

SETTLEMENT AND GENERAL RELEASE AGREEMENT

This Settlement Agreement and General Release is entered into between Plaintiffs GINA LA BLANC and STEVEN LABLANC, individually and on behalf of the ESTATE OF KYLE LABLANC, (hereinafter, "Plaintiffs"), and Defendants THE CITY OF SAN JOSE, TRI-CITY RECOVERY, and MARK STATON, (hereinafter, "Defendants"), collectively referred to herein as the "Parties."

RECITALS

A. On or about January 20, 2017, Plaintiffs commenced an action against Defendants THE CITY OF SAN JOSE; TRICITY RECOVERY; and MARK STATON; and DOES 1 to 100, pending as Santa Clara County Superior Court Case No. 17CV305290. (hereinafter, "the Action"), alleging causes of action for negligence and dangerous condition of public property related to an incident which occurred in San Jose, California on January 25, 2016. (Referred to collectively herein as "Plaintiffs' Claims").

B. Defendants deny any liability for Plaintiffs' Claims.

C. As part of the above-referenced action, Defendant the City of San Jose cross-complained against Defendants Tri-City Recovery and Mark Staton, alleging causes of action for indemnification and apportionment of fault; and Defendants Tri-City Recovery and Mark Staton cross-complained against Defendant the City of San Jose, alleging causes of action for indemnification, apportionment of fault, and dangerous condition of public property (referred to collectively herein as "Defendants' Cross-Claims").

C. The Parties desire to resolve the disputes which have arisen between them by compromising and settling the Plaintiffs' Claims and Defendants' Cross-Claims as set forth below.

THEREFORE, the Parties enter into this Settlement Agreement and Release (the "Agreement") on the terms and conditions stated below:

AGREEMENT

1. RELEASE AND DISMISSAL WITH PREJUDICE

Plaintiffs' counsel will forward an executed Request for Dismissal with prejudice of entire action to Defendant Tri-City Recovery's counsel in exchange for settlement drafts in the above identified amounts following receipt of all signatures to this Agreement. Defendant Tri-City Recovery's counsel will hold the dismissal and may not file said dismissal until after receipt of the settlement checks as outlined in Section 2. Counsel for Defendant the City of San Jose will deliver to Defendant Tri-City Recovery's counsel an executed Request for Dismissal with prejudice of its cross-complaint; Defendant Tri-City Recovery's counsel will file Defendant the City of San Jose's dismissal with Plaintiffs' dismissal, at which time it will also file a Request for Dismissal with prejudice of Defendants Tri-City Recovery and Mark Staton's cross-complaint against Defendant the City of San Jose.

Delivery of good funds is a material term of this Agreement. The Parties agree that the settlement sum is comprised of, among other things, Plaintiffs' attorneys' fees and costs.

2. PAYMENTS

In consideration of the release set forth above, the Defendants agree to pay \$600,000.00 (six hundred thousand dollars) to Plaintiffs Gina and Steven LaBlanc, individually and on behalf of the Estate of Kyle

LaBlanc, and their attorneys (the "payees") by payments to Gina LaBlanc and Steven LaBlanc and Walkup, Melodia, Kelly & Schoenberger as allocated below, within 20 days of receipt of the executed settlement agreement:

The City of San Jose shall pay, by a single payment, the sum of \$100,000.00 (one hundred thousand dollars), of the total settlement, in exchange for full settlement and release of Plaintiffs' claims as outlined above in Section 1, which includes attorney's fees.

Mark Staton and Tri-City Recovery, through its insurance carrier One Beacon Insurance Company, shall pay, by a single payment, the sum of \$500,000.00 (five hundred thousand dollars), in exchange for full settlement and release of Plaintiffs' claims as outlined above in Section 1, which includes attorney's fees.

The payments identified above are also made in exchange for the full settlement and release of Defendants' Cross-Claims.

All sums set forth herein constitute damages on account of personal injuries, within the meaning of Section 104(a)(2) of the Internal Revenue Code of 1986, as amended.

3. GENERAL RELEASES

3.1 Mutual Release

In consideration of the settlement, release, and dismissal described in Sections 1 and 2, all Parties and One Beacon Insurance Company, on behalf of themselves and their past and present agents, representatives, attorneys, insurers, heirs, and assigns, if any, do hereby fully, finally, and forever settle, release, and discharge all other Parties and One Beacon Insurance Company, and each Party's past and present representatives, employees, independent contractors, consultants, officers, directors, parents, subsidiaries, affiliates, predecessors, partners, agents, principals, executors, administrators, representative, attorneys, and insurers from any and all claims, actions, omissions, or causes of action, including but not limited to any and all claims for relief at law or in equity, suits, disputes, debts, contracts, agreements promises, liability, demands, damages, loss, attorney's fees, cost, or expense, of any nature whatsoever, known or unknown, suspected or unsuspected, direct or indirect, fixed or contingent, including but not limited to any Claims alleged in the Action or anything that could have been alleged in the Action.

3.2 Waiver of Rights under Section 1542

In providing these releases, the Parties waive any and all rights under section 1542 of the California Civil Code, which 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.

3.3 Release of Liens

Plaintiffs on behalf of themselves and their past and present agents, representatives, attorneys, insurers, heirs, and assigns, if any and their attorneys of record further agree to release, hold harmless, defend and

indemnify Defendants, One Beacon Insurance Company, affiliates, and Defense Counsel, their heirs, assigns and successors from any and all liens or other claims against this settlement (past, present, or future).

4. FEES AND COSTS

Each Party to this Agreement shall bear its own attorneys' fees and costs.

5. REPRESENTATIONS AND WARRANTIES

The Parties herein represent and warrant as follows:

A. Each Party received independent legal advice from its respective attorneys with respect to the advisability of making the settlement provided for in this Agreement and with respect to the advisability of executing this Agreement.

B. No Party has made any statement or representation to any other Party regarding any fact relied upon in entering into this Agreement, and each Party does not rely upon any statement, representation, or promise of any other Party in executing this Agreement or in making the settlement provided for herein, except as expressly stated in this Agreement.

C. In entering into this Agreement and the settlement provided herein, each Party assumes the risk of any misrepresentation, concealment, or mistake, except as expressly set forth in the representations and warranties section of this Agreement.

D. The Parties have read this Agreement and understand its contents.

E. It is understood and agreed that this Agreement constitutes the compromise of disputed claims and is entered into to prevent further involvement in protracted litigation based upon the disputed claims and that neither this Agreement nor any consideration hereunder is an admission of any liability on the part of any of the Parties hereto.

F. No Party has assigned, transferred, or granted or purported to assign, transfer, or grant any of the claims, demands, and causes of action disposed of by this Agreement.

G. Each term of this Agreement is contractual and not merely a recital.

H. The Parties will execute all such further and additional documents as shall be reasonable, convenient, and necessary to carry out the provisions of this Agreement.

6. COURT SUPERVISION UNDER CCP § 664.6

The Parties agree that the Santa Clara County Superior Court shall retain jurisdiction under Code of Civil Procedure section 664.6 to enforce the terms of this Agreement and, if necessary, to enter judgment in accordance therewith.

7. GENERAL PROVISIONS

A. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

B. This Agreement is the entire agreement among the Parties with respect to the subject hereof and supersedes all prior and contemporaneous oral and written agreements and discussions.

C. Any amendment, addendum, or revision to this Agreement shall be valid only if in writing and signed by the Parties to be bound, in which event there need be no legal consideration therefor.

D. This Agreement is binding upon and shall inure to the benefit of the Parties hereto and their respective agents, employees, representatives, officers, directors, divisions, subsidiaries, affiliates, assigns, attorneys, heirs, and successors and predecessors in interest.

E. Any person executing this Agreement on behalf of any corporation hereby represents and warrants that he or she has full authority to do so and that he or she is expressly authorized to bind his or her company or principal to all of the terms hereof.

F. This Agreement may be executed in counterparts, each of which shall constitute one and the same instrument and shall be binding and enforceable as if all Parties had executed the same copy hereof. Facsimile copies of executions are acceptable to the Parties.

G. Captions of this Agreement are for convenience only and shall not be used to interpret this Agreement.

H. Each Party hereto acknowledges and represents that he or she has fully and carefully read this Agreement and is executing this Agreement as a free and voluntary act.

IN WITNESS WHEREOF, this Agreement is made in the County of Santa Clara, in the State of California, and is effective as of the date first written below.

This agreement is comprised of a total of five pages, with signatures of the Parties on the fourth and fifth pages.

Plaintiff:

Dated: _____, 2019

GINA LABLANC

Dated: _____, 2019

STEVEN LABLANC

Defendants:

Dated: *Mary*, 2019

Tanya Skopitsch

Tanya Skopitsch
TRICITY RECOVERY, INC.

Dated: May 22, 2019

Mark Staton
MARK STATON

Dated: _____, 2019

CITY OF SAN JOSE

Approved as to form:

Dated: May ____, 2019

WALKUP, MELODIA, KELLY & SCHOENBERGER

By: _____

MICHAEL A. KELLY
JEFFREY A. CLAUSE
Attorneys for Plaintiffs STEVEN LABLANC and
GINA LABLANC

Dated: _____, 2019

MARK STATON


Dated: _____, 2019

CITY OF SAN JOSE

Approved as to form:

Dated: May 24, 2019

WALKUP, MELODIA, KELLY & SCHOENBERGER

By: 

MICHAEL A. KELLY
JEFFREY A. CLAUSE
Attorneys for Plaintiffs STEVEN LABLANC and
GINA LABLANC

Dated: May ____, 2019

RICHARD DOYLE, City Attorney

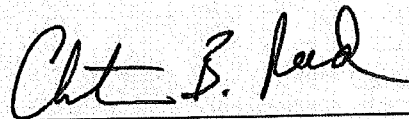
By:

MAREN J. CLOUSE
Senior Deputy City Attorney
Attorneys for Defendant/Cross-Complainant CITY
OF SAN JOSE

Dated: May 23, 2019

LOW, BALL & LYNCH

By:



Christine Balbo Reed, Esq.
Rachel R. Ostrander, Esq.
Attorneys for Defendants/Cross-Defendants
TRICITY RECOVERY and MARK STATON