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8 CITY OF SANTA ANA and YVETTE AGUILAR

9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA

11
12 MATT CHOU; BRADLEY
IDELSHON; MARLA JAMES; DAVID
13 JAMES; and SKY HIGH HOLISTIC,

Case No. CV-15-00941-JVS-FFM
NOTICE OF SETTLEMENT

14 Plaintiffs,
15 vs.

16 CITY OF SANTA ANA, a California
city; MIGUEL PULIDO, as Mayor of the
17 City of Santa Ana; YVETTE AGUILAR;
and DOES 1 through 10,

18 Defendants.

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21 **TO THIS HONORABLE COURT AND TO ALL PARTIES AND THEIR**
22 **ATTORNEYS OF RECORD HEREIN:**

23 **PLEASE TAKE NOTICE** that Plaintiffs Bradley Idelshon, Marla James,
24 David James, and Sky High Holistic (collectively, "Settling Plaintiffs"), on the one
25 hand, and the City of Santa Ana and Yvette Aguilar (collectively, "Settling
26 Defendants"), on the other hand, have agreed to settle all claims asserted by Settling
27 Plaintiffs against Settling Defendants in the above-captioned case.

28 On October 26, 2016, Settling Plaintiffs and Settling Defendants entered into a

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1 Settlement Agreement attached as **Exhibit A**.

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3 Dated: October 27, 2016

JENNIFER MCGRATH

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By: 

JENNIFER MCGRATH
Attorneys for Plaintiffs
BRADLEY IDELSON, MARLA
JAMES, DAVID JAMES, and SKY
HIGH HOLISTIC

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11 Dated: October 27, 2016

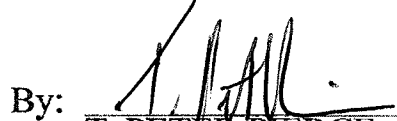
RICHARDS, WATSON & GERSHON
A Professional Corporation
T. PETER PIERCE
PATRICK K. BOBKO
STEPHANIE CAO

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By: 
T. PETER PIERCE
Attorneys for Defendants
CITY OF SANTA ANA and YVETTE
AGUILAR

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SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (“Agreement”) dated _____, 2016 (“Effective Date”¹) is entered by and among Bradley Idelshon, Marla James, David James, and Sky High Holistic (“settling plaintiffs”), on the one hand, and the City of Santa Ana and Yvette Aguilar on the other hand. At times all parties to this Agreement are referred to as “the parties” and individually referred to as a “party.” This Agreement is entered into in reference to the following Recitals which the parties agree are accurate to the best of their knowledge or belief.

RECITALS

- A. On November 4, 2014, the City of Santa Ana’s voters approved Measure BB. On December 9, 2014, the City Council of the City of Santa Ana adopted Ordinance NS-2864, codifying Measure BB.
- B. On June 15, 2015, plaintiffs Bradley Idelshon, Marla James, David James, Sky High Holistic, and Matt Chou filed an action entitled *Matt Chou, et al. v. City of Santa Ana, et al.*, U.S. District Court Case No. CV-15-00941 JVS (FFMx) (“Chou action”), challenging Measure BB and its enforcement.
- C. On December 28, 2015, plaintiffs filed a First Amended Complaint in the *Chou* action.
- D. On March 7, 2016, the Court dismissed the fourth, fifth, sixth, and seventh claims in the First Amended Complaint, and also dismissed Mayor Miguel Pulido as a defendant in the *Chou* action.
- E. The parties now wish to resolve their differences and to avoid the expense of further litigation, and enter into this Agreement to finally, fully, comprehensively, and conclusively settle all of the settling plaintiffs’ claims in the *Chou* action.

NOW THEREFORE, in consideration of the above recitals, the parties agree as follows:

TERMS OF SETTLEMENT

- 1. The City of Santa Ana shall pay to settling plaintiffs the total sum of one hundred thousand dollars (\$100,000.00) (the “Settlement Amount”) in full

¹ The “Effective Date” is the date upon which all parties have executed this agreement as evidenced by the latest date on the signature pages.

settlement of their claims in the Chou action. The Settlement Amount will be delivered to Jennifer McGrath, counsel of record for plaintiffs, in the form of a check made payable to Law Offices of Jennifer McGrath, Bradley Idelshon, Marla James, David James, and Sky High Holistic. The Settlement Amount includes all claims by settling plaintiffs and their counsel for damages, attorney's fees and costs arising out of the Chou action, and in no event shall any defendant be liable for additional monetary consideration in excess of the Settlement Amount in connection with the settling plaintiffs' claims in the Chou action.

2. At the next court appearance following the Execution Date, the City of Santa Ana shall dismiss the criminal complaints filed in (1) *People of the State of California, City of Santa Ana, California v. Marla James*, Orange County Superior Court Case No. 15CM07370; and (2) *People of the State of California, City of Santa Ana, California v. David James*, Orange County Superior Court Case No. 15CM07366.
3. Upon delivery of the Settlement Amount to settling plaintiffs under paragraph 1, settling plaintiffs shall provide defendants with an executed request for dismissal with prejudice of all of their claims asserted in the Chou action. Defendants will file the request for dismissal with the Court.
4. No Assignments. Settling plaintiffs represent and warrant as a material term of this Agreement that they have not assigned, transferred, released or granted, or purported to assign, transfer, release or grant, any part of the Chou action settled by this Agreement. Settling plaintiffs shall not assign, convey, or transfer to any other person any part of the Chou action settled by this Agreement.
5. General Release and Discharge of Claims. Upon the Effective Date of this Agreement, settling plaintiffs, and each of them, for themselves and all of their predecessors, successors, assigns, representatives, attorneys, employees, officers, and agents, do hereby fully and forever release and discharge the City, and all of its predecessors, successors, assigns, representatives, attorneys, agents, elected and appointed council members, council boards, commissions, commissioners, officers, employees, including but not limited to, Mayor Miguel Pulido and Yvette Aguilar (hereinafter collectively all persons and entities will be referred to as "Released Persons"), of and from any and all actions, claims, demands, rights, damages, costs, litigation expenses, attorneys fees, expert fees, consultant fees, other fees, interest, lost profits and earnings, diminution in the value of

the business, loss of past, current, future and subsequent business and patronage, the value of any leasehold interest, the loss of goodwill, any other damages, costs or expenses arising from any and all actions of the Released Persons and compensation of any nature whatsoever, which settling plaintiffs have or may hereafter accrue, including without limitation, any and all known and unknown, foreseen and unforeseen claim, damage and injury, relating to, or in any way, directly or indirectly, involving or arising out of any facts or circumstances related to the Chou action. This general release and discharge of claims excludes (1) plaintiff Sky High Holistic's currently pending state court action (Case No. M-16334) under Penal Code section 1539 in which it seeks return of its property confiscated by the Santa Ana Police Department on May 26, 2015; and (2) any other timely state court action in which plaintiff Sky High Holistic may seek only the return of its property confiscated by the Santa Ana Police Department on May 26, 2015 or, alternatively, only the value of that confiscated property.

6. Waiver of Claims. It is the intention of the settling plaintiffs, in executing this Agreement and receiving the consideration recited herein, that this Agreement is effective as a full and final accord and satisfaction and general release of all claims, debts, damages, liabilities, demands, obligations, costs, expenses, disputes, actions or causes of action, that settling plaintiffs may have against the Released Persons by reason of any acts, circumstances or transactions relating in any way to the Chou action and occurring before the date of this Agreement. The state court actions expressly excluded from the general release and discharge of claims in paragraph 5 are also excluded from this waiver of claims. The parties acknowledge that they are familiar with California Civil Code section 1542 and that they hereby expressly waive the protection of that section, which provides as follows:

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

The parties waive and relinquish any right or benefit that they have or may have under California Civil Code section 1542. That is, the settling plaintiffs shall not invoke the benefits of California Civil Code section 1542, or any such similar law, to prosecute any claims released hereunder. In

connection with such waiver and agreement, each of the settling plaintiffs acknowledges that they are aware that they or their attorney may hereafter discover claims or facts or legal theories in addition to or different from those which they know or believe to exist with respect to the Chou action, but that it is the intention hereby to fully, finally, and forever settle and release all of the claims, known or unknown, suspected or unsuspected, which do now exist, may exist, or heretofore have existed by reason of any acts, circumstances, facts, events, or transactions relating in any way to the Chou action before the date of this Agreement. It is expressly acknowledged and understood by the parties to this Agreement that the parties separately bargained for the foregoing waiver of the provisions of section 1542 of the California Civil Code. The settling plaintiffs consent that this release shall be given full force and effect in accordance with each and all of the express terms and provisions, including those terms and provisions related to such unknown and unsuspected claims, demands, and causes of action relating in any way to or arising out of the facts and circumstances underlying or connected with the Chou action.

7. Governing Law. This Agreement shall be governed and interpreted in accordance with the laws of the State of California. Each party hereto agrees that the laws of the State of California shall apply and that any action brought hereunder shall be subject to the laws and statutes of the State of California. The parties expressly agree that any disputes, disagreements or actions shall be filed in the Superior Court of Orange County, State of California. The parties stipulate that they are subject to the jurisdiction of the Superior Court of Orange County and hereby expressly waive any defense to assertion of jurisdiction by that court in such an action.
8. Integrated Agreement. This Agreement contains the entire understanding and agreement between the parties, and the terms and conditions contained herein shall inure to the benefit of, and be binding upon, the heirs, representatives, successors and assigns of each of the parties hereto. No other representations, covenants, undertakings, or other prior or contemporaneous agreements, oral or written, respecting such matters, which are not specifically incorporated herein, shall be deemed in any way to exist or bind any of the parties hereto. The parties hereto acknowledge that this Agreement has been executed without reliance upon any such promise, representation, or warranty not contained herein.
9. Modification. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by all of the parties.

No waiver of any of the provisions of this Agreement shall be deemed to constitute a waiver of any other provision whether or not similar, nor shall waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the parties making the waiver.

10. **Binding on Successors.** This Agreement and the covenants and conditions contained herein shall obligate, bind, extend to and inure to the benefit of the parties and each of their respective successors in interest, including, but not limited to, their administrators, executors, owners, partners, officers, directors, shareholders, legal representatives, assignees, attorneys, successors, and agents or employees of the parties hereto.
11. **Representation of Claimants.** Settling plaintiffs affirmatively represent that they have been represented by counsel of their own choosing. Settling plaintiffs have read this Agreement and have had the terms used herein and the consequences thereof explained by their attorneys of choice.
12. **Construction.** This Agreement shall not be construed against the party preparing it, but shall be construed as if all parties jointly prepared this Agreement. Any uncertainty and ambiguity shall not be interpreted against any one party. This Agreement is to be performed in California and it is to be interpreted, enforced, and governed by and under the laws of the State of California.
13. **Attorneys' Fees and Costs.** All attorneys' fees, expert fees and costs incurred by settling plaintiffs through the date of this Agreement that relate in any way to the Chou action are included in the settlement amount set forth in paragraph 1 above. Should suit be brought to enforce or interpret any part of this Agreement, the prevailing party shall be entitled to recover attorneys' fees.
14. **No Admission of Liability.** This Agreement and the releases contained herein and the consideration referred to herein are done to save litigation expense and to affect the compromise and settlement of claims and defenses which are denied, disputed, and contested. Nothing contained herein shall be construed as an admission by any party of any liability of any kind to any other party. The parties agree that each party expressly denies that it is in any way liable or indebted to any other party and no person interpreting this Agreement shall be able to infer that any party has engaged in any conduct giving rise to liability to any other party.

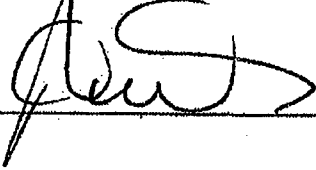
15. Gender Neutral. Whenever in this Agreement the context may so require, the masculine, feminine and neutral genders shall be each deemed to include the other and the singular and the plural shall refer to one another.
16. Counterparts. This Agreement may be executed in duplicate counterparts, each of which shall be deemed an original and all of which shall constitute an agreement to be effective as of the date of signing. Further, signatures transmitted and memorialized by electronic mail or facsimile shall be deemed to have the same weight and effect as an original signature. The parties may agree that an original signature will be substituted at some later time for any electronic or facsimile signature.
17. Captions and Interpretations. The paragraph titles and captions are inserted in this Agreement as a matter of convenience. As such, the paragraph titles or captions are not intended to define or describe the scope of any provision.
18. Invalid Clause May Be Severed. If any provision, clause, or part of the Agreement is adjudged illegal, invalid or unenforceable, the balance of this Agreement shall remain in full force and effect.
19. Survival of Warranties and Representatives. The warranties and representations made in this Agreement are deemed to survive the execution of this Agreement.
20. **BY SIGNING THIS AGREEMENT, THE PARTIES CERTIFY THAT THEY HAVE READ IT, THAT THEY HAVE CONSULTED WITH THEIR LEGAL COUNSEL ABOUT ITS EFFECT, AND THAT THEY FULLY UNDERSTAND IT.**

Signature pages follow

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the Effective Date and their attorneys have indicated their approval as to form by their respective signatures in the appropriate spaces below.

Dated: 10/11/16

BRADLEY IDELSHON



Dated: _____

MARLA JAMES

Dated: _____

DAVID JAMES

Dated: _____

SKY HIGH HOLISTIC

By: _____

Title: _____

Dated: _____

YVETTE AGUILAR

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the Effective Date and their attorneys have indicated their approval as to form by their respective signatures in the appropriate spaces below.

BRADLEY IDELSON

Dated: _____

MARLA JAMES

Dated: 10/11/2016 Marla L. James

DAVID JAMES

Dated: 10/11/2016 David James

SKY HIGH HOLISTIC

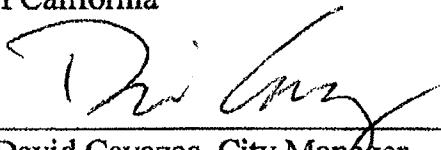
Dated: 10/14/2016 Scott Saechao
By: Scott Saechao
Title: President (managing patient)

YVETTE AGUILAR

Dated: 10/26/16 Yvette Aguilar

CITY OF SANTA ANA, a charter law city and municipal corporation, duly organized and existing under the Constitution and laws of the State of California

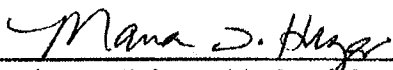
Dated: 10/20/16

By: 
David Cavazos, City Manager

ATTEST:

CITY OF SANTA ANA, a charter law city and municipal corporation, duly organized and existing under the Constitution and laws of the State of California

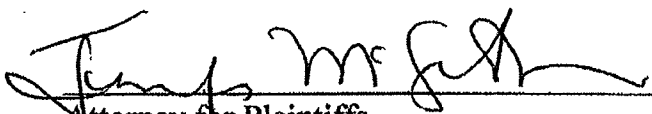
Dated: 10-20-2016

By: 
Maria D. Huizar, Clerk of the Council

APPROVED AS TO FORM:

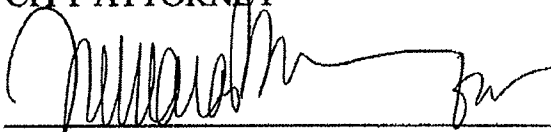
JENNIFER MCGRATH

Dated: 10/18/16


Attorney for Plaintiffs

SONIA R. CARVALHO
CITY ATTORNEY

Dated: 10/19/16


Sandra M. Schwarzmann
Senior Assistant City Attorney
Attorneys for Defendants
City of Santa Ana and Yvette Aguilar

PROOF OF SERVICE

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I, Kelley Herrington, declare:

I am a resident of the State of California and over the age of eighteen years and not a party to the within action. My business address is 355 South Grand Avenue, 40th Floor, Los Angeles, California 90071-3101. On October 27, 2016, I served the within document(s) described as:

NOTICE OF SETTLEMENT

on the interested parties in this action as stated below:

Matthew S. Pappas
Law Offices of Matthew Pappas
1719 E. Broadway
Long Beach, California 90802
(949) 382-1485
(FAX) (949) 242-2605
matt.pappas@mattpappaslaw.com

Matthew S. Pappas
24611 Spadra Lane
Mission Viejo, California 92691
(949) 444-8740
matt-pappas@mattpappaslaw.com

Jennifer McGrath
9114 Adams Avenue, #264
Huntington Beach, California 92646
(714) 231-2124
jmcgrath1.attv@gmail.com

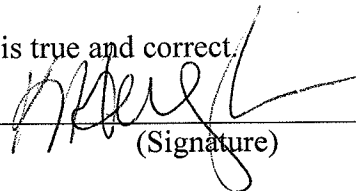
(BY MAIL) By placing a true copy of the foregoing document(s) in a sealed envelope addressed as set forth above. I placed each such envelope for collection and mailing following ordinary business practices. I am readily familiar with this Firm's practice for collection and processing of correspondence for mailing. Under that practice, the correspondence would be deposited with the United States Postal Service on that same day, with postage thereon fully prepaid at Los Angeles, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I certify that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on October 27, 2016, at Los Angeles, California.

I declare under penalty of perjury that the foregoing is true and correct.

Kelley Herrington
(Type or print name)


(Signature)