

SETTLEMENT AGREEMENT AND GENERAL RELEASE OF CLAIMS

The parties to this SETTLEMENT AGREEMENT AND GENERAL RELEASE OF CLAIMS ("Agreement") are Vivian "Kitty" Jaramillo and Jonathan Paik (referred to as "Plaintiffs" herein), on the one hand, and the City of Fullerton, a California city and municipal corporation (sometimes referred to as "Defendant" or "City"), on the other. These persons and entity are sometimes referred to as "Parties" or "each Party" herein. The terms "Plaintiffs" and "Parties" shall also mean an individual Plaintiff in all instances in which those terms are used in the provisions of this Agreement. This Agreement is effective as of the latest date written next to the signature of a Party to this Agreement.

I. Recitals.

The purpose of this Agreement is to settle the actions filed in the Orange County Superior Court under the California Voting Rights Act ("CVRA") entitled *Vivian "Kitty" Jaramillo v. City of Fullerton*, Case No. 30-2014-00737578 and *Paik v. City of Fullerton*, Case No. 30-2015-00777673 ("CVRA Lawsuits").

The Parties desire to settle the CVRA Lawsuits and to fully and finally settle any and all matters between them arising out of, or relating to, the CVRA Lawsuits, or any claims that could have been raised in connection with the CVRA Lawsuits or the City's at-large electoral system occurring prior to the date of this Agreement, without any further court proceedings, trial, appeal or adjudication of any issue of fact or law, and without any admission with respect to such matters.

II. Terms and Conditions of the Settlement Agreement.

In consideration of the mutual promises herein, the Parties agree:

1. Ballot Measure for "By-district" Elections.

a. On or before April 7, 2016, the City Council of the City of Fullerton ("City Council") will announce its intention to place on its agenda for consideration and action a resolution calling an election on a measure (the "ballot measure") allowing the voters of the City to change the City's electoral system with respect to City Council members from "at-large" to any allowable form of "district-based" elections, as those terms are defined in California Elections Code Section 14026. The City Council shall promptly direct staff to begin the process of preparing the adoption of the resolution calling the election and placing a ballot measure before the electorate by agendizing for discussion and action a process to hold a series of public meetings and public hearings for the purpose of establishing district boundary maps to be

submitted as part of the ordinance to be considered in the ballot measure, in order to allow for the timely call of the election and submission of the ballot measure to the voters.

b. The ballot measure shall be decided by the voters of the City of Fullerton at the statewide general election in November 2016, and all actions contemplated herein by the City Council and/or others shall be performed in a timely fashion so as to permit the ballot measure to be decided at the November 2016 election. The election on the ballot measure shall be held in accordance with Government Code sections 34870, *et seq.* The City shall request consolidation of the election on the ballot measure with the November 2016 statewide election pursuant to Elections Code sections 10400, *et seq.* If the ballot measure is adopted by the voters, then the City Council elections thereafter will be held using the district-based electoral system as provided in Government Code section 34878 no later than the next election for a City Council member.

2. Form and Content of Ballot Measure. The ballot measure will be substantially in form and content as required by California Government Code sections 34872 and 34877, and the proposed ordinance shall include a map of the proposed electoral districts.

3. Dismissal with Prejudice. Plaintiffs will dismiss with prejudice the CVRA Lawsuits if the City adopts the resolution described in Paragraph 1, above, and if the ballot measure is approved by the voters of the City of Fullerton in the November 2016 election. The dismissal with prejudice shall be filed within five (5) business days after certification of the election results for the ballot measure. Defendant shall notify Plaintiffs' counsel when the election results will be certified to enable Plaintiffs' counsel to promptly file the request for dismissal.

4. Informational Language in Resolution Calling the Election on the Ballot Measure. The resolution described in Paragraph 1a, above, shall contain informational language describing the City's "at-large" electoral system, describing a "by-district" electoral system, and describing in neutral terms the characteristics of each. The informational language shall also state that "at-large" electoral systems may be challenged under the California Voting Rights Act, but "by-district" electoral systems may not, unless that statement becomes untrue due to a change in the applicable law. The resolution shall also contain informational language concerning the electoral district map including the matters required by Government Code section 34872, and the proposed ordinance attached to the resolution shall include a copy of the map with the proposed electoral districts. The informational language in the resolution calling the election on the ballot measure shall be agreed upon by the Parties prior to City's adoption of the resolution calling the election, along with other necessary and appropriate content. The proposed district map shall also be made available on the City's website.

5. Ballot Argument in Favor of Ballot Measure. As set forth in Elections Code 9287, the City shall give priority to ballot arguments authored by one or more current City Council members for the City of Fullerton in support of passage of the Ballot measure, and if no such argument is submitted, to an individual voter or bona fide group(s) in support of the Ballot Measure. The City agrees that no current City Council member, Department Head or City Manager shall submit a ballot argument opposing the passage of the Ballot measure, campaign against or in any other way (including by proxy) oppose in their official capacity the Ballot measure. Nothing herein shall preclude any Council Member or other City official from expressing his or her personal opinion in his or her personal capacity regarding either the proposed ballot measure or the proposed district boundaries to any person. In doing so, no Council member, Department Head or City Manager shall state or indicate that any such opinion is given in his or her official capacity as a Council member, Department Head, City Manager, or City official and shall affirmatively state that any such opinion is made only in his or her personal capacity.

6. Design of Electoral District Map. Within forty-five (45) days of the execution of this Settlement Agreement, Defendant shall initiate the process of designing electoral districts for the ordinance, by adopting a resolution, or taking other appropriate action, consistent with this Agreement. The electoral district map required to be included as part of the ordinance shall be designed in accordance with applicable federal and State law, including, without limitation, the Voting Rights Act of 1965, as amended, 42 U.S.C. §§ 1973, *et seq.*, and the criteria set forth in Elections Code section 21601. The process for the design of the electoral district map will comply with California Elections Code section 10010 (AB 1440). The parties agree that David Ely of Compass Demographics shall be contracted to assist the parties in the process of community meetings and public hearings to develop one or more district boundary maps for inclusion in the ordinance. In addition to the three (3) public hearings required by Elections Code Section 10010 (AB1440), Mr. Ely will also facilitate at least two meetings in each of the four geographic quadrants of the City of Fullerton. The City shall contract with Compass Demographics to develop one or more district boundary maps, solicit public input from various communities in the City of Fullerton, and, in the process thereof, educate voters about district-based elections and the process of developing electoral districts. The City shall provide Compass Demographics with facilities and resources to accomplish those tasks, allowing Compass Demographics reasonable discretion, in consultation with City staff, of how best to accomplish those tasks. The City shall further cooperate with community and civic groups that wish to facilitate community involvement in the process of drawing the electoral districts and educating the electorate about by-district elections. The City may also retain other consultants to assist in that process and to promote and publicize the process to ensure maximum public participation from all geographic, ethnic, socioeconomic and interest groups in the City, and will coordinate those additional efforts with Plaintiffs' counsel. The City will maintain information on its website for the districting process where notices, agendas, proposed maps, among other items, will be posted.

7. Informational Material Concerning Ballot Measure. As permitted by law, the City will provide written educational information to the public about the ballot measure and electoral district map, separate and apart from the public process for drawing proposed district maps. The City shall provide such educational information to the public beginning June 1, 2016. At a minimum, such information shall be prominently posted on the City's webpage and in a mailing to City residents. The information shall, among other content, describe in detail the proposed change from at-large to by-district elections and the proposed electoral district map. As soon as the ballot measure is assigned a letter on the ballot, the webpage shall advise the public about the letter designation of the ballot measure and urge the voters to vote on the ballot measure.

8. Multilingual Notices and Agenda. Official required notices and agendas (but not, agenda material), the informational and educational material described in Paragraphs 4 and 7, including that which is required by this Agreement to be posted on the City's website will be translated in Spanish, and Korean, and any other languages required by California Elections Code section 14201 in the City of Fullerton. The City will also provide interpreter services in Spanish and Korean, and any other languages required by California Elections Code section 14201 in the City of Fullerton at all community meetings and public hearings, as identified in Paragraph 6, and provide an additional Mandarin speaking interpreter at the meetings held in the Northeast and Northwest geographic quadrants of the City. All interpreters will be certified court interpreters.

9. Expenses and Attorney's Fees. The City agrees that it shall pay Plaintiffs' reasonable attorneys' fees and costs incurred in the CVRA Lawsuits. The Parties to this Agreement will engage in good faith negotiations to attempt to agree on the amount of such attorneys' fees and costs. In the event the Parties are unable to reach an agreement on the amount of attorneys' fees and costs that Plaintiffs' counsel is to be paid by the City as a result of the CVRA Lawsuits, the Parties agree to participate in mediation, and in the event that the Parties are not able to resolve the amount of fees and costs through negotiation or mediation the Parties agree that the issue shall be determined by the Court upon motion by Plaintiffs, and that motion may be brought prior to any judgment or dismissal. Statutory interest shall not begin to accrue until ten (10) days after the amount of attorneys' fees is determined or agreed upon in writing. Any motion for attorney's fees and costs pursuant to this provision shall not be subject to the stay of proceedings set forth in Paragraph 10 below.

10. Stay of Proceedings. Upon execution of this Agreement, all litigation activities relating to the CVRA Lawsuits between the Parties to this Agreement other than those necessary to effectuate this Agreement or ordered by the Court, and the potential motion for attorney's fees and costs referenced above, will be suspended until the respective Court(s) issue a ruling on the parties' joint request for a stay of the

litigation described in this paragraph. Within fifteen (15) days after all Parties' execution of this Agreement, the Parties will execute and the City will file a joint stipulation advising the Courts in each of the Lawsuits of this settlement and requesting a stay of the litigation in accordance with its terms. In the event that the City does not adopt the resolution specified in paragraph 1a of this Agreement, or fails to place the ballot measure on the November 2016 ballot or misses the deadline to do so, or the ballot measure is not approved by the voters, then this Agreement is of no further force or effect. Thereafter, the Parties will retain all rights and remedies that they had as of the date of the execution of this Agreement. Plaintiffs may then request that the Court dissolve the stay of litigation, and the City shall not oppose that request.

11. No New LawsUIT. Plaintiffs agree that they will not file, or assist in any way (for example, and without limitation by soliciting new potential plaintiffs, referring new potential plaintiffs to Plaintiff's counsel herein, or providing pleadings, briefs, reports, discovery, investigations or any other document or matter prepared in connection with, or anticipation of the CVRA Lawsuit) any other person to investigate, analyze, prepare for or file, another lawsuit against the City, alleging a violation of the California Voting Rights Act, Section 2 of the federal Voting Rights Act, or a voting rights violation under the Constitutions of the State of California or of the United States of America based on the facts alleged (or which could have been alleged) in the Complaints in the CVRA Lawsuits. Nothing in this paragraph shall be understood to limit Plaintiffs' efforts to organize community members to support passage of the ballot measure to convert the City's election system to by-district elections.

12. Release of Claims. In return for the mutual promises and other consideration provided in this Agreement, the Parties, for themselves and their past, present or future heirs, beneficiaries, executors, administrators, officers, employees, directors, agents, partners, successors and assigns, including past, present or future City Council members and Mayors ("Releasors"), do, upon certification of voter approval of the ballot measure, fully release, acquit, waive and forever discharge one another, including their heirs, beneficiaries, executors, administrators, officers, employees, directors, agents, partners, successors and assigns, and their past, present or future City Council members and Mayors, ("Releasees"), from any and all claims, actions, causes of action, factual allegations, demands (including without limitation demands for equitable and injunctive relief), debts, damages, costs, expenses including expert fees, losses, or attorney's fees of whatever nature involving the City's electoral system, whether or not known, suspected or claimed (i) arising out of, based on, or in any way related to the facts alleged (or facts that could have been alleged) in the Complaints in the CVRA Lawsuits or (ii) the "at-large" electoral system of Defendant City, including, but not limited to Claims based upon the Constitution of the United States of America, the Constitution of the State of California, the CVRA, Section 2 of the federal Voting Rights Act, California Elections Code § 14030, or California Code of Civil Procedure § 1021.5 ("Claims"), which Claims the Releasors have or may have against the Releasees, except for rights to

enforce this Agreement, or as provided herein. In this Paragraph, the conjunctive includes the disjunctive.

13. Express Waiver of All Claims Under California Civil Code Section 1542. It is further understood and agreed that this Agreement extends to all of the above-described Claims and potential Claims, and that all rights under California Civil Code § 1542 are hereby expressly waived by the Parties for themselves and the other Releasors with respect to all such Claims. Section 1542 provides as follows:

“A general release does not extend to claims which the creditor does not know or suspect 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.”

Notwithstanding these provisions of Section 1542, Plaintiffs and Defendant expressly acknowledge that this Agreement is intended to include in its effect, without limitation, all Claims as described in Paragraph 12, which they do not know or suspect to exist in their favor at the time of execution hereof and that the settlement reflected in this Agreement contemplates the extinguishment of all such Claims, except for attorney’s fees and costs referenced in Paragraph 9, above and except for rights to enforce this Agreement.

14. Non-admission of Liability. This Agreement pertains to disputed Claims under a statute, the CVRA, and is not intended to be, and shall not be construed as an admission by any Party of any violation of any statute or law or constitution, or any other improper or wrongful conduct. Defendant is entering into this Settlement Agreement to avoid the cost and expense of further litigation, and to permit the voters of the City to decide whether to establish “by-district” elections for City Council members.

15. Interpretation. The interpretation of this Agreement shall be governed by the laws of the State of California and any applicable laws of the United States. This Agreement shall be construed as though jointly prepared by the Parties and any uncertainty or ambiguity shall not be construed against any one Party.

16. Admissibility of this Agreement and Retention of Jurisdiction. This Agreement constitutes a compromise of disputed claims and shall not be treated as an admission of liability, or the appropriateness of any remedy had liability been adjudicated, by any of the Parties at any time or for any reason. This Agreement shall not be admissible in any legal or administrative proceeding, including proceedings between the City and the Plaintiffs or proceedings involving the City and any other party. Notwithstanding the generality of the foregoing, the Parties agree that once it is signed by

the Parties, this Agreement shall be fully binding and admissible in any judicial or administrative proceeding: (a) to enforce the terms of this Agreement pursuant to California Code of Civil Procedure § 664.6 or otherwise; (b) for breach of this Agreement's provisions; (c) and to prove the fact and terms of settlement. It is further agreed that the Court shall retain jurisdiction to enforce the terms of this Settlement Agreement pursuant to California Code of Civil Procedure § 664.6.

17. After Execution of Agreement, Each Party to Bear Own Attorney's Fees, Costs and Expenses. After execution of this Agreement, and subject to compliance with the provisions of this Agreement, each Party will bear its/her/his/their own costs, expenses and attorneys' fees of whatever nature or cause, including, without limitation, associated with the ballot arguments, the November 2016 election, or participating in the process of establishing the electoral districts, except as provided in Paragraph 18. Notwithstanding the above, in the event that (1) Defendant materially breaches this agreement, e.g. failing to pass the resolution proposing the ballot measure to adopt an ordinance agreeing to district lines, failing to timely put the measure on the ballot, etc., Plaintiffs will be entitled to the amount of reasonable attorneys' fees for time spent by Plaintiffs' Counsel enforcing this Agreement; and (2) Plaintiffs file a motion for an award of attorneys' fees and costs consistent with Paragraph 9 of this Agreement, Plaintiffs may seek to recover the fees and costs associated with that motion, consistent with the California Supreme Court's decision in *Ketchum v. Moses*. Notwithstanding anything herein to the contrary, in the event that the ballot measure is defeated or otherwise does not result in the implementation of district elections for the Fullerton City Council for whatever reason, Plaintiffs shall retain their rights to recover attorneys' fees and costs, if any, pursuant to California Elections Code Section 14030, Code of Civil Procedure Section 1021.5, or any other applicable statute or doctrine, for work performed after the ballot measure election.

18. Enforcement of Agreement. In the event that any action in law or equity is initiated by any party to enforce the provisions of this Agreement, to obtain a declaration of rights and obligations in conjunction therewith, or otherwise arising out of this Agreement, other than those referenced in paragraph 17(2) above, each party shall bear their own attorneys' fees in connection therewith.

19. Execution in Counterparts. This Agreement may be executed in counterparts, and facsimile or scanned signatures will have the same force and effect as the original.

20. Entire Agreement. The Parties acknowledge that no representations, inducements, promises or agreements, oral or otherwise, have been made by any Party or anyone acting on behalf of a Party which are not embodied herein, and that no other agreement, representation, inducement or promise not contained in this Agreement shall

be valid or binding. Any modification, waiver or amendment of this Agreement will be effective only if it is in writing and signed by the Party to be charged.

21. Representation by Counsel. Each of the Parties expressly acknowledges and represents that he/ she/ it has been represented by counsel in the negotiations culminating in this Agreement. Each of the Parties has read this Agreement, reviewed the same with counsel, and fully understands the meaning and effect of each and every provision of this Agreement, in particular the meaning and effect of the releases and the waiver of rights under California Civil Code § 1542. The signatories below also represent that they each have authority to execute this Settlement Agreement on behalf of the party for whom/which they are signing.

22. Severability. If any term of this Agreement is declared invalid for any reason, that determination shall not affect the validity of the remainder of the Agreement. The remaining parts of this Agreement shall remain in effect as if the Agreement had been executed without the invalid term.

Dated 6/8/, 2015

By: 
Vivian "Kitty" Jaramillo

Dated _____, 2015


By: _____
Jonathan Paik

Dated _____, 2015

By: _____
Joseph Felz, City Manager
On behalf of the City of Fullerton

Approved as to form and content:

Dated June 9, 2015

By: 
Kevin Shenkman, Esq.
Counsel for Plaintiff Vivian "Kitty"
Jaramillo

Dated _____, 2015

By: _____
Laboni Hoq, Esq.
Counsel for Plaintiff Jonathan Paik

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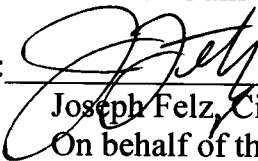
Dated _____, 2015

By: _____
Vivian "Kitty" Jaramillo

Dated _____, 2015

By: _____
Jonathan Paik

Dated July 7, 2015

By:  _____
Joseph Felz, City Manager
On behalf of the City of Fullerton

Approved as to form and content:

Dated _____, 2015

By: _____
Kevin Shenkman, Esq.
Counsel for Plaintiff Vivian "Kitty"
Jaramillo

Dated _____, 2015

By: _____
Laboni Hoq, Esq.
Counsel for Plaintiff Jonathan Paik

Dated _____, 2015

By: _____
Belinda Esobosa-Helzer, Esq.
Counsel for Plaintiff Jonathan Paik

Dated _____, 2015

By: _____
Robert Rubin, Esq.
Counsel for Plaintiff Jonathan Paik

Dated _____, 2015

By: _____
David Carpenter, Esq.
Counsel for Plaintiff Jonathan Paik

Dated July 7, 2015

By: Kimberly Hall Barlow
Kimberly Hall Barlow, Esq.
Counsel for Defendant City of Fullerton