

SETTLEMENT AGREEMENT AND GENERAL RELEASE

This Settlement Agreement and General Release ("Agreement") is entered into on this 21st day of January, 2003 by and between Ernie Torres ("Torres"), on the one hand, and the City of Redlands and the City of Redlands Police Department on behalf of themselves and their current and former employees, including but not limited to Police Officer Brad Grantz (collectively, "Redlands"), on the other.

RECITALS

A. On August 16, 2000, Redlands Police Officer Brad Grantz ("Grantz") accompanied Parole Officer Juanita Sanchez to the residence at which Torres was located to take Torres into custody for allegedly violating parole, which resulted in Torres' arrest ("the Arrest").

B. On or about August 15, 2001, Torres commenced that certain legal action in the United States District Court, Central District, entitled Ernie Torres v. San Bernardino County, Juanita Sanchez, CDC Parole Agent, Grantz, Redlands Police Officer, Case No. CV-01-7110 NM (FMO) (the "Action"). Torres subsequently filed a First Amended, a Second Amended and a Third Amended Complaint. In the Third Amended Complaint, Torres alleged two claims for relief against Grantz based on the Eighth and Fourteenth Amendments to the United States Constitution, for excessive force and cruel and unusual punishment based on a failure to receive medical treatment. Grantz answered the Third Amended Complaint, denying the claims and allegations asserted by Torres and alleging various affirmative defenses.

C. Torres and Redlands (collectively, the "Parties") now desire to resolve and settle all claims, counter-claims and disputes arising from or involving the Arrest, and the Action.

D. This Agreement is a compromise of the claims and liabilities asserted by the Parties and shall not be treated as an admission of liability by any party.

AGREEMENT

1. The Parties incorporate by reference the Recitals into this Agreement.
2. Within twenty (20) days of receipt of this Agreement executed by Torres, Redlands shall pay and deliver to Torres the sum of five hundred dollars (\$500.00). Payment shall be made by way of check made payable to "Ernie Torres." Redlands makes no representation as to whether there are any tax consequences associated with this settlement or its payment of the above-stated sum, and the parties agree that the determination of the tax consequences of such payment is the sole responsibility of Torres.
3. Torres shall execute a Stipulation for Dismissal pursuant to F.R.C.P. 41(a)(1), dismissing the Action as to Grantz, with prejudice, which Redlands may file once it has executed this Agreement..
4. The Parties shall each be responsible for their respective attorney's fees and costs incurred in any manner related to the Arrest and/or the Action.

5. Torres, on behalf of himself and his agents, attorneys, representatives, spouses, executors, heirs, assigns, guardians and successors-in-interest hereby releases and forever discharges Redlands and its agents, employees, city council member, officers, attorneys, representatives, assigns and successors-in-interest, including but not limited to Police Officer Grantz, from any and all claims, causes of action, actions, damages, losses, demands, accounts, reckonings, rights, debts, liabilities, obligations, disputes, controversies, payments, costs and attorney's fees, of every kind and character, known or unknown, existing or contingent, latent or patent, regarding matters alleged in, arising from or related to the Arrest and the Action.

6. The Parties hereby acknowledge and expressly waive the provisions of California Civil Code section 1542 which states:

A GENERAL RELEASE DOES NOT EXTEND TO
CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR
SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF
EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM
MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT
WITH THE DEBTOR.

7. The Parties represent and warrant that they have had the opportunity to seek and receive the advice of an attorney with respect to the advisability of making the release provided for herein, and the meaning of California Civil Code section 1542.

8. Each of the Parties is aware that it may hereafter discover claims or facts in addition to or different from those they now know or believe to be true with respect to the matters related herein. Nevertheless, it is the intention of each of the Parties to fully, finally and forever settle and release all such matters, and all claims related to those matters.

9. The Parties represent and warrant that they fully understand each of the terms of this Agreement and their consequences and that they have sought or have had the opportunity to seek the advice of counsel prior to executing this Agreement.

10. This Agreement is binding upon and shall inure to the benefit of the Parties, their respective officers, agents, employees, attorneys, representatives, executors, heirs, spouses, assigns, successors-in-interest, trusts, partnerships and joint ventures.

11. Each person executing this Agreement does hereby personally represent and warrant to the other signatories that he or she has the authority necessary to execute this Agreement, and that no other consents or approvals of anyone are required or necessary for this Agreement to be binding.

12. This Agreement shall in all respects be interpreted, enforced and governed by and under the laws of the State of California.

13. This Agreement has been jointly negotiated and drafted. The language of this Agreement shall be construed as a whole according to its fair meaning, and not strictly for or


against any of the Parties.

14. Should any term of this Agreement be deemed unlawful, that provision shall be severed and the remaining terms shall continue to be valid and fully enforceable.

15. The Parties agree to execute such other documents and take such other action as may be reasonably necessary to finalize and perform this Agreement.

16. The Parties may execute duplicate originals of this Agreement or any other documents they are required to sign or furnish pursuant to this Agreement.


Dated: January 9, 2003



Ernie Torres

Dated: January 21, 2003

City of Redlands

By: 

Its: Karl N. Haws, Mayor

Attest:

By: 

Lorrin Poyzer, City Clerk

APPROVED AS TO FORM:

Dated: January __, 2003.

BEST BEST & KRIEGER LLP

By:

Howard B. Golds
Cynthia M. Germano
Attorneys for The City of Redlands
and Defendant Redlands Police
Officer Brad Grantz