

SETTLEMENT, RELEASE AND WAIVER AGREEMENT

This Settlement Release and Waiver Agreement (“Agreement”) is made and entered into by and between Cosme Grijalva, individually, as Plaintiff, and the City of San Jose on behalf of itself and all City employees named, or who could have been named, in their official and individual capacities (hereafter collectively, the “City”). Cosme Grijalva 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 after approval by the City Council in open session.

RECITALS

WHEREAS, Cosme Grijalva is the plaintiff in a lawsuit pending in the United States District Court, Northern District of California, San Jose Division, case number 5:18-cv-1853 EJD entitled “*Cosme Grijalva 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 Cosme Grijalva will release and extinguish on a final basis any and all claims against the City and the additional individuals and entities described in Paragraph 1 below, arising out of or in any way connected with the incidents which are the subject of the Action as more fully described in the Complaint filed on March 26, 2018, (the “Incidents”):

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 Cosme Grijalva 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, named or who could have been named in the Action as parties having any relationship to the Incidents. 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 accepting its legal consequences.

2. Consideration. In consideration for Cosme Grijalva’s agreements, promises, covenants, releases and waivers stated in this Agreement, the City of San Jose shall pay the amount of Forty-Nine Thousand Nine Hundred Dollars (\$49,900.00) in the form of a check(s) payable to the Law Office Of Morales & Leanos Client Trust Account for Cosme Grijalva, together with a separate check payable to the Law Office of Morales & Leanos in the amount of Ten Thousand Dollars (\$10,000.00). Said payments shall compensate Cosme Grijalva 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 and for

any and all attorney's fees, costs and expenses claimed or which could have been claimed arising from the Action. Cosme Grijalva shall waive and release any and all claims for damages against the City of San Jose and its employees whether acting in their official or individual capacities, including any and all claims and/or rights to recover compensatory damages, costs and attorney's fees incurred in the Action.

3. Dismissal of Claims. Cosme Grijalva and his attorneys shall file with the Court a dismissal of the entire Action with prejudice within three (3) business days after receiving payment of the settlement amount.

4. Release. Cosme Grijalva, for himself and his successors, assigns, attorneys and agents, hereby generally releases and forever discharges the City of San Jose and all entities, employees and 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 whether acting in an official or individual capacity, 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. Cosme Grijalva 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"). Cosme Grijalva, acknowledges that notwithstanding his lack of proficiency in the English language he has obtained legal advice and sufficient language interpretation to understand 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, Cosme Grijalva 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 Cosme Grijalva 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. Cosme Grijalva 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. Cosme Grijalva represents he has obtained a Spanish language interpretation of this Agreement and waives any claim that the City should provide this Agreement in Spanish. Cosme Grijalva hereby covenants, promises and agrees 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. Except as provided in this Agreement, the Parties shall bear their own costs of suit, attorneys' fees and other expenses incurred in connection with the Action and neither party shall be entitled to recover or make any claim for 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 it 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. Representation of Authority. Cosme Grijalva represents and warrants that he has not assigned any claim or claims that are the subject of this Agreement; that he is the sole and rightful owner of said claims; and, that he is authorized to execute this Agreement. Cosme Grijalva further represents that he authorizes the City to disburse the

settlement amount as stated in paragraph 2 above by issuing a check payable to the Law Office Of Morales & Leanos Client Trust Account for Cosme Grijalva in the amount of Forty-Nine Thousand Nine Hundred Dollars (\$49,900.00), and a separate check payable to the Law Office of Morales & Leanos in the amount of Ten Thousand Dollars (\$10,000.00).

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. Voluntary Agreement. Cosme Grijalva 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.

14. 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.

15. 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.

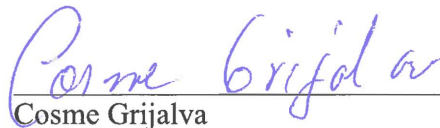
16. Consultation with Counsel. The Parties and each of them acknowledge that they have had the opportunity to consult with legal counsel of their choice prior to execution and delivery of this Agreement, and that they have in fact done so. Cosme Grijalva acknowledges he has received advice from his counsel.

17. 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.

18. 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: June 18, 2018



Cosme Grijalva

RICHARD DOYLE, City Attorney

Dated: June ____, 2018

By: _____

SAN JOSE CITY ATTORNEY

Approved as to Form:

Dated: June 18, 2018



JAIME A. LEANOS
Attorney for Cosme Grijalva

Dated: June 20, 2018

RICHARD DOYLE, City Attorney

By: 

ARDELL JOHNSON
Chief Deputy City Attorney
for Defendants, City of San Jose, et al.

Cosme Grijalva v. City of San Jose, et al.,
Case No. 5:18-cv-01853 EJD
Settlement Agreement