

RESOLUTION NO. 2019-093

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROHNERT PARK
AUTHORIZING CITY MANAGER TO EXECUTE THE SETTLEMENT AGREEMENT
AND GENERAL RELEASE BETWEEN AURA WISE, ROSS LONG, AND THE CITY
OF ROHNERT PARK**

WHEREAS, on July 30, 2018, Plaintiff, Ed Muegge, filed a Complaint for, Injunctive, Declaratory, and Monetary Relief ("Complaint") against Defendants City of Rohnert Park ("City") and the Good Nite Inn Rohnert Park.

WHEREAS, Mr. Muegge subsequently passed away and his daughter, Aura Wise, was permitted to substitute into the case on his behalf.

WHEREAS, on January 5, 2019, a second plaintiff, Ross Long, (hereinafter Aura Wise and Ross Long will be referred to collectively as "Plaintiffs") also filed a Complaint containing the same allegations and seeking the same relief against the City, the Inn, and the Burger King and Taco Bell (collectively, the "Defendants").

WHEREAS, the Complaints state causes of action against the City for violations of the Americans with Disabilities Act ("ADA") and Section 504 of the Federal Rehabilitation Act ("Rehabilitation Act").

WHEREAS, following a mediation between the parties, Plaintiffs have agreed to release all claims, including damages, attorneys' fees, and costs and dismiss the City from both lawsuits for a total payment of Nineteen Thousand One Hundred Dollars (\$19,100.00) and the City's agreement to modify the driveway apron to bring it into compliance with current ADA standards and the California Building Code within six months of approval of this settlement; and

WHEREAS, the City desires to resolve all claims associated with this action and enter into the Settlement Agreement and General Release attached to this resolution as Exhibit A and incorporated herein by reference ("Settlement Agreement").

NOW, THEREFORE BE IT RESOLVED, that the City Council of the City of Rohnert Park does hereby resolve, determine, find and order as follows:

SECTION 1. Approval of Agreement. The Settlement Agreement between Plaintiffs and the City is hereby approved.

SECTION 2. Authorization. The City Manager is hereby authorized to execute the Settlement Agreement in substantially similar form to the attached Exhibit A, subject to minor modification by the City Manager or City Attorney.

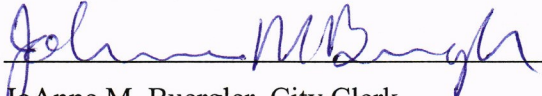
DULY AND REGULARLY ADOPTED this 23rd day of July, 2019.

CITY OF ROHNERT PARK



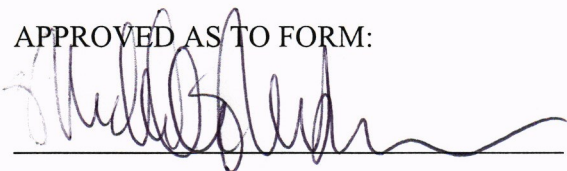
Gina Belforte, Mayor

ATTEST:



JoAnne M. Buergler, City Clerk

APPROVED AS TO FORM:



Michelle Marchetta Kenyon, City Attorney



Attachments: Exhibit A – Settlement Agreement and Mutual Release

ADAMS: Aye MACKENZIE: Absent STAFFORD: Aye CALLINAN: Aye BELFORTE: Aye

AYES: (4) NOES: (0) ABSENT: (1) ABSTAIN: (0)

SETTLEMENT AGREEMENT AND GENERAL RELEASE

AURA WISE v. GOOD NITE INN ROHNERT PARK INC., CITY OF ROHNERT PARK, ET AL.

U.S. Dist. Ct., N.D. Cal., Case No. 3:18-CV-04604-JST

ROSS LONG v. GOOD NITE INN ROHNERT PARK INC., CITY OF ROHNERT PARK, ET AL.

U.S. Dist. Ct., N.D. Cal., Case No. 3:19-CV-00079-JST

1. Statement of Settlement

This settlement agreement and release ("Agreement") is entered into by Plaintiffs AURA WISE and ROSS LONG, on behalf of each of them, their respective agents, representatives, predecessors, successors, heirs, partners, and assigns; and Defendant CITY OF ROHNERT PARK, which includes without limitation its legislative bodies, Council, members, departments, commissions, agents, agencies, boards, predecessors, successors, subsidiaries, related entities, employees (past, present, and future), elected officials, officers, directors, managers, agents, representatives, affiliates, assigns, and insurers, (hereafter collectively referred to as the "CITY"), regarding Plaintiffs' claims against the CITY brought in United States District Court for the Northern District of California, Case Numbers 3:18-CV-01140-JD and 3:19-CV-00079-JST (the "Lawsuits"). This settlement is subject to final approval by the City Council of the City of Rohnert Park.

2. CITY's Agreement to Modify Driveway

On June 27, 2019, the parties entered into a preliminary settlement agreement that would resolve all of the claims and issues pertaining to the allegations against the CITY in these Lawsuits, subject to approval by the CITY's governing body.

The Parties agree that the CITY's non-monetary obligations in this matter shall be limited to the following:

Within six (6) months of the execution of this Agreement by all parties and approval of this settlement by the CITY's City Council, the CITY shall modify the subject driveway apron located between 5000 and 5020 Redwood Drive in Rohnert Park to bring it into compliance with the performance standards for altered facilities set forth in the 2010 Americans with Disabilities Standards for Accessible Design and Title 24, Part Two of the 2016 California Building Code.

3. Technical Infeasibility

If, in the course of performing the work on the subject driveway apron, the CITY discovers an obstruction that it believes constitutes an alleged "technical infeasibility," it shall provide notice of this contention to Plaintiffs' counsel at the address he has then registered with the State Bar. Counsel for the parties will then meet and confer in an effort to find a mutually agreeable resolution to this alleged technical infeasibility.

If the parties are unable to agree on a suitable resolution, Plaintiffs shall be permitted to file a noticed motion under the current case number of this Lawsuit seeking enforcement

of this Agreement. The “prevailing party” in such motion proceedings, whether in full or in part, may be entitled to an award of reasonable attorney fees, litigation expenses, and costs for such motion, i.e., the fee recovery shall be pursuant to the normal prevailing party standards that applied under the subject statutes before entry of this Agreement, under the subject fee shifting statutes named in the complaint and *Christiansburg Garment Co. v. EEOC*, 434 U.S. 412 (1978).

4. Monetary Relief

As part of this settlement, the CITY will pay:

1. Plaintiff AURA WISE the total sum of ONE HUNDRED DOLLARS (\$100.00) for damages within ten (10) days of the execution of this Agreement by all parties, and approval of this Agreement by the CITY’s governing body.
2. Plaintiff ROSS LONG the total sum of FOUR THOUSAND DOLLARS (\$4,000.00) for damages within ten (10) days of the execution of this Agreement by all parties and approval of this Agreement by the CITY’s governing body.
3. Counsel for Plaintiffs the total sum of FIFTEEN THOUSAND DOLLARS (\$15,000.00) for attorney’s fees and costs within ten (10) days of the execution of this Agreement by all parties and approval of this Agreement by the CITY’s governing body.

A single check for the total amount of damages and attorney’s fees and costs described above of NINETEEN THOUSAND ONE HUNDRED DOLLARS (\$19,100.00) shall be made out to “Tim Thimesch, In Trust” and shall be mailed to Plaintiffs’ Counsel at 4413 Black Walnut Court, Concord, CA 94521-4319. Such payment is contingent on Plaintiffs’ Counsel providing the CITY with a copy of his firm’s current W-9 form.

Plaintiffs acknowledge and agree that the CITY’s payment of this monetary relief is also contingent on all other defendants in the *Long* matter, namely the Good Nite Inn entities, Burger King entities, and Taco Bell entities, agreeing to dismiss all existing and potential claims against the CITY related to the Lawsuits, or, if such agreement cannot be reached, the Court’s approval of a Motion for Good Faith Settlement to be filed by the CITY.

5. General Release

Plaintiffs LONG and WISE understand and agree that there is a risk and possibility that, subsequent to the execution of this Agreement, either or both of them will incur, suffer, or experience some further loss or damage with respect to the Lawsuits that is unknown or unanticipated at the time this Agreement is signed. Except for the obligations required in this Agreement, this Agreement shall apply to and cover any and all claims, demands, actions, and causes of action brought, or could have been brought by Plaintiffs with respect to the Lawsuits, whether the same are known, unknown, or hereafter discovered or ascertained, and the provisions of Section 1542 of the California Civil Code are hereby expressly waived. Section 1542 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.

Plaintiffs, on behalf of each of them, their respective agents, representatives, predecessors, successors, heirs, partners, and assigns, releases and forever discharges the CITY and all officers, directors, shareholders, subsidiaries, joint venturers, stockholders, partners, parent companies, employees, agents, attorneys, insurance carriers, heirs, predecessors, and representatives, from all claims, demands, actions, and causes of action of whatever kind or nature, including personal injury or property damage claims, presently known or unknown, arising out of or in any way connected with the Lawsuits, including the following: (1) any and all such claims made in the subject matter areas of the Lawsuits; and (2) any and all such claims alleged or referenced to in Plaintiffs' Complaints and First Amended Complaints as to the released CITY.

6. Dismissal of Lawsuits

Plaintiffs hereby dismiss with prejudice all causes of action against the CITY arising out of this incident, and described in the operative complaints in the Lawsuits, and hereby authorize and direct their attorney to file dismissals with prejudice of the CITY in both Lawsuits, with the Court retaining jurisdiction to enforce this Agreement, within seven (7) days of the execution of this Agreement by all parties.

7. Entire Agreement

This Agreement expresses and constitutes the complete and final understanding of Plaintiffs and the CITY with respect to the subject matter of their agreement. The terms of this release are contractual and not a mere recital.

8. Interpretation

The language of this Agreement shall be construed as a whole according to its fair meaning and not strictly for or against any of the Parties. The headings in this Agreement are solely for convenience and shall not be considered in its interpretation. Where required by context, the plural includes the singular and the singular includes the plural, and the terms "and" and "or" shall mean "and/or." This Agreement is the product of negotiation and joint drafting so that any ambiguity shall not be construed against any party. This Agreement shall be construed and enforced pursuant to the laws of the State of California.

9. Severability

In the event any portion of this Agreement is deemed to be unenforceable, or is in conflict with applicable law, the remainder of this Agreement will be enforced and will remain in full force and effect.

10. Additional Documents

To the extent any documents are required to be executed by any of the parties to effectuate this Agreement, each party hereto agrees to execute and deliver such and further documents as may be required to carry out the terms of this Agreement.

11. Authority to Bind

Each signatory to this Agreement certifies that it, he, or she is fully authorized by the party it, he, or she represents to enter into this Agreement to execute it on behalf of the party represented, and to legally bind that party thereto.

12. Disputed Claims

This Agreement is a compromise and settlement of disputed claims, and nothing in this Agreement shall be construed at any time as an admission of liability on the part of the CITY. The CITY denies each and every allegation advanced by Plaintiffs and, by entering into this Settlement Agreement, does not admit liability to any of the allegations made by Plaintiffs in the complaints filed in the Lawsuits. This Agreement is not to be construed as an admission of liability by the CITY relating to any allegation in Plaintiffs' complaints.

13. Reliance Upon Own Judgment

Plaintiffs rely wholly upon their own judgment, beliefs, and knowledge of the nature, extent, and duration of their damages, if any, and acknowledge that they have not been influenced to any extent whatever in making this agreement by any representations or statements regarding said damages or any other matters, made by the CITY, or by any person or persons representing the CITY.

14. Representation

All parties acknowledge that they have been represented by legal counsel of their own choice, that this Agreement was prepared with the joint input of counsel and shall not be construed in favor of or against any party to the Agreement. Plaintiffs acknowledge that this Agreement was executed freely and voluntarily and with the consent of, and on the advice of, independent legal counsel.

15. Assignment

Plaintiffs warrant that no claims or causes of action arising out of the event or occurrences recited herein have been assigned to any other person or entity.

16. Successors-In-Interest


This Agreement shall be binding on Plaintiffs, the CITY, and any of the parties' respective agents, assigns, attorneys, heirs, personal representatives, executors, trustees, and successors-in-interest.

17. Signatures

The parties agree to execute in counterparts, with the same force and effect as if executed in a single, complete document. Facsimile, electronic signatures, or PDF signatures shall have the same force and effect as original signatures.

PLAINTIFFS

Date: July 16th 2019

By: 
AURA WISE

By: _____
ROSS LONG


Reviewed and approved as to form:

THIMESCH LAW OFFICES

By: _____
Timothy S. Thimesch, Esq.
Attorneys for Plaintiffs WISE and LONG


DEFENDANT

Date: July 24, 2019

By: 
CITY OF ROHNERT PARK
Print Name: Darrin Jenkins
Title: City Manager

Reviewed and approved as to form:

BERTRAND, FOX, ELLIOT, OSMAN & WENZEL

By: 
Patrick A. Tuck, Esq.
Attorneys for Defendant CITY

17. Signatures

The parties agree to execute in counterparts, with the same force and effect as if executed in a single, complete document. Facsimile, electronic signatures, or PDF signatures shall have the same force and effect as original signatures.

PLAINTIFFS

Date: 7-15-19

By: _____
AURA WISE

By: Ross Long
ROSS LONG

Reviewed and approved as to form:

THIMESCH LAW OFFICES

By: Timothy S. Thimesch
Timothy S. Thimesch, Esq.
Attorneys for Plaintiffs WISE and LONG

DEFENDANT

Date: _____

By: _____
CITY OF ROHNERT PARK
Print Name: _____
Title: _____

Reviewed and approved as to form:

BERTRAND, FOX, ELLIOT, OSMAN & WENZEL

By: _____
Patrick A. Tuck, Esq.
Attorneys for Defendant CITY