

SETTLEMENT AGREEMENT

This Settlement Agreement (“Settlement Agreement”) is made and entered into this ____ day of October, 2023 (the “Effective Date”), by and between Eric Cervini, Wendy Davis, David Gins, and Timothy Holloway (“Plaintiffs”), and Chase Stapp, Brandon Winkenwerder, Matthew Daenzer, and City of San Marcos (“Defendants”). Each of Eric Cervini, Wendy Davis, David Gins, Timothy Holloway, and Chase Stapp, Brandon Winkenwerder, Matthew Daenzer, and City of San Marcos is referenced herein as a “Party” and collectively as the “Parties.”

WHEREAS, on June 24, 2021, Plaintiffs filed a complaint (the “Complaint”) against certain defendants in the United States District Court for the Western District of Texas thereby initiating the matter of *Cervini et al. v. Stapp et al.*, 1:21-cv-00568-RP (W.D. Tex.) (the “Litigation”);

WHEREAS, on October 29, 2022, Plaintiffs filed an amendment to the Complaint (the “Amended Complaint”) adding Brandon Winkenwerder, Matthew Daenzer, and City of San Marcos as defendants in the Litigation;

WHEREAS the Parties, having negotiated settlement terms through written and oral correspondence, now wish to settle the Litigation and resolve any and all disputes, claims, and controversies among them concerning the Litigation;

NOW, THEREFORE, in consideration of the promises and the mutual covenants and agreements set forth in this Settlement Agreement, the adequacy and sufficiency of which hereby is acknowledged by each and every Party, the Parties enter into this Settlement Agreement and agree as follows:

SECTION 1. CITY STATEMENT

- (a) **Contents**. The Parties agree that the following language constitutes the “City Statement” to be made publicly in response to the lawsuit:

With the assistance of legal counsel Fletcher, Farley, Shipman and Salinas, LLP, the City of San Marcos has resolved the lawsuit filed by Eric Cervini, Wendy Davis, David Gins, and Timothy Holloway in October of 2020.

While the City of San Marcos continues to deny many of the allegations in the lawsuit, the City of San Marcos Police Department's response did not reflect the Department's high standards for conduct and attention to duty. As such, the City has elected to work together with the claimants to reach a resolution that will bring an end to the lawsuit and improve future operations of the City of San Marcos Police Department. The City has also agreed to contribute \$ _____ toward compensating the claimants for the incident and the expenses incurred in pursuing their claims.

The City regrets that Mr. Cervini, Ms. Davis, Mr. Gins, and Mr. Holloway had this unfortunate experience while travelling through the City of San Marcos.

Following this event, the City of San Marcos Police Department has been committed to improving its operations. To further its ongoing commitment, all members of the police department, both sworn and professional staff, will attend training in the coming weeks. This training will remind members of their obligation and role in developing and fortifying community trust and respect in local law enforcement.

Citizens and visitors to the City of San Marcos should have confidence in the San Marcos Police Department, and a review of this event has better positioned the Department to more fully meet the community's needs and expectations.

- (b) **Publication**. The City Statement shall be issued by the City Manager's Office in accordance with its normal processes for issuing such statements.
- (c) **Timing**. The Parties agree that the City Statement shall be issued within three (3) days after the execution of this Settlement Agreement.
- (d) The Parties acknowledge that issuance of the City Statement in accordance with the terms of this Section are material to this Settlement Agreement and that Plaintiffs reasonably have relied on the terms of this Section in entering into this Settlement Agreement.

SECTION 2. CITY TRAINING

- (a) **Contents**. The San Marcos Police Department in partnership with City Administration and City Legal will provide the following training course for all police department employees, both sworn and professional staff.
 - a. Starting no later than July 20, 2024, the training course will be offered multiple times over several days to ensure all personnel in the 24/7 department are able to attend. Attendance will be mandatory. Officers and Telecommunicators will receive TCOLE credit for successfully completing the course.
 - b. During the 18 months immediately after the City Training is implemented, any new personnel hired will undergo the training within 60 days of the start of their employment.
 - c. This course will address departmental expectations concerning the four principles of procedural justice:
 - Treat people with dignity, courtesy and respect;
 - Give individuals a voice;
 - Be neutral and transparent in decision-making; and

- Be fair and impartial.
- d. Topics covered during the training will include but not be limited to:
- Texas Local Government Code 143.001, Purpose to Secure Efficient Police Departments, “composed of capable personnel who are free from political influence and who have permanent employment tenure as public servants.”
 - The social contract that formed professional policing – Sir Robert Peel’s 9 Principles
 - Why do people obey the law? Understanding the Psychology of Legitimacy and Procedural Justice.
 - The President’s Taskforce on 21st Century Policing – increasing legitimacy and public trust
 - EQ + IQ = Your Craft, and knowing how to increase both
 - Understanding cognitive dissonance
 - Three Key Issues in 21st Century Policing: building community trust; changing responses to critical incidents and mass protests; understanding biases
 - The Hippocratic Oath – Do No Harm
 - “The riot is the voice of the unheard” – Giving our Citizens a Voice
 - Responding to political violence and voter intimidation

SECTION 3. REMEDY

- (a) **Remedy.** In the event that either Party breaches this Settlement Agreement, the non-breaching Party may, in its sole and absolute discretion, initiate an action for binding arbitration, in accordance with Section 7(b) of this Settlement Agreement,

against the breaching Party or Parties.

If such an arbitration occurs, the Party prevailing in arbitration shall be entitled to all costs and expenses, to be paid by the non-prevailing Party, including but not limited to attorneys' fees, incurred to litigate such action. This Section 3(a) is intended to set forth the minimum amount and type of remedies available to the non-breaching Party, and nothing herein shall preclude the non-breaching Party from seeking or obtaining other or additional remedies that may be available beyond those set forth in this Section 3(a).

SECTION 4. MONETARY SETTLEMENT

- (a) **Payment.** The Parties agree that Defendants shall, within 30 days of the completed execution of this Settlement Agreement and receipt of funding instructions and any law firm payees' W-9, make a full and final payment of \$175,000 to Plaintiffs as agreed upon by the Parties.

SECTION 5. DISMISSAL OF LAWSUIT.

- (a) **Dismissal.** Plaintiffs agree to, and shall, within three (3) days of the completed execution of this Settlement Agreement, file with the Court a motion to voluntarily dismiss with prejudice *Cervini et al. v. Stapp et al.*, 1:21-cv-00568-RP (W.D. Tex.). Upon the filing of this motion to dismiss, all pending motions, pleadings, discovery, orders and any other matters arising from this Litigation will be immediately deemed moot and require no further response, other than the terms of this Agreement and the Protective Order.

SECTION 6. RELEASES.

- (a) **Plaintiffs' Release.** Plaintiffs, on behalf of themselves and any other person or Entity who may claim through them, will and hereby fully release and forever discharge Chase Stapp, Brandon Winkenwerder, Matthew Daenzer, and City of San Marcos from any and all claims existing at the time of the Effective Date that Plaintiffs do, did, or might have, own, or hold against Chase Stapp, Brandon Winkenwerder, Matthew Daenzer, and the City of San Marcos (including any past, present or future agents, representatives, employees, and/or elected officials of the City) in connection with the allegations in the Amended Complaint (“Plaintiffs’ Released Claims”), including but not limited to past and future economic and non-economic losses, attorney fees, costs, and expenses, and Plaintiffs also covenant not to sue or initiate any formal legal proceeding against Chase Stapp, Brandon Winkenwerder, Matthew Daenzer, and City of San Marcos with respect to any of the Plaintiffs’ Released Claims (the “Plaintiffs’ Release”); provided, however, that nothing in this Settlement Agreement precludes or shall be deemed to preclude Plaintiffs from taking legal action to enforce the terms of this Settlement Agreement.
- (b) **Defendants' Release.** Chase Stapp, Brandon Winkenwerder, Matthew Daenzer, and City of San Marcos, on behalf of themselves and any other person or entity who may claim through them, hereby fully release and forever discharge Plaintiffs from any and all Claims existing at the time of the Effective Date that Defendants do, did, or might have, own, or hold against Plaintiffs or their agents in connection with the allegations in the Amended Complaint (“Defendants’ Released Claims”), including but not limited to past and future economic and non-economic losses, attorney fees, costs, and expenses, and Defendants also covenant not to sue or initiate any formal

legal proceeding against Plaintiffs or their agents with respect to any of the Defendants' Released Claims (the "Defendants' Release"); provided, however, that nothing in this Settlement Agreement precludes or shall be deemed to preclude Defendants from taking legal action to enforce the terms of this Settlement Agreement.

SECTION 7. FURTHER ACKNOWLEDGEMENTS AND AGREEMENTS

- (a) **Documents and Testimony.** Defendants agree to cooperate in good faith in connection with reasonable requests for discovery and testimony in connection with Plaintiffs' lawsuit in *Cervini et al. v. Cisneros et al.*, 1:21-cv-00565-RP (W.D. Tex.). This cooperation obligation includes assisting Plaintiffs in authenticating documents previously produced by Defendants. At Defendants' request, Plaintiffs agree to mark as Confidential or Attorneys Eyes Only, as the case may be, any such documents or testimony so produced.
- (b) **Governing Law/Jurisdiction.** The Parties hereby agree that in any dispute, claim, or controversy between or among them concerning the interpretation or enforcement of this Settlement Agreement, or any other matter arising out of or relating to this Settlement Agreement, the non-breaching Party may elect to pursue any claim for a dispute arising under this Settlement Agreement in binding arbitration. The Parties may agree to accept a single arbitrator to be mutually agreed upon by the Parties. If that is not possible, each party may select an arbitrator in the Western District of Texas and the two shall mutually select another arbitrator to serve with them so that there should be an odd number of arbitrators. Ordinary choice of law principles shall apply. The Parties agree to provide the alleged breaching Party notice and a reasonable opportunity to cure any alleged breach of

the Settlement Agreement prior to pursuing enforcement of the Agreement.

- (c) **Authority.** Each of the Parties to this Settlement Agreement represents and warrants that said Party has full authority to enter into this Settlement Agreement, to make the releases set forth in this Settlement Agreement, and to enter into the undertakings and obligations set forth in this Settlement Agreement. Each of the Parties further represents, warrants, and covenants that said Party has not previously transferred, assigned or encumbered any of the Claims that may be released herein and agrees not to do so, in whole or in part.
- (d) It is agreed and warranted by Plaintiffs that: 1) they were not Medicare eligible nor were they covered by Medicare at the time of the Incident in Question; 2) they are not currently Medicare eligible nor are they currently receiving benefits from Medicare; 3) they were not, at the time of the Incident in Question, and are not at this time receiving disability benefits; and 4) they do not anticipate being covered by Medicare for the next 30 months.
- (e) It is warranted by each of the Plaintiffs, by and for himself or herself, that there are no outstanding and unpaid liens, claims, or any other assessments or attachments accrued by or on behalf of themselves in connection with the claims raised in the Complaint that would give rise to a third-party claim to some or all of the funds detailed in Section 4. It is further warranted that if any such claims and/or liens arise, including tax liabilities, if any, these shall be fully satisfied out of the proceeds of this settlement by Plaintiffs.
- (f) In the event of any breach of Subsection (e) of this Section, the breaching Plaintiff agrees to INDEMNIFY AND HOLD HARMLESS Defendants from any and all liability and expenses to any person, firm or corporation that rendered services to

the breaching Plaintiff in connection with the claims raised in the Complaint.

- (g) **Independent Counsel.** EACH PARTY REPRESENTS AND WARRANTS THAT SAID PARTY HAS READ AND UNDERSTANDS THIS ENTIRE DOCUMENT AND HAS HAD AN OPPORTUNITY TO CONSULT WITH, OBTAIN ADVICE FROM, AND BE REPRESENTED BY INDEPENDENT COUNSEL OF SUCH PARTY'S OWN CHOOSING, OR HAS ELECTED OF THEIR OWN ACCORD NOT TO SEEK SUCH COUNSEL, IN CONNECTION WITH THE PREPARATION, NEGOTIATION, AND EXECUTION OF THIS SETTLEMENT AGREEMENT. The Parties further acknowledge that they executed this Settlement Agreement freely and voluntarily and without any duress or undue influence on the part, or on behalf, of any of them. The Parties acknowledge that any rule of construction of contracts resolving any ambiguities against the drafting party shall be inapplicable to this Settlement Agreement.
- (h) **No Waiver of Breach.** No breach of any provision hereof can be waived unless in writing. Waiver of any one breach of any provision hereof shall not be deemed to be a waiver of any other breach of the same or any other provision hereof.
- (i) **Entire Agreement.** This Settlement Agreement contains the entire agreement and understanding between the Parties with respect to all matters set forth herein.
- (j) **No Admission of Liability.** It is expressly understood and agreed by the Parties that neither this Agreement nor any part hereof shall be construed or used as an admission of liability on the part of any Party.
- (k) **Amendments.** This Settlement Agreement may be amended or modified only by a written agreement executed by or on behalf of each of the Parties hereto.
- (l) **Headings.** The section and sub-section headings contained in this Settlement

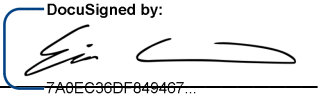
Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Settlement Agreement.

- (m) **Execution in Counterparts.** This Settlement Agreement may be executed in counterparts and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and all counterparts taken together will constitute one and the same agreement, which will be binding and effective as to all Parties. Scanned signatures or signatures transmitted by electronic means shall be binding and treated as original signatures.

- (n) **Severability.** Any term or provision of this Agreement which is invalid or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining term and provisions of this Settlement Agreement or affecting the validity or enforceability of any of the terms or provisions of this Settlement Agreement in any other jurisdiction. If any provision of this Settlement Agreement is so broad as to be unenforceable, that provision shall be interpreted to be only so broad as it is enforceable.

IN WITNESS WHEREOF, the Parties have executed and delivered this Settlement Agreement as of the dates accompanying the signatures below.

ERIC CERVINI

DocuSigned by:

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Dated: _____

WENDY DAVIS

Dated: _____

DocuSigned by:
Wendy Davis
DAD46A6DF45C433...

DAVID GINS

Dated: _____

DocuSigned by:
David Gins
DCF04F6805DE4EB...

TIMOTHY HOLLOWAY

Dated: _____

DocuSigned by:
Timothy Holloway
DCA41C262CBA455...

CHASE STAPP

Dated: _____

BRANDON WINKENWERDER

Dated: _____

MATTHEW DAENZER

Dated: _____

CITY OF SAN MARCOS

Dated: _____



WENDY DAVIS

Dated: _____

DAVID GINS

Dated: _____

TIMOTHY HOLLOWAY

Dated: _____

CHASE STAPP

Dated: 10/13/2023



BRANDON WINKENWERDER

Dated: 10/14/2023



MATTHEW DAENZER

Dated: 10-14-2023



CITY OF SAN MARCOS

Dated: 10/17/2023

