

COMPROMISE AND SETTLEMENT AGREEMENT AND RELEASE

This Compromise and Settlement Agreement and Release (the "Agreement") is entered into as of this 22nd day of May, 2009, by and between Joseph McNulty and Belle Rose Properties, Inc. ("Mr. McNulty") on the one hand, and the People of the State of California and the City of Oakland, by and through the Oakland City Attorney (the "City"), on the other hand. Mr. McNulty, the People of the State of California, and the City are sometimes collectively referred to herein as the "Parties".

WHEREAS, on March 11, 2009, The People of the State of California (the "People") as Plaintiff and the City, as Plaintiff and Real Party in Interest (the People and the City are sometimes referred to collectively herein as "Plaintiffs"), filed a Complaint for Violation of Oakland's Just Cause Ordinance, Injunctive Relief, and Other Equitable Relief (the "Action" or "Complaint") in the Superior Court of the State of California, County of Alameda (Case No. RG09-440648) against, among others, Mr. McNulty and Belle Rose Properties, Inc. ("Defendants");

WHEREAS, Plaintiffs allege in the Complaint that Defendants violated Oakland's Just Cause for Eviction Ordinance, Oakland Municipal Code Sections §§ 8.22.300 through 8.22.390, by serving allegedly defective eviction notices and;

WHEREAS, Defendants deny the material factual and legal allegations of the Complaint and dispute all claims asserted therein;

WHEREAS, the Parties enter into this Agreement to settle certain disputed claims between the Parties as alleged in the Complaint for the purpose of avoiding prolonged and costly litigation between the Parties, and do not, by entering into this Agreement, admit any fact, conclusion of law, issue of law or violation of law, including, but not limited to, any fact, conclusion of law, issue of law, or violation of law suggesting or demonstrating any violations of Oakland's Just Cause for Eviction Ordinance or any other statutory, common law or equitable restrictions on the eviction or treatment of tenants, nor do they intend to waive or impair any right, remedy, argument or defense they may have in this or any other or future legal proceedings, except any argument or defense based on or to enforce the terms of this Agreement.

NOW THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties, and fully intending to be legally bound, the Parties agree as follows:

1. **Prohibited acts:** Mr. McNulty shall refrain from directly or indirectly doing any of the following acts or practices in or from the City of Oakland, California:
 - a. Violating Oakland's Just Cause Ordinance (Oakland Municipal Code Sections 8.22.300 through 8.22.390, inclusive).
 - b. Making written contact with occupants of a dwelling in order to determine occupancy status by using a notice other than one substantially in the form attached hereto as Exhibit A.
 - c. Withholding the name and/or contact information of the owner of the property.
 - d. Engaging in harassing or intimidating behavior towards tenants in an effort to force them out of the property.
 - e. Terminating utility services to an occupied dwelling, or allowing utility services to be terminated to an occupied dwelling, except when such shut-off is by a utility provider (e.g. PG&E or EBMUD) for non-payment of utilities by the occupant or to transfer the account to another name for continued service.
 - f. Changing the locks at a dwelling without proper notice to the occupants.

2. **Sample Notice:** The City of Oakland agrees that the use of the form of notice attached hereto as Exhibit A for purposes of determining the occupancy of a dwelling in Oakland shall not constitute a violation of Oakland's Just Cause for Eviction Ordinance.

3. **Payment of liquidated damages in the case of future violations:** Mr. McNulty shall pay to the City \$5,000.00 for each violation of Oakland Municipal Code Sections 8.22.300 through 8.22.390 that occurs after the date of this agreement. Payment shall be made to the City of Oakland at Office of the City Attorney, 1 Frank H. Ogawa Plaza, 6th Floor, Oakland, CA 94612 (Attn: James F. Hodgkins).

4. **Document Production by Mr. McNulty:** Mr. McNulty hereby agrees to provide the City of Oakland with the following, to the extent possible without violating the laws of the State of California:
 - (a) Any and all documents, including but not limited to, files, notes, memoranda, logs, journal entries, contracts, email messages, voice mail messages, statements, or other writings to or from any banking institution, lender, REO, trustee, trustor, broker, brokerage, or law firm concerning any real property located in Oakland, California that was neither vacant nor occupied by a known former owner, and for which Joseph McNulty was the real estate listing broker, from January 1, 2003 to the present.

- (b) Any and all documents that refer, reflect, or relate to properties located in Oakland, California for which Joseph McNulty was the real estate listing broker, made January 1, 2003 to the present, the production of which is not barred by law or contract.
 - (c) Any and all documents that refer, reflect, or relate to eviction or attempted eviction of any persons from rental properties located in Oakland, California, from January 1, 2003 to the present. For purposes of this agreement "eviction" refers to actual or constructive eviction and is not limited to evictions that are the result of a legal proceeding.
 - (d) Any and all documents, including but not limited to, files, notes, memoranda, logs, journal entries, contracts, email messages, voice mail messages, statements, or other writings to or from any occupants of any real property located in Oakland, California for which Joseph McNulty was acting as the real estate listing broker, made from January 1, 2003 to the present.
 - (e) A list of any and all property addresses in Oakland, CA which were neither vacant nor occupied by a known former owner at Joseph McNulty's first involvement with the property, that Joseph McNulty has had contact with in his capacity as a real estate listing broker, including the name of the client and owner of the property, from January 1, 2003 to the present.
5. Document Distribution or Release by the City: The City hereby agrees not to intentionally distribute or release any of the documents produced pursuant to paragraph 4, unless requested to do so by a formal public records request or discovery request, or unless released pursuant to litigation not involving the Parties to this Settlement.
6. Payment of the City of Oakland's Attorneys' fees: Mr. McNulty hereby agrees to pay attorneys fees for the City of Oakland in bringing this action on behalf of the people, in the amount of \$3,000.00. Payment shall be made to the City of Oakland at: Office of the City Attorney, 1 Frank H. Ogawa Plaza, 6th Floor, Oakland, CA 94612 (Attn: James F. Hodgkins).
7. Releases by Mr. McNulty: Mr. McNulty hereby releases and forever discharges the City and, to the full extent applicable, any of its predecessors, successors, agents, officers, employees, representatives, affiliates, employees of affiliates, subsidiaries, employees of subsidiaries, insurance carriers, bonding companies and attorneys from any and all manner of actions, demands, claims or causes of action, in law or in equity, suits, appeals, petitions, debts, liens, contracts, agreements, promises, covenants, obligations, liabilities, warranties, controversies, affirmative defenses, offsets, damages, losses, costs, fees, claims for restitution, and expenses of any nature whatsoever, asserted or unasserted,

known or unknown, fixed or contingent, liquidated or otherwise, past, present and future, which in any way is based upon any fact, occurrence, event, or failure to act, arising out of or related to the City's or the Oakland City Attorney's prosecution of this action and any statements made in connection therewith.

8. Releases by the City and the People of the State of California: The City, on behalf of itself and the People of the State of California, hereby releases and forever discharges Mr. McNulty, and to the full extent applicable, any of his or its predecessors, successors, insurance carriers, and attorneys from any and all manner of actions, demands, claims or causes of action, in law or in equity, suits, appeals, petitions, debts, liens, contracts, agreements, promises, covenants, obligations, liabilities, warranties, controversies, affirmative defenses, offsets, damages, losses, costs, claims for restitution, and expenses of any nature whatsoever, asserted or unasserted, known or unknown, fixed or contingent, liquidated or otherwise past, present and future, which in any way is based upon any fact, occurrence, event, or failure to act that occurred prior to the date upon which this Agreement is executed, which arise out of, relate to or are based upon the facts, conduct, events, or circumstances alleged in the Complaint.

9. Section 1542 Waiver: With respect to the matters released in paragraphs 7 and 8 above, the Parties each expressly and specifically waive all rights he or it may have against the other under the provisions of Section 1542 of the Civil Code of the State of California and any similar rights in any state or territory in the United States and any similar statute or regulation of the United States and any of its agencies. Section 1542 of the California Civil Code reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR EXPECT 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.

To the extent the provisions of Section 1542 of the Civil Code of California, as well as the provisions of any and all comparable or similar statutes or principles of law of any other state or federal jurisdiction might otherwise be deemed applicable, they are hereby expressly waived by the Parties. In making this waiver, the Parties recognize that they may in the future discover facts in addition to or different from those which they now know or believe to be true with respect to the subject matter of this Agreement, but acknowledge that by operation of the releases in paragraphs 7 and 8 above, they shall be deemed to have fully, finally and forever settled and released all of the claims contemplated in those releases whether known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist, or heretofore have existed, upon any theory of law or equity now existing or coming into existence in the future, including but not limited to conduct which is negligent, intentional, with or without malice, or a breach of any duty, law or rule, without

regard to subsequent discovery or existence of such different or additional facts. The Parties acknowledge that the forgoing waiver was a separately bargained for and key element of this Agreement and is made with full knowledge and understanding of the consequences and effect of this waiver after consultation with counsel.

10. **Retention of Jurisdiction:** Jurisdiction is retained by the Alameda County Superior Court, Hon. Lawrence John Appel, for the purpose of enabling any party to this Agreement to apply to the Court at any time for such further orders and directions as may be necessary and appropriate for the construction or carrying out of this Agreement, for the modification or termination of any of its injunctive provisions, for the enforcement of any of its provisions, or for punishment of any violations of its provisions.
11. **Assumption of Risk of Differences in Facts:** The Parties acknowledge that if the facts with respect to which this Agreement or the matters that are the subject of this Agreement are found hereafter to be different from the facts now believed by them to be true, they expressly accept and assume the risk of such possible differences in facts and agree that this Agreement will be and will remain effective notwithstanding such differences in facts.
12. **Intervening Change of Law:** The Parties intend to be bound by this Agreement regardless of any intervening change in applicable law.
13. **Integration:** This Agreement constitutes the entire understanding of the Parties with respect to the subject matter herein, and there are no other understandings, written or oral, relating to this subject matter. Each party acknowledges that no other party, or agent or attorney of any other party, has made any promise, representation or warranty whatsoever, expressed or implied, not contained or expressly referred to herein, and each party hereby waives any right or claimed right to rely upon such.
14. **Severability:** If any provision of this Agreement or the application thereof is held invalid, the invalidity shall not affect other provisions or applications of this Agreement which can be given effect without the invalid provisions or applications. To this end, the provisions of this Agreement are declared to be severable.
15. **Nonadmissibility and No Admission of Liability:** The Parties enter into this Agreement pursuant to a settlement of certain disputed claims between the Parties as alleged in the Complaint for the purpose of avoiding prolonged and costly litigation between the Parties hereto. By execution of this Agreement, the parties do not admit any fact, conclusion of law, issue of law or violation of law, including, but not limited to, any fact, conclusion of law, issue of law, or violation of law suggesting or demonstrating any violations of Oakland's Just Cause for Eviction Ordinance or any other statutory, common law or equitable restrictions on the eviction or treatment of tenants. Nothing in this Agreement shall be

construed as an admission by the Parties of any fact, conclusion of law, issue of law or violation of law, nor shall compliance with this Agreement constitute or be construed as an admission by the Parties of any fact, conclusion of law, issue of law, or violation of law. Nothing in this Agreement shall prejudice, waive or impair any right, remedy, argument or defense the parties may have in this or any other or future legal proceedings, except any argument or defense based on or to enforce this Agreement. Neither this Agreement, nor the fact of its existence, shall be admissible in any controversy between the Parties, except in a proceeding arising out of or in connection with or otherwise relating to the Agreement itself. Nothing in this Agreement shall otherwise be taken as evidence of, or support for, the merits of any claims or defenses of any party. Nothing in this Agreement shall be deemed to be, or urged upon any forum to be, an admission on the part of either party.

16. Modification: Any modification of this Agreement must be in writing and signed by both Parties. This specific Modification provision cannot be modified orally or otherwise waived orally by either Party.
17. Governing Law: This Agreement shall be construed and interpreted in accordance with the laws of the State of California excluding any conflict of laws interpretation which might apply the law of any other state. The Parties expressly choose California law to govern the interpretation of this Agreement.
18. Representations and Warranties: Each of the persons executing this Agreement represents and warrants that he/she has the full legal capacity and authority to bind the Party upon whose behalf he/she acts, and that this Agreement constitutes a legal, binding obligation of the Party, enforceable in accordance with its terms. Each Party represents and warrants by the execution hereof that the Party has the right, power, legal capacity and authority to enter into and perform all obligations under this Agreement and has conferred with legal counsel of his, her or its choosing as to the significance and legal effect of this Agreement.

19. Notice: Any notice permitted or required by this Agreement shall be sent via either overnight mail or certified mail with return receipt requested and to the Parties as follows:

If to Mr. McNulty: Joseph McNulty
c/o Julia Wei, Esq.
Law Offices of Peter N. Brewer
350 Cambridge Avenue, Ste. 200
Palo Alto, CA 94306

If to the City, the People or the Oakland City Attorney: John A. Russo, Esq.
Oakland City Attorney
City Hall, 6th Floor
1 Frank Ogawa Plaza
Oakland, California 94612

20. Counterparts and Faxed Signature: This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which taken together shall constitute a single instrument. Photographic copies of signed counterparts may be used in lieu of the originals for any purpose. A faxed signature shall have the same force and effect as an original ink signature.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates set forth below:

THE PEOPLE OF THE STATE OF CALIFORNIA AND THE CITY OF OAKLAND, BY AND THROUGH THE OAKLAND CITY ATTORNEY:

By: 

JOHN A. RUSSO
OAKLAND CITY ATTORNEY

Date: 6/3/09

By: 

JOSEPH MCNULTY

Date: 5/21/09

EXHIBIT A

EXHIBIT A TO COMPROMISE AND SETTLEMENT AGREEMENT AND RELEASE
CASE NO. RG09440648

THIS IS AN IMPORTANT NOTICE
REGARDING YOUR TENANCY

The property located at _____ (the "Property") has been sold in foreclosure. The new owner intends to re-sell the property.

My name is _____. I am a licensed real estate agent. The new owner of the Property has hired me to assist in the sale of the Property

THIS IS NOT AN EVICTION NOTICE. YOU ARE NOT, BY THIS NOTICE, BEING
EVICTED FROM THE PROPERTY.

If you have any questions about your tenancy, please call me at _____ or email me at _____ with your questions, and I will forward your questions to an authorized agent of the new owner. [The new owner of the Property may be willing to agree to pay you some amount of money to reimburse you for relocation expenses in exchange for your agreement to move out of the property within a certain period of time. If you are interested in such an arrangement, please contact me at the number below and I will put you in touch with an authorized agent of the new owner. (I am not authorized to enter into such an arrangement with you.)] [Bracketed language to be used only if the new owner may be interested in such an arrangement]

If you have any questions about your tenancy or your rights or obligations in this situation, you can contact the Oakland City Attorney's Office at (510) 238-6628. You can also contact representatives of East Bay Community Law Center, 2921 Adeline Street, Berkeley, CA 94703 (510) 548-4040 or Centro Legal De La Raza, 2501 International Blvd., Oakland, CA 94601 (510) 437-1554.

Please call me, or have your attorney or advocate call me, as soon as you can at _____. I wish to begin the process of preparing the Property for re-sale as soon as possible.

Thank You,
