

SETTLEMENT AGREEMENT AND GENERAL RELEASE

Meinhardt, et al. v. City of Sunnyvale
Case No. 5:16-cv-05501-EJD

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

This Document is subject to Public Disclosure

This is an agreement between Defendant CITY OF SUNNYVALE and named Plaintiffs TIMOTHY AHEARN, CAMRON BAILEY, KIRK KIM, and the following opt in Plaintiffs: Andrea Atkinson, Rafael Chavez, Spencer Chen, Catalina Cruz, Dean Discher, Christopher Fiene, Rene Fernandez, Tracy Hern, Paul Kuczma, David Longanecker, Robert Malvini, Robert Mathers, Scott McCulloch, Shawn Nunes, Gregory Othon, Marianne Siu, Grant Smith, and Regan Williams (collectively the “Parties”).

RECITALS

This Agreement is made with reference to the following facts:

A. On September 9, 2016, Plaintiffs TIMOTHY AHEARN, CAMRON BAILEY, and KIRK KIM filed in the U.S. District Court for the Northern District of California, a complaint against the CITY OF SUNNYVALE (hereafter Defendant or City), Case No. 5:16-cv-05501-EJD. Subsequently, multiple plaintiffs opted into the action, namely Andrea Atkinson, Rafael Chavez, Spencer Chen, Catalina Cruz, Dean Discher, Christopher Fiene, Rene Fernandez, Tracy Hern, Paul Kuczma, David Longanecker, Robert Malvini, Robert Mathers, Scott McCulloch, Shawn Nunes, Gregory Othon, Marianne Siu, Grant Smith, and Regan Williams (hereafter collectively referred to “Plaintiffs”). All of the Plaintiffs are or were employed by Defendant during the operative period of the complaint.

B. In the complaint, the named Plaintiffs brought this lawsuit against the City on behalf of themselves and all current and former non-exempt City employees who worked overtime at any time since September 9, 2013. The complaint alleges Plaintiffs are entitled to additional overtime pay under the Fair Labor Standards Act (“FLSA”). The complaint alleges the City has violated the FLSA by failing to pay Plaintiffs the full amount due for all overtime hours worked. The complaint alleges the City failed to properly calculate the overtime rate of pay by excluding contributions for health care benefits or cash-in-lieu of health care benefits payments from the regular rate of pay, and excluding holiday-in-lieu payments from the regular rate of pay. During the course of litigation Plaintiffs also raised a claim that the City violated the FLSA by failing to include bilingual premium pay in the regular rate of pay for overtime under the FLSA. Plaintiffs allege they are entitled to recover unpaid overtime from September 9, 2013 to the present, plus liquidated damages in an equal amount, a declaratory judgment, an accounting, and attorneys’ fees and costs.

C. The City timely answered the complaint, generally denying the allegations and raising multiple affirmative defenses.

D. In an effort to resolve the issues raised in the lawsuit, the Parties have engaged in extensive negotiations regarding these matters. Throughout these negotiations all parties were and continue to be represented by counsel experienced in wage and employment matters.

E. In March 2017, the City provided damages calculations for all City employees for the period of three years prior to the filing of Plaintiffs' complaint, based upon the failure to include cash-in-lieu of health insurance benefits in the regular rate for FLSA overtime. Between March and April 2017 the City provided payroll information from September 2013 through December 2016 for 31 employees, at Plaintiffs' counsel's request. Plaintiffs have reviewed the data provided by the City and performed their own damages calculations.

F. The City has agreed to comply with the FLSA overtime wage requirements as set forth in *Flores v. City of San Gabriel*, 824 F.3d 890 (9th Cir. 2016).

G. The Parties participated in two days of a settlement conference before Magistrate Judge Susan van Keulen and, at the close of the second day of the settlement conference, under the guidance of Judge van Keulen, reached agreement on the terms of a settlement, which is memorialized in this Agreement. A true and correct copy of the Court's transcript of the hearing is attached to this Agreement as **Exhibit A** and is incorporated by reference herein. The City Council subsequently approved and authorized the settlement terms described in this Agreement.

H. The Parties wish to avoid the potential uncertainty, expense and delay of litigation and therefore, based on their extensive negotiations, agree to a settlement of these disputes. The Parties understand that the potential recovery at trial remains unknown, but the Parties believe that the terms of this Agreement are consistent with and within the range of a reasonable result that Plaintiffs might expect to obtain after a trial.

I. The Parties now desire to resolve all of the outstanding issues in the above-described lawsuit, and to that end, enter into this Agreement.

NOW THEREFORE, the Parties hereto agree, warrant, and represent as follows:

TERMS

1. **Resolution of Claims of Plaintiffs.** The following provisions address the claims raised by Plaintiffs in the lawsuit arising in the past, up to and including the effective date of this settlement Agreement:

a. The City shall pay a total amount of \$65,000.00 as the maximum amount to settle this case. This includes \$6,600 in damages to Plaintiffs who have presently opted in to the lawsuit and all Putative Plaintiffs who may subsequently opt in as described in paragraph 2 below, \$43,400 in attorneys' fees, and \$15,000 for costs.

b. Each Plaintiff's specific share of this settlement is listed in a separate sheet attached to this Agreement as **Exhibit B**. Each Plaintiff's share is a proportionate share of the \$6,600 the City agrees to pay in damages, calculated by including cash in lieu of health insurance benefits and bilingual premium pay in the regular rate of pay based upon each employee's overtime hours between September 9, 2013 and July 15, 2017, except that the amounts for Plaintiffs Tim Ahearn, Camron Bailey, Spencer Chen, and Kirk Kim were calculated by Plaintiffs' counsel and agreed to by the City, and the amounts of all other Plaintiffs and Putative Plaintiffs were adjusted *pro rata* based on the amounts for these four Plaintiffs. Each Plaintiff's signature on this Agreement constitutes an acknowledgment of his individual settlement amount, affirming that he or she accepts the amount as fair, just and reasonable.

c. The City will pay each Plaintiff his or her amount as back pay on the employee's regular payroll check, less the withholdings for that Plaintiff.

d. The above settlement amounts represent the agreed upon amount for all overtime compensation allegedly owed to Plaintiffs and all amounts allegedly owed for liquidated damages, a one-year extension of the statute of limitations, and any and all other damages and/or relief recoverable in the litigation, as well as attorneys' fees and costs, for the full liability period applicable to the litigation.

2. **Resolution of Claims of Putative Plaintiffs.** Plaintiffs' counsel brought this action on behalf of all similarly situated individuals. The Parties acknowledge that other individuals exist who are current or former non-exempt City employees who received cash-in-lieu or bilingual premium pay and worked overtime and who may be entitled to some recovery in this litigation, according to the City's calculations ("Putative Plaintiffs"). At the settlement conference, the Parties engaged in settlement discussions which included extending any agreed back pay and liquidated damages to all Putative Plaintiffs. The Parties agree to offer settlement terms to Putative Plaintiffs who have not yet opted into the action pursuant to the following conditions:

a. The City shall send notice to all Putative Plaintiffs at their last known address.

b. Notification to Putative Plaintiffs shall be accomplished by sending an individualized "Claim Form & Release" in the form of the notice attached hereto as **Exhibit C** to all Putative Plaintiffs. The Claim Form & Release shall set forth each Putative Plaintiff's Damages Payment. The City shall provide Plaintiffs' counsel Proof of Service of the "Claim Form & Release" to all Putative Plaintiffs.

c. Each Putative Plaintiff's specific share of this settlement is listed in a separate sheet attached to this Agreement (**Exhibit B**). Each Putative Plaintiff's share is a proportionate share of the \$6,600 the City agrees to pay in damages, calculated by including cash in lieu of health insurance benefits and bilingual premium pay in the regular rate of pay based upon each employee's overtime hours between September 9,

2013 and July 15, 2017, except that the amounts for Plaintiffs Tim Ahern, Camron Bailey, Spencer Chen, and Kirk Kim were calculated by Plaintiffs' counsel and agreed to by the City, and the amounts of all other Plaintiffs and Putative Plaintiffs were adjusted *pro rata* based on the amounts for these four Plaintiffs. Each Putative Plaintiff's signature on a Claim Form & Release constitutes an acknowledgment of his individual settlement amount, affirming that he or she accepts the amount as fair, just and reasonable.

d. The City will pay each Putative Plaintiff his or her amount as back pay on the employee's regular payroll check, less the withholdings for that Putative Plaintiff.

e. If a Putative Plaintiff accepts the settlement offer made by the City, he/she must execute and return the "Claim Form & Release" (**Exhibit C**). Putative Plaintiffs who execute and return the "Claim Form & Release" shall be bound by the terms of this Agreement. If a Putative Plaintiff chooses not to accept the settlement offer made by the City, he/she shall not be bound by this Agreement, and his/her rights will not be affected, and he/she will receive no payment.

3. **Tax Consequences.** For each Plaintiff's or Putative Plaintiff's settlement amount, each employee will have his/her particular amount reduced by applicable withholdings for state and federal taxes as listed on the subject employee's W-4 form on file with the City as of the date of the wage payment. The City shall then withhold from each employee's share allocated for wages the amounts required by law to be withheld in conformity with each employee's IRS Form W-4 currently or most recently on file with the City at the time the payment is to be made, and will be reported on an IRS Form W-2.

4. **Attorney Fees and Costs.** As described above, the City will pay to Messing Adam & Jasmine LLP (tax identification number 47-3433162) the amount of \$58,400.00, as payment for attorneys' fees and costs incurred in connection with the above-described litigation. Except as otherwise expressly provided herein, each party shall be responsible for the payment of their own costs, attorneys' fees, and all other expenses incurred in connection with the above-described litigation and any matter or thing relating to this Agreement and the Released Claims.

5. **Dismissal of Litigation.** Each of the Plaintiffs will dismiss with prejudice the subject litigation and will withdraw or dismiss any other complaint, claim, grievance, or charge for overtime compensation that he/she has filed against the City up to the date he/she executes this Agreement. In order to accomplish the dismissal of the litigation, counsel for the Parties shall jointly execute, and the parties shall approve, the Stipulation and Order substantially in form attached hereto as **Exhibit D**. The Parties expressly consent to and authorize their counsel to execute the Stipulation and Order and to seek Court approval of the Stipulation and Order on their behalf. The Parties shall submit the Stipulation and Order to the Court at the earliest opportunity after all Parties have fully completed an individual signature page and shall jointly request the Court to accept and approve the Stipulation and Order. If for any reason the Court declines to enter and approve the Stipulation and Order, the Parties shall promptly meet and confer in a good faith effort to prepare a form of stipulation and order, or other similar decree, acceptable to the Court and consistent with the terms of this Agreement. Should the Court refuse

to approve the terms of this Agreement, the Parties shall promptly meet-and-confer in a good faith effort to prepare a form of settlement agreement acceptable to the Court.

6. **Release of All Claims.** In consideration of the covenants undertaken herein, upon final approval by the Court of this Agreement, the Plaintiffs, and each of the Putative Plaintiffs who accepts the settlement offer made by the City and executes and returns the “Claim Form & Release” (the “Releasing Parties”), shall be deemed to have fully, finally, and forever released Defendant, and all of its departments, officers, employees, attorneys and agents and any other person acting by, through, or in concert with it (the “Released Parties”), from the any and all claims, charges, grievances, complaints, allegations, and causes of action for compensation, damages, injunctive relief, declaratory relief, costs, attorneys’ fees or any other form of relief of any nature whatsoever, whether the existence, nature or extent of the released claim is known or unknown, suspected or unsuspected, which the releasing parties have or might have, or which the Releasing Parties at any time heretofore had or might have had, claimed to have or may claim to have against the Released Parties arising in, or in connection with, or out of the litigation described above and any such claim arising in, or in connection with, or out of the claims described above (the “Released Claims”).

7. **Waiver of California Civil Code Section 1542.** Upon final approval by the Court of this Agreement, the Releasing Parties will be deemed to have expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits he or she may otherwise have had with respect to the Released Claims pursuant to California Civil Code section 1542, which provides:

“A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.”

8. **Unanticipated Consequences.** The Parties recognize and acknowledge that factors which have induced them to enter into this Agreement may turn out to be incorrect or to be different from what they had previously anticipated, and the Parties hereby expressly assume any and all of the risks thereof and further expressly assume the risks of waiving the rights provided by California Civil Code section 1542.

9. **No Admissions.** This Agreement affects claims and demands which are disputed, and by executing this Agreement, no party admits or concedes any of the claims, defenses, or allegations which were raised or could be raised by any other party or any third party. Neither this Agreement nor any part of this Agreement shall be construed to be an admission of by any party of any violation of law or of any lack of conformity with the FLSA, nor shall this Agreement nor any part of it, nor any settlement negotiations or earlier drafts of this Agreement, be admissible in any proceeding as evidence of such an admission. This document may be introduced in a proceeding solely to enforce the terms of this Agreement, and may be pleaded as a full and

complete defense to any action, suit or other proceeding that has been or may be instituted, prosecuted or attempted with respect to any of the Released Claims.

10. **Warranty of Non-Assignment.** The Parties warrant that they have not assigned any of the claims or portions of the claims that are the subject of this Agreement.

11. **No Unwritten Representations.** Each party represents that in executing this agreement, the party does not rely upon and has not relied upon any representation, promise, or statement not expressly contained herein.

12. **Complete Agreement.** This Settlement Agreement and General Release is the complete agreement between the Parties and supersedes any prior agreements or discussions between the parties.

13. **California and Federal Law.** This Agreement is executed and delivered in the State of California, and the rights and obligations of the Parties hereunder shall be construed and enforced in accordance with the laws of the State of California and to the extent necessary in accordance with federal law.

14. **Interpretation and Construction.** Any ambiguities or uncertainties herein shall be equally and fairly interpreted and construed without reference to the identity of the party or parties preparing this document or the documents referred to herein, on the understanding that the Parties participated equally in the negotiation and preparation of the Agreement and the documents referred to herein or have had equal opportunity to do so. This Agreement has been arrived at through negotiation and none of the Parties is to be deemed the party which prepared this Agreement or caused any uncertainty to exist within the meaning of Civil Code section 1654. The headings used herein are for reference only and shall not affect the construction of the Agreement.

15. **Breach, Waiver and Amendment.** No breach of the Agreement or of any provision herein can be waived except by an express written waiver executed by the party waiving such breach. Waiver of any one breach shall not be deemed a waiver of any other breach of the same or any other provision of this Agreement. This Agreement may be amended, altered, modified or otherwise changed in any respect or particular only by a writing duly executed by the Parties hereto or their authorized representatives.

16. **Exhibits.** The following exhibits are attached hereto and incorporated by reference:

Exhibit A: Transcript of Settlement Conference hearing before Magistrate Judge Susan van Keulen.

Exhibit B: List of payments allocated to each Plaintiff and each Putative Plaintiff that completes a Claim Form & Release.

Exhibit C: Notice of Collective Action Settlement Claim Form & Release to be sent to all Putative Plaintiffs.

Exhibit D: Stipulation and Order Approving Settlement.

Exhibit E: Individual Plaintiff's Signature Page.

17. **Agreement Does Not Establish Precedent.** The Parties agree that the terms of this Agreement will not establish any precedent, nor will this Agreement be used as a basis by the Parties to seek or justify similar terms in any subsequent case and it may not be used by anyone else to seek or justify similar terms in any subsequent case.

18. **No Impact on Any Other Entitlements.** Neither the Agreement nor any amounts paid under the Agreement will modify any previously credited hours or service under any employee benefit plan, policy, or bonus program sponsored by Defendant. Such amounts will not form the basis for additional contributions to, benefits under, or any other monetary entitlement under Defendant's sponsored benefit plans, policies, or bonus programs. The payments made under the terms of this Agreement shall not be applied retroactively, currently, or on a going forward basis, as salary, earnings, wages, or any other form of compensation for the purposes of Defendant's benefit plans, policies, or bonus programs.

19. **Authority to Execute.** Each party hereto warrants to the other parties that he/she has the full power and authority to execute, deliver and perform under this Agreement and all documents referred to herein, and that any needed consent or approval from any other person has been obtained. This Agreement was approved in substance by the City of Sunnyvale City Council on July 11, 2017.

20. **Counterparts.** This Agreement may be executed by the parties in any number of counterparts, all of which taken together shall be construed as one document.

21. **Effective Date.** The effective date of this Agreement shall be the date the district court approves this Agreement.

22. **Duty to Act in Good Faith.** The Parties shall act in good faith and use their reasonable good faith efforts after the execution of this Agreement to ensure that their respective obligations hereunder are fully and punctually performed. The Parties shall promptly perform any further acts and execute and deliver any other documents or instruments that may be reasonably necessary to carry out the provisions of this Agreement.

23. **Binding on Successors and Assigns.** This Agreement and all documents referred to herein shall bind and inure to the benefit of each of the Parties hereto, their spouses, domestic partners, children, heirs, estates, administrators, representatives, executors, attorneys, successors and assigns.

24. **No Third Party Beneficiaries.** Except as expressly provided herein, this Agreement is not for the benefit of any person not a party hereto or any person or entity not specifically identified as a beneficiary herein or specifically identified herein as a person or entity released hereby. The Agreement is not intended to constitute a third party beneficiary contract.

25. **Time for Performance.**

a. Upon execution of this Agreement, the Parties will execute the Stipulation and Order (**Exhibit D**), as described in Paragraph 5 herein. Should the Court approve the Parties' stipulation and enter an order approving this Agreement, the City shall send the Claim Form and Release (**Exhibit C**), to all Putative Plaintiffs within 21 calendar days of entry of the Court's order.

b. Payment of the individually-calculated settlement amounts (less withholdings) to the Plaintiffs shall occur no later than 45 calendar days after the Court files its order approving settlement. Notwithstanding anything in this Agreement, no sum will be paid to any Plaintiff who has not signed and dated this Agreement.

c. Putative Plaintiffs shall have 30 calendar days from the postmark date of the Claim Form and Release to return a completed claim form to the City (the "Claim Period"). Payment of the individually-calculated settlement amounts (less withholdings) to the Putative Plaintiffs shall occur no later than 45 calendar days after the close of the Claim Period. Notwithstanding anything in this Agreement, no sum will be paid to any Putative Plaintiff who has not signed, dated and returned the "Claim Form & Release" (**Exhibit C**).

d. The payment to Messing Adam & Jasmine LLP shall occur no later than 45 calendar days after the Court files its Order approving this settlement agreement.

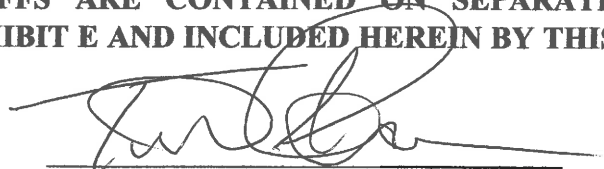
26. **Agreement Signed Knowingly and Voluntarily After Opportunity to Consult with Counsel.** The Parties understand and agree to this settlement agreement and to the terms and conditions contained herein and enter into this agreement knowingly and voluntarily. Plaintiffs have been advised that they have the right to seek legal advice with respect to this Agreement, including the release, and have had the opportunity to consult with counsel. The Parties have investigated the facts pertaining to this Agreement and all matters pertaining thereto as deemed necessary. The Parties have relied on their judgment, belief, knowledge, understanding and expertise after consultation with their counsel concerning the legal effect of the settlement and its terms. By signing this document and the documents referenced to herein, the Parties signify their full understanding, agreement, and acceptance of the Agreement and the Stipulation and Order (**Exhibit D**).

27. **Savings Clause.** If any term, condition, provision or part of this Agreement is determined to be invalid, void or unenforceable for any reason, the remainder of this Agreement will continue in full force and effect.

IN WITNESS WHEREOF, the Parties hereto have executed this Settlement Agreement and Release

RELEASES OF INDIVIDUAL PLAINTIFFS ARE CONTAINED ON SEPARATE SIGNATURE PAGES ATTACHED AS EXHIBIT E AND INCLUDED HEREIN BY THIS REFERENCE

Dated: 9/28/17


TIMOTHY AHEARN, Plaintiff

Dated: _____

CAMRON BAILEY, Plaintiff

Dated: _____

KIRK KIM, Plaintiff

Dated: _____

DEANNA SANTANA
City Manager, Defendant City of Sunnyvale

APPROVED AS TO FORM AND CONTENT:

MESSING ADAM & JASMINE LLP

Dated: _____

GREGG M. ADAM
Attorneys for Plaintiffs

RENNE SLOAN HOLTZMAN SAKAI, LLP

Dated: _____

KEVIN P. MCLAUGHLIN
Attorneys for Defendant

IN WITNESS WHEREOF, the Parties hereto have executed this Settlement Agreement and Release

RELEASES OF INDIVIDUAL PLAINTIFFS ARE CONTAINED ON SEPARATE SIGNATURE PAGES ATTACHED AS EXHIBIT E AND INCLUDED HEREIN BY THIS REFERENCE

Dated: _____

TIMOTHY AHEARN, Plaintiff

Dated: 9/10/17



CAMRON BAILEY, Plaintiff

Dated: _____

KIRK KIM, Plaintiff

Dated: _____

DEANNA SANTANA
City Manager, Defendant City of Sunnyvale

APPROVED AS TO FORM AND CONTENT:

MESSING ADAM & JASMINE LLP

Dated: _____

GREGG M. ADAM
Attorneys for Plaintiffs

RENNE SLOAN HOLTZMAN SAKAI, LLP

Dated: _____

KEVIN P. MCLAUGHLIN
Attorneys for Defendant

IN WITNESS WHEREOF, the Parties hereto have executed this Settlement Agreement and Release

RELEASES OF INDIVIDUAL PLAINTIFFS ARE CONTAINED ON SEPARATE SIGNATURE PAGES ATTACHED AS EXHIBIT E AND INCLUDED HEREIN BY THIS REFERENCE

Dated: _____

TIMOTHY AHEARN, Plaintiff

Dated: _____

CAMRON BAILEY, Plaintiff

Dated: 9-9-17



KIRK KIM, Plaintiff

Dated: _____

DEANNA SANTANA
City Manager, Defendant City of Sunnyvale

APPROVED AS TO FORM AND CONTENT:

MESSING ADAM & JASMINE LLP

Dated: _____

GREGG M. ADAM
Attorneys for Plaintiffs

RENNE SLOAN HOLTZMAN SAKAI, LLP

Dated: _____

KEVIN P. MCLAUGHLIN
Attorneys for Defendant

IN WITNESS WHEREOF, the Parties hereto have executed this Settlement Agreement and Release.

RELEASES OF INDIVIDUAL PLAINTIFFS ARE CONTAINED ON SEPARATE SIGNATURE PAGES ATTACHED AS EXHIBIT E AND INCLUDED HEREIN BY THIS REFERENCE

Dated: _____

TIMOTHY AHEARN, Plaintiff


Dated: _____

CAMRON BAILEY, Plaintiff

Dated: _____

KIRK KIM, Plaintiff

Dated: 10-4-17



KENT STEFFENS
Interim City Manager, Defendant City of Sunnyvale

APPROVED AS TO FORM AND CONTENT:

MESSING ADAM & JASMINE LLP

Dated: 10/5/2017



GREGG M. ADAM
Attorneys for Plaintiffs

RENNE SLOAN HOLTZMAN SAKAI, LLP

Dated: 10/5/17



KEVIN P. MCLAUGHLIN
Attorneys for Defendant