

RESOLUTION NO. 2018-039

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROHNERT PARK
AUTHORIZING CITY MANAGER TO EXECUTE THE SETTLEMENT AGREEMENT
AND MUTUAL RELEASE BETWEEN PETALUMA PEOPLE SERVICES CENTER,
FERNANDO AND NADIA BARAJAS, COLUMBIA REDWOOD CREEK, LLC AND
WINDSOR PROPERTY MANAGEMENT CO., AND THE CITY OF ROHNERT PARK**

WHEREAS, on November 15, 2017, Plaintiffs the Petaluma People Services Center ("PPSC"), and Fernando and Nadia Barajas ("Barajas Plaintiffs"), (collectively "Plaintiffs") filed a Complaint for Monetary, Declaratory, and Injunctive Relief ("Complaint") against Defendants City of Rohnert Park ("City"), and Columbia Redwood Creek, LLC and Windsor Property Management Co. (collectively, the "Redwood Creek Defendants");

WHEREAS, the Complaint states causes of action against the City and Redwood Creek Defendants for violations of the Federal Fair Housing Act ("FHA"), state Fair Employment and Housing Act ("FEHA"), and for various torts, including intentional infliction of emotional distress. The Complaint independently states a cause of action against the Redwood Creek Defendants for a violation of the Unruh Civil Rights Act;

WHEREAS, following mediation on March 5, 2018, between the City Attorney's office, City Manager, and counsel for Plaintiffs and the Redwood Creek Defendants, Plaintiffs have agreed to release all claims, including damages, attorneys' fees, and costs and dismiss their lawsuit against the City and Redwood Creek Defendants for a payment of Seventy-Five, Thousand Dollars (\$75,000.00), with the City and Redwood Creek Defendants each paying Thirty-Seven Thousand, Five Hundred Dollars (\$37,500.00), and certain injunctive relief provisions, to remain in effect for a period of two years; and

WHEREAS, the Parties desire to resolve all claims associated with this action and enter into the Settlement Agreement and Mutual 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, the City, and the Redwood Creek Defendants 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 on this 27th day of March, 2018.

CITY OF ROHNERT PARK

Pam Stafford
Pam Stafford, Mayor

ATTEST:

JoAnne Buergler
JoAnne Buergler, City Clerk

ATTACHMENTS: Exhibit A – Settlement Agreement and Mutual Release

AHANOTU: AYE BELFORTE: AYE MACKENZIE: Absent CALLINAN: Absent STAFFORD: AYE
AYES: (3) NOES: (0) ABSENT: (2) ABSTAIN: (0)

EXHIBIT A
SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release ("Agreement") is executed by and between Plaintiffs Petaluma People Services Center, a California Non-Profit Corporation ("PPSC") and Fernando Barajas and Nadia Barajas ("Barajas Plaintiffs"), and Defendants the City of Rohnert Park ("City"), and Columbia Redwood Creek, LLC, and Windsor Property Management Co., ("Redwood Creek Defendants," collectively the "Parties").

FOR AND IN CONSIDERATION of the terms set forth below, PPSC and the Barajas Plaintiffs, do hereby release, acquit, and forever discharge the City and Redwood Creek Defendants from all disputes, obligations, and purported or actual claims or causes of action, which may exist by and between the Parties including, without limitation, any disputes, obligations, claims and/or causes of action that were or could have been asserted in or pursuant to the Complaint filed in United States District Court of the Northern District of California in the action entitled *Barajas et al. v. City of Rohnert Park et al.*, Case No. 17-cv-06597-WHO ("the Action").

The City and Redwood Creek Defendants make no admission of liability. The Parties expressly represent, understand, and assent that this Agreement is a compromise of disputed claims and shall not be construed as an admission of liability against any of the Defendants.

IT IS THEREFORE AGREED BETWEEN THE PARTIES AS FOLLOWS:

A. Monetary terms

The Parties agree to the following monetary terms:

1. The City and Redwood Creek Defendants each agree to pay the total sum of Thirty-Seven Thousand, Five Hundred Dollars (\$37,500.00), in compensation for all claims made by PPSC and the Barajas Plaintiffs in the Action, including damages, attorneys' fees, and costs, by check made payable to the Brancart & Brancart Attorney-Client Trust, and delivered to Plaintiffs' counsel, Liza Cristol-Deman, Brancart & Brancart, 8205 Pescadero Rd., Loma Mar, CA 94021, within 14 days of all Parties' execution of this Agreement.
2. Plaintiffs have agreed to divide the settlement payment(s) as follows: (1) the Barajas Plaintiffs shall recover Thirty-Seven Thousand Dollars (\$37,000.00); (2) PPSC shall recover Two-Thousand, Five Hundred Dollars (\$2,500.00); and (3) Brancart & Brancart shall recover Thirty-Five Thousand, Five Hundred Dollars (\$35,500.00).

B. Non-Monetary terms

The Parties agree to the following terms of injunctive relief, to remain in effect for a period of two years:

1. The City and Redwood Creek Defendants will comply with all local, state, and federal fair housing laws.

2. The City and Redwood Creek Defendants agree that the Barajas Plaintiffs may retain their eligibility to rent a BMR Unit as long as their earned income qualifies; i.e., they are not deemed ineligible due to any monetary payments received in settlement of this case.
3. The City agrees to work with all entities who are parties to any affordable housing covenants or other agreements that contain the one-person-per-bedroom-plus-one ("1+1") occupancy standard to remove such standard. Plaintiffs agree not to pursue litigation against the City regarding the covenants or other agreements containing the 1+1 occupancy standard while the City is in the process of amending these affordable housing covenants to remove such standard.
4. The City will publish these revisions to the affordable housing covenants on the City's website and in at least one other medium, and invite low-income families with minor children to rent BMR units in the City.
5. The City will provide fair housing brochures provided by Fair Housing Advocates of Northern California in City Hall where other public information is displayed, and list HUD and DFEH's contact information on the City's website.
6. The City and Redwood Creek Defendants agree to send staff members to training regarding fair housing laws provided by Greater Napa Valley Fair Housing Center, Fair Housing Advocates of Northern California, California Rural Legal Assistance, Inc., or a similarly qualified organization, and also train staff members on the amendments to the occupancy standards in any affordable housing covenants. The initial training of the Redwood Creek Defendants shall take place no later than May 31, 2018. With respect to the Redwood Creek Defendants, the obligation contained in this paragraph applies to office personnel at the complex (e.g., the property manager and any assistant property manager, as well as any leasing agents).
7. The Redwood Creek Defendants agree to distribute a notice to all BMR tenants advising them of the amended occupancy restriction within 45 days. If any tenants with children have been told to move out because of the 1+1 rule, they will be advised that the rule has been rescinded and they are not required to move out.
8. The Redwood Creek Defendants agree to distribute fair housing brochures (such as the brochures available on the DFEH website) to all residents throughout the complex, and also make them available in a conspicuous location in the rental office(s).
9. The Redwood Creek Defendants agree to post a HUD or DFEH poster in the rental office(s).

C. Publicity

1. Plaintiffs and the Redwood Creek Defendants agree that, with respect to any press releases, communications with reporters, news outlets, or other public media, the Plaintiffs will not identify the Redwood Creek Defendants by name or complex. Defendants acknowledge that the defendants' name and name of the complex are already in the complaint and other public documents filed with the Court.

2. Plaintiffs and the Redwood Creek Defendants also agree that while the Barajas Plaintiffs will treat the settlement and its terms as confidential with people who live at the complex, the Barajas Plaintiffs may disclose the terms of the settlement to their friends outside of the complex, family members, and financial advisers.

D. Mutual Waiver and Release

1. In exchange for dismissal of this case, the Parties, for themselves, their successors, heirs and assigns, hereby release and forever discharge each other, together with their respective employees, officers, managers, agents, representatives, trustees, directors, partners, stockholders, members, attorneys, successors, assigns, heirs, personal representatives, and executors, and all persons, firms, associations, co-partners, co-venturers, insurers, contractors, engineers, subcontractors, subsidiaries, parents, affiliates, or corporations connected therewith, and each of them, from any and all claims, debts, liabilities, demands, obligations, costs, expenses, attorney's fees, actions, and causes of actions of every nature, character, and description, whether known or unknown, directly or indirectly arising out of any matter, fact, or allegation that are the subject of this Agreement or in any way connected with the subject of the Action.
2. The Redwood Creek Defendants and the Barajas Plaintiffs each have ongoing obligations under the terms of a rental agreement connected with the Barajas Plaintiffs' tenancy. Those obligations, and similar obligations in any subsequent rental agreement between the Redwood Creek Defendants and the Barajas Plaintiffs, are not affected by this release. Only housing discrimination and related claims that were the subject matter of this Action are hereby released.
3. All rights given by Section 1542 of the Civil Code of California, which is quoted below, are expressly waived by the Parties.

CIVIL CODE § 1542: "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 settlement with the debtor."

Having been so informed, the Parties hereby elect to and do waive the provisions and benefits of Civil Code section 1542, effective, if at all, upon the execution of this Agreement.

4. Each Party has consulted with an attorney, and has executed this Agreement with a complete understanding of its legal effect. The Parties understand that by executing this Agreement they have expressly waived all of the aforementioned rights, and bind themselves to the terms of this Agreement. The Parties further state that they have carefully read the foregoing Agreement and know the contents thereof, and sign the same as their own free act.

E. General Provisions

1. Entire Agreement. This Agreement constitutes the entire agreement between the Parties hereto with respect to all of the matters discussed herein, and supersedes all prior

contemporaneous discussions, communications, or agreements, expressed or implied, written or oral, by or between the Parties.

2. No Admission of Liability. Nothing herein shall be construed as an admission on the part of any of the Parties of any claims, demands, causes of action, obligations, damages, or liabilities asserted by any other Party.
3. Governing Law. This Agreement shall be interpreted and governed according to the laws of the United States and the State of California.
4. Authorization to Execute. Each Party represents that the individual signing this Agreement is authorized to bind the Party on whose behalf he or she signs.
5. Binding on Successors. The provisions of this Agreement shall be binding upon, and shall inure to the benefit of the successors, assigns, heirs, trustees, executors, co-tenants and administrators of the respective Parties.
6. No Amendment Without A Writing. The Parties agree this Agreement shall not be amended, unless that amendment is made in writing and signed by each Party hereto.
7. Waiver. The waiver of a breach of this Agreement shall not be construed as a waiver of any subsequent breach.
8. Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be void, voidable, unlawful, or unenforceable for any reason, in whole or in part, the remaining portions of this Agreement will nevertheless continue with full force and effect, and the Parties agree a court of competent jurisdiction will have jurisdiction to reform such provision(s) to the extent necessary to cause it to give maximum legal effect to the intention of the Parties as expressed herein and the Parties agree to be bound by such reformation.
9. Drafting of Agreement. The drafting and the negotiation of this Agreement has been participated in by each of the Parties or their respective counsel and, for all purposes, this Agreement shall be deemed to have been drafted jointly by all the Parties and, accordingly, it is not to be construed against either Party as being the drafter or causing the drafting of the same, or strictly for or against either Party, but rather, shall be construed as a whole according to its fair meaning.
10. Cooperation. Each Party, without further consideration, and upon request of the other Party, agrees to execute and deliver such other documents and to take such other action as may be necessary or appropriate to give full force and effect to the terms and intent of this Agreement.
11. Enforcement of Agreement. Any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this Agreement shall

be resolved through the U.S. District Court for the Northern District of California. The Parties shall first attempt to resolve the dispute without the court's intervention. No Party will contact the court or seek enforcement without first providing at least 14 days' notice to opposing Parties' counsel by email and attempting to resolve the dispute.

12. Counterparts and Delivery of Signatures by Facsimile or PDF. This Agreement may be executed in counterparts. This Agreement may also be signed and delivered via facsimile transmission, or electronically via PDF and such facsimile or PDF documents shall be deemed originals and binding upon the signatories upon receipt by the Party to whom the facsimile or other electronic transmission is sent.
13. No Third-Party Beneficiaries. None of the terms, conditions or agreements of this Agreement shall confer any benefit, obligation or release upon or to any third-person or entity unless otherwise stated herein.
14. Expenses. Each of the Parties shall pay all of their own costs, legal fees, accounting fees, and any other expenses incurred or to be incurred by it or them in negotiating and preparing this Agreement.

[SIGNATURES ON FOLLOWING PAGE]

PLAINTIFFS:

PETALUMA PEOPLE SERVICES CENTER

By: Elee Hempel
Elee Hempel, Executive Director

Date: 03/20/2018

Fernando Barajas

Date: _____

Nadia Barajas

Date: _____

APPROVED AS TO FORM AND CONTENT:

Date: _____

**Liza Cristol-Deman, Brancart & Brancart
Attorneys for Fernando and Nadia Barajas and
Petaluma People Services Center**

DEFENDANTS:

CITY OF ROHNERT PARK

By: _____
Darrin Jenkins, City Manager

Date: _____

APPROVED AS TO FORM AND CONTENT:

Date: _____

Michelle Marchetta Kenyon, City Attorney

**COLUMBIA REDWOOD CREEK, LLC AND
WINDSOR PROPERTY MANAGEMENT CO.**

Date: _____

By: _____
 Marie Newlon, Area Manager,
 Windsor Property Management Co.
 And as agent for Columbia Redwood Creek, LLC

APPROVED AS TO FORM AND CONTENT:

Date: _____

Frank Coughlin, Ruzicka, Wallace & Coughlin
Attorneys for Columbia Redwood Creek, LLC and
Windsor Property Management Co.

PLAINTIFFS:

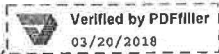
PETALUMA PEOPLE SERVICES CENTER

By: _____
Elece Hempel, Executive Director

Date: _____

Fernando Barajas


Nadia Barajas



Date: _____

Date: 03/20/2018

APPROVED AS TO FORM AND CONTENT:

Liza Cristol-Deman, Brancart & Brancart
Attorneys for Fernando and Nadia Barajas and
Petaluma People Services Center

Date: _____

DEFENDANTS:

CITY OF ROHNERT PARK

By: _____
Darrin Jenkins, City Manager

Date: _____

APPROVED AS TO FORM AND CONTENT:

Michelle Marchetta Kenyon, City Attorney

Date: _____

COLUMBIA REDWOOD CREEK, LLC AND
WINDSOR PROPERTY MANAGEMENT CO.

By: _____
Marie Newlon, Area Manager,
Windsor Property Management Co.
And as agent for Columbia Redwood Creek, LLC

Date: _____

APPROVED AS TO FORM AND CONTENT:

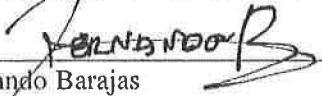
Frank Coughlin, Ruzicka, Wallace & Coughlin
Attorneys for Columbia Redwood Creek, LLC and
Windsor Property Management Co.

Date: _____

PLAINTIFFS:

PETALUMA PEOPLE SERVICES CENTER

By: _____
Elece Hempel, Executive Director



Fernando Barajas

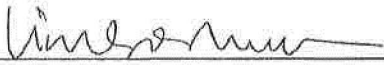
Date: _____

Date: 3/20/18

Date: _____

Nadia Barajas

APPROVED AS TO FORM AND CONTENT:



Liza Cristol-Deman, Brancart & Brancart
Attorneys for Fernando and Nadia Barajas and
Petaluma People Services Center

Date: 3.20.18

DEFENDANTS:

CITY OF ROHNERT PARK

By: _____
Darrin Jenkins, City Manager

Date: _____

APPROVED AS TO FORM AND CONTENT:

Michelle Marchetta Kenyon, City Attorney

Date: _____

COLUMBIA REDWOOD CREEK, LLC AND
WINDSOR PROPERTY MANAGEMENT CO.

By: _____
Marie Newlon, Area Manager,
Windsor Property Management Co.
And as agent for Columbia Redwood Creek, LLC

Date: _____

APPROVED AS TO FORM AND CONTENT:

Frank Coughlin, Ruzicka, Wallace & Coughlin
Attorneys for Columbia Redwood Creek, LLC and
Windsor Property Management Co.

Date: _____