

**FILED**

NOV 15 2019

FRESNO COUNTY SUPERIOR COURT  
By \_\_\_\_\_ DEPT. 501

1 **WANGER JONES HELSLEY PC**  
2 265 E. River Park Circle, Suite 310  
3 Fresno, California 93720  
4 Telephone: (559) 233-4800  
5 Facsimile: (559) 233-9330

6 **John P. Kinsey #215916**  
7 **Rebecca S. Maddox #320316**

8 Attorneys for: Petitioners and Plaintiffs FORGOTTEN FRESNO; GONZALO ARIAS;  
9 ROGER DAY; and ELISA BILIOS

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11/14/2019 9:21 AM

FRESNO COUNTY SUPERIOR COURT  
By: J. Nelson, Deputy

10 **SUPERIOR COURT OF CALIFORNIA, COUNTY OF FRESNO**

11 **CENTRAL DIVISION**

12 FORGOTTEN FRESNO, a California non-  
13 profit corporation; GONZALO ARIAS, JR.,  
14 an individual; ROGER DAY, an individual;  
15 and ELISA BILIOS, an individual,

16 Petitioners and Plaintiffs,

17 v.

18 COUNTY OF FRESNO; THE FRESNO  
19 COUNTY BOARD OF SUPERVISORS  
20 and DOES 1 through 20, inclusive,

21 Respondents and Defendants.

22 WESCLO, L.P.; and FRESNO HUMANE  
23 ANIMAL SERVICES,

24 Real Parties In Interest.

Case No. 18CECG04248

**STIPULATION FOR SETTLEMENT  
AND [REDACTED] ORDER  
[CODE OF CIV. PROC. § 664.6.]**

**ASSIGNED FOR ALL PURPOSES TO:  
Judge: Jeffrey Y. Hamilton  
Dept.: 501, 5<sup>th</sup> Floor**

25 Petitioners and Plaintiffs Forgotten Fresno, Gonzalo Arias, Roger Day, and  
26 Elisa Bilios ("Petitioners"); Respondents County of Fresno and Fresno County Board of  
27 Supervisors ("Respondents"); and Real Parties in Interest Wesclo, L.P. and Fresno Humane  
28 Animal Services ("Real Parties in Interest") (collectively, the "Parties") hereby stipulate  
pursuant to Code of Civil Procedure section 664.6 as follows:

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1 RECITALS

2 WHEREAS, on or about 2017, Real Parties in Interest filed Initial Study  
3 Application No. 7359, General Plan Amendment Application No. 552, and Amendment  
4 Application No. 3852 with the County of Fresno to build an animal shelter on two parcels on  
5 North Grantland Avenue between North Parkway Drive and West Tenaya Avenue, Assessor's  
6 Parcel Numbers 504-081-02S and 504-081-03S ("Project Parcels") located in Fresno County,  
7 CA (collectively, the "Project");

8 WHEREAS, on October 23, 2018, the Fresno County Board of Supervisors  
9 adopted Resolution 18-381, Ordinance No. R-483-3825, and a Mitigated Negative Declaration  
10 approving the Project, which adopted a General Plan Amendment and changed the zoning of  
11 the Project Parcels to light industrial for the Project.

12 WHEREAS, on or about November 16, 2018, Petitioners filed a Verified  
13 Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief challenging  
14 the County's approval of the Project in the matter of *Forgotten Fresno, et. al v. County of*  
15 *Fresno, et. al*, Fresno County Superior Court, Case No. 18CECG04248 (the "Action");

16 WHEREAS, the Real Parties in Interest no longer seeks to proceed the Project,  
17 or develop an animal shelter on the Project Parcels;

18 WHEREAS, the Parties now desire to fully resolve the disputes which exist  
19 among them concerning the Action and Project;

20 STIPULATION

21 NOW, THEREFORE, in consideration of the terms, covenants, conditions,  
22 agreements and mutual "Recitals" stated above, and for other valuable consideration, the  
23 receipt and sufficiency of which are hereby acknowledged, Plaintiff, Petitioners, and Real  
24 Parties in Interest hereby agree as follows:

25 1. Real Parties in Interest hereby abandon the Project and all related approvals,  
26 including Initial Study Application No. 7359, General Plan Amendment Application No. 552,  
27 and Amendment Application No. 3852, adopted by the Fresno County Board of Supervisors in  
28 Resolution 18-381, Ordinance No. R-483-3825 on October 23, 2018, and the Mitigated

1 Negative Declaration prepared in connection with the Project (collectively, the "Project  
2 Approvals").

3 2. Respondents County of Fresno and Fresno County Board of Supervisors shall  
4 rescind the Project Approvals at a regularly scheduled meeting of the Fresno County Board of  
5 Supervisors at which such actions can be properly agendized under the Brown Act, Govt.  
6 Code, § 54950, *et seq*, and in conformity with County of Fresno policies and procedures. The  
7 date for this regularly scheduled meeting shall in no event be held more than six (6) months  
8 from the date Respondents receive notice of entry of the Order approving this Stipulation.

9 3. Real Party in Interest Fresno Humane Animal Services shall issue a check to  
10 Wanger Jones Helsley PC, Client Trust Account, in the total amount of One Hundred Two  
11 Thousand and Five Hundred Dollars And Zero Cents (\$102,500), as consideration for  
12 Petitioners' attorneys' fees and litigation costs incurred in connection with and as a result of  
13 the facts, events, or circumstances underlying the above-entitled action. Payment shall be  
14 made within ten (10) days following the date of execution of the Order approving this  
15 Stipulation. If Real Party in Interest Fresno Humane Animal Services fails to make payment  
16 within this timeframe, Real Party in Interest Wesclo, L.P. shall remain jointly and severally  
17 liable for any shortfall in payment and make such payment within the following ten (10) days.  
18 Payment shall be delivered to Petitioners' Counsel at the following address:

19 Wanger Jones Helsley P.C.  
20 c/o John P. Kinsey  
21 265 E. River Park Circle, Suite 310  
22 Fresno, California 93720

23 4. The Action filed by Petitioners shall be dismissed with prejudice upon the  
24 Court's approval of this stipulation.

25 5. Except as to the obligations created herein, the Parties agree to accept these  
26 terms in full settlement and compromise of the action and agree to release and forever  
27 discharge each other, including any and all persons, firms, partnerships, corporations, heirs,  
28 executors, administrators, and their respective predecessors, successors, assigns, underwritten  
companies, insurers, and shareholders and all of their past, present and future officers,

1 directors, agents, attorneys, accountants and employees and their respective successors, heirs,  
2 assigns, executors, and administrators thereof, and/or each of the aforesaid from all claims,  
3 actions, causes of action, discovery obligations of any nature and for all liabilities and  
4 obligations of every kind and character known or unknown, and whether existing in the past or  
5 the present or the future based upon any conduct occurring up to the date of the execution of  
6 this Settlement Agreement by the last Party hereto.

7 6. The Parties further agree that as part of this settlement and release of claims the  
8 Parties expressly waive all rights under California Civil Code section 1542, which provides:

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

15 7. Execution of this Stipulation for Settlement does not constitute evidence of, and  
16 shall not be construed to be an admission of, liability and/or wrongdoing by any of the Parties.  
17 Rather, this Stipulation for Settlement is a settlement of disputed claims, and the Parties  
18 expressly deny any liability to each other. The Parties acknowledge and agree that this  
19 Stipulation for Settlement is entered into in good faith and has no purpose other than to  
20 compromise, settle, and extinguish the claims referred to herein.

21 8. Counsel for each of the Parties to this agreement represents that he/she has fully  
22 explained to his/her client(s) the legal effect of this agreement and of the release and Dismissal  
23 with Prejudice provided for herein and that the settlement and compromise stated herein is  
24 final and conclusive forthwith, and each attorney represents that his/her client(s) has freely  
25 consented to and authorized this agreement. Each party represents that his/her/its counsel has  
26 in fact explained the effect of this agreement to him/her/its right to obtain such an explanation  
27 of counsel.

28 9. Unless otherwise stated herein, each party will bear its own attorneys' fees,  
experts, and costs.

1           10. This agreement may be executed in counterparts, and on facsimile copies, each  
2 of which is enforceable.

3           11. Any provisions of California Evidence Code section 1119 notwithstanding, this  
4 agreement may be enforced by any party hereto by a motion under California Code of Civil  
5 Procedure section 664.6 or by any other procedure permitted by law in any court having  
6 jurisdiction over this action.

7           12. If any additional or further legal proceedings are necessary by any of the parties  
8 for enforcement of this settlement or declaration of any rights under the terms of this  
9 settlement, the prevailing party in that litigation shall be entitled to receive from the other party  
10 or parties who oppose such action all costs incurred, including, but not limited to, reasonable  
11 attorneys' fees.

12           13. This agreement is the product of the Parties' negotiations and shall be  
13 interpreted in a neutral manner. Any presumption regarding the construction or interpretation  
14 for or against any party by reason of that party having drafted any or all of this agreement shall  
15 not apply.

16           14. Any portion of this agreement found to be invalid, void or unenforceable, shall  
17 be deemed severable from the remainder of this agreement and shall not invalidate the  
18 remainder of the paragraph in which it is located or the remainder of this agreement.

19           15. The Court shall "retain jurisdiction over the parties to enforce the settlement  
20 until performance in full of the terms of the settlement," as provided under California Code of  
21 Civil Procedure § 664.6, or by any procedure permitted by law in the Superior Court of Fresno  
22 County.

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1 Dated: <sup>November</sup> October 13, 2019

**FORGOTTEN FRESNO**  
By: [Signature]  
Name: ROGER DAY  
Its: PRESIDENT

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6 Dated: <sup>November 13</sup> October 13, 2019

**ELISA BILIOS**  
By: [Signature]

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10 Dated: <sup>November</sup> October 13, 2019

**ROGER DAY**  
By: [Signature]

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13 Dated: <sup>November</sup> October 13, 2019

**GONZALO ARIAS, JR.**  
By: [Signature]

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16 Dated: <sup>November</sup> October 12, 2019

**COUNTY OF FRESNO**  
By: [Signature]

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22 Dated: <sup>November</sup> October 12, 2019

Name: [Signature]  
Its: Deputy POP

**FRESNO COUNTY BOARD OF SUPERVISORS**

By: [Signature]  
Name: [Signature]  
Its: Deputy POP

1 Dated: October 4, 2019  
2 NOV

WESCLO, L.P.

By: David A. Redmond

Name: DAVID A. REDMOND

Its: OWNER & GENERAL PARTNER

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7 Dated: October \_\_, 2019

FRESNO HUMANE ANIMAL SERVICES

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

9 Name: \_\_\_\_\_

10 Its: \_\_\_\_\_

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1 Dated: October \_\_\_\_, 2019

WESCLO, L.P.

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

3 Name: \_\_\_\_\_

4 Its: \_\_\_\_\_

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7 Dated: October 31, 2019

FRESNO HUMANE ANIMAL SERVICES

8 By: Brenda Mitchell

9 Name: Brenda Mitchell

10 Its: President

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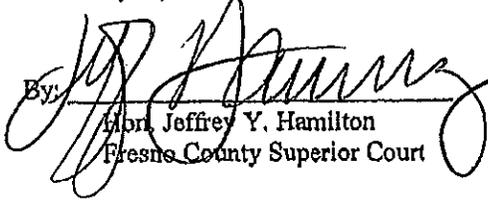
**ORDER**

NOW, THEREFORE, based on the foregoing stipulation of the Parties and for good cause appearing, IT IS HEREBY ORDERED:

1. The foregoing stipulation of the Parties is approved and this action is hereby dismissed with prejudice.

2. The Court shall retain jurisdiction over the Action pursuant to Code of Civil Procedure section 664.6 until such time as (i) the settlement payment of \$102,500 is made to Petitioners' Counsel by one or both of Real Parties in Interest, and (ii) the Fresno County Board of Supervisors rescinds Initial Study Application No. 7359, General Plan Amendment Application No. 552, Amendment Application No. 3852, Resolution 18-381, Ordinance No. R-483-3825, and the Mitigated Negative Declaration for the Project, whichever occurs later.

Date: 11/15 ~~October~~ 2019

By:   
Hon. Jeffrey Y. Hamilton  
Fresno County Superior Court

**PROOF OF SERVICE**

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My business address is 265 East River Park Circle, Suite 310, Post Office Box, 28340, Fresno, California 93729. I am employed in Fresno County, California. I am over the age of 18 years and am not a party to this case.

On the date indicated below, I served the foregoing document(s) described as **STIPULATION FOR SETTLEMENT AND [PROPOSED] ORDER** on all interested parties in this action by placing a true copy thereof enclosed in sealed envelopes addressed as follows:

**SERVICE LIST ATTACHED**

  X   (BY U.S. MAIL) I am readily familiar with the business practice for collection and processing of correspondence for mailing, and that correspondence, with postage thereon fully prepaid, will be deposited with the United States Postal Service on the date noted below in the ordinary course of business, at Fresno, California.

       (BY PERSONAL SERVICE) I caused delivery of such envelope(s), by hand, to the office(s) of the addressee(s).

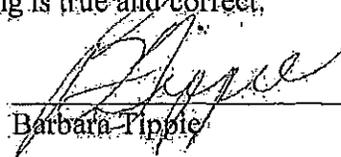
       (BY ELECTRONIC MAIL) I caused such documents to be scanned into PDF format and sent via electronic mail to the electronic mail addressee(s) of the addressee(s) designated.

       (BY FACSIMILE) I caused the above-referenced document to be delivered by facsimile to the facsimile number(s) of the addressee(s).

       (BY OVERNIGHT COURIER) I caused the above-referenced envelope(s) to be delivered to an overnight courier service for delivery to the addressee(s).

**EXECUTED** on November 14, 2019, at Fresno, California.

  X   (STATE) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

  
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Barbara Tippie

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**SERVICE LIST**

<p>Kyle R. Roberson Deputy County Counsel <b>OFFICE OF THE FRESNO COUNTY COUNSEL</b> 2220 Tulare Street, Suite 500 Fresno, CA 93721 Tel: 559-600-3479 Fax: 559-600-3480 Email: <a href="mailto:kroberson@FresnoCountyCA.gov">kroberson@FresnoCountyCA.gov</a></p>	<p><i>Attorneys for:</i> County Of Fresno; The Fresno County Board Of Supervisors</p>
<p>Christopher L. Campbell Daniel Stein <b>BAKER MANOCK &amp; JENSEN PC</b> 5260 N. Palm Avenue, Fourth Flr Fresno, CA 983704 E-mail: <a href="mailto:CCampbell@bakermanock.com">CCampbell@bakermanock.com</a> E-mail: <a href="mailto:DStein@bakermanock.com">DStein@bakermanock.com</a></p>	<p><i>Real Parties in Interest,</i> WESCLO, L.P. and Fresno Humane Animal Services</p>

**PROOF OF SERVICE**

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My business address is 265 East River Park Circle, Suite 310, Post Office Box 28340, Fresno, California 93729. I am employed in Fresno County, California. I am over the age of 18 years and am not a party to this case.

On the date indicated below, I served the foregoing document(s) described as **NOTICE OF ENTRY OF ORDER** on all interested parties in this action by placing a true copy thereof enclosed in sealed envelopes addressed as follows:

**SERVICE LIST ATTACHED**

  X   (BY U.S. MAIL) I am readily familiar with the business' practice for collection and processing of correspondence for mailing, and that correspondence, with postage thereon fully prepaid, will be deposited with the United States Postal Service on the date noted below in the ordinary course of business, at Fresno, California.

       (BY PERSONAL SERVICE) I caused delivery of such envelope(s), by hand, to the office(s) of the addressee(s).

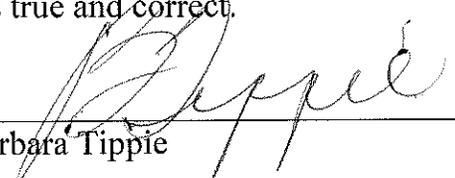
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       (BY FACSIMILE) I caused the above-referenced document to be delivered by facsimile to the facsimile number(s) of the addressee(s).

       (BY OVERNIGHT COURIER) I caused the above-referenced envelope(s) to be delivered to an overnight courier service for delivery to the addressee(s).

**EXECUTED** on November 19, 2019, at Fresno, California.

  X   (STATE) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

  
\_\_\_\_\_  
Barbara Tippie

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**SERVICE LIST**

<p>Kyle R. Roberson Deputy County Counsel <b>OFFICE OF THE FRESNO COUNTY COUNSEL</b> 2220 Tulare Street, Suite 500 Fresno, CA 93721 Tel: 559-600-3479 Fax: 559-600-3480 Email: <a href="mailto:kroberson@FresnoCountyCA.gov">kroberson@FresnoCountyCA.gov</a></p>	<p><i>Attorneys for:</i> County Of Fresno; The Fresno County Board Of Supervisors</p>
<p>Christopher L. Campbell Daniel Stein <b>BAKER MANOCK &amp; JENSEN PC</b> 5260 N. Palm Avenue, Fourth Flr Fresno, CA 983704 E-mail: <a href="mailto:CCampbell@bakermanock.com">CCampbell@bakermanock.com</a> E-mail: <a href="mailto:DStein@bakermanock.com">DStein@bakermanock.com</a></p>	<p><i>Real Parties in Interest,</i> WESCLO, L.P. and Fresno Humane Animal Services</p>