

## **SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release ("Agreement") is entered into on the effective date (hereinafter, the "Effective Date") set forth below, by and between James Davis, an individual (hereafter, "DAVIS"), and the County of Fresno, a political subdivision of the State of California (hereafter, "COUNTY"). DAVIS and COUNTY are herein referred to collectively as the "Parties" and individually as a "Party" to this Agreement.

### **RECITALS**

WHEREAS, on May 23, 2014, DAVIS filed a Verified Petition for Writ of Administrative Mandamus (CCP § 1094.5) and Complaint for Damages for Violation of DAVIS' Skelly Rights (*Skelly v. State Personnel Bd.* (1975) 15 Cal.3d 194) and the Peace Officers Procedural Bill of Rights (Government Code Section 3303(G); 3309.5) (hereafter, the "Verified Petition") in Fresno County Superior Court against COUNTY, COUNTY's Civil Service Commission, and Rick Chavez, in his official capacity as the Chief Probation Officer of Fresno County ("Mr. Chavez") (COUNTY, its Civil Service Commission, and Mr. Chavez are hereafter collectively referred to as the "COUNTY Defendants"), thereby commencing Case Number 14CECG01490 (hereafter, the "Action"); and

WHEREAS, on November 20, 2014, DAVIS filed the First Amended Verified Petition, which is the operative pleading in the Action; and

WHEREAS, the First Amended Verified Petition, in essence, asserts that:

- a) COUNTY Defendants unlawfully terminated DAVIS' employment with the County, for which DAVIS is entitled to reinstatement to his employment and back pay; and
- b) COUNTY violated DAVIS' rights under *Skelly v. State Personnel Bd.* (1975) 15 Cal.3d 194, and the Public Safety Officers Procedural Bill of Rights Act, for which DAVIS is entitled to civil penalties, damages, and attorney's fees; and

WHEREAS, COUNTY Defendants maintain that they have meritorious defenses to the Action; and

WHEREAS, the Parties wish to avoid the disruption, inconvenience, uncertainty, and costs associated with further litigation with respect to this matter, and as such, the Parties seek to settle and resolve the issue based upon the terms set forth herein.

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## **AGREEMENT**

1. **Effective Date.** The effective date of this Agreement shall be November 6, 2018, 2018 ("Effective Date").
2. **Incorporation of Recitals.** The Recitals set forth above are true and incorporated herein by this reference and are made a part of this Agreement as if set forth in their entirety.
3. **COUNTY Defendants' Obligations.**
  - a) **Payments to DAVIS and his Attorney.** Subject to the timely receipt of the Requests for Taxpayer Identification Number and Certification specified in Section 4(a) of this Agreement, on or before the 15<sup>th</sup> County business day following the Effective Date of this Settlement Agreement, COUNTY shall remit the following payments:
    - i) Forty Thousand Dollars (\$40,000.00), payable by check or warrant, to DAVIS; and
    - ii) Forty-Three Thousand Four Hundred and Thirty-Seven Dollars and 91 cents (\$43,437.91), payable by check or warrant, to DAVIS' attorney Jacob M. Weisberg. The payments to DAVIS and Mr. Weisberg are collectively referred to as the "Settlement Amount".
  - b) **Allocation of Settlement Amount for Taxation Purposes.** DAVIS represents to COUNTY that the payments comprising the Settlement Amount shall be allocated as follows for taxation purposes:
    - i) DAVIS represents to COUNTY that the \$40,000.00 payment to DAVIS is allocated in its entirety to damages he claims to have suffered when he was required to purchase private health insurance following his dismissal from COUNTY employment; and
    - ii) With respect to the \$43,437.91 payment to DAVIS' attorney, Jacob M. Weisberg, \$40,000 shall be allocated to attorney's fees earned by Mr. Weisberg, and \$3,437.91 shall be allocated to court costs incurred by Mr. Weisberg.

- c) **Delivery of Settlement Amount.** DAVIS requests that the payments comprising the Settlement Amount be delivered to his attorney Jacob M. Weisberg. Mr. Weisberg will collect, in person, the payments comprising the Settlement Amount from the Office of the Fresno County Counsel, 2220 Tulare Street, Suite 500, Fresno, California 93721.
- d) **Full Satisfaction.** Upon delivery of the Settlement Amount as provided in Section 3(c), COUNTY Defendants will have fully satisfied their obligations under this Agreement.

**4. DAVIS' Obligations.**

- a) **Requests for Taxpayer Identification Number and Certification.** On or before the fifth (5<sup>th</sup>) business day following the Effective Date, DAVIS shall deliver to COUNTY properly completed IRS Form W-9, Requests for Taxpayer Identification Number and Certification, for both himself and the Law Offices of Jacob M. Weisberg.
- b) **Request for Dismissal With Prejudice.** Within five (5) business days of receipt of the Settlement Amount, DAVIS shall file a Request for the Dismissal of the entire Action with prejudice.
- c) **Waiver of Fees and Costs.** DAVIS hereby waives and relinquishes any right to recover any damages, attorney's fees, and/or costs from the COUNTY Defendants relating to the Action, except as to those fees and costs to be paid pursuant to Section 3(a).

**5. Release of Claims and Covenant Not to Sue.** In consideration for the agreements contained herein, and except as to obligations created herein, DAVIS for himself, and his successors, assigns, heirs, executors, administrators and representatives, and any other person or entity claiming (now or in the future) to be acting through or on behalf of DAVIS (each a "Releasor," and collectively, the "Releasors"), hereby fully and finally release and forever discharge the Releasees (hereinafter defined) from any and all claims, demands, and causes of action of whatever kind or nature whether known or unknown included in the Action, or which could have been included in the Action. County of Fresno, including its governing Board of Supervisors, officers, agents, employees, and attorneys, Civil Service Commission and each of its members, and Rick Chavez, Chief Probation Officer, and his successors in office, are each a "Releasee" and are collectively the "Releasees" under this Agreement.

DAVIS acknowledges and affirms that he is familiar with Section 1542 of the California Civil Code, which provides that:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT EXISTS 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.**

DAVIS hereby knowingly and voluntarily waives the provisions of Section 1542 of the California Civil Code with respect to any claim alleged or which could have been alleged in the Action, and acknowledges and agrees that this waiver is an essential and material term of the settlement which led to this Agreement.

As of the Effective Date, Releasors, hereby absolutely, unconditionally and irrevocably, covenant and agree with and in favor of the Releasees that Releasors will not bring, file, charge, claim, sue or cause, assist, or permit to be brought, filed, charged or claimed any action, cause of action, or proceeding (at law, in equity, in any regulatory proceeding or otherwise) against the Releasees on the basis of any matter released, surrendered, or discharged by the Releasors pursuant to this Agreement. If any Releasor violates the foregoing covenant, such Releasors, jointly and severally agrees to pay, in addition to such other damages as any Releasee may sustain as a result of such violation, all reasonable attorneys' fees and costs incurred by any Releasee as a result of such violation.

6. **No Admission.** This Agreement is the compromise and the final and complete resolution of all disputes claims asserted, or that could have been asserted, in the pleadings on file in this action and fully and finally settles the asserted claims, or claims that could have been asserted, in the Action. Nothing in this Agreement shall be interpreted or construed to be an admission of liability on the part of any person or Party named herein.
7. **Modification.** This Agreement may not be altered, amended, or modified in any respect, except by a writing duly executed by the Parties.
8. **Binding Effect of Agreement.** This Agreement, and all the terms and provisions hereof, shall be binding upon, and shall insure to the benefit, of the Parties and their respective heirs, legal representatives, successors, and assigns.
9. **Third Party Beneficiaries.** Mr. Chavez and COUNTY's Civil Service Commission are intended third-party beneficiaries of this Agreement. Otherwise, the Parties acknowledge and agree that no other person, firm, corporation, or entity shall be deemed an intended third-party beneficiary of this Agreement.

10. **Attorneys Fees' and Costs.** Except as set forth in Section 3(a) and (b) herein, each Party shall bear its own attorneys' fees and costs related to this Agreement.
11. **Voluntary Settlement.** The Parties agree that the Settlement Amount and the other terms of the settlement as described herein were negotiated in good faith by the Parties, and reflect a settlement that was reached voluntarily after consultation with competent legal counsel. The Parties specifically represent that, prior to signing this Agreement, they have been provided a reasonable period of time within which to consider whether to accept this Agreement. The Parties further represent that they have each carefully read and fully understand all of the provisions of this Agreement, and that they are voluntarily, knowingly, and without coercion, entering into this Agreement based upon their own judgment.
12. **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, illegal, or unenforceable, that provision shall be interpreted as severable and severed from this Agreement and all other provisions in this Agreement shall nevertheless continue and remain in full force and effect. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner so that the transaction contemplated by the Parties is fulfilled to the greatest extent possible.
13. **Waiver.** Failure to insist on compliance with any term, covenant, or condition in this Agreement shall not be deemed a waiver of that term, covenant, or condition, nor shall any waiver or relinquishment of any right or power in this Agreement at any one time or more times be deemed a waiver or relinquishment of any right or power at any other time or times.
14. **Additional Documents.** The Parties will cooperate fully, execute all supplementary documents, and take all additional actions that are necessary or appropriate to give full force and effect to the terms and intent of this Agreement.
15. **Execution in Counterparts.** This Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. Counsel for the Parties shall exchange Portable Document Format ("PDF") copies of the signed counterparts by email and originally signed counterparts by U.S. Mail.
16. **Notices.** All notices, consents, approvals, requests, correspondence, documents, reports, demands and other communications (collectively, "Notice") which the Parties are required or desire to serve upon or deliver to one another shall be in writing and shall be sent by any of the following methods: (a) personal delivery, in which case notice is effective upon delivery; (b) certified or registered United

States mail, return receipt requested, in which case notice shall be deemed delivered upon receipt of delivery is confirmed by a return receipt; or (c) nationally recognized overnight courier, with charges prepaid or charged to the sender's account, in which case notice is effective on delivery if delivery is confirmed by the delivery service addressed in the appropriate manner for the method of service, as set forth below:

**COUNTY Defendants:**

Kirk Haynes, Chief Probation Officer  
3333 E. American Ave., Suite B  
Fresno, CA 93725

***Copies of notices to COUNTY shall also be given to:***

Office of the Fresno County Counsel  
**Attention:** Catherine E. Basham, Chief Deputy County Counsel  
2220 Tulare Street, Suite 500  
Fresno, California 93721

**DAVIS:**

James Davis  
c/o Law Offices of Jacob M. Weisberg  
844 N Van Ness Ave  
Fresno, California 93728

17. **Authorization to Execute.** Each Party represents and warrants to the other Party that such Party is duly authorized and empowered to execute, enter into, and perform its obligations set forth in this Agreement, and that the individual signing this Agreement on behalf of such Party has been duly authorized to execute this Agreement on behalf of such Party, and will, by signing this Agreement on such Party's behalf, legally bind such Party to the terms and conditions of this Agreement.

Each Party further represents and warrants to the other Party that no other person or entity is required to give its approval or consent to this Agreement in order for such Party to authorize, enter into, and perform its obligations under this Agreement, or that if such approval or consent to this Agreement is required, that such approval or consent has been obtained.

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18. **Headings; Construction; Statutory References.** The headings of the sections and paragraphs of this Agreement are for convenience only and shall not be used to interpret this Agreement. This Agreement is the product of negotiation between the Parties. The language of this Agreement shall be construed as a whole according to its fair meaning and not strictly for or against any Party. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting this Agreement. All references in this Agreement to particular statutes, regulations, ordinances or resolutions of the United States or the State of California shall be deemed to include the same statute, regulation, ordinance or resolution as hereafter amended or renumbered, or if repealed, to such other provisions as may thereafter govern the same subject.
19. **Governing Law and Venue.** This Agreement shall be deemed to have been entered into in Fresno County, and shall be interpreted under, and enforced by the laws of the State of California. The Agreement and obligations of the parties are subject to all laws, orders, rules, and regulations of the authorities having jurisdiction over this Agreement (or the successors of those authorities). Any suits brought pursuant to this Agreement shall be filed and heard in courts having jurisdiction and located in the Fresno County, State of California.

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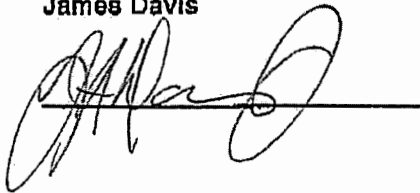
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20. **Integrated Agreement.** This Agreement contains the sole, complete, and entire agreement and understanding of the Parties concerning the matters contained herein, and supersedes all previous negotiations, proposals, commitments, writings, and understandings of any nature whatsoever, unless expressly included in this Agreement.

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement to be effective as of the Effective Date.

James Davis



Dated: 11-12-16

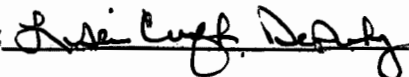
County of Fresno

  
Sal Quintero, Chairperson of the Board  
of Supervisors of the County of Fresno

Dated: NOV. 6, 2018

ATTEST:

Bernice E. Seidel  
Clerk of the Board of Supervisors  
County of Fresno, State of California

By: 

Dated: NOV. 6, 2018



**For accounting use only:**

Fund – 0001

Subclass – 10000

Org – 34309999

Account – 7295