

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Settlement Agreement") is made by and between David Tovar, Sr., minors D.T.M. and J.M. by and through their guardian ad litem Elliot Tovar, minor Plaintiff D.T. by and through his guardian ad litem Valerie Hall, minor D.T.J. by and through his guardian ad litem Marilyn Presho, and the Estate of David Tovar, Jr. (hereafter "Plaintiffs"), and the City of San Jose (hereafter "CITY"). "Parties," when referenced herein, includes Plaintiffs and CITY collectively.

WHEREAS, Plaintiffs filed a lawsuit on April 7, 2021 entitled *David Tovar Sr., et al. v. City of San Jose, et al.* in the United States District Court, Northern District of California, San Jose Division, case number 3:21-cv-2497, (hereafter the "Action"), asserting claims based on the January 21, 2021 apprehension and death of David Tovar, Jr. ("Decedent");

WHEREAS, the Parties now mutually desire to resolve the Action without further litigation and, therefore, undertake to settle the Action in its entirety by entering into this Agreement pursuant to which Plaintiff releases and extinguishes on a final basis all 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, Plaintiffs desire 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 Plaintiffs alleged, or could have alleged, in the Action arising from or based on any act or omission by the CITY, CITY Departments, CITY elected officials, and all current and former CITY employees, including but not limited to OFFICERS HANS JORGENSEN, ALVARO LOPEZ, JAMES SOH, TOPUI FONUA, AND MAURICIO JIMENEZ, whether acting in their official or individual capacities.

2. Consideration. In consideration for Plaintiffs' agreements, promises, covenants, releases, waivers, and dismissal of the Action, stated herein CITY shall pay the sum of one million dollars (\$1,000,000.00), to be paid in accordance with the Addendum attached hereto and incorporated herein by reference. In consideration of said payment, Plaintiffs shall dismiss the Action with prejudice and withdraw, waive, and release all claims for damages, including all claims and/or rights to recover costs and attorney's fees.

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

4. Release. Plaintiffs and Plaintiff's representatives, successors, assigns, attorneys, and agents, hereby generally release and forever discharge CITY and all past and present employees of CITY, whether or not the employee was named individually in the Action. For purposes of this Agreement, CITY 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 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. Plaintiffs understand 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"). Plaintiffs acknowledge and understand 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 _____

Initials _____

Initials _____

Initials _____

Initials _____

Plaintiffs represent that they have read, reviewed with counsel, and understood Civil Code Section 1542, and that they hereby waive 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, or liability, or responsibility of any kind, or a concession by any person, that any allegation asserted in the claims alleged 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. Affidavit of Heirship. The undersigned Plaintiffs declare and swear under penalty of perjury of the State of California that all heirs of Decedent David Tovar, Jr. are parties to this agreement and there are no other heirs or potential heirs with standing to pursue claims against Defendants, or any of them, relating or referring to any claims which Plaintiffs alleged or could have alleged in the Action. The undersigned Plaintiffs further declare and swear under penalty of perjury that they are the Decedent's only "successors in interest," as defined in California Code of Civil Procedure Section 377.10 et. seq., are the only persons entitled to commence the Action, and there are no other heirs of Decedent. No other person(s) has/have a superior right to commence the Action or to be substituted for Decedent or his Estate in the Action.

10. Representations. Each person executing this Settlement Agreement hereby warrants that he/she has full authority to do so. Plaintiffs further represent and warrant that they are the sole and rightful owner of the claims asserted in the Action; that none of them has 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. Representations of Guardians ad Litem. Plaintiffs acknowledge that all or part of the Consideration and a purpose of this Agreement is to fully and finally resolve claims on behalf of Plaintiffs younger than the age of consent. The individuals filing suit

on behalf of said minor Plaintiffs represent that they have authority to resolve all claims on behalf of said minor Plaintiffs. Plaintiffs further acknowledge that the representatives acting on behalf of said minor Plaintiffs have sole responsibility for obtaining court approval of the settlement and compromise of said minor Plaintiffs' claims and otherwise complying with all legal requirements to consummate a full and final settlement on behalf of the minor Plaintiffs.

12. **Responsibility for Liens.** Plaintiffs agree to hold the Defendants harmless with regard to third-party claims or liens arising from Decedent David Tovar Jr.'s medical treatment, or from insurance subrogation claims, or claims of any kind.

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. **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.

15. **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.

16. **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: _____

DAVID TOVAR, SR., Plaintiff

D.T.M., a minor, Plaintiff and co-successor-in-interest to ESTATE OF DAVID TOVAR, JR.

Dated: _____

By: _____
Elliot Tovar, guardian ad litem

J.M., a minor, Plaintiff and co-successor-in-interest to ESTATE OF DAVID TOVAR, JR.

Dated: _____

By: _____
Elliot Tovar, guardian ad litem

D.T., a minor, Plaintiff and co-successor-in-interest to ESTATE OF DAVID TOVAR, JR.

Dated: _____

By: _____
Valerie Hall, guardian ad litem

D.T.J., a minor, Plaintiff and co-successor-in-interest to ESTATE OF DAVID TOVAR, JR.

Dated: _____

By: _____
Marilyn Prescho, guardian ad litem

CITY OF SAN JOSE


Dated: _____

By: _____
NORA FRIMANN
City Attorney as Authorized Agent for
the City of San José

APPROVED AS TO FORM:

Dated: 6/13/25

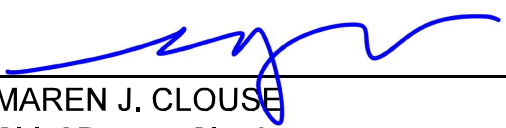
POINTER & BUELNA, LLP

By: 

PATRICK BUELNA
Attorney for Plaintiffs

Dated: June 13, 2015

CITY OF SAN JOSE

By: 

MAREN J. CLOUSE
Chief Deputy City Attorney
Attorney for Defendants