

### 3.10 Settlement of *Rubalcava v. City of San José, et al.*

**Recommendation:**

Approve the settlement in the case of *Rubalcava v. City of San José, et al.* in the total amount of \$12,000,000.00 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)

[Rules Committee referral 6/12/2024 - Item A.1.a]



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** NORA FRIMANN,  
City Attorney

**SUBJECT: SETTLEMENT OF RUBALCAVA  
v. CITY OF SAN JOSE, ET AL.**

**DATE:** June 14, 2024

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## **RECOMMENDATION**

Approve a settlement in the case of *Rubalcava v. City of San José, et al.* in the amount of \$12,000,000.00, and authorize the City Attorney to execute a Settlement Agreement.

## **OUTCOME**

The City will pay the sum of \$12,000,000.00 to settle the lawsuit filed on June 25, 2020 entitled *Lionel Rubalcava v. City of San José, et al.* in the United States District Court for the Northern District of California, case number 5:20-cv-04191.

## **BACKGROUND**

In this case the plaintiff alleged San Jose Police officers, caused the plaintiff to be wrongfully prosecuted for a crime, convicted, and imprisoned in connection with a drive-by shooting that occurred in 2002. After serving 17 years of his sentence the Innocence Project intervened on plaintiff's behalf. The three witnesses who had identified plaintiff as the shooter in plaintiff's criminal trial expressed uncertainty about their earlier statements identifying the plaintiff to investigating officers. Consequently, the Innocence Project successfully persuaded the District Attorney to join an application to the Superior Court pursuant to which the plaintiff obtained an order declaring he was factually innocent. That finding allowed plaintiff to bring this lawsuit. The plaintiff alleged the officers fabricated evidence that identified him as the shooter and further, that the officers concealed exculpatory evidence from his criminal defense attorney relating to witnesses' identification of plaintiff as the shooter. Plaintiff also alleged defendants conspired to violate his constitutional rights to a fair trial; and, further, that defendants maliciously caused the prosecution of criminal proceedings against him. The officers involved and the City denied the allegations.

## **ANALYSIS**

This is a negotiated settlement between the parties to avoid the risks inherent in litigation. The City will pay the plaintiff the sum of \$12,000,000.00 in full satisfaction and settlement of all claims. The plaintiff will dismiss the entire lawsuit against the City and all City employees. The proposed agreement will conclude the litigation without further

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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 18, 2024 agenda.

## COST SUMMARY/IMPLICATIONS

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

**CEQA**

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

By /s/  
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 Lionel Rubalcava (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 25, 2020, entitled *Lionel Rubalcava v. City of San Jose, et al.*, in the United States District Court for the Northern District of California, case number 5:20-cv04191, (hereafter the "Action"); and,

WHEREAS, the Parties now mutually and voluntarily desire to resolve the Action in its entirety without further litigation by entering into this Agreement, pursuant to which, in exchange for City's payment of the settlement sum, Plaintiff releases and extinguishes on a final basis all claims and potential claims against CITY arising out of, or in any way connected with, the subject matters described in the pleadings on file in the Action; and,

WHEREAS, Plaintiff will dismiss the Action with prejudice on the terms set forth herein,

NOW THEREFORE, the Parties agree as follows:

1. Scope of Settlement. This Agreement shall settle, compromise, and forever discharge all known and undiscovered claims of any and every kind, nature and character, that Plaintiff alleged, or could have alleged, in the Action arising from or based on any act or omission by the City of San Jose, City Departments, City elected officials, and all City employees, whether or not named as a defendant in the Action.

2. Consideration. In consideration for Plaintiff's agreements, promises, covenants, releases, waivers, and dismissal of the Action, stated herein the City of San Jose shall pay the sum of Twelve Million Dollars (\$12,000,000.00) in the form of a check payable to Neufeld Scheck Brustin Hoffmann & Freudenberger, LLP and Lionel Rubalcava, who shall provide a W-9 prior to issuance of payment. Said payment shall compensate Plaintiff for all damages claimed, or which Plaintiff alleged, or could have claimed, arising from or related in any way to the subject matters in the Action. In consideration of said payment, Plaintiff shall dismiss the Action with prejudice as to all defendants and withdraw, waive, and release any and all claims for damages, including any and 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 in its entirety with prejudice within five (5) business days after receiving payment of the settlement amount after which Defendants shall dismiss the pending appeal in the Ninth Circuit Court of Appeals.

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4. Release. Plaintiff and Plaintiff's representatives, successors, assigns, attorneys, and agents, hereby generally release and forever discharge CITY and all CITY past and present employees, whether or not the employee was named individually in the Action. For purposes of this Agreement, the City of San Jose 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 the 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 alleged or asserted, or which could have been alleged or 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.**

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Plaintiff represents that he has read, reviewed with counsel, and understood Civil Code Section 1542, and that he/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 by the CITY, or any other Party, of liability or responsibility of any kind, or a concession by any Party that assertions or allegations regarding the claims alleged in the Action are valid. Each Party fully assumes the risk that the facts or law surrounding such claims, and/or the other matters settled pursuant hereto, may be other than that Party believes them to be.

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 there are no liens on the settlement proceeds that may be asserted against CITY..

10. Responsibility for Liens. Plaintiff agrees to hold the CITY 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.

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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: June 12, 2024



LIONEL RUBALCAVA  
Plaintiff

Dated: June \_\_, 2024

CITY OF SAN JOSE

By: \_\_\_\_\_

NORA FRIMANN  
City Attorney as Authorized Agent  
for the CITY OF SAN JOSE

APPROVED AS TO FORM:

Dated: June 12, 2024

NEUFELD SCHECK BRUSTIN HOFFMANN  
& FREUDENBERGER, LLP



By: \_\_\_\_\_

NICK BRUSTIN  
Attorney for Plaintiff,  
Lionel Rubalcava

Dated: \_\_\_\_\_

NORA FRIMANN, City Attorney

By: \_\_\_\_\_

ARDELL JOHNSON  
Assistant City Attorney

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