

MUTUAL SETTLEMENT AGREEMENT AND RELEASE

This Mutual Settlement Agreement and Release ("Settlement Agreement") is made and entered into this 20th day of June, 2017 among the following:

"Plaintiffs": ANTONIO ORTIZ AND LUIZ ORTIZ,

"Defendants": CITY OF FULLERTON, BRYAN BYBEE, MATTHEW MARTINEZ,
EMMANUEL PULIDO, BILLY PHU

RECITALS

- A. Plaintiffs filed a First Amended Complaint for Damages against Defendants on September 16, 2016, in the United States District Court, Central District, Case No. 8:16-cv-01499-DOC-DFM ("the Action").
- B. Defendants denied and continue to deny all of Plaintiffs' allegations.

AGREEMENT

Plaintiffs and Defendants agree as follows:

1.0 Statement of Intent

- 1.1 It is the intent of the Parties, including Plaintiffs and Defendants to finally resolve all of the claims between them relating in any way to the events of July 4, 2011 which resulted in the injuries allegedly sustained by Plaintiffs, as well as any and all past, present or future claims, demands, actions, causes of action or liabilities of whatever kind and nature, whether known or unknown, suspected or claimed, relating to those events, or any other claims in any way arising out of or deriving from those events, and in order to preclude any potential future litigation between or among the parties to this agreement, all of its terms are to be construed so that their meaning will effectuate this intent. The terms of this agreement are to be construed in this fashion, with no presumption in favor or against any party as drafter of the agreement.

2.0 Release and Discharge

- 2.1 In consideration of the payments set forth in Section 3.0, Plaintiffs hereby completely release and forever discharge Defendants from any and all past, present and future claims, demands, obligations, actions, causes of action, wrongful death claims, rights, damages, costs, attorney fees, losses of services, expenses and compensation of any nature whatsoever, which Plaintiffs now have or which may hereafter accrue or otherwise be acquired on account of the subject of the Action against Defendants including, without limitation, all known or unknown claims for bodily and personal injuries to Plaintiffs, or any future wrongful death claim of Plaintiffs' representatives or

heirs which may result from the alleged acts or omissions of the Defendants related to the subject of the Action.

- 2.2 This release and discharge shall also apply to Defendants past, present and future officers, directors, stockholders, attorneys agents, servants representatives, employees, subsidiaries, affiliates, partners, insurance companies and its employees, predecessors and successors in interest, and assigns, and all other persons, firms or corporations with whom any of the former have been, are now, or may hereafter be affiliated.
- 2.3 This release on the part of Plaintiffs are a fully binding and complete settlement among Plaintiffs and Defendants, their heirs, assigns and successors.
- 2.4 Plaintiffs acknowledge and agree that the release and discharge set forth above is a general release. Plaintiffs expressly waive and assume the risk of any and all claims for damages which exist as of this date, but of which Plaintiffs does not know or suspects to exist, whether through ignorance, oversight, error, negligence, or otherwise, and which, if known, would materially affect Plaintiffs' decision to enter into this Settlement Agreement. Plaintiffs further agree that Plaintiffs will accept payment of the sums specified herein as a complete compromise of matters involving disputed issues of law and fact. Plaintiffs assume the risk the facts or law may be other than Plaintiffs believe.
- 2.5 It is understood and agreed by the parties that this settlement is a compromise of disputed claims, and the settlement payment herein is not an admission of liability on the part of Defendants, by whom liability is expressly denied.
- 2.6 There is a risk that, after the execution of this Agreement, Plaintiffs will manifest new damage, the scope, location, and character of which is unknown and/or not discovered at the time this Agreement is signed. There is a risk the damage of which Plaintiffs and their attorney presently are aware may become more serious or otherwise increase in magnitude (qualitatively and/or quantitatively). Plaintiffs shall, and hereby do, assume the above-mentioned risks. This release is expressly intended to cover and include all future damages, defects and discoveries, including all rights and causes of action arising against the Defendants therefrom. Plaintiffs are aware of the provisions of California Civil Code section 1542, which provides:

"A general release does not extend to claims which the creditor does not know or suspects 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."

Plaintiffs hereby expressly waive the provisions of said Section 1542 as to all matters within the scope of the claims released hereby. Plaintiffs hereby warrant and guarantee they have full and complete authority to release all such claims on behalf of themselves, their heirs, assigns, and successors in interest.

- 2.7 a) In consideration of the payment referred to herein, Plaintiffs hereby fully and forever completely release, acquit, and discharge the Defendants and Defendants' insurance carriers from any and all claims, costs, demands, damages, attorneys' fees, and rights which arise from, or are directly or indirectly related to, or are connected with, or caused by, the Action.
- b) Plaintiffs specifically agree to hold Defendants and Defendants' insurance carriers harmless, and to indemnify Defendants and Defendants' insurance carriers for and against any lien, any lienholder, its agents, officers, directors, shareholders, attorneys, servants, representatives, employees, subsidiaries, partners, predecessors, successors in interest, assignees, firms, or corporations which have arisen or may arise from the Action known to Plaintiffs, their attorneys, or guardians, or representatives or agents of any kind whatsoever which could be known to them after a reasonable inquiry consistent with both the ordinary standard of care and the highest standard of care they may be held to according to their position and obligation.
- c) Plaintiffs agree to hold Defendants and Defendants' insurance carriers harmless and to indemnify Defendants for and against any claim made by Plaintiffs, their agents, attorneys, servants, employees, representatives, and successors in interest against Defendants and Defendants' insurance carriers which may have arisen or may arise from the Action.

3.0 Payments

In consideration of the release set forth above, the Defendant City of Fullerton, through its insurance carriers, agrees to pay on behalf of itself and all of the Defendants the total sum of Two Hundred Eighty Thousand Dollars (\$280,000.00), payable as follows:

- 3.1 Cash payment in the sum of Two Hundred Eighty Thousand Dollars (\$280,000.00) to Plaintiffs and Plaintiffs' attorneys, Law Offices of David Haas and The Beck Law Firm inclusive of liens, disbursements and for attorney's fees rendered on behalf of the Plaintiffs, to be paid within thirty (30) calendar days of the execution of this agreement by Plaintiffs and Plaintiffs' counsel.

4.0 Dismissal with Prejudice

Within three (3) court days after payment of the settlement amount, Plaintiffs agrees to file a dismissal with prejudice of the entire action. The individual Defendants will be dismissed in exchange for a waiver of costs and a waiver of all claims for any causes of action against the Plaintiffs, including abuse of process and malicious prosecution. Plaintiffs and Defendants further agree that the Court shall retain jurisdiction, regardless of any order of dismissal, to enforce the terms of this agreement.

5.0 Representation of Comprehension of Document

In entering into this Settlement Agreement, Plaintiffs represent that Plaintiffs have relied upon the advice of Plaintiffs' attorneys, who are the attorneys of Plaintiffs' own choice, concerning the legal and income tax consequences of this Settlement Agreement; that the terms of this Settlement Agreement have been completely read and explained to Plaintiffs by Plaintiffs' attorneys; and the terms of the Settlement Agreement are fully understood and voluntarily accepted by Plaintiffs.

6.0 Warranty of Capacity to Execute Agreement

Plaintiffs represent and warrant that no other person or entity has, or has had, any interest in the claims, demands, obligations or causes of action referred to in this Settlement Agreement, except as otherwise set forth herein; that Plaintiffs have the sole right and exclusive authority to execute this Settlement Agreement and receive the sums specified in it; and that Plaintiffs have not sold, assigned, transferred, conveyed, or otherwise disposed of any of the claims, demands, obligations or causes of action referred to in this Settlement Agreement.

7.0 Governing Law

This Settlement Agreement shall be construed and interpreted in accordance with the laws of the State of California.

8.0 Additional Documents

All parties agree to cooperate fully and execute any and all supplementary documents and to take all additional actions, which may be necessary or appropriate to give full force and effect to the basic terms and intent of this Settlement Agreement.

9.0 Entire Agreement and Successors in Interest

This Settlement Agreement contains the entire agreement between the Plaintiffs and the Defendants with regard to the matters set forth in it and shall be binding upon and inure to the benefit of the executors, administrators, personal representatives, heirs, successors and assigns of each.

10.0 Effectiveness

This Settlement Agreement shall become effective immediately following execution by each of the parties.

11.0 Invalidity of Any Condition or Covenant

In the event any condition or covenant herein contained is held to be invalid or void by a court of competent jurisdiction the same shall be deemed severable from the remainder of this Settlement Agreement and shall in no way affect any other covenant or

condition herein contained. If such condition or covenant shall be deemed invalid due to scope or breadth, such condition or covenant shall be deemed valid to the extent of the scope or breadth permitted by law.

12.0 Amendment of Agreement

This Settlement Agreement may be amended only by a written Agreement executed by Plaintiffs and Defendants.

13.0 No Prevailing Party; Plaintiffs to Cover All Liens

Plaintiffs and Defendants agree to bear their respective attorneys' fees and costs. There is no prevailing party. Plaintiffs will satisfy all liens, including all medical, statutory, and equitable liens, and will hold Defendants harmless for all liens, including all medical, statutory, and equitable liens.

14.0 Enforceability and Admissibility

Pursuant to California Evidence Code section 1123(b), this Settlement Agreement is enforceable, binding, and admissible in a court of law in the State of California. The Agreement is enforceable under Code of Civil Procedure section 664.6, except to the extent that federal law governs, in which case, the Court retains jurisdiction to enforce any provision of federal law necessary to accomplish the terms set forth herein.

15.0 Medicare Release Provision

As part of the terms of this Agreement, and the settlement embodied herein, Plaintiffs agrees to release all claims and rights which he now has or may have in the future against the Released Parties (Defendants and Defendants' insurance carriers). This Release applies to all claims for rights not mentioned in this Release including those not even known to Plaintiffs. This Release also applies to any and all Medicare Secondary Payer Liens.

Whereas the Releasers (Plaintiffs) agrees to hold the Released Parties (Defendants and Defendants' insurance carriers) harmless with respect to any payment owed by them to Centers for Medicare and/or Medicaid Services, through its Medicare Secondary Payer contractor arising out of the aforesaid events of July 5, 2011. This Release applies to any present or future medical expenses. This Release applies specifically to, and includes, but is not limited to the July 4, 2011 incident giving rise to the Action.

16.0 Assumption of Risk

Plaintiffs fully understand and declare that if the facts with respect to which this Agreement is executed are found hereafter to be different from the facts now believed to be true, Plaintiffs assume the risk of such possible difference in facts and hereby agrees this Agreement shall be in effect and shall remain in effect notwithstanding such difference in facts. Plaintiffs represent and covenant that he is fully informed regarding all facts related to

this Agreement and will not seek to void, rescind, set aside, or alter this Agreement on an assertion of mistake of fact or law.

17.0 **No Admission of Liability**

It is expressly understood, acknowledged, and agreed to by the Parties, that by reason of entering into this Agreement, no party admits, expressly or impliedly, any fact or liability of any type or nature with respect to any matter, whether or not referred to herein, or the sufficiency of any claims, allegations, assertions, or positions of any party. No party has made any such admissions; and this Agreement is entered into solely by way of compromise and settlement only.

18.0 **No Prior Assignment or Transfer**


Each party to this Agreement represents and warrants there has been no assignment or other transfer of any claims or causes of action which they are releasing pursuant to the terms of this Agreement.

19.0 **Miscellaneous Provisions**

- 19.1 Final Agreement: Plaintiffs acknowledge that (1) this Agreement and its reduction to final form is the result of extensive good faith negotiations between the Parties through their respective counsel; (2) said counsel has carefully reviewed and examined this Agreement for execution by Plaintiffs, or any of them; and (3) any statute or rule of construction ambiguities are to be resolved against the drafting party should not be employed in the interpretation of this Agreement.
- 19.2 Binding Agreement: This Agreement is and shall be binding upon and shall inure to the benefit of the predecessors, subsidiaries, successors, assigns, parties, agents, officers, employees, associates, legal representatives, heirs, executors and/or administrators of each of the Parties hereto.
- 19.3 Paragraph Headings: Paragraph headings are for reference only and shall not affect the interpretation of any paragraph hereto.
- 19.4 No Inducement: Plaintiffs warrant that no promise or inducement has been made or offered by any of the Parties, except as set forth herein, and that this Agreement is not executed in reliance upon any statement or representation of any of the Parties or their representatives, concerning the nature and extent of the injuries, damages or legal liability thereof. Plaintiffs further represent they have been represented by legal counsel during the course of the negotiations leading to the signing of this Agreement, and he has been advised by legal counsel with respect to the meaning of this Agreement and its legal effect.
- 19.5 Counterparts: This Agreement may be executed in counter-parts with the same effect as if all original signatures were placed on one document and all of which together shall be one and the same Agreement

- 19.5 Return of Documents Marked as Confidential: All documents produced by Defendants during the course of this litigation that were marked as being confidential shall be returned by Plaintiffs and Plaintiffs' counsel within 30 days of the execution of this Agreement. No copies of said documents in any form, whether written or electronic, shall be retained by Plaintiffs or Plaintiffs' counsel.
- 19.6 Effective Date: This Agreement to be effective as of the date all signatures are obtained.

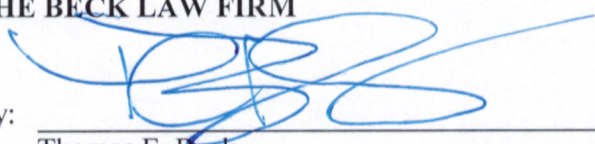
DATED: June 4, 2017

By: 
ANTONIO ORTIZ

DATED: June __, 2017

By: _____
LUIZ ORTIZ

DATED: June 4, 2017

THE BECK LAW FIRM
By: 
Thomas E. Beck
Attorneys for Plaintiff ANTONIO ORTIZ

LAW OFFICES OF DAVID HAAS

DATED: June __, 2017

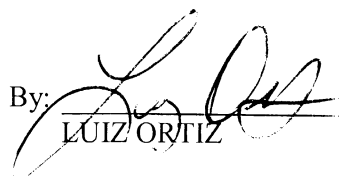
By: _____
David Haas, Attorneys for Plaintiff LUIZ ORTIZ

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- 19.6 Effective Date: This Agreement to be effective as of the date all signatures are obtained.

DATED: June __, 2017

By: _____
ANTONIO ORTIZ

DATED: June 20, 2017

By:  _____
LUIZ ORTIZ

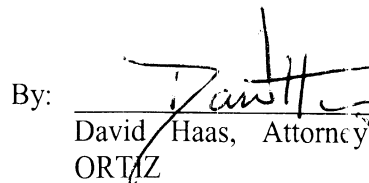
DATED: June __, 2017

THE BECK LAW FIRM

By: _____
Thomas E. Beck
Attorneys for Plaintiff ANTONIO ORTIZ

LAW OFFICES OF DAVID HAAS

DATED: June 20, 2017

By:  _____
David Haas, Attorneys for Plaintiff LUIZ ORTIZ

DATED: June ____, 2017

LEWIS BRISBOIS BISGAARD & SMITH LLP

By: _____

Dana Alden Fox
Barry Hassenberg
Attorneys For Defendants, CITY OF
FULLERTON, BRYAN BYBEE, MATTHEW
MARTINEZ, EMMANUEL PULIDO, BILLY
PHU

DATED: June 26, 2017

CITY OF FULLERTON

By: _____

Joseph B. Felz *Allan Reeder*
Interim City Manager

DATED: June ____, 2017

By: _____

BRYAN BYBEE

DATED: June ____, 2017

By: _____

MATTHEW MARTINEZ

DATED: June ____, 2017

By: _____

EMMANUEL PULIDO

DATED: June ____, 2017

By: _____

BILLY PHU

DATED: June 28, 2017

LEWIS BRISBOIS BISGAARD & SMITH LLP

By: 

Dana Alden Fox

Barry Hassenberg

Attorneys For Defendants, CITY OF
FULLERTON, BRYAN BYBEE, MATTHEW
MARTINEZ, EMMANUEL PULIDO, BILLY
PHU

DATED: June __, 2017

CITY OF FULLERTON

By: _____

City Manager

DATED: June 22, 2017

By: 

BRYAN BYBEE

DATED: June 20, 2017

By: 

MATTHEW MARTINEZ

DATED: June 21, 2017

By: 

EMMANUEL PULIDO

DATED: June 22, 2017

By: 

BILLY PHU