

1 Defendants' counsel signed on March 6, 2012. *Id.* at 7-8. The City did not sign the
2 agreement earlier because it was waiting for finalization of a conciliation agreement in
3 related proceedings before the Equal Employment Opportunity Commission, which Horan
4 did not sign until February 27, 2012. Bond Decl. ¶ 9 & Ex. B at 6. The Agreement provided
5 that it "is contingent on final approval by the San Francisco Recreation and Parks
6 Commission and the San Francisco Board of Supervisors and that this Agreement will not
7 become effective absent such final approval." Agreement ¶ 3.

8 The Recreation and Parks Commission approved the settlement on April 19, 2012, and
9 the Board of Supervisors processed the settlement during the week of June 11, 2012. Bond
10 Decl. ¶ 14. The settlement then proceeded through the Board of Supervisors' Rules
11 Committee, which considered the settlement at several meetings and finally approved the
12 Agreement and referred it to the full Board of Supervisors on November 1, 2012. *Id.* ¶¶ 15-
13 16. The full Board "reviewed the Settlement at its November 7 and November 20 meetings
14 and referred it to the Mayor, who signed it on December 7, 2012." *Id.* ¶ 16. The City argues
15 that the Agreement did not become effective until that date.

16 The Agreement required the City to pay \$250,000 to Horan and his counsel with three
17 separate checks: \$46,296.78 to Horan for "general damages for personal injury, including
18 allegations of emotional injury"; \$120,000 to Horan for back wages; and \$83,703.22 to
19 Horan's counsel for attorneys' fees and costs. Agreement ¶ 1(a) (Ex. 3 to Pierce Decl.). The
20 Agreement did not provide a deadline by which payment had to be processed or received,
21 and the Agreement was also silent on whether Horan was entitled to interest after a certain
22 date. All three checks were received by Horan's counsel by February 5, 2013. Pierce Reply
23 Decl. ¶ 2 (stating that the checks for \$46,296.78 and \$83,703.22 were dated January 24,
24 2013, and received on February 4, 2013, and that the check for \$120,000 was dated
25 February 4, 2013, and received the following day).

26 The Agreement further required that, "[n]o later than 30 days after the first business
27 day after payment is made to Plaintiff as described . . . above, the City will notify the San
28 Francisco Employees Retirement System of the payment of back wages to Plaintiff."

1 Agreement ¶ 1(b). The City provided evidence that the notification was timely provided,
2 Zhang Decl. ¶ 4 & Ex. B, and Horan subsequently withdrew his request for enforcement of
3 this provision, Reply at 2.

4
5 **DISCUSSION**

6 The only issue remaining before the Court is Horan's request for interest on the
7 \$250,000 he and his counsel received as a result of the settlement. Horan asserts that he is
8 entitled to such interest because the City breached the Agreement, which both parties agree is
9 a contract governed by state law. For example, he argues that the City "became obligated to
10 pay contractual damages" by the Agreement, and that California Civil Code section 3287(a)
11 applies to "'damages' resulting from breach of contract." Reply at 2. He also relies on
12 California Civil Code section 3289(b) to argue that a 10 percent annual interest rate is proper.
13 Reply at 2-3. By its own terms, that section applies only "after a breach." Cal. Civ. Code
14 § 3289(b).

15 The problem with Horan's argument is that he never establishes that the City breached
16 the Agreement. He contends that his right to receive the \$250,000 accrued once a settlement
17 agreement was reached in 2011, but the terms of the Agreement state that it would not
18 become effective until after the Board of Supervisors approved it. Likewise, Horan suggests
19 that the City acted in bad faith in delaying approval of the Agreement and payment of the
20 \$250,000 settlement amount, but he has neither submitted evidence of bad faith nor
21 established that the delays in approval or payment constitute a breach of the Agreement
22 giving rise to damages. Accordingly, the Court DENIES Horan's request to order payment
23 of interest.

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25 **IT IS SO ORDERED.**

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27 Dated: 09/26/13



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THELTON E. HENDERSON, JUDGE
UNITED STATES DISTRICT COURT