

SETTLEMENT, RELEASE AND WAIVER AGREEMENT

This Settlement Release and Waiver Agreement (“Agreement”) is made and entered into by and between Benjamin Cooper, individually as Plaintiff, and the City of San Jose on behalf of itself and its present and former employees whether acting in their official or individual capacities (hereafter collectively, the “City”). Benjamin Cooper and the City are collectively referred to as “Parties” in this Agreement. The Effective Date of this Agreement shall be the date of execution by the City San Jose.

RECITALS

WHEREAS, Benjamin Cooper is the Plaintiff in a lawsuit pending in the United States District Court, Northern District of California, San Jose Division, case number 16-cv-06237 BLF, entitled *Benjamin Cooper v. City of San Jose, et al.* (hereafter, the “Action”); and,

WHEREAS, the Parties now undertake through this Agreement to settle the Action in its entirety, pursuant to which Benjamin Cooper will release and extinguish on a final basis any and all claims against the City and all individuals and entities described in Paragraph 1 below, arising out of or in any way connected with the incident which are the subject of the Action as more fully described in the First Amended Complaint filed on December 9, 2016 in case number 16-cv-06237, (the “Incident”):

NOW, THEREFORE, in consideration of the promises, undertakings and covenants herein, and for good and valuable consideration the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Scope of Settlement. This Agreement will settle, compromise, and forever discharge all claims by Benjamin Cooper of any and every kind, nature and character, arising from or based on any act or omission by the City of San Jose, the San Jose Police Department, and all City employees who could have been named in the Action. Each of the parties has obtained the advice of legal counsel prior to entering into this Release. Each of the parties hereto executes this Release with the full knowledge of its significance and with express intention of effecting its legal consequences.

2. Consideration. In consideration for Benjamin Cooper’s agreements, promises, covenants, releases and waivers stated in this Agreement, the City of San Jose shall pay the sum of Two Hundred Fifteen Thousand Dollars (\$215,000.00) in the form of a check payable to Benjamin Cooper and the Law Office of Samuel M. Lasser. Said payment shall compensate Benjamin Cooper for any and all damages claimed, or which he could have claimed arising from or related in any way to the matters alleged in the Action. In consideration of said payment, Benjamin Cooper shall dismiss the Action with prejudice and withdraw, waive and release any and all claims for other damages, including any and all claims and/or rights to recover costs and attorney’s fees incurred in the Action.

3. Dismissal of Claims. Benjamin Cooper and his attorneys shall dismiss the Action with prejudice within three (3) business days after receiving payment of the settlement amount.

4. Release. Benjamin Cooper, for himself and his successors, assigns, attorneys and agents, hereby generally releases and forever discharges the City of San Jose and all individuals named, or who could have been named in the Action (collectively, the "Releasees"). The City of San Jose includes, without limitation, all City Departments and Agencies, the City Council, all past and present elected and appointed officials, City employees, and any person or entity to which the City may owe an obligation of contractual or implied indemnity relating to a released claim. The release includes, without limitation, any and all actions, causes of action, obligations, costs, expenses, damages, losses, claims, liens, liabilities, attorney's fees and demands of whatsoever nature relating to or arising out of the facts or circumstances alleged in the Action, or that could have been alleged in the Action, whether or not such claims were actually asserted in the Action.

5. Release of Unknown Claims. Benjamin Cooper represents he understands and agrees that this Agreement shall be effective as a full and final settlement of all disputes and matters arising out of any subject matter identified in this Agreement, including but not limited to all claims and causes of action asserted, or which could have been asserted, in the Action (the "Released Matters"). Benjamin Cooper acknowledges that he understands section 1542 of the California Civil Code, which provides as follows:

A general release does not extend to claims, which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

As to the Released Matters, Benjamin Cooper expressly waives and relinquishes any and all rights which he may have under, or which may be conferred on him by, the provisions of California Civil Code section 1542, as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that he may lawfully waive such rights or benefits pertaining to the Released Matters. In connection with such waiver Benjamin Cooper also acknowledges that he or his attorneys may hereafter discover claims or facts in addition to or different from those which he knows or believes exist with respect to the Released Matters. Benjamin Cooper understands by signing this Agreement that he will fully, finally, and forever settle and release all of the disputes and differences, known or unknown, suspected or unsuspected, which now exist, may exist in future, or heretofore existed arising out of or in connection with the Released Matters.

6. Covenant Not to Challenge Enforceability. Benjamin Cooper does hereby covenant, promise and agree that he will not at any time challenge the enforceability of this Agreement, or any provision thereof, or assert that this Agreement, or any provision

thereof, is invalid on any constitutional grounds, including, but not limited to, assertions that this Agreement violates the First Amendment, Due Process Clause, Equal Protection Clause or is void as against public policy.

7. Parties Affected and Choice of Law. This Agreement shall bind and benefit the Parties hereto, and their legal successors, heirs, assigns, agents, legal advisors, and predecessors. This agreement shall be governed by California law.

8. Parties to Bear Own Attorney's Fees and Costs. The Parties shall bear their own costs of suit, attorneys' fees and other expenses incurred in connection with the Action. Neither party shall be entitled to recover any attorney's fees, costs or expenses from the other.

9. Liability Not Admitted. The Parties acknowledge and agree the City's payment represents a compromise and release of disputed claims and that neither the payment, nor anything stated in this Agreement, constitutes or represents an admission by the City, or any other party, of liability or responsibility of any kind, or a concession by any party that assertions or allegations regarding the claims alleged in the Action are valid. Each party fully assumes the risk that the facts or law surrounding such claims, and/or the other matters settled pursuant hereto, may be other than that party believes them to be.

10. Entire Agreement. This document is a fully integrated contract. It contains all agreements, covenants, understandings, representations, and warranties between the Parties concerning the subject matter of the Agreement. The Parties have made no other express or implied agreements, covenants, understandings, representations or warranties concerning the subject matter of this Agreement. All prior and contemporaneous conversations, negotiations, possible and alleged agreements, understandings, representations, covenants and warranties concerning the subject matter of this Agreement, other than those referred to herein, are merged herein. This Agreement cannot be modified or amended by the exchange of electronic communications or any means other than a fully integrated writing signed by all Parties.

11. Representations. Benjamin Cooper represents and warrants that he has not assigned any claim or claims that are the subject of this Agreement; that no liens on the settlement proceeds have been asserted or exist; that he is the sole and rightful owner of said claims; and, that he is authorized to execute this Agreement.

12. Responsibility for Liens. Benjamin Cooper and his attorneys shall pay or otherwise satisfy or resolve any outstanding liens or claims, including without limitation, liens or claims asserted by or on behalf of Medicare or Medi-Cal, for Benjamin Cooper's medical treatment and/or expenses, past or future, that he may have incurred or will incur arising from or related in any way to the matters alleged in the Action. Benjamin Cooper and his attorneys jointly and severally agree to indemnify and hold the City harmless with regard to any liens or claims made against, or as a result of, this settlement.

13. Severability. If any provision in this Agreement is found to be unenforceable, it shall not affect the enforceability of the remaining provisions and the court shall enforce the remaining provisions to the extent permitted by law.

14. Voluntary Agreement. Benjamin Cooper understands and agrees that he is waiving significant legal rights by signing this Agreement and represents that he has entered into this Agreement voluntarily, after consulting with his attorneys, with a full understanding of and in agreement with all of its terms.

15. Headings. The headings in each paragraph herein are for convenience of reference only and shall be of no legal effect in the interpretation of the terms hereof.

16. Drafting. The Parties agree that this Agreement shall be interpreted without regard to the drafter of the same and shall be construed as though each party to this Agreement participated equally in the preparation and drafting of this Agreement.


17. Consultation with Counsel. The Parties and each of them acknowledge they have had the opportunity to consult with legal counsel of their choice prior to execution and delivery of this Agreement, and that they have in fact done so. Benjamin Cooper acknowledges he has received advice from his counsel.

18. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and shall be deemed duly executed upon the signing of the counterparts by the Parties hereto.

19. Binding Force and Effect. This Agreement shall be binding and inure to the benefit of all parties hereto and their respective heirs, executors, administrators, trustors, trustees, beneficiaries, predecessors, successors, assigns, partners, partnerships, affiliated entities, agents, and representatives.

AGREED AND ACCEPTED:

Dated: February 19, 2019



Benjamin Cooper

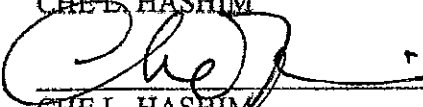
RICHARD DOYLE, City Attorney

Dated: February __, 2019

By: _____
Attorney for CITY OF SAN JOSE

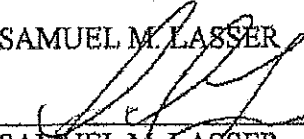
Approved as to Form:

Dated: February 13, 2019

CHE L. HASHIM


CHE L. HASHIM
Attorney for Benjamin Cooper


Dated: February 13, 2019

SAMUEL M. LASSER


SAMUEL M. LASSER
Attorney for Benjamin Cooper

Dated: February 26, 2019

RICHARD DOYLE, City Attorney

By: 

ARDELL JOHNSON
Chief Deputy City Attorney
for CITY OF SAN JOSE