

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Settlement Agreement") is made by and between Guadalupe Marin (hereafter "Plaintiff"), and the City of San Jose (hereafter "CITY"). "Parties," when referenced herein, includes Plaintiff and CITY collectively.

WHEREAS, Plaintiff filed a lawsuit on August 18, 2021 entitled *Guadalupe Marin v. City of San Jose, et al.* in the United States District Court, Northern District of California, San Jose Division, case number 21-CV-6372-VKD (hereafter the "Action");

WHEREAS, on April 26, 2024, CITY made a Federal Rule of Civil Procedure 68 Offer to Plaintiff, whereby judgment would be entered in favor of Plaintiff and against CITY in the sum of three hundred and fifty thousand dollars (\$350,000), inclusive of all courts costs and attorneys' fees, with the judgment satisfying all claims Plaintiff has alleged or which could have been alleged against CITY or any of its past and present officials, employees, and agents, including all named Defendants in the Action (hereafter "Rule 68 Offer");

WHEREAS, the Parties now mutually desire to resolve the Action without further litigation and, therefore, undertake to settle the Action in its entirety by entering into this Agreement pursuant to which Plaintiff releases and extinguishes on a final basis all claims and potential claims arising out of, or in any way connected with all matters alleged, or which could have been alleged, in the pleadings comprising the Action, by the entry of judgment against CITY as reflected in the Rule 68 Offer; and

WHEREAS, the proposed Stipulated Judgment to be entered by the Court as a release of all of Plaintiff's claims is attached hereto as Exhibit A and incorporated by reference into this Settlement Agreement; and

NOW THEREFORE, the Parties agree as follows:

1. Scope of Settlement. This Agreement shall settle, compromise, and forever discharge all claims of any and every kind, nature and character, which Plaintiff alleged, or could have alleged, in the Action arising from or based on any act or omission by the CITY, CITY Departments, CITY elected officials, and all current and former CITY employees, whether acting in their official or individual capacities.

2. Consideration. In consideration for Plaintiff's agreements, promises, covenants, releases, waivers, and entry of judgment solely against CITY, as stated herein and reflected in the Rule 68 Offer, CITY shall pay the sum of three hundred and fifty thousand dollars (\$350,000) in the form of a check payable to Law Office of Sarah

Marinho, Client Trust Account. Counsel for Plaintiff shall provide a W-9 prior to issuance of payment. In consideration of said payment, Plaintiff agrees to the entry of the attached Stipulated Judgment against CITY, the entry of which shall release all claims for damages, including all claims and/or rights to recover costs and attorneys' fees.

3. Entry of Judgment. The parties agree that upon Plaintiff's receipt of the amount identified in the Rule 68 Offer, Plaintiff's counsel shall inform counsel for CITY within one business day of receipt by Plaintiff, and counsel for CITY shall thereafter file the Stipulated Judgment within one (1) business day after receiving notice from Plaintiff's counsel.

4. Release. Plaintiff and Plaintiff's representatives, successors, assigns, attorneys, and agents, hereby generally release and forever discharge CITY and all past and present employees of CITY, whether or not the employee was named individually in the Action. For purposes of this Agreement, CITY includes, without limitation, all CITY Departments and Agencies, the CITY Council, all past and present elected and appointed officials, CITY employees, and any person or entity to which CITY may owe an obligation of contractual or implied indemnity relating to a released claim. The release includes, without limitation, any and all actions, causes of action, obligations, costs, expenses, damages, losses, claims, liens, liabilities, attorney's fees, and demands of whatsoever nature relating to or arising out of the facts or circumstances alleged in the Action, or that could have been alleged in the Action, whether or not such claims were actually asserted in the Action.

5. Release of Unknown Claims. Plaintiff understands this Agreement is a full and final settlement of all disputes and matters arising out of any subject matter identified in this Agreement, including but not limited to all claims and causes of action asserted, or which could have been asserted in the Action, and all present and future unknown and unanticipated injuries, losses or damages arising out of the Action (the "Released Matters"). Plaintiff acknowledges and understands Section 1542 of the Civil Code of the State of California 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.

Initials GM

Plaintiff represents that she has read, reviewed with counsel, and understood

Civil Code Section 1542, and that she hereby waives all present and future rights and benefits under Section 1542 to the extent it would permit claims relating to, arising out of, or any way connected to the subject of the Action based on facts found to be different from the facts believed to be true at the time this Settlement Agreement was executed.

6. Liability Not Admitted. The Parties acknowledge and agree that CITY's payment represents a compromise and release of disputed claims and that neither the payment, nor anything stated in this Agreement, constitutes or represents an admission of wrongful conduct, or liability, or responsibility of any kind, or a concession by any person, that any allegation asserted in the claims alleged in the Action is valid.

7. Parties to Bear Own Attorney's Fees and Costs. The Parties shall bear their own costs, including attorneys' fees, and any other fees incurred in connection with the Action, this Settlement Agreement, and the matters settled pursuant to this Settlement Agreement.

8. Consultation with Counsel. The Parties and each of them acknowledge they have carefully read and understand the terms of this Settlement Agreement and have consulted with legal counsel of their choice prior to execution and delivery of this Agreement. The Parties have voluntarily accepted the terms stated herein for the express purpose of making a full and final compromise and settlement of the Action.

9. Representations. Each person executing this Settlement Agreement hereby warrants that they have full authority to do so. Plaintiff further represents and warrants that she is the sole and rightful owner of the claims asserted in the Action; that she has not assigned any claim or claims, or the right to receive payments that are the subject of this Agreement; and that no Liens on the settlement proceeds have been asserted or exist.

10. Responsibility for Liens. Plaintiff agrees to hold the Defendants harmless with regard to third-party claims or liens arising from Plaintiff's medical treatment, or from insurance subrogation claims, of any kind.

11. Severability. If any provision in this Agreement is found to be unenforceable, it shall not affect the enforceability of the remaining provisions and the court shall enforce the remaining provisions to the extent permitted by law.

12. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and shall be deemed duly executed upon the signing of the counterparts by the Parties hereto.

13. Binding Force and Effect. This Agreement shall be governed by California law. It shall bind and inure to the benefit of all Parties and their respective heirs, executors, administrators, trustors, trustees, beneficiaries, predecessors, successors, assigns, partners, partnerships, affiliated entities, agents, and representatives.

14. Entire Agreement. This document is a fully integrated contract. It contains all agreements, covenants, understandings, representations, and warranties between the Parties concerning the subject matter of the Agreement. The Parties have made no other express or implied agreements, covenants, understandings, representations, or warranties concerning the subject matter of this Agreement. All prior and contemporaneous conversations, negotiations, possible and alleged agreements, understandings, representations, covenants, and warranties concerning the subject matter of this Agreement, other than those referred to herein, are merged herein. This Agreement cannot be modified or amended by the exchange of electronic communications or any means other than a fully integrated writing signed by all Parties.

IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement effective as of the date last set forth below.

Dated: 5/29/24

By: Guadalupe Marin
Guadalupe Marin

CITY OF SAN JOSE

Dated: _____

By: _____
NORA FRIMANN
City Attorney as Authorized Agent for
the City of San José

APPROVED AS TO FORM:

Dated: 5/29/24

By: Sarah Marinho
Sarah Marinho
Attorney for Plaintiff

Dated: 05/30/24

CITY OF SAN JOSE

By: 

Elisa Tolentino
Chief Deputy City Attorney
Attorney for City of San José

EXHIBIT A

1 SARAH MARINHO, SBN 293690
2 MARINHO LAW FIRM
3 111 N. Market St., Suite 300
4 San Jose, California 95113
5 T: (408) 827-8690
6 sarah@marinholawfirm.com

7 Attorney for Plaintiff GUADALUPE MARIN

8 NORA FRIMANN, City Attorney (93249)
9 ARDELL JOHNSON, Assistant City Attorney (95340)
10 ELISA TOLENTINO, Chief Deputy City Attorney (245962)
11 WESLEY KLIMCZAK, Sr. Deputy City Attorney (294314)
12 Office of the City Attorney
13 200 East Santa Clara Street, 16th Floor
14 San José, California 95113-1905
15 Telephone Number: (408) 535-1900
16 Facsimile Number: (408) 998-3131
17 E-Mail Address: cao.main@sanjoseca.gov

18 Attorneys for Defendants CITY OF SAN JOSE and
19 TYLER MORAN

20 STEVEN B. DIPPELL—BAR NO. 121217
21 Email: sdippell@dby-law.com
22 DAVIS, BENGTSON & YOUNG, APLC
23 1960 The Alameda, Suite 210
24 San Jose, CA 95126
25 Phone: 669.245.4200
26 Fax: 408.985.1814

27 Attorneys for Defendant
28 MATTHEW RODRIGUEZ

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

GUADALUPE MARIN,

Plaintiff,

v.

CITY OF SAN JOSE, MATTHEW
RODRIGUEZ, TYLER MORAN, and
DOES 1-25, inclusive,

Defendants.

Case Number: 5:21-cv-06372-VKD
**[PROPOSED] STIPULATED
JUDGMENT**

1 Pursuant to Federal Rule of Civil Procedure 68, judgment is hereby entered in favor
2 of Plaintiff Guadalupe Marin against Defendant City of San Jose in the sum of three
3 hundred fifty thousand dollars (\$350,000.00), inclusive of all court costs and attorneys'
4 fees. Defendants Matthew Rodriguez and Tyler Moran are dismissed from this action. The
5 judgment shall operate to satisfy all claims and all damages, including all claims and/or
6 rights to recover costs and attorneys' fees, Plaintiff has alleged or could have alleged in
7 this action against the City of San Jose and/or its past and present officials, employees,
8 and agents in their official and individual capacities, whether or not named as a defendant
9 in the action.

10 The Clerk of Court is instructed to close the file in this matter.

11 **IT IS SO ORDERED.**

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14 U.S. Magistrate Judge
15 Honorable Virginia DeMarchi
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