

## SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Agreement” or “Release”) is made by and between Edwin Ardon, Jr. (“Ardon”), Isaac Ruiz (“Isaac”), Isai Ruiz (“Isai”), and Pablo Simental (“Simental”) (collectively, “Plaintiffs”) and City of Delano and its officers, directors shareholders, members, managers, partners, agents, employees, representatives, attorneys, insurers, board affiliates and all persons acting by or through or under or in concert with them (collectively, “Defendants”). Defendants and Plaintiffs are hereinafter collectively referred to herein as the “Parties”.

### RECITALS

WHEREAS, Plaintiff Simental has filed a complaint against City of Delano and certain named officers with the Delano Police Department in Federal Court, Case No. 1:20-cv-00697-JLT (“Action”);

WHEREAS, Ardon, Isaac, and Isai have claims against City of Delano and certain named officers with the Delano Police Department which has not yet been filed in a court of law (the “Action”);

WHEREAS, the subject matter of both Actions is an altercation on April 11, 2019 which resulted in the detention of Simental, Isaac, and Isai and the arrest and prosecution of Ardon;

WHEREAS, Defendants dispute and deny any liability in the Actions;

WHEREAS, the parties now desire to resolve all claims which may exist arising out of and relating to the Actions.

NOW, THEREFORE, in consideration of the above and the following covenants, it is agreed as follows:

1. The Parties shall execute a copy of this Agreement, which shall be binding and enforceable according to its terms. **The Parties understand that this Agreement is subject to approval by the California Affiliated Risk Management Authorities Board of Directors (CARMA). A representative from Central San Joaquin Valley Risk Management Authority (CSJVRMA) will recommend the terms of this Agreement for approval, but cannot guarantee approval by the board. Approval of this Agreement shall be placed on the first available agenda for consideration, currently scheduled for November 15, 2020. If approval is not obtained from the aforementioned board, this Agreement is of no force or effect. Pending approval by the aforementioned boards, Plaintiffs and their counsel agree to keep the terms and existence of this Agreement strictly confidential and will make no disclosure, whether verbally, in writing, to the press, or on any form of social media.**
2. This Agreement is also contingent upon the approval of the City Council of the City of Delano. **If approval is not obtained, this Agreement is of no force or effect.**

3. In full and final settlement of all claims by Plaintiffs, City of Delano agrees to pay as follows: \$32,000 to Simental; \$35,000 to Ardon (inclusive of fees and costs), \$30,000 to Isaac (inclusive of fees and costs), \$30,000 to Isai (inclusive of fees and costs) and \$25,000.00 to the ACLU of Southern California (counsel for Simental) for fees and costs incurred in prosecuting the Action. The amounts paid to Plaintiffs are to compensate them for their alleged physical injuries and emotional distress arising out of those physical injuries. The payments above shall be made in the form of two checks: (1) in the amount of \$57,000 to the ACLU Foundation of Southern California and shall be sent via mail to Esmeralda Martinez, Director of Finance, ACLU of Southern California, 1313 W. 8th Street, Los Angeles CA, 90017, and (2) in the amount of \$95,000 to the Morgan Lewis Client Trust Account as specified in the W-9 provided. Defendants shall issue those checks within two weeks after receiving all of the following: (1) a fully executed copy of this Agreement; (2) approval of this Agreement by the boards and councils mentioned above; (3) W-9s for the check payees; and (4) the payee information for each check. Plaintiffs acknowledge and agree that neither Defendants nor any of their principals, attorneys, insurers, or agents, have made any representation whatsoever to Plaintiffs regarding the tax consequences of this settlement payment. Plaintiffs shall be solely responsible for all tax liabilities, if any, as a result of Plaintiffs' receipt of the settlement payments and understand that an IRS form 1099 will be issued to the payees on the settlement checks.
4. In consideration of terms described in paragraph 3, Simental agrees he will dismiss the complaint he filed with prejudice, in its entirety, as to all Defendants and all claims. Said dismissal shall be filed within 10 days of receipt of Simental's receipt of the funds described in paragraph 3. The remaining three Plaintiffs agree that they will file no claims in any court against Defendants relating to the facts and circumstances of the Action. The parties agree that the tolling agreement entered into on August 3, 2020 by the remaining three Plaintiffs and Defendants shall be extended until all obligations under the Agreement have been met.
5. Upon the occurrence of events and conditions set forth in paragraphs 1 through 4, above, Plaintiffs fully release and discharge Defendants and their officers, directors shareholders, members, managers, partners, agents, employees, representatives, attorneys, insurers, board affiliates and all persons acting by or through or under or in concert with them, from and against any and all claims, causes of action, demands or charges of whatever nature and which, prior to the date hereof might arise out of or be related to the claims stated in the Action.
6. Plaintiffs are fully apprised of the provisions of California law relating to releases and, in particular, §1542 of the California Civil Code which states:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER

WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY."

Notwithstanding this statutory provision, and to implement a full and complete release, Plaintiffs acknowledge that this Agreement is intended to include in effect, without limitation, all claims which they do not presently know of or suspect to exist against the others arising out of or related to the Claim. Section 1542 is therefore waived.

7. This Agreement shall be enforceable pursuant Federal Rule of Civil Procedure 41(a) and Kokkonen v. Guardian Life Insurance Company of America, 511 U.S. 377 (1994). The parties agree that the District Court has jurisdiction to enforce this Agreement. In the event of legal action to enforce this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party, their reasonable attorneys' fees and costs actually incurred.
8. Defendants agree to comply with the following terms within 120 days of approval from the Board and Councils referenced above: (1) DPD will implement the training memo on Penal Code section 148 attached hereto as Exhibit A (hereinafter "PC 148 training") and provide a written copy of the PC 148 training to all Department members; and (2) Defendants will require Department members to acknowledge receipt and review of the PC 148 training. Within two weeks of the approval of this Agreement by the Board and Councils mentioned above, Defendants agree to send a letter (by email and mail) addressed to the Kern County District Attorney's Office and the Kern County Superior Court, and copied to counsel for the Plaintiffs, stating: On April 11, 2019, Delano Police Department ("DPD") officers cited and arrested Edwin Ardon, Jr. for Cal. Vehicle Code § 21954(A) and Cal. Penal Code § 148(A). Subsequently, the District Attorney's office charged Mr. Ardon with Cal. Vehicle Code § 21950(B) ("jaywalking"). Upon further review of this case, the DPD has determined that further prosecution of Mr. Ardon is not in the interest of justice in light of the circumstances of Mr. Ardon's arrest and the nature of the charges filed against him, and DPD recommends dismissal of all charges. *See* Cal. Penal Code § 853.6(j).
9. Except as otherwise provided herein, each party shall bear its own fees and costs incurred in prosecuting/defending this Action, except as specified in this Agreement.
10. Plaintiffs shall bear all responsibility for liens, whether public or private, including Medi-Cal, Medicare, or any other lien for treatment related in injuries allegedly related to claims in the Action.
11. This Agreement contains the entire understanding of the parties with respect to the subject matter hereof, and no modification or waiver of any of the provisions hereof shall be valid unless it is put into writing and executed by all parties hereto.
12. Should any provision of this Agreement be declared or determined by any court to be illegal or invalid, the validity of the remaining parts, terms and provisions shall not be

affected thereby and said illegal or invalid part, term or provision shall not be deemed to be part of this Agreement. This Agreement shall be interpreted according to its plain meaning and not for or against either party.

13. Each of the parties to this Agreement represents and warrants that they have full legal authority to agree to and execute this Release containing the provisions herein (including those concerning the release of claims) on behalf of any and all persons having a legal and/or beneficial interest whatsoever in the rights, claims, demands, causes of action, injuries, damages, loss, actions, costs, attorneys' fees, loss of services, expenses and compensation released thereby.
14. Each party represents and warrants that in executing this Agreement, they have relied on the legal advice of their attorney of choice and the terms of this Release and its consequences have been completely read and explained to each party by that attorney, and each party fully understands the terms of this Release.
15. This Agreement may be executed in counterparts, each of which may be comprised of original signatures, or copies or facsimiles thereof, but all of which shall taken together constitute the same Agreement and, in pleading or proving any provision of the Agreement, it shall not be necessary to produce more than one such counterpart. This Agreement may also be executed by facsimile or electronic signature (such as DocuSign), and shall be considered an original.

IN WITNESS WHEREOF, the Parties have entered into this Agreement as of the date last written below.

Dated: October 13, 2020

**NEED SIGNATURE LINES FOR PARTIES HERE**

Approved as to form on October 13, 2020

**Stephanie Padilla**

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Stephanie Padilla, Counsel for Plaintiff Simental

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Megan McDonough, Counsel for Plaintiffs Ardon, Isaac, Isai



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Bruce Praet, Counsel for Defendants

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Edwin Ardon, Jr.  
Plaintiff

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Isaac Ruiz  
Plaintiff

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Isai Ruiz  
Plaintiff

**Pablo Simental**

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Pablo Simental, Jr.  
Plaintiff

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Melissa McDonald  
Central San Joaquin Valley Risk Management Authority  
On behalf of all Defendants

**Signature:** *Stephanie Padilla*  
Stephanie Padilla (Oct 13, 2020 19:13 PDT)  
**Email:** SPadilla@aclusocal.org

**Signature:** *Pablo Simental*  
Pablo Simental (Oct 13, 2020 19:51 PDT)  
**Email:** pablosimentalwcpa@gmail.com


# CONFIDENTIAL - Settlement Agreement

Final Audit Report

2020-10-14

Created:	2020-10-14
By:	Stephanie Padilla (SPadilla@aclusocal.org)
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-  Document emailed to Pablo Simental (pablosimentalwcpa@gmail.com) for signature  
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