

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Settlement Agreement”) is made by and between Fernando Ruiz, Daniel Bufano, Elijah El-Amin, John J. Ferguson, and Clay Morganparks (“Plaintiffs”) and the City of San José (“Defendant”), collectively referred to as the “Parties.”

WHEREAS, Plaintiffs filed an action against the Defendants on or about November 18, 2017, in the United States District Court, Northern District of California, San José Division, case number 5:17-CV-06488-LHK, entitled *Ruiz v. City of San José, et al* (the “Action”);

AND WHEREAS, the Parties now undertake to settle this Action in its entirety, and Plaintiffs and Defendant now undertake to release and extinguish on a final basis any and all claims against the Defendant, arising out of, or in any way connected with, the incidents which are the subject of the Action, which occurred on various dates in 2014 and 2015 in San José, California, as more fully described in the Complaint filed in this Action (“Incidents”);

AND WHEREAS Plaintiffs desire to dismiss the Action with prejudice;

NOW THEREFORE, the Parties agree as follows:

1. For consideration of \$125,000.00 dollars, Plaintiffs, on behalf of themselves, their past and present assigns, heirs, executors, and administrators, hereby release and forever discharge the Defendant, its past and present employees, partners, agents, predecessors, successors, 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. A draft in the amount of \$125,000.00 dollars shall be made payable to: “_LAW OFFICES OF BRUCE NICKERSON_____” and shall be delivered to Bruce Nickerson, counsel for Plaintiffs, within 20 days of full execution of the Settlement Agreement and Release. In consideration for the above-referenced payment, Plaintiffs shall dismiss the Action with prejudice within three days after service of the drafts.

2. On or before November 12, 2018, Defendant will provide a list to Plaintiffs’ counsel of known arrests during the past five years of individuals, other than Plaintiffs, who were arrested by the San José Police Department, pursuant to “sting” (undercover) operations, for violation of California Penal Code Sections 647(a), 647(d), and 314.1.

3. Defendant shall cooperate with Plaintiffs’ counsel’s requests to the Santa Clara Superior Court to discover information about factually similar arrests by the SJPD during the last five years.

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

5 Section 1542 of the Civil Code of the State of California provides as follows:

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

Plaintiffs represent that Civil Code Section 1542 has been read and reviewed with counsel and understood, and that they hereby waive 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.

6. 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 Incidents. 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.

7. This Settlement includes the payment of attorneys' fees. Otherwise, the Parties shall bear their own cost and any other fees incurred in connection with this Settlement Agreement and the events underlying this Settlement Agreement.

8. 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 asserts or allegations regarding the claims alleged in the Action are valid. The Parties acknowledge that the settlement agreement made pursuant to this Agreement is made solely for the purpose of compromising disputed claims and avoiding the time, expense and uncertainty of further litigation.

9. 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.

10. 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.

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

12. Plaintiffs agree to hold the Defendant harmless with regard to any liens or claims for medical treatment and/or expenses they may have incurred as a result of the Incident.

13. 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.

LAW OFFICE OF BRUCE NICKERSON

Dated: 9-26, 2018

By: Bruce W. Nickerson
BRUCE NICKERSON

Attorney for Plaintiffs, Fernando Ruiz,
Daniel Bufano, Elijah El-Amin, John J.
Ferguson, and Clay Morganparks

CITY OF SAN JOSE


Dated: _____, 2018

By: _____
RICK DOYLE,
City Attorney, as Authorized Agent for the
Defendant, City of San José

CITY OF SAN JOSE

APPROVED AS TO FORM:

Dated: 10/4, 2018

By: 
CLIFFORD S. GREENBURG
Senior Deputy City Attorney
Attorney for Defendant City of San José

Dated: _____, 2018

By: _____
FERNANDO RUIZ, Plaintiff


Dated: _____, 2018

By: _____
DANIEL BUFANO, Plaintiff

Dated: _____, 2018

By: _____
ELIJAH EL-AMIN, Plaintiff

Dated: Sept 28, 2018

By: 
JOHN J. FERGUSON, Plaintiff

Dated: _____, 2018

By: _____
CLAY MORGANPARKS, Plaintiff

CITY OF SAN JOSE

Dated: _____, 2018

By: _____
RICK DOYLE,
City Attorney, as Authorized Agent for the
Defendant, City of San José

CITY OF SAN JOSE

APPROVED AS TO FORM:

Dated: _____, 2018

By: _____
CLIFFORD S. GREENBURG
Senior Deputy City Attorney
Attorney for Defendant City of San José

Dated: Sept, 26, 2018

By: _____
FERNANDO RUIZ, Plaintiff

Dated: _____, 2018

By: _____
DANIEL BUFANO, Plaintiff

Dated: _____, 2018

By: _____
ELIJAH EL-AMIN, Plaintiff

Dated: _____, 2018

By: _____
JOHN J. FERGUSON, Plaintiff

Dated: _____, 2018

By: _____
CLAY MORGANPARKS, Plaintiff

Dated: _____, 2018 By: _____
FERNANDO RUIZ, Plaintiff

Dated: 10/27/2018, 2018 By: *Daniel Bufano*
DANIEL BUFANO, Plaintiff

Dated: _____, 2018 By: _____
ELIJAH EL-AMIN, Plaintiff

Dated: _____, 2018 By: _____
JOHN J. FERGUSON, Plaintiff

Dated: _____, 2018 By: _____
CLAY MORGANPARKS, Plaintiff

CITY OF SAN JOSE

Dated: _____, 2018

By: _____
RICK DOYLE,
City Attorney, as Authorized Agent for the
Defendant, City of San José

CITY OF SAN JOSE

APPROVED AS TO FORM:

Dated: _____, 2018

By: _____
CLIFFORD S. GREENBURG
Senior Deputy City Attorney
Attorney for Defendant City of San José

Dated: _____, 2018

By: _____
FERNANDO RUIZ, Plaintiff

Dated: _____, 2018

By: _____
DANIEL BUFANO, Plaintiff

Dated: 09/27, 2018

By: 
ELIJAH EL-AMIN, Plaintiff

Dated: _____, 2018

By: _____
JOHN J. FERGUSON, Plaintiff

Dated: _____, 2018

By: _____
CLAY MORGANPARKS, Plaintiff

CITY OF SAN JOSE

APPROVED AS TO FORM:

Dated: _____, 2018

By: _____
CLIFFORD S. GREENBURG
Senior Deputy City Attorney
Attorney for Defendant City of San José

Dated: _____, 2018

By: _____
FERNANDO RUIZ, Plaintiff

Dated: _____, 2018

By: _____
DANIEL BUFANO, Plaintiff

Dated: _____, 2018

By: _____
ELIJAH EL-AMIN, Plaintiff

Dated: _____, 2018

By: _____
JOHN J. FERGUSON, Plaintiff

Dated: 9-26, 2018

By: 
CLAY MORGANPARKS, Plaintiff