



## Civil Rights Department

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758  
800-884-1684 (voice) | 800-700-2320 (TTY) | California's Relay Service at 711  
www.CalCivilRights.ca.gov | contact.center@CalCivilRights.ca.gov

### SETTLEMENT AGREEMENT

**CRD Case Name:** [REDACTED] / Moraga Orinda Fire Protection District

**CRD Case Number:** 202210-18504411

**EEOC Case Number:** 37A-2023-00889

**Complainant:** [REDACTED]

**Respondent:** Moraga-Orinda Fire Protection District

In exchange for the promises and representations set forth herein, [REDACTED] ("Complainant") and Moraga-Orinda Fire Protection District ("Respondent") (collectively the "Parties"), agree to resolve the above-listed complaint filed with the Civil Rights Department<sup>1</sup> ("CRD Complaint")<sup>2</sup> pursuant to the following terms and conditions:

1. This Agreement will take effect once it has been signed by all Parties and an authorized CRD representative, and the Complainant's right to revoke the waiver of claims under the federal Age Discrimination in Employment Act ("ADEA"), as provided in the accompanying Addendum, has expired (the "Effective Date").
2. The Parties intend and agree that this Agreement is binding and enforceable as permitted under law and that the terms are contractual and not mere recitals. As such this Agreement may be used as evidence if any Party brings a proceeding to enforce this Agreement.

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<sup>1</sup> Prior to July 1, 2022, the Civil Rights Department ("CRD") was named the Department of Fair Employment and Housing ("DFEH"). Pursuant to Government Code section 11159 and Senate Bill 1316 (2022), the CRD has the same duties, powers, purposes, responsibilities, and jurisdiction as the former DFEH.

<sup>2</sup> For purposes of this Agreement the term "CRD Complaint" includes Complainant's cross-filed complaint with the U.S. Equal Employment Opportunity Commission ("EEOC").

3. By signing this Agreement, no Party is admitting liability, wrongdoing, or the truth of any facts alleged in the CRD Complaint.

4. In exchange for Complainant's promises in this Agreement, Respondent agrees:

a. Complainant will be paid the total gross sum of Ninety-Seven Thousand Five Hundred Dollars (\$97,500.00), which will be paid as follows:

(1) Respondent will pay Ninety-Seven Thousand Five Hundred Dollars (\$97,500.00) to Complainant in compensation for Complainant's alleged damages resulting or flowing from, arising out of, or relating to the incident that is the subject of the complaint and attorney fees and costs by one check, without withholdings or deductions, payable to [REDACTED]

[REDACTED] within ten (10) business days of the Effective Date, on the condition Respondent has received a properly executed IRS W-9 Form from the Law Offices of Jeremy Pasternak;

(2) As described in the Addendum, a portion of the total gross sum of One Thousand Dollars (\$1,000.00), totaling One Thousand Dollars (\$1,000.00), is consideration for Complainant's agreement to release any claims for age discrimination under the ADEA;

b. Respondent will abide by all applicable federal, state, and local fair employment laws and will not discriminate against and/or harass applicants or current employees on the basis of criminal history, race, sex, gender, or any other protected category under the California Fair Employment and Housing Act (Government Code §12900 et seq.) (FEHA);

c. Respondent will distribute CRD FAQ Fact Sheet "Fair Chance Act: Criminal History and Employment" CRD-E13P-ENG / November 2022 (English), or "Ley de oportunidad justa: antecedentes penales y empleo" CRD-E13P-SP / November 2022 (Spanish) (as appropriate), to all of Respondent's current managers, supervisors, and HR professionals in the State of California within thirty (30) days of the Effective Date and, for a period of three (3) years, to all equivalent new employees in the State of California at the time they begin employment. This Fact Sheet is available on the CRD website: [www.CalCivilRights.ca.govfeh.ca.gov](http://www.CalCivilRights.ca.govfeh.ca.gov). The Fact Sheet shall not be reduced in size, defaced, or altered;

d. Respondent will conduct a good-faith comprehensive review of its written anti-discrimination, anti-harassment, and anti-retaliation hiring and employment policies and verify that the policies are in full compliance with all requirements of the FEHA, and specifically the California Fair Chance Act (Government Code §12952), within sixty (60) days of the Effective Date. As part of this comprehensive review, Respondent will review the information, resources, and sample forms regarding the Fair Chance Act available on the CRD website: <https://civildrights.ca.gov/fair-chance-act/>. If Respondent's policies are not fully compliant with California law, Respondent will develop, adopt, and implement all modifications necessary to make its anti-discrimination, anti-harassment, and anti-retaliation policies fully compliant with California law within ninety (90) days of the Effective Date;

e. If the review required by paragraph 4(d) results in new or revised written anti-discrimination, anti-harassment, and/or anti-retaliation policies, Respondent will distribute the new or revised written anti-discrimination, anti-harassment, and anti-retaliation policies to all current employees in the State of California within ninety (90) days of the Effective Date and to all future applicants for employment in the State of California at the time they apply for employment;

f. Respondent will have all managers, supervisors, and HR professionals attend comprehensive fair employment training on an employer's anti-discrimination, anti-harassment, and anti-retaliation obligations under the FEHA and the California Regulations interpreting and implementing the FEHA (2 CCR § 10000 et seq.), with particular emphasis on Respondent's obligations to applicants and employees under the Fair Chance Act, within ninety (90) days of the Effective Date;

g. Within ninety (90) days of the Effective Date, Respondent will inform Complainant and the CRD that Respondent has satisfied the promises set forth in this Paragraph 4. Respondent will inform Complainant of compliance via e-mail addressed to [my@pasternaklaw.com](mailto:my@pasternaklaw.com). Respondent will inform the CRD of compliance via e-mail addressed to [DRDCompliance@dfeh.ca.gov](mailto:DRDCompliance@dfeh.ca.gov); and

h. Respondent will release and forego from bringing against Complainant, in state or federal court or before any state, local, or federal government entity, any potential claims under the Fair Employment and Housing Act and/or Title VII of the federal Civil Rights Act of 1964 that are based on, arise from, or are related to the allegations in the CRD Complaint arising through the Effective Date.

5. In exchange for Respondent's promises in this Agreement, Complainant agrees:

- a. To the closure of the CRD Complaint; and
- b. To release and forego from bringing against Respondent (or any of Respondents' officers, agents, or employees), in state or federal court or before any state, local, or federal government entity, any potential claims under the Fair Employment and Housing Act, the ADEA, and/or Title VII of the federal Civil Rights Act of 1964 that are based on or related to the allegations in the CRD Complaint arising through the Effective Date.

6. This Agreement does not prohibit Complainant from testifying, assisting, or participating in an investigation, hearing, or proceeding conducted by any state, local, or federal governmental entity, or from helping other individuals to pursue their rights.

7. The existence, terms, and conditions of this Agreement, the accompanying Addendum, and underlying factual information related to the CRD Complaint are not confidential, and the Agreement and Addendum constitute a public document.

However, the Parties agree to keep Complainant's identity confidential to the extent allowed by law. Complainant's identity may not be disclosed to a third party, with the exception of the Parties' attorneys, tax advisors, insurers, and spouses or domestic partners, and except as allowed by law as necessary to enforce the terms of the Agreement in the event of default by a Party, or in the event that the CRD needs to reopen the case.

8. Notwithstanding Paragraph 7, the Parties will maintain the confidentiality of the mediation process leading up to the execution of this Agreement as set forth in the Agreement to Mediate and Confidentiality Agreement that they previously signed.

9. In signing this Agreement, and the accompanying Addendum, each Party acknowledges that:

- a. They have carefully read and fully understand the provisions of this Agreement;

b. The CRD and its agents and employees have not provided legal advice, tax advice, or advice concerning the impact of this Agreement on eligibility for public benefits;

c. They understand they have the right to consult with an attorney, to seek tax advice, and to review this Agreement with an attorney, tax consultant, and/or benefits counselor prior to signing;

d. They have knowingly and freely entered into this Agreement, without coercion; and

e. They have the authority to bind the entity or individual on whose behalf they have signed.

10. This Agreement, including the Addendum, is the sole and entire Agreement between the Parties and the CRD regarding the CRD Complaint and supersedes all prior agreements, negotiations, and discussions between them relating to the CRD Complaint. In signing this Agreement, the Parties have not relied on any other promises, inducements, or representations, other than as expressly set forth in this Agreement.

The CRD is not a signatory to and has not approved any separate agreement or covenant between the Parties. Should any term contained in the Parties' separate agreement conflict with any term in this Agreement, this Agreement controls, and any conflicting terms in the Parties' separate agreement are void and unenforceable.

11. This Agreement may only be modified in a subsequent written agreement signed by the Parties and the CRD.

12. If any provision of this Agreement is held to be invalid and/or unenforceable, the remaining provisions of the Agreement will be considered valid and enforceable, as if the invalid and/or unenforceable portion did not exist.

13. If any Party to this Agreement brings an action in court to enforce this Agreement, the prevailing Party will be entitled to recover their reasonable attorneys' fees and costs, as determined by the court.

14. The Parties agree and understand that the CRD has the authority to investigate compliance with this Agreement; to enforce the Agreement in court; or, in the event of breach of this Agreement by Respondent, to reopen the CRD Complaint, continue its investigation, and pursue the CRD Complaint to the full extent of the CRD's legal authority.

15. Respondent acknowledges their affirmative duty under the Fair Employment and Housing Act not to discriminate, and that it is unlawful to retaliate against any person because that person has made a complaint, testified, assisted, or participated in any manner in a proceeding under the Fair Employment and Housing Act, the ADEA, or Title VII of the federal Civil Rights Act of 1964.

16. This Agreement and the Addendum shall be interpreted under the laws of the State of California.

17. This Agreement and the Addendum may be signed in duplicate originals, each of which will be treated as an original and equally admissible in evidence. A fax or scanned signature has the same effect as the original.

18. It is understood that this agreement shall become effective only upon approval by the Board of the Moraga Orinda Fire Protection District.


Dated: Aug 24, 2023

  
Complainant 

Dated: Aug 21, 2023

Dave Winnacker  
Dave Winnacker (Aug 21, 2023 14:08 PDT)  
David Winnacker, Fire Chief  
for Respondent Moraga-Orinda Fire Protection District

Approved as to form:

  
Jonathan Holtzman (Aug 23, 2023 16:56 PDT)  
Jonathan V. Holtzman  
MOFD District Counsel

Dated: Aug 23, 2023

In reliance on the promises made by the Parties in the foregoing Agreement, the CRD will terminate its investigation of and will close CRD Case 202210-18504411 and EEOC Case 37A-2023-00889, subject to the Department's authority to reopen the Complaint and/or bring an action to enforce this Agreement in the event of a breach. The CRD does not waive or limit its right to investigate or seek relief in any other charge against Respondent.

Dated: Aug 28, 2023



Chhaya Malik, Deputy Director of Dispute Resolution  
for the California Civil Rights Department

ADDENDUM: WAIVER OF CLAIMS UNDER THE  
FEDERAL AGE DISCRIMINATION IN EMPLOYMENT ACT (“ADEA”)

A. By signing this Addendum: Waiver of Claims Under the Federal Age Discrimination in Employment Act (“ADEA Waiver”), Complainant further agrees, in exchange for the consideration of One Thousand Dollars (\$1,000.00) allocated to the release of claims under the ADEA as stated in Paragraph 4 of the foregoing Agreement, to release and forego from bringing against Respondent (or any of Respondent’s officers, agents, or employees), in state or federal court, any potential claims under the ADEA arising through the Effective Date.

B. As required by the Older Workers Benefit Protection ACT (“OWBPA”), the parties acknowledge that:

- i. Complainant is advised to consult with an attorney regarding a decision to release claims under the ADEA as provided in this ADEA Waiver.
- ii. Complainant may take up to twenty-one (21) days to decide whether to sign this ADEA Waiver. Complainant may waive all or part of the 21-day consideration period by deciding to sign or reject the ADEA Waiver before the 21<sup>st</sup> day.
- iii. If Complainant signs this ADEA Waiver, Complainant may revoke the ADEA Waiver within seven (7) days of signing it. In order to revoke the ADEA Waiver, Complainant must send notice of the revocation in writing, before the end of the 7-day period, via email to: Alicia R. Kennon at [akennon@wshblaw.com](mailto:akennon@wshblaw.com), and to the Civil Rights Department’s Dispute Resolution Division at [DRDCompliance@dfeh.ca.gov](mailto:DRDCompliance@dfeh.ca.gov).
- iv. If Complainant revokes the release of ADEA claims as stated in this ADEA Waiver, Complainant understands that the foregoing Agreement will also be null and void, and that Complainant will forfeit all the consideration described in paragraph 4 of the Agreement.

C. This ADEA Waiver does not apply to claims that may arise in the future, after the Effective Date.

Dated: Aug 24, 2023

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Complainant