

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Settlement Agreement") is made by and between Marissa Santa Cruz and Paea I'suva Tukuafu (hereafter "Plaintiffs"), and the City of San Jose (hereafter "CITY"). "Parties," when referenced herein, includes Plaintiffs and CITY collectively, and is mutual and reciprocal as to any claims between the Parties, their employees, contractors, or assigns.

WHEREAS, Plaintiffs filed a lawsuit on January 16, 2020 entitled *Marissa Santa Cruz, Paea I'suva Tukuafu v. City of San Jose, et al.* in the United States District Court for the Northern District of California, case number 5:20-cv-00351, (hereafter the "Action"); and,

WHEREAS, the Parties now desire and undertake to settle the Action in its entirety by entering into this Agreement, pursuant to which Plaintiffs will release and extinguish on a final basis any and all claims against CITY and all individuals and entities described in Paragraph 1 below, arising out of or in any way connected with the subject matters of the events described in the complaint filed in the Action;

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 shall settle, compromise, and forever discharge all claims of any and every kind, nature and character, which Plaintiffs alleged, or could have alleged, in the Action arising from or based on any act or omission by the City of San Jose, City Departments, City elected officials, and all City employees, named or who could have been named in the Action.

2. Consideration. In consideration for Plaintiffs' agreements, promises, covenants, releases, waivers, and dismissal of the Action stated herein, CITY shall pay the sum of Four Hundred Thousand Dollars (\$400,000.00) in the form of a check payable to Powell & Associates Client Trust Account. Powell & Associates will provide a W-9 prior to issuance of payment. Said payment shall compensate Plaintiffs for any and all damages claimed, or which Plaintiffs could have claimed, arising from or related in any way to the subject matters in the Action. In consideration of said payment, Plaintiffs shall dismiss the Action with prejudice and withdraw, waive, and release any and all claims for damages, including any and all claims and/or rights to recover costs and attorney's fees.

3. Dismissal of Claims. Plaintiffs and Plaintiffs' attorneys shall dismiss the Action with prejudice within five (5) business days after receiving payment of the settlement amount.

4. Release. Plaintiffs and Plaintiffs' representatives, successors, assigns, attorneys, and agents, hereby generally release and forever discharge CITY and all past and present employees, whether or not the employee was named individually in the Action. For purposes of this Agreement, CITY includes, without limitation, all City

Departments and Agencies, the City Council, all past and present elected and appointed officials, City employees, and any person or entity to which 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. Plaintiffs understand this Agreement is 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, and all present and future unknown and unanticipated injuries, losses or damages arising out of the Action (the "Released Matters"). Plaintiffs acknowledge and understand 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.

MSC, P.T.
Initials

Plaintiffs represent that they have read, reviewed with counsel, and understood Civil Code Section 1542, and hereby waive 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 subject of the Action based on facts found to be different from the facts believed to be true at the time this Settlement Agreement was executed.

6. Liability Not Admitted. The Parties acknowledge and agree that 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 that Party believes them to be.

7. Parties to Bear Own Attorney's Fees and Costs. The Parties shall bear their own costs, including attorneys' fees, and any other fees incurred in connection with the Action, this Settlement Agreement, and the matters settled pursuant to this Settlement Agreement.

8. Consultation with Counsel. The Parties and each of them acknowledge they have carefully read and understand the terms of this Settlement Agreement and have consulted with legal counsel of their choice prior to execution and delivery of this Agreement. The Parties have voluntarily accepted the terms stated herein for the express purpose of making a full and final compromise and settlement of the Action.

9. Representations. Each person executing this Settlement Agreement hereby warrants that he/she has full authority to do so. Plaintiffs further represent and warrant that they are the sole and rightful owner of the claims asserted in the Action; that they have not assigned any claim or claims, or the right to receive payments that are the subject of this Agreement; and that no liens on the settlement proceeds have been asserted or exist.

10. Responsibility for Liens. Plaintiffs agree to hold the CITY harmless with regard to third-party claims or liens arising from Plaintiffs' medical treatment, or from insurance subrogation claims, of any kind.

11. 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.

12. 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.

13. Binding Force and Effect. This Agreement shall be governed by California law. It shall bind and inure to the benefit of all Parties and their respective heirs, executors, administrators, trustors, trustees, beneficiaries, predecessors, successors, assigns, partners, partnerships, affiliated entities, agents, and representatives.


14. 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.

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

Dated: 8/19/2021


MARISSA SANTA CRUZ
Plaintiff

Dated: 08/19/2021



PAEA I'SUVA TUKUAFU
Plaintiff

Dated: _____

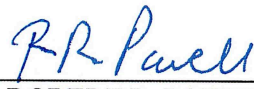
CITY OF SAN JOSE

By: _____
NORA FRIMANN
City Attorney as Authorized Agent
for the CITY OF SAN JOSE

APPROVED AS TO FORM:

Dated: 8/19/2021

POWELL & ASSOCIATES

By: 

ROBERT R. POWELL
Attorney for Plaintiffs
Marissa Santa Cruz and
Paea I'suva Tukuafu

Dated: 8.20.2021

NORA FRIMANN, City Attorney

By: 

ARDELL JOHNSON
Assistant City Attorney