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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
10

11 SUE JONES,

12 Plaintiff,

13 vs

14 CITY OF ORANGE COVER and DOES 1
15 through 25, inclusive,

16 Defendants.
17

Case No. 1:08-CV-00775-LJO-DLB

**SETTLEMENT AGREEMENT
REGARDING THE THIRD CAUSE OF
ACTION OF THE COMPLAINT AND
ORDER OF DISMISSAL OF THE
THIRD CAUSE OF ACTION**

18
19 **RECITALS**

20 WHEREAS Sue Jones (hereinafter "Jones") has filed a Complaint against the City of
21 Orange Cove (hereinafter "City") and said Complaint is now pending before this Court;

22 WHEREAS in her third count of the Complaint, Jones claims that the City's ordinance
23 which charged her for water service to apartment units owned by Jones but were unoccupied
24 violated her constitutional rights and sought to declare City Municipal Code Section 3.040.070
25 unconstitutional;

26 WHEREAS Jones also claimed that the City's requirement for Jones to pay for water
27 service for and on behalf of tenants of other real properties, owned by Jones, which tenants had
28 failed to pay for the water service, violated her due process rights;

1 WHEREAS the City had claimed that Jones owned money to the City for past due water
2 service to the vacant units and/or other real properties owned by Jones and rented by Jones to
3 others who had the service in their respective names but failed to pay for the service when they
4 vacated the real property;

5 WHEREAS the parties have agreed to resolve their dispute regarding this claim. The
6 parties hereby jointly agree that:

7 1. City hereby waives any and all past due money claims it has against Jones for
8 unpaid water bills for all vacant apartment units which were charged to Jones by the City.

9 2. City will further agree not to require Jones to pay for the past due water service
10 fees provided to tenants of Jones who were occupying Jones' properties, who had service turned
11 on in their respective names but failed to pay for the service by the time they vacated the real
12 property.

13 3. Jones agrees to dismiss her Third Cause of Action against the City.

14 4. Jones shall, in cooperation with the City, install water main locks for all
15 apartment units and maintain the locks. The keys to the locks shall be provided to the City upon
16 request. Jones shall pay for the acquisition and installation of all locks.

17 5. Jones further covenants and agrees that she and/or her agent(s) shall notify the
18 City once a unit has been occupied and service has been turned on so that the City can bill Jones
19 for the services provided to the said unit. Jones shall do so within five (5) business days after the
20 water has been turned on to a specified unit.

21 6. Jones further covenants and agrees that she and/or her agent(s) shall notify the
22 City once a unit becomes unoccupied and the service has been turned off so that the City can
23 stop billing Jones for the services provided to the unit. Jones shall do so within five (5) business
24 days after the water has been turned off to a specified unit.

25 7. Upon reasonable notice, City shall be entitled to audit compliance by Jones of the
26 above reporting requirements.

27 8. The arrangement for water service between Jones and the City shall continue until
28 the City has installed water meters for each and every unit as required under state law in 2012.

1 9. This agreement does not constitute an admission of liability or wrongdoing by any
2 party. This agreement also does not constitute an admission of the unconstitutionality of any
3 ordinance or law.

4 10. The parties agree and understand that in the event that legal proceedings are
5 initiated for the purpose of enforcing the terms of this agreement, the prevailing party in any
6 such proceeding shall be entitled to an award of reasonable attorney's fees and costs incurred in
7 bringing or defending such action.

8 **This agreement does not resolve nor will it set aside Jones' claim against the City on**
9 **the remainder of her Complaint.**

10 It is hereby agreed by the parties.

11 Dated: June 23, 2010. /s/ Sue B. Jones
12 _____
13 Sue B. Jones, Plaintiff

13 Dated: June 28, 2010. /s/ Alan Bengyel
14 _____
15 Alan Bengyel, City Manager
16 City of Orange Cove

16 **Attorney Approval:**

17 Dated: June 28, 2010. Tuttle & McCloskey
18 A Professional Corporation
19 By /s/ James F. McBrearty
20 James F. McBrearty, Esq.
21 Attorneys for Defendant, City of Orange Cove

22 Dated: June 23, 2010. Yarra, Kharazi & Associates
23 By /s/ H. Ty Kharazi
24 H. Ty Kharazi, Esq.
25 Attorneys for Plaintiff, Sue Jones
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ORDER

Based on the agreement of the parties as set forth above, the Court hereby orders that the Third Cause of Action be dismissed.

IT IS SO ORDERED.

Dated: June 29, 2010

/s/ Dennis L. Beck
UNITED STATES MAGISTRATE JUDGE

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