

SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

This Settlement Agreement and Release of Claims (“Agreement”) is entered into as of the date upon which the last Party signature is affixed (the “Effective Date”) by and among the City of Los Alamitos, a charter city (“LOS ALAMITOS”) and Los Alamitos Community United, Reverend Samuel Pullen and Henry J. Josefsberg (collectively, “COMMUNITY UNITED”).

LOS ALAMITOS and COMMUNITY UNITED are sometimes individually referred to herein as a “Party” and collectively as the “Parties”.

RECITALS

A. On April 18, 2018, COMMUNITY UNITED filed a petition for writ of mandate and complaint in Orange County Superior Court entitled *Los Alamitos Community United, et al v. City of Los Alamitos, et al.*, Case No. 30-2018-00987018 (hereafter, the “Litigation”).

B. In the Litigation COMMUNITY UNITED alleged that LOS ALAMITOS violated the California Values Act, Government Code §§ 7284 et seq. (the “Act”) and State law when it adopted Ordinance No. 2018-03, which purportedly exempted LOS ALAMITOS from the Act. COMMUNITY UNITED alleged that LOS ALAMITOS was required to comply with the Act in all respects. LOS ALAMITOS disagreed for, among other reasons, that it was required to follow federal law, which it alleged was violated by the California Values Act. The Ninth Circuit Court of Appeals has held that the California Values Act is not preempted by federal law.

C. In the Litigation COMMUNITY UNITED also named as Defendants/Respondents: (1) Troy Edgar, the then mayor of LOS ALAMITOS; (2) Bret Plumlee, the then city manager of LOS ALAMITOS; and (3) the LOS ALAMITOS’ police department (hereafter, “Additional Respondents”). COMMUNITY UNITED alleged in the Litigation that the Additional Respondents were potentially liable for the alleged violations while acting in their official capacities. LOS ALAMITOS is required by State law to defend and indemnify its officials while acting in their official capacities and the Parties agree that neither Mr. Edgar or Mr. Plumlee shall have any personal liability arising out of this Litigation or Settlement thereof. Notwithstanding the foregoing, the Parties agree that this Agreement shall constitute a release and waiver of the Additional Respondents to the same effect and force as the Agreement does with respect to LOS ALAMITOS.

D. The Parties to the Litigation desire to settle their differences, compromise their disputes, release each other from any and all liability, except as specifically provided herein, and avoid the expenses of continuing litigation.

Now, therefore, the Parties, in consideration of the performance hereinafter described, agree as follows:

CONDITIONS OF SETTLEMENT.

- 1.1. LOS ALAMITOS and COMMUNITY UNITED shall, upon entry of a “Stipulation and [Proposed] Order Dismissing the Litigation and Reserving Jurisdiction” (hereafter, the "Order"), work in good faith to develop a communication addressing LOS ALAMITOS’ compliance with the Act and distribute same within 60 days of entry of the Order.
- 1.2. LOS ALAMITOS and COMMUNITY UNITED shall, within 30 days of entry of the Order, schedule a meeting for a time within six months of the entry of the Order, to be attended by COMMUNITY UNITED and persons invited thereby, along with two LOS ALAMITOS council members, its police chief and other representatives of LOS ALAMITOS’ choosing. The Parties recognize that at the time of drafting this Agreement, all residents of California are, pursuant to an order issued by the Governor of California, required to stay at home and not congregate due to the Coronavirus pandemic. Notwithstanding this, the Parties agree to work in good faith to meet the timelines set forth in this Section 1.2 provided it is safe to do so and not inconsistent with any orders or recommendations from authorized persons to not hold such meetings.
- 1.3. LOS ALAMITOS shall, within 30 days of entry of the Order, designate in writing to COMMUNITY UNITED, a LOS ALAMITOS representative to address concerns or questions from COMMUNITY UNITED or other persons and organizations within the LOS ALAMITOS community relating to LOS ALAMITOS’ compliance with the Act. LOS ALAMITOS agrees to maintain the designated representative for 24 months from its designation of such representative; provided it may change such designation upon prior written notice to COMMUNITY UNITED.
- 1.4. LOS ALAMITOS shall within 30 days of the entry of the Order, modify its written Lexipol policy for compliance with the Act, to substantially reflect the policy adopted by the Merced Police Department attached hereto as Exhibit “A”.
- 1.5. LOS ALAMITOS shall, within 30 days of the entry of the Order, reimburse COMMUNITY UNITED the amount of \$200,000 for any and all costs, including attorneys’ fees and administrative record costs, which COMMUNITY UNITED has incurred in the Litigation.
- 1.6. LOS ALAMITOS shall, within 60 days of entry of the execution of this Agreement, introduce for first reading and adopt an ordinance rescinding Ordinance No. 2018-03.
- 1.7. COMMUNITY UNITED shall, within 10 business days of rescission of Ordinance No. 2018-03, file the proposed Order in substantially the same form as the attached Exhibit "B". The Parties agree that if, for whatever reason, the trial court does not grant the Parties’ joint request to enter the proposed Order that the Parties shall work together in good faith to resolve any reasons that led the trial court to deny

the Parties' request. If the Parties are unable after a good faith effort to resolve the trial court's reservations, COMMUNITY UNITED shall (a) promptly execute and file a Request for Entry of Dismissal of the Litigation with prejudice, and (b) upon such dismissal, this Agreement shall be enforceable by any Party through the filing of new litigation alleging a breach of the Agreement. In such an event, the timeframes provided herein shall run from the dismissal of this Litigation.

2. RELEASE OF CLAIMS:

- 2.1 In consideration of the above recited Conditions of Settlement, the Parties (including their respective officers, employees, agents and attorneys) hereby release and forever discharge each other from any and all Claims relating to and/or arising out of the allegations and defenses that were or may have been asserted in the Litigation.
- 2.2 As used in Section 2.1 above, "Claims" shall include only any and all causes of action, in law or equity, suits, liabilities, demands, damages, losses, costs or expenses of any nature whatsoever, including but not limited to attorneys' fees, litigation expenses, whether now known or unknown, that have or may have existed or that do exist as of the Effective Date.
- 2.3 Waiver of Civil Code Section 1542: To the extent applicable, each of the Parties expressly waives any rights or benefits under Civil Code § 1542, which provides as follows:

"A general release does not extend to claims that 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."

In connection with this waiver, each of the Parties acknowledges that Claims and facts in addition to or different from those which are now known or believed to exist may hereafter be discovered with respect to the subject matter of this Agreement or the other Parties hereto.

3. ENFORCEMENT OF SETTLEMENT AGREEMENT.

- 3.1 The Parties desire any dispute related to or arising out of this Agreement to be resolved promptly. Unless a Party to this Agreement reasonably believes that informal efforts to resolve such a dispute would be futile, the Parties agree to use their best efforts to resolve their disputes by direct communications between the Parties and/or their legal counsel.
- 3.2 In the event such individuals are unable to resolve the dispute, or informal efforts are not resorted to because such efforts are believed to be futile, written notice of the claimed dispute shall be provided to all Parties and to their legal counsel. The Party to whom the claimed dispute is addressed shall have 30 days to respond.

- 3.3 In any dispute related to or arising out of this Agreement, the Parties consent to the jurisdiction of the Orange County Superior Court, Honorable James Crandall, the presiding judge over the Litigation, or his successor, to address any such disputes. See Cal. Civ. Pro. Code § 664.6.

4. **GENERAL PROVISIONS.**

- 4.1. Warranty of No Assignment. Each of the Parties hereby warrants and represents that it has not assigned, transferred, or conveyed, or purported to have assigned, transferred, or conveyed, to any person or entity any claim, demand, debt, liability, account, obligation, or cause of action herein released.
- 4.2. Warranty of Authority. Each individual signing this Agreement warrants and represents that he has full authority to execute on behalf of the entity on whose behalf he so signs, and that such signature is binding thereon.
- 4.3. Entire Agreement, No Reliance on Representations by Others. This Agreement contains the entire agreement and understanding concerning the subject matter herein and supersedes and replaces any prior negotiations and agreements between the Parties, or any of them, whether written or oral. Each of the Parties acknowledges that no other Party or agent or attorney of any other Party has made any promise, representation, or warranty whatsoever, express or implied, not contained herein, concerning the subject matter hereof, to induce the other Party to execute this Agreement. Each Party acknowledges that it has not executed this Agreement in reliance upon any such promise, representation, or warranty not contained herein.
- 4.4. Binding on Successors and Heirs. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective assigns, successors and heirs.
- 4.5. Controlling Law. This Agreement is made and entered into in the State of California and shall in all respects be interpreted, enforced, and governed by and under the laws of California.
- 4.6. Modification. This Agreement may be modified only by a written agreement signed by all Parties hereto.
- 4.7. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original.
- 4.8. Payment of Costs. Except as such amounts may be included in this Agreement, each Party hereto shall be responsible for its own costs and fees, including attorneys' fees, incurred in connection with negotiating and drafting this Agreement or in the Litigation.
- 4.9. Drafting of Agreement. This Agreement is a negotiated document and shall be deemed to have been drafted jointly by the Parties. This Agreement shall be

interpreted and construed on the express assumption that all Parties participated equally in its drafting.

- 4.10. Headings and Titles. The headings and titles for the paragraphs of this Agreement are for convenience only and shall not alter the terms of this Agreement.
- 4.11. Waiver. Waiver by any Party of any breach or failure to exercise any right under this Agreement shall not be deemed a waiver of any subsequent breach or right. The failure of any Party to take action at the earliest possible time to redress any such breach or to exercise any such right shall not deprive such Party of the right to take action at any subsequent time while such breach or condition giving rise to such right continues.
- 4.12. Time of the Essence. Time is of the essence for this Agreement and for each term and condition hereof.
- 4.13. Notice. Any notice, request, demand, instruction, or other communication to be given to any Party hereunder shall be in writing and personally delivered or sent by first class mail, as follows:

If to LOS ALAMITOS: City of LOS ALAMITOS
3191 Katella Avenue
L0s Alamitos, CA 90720
Attention: City Manager

With a copy to: Michael Daudt, City Attorney
Woodruff Spradlin & Smart
555 Anton Boulevard, Suite 1200
Costa Mesa, CA 92626

If to COMMUNITY UNITED: ACCLU Foundation of Southern California
c/o Monica Glicken
4111 Katella Avenue
Los Alamitos, CA 90720

With a copy to: Jessica Karp Bansal, Senior Staff Attorney
ACLU of Southern California
1313 West Eighth St.
Los Angeles, CA 90017

Notice shall not be deemed given unless and until notice is given to all addressees to whom notice must be sent. The addresses and addressees for the purposes of this Section may be changed by giving written notice of such change in the manner provided in this Section.

- 4.14. Representations. The Parties make the following material representations with the understanding that each of them enters into this Agreement in reliance upon each

of these representations and that without these representations, none would enter into this Agreement.

4.14.1. Representation re Understanding and Consultation with Counsel. Each of the Parties warrants and represents that it has read and understands this Agreement, and that each Party has had adequate time to consult with its counsel and review this Agreement.

4.15. Good Faith and Further Assurances. The Parties agree that they will act in good faith in abiding by the terms of this Agreement, and in carrying out the obligations of each Party set forth herein. So long as authorized by applicable laws to do so, each of the Parties to this Agreement will do such further acts and execute, acknowledge, and deliver all further documents as may be necessary to fully effectuate the provisions of this Agreement.

IN WITNESS WHEREOF, the undersigned have executed this Agreement.

Dated: _____

CITY OF LOS ALAMITOS

By: _____
Chet Simmons, City Manager

APPROVED AS TO FORM:

Michael Daudt, City Attorney

Dated: _____

Dated: _____

LOS ALAMITOS COMMUNITY UNITED

By: _____
Monica Glicken

By: _____
Reverend Samuel Pullen, an individual

APPROVED AS TO FORM:

By: _____
Henry Josefsberg, an individual

Jessica Bansal, Legal Counsel

Dated: _____

EXHIBIT "A"

EXHIBIT "B"