

COMPROMISE AND SETTLEMENT AGREEMENT AND RELEASE

This Compromise and Settlement Agreement and Release (the "Agreement") is entered into as of this 24th day of March, 2009, by and between Percy Cheung, individually and dba Smart Choice Realty ("Mr. Cheung"), 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. Cheung and the City are sometimes collectively referred to herein as the "Parties".

WHEREAS, on February 19, 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. RG09-436902) against Percy Cheung, individually and against Smart Choice Realty ("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. Entry of Stipulated Final Judgment and Permanent Injunction: The Parties shall enter into the Stipulated Final Judgment and Permanent Injunction attached hereto as Exhibit A

and shall cooperate in the submission of that Stipulated Final Judgment and Permanent Injunction for approval by the Court. Execution of the Stipulated Final Judgment and Permanent Injunction shall not be construed as an admission by Defendants of any fact, conclusion of law, issue of law, or violation of law, nor shall compliance with this Agreement or the Stipulated Final Judgment and Permanent Injunction constitute or be construed as an admission by Defendants of any fact, conclusion of law, issue of fact, law or violation of law.

2. Payment of liquidated damages in the case of future violations: Mr. Cheung 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).
3. Document Production by Mr. Cheung: Percy Cheung hereby agrees to provide the City of Oakland with the following, to the extent possible without violating the real estate laws of the State of California
 - (a) Any and all documents from January 1, 2003 to present, 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 at Percy Cheung's first involvement with the property.
 - (b) Any and all documents from January 1, 2003 to present that refer, reflect, or relate to the provision of professional services by Percy Cheung for real property located in Oakland, California, the production of which is not barred by law or contract.
 - (c) Any and all documents from January 1, 2003 to present that refer, reflect, or relate to eviction or attempted eviction of any persons from rental properties located in Oakland, California. 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 from January 1, 2003 to present, 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 Percy Cheung provided professional services.

- (e) A list of any and all property addresses from January 1, 2003 to present in Oakland, CA which were neither vacant nor occupied by a known former owner at Percy Cheung's first involvement with the property, that Percy Cheung has had contact with in his capacity as a real estate listing broker, including the name of the client and owner of the property.
4. Payment of the City of Oakland's Attorneys' fees: Mr. Cheung hereby agrees to pay attorneys fees for the City of Oakland in bringing this action on behalf of the people, in the amount of \$2,500.00. 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). A payment of \$500.00 will be made on May 8, 2009, followed by payments of \$400.00 made on June 8, July 8, August 8, September 8, and October 8, 2009.
5. Releases by Mr. Cheung: Mr. Cheung 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.
6. Releases by the City: The City, on behalf of itself and the People of the State of California, hereby releases and forever discharges Mr. Cheung and Smart Choice Realty, and to the full extent applicable, any of his or its predecessors, successors, agents employees, representatives, 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.
7. Section 1542 Waiver: With respect to the matters released in paragraphs 5 and 6 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 3 and 4 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.

8. Dismissal with Prejudice of Action: Concurrent with the submission for court approval of the Stipulated Final Judgment and Permanent Injunction, the Parties shall submit to the Court the proposed Judgment, which shall, in part, dismiss the Complaint and the Action initiated thereby with prejudice pursuant to the Stipulated Final Judgment and Permanent Injunction.
9. 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 and the Stipulated Final Judgment and Permanent Injunction will be and will remain effective notwithstanding such differences in facts.
10. Intervening Change of Law: The Parties intend to be bound by this Agreement and the Stipulated Final Judgment and Permanent Injunction regardless of any intervening change in applicable law.
11. Integration: This Agreement (including the Stipulated Final Judgment and Permanent Injunction attached hereto as Exhibit A) 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 or in the attached Stipulated Final Judgment and Permanent Injunction, and each party hereby waives any right or claimed right to rely upon such.

12. 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.
13. Nonadmissibility and No Admission of Liability: The Parties enter into this Agreement and the Stipulated Final Judgment and Permanent Injunction 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 and the Stipulated Final Judgment and Permanent Injunction, 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 or the Stipulated Final Judgment and Permanent Injunction 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 or the Stipulated Final Judgment and Permanent Injunction 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 or the Stipulated Final Judgment and Permanent Injunction 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 Stipulated Final Judgment and Permanent Injunction. Neither this Agreement nor the Stipulated Final Judgment or Permanent Injunction, nor the fact of their 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 or the Stipulated Final Judgment and Permanent Injunction. 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 or the Stipulated Final Judgment and Permanent Injunction shall be deemed to be, or urged upon any forum to be, an admission on the part of either party.
14. 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.
15. 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.
16. 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 and the Stipulated Final Judgment and Permanent Injunction.

17. 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:

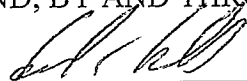
If to Mr. Cheung: Percy Cheung
858 E. 14th Street
San Leandro, CA 94577

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

18. 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: 

DAVID HALL
NEIGHBORHOOD LAW CORPS ATTORNEY

Date: May 1, 2009

By: 

PERCY CHEUNG

Date: May 1, 2009