007

17 **COHELAN & KHOURY**
605 C Street, Suite 200
San Diego, CA 92101-5307
Telephone: (619) 595-3001

18
19
20 By: Timothy D. Cohelan, SBN 60827

21
22 Dated: _____, 2007

23 **DREHER LAW FIRM**
835 Fifth Avenue, Suite 202
San Diego, California 92101
Telephone: (619) 230-8828

24
25
26 By: Robert S. Dreher, SBN 120527

San Diego Police Department

TRAINING BULLETIN

A PUBLICATION OF THE SAN DIEGO POLICE DEPARTMENT

WILLIAM M. LANSDOWNE
CHIEF OF POLICE

06-03

November 17, 2006

ILLEGAL LODGING - Penal Code 647(i)

I. BACKGROUND

Penal Code 647(i) prohibits lodging in any building, structure, vehicle, or place, PUBLIC or PRIVATE, without the permission of the owner or lawful possessor (i.e. tenant, manager). The San Diego Police Department's enforcement of 647(i) P.C. is citizen complaint driven.

Often those in violation of illegal lodging (PC 647(i)) are individuals who also suffer from a wide range of health problems, including contagious diseases, mental illness, and narcotic addiction. They may also be involved in other criminal behaviors, including disorderly conduct offenses, such as public urination, and more serious crimes including drug dealing. These behaviors affect both the illegal lodger and the citizens who work and live in the area.

The police response to areas affected by illegal lodgers is threefold (presented in no significant sequence):

- To prevent crime;
- To enforce the law; and,
- To assist those who cannot assist themselves.

During enforcement action for illegal lodging officers must remember that part of the "police role" is to provide education on the whereabouts of social agencies and inform individuals that they are breaking the law. Individuals thought to be in violation of PC 647(i) should be educated about illegal lodging laws and given handouts, such as the "Downtown Directory of Social Services" and "Homeless Outreach Team" business cards. Documentation of these contacts should be made on field interview forms.

In addition to enforcing the law, police also assist those who cannot assist themselves by putting them in contact with appropriate medical, social, psychiatric, and other services. This assistance can range from providing referral information on working with other professionals such as PERT, the Homeless Outreach Team or any San Diego County services. Additionally, the police have a responsibility to physically take a person into

custody when they display an imminent threat either to themselves or others pursuant to W&I 150.

II. ILLEGAL LODGING ENFORCEMENT GUIDELINES

The following guidelines are to be followed with respect to illegal lodging enforcement:

1. Officers should only enforce illegal lodging in those areas where the City has received complaints.
2. Officers will not ordinarily issue Penal Code section 647(j) citations between the hours of 2100 and 0530.
3. If an officer encounters an individual illegally lodging in an area where complaints have been received, prior to taking any enforcement action, the officer should first conduct computer checks for past illegal lodging history, warrants, criminal history, ARJIS for field interviews related to past illegal lodging warnings, and verification of status of any citizen complaints. Officers should inquire as to whether the individual sought shelter for the night before, and document what that individual did or did not do with respect to seeking shelter the night before the potential enforcement action.
4. Officers should then determine whether the individuals in violation of PC 647(j) desire assistance in the form of shelter or other social services. If services are requested, officers should direct or assist interested individuals to the appropriate service providers. Officers should educate individuals of applicable illegal lodging laws, explain how to obtain shelter beds and give "Homeless Outreach Team" contact information to the individual. If the individual refuses services, officers shall ask the individual to voluntarily move from the area.
5. If an individual refuses to voluntarily move from the area in question and rejects all offers for shelter and social services, officers may then consider citing for illegal lodging (PC 647(j)) as described in the procedure below.
6. Officers should consider physical arrest for PC 647(j) only in those situations where an individual has either been repeatedly cited within a short period of time (30 days) or where an individual refuses to leave the area in question after being cited by an officer.

III. ILLEGAL LODGING ENFORCEMENT PROCEDURES

Prior to any arrest or citation the following procedures should be followed:

Illegal lodging arrests and citations must document the two ELEMENTS of "lodging and without permission":

1. Lodging

- a. What kind of place/structure is it? Address is not enough information. Note if regular encampment; type and frequency of citizen complaints.
- b. Bedding; blanket, tarp, box, sleeping bag, etc.
- c. Belongings-food, pets, clothing, shopping cart, utensils, and furniture?
- d. Prior Contacts-for what, when, where?
- e. Admissions-how long there, how often there, overnight?
- f. It is insufficient to support a charge of illegal lodging if a person is sleeping with no other evidence of lodging.

2. Without Permission
 - a. Statement by owner/occupant
 - b. Owner/occupant's name and address.
 - c. Trespass letter/Letter of Authorization will be sufficient.

IV. ADDITIONAL INVESTIGATIVE CONSIDERATIONS

1. Photographs of suspect at encampment, with his/her belongings are very helpful.
2. Completely fill out form reports and individualize contact with a narrative. Attempt to locate the reporting party and/or any witnesses to the illegal lodging. Witness and reporting party statements/information must be included in the reports.

Officers should ask investigative type questions while speaking with suspects. For example:

- How long have you been homeless?
 - Have you had any contacts with social services agencies?
 - Which ones and what happened?
 - Are you currently receiving any type of income? (Le. Social Security)
 - Have you been warned about illegal lodging?
 - Have you had contact with the SDPD Homeless Outreach Team?
 - Have you attempted to locate housing or shelter?
3. Investigate for evidence of other crimes such as under the influence, warrants, and possession of paraphernalia or controlled substances.

Any questions or concerns regarding this Training Bulletin should be directed to Sergeant Rick Schnell, Homeless Outreach Team, 619-850-0655 or Teresa Clanton, Legal Assistant, City Attorney Neighborhood Prosecution Unit, 619-533-5658.

SEPTEMBER 2010 STIPULATION AND ORDER MODIFYING
SETTLEMENT AGREEMENT

Greg Spencer et al. v. City of San Diego, et al.

Case No. 04CV-2314BEN (WMC)

incorporated into the SDPD Training Bulletin re: ILLEGAL LODGING – Penal Code 647(e), which is attached hereto as Exhibit A and incorporated by reference herein.

2. As described in the departmental Training Bulletin, members of the San Diego Police Department may hereafter enforce the illegal lodging law between the hours of 2100 (9:00 p.m.) and 0530 (5:30 a.m.) in the area bounded by Laurel Street to the north, by I-5 to the east, by San Diego Bay to the west, and by Sigsbee Street to the south (hereinafter, the "Downtown Area") if, and only if:

- a) A member of the San Diego Police Department has first confirmed that there is a shelter bed available for that person within the Downtown Area or within a 5 mile radius of 25th Street and Market Street;
- b) A member of the San Diego Police Department offers a shelter bed to that person; and,
- c) That person refuses to accept the available shelter bed, with appropriate documentation of the offer and refusal.

3. The parties shall meet and confer to determine the details and objective characteristics of the identification of "available" shelter, the offer of shelter, its location and method of documentation.

4. The parties will further meet and confer in an effort to have or create a program using the community court model or other appropriate model under auspices of the Superior Court of San Diego County to hear and determine issues related to Penal Code 647(e) citations issued pursuant to this stipulation.

5. If no shelter bed is available in the "Downtown Area" for such person, or the individual is turned down by the services provider for an available bed, the present terms and procedures of the 2007 Settlement and Order will remain in effect.

6. The present terms of the 2007 Settlement and Order remain in effect throughout the City of San Diego, except to the extent it is hereby modified in the Downtown Area.

7. The parties agree to continue to negotiate over the terms of the 2007 settlement.

8. The Court reserves jurisdiction to interpret and enforce this Order.

IT IS SO STIPULATED:

Dated:

**SAN DIEGO VOLUNTEER LAWYER
PROGRAM**

COHELAN, KHOURY & SINGER

-and-

DREHER LAW FIRM

By: s/Robert Scott Dreher
Attorneys for Plaintiffs

**OFFICE OF THE CITY ATTORNEY
OF THE CITY OF SAN DIEGO**

By: s/Daniel Bamberg
Daniel Bamberg, Esq.
Attorneys for Defendants

In accordance with the foregoing stipulation of the parties, the files, records and pleadings in this matter, and for good cause appearing,

IT IS SO ORDERED:

Dated:

HON. WILLIAM McCURINE, Jr.
United States Magistrate Judge
United States District Court