

SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS

On August 27, 2024, the Parties entered into a legally enforceable "Settlement Term Sheet". This Settlement Agreement and General Release ("AGREEMENT") is intended to expand on the terms of the existing Settlement Term Sheet and is entered into between and among the CENTRAL FIRE DISTRICT OF SANTA CRUZ COUNTY ("DISTRICT"), MICHAEL BOTILL, JR. ("BOTILL"), DAN JORDAN ("JORDAN"), and FORREST GLEITSMAN ("GLEITSMAN"), as well as their past and present council members, directors, governing body, employees, agents, predecessors, attorneys, divisions, departments, representatives, insurers, successors in interest, assigns, and all persons acting by, through, under, or in concert with any of them. The DISTRICT, BOTILL, JORDAN, and GLEITSMAN are collectively referred to as the "Parties" or individually as a "Party," with reference to the following:

RECITALS

A. BOTILL was hired by the DISTRICT as a probationary Firefighter/Paramedic in 2016;

B. BOTILL filed a civil complaint ("LAWSUIT") against DISTRICT, JORDAN, and GLEITSMAN in the Superior Court for the State of California, County of Santa Cruz, on July 26, 2023, Case No. 23CV01792;

C. GLEITSMAN filed a cross-complaint against BOTILL in Case No. 23CV01792 on October 25, 2023, and GLEITSMAN filed his operative second amended cross-complaint against BOTILL on February 8, 2024 ("CROSS-COMPLAINT");

D. DISTRICT, JORDAN, and GLEITSMAN categorically deny all of the claims and allegations asserted by BOTILL against them in the LAWSUIT;

E. BOTILL categorically denies all of the claims and allegations asserted by GLEITSMAN against him in the CROSS-COMPLAINT;

NOW THEREFORE, and in consideration for the promises contained herein, and other good and valuable consideration, receipt of which is acknowledged by the execution of this AGREEMENT, and to avoid continued unnecessary litigation, it is agreed by and between the Parties as follows:

I. WAIVER AND RELEASE OF CLAIMS

A. **No Admission of Liability.** This AGREEMENT and compliance with this AGREEMENT shall not in any way be construed as an admission by any Party of the truth of any allegations, or an admission of any unlawful acts or other liability whatsoever against each other or against any other person or entity. Each Party disclaims any liability to, against each other, or against any other person or entity, on the part of themselves, any related person or any related predecessor corporation or its or their agents, representatives, or successors in interest and assigns.

This AGREEMENT cannot be used by a Party to demonstrate any admission of liability or wrongdoing by another Party.

B. California Public Employees' Retirement System ("CalPERS") Retirement. Upon BOTILL's application for industrial disability retirement with CalPERS, the DISTRICT shall submit certification to approve BOTILL'S industrial disability retirement based on Dr. Mark Anderson's report dated August 15, 2024 (attested to by Dr. Anderson on August 23, 2024) and his findings regarding the body parts examined in that report. The DISTRICT acknowledges that the incident on October 5, 2022 referenced in the COMPLAINT was within the course and scope of employment. If CalPERS denies the industrial disability retirement, the DISTRICT will continue to cooperate but BOTILL and not the DISTRICT will be the party required to file an appeal.

1. **Advanced Disability Pension Payments.** BOTILL agrees that he will waive any advanced disability pension payments pending the determination of his industrial disability retirement application.

C. Parties' Release of Claims. Other than the workers' compensation case listed below, as consideration for the payments and agreements that make up this AGREEMENT, the Parties hereby and forever release and discharge all other Parties, as well as any of their past and/or present parents, subsidiaries, affiliated entities, direct or indirect successors, officers, officials, directors, trustees, heirs, predecessors, assigns, agents, insurers (including National Union Fire Insurance Company/Glatfelters Insurance Group), employees, lay volunteers or representatives, attorneys, and representatives ("Releasees") from any and all causes of action, judgments, liens, indebtedness, damages, losses, claims, liabilities, and demands of whatsoever kind or character, known or unknown, suspected to exist or not suspected to exist, anticipated or not anticipated, whether or not it has been brought before any state or federal court or before any state or federal agency or other governmental entity, including, but not limited to, all of BOTILL'S claims arising from or related or attributable in whole or in part to BOTILL'S employment relationship with DISTRICT, arising prior to the Effective Date of this AGREEMENT.

The Parties understand and agree that this AGREEMENT extends to all disputes or claims of every nature and kind, known or unknown, suspected or unsuspected, past, present, or future, arising from or attributable to the above-referenced matters and disputes. The Parties understand and expressly agree that this AGREEMENT also extends to any other matter, event or claim occurring prior to the effective date of this AGREEMENT.

The Parties understand and agree that they are waiving any rights they have, may have had, or may have, to pursue any and all remedies available to them under any employment-related or other cause of action against Releasees, including, without limitation, any claims for discrimination, harassment and/or retaliation, claims under the California Fair Employment and Housing Act (California Government Code section 12900, et seq.), the California Family Rights Act (California Government Code section 12945.2), the Unruh and George Civil Rights Acts (California Civil Code section 51, et seq.), all provisions of the California Labor Code and any wage orders or similar directives or authorities issued by any federal or state authority having enforcement powers, the Constitution of the United States, the Constitution of the State of California, Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000e, et seq.), the Age

Discrimination in Employment Act (29 U.S.C. § 621, et seq.), the Equal Pay Act (29 U.S.C. § 206(d)), the Fair Labor Standards Act (29 U.S.C. § 201, et seq.), the Family and Medical Leave Act (29 U.S.C. § 2601, et seq.), the Employment Retirement Income Security Act of 1974 (29 U.S.C. § 1001, et seq.), Sections 1981-88 of Title 42 of the United States Code (42 U.S.C. § 1981, et seq.), the American with Disabilities Act (42 U.S.C. § 12101, et seq.), claims of retaliation or whistle-blowing (including but not limited to California Labor Code section 1102.5, et seq. and Government Code section 12653), claims for breach of any type of contract, including written, oral or implied and, including, and all other claims arising in contract, tort, or equity or under any other statute, whether federal, state, or local, up to the effective date of this AGREEMENT.

Each Party expressly waives and releases any right to recover any type of personal relief from the any other Party, including monetary damages or reinstatement, in any administrative action or proceeding, whether state or federal, and whether brought by any of them or on their behalf by an administrative agency, related in any way to the matters released herein. Furthermore, nothing in this AGREEMENT prohibits any Party from reporting possible violations of law or regulation to any government agency or entity, including but not limited to the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, the Department of Labor and/or the Department of Justice, or making other disclosures that are protected under the whistleblower provisions of law. No Parties need prior authorization from the DISTRICT to make any such reports or disclosures and are not required to notify the DISTRICT that he has made such reports or disclosures.

This release does not apply to BOTILL'S pending workers' compensation claim(s) against the DISTRICT before the State of California Worker's Compensation Appeal Board, including Case No. ADJ17231642.

D. **Civil Code Section 1542 Waiver.** The Parties hereby waive any and all rights that they may have pursuant to California Civil Code section 1542, which reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

1. The Parties hereby expressly waive the provisions of California Civil Code section 1542 and further expressly waive any right to invoke said provisions now or at any time in the future.
2. The Parties recognize and acknowledge that factors which have induced them to enter into this AGREEMENT may turn out to be incorrect or to be different from what he had previously anticipated, and he hereby expressly assume any and all of the risks thereof and further expressly assumes the risks of waiving the rights provided by California Civil Code section 1542.

E. **Representation of No Pending Claims.** Each Party represents that, other than the claims described herein, they have not filed any lawsuits, complaints, appeals, claims, applications or charges against any Party or any Party's past or present officers, directors, governing bodies, elected officials, employees, agents, predecessors, attorneys, divisions, affiliates, representatives, successors in interest, assigns, and/or all persons acting by, through, under, or in concert with any of them, with any state or federal court, or local, state or federal agency, or administrative or quasi-administrative tribunal or person, based on any events occurring on or prior to the Effective Date of this AGREEMENT.

II. PAYMENT AND DISMISSAL

The Parties agree that upon execution of this AGREEMENT, they shall perform the following acts:

A. Within seven (7) business days of Plaintiff and his counsel receiving the Settlement Proceeds identified below, the Parties shall jointly request that the Superior Court for the County of Santa Cruz dismiss in its entirety with prejudice, Case No. 23CV01792.

B. The DISTRICT shall pay the total sum of nine-hundred sixty-five thousand dollars (\$965,000.00) ("Settlement Proceeds") in full and final settlement of all matters encompassed by this AGREEMENT as follows:

1. One-hundred thirty-eight thousand, six-hundred and seventy-seven dollars and seventy-six cents. (\$138,677.76) shall be paid as lost wages to BOTILL. The DISTRICT will make the appropriate withholdings and taxes from this amount based upon the most recent IRS-Form W2 on file with the DISTRICT. The remaining amount after withholdings shall be paid via check made out to "Michael Botill" and then sent via USPS, Certified Mail Restricted Delivery to the Law Office of Brian Mathias at P.O. Box 2874, Aptos, CA 95001.
2. Four-hundred sixteen thousand, thirty-three dollars and twenty-seven cents (\$416,033.27) shall be paid to BOTILL. BOTILL will provide the appropriate W-9 forms to the DISTRICT prior to payment. The DISTRICT will issue the appropriate Form 1099 with this payment. This sum shall be paid via check made out to "Michael Botill" and then sent via USPS, Certified Mail Restricted Delivery to the Law Office of Brian Mathias at P.O. Box 2874, Aptos, CA 95001.
3. Two-hundred eighty thousand, seven-hundred ninety-five dollars and seventy-five cents (\$280,795.75) to BOTILL's attorneys at Collier Socks LLP, representing attorney's fees and costs. Collier Socks LLP will provide the appropriate W-9 form to the DISTRICT prior to payment. The DISTRICT will issue the appropriate Form 1099 with this payment. This sum shall be sent to Collier Socks LLP, 240 Tamal Vista Blvd., Ste. 100, Corte Madera, CA 94925 via USPS Certified Mail.

4. One-hundred twenty-nine thousand, four-hundred ninety-three dollars and twenty-two cents to BOTILL's attorney at Brian Mathias Law for (\$129,493.22), representing attorney's fees and costs. Brian Mathias Law will provide the appropriate W-9 form to the DISTRICT prior to payment. The DISTRICT will issue the appropriate Form 1099 with this payment. This sum shall be sent via USPS, Certified Mail Restricted Delivery to Brian Mathias at P.O. Box 2874, Aptos, CA 95001.

C. The DISTRICT agrees to reinstate all sick leave (432 hours) and vacation (120 hours) used by BOTILL from October 26, 2022, and March 28, 2023. The DISTRICT understands this will cause BOTILL's sick leave to eclipse 750 hours; nevertheless, the DISTRICT shall pay out BOTILL for the full amount of his sick leave, in addition to the payments specified in Paragraph II.B.1 of this AGREEMENT. This reinstatement shall be made upon BOTILL's retirement/separation.

D. The DISTRICT agrees to pay BOTILL's share of the mediation fees of \$2,650 (two-thousand, six hundred and fifty dollars), in addition to the payments above and reinstatement of sick leave and vacation time specified in Sections II.B.1, II.B.2, and II.C.

E. The payment of the Settlement Proceeds shall be made within 30 days of the Effective Date of this AGREEMENT, provided that all of the following has occurred:

- a. BOTILL and his attorneys' firms have provided the DISTRICT with the completed Form W-9s prior to payment.

F. **Return of Property.** BOTILL represents and warrants that within thirty (30) days of the Effective Date, he will return, or arrange to have returned, all DISTRICT property in his possession, including, but not limited to, uniforms, tools, equipment, any electronic devices, and keys and access cards to all DISTRICT buildings, offices, and properties. BOTILL further represents and warrants to provide all business-related information requested by the DISTRICT that is known to him, including lock combinations and passwords.

III. GENERAL PROVISIONS

A. **Effective Date.** The Effective Date of this AGREEMENT shall be the last date on which all Parties have signed this AGREEMENT.

B. **No Representation of Tax Liabilities.** No Party, including the attorneys for any Party, has made any representations or warranties regarding whether the payments to BOTILL described above in Section II.B ("Settlement Proceeds") are subject to taxation. The Parties agree that all tax obligations other than the DISTRICT'S share of payroll taxes which may arise from the settlement payment to Plaintiff described in Section II.B.1 shall be the sole obligation of Plaintiff. As such, Plaintiff will be responsible for paying any taxes due on his respective payments under the terms of this Agreement. Accordingly, if a governmental taxing authority or court ultimately determines that settlement payments made pursuant to Section II.B.1 or II.B.2 were

improperly classified for such purposes, Plaintiff agrees to reimburse the DISTRICT for any income and employment tax deficiency, penalty, cost, or interest charges assessed against the DISTRICT for failure to withhold such taxes.

C. Each Party to Bear Own Fees and Costs. Aside from what is specifically provided for in this AGREEMENT, each Party shall bear their own costs, expenses, and attorneys' fees incurred in connection with the proceedings and/or events resulting in and/or preceding this AGREEMENT, or in connection with any other claims made or investigated by either Party against the other in any forum (civil, criminal, administrative or quasi-administrative), and each Party hereto expressly waives any claim for recovery of any such costs, expenses, or attorneys' fees from any other Party. Attorneys for all Parties to this AGREEMENT do likewise expressly waive any claim for recovery of costs, expenses, and/or attorney's fees from the opposing Party(ies). No Party shall be deemed a "prevailing party" by virtue of executing this AGREEMENT.

D. No Prior Assignments. BOTILL represents that he has not assigned or transferred, or purported to assign or transfer, to any person or entity, any claim or any portion thereof or interest therein against the DISTRICT. GLEITSMAN represents that he has not assigned or transferred, or purported to assign or transfer, to any person or entity, any claim or any portion thereof or interest therein against BOTILL.

E. Enforcement. This AGREEMENT is made and entered into in the State of California, and shall be governed, interpreted, and enforced under the laws of the State of California. The Parties agree that jurisdiction and/or venue of any action involving the validity, interpretation, or enforcement of this AGREEMENT or any of its terms, provisions, or obligations, or claiming breach thereof, shall exist exclusively in a court located within the County of Santa Cruz, California. The Parties further agree that this AGREEMENT may be used as evidence in any subsequent proceeding in which any of the Parties allege a breach of this AGREEMENT or seek to enforce its terms, conditions, provisions, or obligations. In any action to enforce or interpret this settlement Agreement or the previously executed Settlement Term Sheet, the prevailing Party shall be entitled to reasonable attorneys' fees and costs incurred.

F. Covenant to Effectuate Agreement. Each Party hereto agrees to do all things and execute and deliver all instruments and documents necessary to fulfill and effect the provisions of this AGREEMENT and to protect the respective rights of the Parties to this AGREEMENT.

G. Waiver of Terms of Agreement. No waiver by any Party of any breach of any term or provision of this AGREEMENT shall be construed to be, nor be, a waiver of any preceding, concurrent or succeeding breach of the same, or any other term or provision hereof. No waiver shall be binding unless in writing and signed by the Party to be charged or held bound. It is further understood and agreed that if, at any time, a breach of any term of this AGREEMENT is asserted by any Party hereto, that Party shall have the right to seek specific performance of that term and/or any other necessary and proper relief, including, but not limited to, damages.

H. No Duress or Undue Influence. The Parties represent and agree that they have carefully read and fully understand all of the provisions of this AGREEMENT, and that they are voluntarily, without any duress or undue influence on the part of or on behalf of any Party, entering into this AGREEMENT.

I. **Consultation with Counsel.** The Parties affirm that, prior to execution of this AGREEMENT, they have consulted with their respective legal counsel/representatives concerning the terms and conditions set forth herein, and that they understand the advice provided to them.

J. **Entire Agreement.** This AGREEMENT contains all of the terms and conditions agreed upon by the Parties hereto regarding the subject matter of this AGREEMENT. Any prior agreements, promises, negotiations, or representations, either oral or written, relating to the subject matter of this AGREEMENT, not expressly set forth in this AGREEMENT, are of no force or effect, excepting the previously executed Settlement Term Sheet, which remains binding and enforceable.

K. **Interpretation.** This AGREEMENT has been jointly negotiated and drafted by counsel for the Parties. The language in this AGREEMENT shall be construed as a whole according to its fair meaning and not strictly for or against any of the Parties.

L. **Severability.** In the event that any one or more provisions of this AGREEMENT shall be declared to be illegal, invalid, unenforceable, and/or void by a court of competent jurisdiction, such provision or portion of this AGREEMENT shall be deemed to be severed and deleted from this AGREEMENT but this AGREEMENT shall in all other respects remain unmodified and continue in force and effect.

M. **No Precedent.** This AGREEMENT is in no way intended, and shall in no way be construed, to restrict rights guaranteed to the DISTRICT under local, state or federal law, rule, policy or agreement or to establish a precedent in this or any other matter, now or in the future.

N. **Execution of Counterparts.** This AGREEMENT may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. A photocopy or facsimile transmission of the AGREEMENT, including signatures, shall be deemed to constitute evidence of the AGREEMENT having been executed.

PLEASE READ CAREFULLY. THIS SETTLEMENT AGREEMENT AND RELEASE INCLUDES A RELEASE BY ALL PARTIES OF ALL KNOWN AND UNKNOWN CLAIMS.

IN WITNESS WHEREOF, the Parties hereto have executed this Settlement Agreement and Release of All Claims.

Dated: _____

By: _____

Michael Botill, Jr.

Dated: _____

By: _____

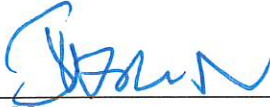
Dan Jordan

Dated: _____

By: _____
Forrest Gleitsman

CENTRAL FIRE DISTRICT OF SANTA CRUZ
COUNTY

Dated: 9/30/24

By: 

Jason Nee
Fire Chief