

## SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Settlement Agreement") is made by and between M. MICHAEL ACOSTA (hereafter "Plaintiff") and the CITY OF SAN JOSE (hereafter collectively "CITY"). Plaintiff and 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 of San José.

WHEREAS, Plaintiff filed a lawsuit on March 11, 2021 entitled *NAACP of San José/Silicon Valley, et al. v. City of San José, et al.* in U.S. District Court for the Northern District of California, case number 4:21-cv-01705 (hereafter the "Action"); and,

WHEREAS, the parties have undertaken extensive discovery, including production of documents and video recordings, depositions, and expert discovery;

WHEREAS, on February 27, 2023, Plaintiff filed a First Amended Class Action Complaint for Damages, Declaratory and Injunction Relief in the Action;

WHEREAS, on April 7, 2023, the Court issued an order denying Plaintiff's Motion for Class Certification;

WHEREAS, on August 3, 2023, the Court issued an order partially granting and partially denying the CITY's motion for summary judgment;

WHEREAS, the Parties now mutually desire to resolve the Action without further litigation and, therefore, undertake to settle Plaintiff's claims in their entirety by entering into this Agreement pursuant to which Plaintiff releases and extinguishes on a final basis all his claims and potential claims arising out of, or in any way connected with all matters alleged, or which could have been alleged, in the pleadings comprising the Action; and,

WHEREAS, Plaintiff desires to dismiss the Action with prejudice;

NOW THEREFORE, the Parties agree as follows:

1. Scope of Settlement. This Agreement shall settle, compromise, and forever discharge all claims of any and every kind, nature and character, which Plaintiff alleged, or could have alleged, in the Action arising from or based on any act or omission by the City of San Jose, City Departments, City elected officials, and all current and former City employees, named or who could have been named in the Action, whether acting in their official or individual capacities.
2. Consideration. In consideration for Plaintiff's agreements, promises, covenants, releases, waivers, and dismissal of the Action stated herein, the City

of San Jose shall pay the sum of Two Million Nine Hundred Thousand Dollars (\$2,900,000.00) in the form of a check payable to M. MICHAEL ACOSTA AND RACHEL LEDERMAN ATTORNEY TRUST ACCOUNT. The payee shall provide a W-9 prior to issuance of payment. Said payment shall compensate Plaintiff for all damages claimed, or which Plaintiff could have claimed, arising from or related in any way to the subject matters in the Action, inclusive of Plaintiff's attorneys' fees and costs. In consideration of said payment, Plaintiff shall dismiss the Action with prejudice and withdraw, waive, and release any and all claims for damages, including any and all claims and/or rights to recover costs and attorney's fees.

3. Dismissal of Claims. Plaintiff and Plaintiff's attorneys shall dismiss the Action with prejudice within five (5) business days after receiving payment of the settlement amount.

4. Release. Plaintiff and Plaintiff's representatives, successors, assigns, attorneys, and agents, hereby generally release and forever discharge CITY and all past and present employees of the City of San José, whether or not the employee was named individually in the Action. For purposes of this Agreement, the City of San José 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. Plaintiff understands this Agreement is 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, and all present and future unknown and unanticipated injuries, losses or damages arising out of the Action (the "Released Matters"). Plaintiff acknowledges and understands Section 1542 of the Civil Code of the State of California provides as follows:

**A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.**



Initials \_\_\_\_\_

Plaintiff represents that he has read, reviewed with counsel, and understood Civil Code Section 1542, and that he hereby waives all present and future rights and benefits under Section 1542 to the extent it would permit claims relating to, arising out of, or any way connected to the subject of the Action based on facts found to be different from the facts believed to be true at the time this Settlement Agreement was executed.

6. Liability Not Admitted. The Parties acknowledge and agree that 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 of wrongful conduct, liability, or responsibility of any kind, or a concession, by any person that any allegation or claims asserted in the Action is valid.

7. Parties to Bear Own Attorney's Fees and Costs. The Parties shall bear their own costs, including attorneys' fees, and any other fees incurred in connection with the Action, this Settlement Agreement, and the matters settled pursuant to this Settlement Agreement.

8. Consultation with Counsel. The Parties and each of them acknowledge they have carefully read and understand the terms of this Settlement Agreement and have consulted with legal counsel of their choice prior to execution and delivery of this Agreement. The Parties have voluntarily accepted the terms stated herein for the express purpose of making a full and final compromise and settlement of the Action.

9. San Jose City Council Approval. This Agreement requires San Jose City Council approval in open session before it can be executed on behalf of CITY.

10. Representations. Each person executing this Settlement Agreement hereby warrants that he or she has full authority to do so. Plaintiff further represents and warrants that he is the sole and rightful owner of the claims asserted in the Action; that he has not assigned any claim or claims, or the right to receive payments that are the subject of this Agreement; and that no liens on the settlement proceeds have been asserted or exist.

11. Responsibility for Liens. Plaintiff agrees to hold CITY harmless from third-party claims and liens, if any, arising from Plaintiff's medical treatment, insurance subrogation claims, and creditors of any kind claiming a right to receive payment from the settlement amount.

12. 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.

13. 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.

14. Binding Force and Effect. This Agreement shall be governed by California law. It shall bind and inure to the benefit of all Parties and their respective heirs, executors, administrators, trustors, trustees, beneficiaries, predecessors, successors, assigns, partners, partnerships, affiliated entities, agents, and representatives.

15. 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.

IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement effective as of the date last set forth below.

Dated: Sep 1, 2023, 2023



box SIGN 186VXG5W-4QYIRV9X

M. MICHAEL ACOSTA  
Plaintiff

Dated: \_\_\_\_\_, 2023

CITY OF SAN JOSE

By: \_\_\_\_\_  
NORA FRIMANN  
City Attorney as Authorized Agent  
for CITY OF SAN JOSE

APPROVED AS TO FORM:

LAW OFFICES OF JAMES B. CHANIN

Dated: Sep 1, 2023, 2023

By: \_\_\_\_\_  
JAMES B. CHANIN  
Attorney for Plaintiff  
M. MICHAEL ACOSTA

PARTNERSHIP FOR CIVIL JUSTICE  
FUND and its project THE CENTER  
FOR PROTEST LAW & LITIGATION

Dated: Sep 1, 2023, 2023

By: Rachel Lederman \_\_\_\_\_  
RACHEL LEDERMAN  
Senior Counsel  
Attorney for Plaintiff  
M. MICHAEL ACOSTA

NORA FRIMANN, City Attorney

Dated: \_\_\_\_\_, 2023

By: \_\_\_\_\_  
YUE-HAN CHOW  
Senior Deputy City Attorney  
Attorney for CITY OF SAN JOSE