

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Settlement Agreement”) is made by and between the City of San José (“Defendant”), Frank F. Guerrero, III and Anthony G. Belcher (“Plaintiffs”), collectively referred to as the “Parties.”

WHEREAS, Plaintiffs filed an action against Defendant on or about March 6, 2018 in the Superior Court of California, County of Santa Clara, case number 18CV324413, entitled *Frank Guerrero, et al. v. City of San Jose* (“Action”);

AND WHEREAS, the Parties now undertake to settle the Action in its entirety, and Parties now undertake to release and extinguish on a final basis any and all claims by Plaintiffs against Defendant, arising out of, or in any way connected with, the incident which is the subject of the Action, which occurred on or about July 30, 2017 in San Jose, California, as more fully described in the Complaint (“Incident”);

AND WHEREAS Plaintiff desires to dismiss the Action with prejudice;

NOW THEREFORE, the Parties agree as follows:

1. For consideration of three-hundred, seventy-five thousand dollars (\$375,000.00), Plaintiffs on behalf of them, their past and present assigns, and heirs, hereby release and forever discharge Defendant, its past and present employees, consultants, attorneys, and assigns, all of whom expressly deny any liability, from any and all claims, demands, damages, actions, or suits, known and unknown, relating to, arising out of, or in any way connected with the Incident. Drafts in the following amounts shall be made payable to:

- a. Frank Guerrero, Anthony Belcher, and The Chavez Law Group
in the amount of \$281,538.39

- b. Kaiser Permanente in the amount of \$43,000.
- c. County of Santa Clara in the amount of \$50,461.61.

The drafts shall be delivered to counsel Lance Swanner of The Chavez Law Group, LLP for Plaintiffs within 35 days of receipt of the Settlement Agreement and Release. In consideration for the above-referenced payment, Plaintiffs shall dismiss the Action with prejudice within ten (10) days after service of the drafts.

2. Plaintiffs and their attorney further agree to defend, indemnify, and hold Defendant harmless against any and all contractual, equitable, healthcare, government, insurance, or constructive liens, for medical services, and any lawsuits, declaratory relief actions, arbitrations, or other legal proceedings which may be asserted or arise out of the Incident, the Action, or this Settlement Agreement.

3. The Parties shall cooperate in executing all documents necessary to effectuate this Settlement Agreement and to effectuate the dismissal with prejudice of the Action.

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.”

Plaintiffs represent that Civil Code Section 1542 has been read and reviewed with counsel and understood, and that it hereby waives any and 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 Incident based on facts found to be

different from the facts believed to be true at the time this Settlement Agreement was executed.

4. The Parties understand and acknowledge that this Settlement Agreement constitutes a compromise and settlement of disputed claims relating to, arising out of or any way connected with the Incident. No act taken by the Parties, either previously or in connection with this Settlement Agreement, shall be deemed or construed to be an admission of the truth or falsity of any claims heretofore made or an acknowledgment or admission by any party of any fault or liability whatsoever to the other party.

5. The Parties shall bear their own costs, including attorneys' fees, and any other fees incurred in connection with this Settlement Agreement and the events underlying this Settlement Agreement.

6. The Parties represent that they have had the opportunity to consult with legal counsel and have carefully read and understand the terms of this Settlement Agreement. The terms of this Settlement Agreement are voluntarily accepted for the express purpose of making a full and final compromise and settlement of the Action any and all claims by Plaintiffs against Defendant, arising out of, or in any way connected with the Incident.

7. This Settlement Agreement represents the entire agreement and understanding between the Parties regarding settlement of the Action and supersedes any and all prior and contemporaneous agreements, representations, and negotiations. This Settlement Agreement may be modified or amended only by a written instrument signed by all Parties hereto.

8. Each person executing this Settlement Agreement on behalf of any other person or persons hereby warrants that they have full authority to do so.

9. This Settlement Agreement shall become effective upon approval by the San José City Council in open session.

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

FOR PLAINTIFFS

Dated: _____

By: _____
FRANK GUERRERO, Plaintiff

Dated: 11-15-19

By: *Anthony Belcher*
ANTHONY BELCHER, Plaintiff

APPROVED AS TO FORM:

THE CHAVEZ LAW GROUP, LLP

Dated: _____

By: _____
LANCE SWANNER
Attorney for Plaintiffs

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FOR PLAINTIFFS

Dated: 11/19/19

By: 
FRANK GUERRERO, Plaintiff


Dated: _____

By: _____
ANTHONY BELCHER, Plaintiff

APPROVED AS TO FORM:

THE CHAVEZ LAW GROUP, LLP

Dated: 11/26/2019

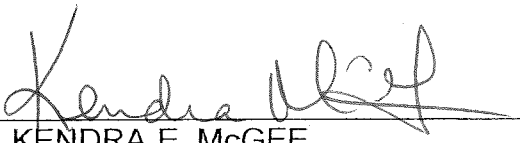
By: 
LANCE SWANNER
Attorney for Plaintiffs

FOR CITY OF SAN JOSE

Dated: _____

By: _____
RICHARD DOYLE
City Attorney as Authorized Agent for
the CITY OF SAN JOSE

Dated: 11/26/19

By: 
KENDRA E. MCGEE
Senior Deputy City Attorney
Attorney for Defendant, CITY OF
SAN JOSE