

This matter comes before the Court on Plaintiff Michael Horan's motion to enforce 12 13 the settlement agreement. Horan requests that the Court order Defendant City and County of 14 San Francisco ("City") to provide notice of payment of back wages to the San Francisco 15 Employees Retirement System as required in the settlement agreement, and he further 16 requests that the City be ordered to pay interest on the \$250,000 settlement payment. After 17 carefully reviewing the parties' written arguments, the Court finds oral argument to be unnecessary and now VACATES the September 30, 2013 hearing date. Horan's motion is 18 19 DENIED for the reasons discussed below.

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21 BACKGROUND

The parties reached a tentative settlement on September 2, 2011. Bond Decl. ¶ 3.
Horan and the City "reached agreement on the terms of a Settlement in mid-November
2011." *Id.* ¶ 9. Horan signed the settlement agreement on November 15, 2011, and his
counsel signed on December 29, 2011. Settlement Agreement at 7 (Ex. 3 to Pierce Decl.)
("Agreement").¹ The City's representative signed the Agreement on March 1, 2012, and

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- ¹The Agreement was also attached as Exhibit A to the Bond Declaration filed by the City in opposition to the motion.

Defendants' counsel signed on March 6, 2012. *Id.* at 7-8. The City did not sign the
agreement earlier because it was waiting for finalization of a conciliation agreement in
related proceedings before the Equal Employment Opportunity Commission, which Horan
did not sign until February 27, 2012. Bond Decl. ¶ 9 & Ex. B at 6. The Agreement provided
that it "is contingent on final approval by the San Francisco Recreation and Parks
Commission and the San Francisco Board of Supervisors and that this Agreement will not
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 and referred it to the Mayor, who signed it on December 7, 2012." Id. ¶ 16. The City argues 14 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 allegations of emotional injury"; \$120,000 to Horan for back wages; and \$83,703.22 to 18 Horan's counsel for attorneys' fees and costs. Agreement ¶ 1(a) (Ex. 3 to Pierce Decl.). The 19 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).

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

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

5 DISCUSSION

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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) 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. 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.

- 25 **IT IS SO ORDERED.**
- 27 Dated: 09/26/13

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E. HENDERSON. TED STATES DISTRICT COURT