

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

JOSE LUIS VALDEZ, individually; ALICIA T. VALDEZ, individually and as representatives of the ESTATE OF MARCO ANTONIO VALDEZ; JUANITA RAMIREZ FLORES; individually; ALICIA T. VALDEZ as Guardian ad Litem for I. Y. (a minor); M. F. (a minor; and F. M. (a minor),)	Case No. CV 10-05112 LHK STIPULATION AND ORDER FOR DISMISSAL WITH PREJUDICE BY ALL PARTIES [Fed. R. Civ. P. 41(a)(1)(ii)]
Plaintiffs,)	
vs.)	
CITY OF GONZALES; GONZALES POLICE DEPARTMENT; CHIEF PAUL MILLER, individually and in his capacity as a Chief of Police for the City of Gonzales; SGT. PETER AUSTEN, individually and in his capacity as a police officer for the City of Gonzales; Officer JOSE CISNEROS, individually and in his capacity as a police officer for the City of Gonzales; Officer WINSTON ROJAS, individually and in his capacity as a police officer for the City of Gonzales; and DOES 1-50, inclusive,)	
Defendants.)	

In consideration of the payments made to be made to blocked trust accounts in trust for the minor Plaintiffs, payment of expenses of the representatives of the Estate of Marco Valdez,

1 and payment of attorney's fees and litigation expenses to Plaintiffs' attorney, Manuel Juarez as
2 set forth in the settlement agreement of June 29, 2011, and the release executed by all Plaintiffs
3 attached hereto as **Exhibit A**, Plaintiffs JOSE LUIS VALDEZ, ALICIA T. VALDEZ,
4 individually and as representatives of the ESTATE OF MARCO ANTONIO VALDEZ; ALICIA
5 T. VALDEZ as Guardian ad Litem for I. Y. (a minor); M. F. (a minor; and F. M. (a minor), and
6 JUANITA RAMIREZ FLORES; and Defendants, CITY OF GONZALES; GONZALES
7 POLICE DEPARTMENT; CHIEF PAUL MILLER, SGT. PETER AUSTEN, Officer JOSE
8 CISNEROS, and Officer WINSTON ROJAS each stipulates to dismissal of this action with
9 prejudice.

10 Dated: Sept 29, 20, 2011

11 LAW OFFICES OF VINCENT P. HURLEY

12 By: Vincent P. Hurley
13 VINCENT P. HURLEY
14 Attorneys for Defendants City of Gonzales,
15 Gonzales Police Department, Chief Paul Miller,
Sgt. Peter Austen, Officer Jose Cisneros, Officer
Winston Rojas

16 Dated: September 21, 2011

17 LAW OFFICE OF MANUEL A. JUAREZ

18 By: /s/ Manuel A. Juarez

19 MANUEL A. JUAREZ
20 Attorney for Plaintiffs Jose Luis Valdez, Alicia T.
21 Valdez, individually and as representatives of the
22 Estate of Marco Antonio Valdez, Alicia T. Valdez
23 as Guardian ad Litem for I. Y. (a minor); M. F. (a
minor; and F. M. (a minor), and Juanita Ramirez
Flores

24 IT IS SO ORDERED.

25 Dated: October 7, 2011

26 Lucy H. Koh
27 The Honorable Lucy H. Koh
28 United States District Court Judge

RELEASE AGREEMENT

This release agreement (Agreement) is entered into by Plaintiffs, JOSE LUIS VALDEZ, individually, and ALICIA T. VALDEZ, individually and as representatives of the ESTATE OF MARCO VALDEZ; JUANITA RAMIREZ FLORES, individually; ALICIA T. VALDEZ as Guardian ad Litem for ITZEL YARETZI VALDEZ RAMIREZ (a minor); MIZAEEL FRANCISCO RAMIREZ also known as MIZAEEL FRANCISCO VALDEZ RAMIREZ (a minor); and FRANCESCA MARIE VALDEZ (a minor). Except as necessary, all Plaintiffs will be referred to collectively as "Plaintiffs".

Plaintiffs intend by this Agreement to release their claims against Defendants, CITY OF GONZALES; GONZALES POLICE DEPARTMENT; CHIEF PAUL MILLER, individually and in his capacity as a Chief of Police for the City of Gonzales; PETER AUSTEN, individually and in his capacity as a police officer for the City of Gonzales; JOSE CISNEROS, individually and in his capacity as a police officer for the City of Gonzales; WINSTON ROJAS, individually and in his capacity as a police officer for the City of Gonzales and all others identified below (Defendants) in United States District Court, Northern District of California, Case Number CV 10-05112 LHK.

Plaintiffs alleged that they suffered injuries as a result of the conduct of Defendants on September 14, 2009, when Marco Antonio Valdez was killed. Plaintiffs' claims included individual and wrongful death claims for physical injuries that caused the death of Marco Valdez. Defendants denied liability, and the matter has been in litigation since the filing of Plaintiffs' complaint. On June 29, 2011, all parties met in Early Neutral Evaluation and mediation with Christopher Johns, Esq., appointed by the Federal Court from the Court Mediation Panel, and all Plaintiffs agreed to settle all claims against Defendants. Plaintiffs and Defendants executed a handwritten document entitled "Settlement and Complete Release Agreement of United States District Court Case # CV 10-05112 LHK", and a copy of said handwritten settlement agreement is attached to and incorporated into this agreement.

THEREFORE, Plaintiffs, with the advice and consent of their attorney, intend by this Agreement to release Defendants from all claims, rights, demands, liabilities, obligations and causes of action of every kind, nature and description that Plaintiffs may have against Defendants, or any other person or entity as specified below, and

PLAINTIFFS AGREE AS FOLLOWS:

1. PAYMENT. As compensation for all claims of Plaintiffs, Defendant City of Gonzales and the Monterey Bay Area Self Insurance Authority will pay sums as follows:
 - a. Forty one thousand two hundred fifty dollars (\$41,250.00) to a blocked trust account for the benefit of ITZEL YARETZI VALDEZ RAMIREZ (a minor) in a recognized financial institution administered by an independent trustee as ordered by the Court pursuant to an Order on Minor's Compromise, and
 - b. Forty one thousand two hundred fifty dollars (\$41,250.00) to a blocked trust account for the benefit of MIZAEL FRANCISCO RAMIREZ also known as MIZAEL FRANCISCO VALDEZ RAMIREZ (a minor) in a recognized financial institution administered by an independent trustee as ordered by the Court pursuant to an Order on Minor's Compromise, and
 - c. Forty one thousand two hundred fifty dollars (\$41,250.00) to a blocked trust account for the benefit of FRANCESCA MARIE VALDEZ (a minor) in a recognized financial institution administered by an independent trustee as ordered by the Court pursuant to an Order on Minor's Compromise, and
 - d. Ten thousand dollars (\$10,000.)) payable to the Trust Account of Manuel Juarez, Esq. for Jose Luis Valdez and Alicia T. Valdez as representatives of the Estate of Marco Antonio Valdez, and their attorney, Manuel Juarez, and
 - e. Fifty six thousand two hundred fifty dollars (\$56,250.00) payable to attorney Manuel Juarez as payment for attorneys fees of \$41,250.00 and expenses of \$15,000.00.
 - f. Plaintiff JUANITA RAMIREZ FLORES shall not receive any money.
 - g. Plaintiffs JOSE LUIS VALDEZ and ALICIA T. VALDEZ, individually, shall not receive any money.
2. RELEASE. Plaintiffs hereby release and forever discharge the CITY OF GONZALES, PAUL MILLER, PETER AUSTEN, JOSE CISNEROS, WINSTON ROJAS, and their officers, elected officials, directors, all employees, subsidiaries, agents, attorneys, representatives, successors, heirs and assigns, and insurers of and from any and all claims, debt, liabilities, demands, obligations, costs, expenses, damages, actions and causes of action, of every

nature, character and description, known and unknown, which the parties now own or hold, or have at anytime owned or held, or may at any time own or hold, by reason of any matter, cause or thing whatsoever incurred, done, omitted or suffered to be done prior to the date of this Agreement which Plaintiff may have against City of Gonzales, PAUL MILLER, PETER AUSTEN, JOSE CISNEROS, WINSTON ROJAS, or any employee, known or unknown, on account of, or in anyway related to the death of Marco Antonio Valdez.

3. WAIVER OF CIVIL CODE § 1542. Plaintiffs are represented by attorneys at the time of executing this release. Plaintiffs and their attorneys have spent considerable time examining the occurrences and transactions which are the subject of this release, and based upon that examination Plaintiff expressly waives and relinquishes their respective rights created under California Civil Code §1542, which states:

"CERTAIN CLAIMS NOT AFFECTED BY GENERAL RELEASE -- A general release does not extend to claims which the creditor does not know or suspect to exist in his or their favor at the time of executing the release, which, if known by him or her, must have materially affected his or their settlement with the debtor."

4. DISPUTED CLAIMS. This Agreement is a compromise, settlement and release of disputed claims, and nothing in this Agreement shall be construed at any time as an admission of liability on the part of the City of Gonzales, PAUL MILLER, PETER AUSTEN, JOSE CISNEROS, WINSTON ROJAS or any of City's employees.

5. RELIANCE UPON OWN JUDGMENT. Plaintiffs rely wholly upon their own judgment, beliefs and knowledge of the nature, extent and duration of their damages, if any, and acknowledge that they has not been influenced to any extent whatever in making this agreement by any representations or statements regarding said damages or any other matters made by Defendants in this case, or by any person or persons representing them.

6. ATTORNEYS FEES. Plaintiffs and Defendants shall bear their own costs and attorneys fees except as specified above in Paragraph 1(e). If it becomes necessary to engage in legal proceedings to enforce or interpret any of the provisions of this agreement, the prevailing party will be entitled to recover his, her, or its reasonable attorney's fees incurred in connection with such proceedings.

7. WARRANTIES. Plaintiffs warrant that the settlement evidenced by this Agreement and the execution of this Agreement has been approved and authorized by Plaintiffs, and that the persons who execute and attest this Agreement have been authorized to perform said acts. Alicia T. Valdez warrants and guarantees her authority as *guardian ad litem* for all three minor children of Marco Antonio Valdez, and that no parent of any minor child of Marco Antonio Valdez has claimed or will claim any right or authority to represent any of the children or release any Defendant.

8. ASSIGNMENT. All parties warrant that no claims or causes of action arising out of the event or occurrences recited herein have been assigned to any other person or entity.

9. INDEMNIFICATION. By signing this Agreement Plaintiffs agree to fully indemnify Defendants and hold Defendants harmless from any claim, lawsuit, medical or other lien, including Medi-Cal or Medi-Care liens, attorneys fees or costs of litigation brought against Defendants by Plaintiffs or any person or entity on Plaintiffs' behalf arising as a result of this Agreement, whether said person or entity disputes the terms of this Agreement, the authority of the undersigned to make this Agreement, or for any additional claim of damages arising out of the event of September 14, 2009. Plaintiffs certify that they know of no person or entity that would dispute the terms of this Agreement.

10. SEVERABILITY. Should any provision of this Agreement be held invalid or illegal, such illegality will not invalidate the remainder of this Agreement. Instead, the Agreement shall be construed as if it did not contain the illegal part, and the rights and obligations of the parties shall be construed and enforced accordingly.

11. INTERPRETATION. This Agreement shall be construed and enforced pursuant to the laws of the State of California.

12. REPRESENTATION. Plaintiffs and Defendants acknowledge that they have been represented by independent legal counsel of their own choice, that this Agreement was prepared with the joint input of counsel, and shall not be construed in favor of or against any party to the Agreement. Plaintiffs further acknowledge that this Agreement was executed freely and voluntarily and with the consent of and on the advice of independent legal counsel. Plaintiffs hereby authorize and direct their attorneys of record to dismiss all Defendants and this lawsuit with prejudice.

13. DELIVERY. The parties agree that Plaintiffs' attorney will accept the sum of money identified in Paragraphs 1(d) & (e) as trustee for Plaintiffs in this action, and that Plaintiffs' attorney will comply with any orders of a court to assure deposit of the sums identified in Paragraphs 1(a), (b) and (c) into court approved trust accounts, and Defendants will not participate in, or be responsible in any way for the ultimate distribution of the money.

14. ENTIRE AGREEMENT. This document contains the entire agreement and the terms of this settlement and release are contractual.


15. COURT AUTHORITY TO ENFORCE TERMS OF THIS AGREEMENT. The Parties agree that this agreement may be enforced by Order of the United States District Court after a properly noticed motion.

16. PAGINATION. This agreement consists of six (6) pages plus the attached handwritten settlement agreement, and all signatures are contained on Pages 5 and 6.



Date: 8-9-11


JOSE LUIS VALDEZ, individually and as
representatives of the ESTATE OF MARCO ANTONIO
VALDEZ

Date: 8-9-11


ALICIA T. VALDEZ individually and as representatives
of the ESTATE OF MARCO ANTONIO VALDEZ; and
as Guardian ad Litem for ITZEL YARETZI VALDEZ
RAMIREZ (a minor); MIZAEL FRANCISCO
RAMIREZ also known as MIZAEL FRANCISCO
VALDEZ RAMIREZ (a minor); and FRANCESCA
MARIE VALDEZ (a minor)

Date: 8-16-11


JUANITA RAMIREZ FLORES, individually

MANUEL JUAREZ, ESQ.
Attorney for Plaintiffs

Reviewed and approved as to form.

Reviewed and approved as to form.

LAW OFFICES OF VINCENT P. HURLEY
A Professional Corporation

A handwritten signature in cursive script, reading "Vincent P. Hurley", written over a horizontal line.

VINCENT P. HURLEY

Attorneys for Defendants CITY OF GONZALES, PAUL
MILLER, PETER AUSTEN, JOSE CISNEROS, and
WINSTON ROJAS