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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

10
11 LEONARDO GONZALEZ-TZITA, an
individual, ESTEBAN DIEGO
12 ESTEBAN, an individual, SIDONIO
LOMELI, and individual and all as class
13 representatives,

14 Plaintiff,

15 vs.

16 CITY OF LOS ANGELES, a municipal
corporation; LOS ANGELES POLICE
17 DEPARTMENT, a public entity, CHIEF
CHARLIE BECK, individually and in his
18 official capacity, LAPD Officer Lee
(#34792), individually and in his official
19 capacity as DOE 1, LAPD Officer Reyez
(#36912) individually and in her official
20 capacity as DOE 2, LAPD Officer
Vanegas (#39073), individually and in his
21 official capacity as DOE 3, and Does 4
through 10,

22 Defendants.
23

Case No. 2:16-cv-194 FMO
(Ex)

CORRECTED REVISED
SETTLEMENT
AGREEMENT

24
25 Plaintiffs Leonardo Gonzalez-Tzita, Esteban Diego Esteban and Sidonio Lomeli
26 (“Class Representative Plaintiffs”), individually and on behalf of the class to be
27 certified by the Court, on the one hand (collectively “Plaintiffs”), and defendants City
28

1 of Los Angeles (“the City”), Los Angeles Police Department, Chief Charlie Beck,
2 LAPD Officer Lee (#34792), LAPD Officer Reyez (#36912) and LAPD Officer
3 Vanegas (#39073), all in their individual and official capacities, on the other hand
4 (collectively “Defendants”), by and through their respective counsel, hereby submit the
5 following settlement agreement (“Settlement Agreement”).

6 **I. RECITALS**

7 The Class Representative Plaintiffs filed the above-captioned action in the United
8 States District Court for the Central District of California (“Court”) on January 11,
9 2016. The Operative Complaint is the Third Amended Complaint, filed July 8, 2016
10 (Dkt #26).

11 The Class Representative Plaintiffs asserted they represented a class of persons
12 who were subjected to violations of their Fourth Amendment rights as well as rights
13 under California state law, as a result of the City of Los Angeles’ “bandit taxi” program
14 whereby the City used Los Angeles Police Department officers and members of the Los
15 Angeles Department of Transportation to impound for up to thirty days vehicles
16 defendants contended were being operated as “bandit taxis” in violation of L.A.M.C.
17 §71.02(a), and effecting said seizures and impounds pursuant to Cal. Veh. Code
18 §21100.4.
19

20 Plaintiffs shall file their Motion for Class Certification and Preliminary
21 Settlement Approval on or before May 23, 2019.

22 The parties engaged in extensive settlement negotiations over several months.
23 This settlement, which the parties have reached through arms-length negotiations, is the
24 result of those negotiations. The parties now agree they wish to avoid the cost, time and
25 risks involved in further litigation of this case and to bring an end to the litigation.
26

27 Therefore, the parties agree as follows:
28

1 **II. DEFINITIONS**

2 1. “Administrator” means the claims administrator chosen by the Plaintiffs and
3 to be appointed by the Court to administer the claims process, pay class claims, cause
4 (if needed) English-language documents disseminated to class members to be translated
5 into Spanish prior to dissemination, issue deficiency notices, publish summary Class
6 Notice, discharge other duties set forth in this Settlement Agreement and handle other
7 tasks necessary and appropriate to completing the claims process.

8 2. A “Class Member” means any class member meeting the following definition
9 (as set forth in the proposed Class Certification Order):

10 “Any registered vehicle owners whose vehicles were seized and
11 impounded by the City at any time from January 11, 2014, through
12 February 15, 2017, under the authority of Cal. Veh. Code §21100.4.”

13 3. The “Class Representative Plaintiffs” are Plaintiffs Leonardo Gonzalez-Tzita,
14 Esteban Diego Esteban and Sidonio Lomeli.

15 4. An “Unrepresented Class Member” is a class member who is not one of the
16 Class Representative Plaintiffs and who therefore is not currently represented by Class
17 Counsel.

18 5. “Class Counsel” means Donald W. Cook, 3435 Wilshire Boulevard, Suite
19 20 2910, Los Angeles, CA 90010.

21 6. “Matters Alleged in the Lawsuit” refers to the claims for relief and allegations
22 in the Third Amended Complaint (“TAC”), all of which were the result of the City of
23 Los Angeles’ “bandit taxi” program whereby the City used Los Angeles Police
24 Department officers and members of the Los Angeles Department of Transportation to
25 impound for up to thirty days vehicles defendants contended were being operated as
26 “bandit taxis” in violation of L.A.M.C. §71.02(a), and effecting vehicle seizures and
27 impounds pursuant to Cal. Veh. Code §21100.4, which Plaintiffs contend violated the
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1 Fourth Amendment as well as California state law.

2 7. “Released Persons” means the Defendants and their affiliates, subsidiaries,
3 predecessors, successors, and/or assigns, together with past, present and future officials,
4 employees, representatives, attorneys, and/or agents.

5 8. “LAPD” refers to the Los Angeles Police Department.

6 9. “LADOT” refers to the Los Angeles Department of Transportation.

7 10. “The City” refers to the City of Los Angeles.

8 11. “Class Notice” means the notice in a form substantially similar to that
9 attached hereto as **Exhibit B** and as approved by the Court.

10 12. “Effective Date” means the date upon which the anticipated Order of Final
11 Approval of Settlement (“Final Approval Order”) is entered by the Court on its docket.

12 13. An “Opt-Out” is any Unrepresented Class Member who files with the
13 Administrator a timely request for exclusion from this Settlement Agreement. A copy
14 of the proposed Opt-Out Form is attached hereto as **Exhibit C**.

15 14. “Update Address Form” means the form that Unrepresented Class Members
16 may use to update their address with the Administrator.

17 15. The “Total Monetary Settlement” is the total amount to be paid by the City
18 of Los Angeles to settle this matter, inclusive of all fees and costs.

19 20 16. The “Class Fund” is the monetary fund set aside for Class Members but *not*
21 including the cost of class administration. The Class Fund is the total of funds available
22 to distribute to Class Members according to the formula approved by the Court.

23 24 17. The “Class Representative Plaintiffs’ Incentive Fund” encompasses incentive
25 payments to Plaintiffs Gonzalez-Tzita, Esteban and Lomeli under this Settlement
26 Agreement.

27 18. “Class Attorney’s Fees and Costs” are the attorney’s fees and costs the
28 Plaintiffs intend to request that the Court award Class Counsel pursuant to this

1 Settlement Agreement. These fees are all based on a statutory fee award available on
2 both the federal and state claims brought in this case. Nothing in this paragraph in any
3 way either increases the total settlement amount owed by the City or imposes any
4 payment obligation on any other Defendant or Released Person.

5 19. The “Bar Date” is the date by which any Class Member must file their
6 objections, if any, to this Settlement Agreement, or any Class Member must request
7 exclusion (opt-out) from the settlement. An Unrepresented Class Member requests
8 exclusion from the settlement by sending a request to the Administrator consistent with
9 the terms of Paragraph 44, *infra*. **Plaintiffs, with defendants concurrence, will request**
10 **that the Court set the Bar Date as the close of business on the 60th day after the last**
11 **day of mailing of the Class Notice which is up to two consecutive business days**
12 **from beginning to end, as addressed in paragraphs 38 and 40, *infra* (that is, the**
13 **Class Administrator must mail all notices within a two-day period).**

14 **III. DISCLAIMER OF LIABILITY; NO ADMISSION OR WAIVER**

15 20. This Settlement Agreement is for settlement purposes only. Nothing in the
16 Settlement Agreement, its exhibits or other documents incorporated herein shall be
17 construed as, or deemed to be evidence of, a waiver of any defense or legal position
18 otherwise available to any of the Defendants or any other persons. Neither the fact of
19 settlement nor any provision contained in this Settlement Agreement, its exhibits or
20 other documents incorporated herein, nor any party’s or other person’s performance
21 hereunder shall constitute or be admissible anywhere as (a) evidence establishing or
22 otherwise relating to any claim for relief or any fact alleged by any Plaintiff,
23 Unrepresented Class Member or other person, whether in this action or in any other
24 pending or future action or proceeding; or (b) evidence of any wrongdoing, fault,
25 violation of law, or liability of any kind on the part of any Defendant or other Released
26 Person. The Defendants make no admission of any claim, allegation or fact in this case
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1 or any other action or proceeding whatsoever. Rather they deny all allegations of
2 wrongdoing and deny any liability whatever to the Class Members or to any other
3 person. This Settlement Agreement does not create, and is not intended to create, any
4 rights belonging to any non-parties, except as otherwise expressly provided herein. The
5 parties have reached this settlement through arms-length negotiations and to avoid the
6 costs and delays of further disputes, litigation and negotiations among them.

7 **IV. TERMS OF SETTLEMENT AGREEMENT FOR DAMAGES**

8
9 21. The parties enter into this Settlement Agreement solely for the purposes of
10 this settlement and its implementation. If the Settlement Agreement does not receive
11 final court approval as provided herein, then this Settlement Agreement shall have no
12 effect whatever, and the parties shall in all respects return to their positions *ex ante*;
13 provided, however, that said return to the parties' positions *ex ante* shall not entitle any
14 party to reimbursement of costs already incurred under this Settlement Agreement,
15 except as otherwise expressly provided herein.

16 22. The Total Monetary Settlement, which covers all payments to the Class
17 Representative Plaintiffs and individual Unrepresented Class Members, including
18 attorneys fees and costs, and all payments for class administration, is \$1,700,000.00.
19 Payment shall be the obligation of the City and no other Defendant or person. The Final
20 Approval Order Judgment shall be treated as any final judgment in federal court that has
21 not been appealed, except as otherwise provided in this Settlement Agreement.

22 23. Within three weeks of the order granting preliminary approval, the City shall
23 pay the Total Monetary Settlement of \$1,700,000.00 by check, payable to "Donald W.
24 Cook Client Trust Account." It is understood by the parties that the Total Monetary
25 Settlement shall be held in Class Counsel's Trust Account pending the Court's rulings
26 directing disbursements pursuant to the Court's preliminary approval and final approval
27 orders, and the order on Class Counsel's Motion for Attorney's Fees and Costs.
28

1 24. It is expressly understood and agreed upon that any and all disputes, or
2 resolution of such disputes, between or among any of the Plaintiffs, or between or
3 among any Plaintiffs, on the one hand, and their counsel, on the other, over any
4 apportionment, division or transfer of the total settlement, shall not entitle any such
5 plaintiff or any such counsel to any relief whatever against the City or other Released
6 Person, or impose any duty of any kind upon the City or other Released Person.
7 Plaintiffs and their counsel shall hold the City and all other Released Persons harmless
8 in any dispute, or for any alleged wrong, in any way arising out of any and all
9 distributions of the settlement funds. Plaintiffs and their counsel shall respectively hold
10 the City and all other Released Persons harmless with regard to any dispute, or alleged
11 wrong, in any way relating to any claim by any third-party lienholder to any amount
12 distributed to any Class Representative Plaintiff herein; provided, however, that the
13 Plaintiffs and their counsel shall only hold the City harmless under the terms of this
14 sentence to the extent that counsel for the debtor-plaintiff(s) in issue have received
15 notice of the subject lien(s) on or before the date that the City has deposited the total
16 settlement amount into the Donald W. Cook Client Trust Account.

18 25. Class Counsel shall provide the City with properly executed IRS Form W-9
19 for Class Counsel.

20 26. The City makes no representations about, and makes no guarantee to any
21 person with regard to, the amount that will ultimately constitute the Class Fund. All
22 Plaintiffs and their counsel shall hold the City and all other Released Persons harmless
23 in any dispute in any way arising from the determination of the amount constituting the
24 Class Fund or any transfer or distribution of any portion of the Class Fund.

25 27. Before entry of the Final Approval Order, Plaintiffs shall dismiss from the
26 above-captioned lawsuit, all defendants other than the City; provided, however, that in
27 the event the Matters Alleged in the Lawsuit are not resolved with a Final Approval
28

1 Order that becomes final, such dismissed defendants shall be reinstated to permit the
2 parties to proceed upon the Matters Alleged in the Lawsuit as the parties deem
3 appropriate. In the event of reinstatement, the applicable statute(s) of limitations
4 governing claims for relief related to Matters Alleged in the Lawsuit for each such
5 reinstated defendant shall be tolled from the date of dismissal to the filing of a notice
6 of reinstatement of claims filed with the Court. Should there not be a Final Approval
7 Order, Plaintiffs shall return to the City the \$1,700,000.00 deposited into the Donald W.
8 Cook Client Trust Account.

9
10 **V. EFFECT OF SETTLEMENT AGREEMENT FOR DAMAGES**

11 28. This Settlement Agreement is subject to and conditioned on a Fairness
12 Hearing conducted by the Court, the Court's final approval of this Settlement
13 Agreement, and entry of the Final Approval Order. The Final Approval Order shall be
14 a judgment of this Court, binding and enforceable in accordance with the terms of this
15 Settlement Agreement and applicable law. Subject to any continuing rights of Opt-Outs,
16 the Final Approval Order shall:

17 A. Dismiss with prejudice all claims for damages or other relief against
18 any and all Defendants or other Released Persons, each party therein to bear all
19 its own costs and attorney's fees except as otherwise expressly provided for in
20 this Settlement Agreement;

21 B. Enjoin all Class Members (Class Representative Plaintiffs and
22 Unrepresented Class Members) from asserting against any Defendant or other
23 Released Person any and all claims for damages or other relief which any such
24 class member had, has, or may have in the future in any way arising out of the
25 facts alleged, or in any way related to the claims for relief pleaded, in this case,
26 which are fully incorporated herein by reference;

27 C. Release each Defendant and other Released Person from all claims for
28

1 damages or other relief which any Class Member has, or may have in the future,
2 against such Defendant or other Released Person in any way arising out of the
3 facts alleged, or in any way related to the claims for relief pleaded in this case;

4 D. Determine that this Settlement Agreement is entered into in good faith,
5 is reasonable, fair and adequate, and in the best interest of all the class members;
6 and

7 E. Reserve the Court's continuing jurisdiction over the parties to this
8 Settlement Agreement, including the City, Class Representative Plaintiffs and
9 Unrepresented Class Members, to administer, supervise, construe and enforce the
10 Settlement Agreement and/or Final Approval Order in accordance with their
11 terms for the benefit of all parties.
12

13 29. The parties will take all necessary and appropriate steps to obtain preliminary
14 and final approvals of the Settlement Agreement, dismissal of the defendants other than
15 the City as provided in this agreement, and dismissal of this case with prejudice at the
16 time the Court enters its Final Approval Order, all parties bearing all their own
17 attorney's fees and costs unless otherwise expressly provided in this Settlement
18 Agreement. If the Final Approval Order is entered and there is an appeal therefrom by
19 an objector, the City will not oppose Plaintiffs' efforts to defend the Settlement
20 Agreement and/or Final Approval Order, which shall be at Plaintiffs' sole expense.

21 30. The Final Approval Order that this Settlement Agreement contemplates
22 resolves in full as of the Effective Date all claims for relief, actions, causes of action,
23 or allegations of any kind that in any way arise from or relate to the Matters Alleged in
24 the Lawsuit, against any or all of the Defendants and other Released Persons by any and
25 all of the Class Representative Plaintiffs and Unrepresented Class Members, whether
26 based upon any federal, state or local law, law of any foreign nation, regulation, duty,
27 obligation, promise, ordinance or any other legal rule. As of the Effective Date, all the
28

1 Class Representative Plaintiffs and Unrepresented Class Members, except Opt-Outs,
2 waive all rights to any and all claims for relief, actions or causes of action in any way
3 arising from or related to the Matters Alleged in the Lawsuit against any and all of the
4 Defendants and other Released Parties, whether based upon any federal, state or local
5 law, law of any foreign nation, regulation, duty, or obligation, promise, ordinance or any
6 other legal rule.

7
8 31. As of the Effective Date, the Class Representative Plaintiffs and the
9 Unrepresented Class Members, except Opt-outs, and all their agents, attorneys and
10 assigns, on the one hand, and the Defendants and all of their officials, agents, attorneys
11 and assigns, on the other, hereby waive and release one another from any and all claims
12 or rights to pursue, initiate, prosecute, or commence any action or proceeding against
13 one another before any court, administrative agency or other tribunal, or to file against
14 one another any complaint regarding acts or omissions with respect to any Matters
15 Alleged in the Lawsuit, including but not limited to any claims of malicious prosecution
16 or abuse of process.

17 32. Upon Entry of the Final Approval Order, each Class Representative Plaintiff
18 and Unrepresented Class Member shall be deemed to have consented to the jurisdiction
19 of the Court. Nothing in this paragraph is intended to negate any prior or other consent
20 to this Court's jurisdiction by any Class Representative Plaintiff, Unrepresented Class
21 Member or other person.

22 **VI. CLASS COUNSEL FEES**

23 33. The parties agree that the Total Monetary Settlement includes all attorney's
24 fees and costs and is the total amount that the City owes hereunder. Class Counsel
25 represents he shall seek attorney's fee and costs of no more than the amount specified
26 in the proposed Class Certification and Preliminary Approval order. Defendants take no
27 position on the amount of the fees and costs herein sought by Class Counsel.
28

1 **VII. CLASS NOTIFICATION AND CLAIMS ADMINISTRATION**

2 34. Plaintiffs contend that in this case the best way to obtain mailing addresses
3 for Unrepresented Class Members is by obtaining the information from Official Police
4 Garage-Los Angeles (OPG-LA), the 18 Official Police Garages (OPGs) who provide
5 towing and vehicle storage services for the City, and California DMV records. Class
6 Counsel represents these entities maintain computer and/or paper records tracking and
7 identifying every vehicle seized under §21100.4, including names and the last known
8 addresses of every Unrepresented Class Members. Class Notices and related forms (see
9 next paragraph) will be mailed to each Unrepresented Class Member identified on the
10 appropriate computerized list. This mailing will be done by the Class Administrator, and
11 is to be completed no later than 30 days after the Court’s order granting preliminary
12 approval.
13

14 35. All Class Notices shall include an Opt-Out form, see **Exhibit C**, and an
15 Update Address form, see **Exhibit D**, both of which will be in the form as approved by
16 the Court.

17 36. The Administrator shall be responsible for providing Class Notice. This duty
18 shall comprise mailing Class Notice, Claim Form and Opt-Out Forms by regular mail
19 to all Class Members’ last known addresses. The Administrator shall also use normal
20 and customary means to search for a Class Member’s last known address, including the
21 use of a postal database, when mail is returned, or do whatever else is reasonably
22 necessary in order to reasonably notify Class Members.
23

24 37. In lieu of publishing a summary Class Notice in local newspapers as a form
25 of reaching class members who do not receive the mailing, which experience has shown
26 does not effectively reach class members, the Administrator shall gather mail addresses
27 to the extent reasonably possible and cost effective. The Administrator shall develop
28 and host a dedicated website with downloadable forms, and offering online submission

1 of the forms.

2 38. The Administrator shall complete the mailing of Class Notice, etc., within
3 two consecutive business days. The second day of such mailing is the first day of the
4 period for calculating the Bar Date and Claim Cut-Off Date. That mailing shall occur
5 as soon as practicable after the settlement has been preliminarily approved and no later
6 than the date set by the Court.

7 39. In addition to preparing the Class Notices and Claim and Opt-Out Forms, and
8 mailing them to the Unrepresented Class Members as identified by OPG-LA records and
9 DMV records, the Administrator's responsibilities shall be (a) to process and pay class
10 claims, (b) to use the database(s) normally used by the Administrator to verify the social
11 security number or TIN a claimant has provided; (c) to provide documents the Court
12 requires to finalize the class settlement, (d) to provide the accountings, reports and
13 notices to parties and/or counsel, including the total number of Opt-Outs pursuant to the
14 terms of this Settlement Agreement, and (e) to perform any other tasks specified for it
15 in this Settlement Agreement.
16

17 40. An Unrepresented Class Member's objection to or request for exclusion from
18 the settlement shall be deemed timely if received *or* mailed to the Administrator on or
19 before the Bar Date.

20 41. Immediately upon entry of the Final Approval Order, the Administrator shall
21 provide to Class Counsel and counsel for the City, via U.S. Mail, redacted copies of all
22 names of Class Members whom the Administrator determines warrant payment from the
23 Class Fund. The Administrator shall redact such copies to omit all Social Security
24 Numbers. Only the Administrator shall be privy to Class Members Social Security
25 numbers. In providing counsel with the redacted copies herein, the Administrator shall
26 identify, by cover letter or other means, all Class Members the Administrator does not
27 intend to pay, or intends to send deficiency notices on, for whatever reason. If an Opt-
28

1 Out form has not been received, that means the Administrator intends to pay the claim
2 without further inquiry.

3 42. The Administrator will prepare a list of all rejected claims, with the reasons
4 for rejection, and maintain the list until at least December 31, 2021.

5 43. The Parties agree that untimely filed Opt-Out Forms shall be finally rejected
6 by the Administrator.

7 **VIII. EXCLUSION FROM SETTLEMENT CLASS: OPT-OUTS**

8 44. Any Unrepresented Class Member who wishes to be excluded from the terms
9 of this Settlement Agreement must submit to the Administrator a request for exclusion
10 (Opt-Out) by the Bar Date. The request for exclusion must be delivered to the
11 Administrator, or postmarked for delivery to the Administrator, on or before the Bar
12 Date.
13

14 45. Each Unrepresented Class Member who requests exclusion from, or objects
15 to, this settlement shall be deemed to have consented to the jurisdiction of the Court
16 with respect to his/her claim, if any.

17 46. Any Unrepresented Class Member who does not request exclusion from the
18 settlement as set forth in this Settlement Agreement shall conclusively be deemed to be
19 bound by the Settlement Agreement and Final Approval Order, including all release
20 provisions, as well as by all subsequent proceedings, orders and judgments herein.

21 47. Any Unrepresented Class Member who becomes an Opt-Out shall not share
22 in any monetary benefits provided by this Settlement Agreement.

23 48. The Administrator will report in writing, via facsimile and electronic mail,
24 to counsel for the City and Class Counsel the names of, and total number of, all Opt-
25 Outs no later than 10 days after the Bar Date.
26

27 49. The Administrator shall maintain copies of all Opt-Out forms and data. If one
28 or more Opt-Outs sue upon Matters Alleged in the Lawsuit, any of the Defendants may

1 inquire of the Administrator for identifying information, not previously provided,
2 reasonably necessary to determine whether the individual suing opted out of the
3 settlement.

4 **IX. INTEGRATION**

5 50. This Settlement Agreement, together with all exhibits and other documents
6 expressly incorporated herein by reference, supersedes all prior and contemporaneous
7 written or oral agreements and understandings between or among the signatories hereto
8 or their representatives, agents or principals regarding the matters contained herein. As
9 such, this Settlement Agreement is an integrated agreement and contains the entire
10 agreement regarding the matters herein, and no representations, warranties or promises
11 have been made or relied on by any of the signatories hereto, or by their representatives,
12 agents or principals, other than as set forth herein. This Settlement Agreement was
13 drafted by counsel for the parties hereto, and there shall be no presumption or
14 construction against any party.
15

16 51. Should the Court change any material terms of this Settlement Agreement
17 (which shall expressly include the total settlement amount and other payment terms,
18 conditions and amounts; dismissals and releases; and rescissionary rights specified in
19 different parts of this Settlement Agreement), the City and the Plaintiffs shall each have
20 the right of rescission, the case will return to active litigation status, the plaintiffs will
21 have the right to reinstate dismissed individual defendants, and all releases shall be
22 withdrawn.
23

24 **X. FAIRNESS HEARING AND FINAL ORDER OR APPROVAL**

25 52. Before this Settlement Agreement becomes final and binding on the parties,
26 the Court shall hold a Fairness Hearing to determine whether to enter the Final Approval
27 Order.
28

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1 **XI. APPROVALS REQUIRED**

2 53. The Los Angeles City Council and Plaintiffs have all approved this
3 settlement.

4 **XII. DISPUTE RESOLUTION**

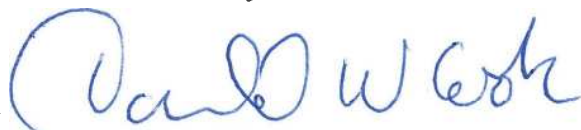
5 54. In the event of any disputes regarding implementation of the Settlement
6 Agreement as set forth herein, they shall be resolved by the Court.

7 **XIII. THIRD PARTY BENEFICIARIES**

8 55. This Settlement Agreement does not and is not intended to create any rights
9 with respect to any third parties, except as otherwise provided herein.


10 DATED: May 23, 2019

11
12 **DONALD W. COOK**
Attorney for Plaintiffs

13
14 By 
15 _____
Donald W. Cook

16 DATED: May 22, 2019

17 **MICHAEL N. FEUER**, City Attorney
18 Attorney for Defendants

19
20 By 
21 _____
Gabriel S. Dermer
Assistant City Attorney

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