

SETTLEMENT, MUTUAL AGREEMENT AND GENERAL RELEASE OF CLAIMS

THIS SETTLEMENT, MUTUAL AGREEMENT AND GENERAL RELEASE OF CLAIMS ("Agreement") is made and entered into by and between David Tovar ("Tovar"), and the City of Fullerton and Bryan Bybee (collectively referred to as "Fullerton"). Tovar and Fullerton are sometimes referred to collectively at times herein as the "Parties," or individually as "Party."

RECITALS

A. Tovar filed a lawsuit against Fullerton alleging various claims, including alleged violations of 42 U.S.C. § 1983, a violation of California Civil Code section 51.7, a violation of California Civil Code section 52.1, assault, battery, and negligence, in a case entitled David Tovar, et al. v. City of Fullerton, et. al. (United States District Court Case No. SACV 13-00453-DOC (ANx) (the "Dispute");

B. Recognizing the costs and uncertainties involved in any litigation, the Parties now desire to settle fully and finalize all differences between them arising from the Dispute;

C. The Parties intend, by this Agreement, to settle any and all claims in connection with the Dispute, and the events giving rise therein, whether alleged or unalleged, for the total sum of Twenty Thousand dollars (\$20,000.00). Fullerton also agrees to bear the costs of the mediation of the Dispute;

D. This Agreement does not constitute an admission of any liability or wrongdoing whatsoever on the part of any of any of the Parties hereto.

AGREEMENT AND RELEASE

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Payment. Payment is contingent upon execution of this Agreement and Tovar's counsel providing Fullerton with a Tax Identification number and a W-9 form, which shall be provided within five (5) days of the last Parties' execution of this Agreement. Within ten (10) working days of receipt of the executed W-9 form and this Agreement, Fullerton will make the settlement payment of Twenty Thousand (\$20,000.00) made payable to Tovar's counsel of record as follows: "Frederico Sayre, Sayre & Levitt, LLP, Client Trust Account, f.b.o. David Tovar." The check shall be mailed to 333 Civic Center Drive West, Santa Ana, CA 92701.

2. Dismissals. Upon receipt of the agreed upon settlement payment, counsel for Tovar will execute a stipulation for dismissal, with prejudice, of the Dispute, and in no event later than five (5) business days after receipt of payment, upon counsel for Fullerton at 3777 N. Harbor Boulevard, Fullerton, CA 92835.

3. **Notice.** All notices to be given pursuant to this Agreement, shall be in writing and shall be delivered to the following addresses, or such other addresses as the parties may later designate in writing:

If to Tovar: Frederico Sayre, Sayre & Levitt, LLP, 333 Civic Center Drive West, Santa Ana, CA 92701. Such notice shall also be faxed to (714) 716-8445.

If to Fullerton: Jones & Mayer, and mailed to 3777 N. Harbor Boulevard, Fullerton, CA 92835. Such notice shall also be faxed to (714) 446-1448.

4. **Release of Claims.** Tovar, individually, and on behalf of himself, his respective successors, assigns, heirs, principals, agents, employees, consultants, representatives, attorneys, bonding companies and insurers release and forever discharge Fullerton, as well as their respective successors, assigns, principals, agents, employees (including, but not limited to, Bryan Bybee), elected officials, consultants, representatives, attorneys, bonding companies and insurers from any and all liability in connection with all claims, damages, attorney's fees, costs and allegations arising from or in any way related to the Dispute, whether made or unmade, asserted or unasserted, stated or unstated or that could have been stated, and of any kind whatsoever.

5. **No Liens:** Tovar represents and acknowledges that there have been no attorney, medical, or other liens that have been served or filed to date in connection with the Dispute. Tovar agrees that they shall be solely responsible for any and all liability associated with any such liens.

6. **Civil Code 1542 Release.** The Parties are aware of all rights that may be granted to them pursuant to Civil Code Section 1542, which section reads, in pertinent part, as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW 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."

The Parties nevertheless waive all rights granted to them by Section 1542, and any similar statute, code, law or regulation of any state of the United States, or of the United States, and assumes all risks for claims arising in the Dispute, heretofore or hereafter arising, known or unknown, from the subject matters of this release. Furthermore, the Parties agree that the facts on which the release under which this Agreement is based, may turn out to be different from the facts now known or believed to be true in respect to the matters referred to above. Nevertheless, the Parties accept and assume the risk that such facts may turn out to be different and agrees that the terms of the release in this Agreement shall in all respects be effective and not subject to termination, rescission, modification by an such difference in the facts.

7. **No Admission of Liability.** The Parties understand and agree that this Agreement is not to be construed as an admission of liability whatsoever on the part of Fullerton or any

Fullerton employee, and that this Agreement is made solely for the purpose of avoiding the burden that would be imposed upon the Parties by further litigating the Dispute.

8. **No Assignment.** The Parties, and each of them, represent and warrant that they have not assigned or transferred, or purported to assign or transfer, and shall not hereafter assign or transfer, any obligations, liabilities, demands, claims, costs, expenses, debts, controversies, damages, actions, and causes of actions released under this Agreement.

9. **Consultation With Attorney.** Each Party declares that prior to the execution of this Agreement, he/she/it has consulted with his/her/its attorney in order that he/she/it may intelligently exercise his/hers/its own judgment in deciding whether to execute this Agreement.

10. **Authority to Execute Agreement.** Each Party declares that he/she/it has read this Agreement and understands and knows the contents thereof, and represents and warrants that each of the Parties executing this Agreement is empowered to do so and hereby binds the respective Party, and all of its successors, assigns, principles, agents, employees, consultants, representatives, attorneys, bonding companies and insurers to the terms hereunder.

11. **Counterparts.** This Agreement may be executed in counterparts, and all so executed shall constitute an agreement binding on the Parties hereto. The Parties further agree that a facsimile copy of the executed counterparts shall have the same force and effect as an original.

12. **Enforcing Agreement.** This Agreement shall in all respects be interpreted, enforced and governed under the laws of the United States or the State of California, as applicable, and this Agreement is fully enforceable pursuant to California Code of Civil Procedure section 664.6, or its federal counterpart.

13. **Jurisdiction and Venue.** This Agreement is intended to be construed pursuant to the laws of the State of California. Each Party hereto agrees that the proper venue for any action arising out of the breach or the interpretation of this Agreement or other documents delivered pursuant to any provision thereof, shall be the United States District Court, Central District of the State of California.

14. **Entire Agreement.** This Agreement constitutes the entire understanding between and among the Parties hereto. Each Party acknowledges that no Party, agent or representative of the other Party has made any promise, representation or warranty, express or implied, not expressly contained in this Agreement, that induced the other Party to sign this document. Both Parties agree that this Agreement shall not be amended or modified, except in writing signed by each Party, and shall not be construed against any Party because that Party's representative drafted the Agreement or any portion of it.

15. **Additional Acts.** The Parties agree to perform such further acts and to execute and deliver such further documents as may be reasonably necessary or appropriate to carry out this Agreement.

16. **No Other Promise or Warranty.** No promise or warranty shall be binding on any Party except as expressly contained in this Agreement.

17. Not Binding on Any Third Party. This Agreement is not for the benefit of any person or party who is not a signatory hereto or specifically named or referred to herein.

18. If Any Provision Is Void. If any provision of this Agreement shall be determined to be invalid, void or illegal, such provision shall be construed and amended in a manner which would permit its enforcement, but in no event shall such provision affect, impair or invalidate any other provision hereof.

19. Agreement Binding on Successors. It is agreed that this Agreement, together with the releases, shall be binding upon and inure to the benefit of the heirs, executors, administrators, personal representatives, successors in interest and assigns of the respective Parties hereto.

20. Attorneys' Fees. The Parties shall each bear their own attorney's fees and costs incurred in litigation of the Dispute. However, should either Party initiate any action at law or in equity to enforce or interpret the terms of this Agreement, the prevailing Party shall be entitled to reasonable attorneys' fees and costs.

21. Gender and Number. Within this Agreement, words of any gender shall be held and construed to include any other gender, and words in the singular number shall be held and construed to include the plural, unless the context otherwise requires.

22. Effective Date. This Agreement shall be effective as of the last date set forth below.

WHEREFORE, the undersigned having read the foregoing Settlement and Release Agreement, and fully understanding it, and agreeing to its terms, hereby execute this Agreement and make it effective on the date of the last signature hereto.

DATED: July 8, 2014

CITY OF FULLERTON

By: _____

Joe Felz
City Manager, CITY OF FULLERTON

DATED: July 9ND, 2014

DAVID TOVAR _____

Signatures continued on following page.

APPROVED AS TO FORM AND CONTENT:

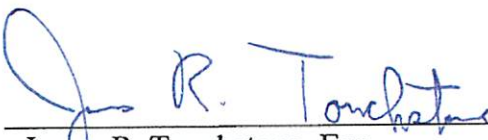
DATED: July ¹⁷2, 2014

SAYRE & LEVITT, LLP

By: 
Frederico Sayre, Esq.
Attorneys for Plaintiff DAVID TOVAR

DATED: July 8, 2014

JONES & MAYER

By: 
James R. Touchstone, Esq.
Attorneys for Defendants, CITY OF
FULLERTON, et al.