

2.9 Settlement of *Ribeiro v. City of San José, et al.*

Recommendation:

Approve the settlement in the case of *Cleber Giassi Ribeiro v. City of San José, et al.* in the total amount of \$85,000 and authorize the City Attorney to execute a settlement agreement. CEQA: Not a Project; File No. PP17-003, Agreements/Contracts (New or Amended) resulting in no physical changes to the environment. (City Attorney)



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: NORA FRIMANN
City Attorney

SUBJECT: SETTLEMENT OF RIBEIRO V.
CITY OF SAN JOSE, ET AL

DATE: May 30, 2024

RECOMMENDATION

Approve the settlement in the case of *Cleber Giassi Ribeiro v. City of San José, et al.* in the total amount of \$85,000 and authorize the City Attorney to execute a settlement agreement.

OUTCOME

The City will pay the sum of \$85,000.00 to settle the lawsuit filed on June 17, 2021 entitled *Cleber Giassi Ribeiro v. City of San José, et al.* in the Superior Court of California, County of Santa Clara, case number 21CV384438.

BACKGROUND

This case arises from a two-vehicle collision involving Plaintiff and a Department of Public Works employee, at the intersection of Great Oaks Blvd. and Highway 85 on October 26, 2020. Plaintiff alleges he suffered neck pain and low back injuries, as well as pain and suffering, as a result of the accident. The settlement will resolve all of Plaintiff's claims for damages, including future damages.

ANALYSIS

This is a negotiated settlement between the parties to avoid the risks inherent in litigation. The City will pay plaintiff the total sum of \$85,000 in full satisfaction and settlement of all claims, and Plaintiff will dismiss his entire lawsuit against the City and all City employees with prejudice. The proposed agreement will conclude the litigation without further cost, expense, or risk of loss to the City and City employees. The parties will bear their own respective attorneys' fees and litigation costs.

PUBLIC OUTREACH / INTEREST

This memorandum and the Settlement Agreement have been posted on the City's website for the June 11, 2024 Council agenda.

COST SUMMARY/IMPLICATIONS

The settlement will be paid from the City's claims reserve fund.

CEQA

Not a project; PP17-003, Agreements/Contracts (New or Amended) resulting in no physical changes to the environment.

By _____ /s/ Nora Frimann
NORA FRIMANN
City Attorney

cc: Jennifer Maguire, City Manager

For questions, please contact NORA FRIMANN, City Attorney, at (408) 535-1900.

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Settlement Agreement”) is made by and between CLEBER GIASSI RIBEIRO (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 June 17, 2021 entitled *Cleber Giassi Ribeiro v. City of San Jose, et al.* in the Superior Court for the State of California, County of Santa Clara, case number 21CV384438, (hereafter the “Action”);

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; and

WHEREAS, Plaintiff desires to dismiss the Action with prejudice;

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, including but not limited to ZACHARY COLE BUNCE, whether acting in their official or individual capacities.

2. Consideration. In consideration for Plaintiff’s agreements, promises, covenants, releases, waivers, and dismissal of the Action, stated herein CITY shall pay the sum of Eighty-Five Thousand Dollars (\$85,000.00) in the form of a check payable to Cleber Giassi Ribeiro/The Vartazarian Law Firm, who shall provide a W-9 prior to issuance of payment. In consideration of said payment, Plaintiff shall dismiss the Action with prejudice and withdraw, waive, and release all claims for damages, including all claims and/or rights to recover costs and attorney’s fees.

3. Dismissal of Claims. Plaintiff and Plaintiff’s attorneys shall dismiss the Action with prejudice within five (5) business days after receiving payment of the settlement amount.

DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.

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 _____



Plaintiff represents that he has read, reviewed with counsel, and understood Civil Code Section 1542, and that he 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 he has full authority to do so. Plaintiff further represents and warrants that he is the sole and rightful owner of the claims asserted in the Action; that he 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: 5/22/2024

By:  _____
Plaintiff CLEBER GIASSI RIBEIRO

CITY OF SAN JOSE

Dated: _____

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

APPROVED AS TO FORM:

THE VARTAZARIAN LAW FIRM

Dated: _____

By: _____
JUSTIN RABI
Attorney for Plaintiff

CITY OF SAN JOSE

By: _____
KAVEH MIRSHAFIEI
Deputy City Attorney
Attorney for City of San José