

SETTLEMENT AGREEMENT AND GENERAL RELEASE

This Settlement Agreement and General Release ("Agreement") is made by and between Plaintiffs JOHN BAUER, an individual and as Successor in Interest of Jacob Bauer, deceased; ROSE BAUER, an individual and as Successor in Interest of Jacob Bauer, ("PLAINTIFFS"), and the CITY OF PLEASANTON ("CITY"), a municipal entity (and its coverage pool(s)), on behalf of Defendants CITY OF PLEASANTON, BRADLEE MIDDLETON; JONATHAN CHIN and RICHARD TROVAO ("DEFENDANTS"), by and through their respective attorneys of record (collectively the "PARTIES").

W I T N E S S E T H

WHEREAS, PLAINTIFFS filed a lawsuit against DEFENDANTS in the United States District Court, Case No. C19-04593 LB, alleging civil rights violations by DEFENDANTS and the CITY'S employees, pertaining to the death of Decedent Jacob Bauer, on August 1, 2018, in Pleasanton, California (hereafter "Civil Action").

WHEREAS, DEFENDANTS deny any and all allegations of the Civil Action;

WHEREAS, the PARTIES wish to effect a complete resolution and settlement of all claims, disputes, and controversies arising out of the Civil Action; and

WHEREAS, the PARTIES voluntarily and freely enter this Agreement for that purpose.

NOW, THEREFORE, in consideration of the mutual terms, covenants and conditions set forth below, the PARTIES hereto, intending to be legally bound, do enter into this Agreement and agree to execute this document as a full and complete release, providing the following terms and conditions are complied with below.

GWILLIAM, IVARY, CHIOSSO, CAVALLI & BREWER

AGREEMENT

1. **Consideration.** In consideration of the promises contained herein, the CITY OF PLEASANTON (via its coverage pool(s)), as a complete settlement of this action on behalf of all DEFENDANTS, will make payment(s) to PLAINTIFFS, and to the Trust Account of their main attorneys of record, Gwilliam, Ivory, Chiosso, Cavalli & Brewer, in the total amount of \$5,900,000.00 (FIVE MILLION NINE HUNDRED THOUSAND DOLLARS AND NO CENTS) (the "Settlement Funds"). In exchange for the settlement draft(s), PLAINTIFFS stipulate to a dismissal of this entire action, with prejudice, as to all named and/or appearing DEFENDANTS, a dismissal to be filed by the PARTIES following payment to PLAINTIFFS and their attorneys of record, as further listed in Section 3 below. The Settlement Funds shall be paid as follows:

a. One check in the amount of **\$1,647,057.32** (ONE MILLION SIX HUNDRED AND FORTY-SEVEN THOUSAND FIFTY-SEVEN DOLLARS AND THIRTY-TWO CENTS) made payable to "John Bauer" for compensatory damages relating to the alleged physical injuries, alleged wrongful death, alleged pain and suffering, and other non-economic damages suffered by Decedent Jacob Bauer. A Form 1099 will be issued to John Bauer regarding this payment, which will be made without any deduction or withholding.

b. One check in the amount of **\$\$1,650,643.82** (ONE MILLION SIX HUNDRED AND FIFTY THOUSAND **Six hundred** FORTY-THREE DOLLARS AND EIGHTY-TWO CENTS) made payable to "Rose Bauer" for compensatory damages relating to the alleged physical injuries, alleged wrongful death, alleged pain and suffering, and other non-economic damages suffered by Decedent Jacob Bauer. A Form 1099 will be issued to Rose Bauer regarding this payment, which will be made without any deduction or withholding.

c. One check in the amount of **\$2,602,298.86** (TWO MILLION SIX HUNDRED AND TWO THOUSAND TWO HUNDRED NINETY-EIGHT DOLLARS AND EIGHTY-SIX CENTS) made payable to “Gwilliam, Ivary, Chiosso, Cavalli & Brewer” for attorneys’ fees and costs. A Form 1099 will be issued to Gwilliam, Ivary, Chiosso, Cavalli & Brewer regarding this payment, which will be made without any deduction or withholding.

2. **Attorneys’ Fees And Costs.** Each of the PARTIES will bear their own attorneys’ fees and/or costs with regard to this settlement.

3. **Dismissal.** PLAINTIFFS will agree to a Request for Dismissal, With Prejudice, as to the entire Civil Action, which the PARTIES will file only after payment of the settlement proceeds to PLAINTIFFS and their attorneys.

4. **No Admission of Liability.** The PARTIES acknowledge and agree that this Agreement and compliance with this Agreement shall not constitute or be construed as an admission by of liability or fault by DEFENDANTS or any of the employees of the CITY OF PLEASANTON. The PARTIES further acknowledge that DEFENDANTS dispute PLAINTIFFS’ allegations and that this Agreement is made by the PARTIES to avoid the risk of litigation and trial.

5. **No Pending Litigation.** PLAINTIFFS represent that, other than the Civil Action, they do not presently have on file any complaints, grievances, charges or claims against DEFENDANTS or any other employee(s) of the CITY OF PLEASANTON.

6. **Release By Plaintiff.** In return and in consideration of the promises contained herein, PLAINTIFFS release, and absolutely and forever discharge DEFENDANTS and their predecessors, successors, assigns, elected officials, joint powers authority, employer, employees and each past or present affiliated or parent entities and each past or present employee agent,

representative, officer, and any other person or firm who, previously or hereinafter, is affiliated in any manner with any of the above, from any and all claims, demands, causes of action, obligations, liens, expenses, costs, damages, attorneys' fees and liabilities which PLAINTIFFS ever had, now has, or may hereinafter have, against any of them by reason of any act, cause, matter or event whatsoever to the date of this Agreement, whether known or unknown, arising directly or indirectly out of or in any way based upon the subject matter of the Civil Action. PLAINTIFFS agree to satisfy, pay, defend, indemnify, and hold harmless DEFENDANTS against any and all lien claims, including but not limited to lien claims by Medicare, Medi-Cal, any health care providers, hospitals, clinics, emergency first responders, health maintenance organizations, Kaiser facilities or related facilities, chiropractors, or correctional institutions, respecting any services, payments, benefits, compensation or indemnification of any kind related in any way to injuries allegedly suffered by PLAINTIFFS and/or Decedent Jacob Bauer arising directly or indirectly out of or in any way based upon the subject matter of the Civil Action.

7. **Defense.** This Agreement may be pled as a full and complete defense to any subsequent action or other proceeding involving any person or party, which arises out of the rights and claims waived, released and discharged by this Agreement.

8. **No Assignment By The PARTIES.** The PARTIES, and each of them, hereto represents and warrants that they have full power to make the releases and agreements contained herein. The PARTIES represent and warrant that they have not assigned, encumbered, or in any manner transferred all or any portion of the claims covered by the releases and agreements contained herein. The PARTIES, and each of them, hereto acknowledge and agree that this warranty and representation is an essential and material term of this Agreement without which the consideration would not have been delivered.

9. **No Assignment By PLAINTIFFS.** PLAINTIFFS represent and warrant that they have not heretofore assigned or transferred or purported to assign or transfer, to any person or entity, a claim, debt, liability demand, obligation, cost, attorneys' fees, expense, action or cause of action herein released. PLAINTIFFS further agree to indemnify, hold harmless, and defend DEFENDANTS and/or its employees from any and all claims, debts, liens, liabilities, or demands, obligations, attorneys' fees, costs, expenses, action or cause of action which are in any way based on, arising out of, or in connection with any such transfer or assignment, including all actual attorneys' fees and costs in connection therewith.

10. **Breach Of This Agreement.** The PARTIES agree that, in the event of any breach of this Agreement, the party aggrieved shall be entitled to recover from the breaching party, in addition to any other relief provided by law, such costs and expenses as may be incurred by said aggrieved party, including court costs, attorneys' fees and other costs and expenses, taxable and otherwise, reasonably necessary in preparing the defense of, defending against or seeking and obtaining an abatement or an injunction against such action or such proceedings, or in establishing or maintaining the applicability or the validity of this Agreement or any provision thereof and in prosecuting any counterclaim or cross-complaint therein.

11. **Binding Effect.** This Agreement shall be binding upon and for the benefit of the PARTIES hereto and their respective heirs, successors, predecessors, devisees, administrators, executors, affiliates, representatives, assigns, and their respective agents and employees, partners, members and representatives, wherever the context requires or admits, both jointly and individually.

12. **Advice Of Counsel.** PLAINTIFFS are represented by counsel and DEFENDANTS are represented by counsel. PLAINTIFFS have read the Agreement or had it

read to them, that they are fully aware of its contents and of its legal effect, and that each party enters into this Agreement freely, without coercion, based on the PARTIES' own judgment and not in reliance upon any representations or promises made by the other party. The PARTIES, and each of them, expressly waive any and all claims, charges, complaints, actions and causes of action against any other party arising out of or in any way associated with the negotiation, preparation, or execution of this Agreement.

13. **Complete And Final Agreement.** The PARTIES agree that this Agreement constitutes the entire agreement between the PARTIES and it is expressly understood and agreed that the Agreement has been freely and voluntarily entered into by the PARTIES hereto with the advice of counsel, who have explained the legal effect of this Agreement. The PARTIES further acknowledge that no warranties or representations or inducements not contained in this Agreement have been made on any subject in connection with this Agreement, and that they have not been induced to execute this Agreement by reason of nondisclosure or suppression of any fact. This Agreement may not be altered, modified or otherwise changed in any respect except by writing, duly executed by all of the PARTIES or their authorized representatives.

14. **Assumption Of Risk.** The PARTIES, and each of them, hereby expressly assume the risk of any mistake of fact or law, or both, or that the true facts or laws might be other or different from facts and laws now known or believed to exist. Each party to this Agreement acknowledges that it has made such investigation of the facts pertaining to this Agreement as each deems necessary, and in entering into this Agreement, each party assumes the risk of mistake with respect to such facts.

15. **Complete and Final Agreement.** This Agreement contains all of the agreement, conditions, promises and covenants between the PARTIES and supersedes all prior or

contemporaneous agreements, representations or understandings with respect to the subject matter of the present agreement.

16. **Governing Law.** The terms, conditions and covenants of this Agreement shall be interpreted under the laws of the State of California.

17. **Waiver Of California Civil Code Section 1542.** The PARTIES in this Agreement intend this Agreement to be a full and general release as to the subject matter relating to, involving or arising from the Civil Action, and PLAINTIFFS hereby waive all claims or benefits that they now have, or in the future may have under the provisions of section 1542 of the California Civil Code, which reads 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 PLAINTIFFS to this Agreement, having been **apprised** of the statutory language of Civil Code Section 1542 by their attorneys, and each fully understanding the same, nevertheless elect to waive the benefits of any and all rights any of them may have pursuant to the provisions of Civil Code Section 1542. The PLAINTIFFS to this Agreement understand that if the facts with respect to which this Agreement is executed are found hereinafter to be different from the facts now believed by any of them to be true, that this Agreement shall be effective notwithstanding such material difference.

18. **Neutral Interpretation.** PLAINTIFFS and DEFENDANTS, and their counsel, have cooperated in the preparation of this Agreement, and this Agreement therefore shall not be construed against any party.

19. **Warranty Of Authority.** Each of the undersigned individuals represents and warrants to each of the other PARTIES and such other PARTIES' attorneys that (a) he/she or it has full right, power and authority to bind the party on behalf of which he/she or it is executing this Agreement in a representative capacity, to all of the terms of this Agreement, and that (b) no consent of any other person is required by any party to this Agreement as a condition to such party being bound by this Agreement (or that such consent has been obtained).

20. **Counterparts.** This Agreement may be signed in counterparts and shall be binding and effective immediately upon the execution by all PARTIES in one or more counterparts.

21. **Enforceability.** The provisions of this Agreement are contractual in nature and not merely recitals, and shall be considered independent and severable, and if any such provision or any part thereof shall at any time be held invalid, in whole or in part, under any federal, state, county, municipal or other law, ruling or regulation, then such provision or part thereof shall remain in force and effect to the extent permitted by law, the remaining provisions of this Agreement shall also remain in full force and effect, and enforceable. By signature by counsel for DEFENDANTS, they represent that they have the right and ability to bind DEFENDANTS, per this agreement.

22. **Listening Session.** Additionally, as part of this settlement, within 30 days of the release being signed and approved by all parties, counsel for both sides will coordinate to schedule a Zoom conference call between Plaintiffs and the Chief of Police David Swing and/or Captain Larry Cox from the Pleasanton Police Department. During the Zoom conference call, the **Bauers** ~~Bauer's~~ will have approximately 10-20 minutes to provide their input regarding policy changes at PPD with regard to PPD's responses to people who may be suffering from a mental health

crisis. The Chief and/or Captain will then be able to respond to the Bauer's input, including what PPD has implemented in relation to dealing with people who may be suffering from a mental health crisis., including since Jacob Bauer's death, and what PPD is contemplating in the future in responding to calls involving people who may be suffering from a mental health crisis.

I HAVE READ THE ENTIRE CONTENTS OF THIS AGREEMENT BEFORE SIGNING IT AND HAVE BEEN PROVIDED WITH A COPY FOR MY RECORDS.

Dated: July 23, 2021

By: John Bauer
JOHN BAUER, individually and as
co-successor-in-interest to Decedent JACOB
BAUER

Dated: July _____, 2021

By: _____
ROSE BAUER, individually and as
co-successor-in-interest to Decedent JACOB
BAUER

APPROVED AS TO FORM:

DATE: JULY ____, 2021

GWILLIAM IVARY CHIOSSO CAVALLI & BREWER

J. Gary Gwilliam
Jayme L. Walker
Attorneys for Plaintiffs
JOHN AND ROSE BAUER

DATE: JULY ____, 2021

THE CARDOZA LAW OFFICES

Michael E. Cardoza
Attorneys for Plaintiffs
JOHN AND ROSE BAUER

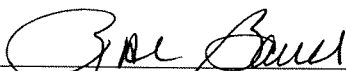
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I HAVE READ THE ENTIRE CONTENTS OF THIS AGREEMENT BEFORE SIGNING IT AND HAVE BEEN PROVIDED WITH A COPY FOR MY RECORDS.

Dated: July ____, 2021

By: _____
JOHN BAUER, individually and as
co-successor-in-interest to Decedent JACOB
BAUER

Dated: July 22, 2021

By:  _____
ROSE BAUER, individually and as
co-successor-in-interest to Decedent JACOB
BAUER

APPROVED AS TO FORM:

DATE: July ____, 2021

GWILLIAM IVARY CHIOSSO CAVALLI & BREWER

J. Gary Gwilliam
Jayme L. Walker
Attorneys for Plaintiffs
JOHN AND ROSE BAUER

DATE: July ____, 2021

THE CARDOZA LAW OFFICES

Michael E. Cardoza
Attorneys for Plaintiffs
JOHN AND ROSE BAUER

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I HAVE READ THE ENTIRE CONTENTS OF THIS AGREEMENT BEFORE SIGNING IT AND HAVE BEEN PROVIDED WITH A COPY FOR MY RECORDS.

Dated: July _____, 2021

By: _____
JOHN BAUER, individually and as
co-successor-in-interest to Decedent JACOB
BAUER

Dated: July _____, 2021

By: _____
ROSE BAUER, individually and as
co-successor-in-interest to Decedent JACOB
BAUER

APPROVED AS TO FORM:

DATE: July 26, 2021

GWILLIAM IVARY CHIOSSO CAVALLI & BREWER



J. Gary Gwilliam
Jayme L. Walker
Attorneys for Plaintiffs
JOHN AND ROSE BAUER

DATE: July ____, 2021

THE CARDOZA LAW OFFICES

Michael E. Cardoza
Attorneys for Plaintiffs
JOHN AND ROSE BAUER

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I HAVE READ THE ENTIRE CONTENTS OF THIS AGREEMENT BEFORE SIGNING IT AND HAVE BEEN PROVIDED WITH A COPY FOR MY RECORDS.

Dated: July _____, 2021

By: _____
JOHN BAUER, individually and as
co-successor-in-interest to Decedent JACOB
BAUER

Dated: July _____, 2021

By: _____
ROSE BAUER, individually and as
co-successor-in-interest to Decedent JACOB
BAUER

APPROVED AS TO FORM:


DATE: July ____, 2021

GWILLIAM IVARY CHIOSSO CAVALLI & BREWER

J. Gary Gwilliam
Jayme L. Walker
Attorneys for Plaintiffs
JOHN AND ROSE BAUER

DATE: July 26, 2021

THE CARDOZA LAW OFFICES



Michael E. Cardoza
Attorneys for Plaintiffs
JOHN AND ROSE BAUER

DATE: July 28, 2021

MCNAMARA, NEY, BEATTY, SLATTERY, BORGES
& AMBACHER LLP



Noah G. Blechman
Attorneys for Defendants
CITY OF PLEASANTON; BRADLEE MIDDLETON;
JONATHAN CHIN; RICHARD TROVAO