

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (hereinafter, the “Agreement”) is entered into as of January 16, 2020 (the “Effective Date”), by and between, on the one hand, EDGAR EDUARDO TORRES GUTIERREZ (“Claimant”), and, on the other hand, the CITY OF LAGUNA BEACH (the “City”). The parties to this Agreement are referred to herein collectively as the “Parties” and individually as a “Party.” The Agreement is intended by the Parties hereto to settle, fully and finally, the disputes between them as discussed herein.

RECITALS

A. Whereas, on or about November 29, 2018, American Civil Liberties Union Foundation of Southern California (“ACLU”) initiated a claim on behalf of the Claimant against the City pursuant to Cal. Gov. Code § 910 (“Claim”). The claim alleges various violations of Claimant’s constitutional rights under the Fourth and Fourteenth Amendments to the U.S. and California Constitutions, as well as violations of the California Values Act (Cal. Gov. Code §§ 7284.6(a)(1)(B), (a)(4), the Truth Act (Cal. Gov. Code § 7283.1), and the Bane Act (Cal. Civ. Code § 52.1) by members of the Laguna Beach Police Department (“LBPD”) arising from an incident that occurred on June 3, 2018 (the “Subject Incident”).

B. WHEREAS, the City disputes the material allegations of the Claim, that it (or any of its affiliates including but not limited to LBPD) violated any rights of Claimant, and that it is in any way liable to Claimant.

C. WHEREAS, the Parties are entering into this Agreement to avoid the expense and uncertainty of litigation relating to the Claim, and to settle, fully and finally, all issues and disputes between them relating to the matters raised in the Claim and/or arising from the Subject Incident.

AGREEMENT

NOW, THEREFORE, based upon the foregoing Recitals, and the terms, conditions, and covenants herein, the Parties hereto agree as follows:

1. **Confirmation of Recitals.** The Parties hereby represent and warrant that the factual statements made in the above Recitals are true and accurate.

2. **Settlement Payment.** Within thirty (30) days of the full execution of this Agreement and its approval by the City, Claimant shall be paid the total lump sum of eighteen thousand seven hundred fifty dollars and no cents (\$18,750.00) (hereinafter “the Settlement Payment”) on behalf of the City, in full consideration and settlement of all claims by Claimant against the City and its officers, agents, and affiliates, including but not limited to, LBPD. Said sum constitutes a full and complete settlement and compromise of the Claim and of all disputed claims against the City and/or LBPD, and each of them, arising out of or related to the Subject Incident that occurred on June 3, 2018. The Settlement Payment shall be made via check to “Edgar Eduardo Torres Gutierrez,” which shall be delivered to Claimant’s attorney.

3. **Right To File Internal Investigation.** Claimant shall have the right to file an internal investigation request with the City and/or LBPD within ten (10) days from the date this

Agreement is executed. Should Claimant fail to file such a request within the time delineated in this Agreement, such right will be considered fully and forever waived.

4. **Training Video.** As part of this Agreement, the City agrees to show the attached training video, which has been approved by Claimant's counsel and is attached hereto and incorporated by reference herein as **Exhibit "A"**, to all sworn officers and newly hired officers of LBP. This obligation will terminate exactly two years from the date on which this Agreement is executed, but officers will only be required to watch the training video once during that two-year timeframe. Documentation shall be kept by the City to confirm that the officers have watched the training video.

5. **Non-Publication Clause.** This Agreement shall be considered a public record pursuant to the California Public Records Act and the contents of this Agreement shall not be considered confidential. Notwithstanding the foregoing, the Parties agree that Claimant's counsel at the ACLU Foundation of Southern California shall not publicize the existence and contents of this Agreement through an ACLU Foundation of Southern California press release or email blast. This Agreement shall not prohibit the ACLU Foundation of Southern California from individually responding to inquiries from or individually communicating with the press or members of the public related to the existence of the Agreement. The above prohibition on the ACLU Foundation of Southern California shall not apply to Claimant or Claimant's other counsel at the UCI Immigrant Rights Clinic, nor shall it prevent the ACLU Foundation of Southern California from sharing press releases or other communications from Claimant or the UCI Immigrant Rights Clinic regarding the Agreement with third parties other than by means of an official ACLU Foundation of Southern California email blast or social media post.

6. **Parties to Bear Their Own Costs, Fees, and Expenses.** All Parties shall bear their own attorneys' fees and costs in relation to the Claim, and the City shall not pay, or be liable for, any payment to Claimant in relation to the Claim other than the Settlement Payment. It is expressly understood and agreed that the Settlement Payment provided for herein shall constitute the full and complete compensation to Claimant in relation to the Claim, including for any attorneys' fees and/or court costs, of whatever kind or basis, relating to the Claim, whether already incurred or incurred hereafter, including fees to which Claimant believes he is entitled under 42 U.S.C. section 1988, Code of Civil Procedure section 1021.5, or any other statute or rule. Claimant shall not seek, and hereby waives and releases any claim for, any such fees and/or costs from any Party and any related person or entity. The City likewise hereby waives and releases any claim for attorneys' fees, court costs, or other relief that they may have against Claimant relating to the Claim.

7. **General Release.** In consideration for this Agreement and the Settlement Payment, Claimant hereby releases and forever discharges the City, and each of them, and each of their respective predecessors, successors, assigns, employees, former employees, shareholders, officers (including police officers), directors, agents, attorneys, subsidiaries, insurance companies, joint powers authorities of which they are a part, and divisions or affiliated corporations or organizations, whether previously or hereafter affiliated in any manner ("the Released Parties"), from any and all claims, demands, causes of action, obligations, damages, attorneys' fees, costs, and liabilities of any nature whatsoever, whether or not now known, suspected, or claimed, which Claimant ever had, now has, or ever may claim to have as of the date of this Agreement against the Released Parties (whether directly or indirectly), or any of them, by reason of any act or

omission, concerning any matter, cause, or thing, including, without limiting the generality of the foregoing, any claims related to or arising out of the Subject Incident, or any claims or defenses asserted, or which could have been asserted, in the Claim.

8. **Discovery of Different or Additional Facts.** All Parties acknowledge that they may hereafter discover facts different from or in addition to those they now know or believe to be true with respect to the claims, demands, causes of action, obligations, damages, and liabilities of any nature whatsoever that are the subject of the release set forth in Paragraph 7 of this Agreement, and they expressly agree to assume the risk of the possible discovery of such additional or different facts, and agree that this Agreement shall remain effective in all respects regardless of such additional or different facts.

9. **Release of Unknown Claims.** The release set forth above in Paragraph 7 of this Agreement is a general release of ALL claims, demands, causes of action, obligations, damages, and liabilities, of any nature whatsoever, that are described in the release, and is intended to encompass all known, unknown, foreseen, and unforeseen claims that Claimant may have against the City, and each of them, in relation to incident leading to the Subject Incident, and/or the claims and defenses raised in the Claim, except for any claims that may arise from the terms of this Agreement. Claimant expressly agrees to waive and relinquish all rights and benefits he may have under Section 1542 of the Civil Code of the State of California, and any law of similar effect from other jurisdictions. Section 1542 of the Civil Code of the State of California reads as follows:

§ 1542. [General release; extent] 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.

10. **Non-Admission of Liability.** The Parties to this Agreement acknowledge and agree that this Agreement is a settlement of disputed claims. Neither the fact that the Parties have settled nor the terms of this Agreement shall be construed in any manner as an admission of any liability by the City, LBPD, or any of their employees, or any affiliated person(s) or entity/ies.

11. **No Assignment of Claims.** Claimant warrants that he has made no assignment, and will make no assignment, of any claim, chose in action, right of action, or any right of any kind whatsoever, embodied in any of the claims and allegations referred to herein, and that no other person or entity of any kind had or has any interest in any of the demands, obligations, actions, causes of action, debts, liabilities, rights, contracts, damages, attorneys' fees, costs, expenses, losses, or claims referred to herein.

12. **Successors and Assigns.** This Agreement, and all of the terms and provisions hereof, shall be binding upon, and shall inure to the benefit of, the Parties and their respective heirs, legal representatives, successors, and assigns.

13. **Knowing and Voluntary.** This Agreement is an important legal document and in all respects has been voluntarily and knowingly executed by the Parties hereto. The Parties specifically represent that, prior to signing this Agreement, they have been provided a reasonable period of time within which to consider whether to accept this Agreement. The Parties further

represent that they have each carefully read and fully understand all of the provisions of this Agreement, and that they are voluntarily, knowingly, and without coercion entering into this Agreement based upon their own judgment. The Parties further specifically represent that, prior to signing this Agreement, they have conferred with their counsel to the extent desired concerning the legal effect of this Agreement.

14. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties who have executed it and supersedes any and all other agreements, understandings, negotiations, or discussions, either oral or in writing, express or implied, between the Parties to this Agreement. The Parties to this Agreement each acknowledge that no representations, inducements, promises, agreements, or warranties, oral or otherwise, have been made by them, or anyone acting on their behalf, which are not embodied in this Agreement, that they have not executed this Agreement in reliance on any such representation, inducement, promise, agreement or warranty, and that no representation, inducement, promise, agreement, or warranty not contained in this Agreement, including, but not limited to, any purported supplements, modifications, waivers, or terminations of this Agreement, shall be valid or binding, unless executed in writing by all of the Parties to this Agreement. Any alteration, change, or modification of or to this Agreement shall be made by written instrument executed by each Party hereto in order to become effective.

15. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be considered an original but all of which shall constitute one agreement.

16. **Singular and Plural.** Whenever required by the context, as used in this Agreement, the singular shall include the plural, and the masculine gender shall include the feminine and the neuter, and the feminine gender shall include the masculine and the neuter.

17. **Severability.** Should any portion, word, clause, phrase, sentence, or paragraph of this Agreement be declared void or unenforceable, such portion shall be considered independent and severable from the remainder, the validity of which shall remain unaffected.

18. **Headings.** Headings at the beginning of each numbered section of this Agreement are solely for the convenience of the Parties and are not a substantive part of this Agreement.

19. **Waiver.** Failure to insist on compliance with any term, covenant, or condition contained in this Agreement shall not be deemed a waiver of that term, covenant, or condition, nor shall any waiver or relinquishment of any right or power contained in this Agreement at any one time or more times be deemed a waiver or relinquishment of any right or power at any other time or times.

20. **Governing Law.** This Agreement is made and entered into in the State of California, and shall in all respects be interpreted, enforced, and governed under the laws of said State without giving effect to conflicts of laws principles.

21. **Modification.** This Agreement shall not be modified, amended or supplemented unless such modifications, amendments or supplements are in writing and signed by each party to this Agreement.

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IN WITNESS WHEREOF, the parties have executed this Agreement on the date set forth below.

CITY OF LAGUNA BEACH, a California
Municipal Corporation

Date: _____, 2020

By: _____

Its: _____

APPROVED AS TO FORM:
RUTAN & TUCKER, LLP

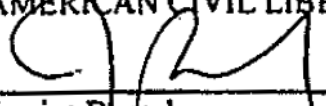
Ajit Singh Thind
Assistant City Attorney, City of Laguna Beach

Date: 01/09, 2020



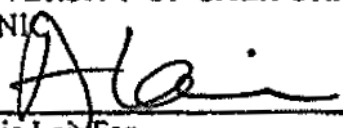
EDGAR EDUARDO TORRES GUTIERREZ

APPROVED AS TO FORM:
AMERICAN CIVIL LIBERTIES UNION OF SOUTHERN CALIFORNIA



Jessica Bansal
Attorneys for Edgar Eduardo Torres Gutierrez

UNIVERSITY OF CALIFORNIA, IRVINE SCHOOL OF LAW IMMIGRANT RIGHTS
CLINIC



Annie Lai, Esq.
Evan Ormond (Certified Law Student)
Counsel for Edgar Eduardo Torres Gutierrez

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IN WITNESS WHEREOF, the parties have executed this Agreement on the date set forth below.

Date: January 16 2020

CITY OF LAGUNA BEACH, a California
Municipal Corporation

By: John P. [Signature]

Its: City Manager

APPROVED AS TO FORM:
RUTAN & TUCKER, LLP

[Signature]
Ajit Singh Thind
Assistant City Attorney, City of Laguna Beach

Date: _____, 2020

EDGAR EDUARDO TORRES GUTIERREZ

APPROVED AS TO FORM:
AMERICAN CIVIL LIBERTIES UNION OF SOUTHERN CALIFORNIA

Jessica Bansal
Attorneys for Edgar Eduardo Torres Gutierrez

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CLINIC

Annie Lai, Esq.
Evan Ormond (Certified Law Student)
Counsel for Edgar Eduardo Torres Gutierrez