

SETTLEMENT AGREEMENT AND MUTUAL GENERAL RELEASE

This Settlement Agreement and Mutual General Release (“Agreement”) is made and entered into by and between the City of San Clemente (“Employer”), and James Makshanoff (“Employee”). The term “Employer” when used in this Agreement, means each and every of the following, both singly and cumulatively: City of San Clemente, and each of its past or current officers, officials, directors, governing bodies (including all members of the City Council), departments, divisions, agents, representatives, successors, insurers, and attorneys.

RECITALS

WHEREAS, Employee was employed by Employer until he resigned effective January 17, 2020; Employee contends that Employer subjected Employee improperly to certain tort and other legal claims, including and not limited to retaliation, and Employer denies such claims; and Employee and Employer desire to enter into this Agreement to resolve their dispute;

WHEREAS, this Agreement and compliance with this Agreement is in no way an admission of liability by Employer of any wrongdoing or the violation of any rights, law, statute, duty or contract;

WHEREAS, The Parties desire to resolve, compromise, and settle the claims and controversies between them, on the terms and conditions set forth below.

THEREFORE, in consideration of the mutual promises and releases contained herein, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. The California Joint Powers Insurance Authority (“CJPIA”), acting on behalf of Employer, shall pay Employee and his attorneys, the total sum of Three Hundred Sixty Thousand Dollars (\$360,000) (“Settlement Amount”) within twenty (20) days of the Effective Date of the Agreement. CJPIA shall pay the Settlement Amount as follows: One Hundred Forty-four Thousand Dollars (\$144,000) to the Law Office of Lawrence J. Lennemann Client-Trust Account, and Two Hundred Sixteen Thousand Dollars (\$216,000) to James Makshanoff. Employee and his attorneys will provide to counsel for the City of San Clemente current, completed W9 forms. CJPIA shall issue a Tax Form 1099 to the the Law Office of Lawrence J. Lennemann in the amount of \$144,000, and a Tax Form 1099 to James Makshanoff in the amount of \$216,000.

2. In consideration of the Settlement Amount above, Employee and Employer, on behalf of themselves and their agents, representatives, elected officials, officers, heirs, successors, assigns, attorneys, and insurers hereby finally and unconditionally release and forever discharge each other and any and all of their agents, representatives, elected officials, officers, heirs, successors, assigns, attorneys, and insurers from any and all claims related to or stemming from Employee’s employment with the Employer, including but not limited to, claims for breach of implied or express contract or covenant; claims for promissory estoppel; claims of entitlement to

any form of compensation; claims of wrongful denial of insurance and employee benefits; claims for wrongful termination, public policy violations, defamation, invasion of privacy, fraud, misrepresentation, retaliation emotional distress or other common law or tort matters; claims of harassment, retaliation or discrimination based on age, race, color, religion, sex, gender, national origin, ancestry, physical or mental disability, medical condition, marital status, or other protected status; claims under California Labor and Government Codes; claims based upon the California and/or United States Constitution; claims based on any federal, state or other governmental statute, regulation or ordinance, including, without limitation: the California Family Rights Act, the California Fair Employment & Housing Act, Title VII of the Civil Rights Act, as amended, the Americans with Disabilities Act, as amended, the Age Discrimination in Employment Act ADEA, the Labor Management Relations Act, and the Employee Retirement Income Security Act.

3. Employee has not filed any complaints, charges or lawsuits against Employer (including its past or current elected officials, officers, representatives, agents, or affiliates) with any governmental agency or any court. Employee will not file any complaint or charge or lawsuit against Employer (including its past or current elected officials, officers, agents, representatives, or affiliates) at any time hereafter for any event relating to employment with Employer or the end of employment therefrom, and that if any court assumes jurisdiction of any complaint, charge or lawsuit against Employer (including its past or current elected officials, officers, agents, representatives, or affiliates) on behalf of Employee, Employee will request such agency or court to withdraw from the matter. Employee further agrees and acknowledges that by executing this Agreement, he is irrevocably and unequivocally dismissing all grievances, administrative appeals, arbitration demands, and/or civil claims he has or may have against the Employer.

4. Employee and Employer each understand and agree that the foregoing Release shall be construed broadly and apply to all claims, charges, actions, suits, demands, obligations, damages, injuries, liabilities, losses, and causes of action of every character, nature, kind or description, known or unknown, suspected or unsuspected, past, present or future, attributable to any action or omission to act arising out of the employment relation and its termination that Employee may have against Employer. Employee expressly acknowledges that he is aware of the existence of California Civil Code § 1542 and its meaning and effect. This release extends to the elected officials, officers, agents, or affiliates of the Employer. Any and all rights granted to Employee and Employer under §1542 of the California Civil Code or any analogous federal law or regulation in regard to Employee's employment and resignation are hereby expressly waived by Employee and Employer. Employee further expressly acknowledges that he has read and understands the provision of California Civil Code §1542.

EMPLOYEE AND EMPLOYER ACKNOWLEDGE THAT THEY HAVE BEEN ADVISED BY THEIR LEGAL COUNSEL AND ARE FAMILIAR WITH THE PROVISIONS OF CALIFORNIA *CIVIL CODE*, SECTION 1542, WHICH 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."

THE EMPLOYEE AND EMPLOYER, BEING AWARE OF *CIVIL CODE*, SECTION 1542, HEREBY EXPRESSLY WAIVE ANY RIGHTS WHICH THEY MAY HAVE

UNDER THIS LAW, AS WELL AS UNDER ANY STATUTES OR COMMON LAW PRINCIPLES OF SIMILAR EFFECT.

Employee and Employer further acknowledge that if they later discover facts different from or in addition to those facts now known to them or believed by them to be true with respect to any or all of the matters covered by this Agreement, this Agreement nevertheless shall remain in full and complete force and effect.

5. Employer and Employee understand and expressly agree that this Agreement shall bind and benefit the heirs, representatives, predecessors, successors, assigns, past and current elected officials, officers, agents, affiliates, attorneys, and insurers of Employee and Employer.

6. In any dispute with respect to this Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees and costs from the other party.

7. The validity, construction and enforceability of this Agreement shall be governed in all respects by the law of California applicable to agreements negotiated, executed and performed in California regardless of whether either of the parties shall now be or hereafter become a resident of another state or country, except as to any matters which are required by law to be governed by the laws of another jurisdiction.

8. Each Party shall bear its/his own legal fees arising out of this matter and waive any claims it/he may have against the other for attorney's fees, except under the conditions set forth in paragraph 6.

9. This Agreement sets forth the entire agreement between the Parties hereto and fully supersedes any and all prior agreements or understandings between the parties pertaining to the subject matter hereof. Any change or modification to this Agreement must be in writing and signed by the Parties. Neither Employee nor Employer has relied upon any representation or statement not now set forth in this writing concerning the terms, conditions, and inducements of this mutual release. There are no hidden terms, and everything which is important to this Agreement is specified in writing here.

10. Employee acknowledges and agrees that he has been advised in writing and has consulted with a private attorney prior to executing this Agreement, that Employee fully understands the right to discuss all aspects of this Agreement with a private attorney, that Employee has discussed this with an attorney, and that Employee has carefully read and fully understands all of the provisions of this Agreement and is freely and voluntarily entering into this Agreement.

11. Employee warrants that there has been no assignment or other transfer of interest in this matter to any other person who is not a party to this Agreement, and agrees to hold Employer harmless for any expenses including attorneys' fees which may be incurred if Employer is sued because of this matter by any person holding an alleged assignment or transfer of the matter of the Employee herein.

12. Important Notice Regarding Release of Claims Under the Age Discrimination in Employment Act of 1967 (“ADEA”): Without in any way limiting the generality or scope of the Release set forth above, Employee hereby acknowledges that Employee knowingly and voluntarily enters into this Agreement with the purpose of waiving and releasing any age discrimination claims Employee may have under the ADEA, and acknowledges and agrees that:

- a) This Agreement is written in a manner in which Employee fully understands;
- b) Employee specifically waives any rights or claims arising under the ADEA;
- c) This Agreement does not waive rights or claims under the ADEA that may arise after the date this Agreement is executed;
- d) The rights and claims waived in this Agreement are in exchange for consideration over and above anything to which Employee is already entitled;
- e) Employee has been advised in writing to consult with an attorney prior to executing this Agreement, and has, in fact had an opportunity to do so;
- f) Employee has been given a period of up to at least twenty-one (21) days, if desired, within which to consider this Agreement; but he may, in the exercise of his own discretion, sign or reject this Agreement at any time before the expiration of the twenty-one (21) days. Any changes made to this Agreement, whether material or immaterial, will not restart the running of this 21-day period.
- g) Once executed, the Employee has a period of seven (7) days within which he can revoke this Agreement, and the Agreement shall not be effective until the seven-day revocation period has been exhausted. Thus, the Effective Date of this Agreement is the eighth day after this Agreement has been executed, provided it was not revoked. If Employee chooses to revoke this Agreement, he must do so in writing, and the revocation must be addressed and delivered by electronic means to legal counsel for the City of San Clemente, at emkessel@kesselaw.com, before the expiration of the seven (7) day revocation period.

13. By executing this Agreement, Employee also acknowledges that Employee (a) is not relying upon any statements, understandings, representations, expectations, or agreements other than those expressly set forth in this Agreement; (b) has made Employee’s own investigation of the facts and is relying solely upon Employee’s own knowledge and the advice of Employee’s own legal counsel; and (c) knowingly waives any claim that this Agreement was induced by any misrepresentation or nondisclosure and any right to rescind or avoid this Agreement based upon presently existing facts, known or unknown. The Parties stipulate that each Party is relying upon these representations and warranties in entering into this Agreement. These representations and warranties shall survive the execution of this Agreement.

14. All terms and provisions of this Agreement, and the drafting of this Agreement, have been negotiated by the Parties at arm’s length and to mutual agreement, with consideration by and participation of each, and no Party shall be deemed the scrivener of this Agreement.

15. The Parties hereto intend and agree that this Settlement Agreement and Mutual Release shall be given full force and effect and is not subject to any conditions other than as set forth in this Agreement.

16. It is expressly understood and agreed that Employee will pay any and all outstanding liens, including attorney liens, medical bills and medical liens resulting from this matter, if any, out of the proceeds of this Settlement.

17. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument. A Party may execute and deliver this Agreement by transmitting a facsimile copy or a scanned electronic version of the signed signature pages to the other Parties.

18. If any provision or term of this Agreement is held to be illegal, invalid, or unenforceable, such provision or term shall be fully severable; this Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised part of this Agreement; and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Agreement. Furthermore, in lieu of each such illegal, invalid, or unenforceable provision or term there shall be added automatically as a part of this Agreement another provision or term as similar to the illegal, invalid, or unenforceable provision as may be possible and that is legal, valid, and enforceable.

19. The City warrants that the person who executes this Agreement on behalf of the City has full authority to enter into this Agreement and to thereby legally bind the City.

In witness whereof, the Parties have executed this Agreement as follows:

Date 11/18/2020


James Makshanoff

Date _____

By: _____
Paul Zeglovitch, CJPIA Liability
Program Manager on behalf of the
City of San Clemente

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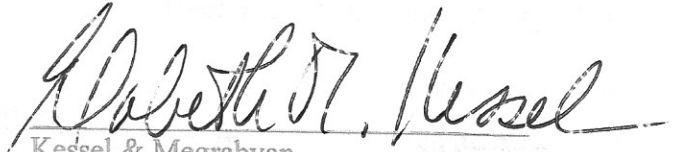
James Makshanoff

Date 11/23/20

By: Paul Zeglovitch
Paul Zeglovitch, CJPIA Liability
Program Manager on behalf of the
City of San Clemente

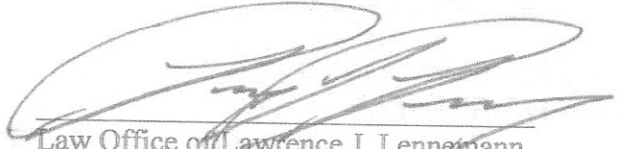
APPROVED AS TO FORM

Date 11-25-20



Kessel & Megrabyan
Elizabeth M, Kessel, Esq.

Date 11/18/20



Law Office of Lawrence J. Lennemann.
Lawrence J. Lennemann, Esq.