

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Settlement Agreement") is made by and between Plaintiff JACOB FLORES and Defendant CITY OF SAN JOSE, its officers, directors, agents, servants, employees, predecessors, successors and assigns, and each of them ("SETTLING PARTIES" or "PARTIES").

WHEREAS, Plaintiff filed an action on or about December 5, 2018, now pending in the United States District Court, Northern District of California, case number 5:18-cv-07329-SVK (the "Action"); and

WHEREAS, the Parties now undertake to settle this Action in its entirety, and Plaintiffs and the 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 purported violations of 42 U.S.C. §1983 in San Jose, California, as more fully described in the Complaint filed in this Action; and

WHEREAS Plaintiff desires to dismiss the Action with prejudice;

NOW THEREFORE, the Parties agree as follows:

1. For consideration of \$60,000 (sixty thousand) dollars, Plaintiff JACOB FLORES, on behalf of himself, his past and present assigns, heirs, executors, and administrators, hereby release and forever discharges 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 (as set forth in the Complaint). A draft in the amount of \$60,000 dollars shall be made payable to: Jaime Leanos, Client Trust Account. The

check is to be delivered to the Law Office of Morales & Leanos no later than 30 days from the approval of this Settlement Agreement by the San Jose City Council.

2 In consideration for the above-referenced payment, Plaintiff shall dismiss the Action with prejudice within seven days after service of the draft.

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.

4 This is a full and final release applying to all unknown and unanticipated injuries or damages, including any and all claims now existing or which may arise in the future, arising out of said event as well as those not known or disclosed; the undersigned expressly waive any right or claim of right to assert hereafter that any claim, demand, obligation and/or cause of action has, through ignorance, oversight or error, been omitted from the terms of this Settlement Agreement, and further expressly waive any right or claim of right that they may have under the law of any jurisdiction that releases such as those herein given do not apply to unknown or unstated claims. It is the express intent of the Plaintiff to waive any and all claims that he may have against the persons and entities herein released, including any which are presently unknown, unsuspected, unanticipated or undisclosed. 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."

Plaintiff represents that Civil Code Section 1542 has been read and reviewed

with counsel and understood, and that he 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.

5. 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.

6. This Settlement includes the payment of attorney's fees and costs. Otherwise, the Parties shall bear their own costs and any other fees incurred in connection with this Settlement Agreement and the events underlying this Settlement Agreement.

7. 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 set forth in Plaintiff's Complaint and avoiding the time, expense and uncertainty of further litigation.

8. 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.

9. 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.

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

11. To the extent state law informs any dispute that may arise between the Parties, such dispute, and this Settlement Agreement, shall be governed by the laws of the State of California.

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

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

14. This Settlement Agreement may be executed by facsimile in any number, of counterparts and signature pages and by different parties on separate counterparts and signature pages, each of which, when so executed and delivered, shall be an original, and all such counterparts shall together constitute one and the same instrument.

15. Should any provision of this Settlement Agreement be declared or determined by any court to be illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected thereby and said illegal or invalid part, term or provision shall not be deemed to be part of this Settlement Agreement.

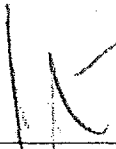
IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement:

Dated: November di0, 2019



JACOB FLORES
Plaintiff

Dated: November 11, 2019

By: 

JAIME LEANOS, ESQ.
Attorney for Plaintiff JACOB FLORES

CITY OF SAN JOSE

Dated: November , 2019

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

APPROVED AS TO FORM:

Dated: November , 2019

By: -----
KATHRYN ZOGLIN
Senior Deputy City Attorney
Attorneys for Defendant CITY OF SAN
JOSE

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JACOB FLORES
Plaintiff

Dated: November_, 2019

By: -----
JAIME LEANOS, ESQ.
Attorney for Plaintiff JACOB FLORES

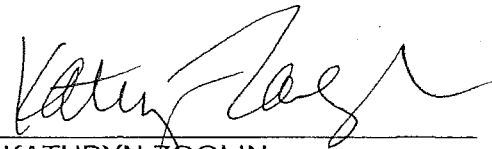
CITY OF SAN JOSE

Dated: November_, 2019

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

APPROVED AS TO FORM:

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KATHRYN ZOGLIN
Senior Deputy City Attorney
Attorneys for Defendant CITY OF SAN
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