

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, APPROVING THE SETTLEMENT BETWEEN MIGUEL V. PEREZ ESCALONA AND THE CITY OF MIAMI BEACH, FLORIDA, IN THE AMOUNT OF \$175,000.00; AND AUTHORIZING THE CITY MANAGER AND THE CITY ATTORNEY TO TAKE THE NECESSARY AND APPROPRIATE STEPS FOR THE IMPLEMENTATION THEREOF; AND FURTHER AUTHORIZING THE MAYOR AND THE CITY CLERK TO EXECUTE ANY DOCUMENTS AND/OR AGREEMENTS, AS TO EFFECTUATE THE TERMS OF THE SETTLEMENT.

WHEREAS, on August 19, 2011, Miguel V. Perez Escalona initiated litigation against the City of Miami Beach, Florida in the Circuit Court of the Eleventh Judicial Circuit of Florida, Case No. 11-26116 CA 24, alleging a violation of Fla. Stat. §112.3187, in connection with his termination from City employment in 2011; and

WHEREAS, the parties desire to avoid incurring further costs of litigation, and seeks to resolve all matters in controversy, disputes, and causes of action between the parties in an amicable fashion; and

WHEREAS, the parties have reached a full and final compromise and settlement of all matters, causes of action, claims and contentions between them, which is contingent upon approval of the Mayor and City Commission, and

WHEREAS, on June 26, 2019, the Mayor and City Commission held an Executive Session to discuss the Settlement Agreement; and

WHEREAS, the Mayor and City Commission directed the City Attorney's Office to proceed with the settlement in accordance with the direction provided at the Executive Session; and

WHEREAS, the proposed Settlement Agreement and General Release to be executed by the parties, contingent upon approval of the Mayor and City Commission, is attached hereto as Exhibit A; and

WHEREAS, the City Manager and the City Attorney recommended that the Mayor and City Commission approve and ratify the attached Settlement Agreement and General Release and authorize the settlement payment in the amount of \$175,000 from the City's Risk Management Fund.

NOW, THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, that the Mayor and City Commission hereby approve the settlement between Miguel V. Perez Escalona and the City of Miami Beach, Florida, in the amount of \$175,000.00; and authorizing the City Manager and the City Attorney to take the necessary and appropriate steps for the implementation thereof; and further authorizing the Mayor and the City Clerk to execute any documents and/or agreements, as to effectuate the terms of the settlement.

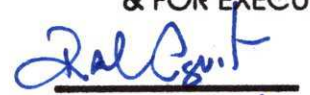
PASSED and ADOPTED this 17th day of July, 2019.


ATTEST:

RAFAEL E. GRANADO
CITY CLERK

DAN GELBER
MAYOR

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION



City Attorney  7/2/19
Date

MIGUEL PEREZ ESCALONA,

Plaintiff,

vs.

CITY OF MIAMI BEACH,

Defendant.

IN THE CIRCUIT COURT OF THE
11TH JUDICIAL CIRCUIT IN AND
FOR MIAMI-DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO. 11-26116 CA 24

SETTLEMENT AGREEMENT AND GENERAL RELEASE

THIS SETTLEMENT AGREEMENT AND GENERAL RELEASE (hereinafter referred to as the "Agreement"), is made and entered into by and between CITY OF MIAMI BEACH, FLORIDA, which term shall also collectively include all past and present mayors, commissioners, managers, employees, agents, representatives, attorneys, fiduciaries and administrators, in both individual and official capacities (hereinafter referred to as "DEFENDANT" or "City") and MIGUEL PEREZ ESCALONA (hereinafter referred to as "PLAINTIFF" or "EMPLOYEE").

WITNESSETH:

WHEREAS, on August 19, 2011, PLAINTIFF served a civil action against DEFENDANT in the Case No. 11-26116 CA 24 alleging violation of Fla. Stat. §112.3187, as well as a pro se complaint filed in Case No. 12-30361 CA 09 alleging one count of common law slander, and EEOC Charge No. 510-2012-00833 ("the Civil Action."

WHEREAS, DEFENDANT and PLAINTIFF desire to avoid incurring further costs of litigation, and seek to resolve all matters in controversy, disputes, and causes of action between them in an amicable fashion;

EXHIBIT A

WHEREAS, DEFENDANT and PLAINTIFF have reached a full and final compromise and settlement of all matters, causes of action, claims and contentions between them;

NOW THEREFORE, in consideration of the mutual covenants and promises herein contained and other good and valuable consideration, and to avoid unnecessary litigation, it is hereby agreed by and between the parties as follows:

FIRST: This Agreement, and compliance with this Agreement, shall not be construed as an admission by DEFENDANT of any liability whatsoever, or as an admission by DEFENDANT of any violation of the rights of PLAINTIFF, or of any violation of any order, law, statute, duty, or contract, or any act of discrimination whatsoever against PLAINTIFF, and DEFENDANT specifically disclaims any liability to, or discrimination against, PLAINTIFF, and any alleged violation of any rights of PLAINTIFF, or of any order, law, statute, duty or contract on the part of DEFENDANT.

SECOND: The parties agree that they will take all necessary actions and execute, serve, and file all necessary documents and pleadings to dismiss with prejudice any actions with respect to PLAINTIFF, whether they be brought civilly or criminally in court or through any administrative agency including, but not limited to, the Miami Beach Police Department, the U.S. Equal Employment Opportunity Commission, the Florida Commission Rights Commission, or any other arbitrator, agency, body, or court of law to whom PLAINTIFF has or could bring a complaint regarding any allegation, incident, or event occurring during or arising out of his employment, separation, or retirement from his employment with the City. The employee and his counsel agree and represent that the employee has had a reasonable period of time to


PLAINTIFF

consider the agreement and further agree and acknowledge that such representation is a material term and condition of the agreement and that City is relying upon such representation and would not enter into the agreement but for such representation”

THIRD: The City will mark “rescinded” on the termination letter dated March 17, 2011 and will allow Plaintiff to add a letter to his file resigning from City employment effective March 17, 2011.

FOURTH: Within ten (10) working days of its receipt of the Agreement fully executed by PLAINTIFF and his attorneys and a fully executed Notice of Dismissal with Prejudice as to PLAINTIFF, noting that each side is to bear its own costs and attorneys’ fees, DEFENDANT agrees to pay the total sum of One Hundred Seventy Five Thousand and 00/100 Dollars (\$175,000.00) and to do the following:

- a. Issue a check in the amount of One Hundred Seventy-Five Thousand and 00/100 Dollars (\$175,000.00) made payable to G. William Allen Jr. Trust Acct.
- b. Accept PLAINTIFF’s resignation effective March 17, 2011.
- c. Designate Plaintiff as eligible for rehire in the City’s Human Resource Department database.
- d. Pay both parties’ portion of the mediator’s invoice for this case.

FIFTH: PLAINTIFF agrees not to make any application for employment at any time, in any capacity, with DEFENDANT. PLAINTIFF further waives and releases any right to be considered for such employment. PLAINTIFF further agrees that in the event he applies for employment with DEFENDANT and is rejected for such employment, he will not file a charge or complaint in any court, commission, or agency based on, or alleging facts related to, events occurring prior to, and including, the date of the


PLAINTIFF

execution of this Agreement. PLAINTIFF agrees and acknowledges that he is not waiving claims or rights that he may have after the execution of this Agreement, but that he has contractually agreed not to apply for employment with DEFENDANT in the future and this Agreement shall constitute a bar of any claim he may have to apply for employment with DEFENDANT in the future and not be hired. The Parties agree this is a material term and condition of this Agreement. DEFENDANT would not have entered into it but for this Agreement.

SIXTH: It is expressly understood by PLAINTIFF, PLAINTIFF's attorney, and DEFENDANT that the obligations of DEFENDANT contained in this Agreement shall be in lieu of any and all amounts to which PLAINTIFF or any of PLAINTIFF's attorneys are now, or may become, entitled to, any claim whatsoever arising out of PLAINTIFF's employment with DEFENDANT, PLAINTIFF's separation from employment with DEFENDANT, or otherwise (including special, general or exemplary damages, attorneys' fees, interest, expenses, and costs actually incurred). PLAINTIFF hereby indemnifies and agrees to defend and hold harmless DEFENDANT from any claim for attorneys' fees and costs that may be made by any of PLAINTIFF's attorneys or experts, including but not limited to any claims by Jason B. Wolfe and the Law Firm of Koch Parafinzkuk and Wolf, P.A.; Chad Levy and The Law Offices of Levy & Levy, P.A.; and G. William Allen, Jr.

SEVENTH: DEFENDANT, for and in consideration of the payment and obligations set forth in this Agreement and except as provided in this Agreement, and for other good and valuable consideration, hereby generally releases and forever discharges, and by this Agreement does generally release and forever discharge,


PLAINTIFF

PLAINTIFF, and PLAINTIFF's attorneys, of and from all debts, obligations, promises, covenants, agreements, contracts, endorsements, bonds, controversies, suits or causes of action whatsoever, whether known or unknown, and whether asserted or unasserted, from the beginning of time to the date of this Agreement, including, but not limited to, those arising out of the civil actions or any administrative charges regarding PLAINTIFF's employment by DEFENDANT.

EIGHTH : PLAINTIFF, for and in consideration of the payment and obligations set forth in this Agreement and except as provided in this Agreement, and for other good and valuable consideration, hereby generally releases and forever discharges, and by this Agreement does release and forever discharge DEFENDANT from all debts, obligations, promises, covenants, agreements, contracts, endorsements, bonds, controversies, suits or causes of action whatsoever, whether known or unknown, and agrees not to sue and not to assert against them, any causes of action, claims and demands whatsoever, known or unknown, at law, in equity, or before any agency or commission of local, state and federal governments, arising, alleged to have arisen, or which might have been alleged to have arisen or which may arise under any law including, U.S. Constitution and Florida Constitution and including but not limited to, federal, state, or municipal employment, anti-discrimination, anti-harassment or retaliatory laws such as the Americans With Disabilities Act, Florida Civil Rights Act, Age Discrimination in Employment Act, Family Medical Leave Act, Title VII of the Civil Rights Act of 1964, as amended in 1972, 1991, Florida Human Rights Act, Florida Statute Ch. 448 Florida Whistleblowers Act, Worker's Compensation Act (retaliatory claim), any federal whistleblower provision, statutes and laws of contract and tort,


PLAINTIFF

including without limitation, claims for wrongful discharge, defamation and negligent or intentional infliction of emotional distress that PLAINTIFF on behalf of himself and on behalf of persons similarly situated, ever had, now has or which his heirs, executors, administrators, or assigns, or any of them, hereafter can, shall or may have for or by reason of any cause whatsoever, to the effective date of this Agreement. The employee and his counsel agree and represent that the employee has had a reasonable period of time to consider the agreement and further agree and acknowledge that such representation is a material term and condition of the agreement and that City is relying upon such representation and would not enter into the agreement but for such representation.

NINTH: Employee specifically acknowledges that he has consulted with his attorneys, Chad Levy and G. William Allen, Jr., prior to executing this Settlement Agreement and General Release and acknowledges the opportunity and (exercise of that opportunity) to consult his attorneys and that both he and his attorneys agree:

a. Employee is specifically releasing, among other claims, any claims under the Age Discrimination in Employment Act of 1967 and all amendments thereto; and

b. Employee is not waiving rights or claims that may arise after the date of the Settlement Agreement and General Release are executed. The employee and his counsel agree and represent that the employee has had a reasonable period of time to consider the agreement and further agree and acknowledge that such representation is a material term and condition of the agreement and that City is relying


PLAINTIFF

upon such representation and would not enter into the agreement but for such representation.

TENTH: PLAINTIFF represents and agrees that PLAINTIFF has thoroughly discussed all aspects of this Agreement with PLAINTIFF's attorney and PLAINTIFF has carefully read and fully understands all of the provisions of this Agreement, and that PLAINTIFF is voluntarily entering into this Agreement.

ELEVENTH: The parties hereto represent and acknowledge that in executing this Agreement they do not rely and have not relied on any representation or statement made by any of the parties or by any of the parties' agents, representatives, or attorneys with regard to the subject matter, basis, or effect of this Agreement or otherwise other than those specifically stated in this written Agreement.

TWELFTH: This Agreement shall be binding upon the parties hereto and upon their heirs, administrators, representatives, executors, successors and assigns, and shall inure to the benefit of said parties and each of them and to their heirs, administrators, representatives, executors, successors and assigns.

THIRTEENTH: The parties agree that any breach of this Agreement will result in irreparable injury to DEFENDANT. Specifically, PLAINTIFF hereby agrees that any breach or threat of breach of this Agreement or any of its parts will cause irreparable harm and hereby agrees to the entry of a Temporary Restraining Order upon application of DEFENDANT pending determination by the Court as to whether or not the breach has occurred or is pending, and agrees to the entry of a preliminary and permanent injunction if the Court determines that the breach has occurred or is pending.


PLAINTIFF

FOURTEENTH: Should any provision of this Agreement be declared or be determined by any court of competent jurisdiction to be illegal, invalid or unenforceable, the legality, validity, and enforceability of the remaining parts, terms or provisions shall not be affected thereby, and said illegal, unenforceable or invalid part, term, or provision shall be deemed not to be part of this Agreement.

FIFTEENTH: The law governing this Agreement shall be that of the United States and the State of Florida. The Court shall retain jurisdiction to enforce the Agreement.

SIXTEENTH: The parties to this Agreement may execute their signatures in counterpart, each document of which shall be considered as an original when executed.

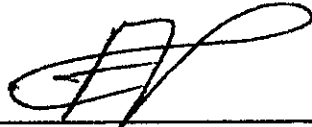
SEVENTEENTH: The Plaintiff expressly acknowledges and affirms that no aspect of this agreement shall become binding and effective, nor shall any payment be made to the Plaintiff, unless and until the Mayor and City Commission authorize the settlement of this matter consistent with the express terms, conditions, and obligations identified herein. The City will make all reasonable efforts to have the Mayor and City Commission consider the approval of this settlement agreement within 90 days of full execution of the settlement agreement. This agreement and all of its terms will be self-executing and will automatically and without further action by anyone become effective upon approval by the Mayor and City Commission. The City agrees to issue a check for the settlement amount within 30 days of approval by the City Commission.

EIGHTEENTH: The Plaintiff hereby agrees that he will not attempt to withdraw or terminate his acceptance of this agreement or its terms during the period between full execution and the ratification of the settlement agreement by the Mayor and City Commission. The Plaintiff separately acknowledges and agrees to this term and hereby


PLAINTIFF

acknowledges receipt of good and valuable consideration in the form of the Defendant's agreement to immediately cease litigation activity in this case during the period between full execution of this agreement and ratification by the Mayor and City Commission.

Date: 5/15/2019



MIGUEL V. PEREZ ESCALONA

STATE OF FLORIDA)
) ss:
COUNTY OF)

Sworn to and subscribed before me this ___ day of _____, 2019, by _____ who is personally know to me and/or produced identification.

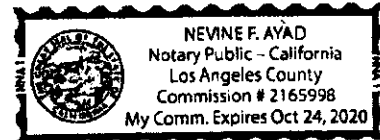
Notary Public - State of Florida

My Commission expires:

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California, County of Los Angeles
Subscribed and Sworn to (or affirmed)
Before me on this 15 day of May, 2019, by
Miguel V. Perez Escalona
proved to me on the basis of satisfactory evidence
to be the person(s) who appeared before me.

Nevine F. Ayad
Signature of Notary Public




PLAINTIFF

Date: 5/17/19

CITY OF MIAMI BEACH

Title:

(SEAL)

STATE OF FLORIDA)

) ss:

COUNTY OF MIAMI-DADE

Sworn to and subscribed before me this 17th day of May, 2012, by Jimmy Nox who is personally know to me and/or produced identification.

Naima De Pinedo
Notary Public-State of Florida
My Commission expires



[Signature]
PLAINTIFF