

SETTLEMENT AGREEMENT AND GENERAL RELEASE OF CLAIMS

The parties to this SETTLEMENT AGREEMENT AND GENERAL RELEASE OF CLAIMS (“Agreement”) are (1) Rickk Montoya (referred to as “Montoya” or “Plaintiff” herein), (2) the City of Garden Grove, a California city and municipal corporation (referred to “City” or “Defendant” herein), and (3) Central Garden Grove Neighborhood Association, a California nonprofit public benefit corporation acting under the name Garden Grove Neighborhood Association (referred to as “GGNA” or “Intervenor” herein). These persons or entities are sometimes referred to as “Parties” or “each Party” herein. This Agreement is effective as of the latest date written next to the signature of a Party to this Agreement.

RECITALS

A. On or about July 20, 2015, Montoya filed that certain complaint for violation of the California Voting Rights Act of 2001 (“CVRA”) against the City in Orange County Superior Court, thereby instituting the action entitled *Rickk Montoya v. City of Garden Grove, California*, Case No. 30-2015-00799522 (the “CVRA Action”).

B. On or about January 5, 2016, GGNA was permitted to intervene in the CVRA Action and thereafter filed that certain complaint in intervention and first amended complaint in intervention against the City and Montoya for writ of mandate, injunctive relief, and declaratory relief (the “Intervention Action”).

C. The Parties desire to settle the CVRA Action and the Intervention Action and to fully and finally settle any and all matters between them arising out of, or relating to, the CVRA Action and/or the Intervention Action, or any claims that could have been raised in connection with the CVRA Action or the Intervention Action or the City’s at-large electoral system occurring prior to the date of this Agreement, without any further court proceedings, trial, appeal or adjudication of any issue of fact or law, except as provided herein, and without any admission with respect to such matters.

D. The purpose of this Agreement is to settle the CVRA Action and the Intervention Action by the Parties jointly requesting the Court to enter a judgment pursuant to its authority under the CVRA requiring the City to implement a mutually agreed procedure pursuant to which the City will change from its at-large system of election of four City Council members to a

system of election for City Council members with six City Council members elected by-district and the Mayor elected at-large, to be instituted timely so as to be the system of election for the November 2016 election, and dismissing the Intervention Action.

TERMS AND CONDITIONS

NOW, THEREFORE, in light of the foregoing recitals, and in consideration of the representations, warranties, releases, and promises contained herein, the Parties agree to the following terms and conditions:

1. **Stipulation for Entry of Judgment.** Within five (5) business days of full execution of this Agreement, the Parties shall execute and jointly file with the Court the Stipulation for Entry of Judgment attached hereto as Exhibit 1 (“Stipulation”). The Parties further agree to jointly request that the Court enter judgment consistent with the Stipulation, including, without limitation, jointly requesting that the Court consider the Proposed Judgment on an *ex parte* or expedited basis if requested by any Party.

2. **Parties’ Attorney’s Fees and Litigation Expenses.**

2.1. **Plaintiff’s Attorney’s Fees and Litigation Expenses.** Provided the Court enters judgment consistent with the Stipulation, within forty-five (45) days of entry of judgment by the Court, City shall pay Plaintiff the amount of Two Hundred and Ninety Thousand Dollars (\$290,000) in full satisfaction of all claims Plaintiff has or may have against City and/or Intervenor for attorney’s fees and/or litigation costs or expenses incurred in conjunction with the CVRA Action and/or the Intervention Action.

2.2. **Intervenor’s Attorney’s Fees and Litigation Expenses.** Provided the Court enters judgment consistent with the Stipulation, within forty-five (45) days of entry of judgment by the Court, City shall pay Intervenor the amount of Eighteen Thousand Dollars (\$18,000) in full satisfaction of all claims Intervenor has or may have against City and/or Plaintiff for attorney’s fees and/or litigation costs or expenses incurred in conjunction with the CVRA Action and/or the Intervention Action.

2.3. The Parties acknowledge and agree that, except as otherwise expressly provided in this Agreement, each Party shall bear its own costs, expenses, and attorney’s fees arising out of or relating to the CVRA Action, the Intervention Action, and the completion and implementation of this settlement.

3. Litigation Standstill. Upon full execution of this Agreement all litigation activities relating to the CVRA Action and the Intervention Action, other than those necessary to effectuate this Agreement and the case management conference and hearings on City's or Montoya's demurrers to GGNA's first amended complaint in intervention, if any, scheduled for February 23, 2016, will be suspended and court calendar dates removed, including all pending discovery.

4. No New Lawsuits or Legal Actions.

4.1. Plaintiff shall not file, or assist in any way (for example, and without limitation by soliciting new potential plaintiffs, referring new potential plaintiffs to Plaintiff's counsel herein, or providing pleadings, briefs, reports, discovery, investigations or any other document or matter prepared in connection with, or anticipation of the CVRA Action) any other person or entity to investigate, analyze, prepare for or file, another lawsuit against the City, alleging a violation of the California Voting Rights Act, Section 2 of the federal Voting Rights Act, or a voting rights violation under the Constitutions of the State of California or of the United States of America based on the facts alleged (or which could have been alleged) in the CVRA Action or based on the electoral system required to be implemented pursuant to the judgment entered by the Court pursuant to the Stipulation.

4.2. Neither Intervenor, nor any of Intervenor's current or future officers, directors, employees, attorneys or agents, shall file, or assist in any way (for example, and without limitation by soliciting new potential plaintiffs, petitioners or intervenors, referring new potential plaintiffs, petitioners or intervenors to Intervenor's counsel herein, or providing pleadings, briefs, reports, discovery, investigations or any other document or matter prepared in connection with, or anticipation of the Intervention Action) any other person or entity to investigate, analyze, prepare for or file, any legal action challenging, or seeking relief contrary to, this Agreement, the Stipulation, the judgment entered by the Court pursuant to the Stipulation, or the electoral system required to be implemented pursuant to such judgment.

5. Release of Claims. In return for the mutual promises and other consideration provided in this Agreement, the Parties, for themselves and their past, present or future heirs, beneficiaries, executors, administrators, officers, employees, directors, agents, partners, successors and assigns, including past, present or future City Council members and Mayors ("Releasers"), do, upon entry of Judgment by the Court, fully release, acquit, waive and forever

discharge one another, including their heirs, beneficiaries, executors, administrators, officers, employees, directors, agents, partners, successors and assigns, including past, present or future City Council members and Mayors (“Releasees”), from any and all claims, actions, causes of action, factual allegations, demands (including without limitation demands for equitable and injunctive relief), debts, damages, costs, expenses, including expert fees, losses, or attorney’s fees of whatever nature, involving the City’s electoral system or the City’s actions in furtherance of resolution of the CVRA Action, whether or not known, suspected or claimed (i) arising out of, based on, or in any way related to the facts alleged (or facts that could have been alleged) in the complaints and amended complaints filed in the CVRA Action and/or the Intervention Action, or (ii) the “at-large” electoral system of Defendant City, including, but not limited to Claims based upon the Constitution of the United States of America, the Constitution of the State of California, the CVRA, Section 2 of the federal Voting Rights Act, California Elections Code § 9200 *et. seq.*, California Government Code § 34870 *et. seq.*, California Government Code § 34900 *et. seq.*, California Elections Code § 14030, or California Code of Civil Procedure § 1021.5 (“Claims”), which Claims the Releasors have or may have against the Releasees, except for rights to enforce this Agreement, or as provided herein. In this Paragraph, the conjunctive includes the disjunctive.

6. Express Waiver of All Claims Under California Civil Code Section 1542. It is further understood and agreed that this Agreement extends to all of the above-described Claims and potential Claims, and that all rights under California Civil Code § 1542 are hereby expressly waived by the Parties for themselves and the other Releasors with respect to all such Claims. Section 1542 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.”

Notwithstanding these provisions of Section 1542, Plaintiff, Defendant and Intervenor expressly acknowledge that this Agreement is intended to include in its effect, without limitation, all Claims described in Paragraph 5, which they do not know or suspect to exist in their favor at the time of execution hereof and that the settlement reflected in this Agreement contemplates the extinguishment of all such Claims, except for rights to enforce this Agreement.

7. Non-admission of Liability. This Agreement pertains to disputed Claims under statutes, and is not intended to be, and shall not be construed as an admission by any of the Parties of any violation of any statute or law or constitution, or any other improper or wrongful conduct.

8. Admissibility of this Agreement. This Agreement constitutes a compromise of disputed claims and shall not be treated as an admission of liability by any of the Parties or any of the Releasees at any time or for any reason. This Agreement shall not be admissible in any legal or administrative proceeding, including proceedings between the City and Plaintiff, the City and Intervenor, or proceedings involving the City and any other party. Notwithstanding the generality of the foregoing, the Parties agree that once it is signed by the Parties this Agreement shall be fully binding and admissible in any judicial or administrative proceeding: (a) to enforce the terms of this Agreement pursuant to California Code of Civil Procedure § 664.6 or otherwise; and (b) for breach of this Agreement's provisions.

9. Integration. This Agreement constitutes the final and complete agreement of the Parties hereto with respect to the subject matter hereof and supersedes all prior or contemporaneous negotiations, promises, covenants, agreements or representations concerning any matters directly, indirectly or collaterally related to the subject matter of this Agreement. This Agreement fully sets forth the rights and obligations of the Parties hereto. The Parties hereto have expressly and intentionally included in this Agreement all collateral or additional agreements which may, in any manner, touch or relate to any of the subject matter of this Agreement and, therefore, all promises, covenants and agreements, collateral or otherwise, are included herein. The Parties acknowledge that in entering into this Agreement, neither have relied on any statement, promise, representation or warranty whatsoever, which is not expressly contained herein. It is the intention of the Parties to this Agreement that it shall constitute an integration of all their agreements, and each understands that in the event of any subsequent litigation, controversy or dispute concerning any of its terms, conditions or provisions, no party hereto shall be permitted to offer or introduce any oral or extrinsic evidence concerning any other alleged collateral or oral agreement between the Parties not included herein.

10. Amendment. This Agreement cannot be amended, modified or waived except by a writing executed by the Party to be charged, which expresses, by its terms, an intention to modify this Agreement.

11. Construction of Agreement. This Agreement shall be construed as a whole in accordance with its fair meaning and in accordance with the laws of the State of California and any applicable laws of the United States. The language of the Agreement shall not be construed for or against any particular party by reason of its participation or lack of participation in drafting any provision of the Agreement. This Agreement shall be interpreted and construed as if drafted by each of the Parties with equal participation in the drafting hereof. The headings used herein are for reference only and shall not affect the construction of this Agreement.

12. Representation by Counsel. Each of the Parties expressly acknowledges and represents that it has been represented counsel in negotiations culminating in this Agreement. Each of the Parties has read this Agreement, reviewed the same with counsel, and fully understands the meaning and effect of each and every provision of this Agreement, in particular the meaning and effect of the releases and the waiver of rights under California Civil Code § 1542.

13. Authority. The undersigned represent and warrant that they have taken all actions and obtained all authorizations, consents and approvals as are conditions precedent to their authority to execute this Agreement.

14. Execution in Counterparts. This Agreement may be executed in counterparts, which will be binding upon the Parties hereto as if all of said Parties executed the original hereof. This Agreement may be executed by facsimile or scanned signatures. Delivery of this Agreement bearing a facsimile or scanned signature or signatures shall have the same force and effect as if the Agreement bore an inked original signature or signatures.

15. Choice of Law/Jurisdiction. The Court where the CVRA Action was filed will retain jurisdiction over this matter under *California Code of Civil Procedure* Section 664.6 in the event of a default by any of the Parties and be allowed to enforce the terms of this Agreement.

16. Enforcement of Agreement. In the event that any action in law or equity is initiated by any party to enforce the provisions of this Agreement, to obtain a declaration of rights and obligations in conjunction therewith, or otherwise arising out of this Agreement, each party shall bear their own attorneys' fees in connection therewith.

17. Severance of Void/Unenforceable Provisions. Each of the Parties acknowledges and agrees that the terms and conditions of this Agreement are valid, binding, and enforceable as to it. In the event, however, that any term, provision, covenant, or condition of this Agreement

shall be declared invalid, void, or unenforceable by a final judgment or other final judicial determination, such portion shall be deemed severed from this Agreement and the remaining parts shall remain in full force and effect, so long as the economic and legal substance of the transaction contemplated thereby are not affected in any manner materially adverse to any Party to this Agreement. Upon any binding determination that any term or other provision of this Agreement is invalid, void, or unenforceable, the Parties 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 and legally enforceable manner in order that the transaction contemplated thereby may be effected to the fullest extent possible.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates set forth opposite their respective signatures.

DATED: 1/25, 2016

By: 
RICKK MONTOYA

DATED: _____, 2016

CITY OF GARDEN GROVE

By: _____
BAO NGUYEN
Mayor

ATTEST

DATED: _____, 2016

By: _____
KATHLEEN BAILOR
City Clerk

DATED: _____, 2016

CENTRAL GARDEN GROVE NEIGHBORHOOD ASSOCIATION

By: _____
MAUREEN BLACKMUN
President

APPROVED AS TO FORM

DATED: January 26, 2016

SHENKMAN & HUGHES PC

By: 

KEVIN SHENKMAN
Attorney for Plaintiff RICKK MONTOYA

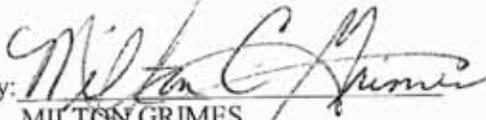
DATED: _____, 2016

R. REX PARRIS LAW FIRM

By: _____
R. REX PARRIS
Attorney for Plaintiff RICKK MONTOYA

DATED: 1/26, 2016

LAW OFFICES OF MILTON C. GRIMES

By: 

MILTON GRIMES
Attorney for Plaintiff RICKK MONTOYA

DATED: _____, 2016

WOODRUFF, SPRADLIN & SMART, APC

By: _____
OMAR SANDOVAL
Attorney for Defendant CITY OF GARDEN
GROVE

DATED: _____, 2016

By: _____
MARK S. ROSEN
Attorney for Intervenor CENTRAL GARDEN
GROVE NEIGHBORHOOD ASSOCIATION