

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release ("Agreement") is made by and between Plaintiff Hector Martinez ("Martinez") and Defendant Sweetwater Authority ("SWA"), (collectively referred to as the "Parties"). This Agreement is in full satisfaction of all matters in controversy between the parties, including but not limited to the lawsuit entitled *Martinez et al v. Sweetwater Authority*, U.S. District Court for the Southern District of California, Case No. 13cv00167-CAB (the "Lawsuit"), Martinez's workers' compensation claim currently pending against SWA, as well as any and all claims or causes of action which are pending, or which could have been or may be brought by Martinez, which relate in any way to his employment with SWA, or separation therefrom.

In consideration of the mutual covenants contained in this agreement, the Parties agree as follows:

1. **Settlement, Dismissal and Indemnity.** Martinez shall dismiss the Lawsuit against SWA with prejudice, each side to bear its own attorneys fees and costs, shall dismiss his workers' compensation claim currently pending against SWA, and shall withdraw, abandon and cease to file any further claims, lawsuits, administrative charges, or grievances of any kind whatsoever against SWA, its employees, agents and assigns, unless prohibited by law, in exchange for the following consideration:

2. **Resignation.** Martinez shall resign his employment at SWA effective March 26, 2014. Martinez understands and acknowledges that said resignation from employment is a material term of this Agreement. SWA makes no representations or guarantees regarding Martinez's retirement benefits under ("PERS"). Martinez shall remain on a leave of absence for medical reasons through March 26, 2014, and shall not return to the offices of the SWA. Martinez further agrees not to seek re-employment with SWA in the future, in any capacity. If such an application is received, SWA may reject it without taking any further action or providing notice to Martinez and this Agreement shall be good cause for termination if Martinez obtains employment at SWA.

3. **Payment to Martinez.** Within seven (7) days of Martinez' resignation from SWA, or within seven (7) days of the expiration of the revocation period, whichever is later, SWA shall pay to Martinez the total sum of One Hundred and Seventy-Five Thousand Dollars (\$175,000) in full settlement of the lawsuit including his claims for emotional distress and physical manifestation of emotional distress, his workers' compensation claim, and any and all claims he has or may have against SWA, its past, present or future employees, Board members, agents, insurers, attorneys, affiliates and/or assigns, arising out of the events or incidents referred to in the Lawsuit, or relating in any way to Martinez's employment with SWA, his separation from employment, and/or to the terms and/or requirements of this Agreement. Said sum shall be made payable in check(s) made out to "Elliott Kanter Client Trust Account". With respect to the receipt of said sum, Martinez agrees that he alone is and will be fully responsible for the payment of any and all amounts governmental or tax authorities may claim are due, if any. Martinez acknowledges that SWA is relying on, among other things, this specific provision in entering into this Agreement, in paying the settlement sum, that this Agreement is not contingent upon any particular tax characterization or treatment of such sums.

4. **Release.** Martinez, on behalf of himself, his dependents, heirs, executors, administrators, assigns, and successors, irrevocably and unconditionally releases and forever discharges SWA, its current or former employees, managers, agents, affiliates, board members, heirs, successors, assigns, and attorneys from any and all claims, charges, causes of action or any other liability (herein collectively referred to as "claims"), whether in contract or tort, by statute or common law, known or unknown, arising out of or relating in any way to the Lawsuit, to Martinez's employment with SWA and/or separation from such employment, including, but not limited to, claims for discrimination, harassment, or retaliation, and/or any other claims under federal, state or local law, any claims under Title VII of the Civil Rights Act of 1964, as amended; the Age Discrimination in Employment Act, as amended; the Equal Pay Act, as amended; the Fair Labor Standards Act, as amended; the Americans with Disabilities Act; the Employee Retirement Income Security Act, as amended; the California Fair Employment and Housing Act, as amended; the California Labor Code; and/or any other local, state or federal law governing discrimination and/or retaliation in employment and/or the payment of wages or benefits. Martinez shall also withdraw and dismiss his workers compensation claim against SWA, and withdraw, dismiss and abandon any pending charges of

discrimination or grievances filed through the employees' association, any administrative charges or actions, and shall cease and desist from asserting such charges or grievances, unless prohibited by law.

5. **Section 1542 Release.** Section 1542 of the California Civil Code provides, generally, that a release does not extend to unknown claims. Specifically, Section 1542 of the Civil Code of the State of California states as follows:

A general release does not extend to claims which the creditor does not know or suspect 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.

For the purposes of implementing a full and complete release and discharge of each other, Martinez expressly waives and releases all rights and benefits afforded by Section 1542 of the Civil Code of the State of California, and acknowledges that this Agreement is intended to include and discharge all claims which he does not know or suspect to exist relating to his employment with SWA, or separation from employment, at the time of execution.

6. **Release of Rights and Claims Under Age Discrimination in Employment Act**

The following provisions apply notwithstanding anything to the contrary otherwise provided in this Agreement:

(a) In consideration of the payment provided in this Agreement, Martinez specifically waives all existing rights and claims he may have against SWA under the Age Discrimination in Employment Act, 29 USC§ 621 et seq, as amended and supplemented by the Older Workers Benefit Protection Act. This waiver does not extend to rights or claims that may arise after the date this Settlement Agreement and Release is executed.

(b) Martinez acknowledges that the consideration provided in this Agreement constitutes independent consideration for the said waiver and is in addition to any other payment to which he is entitled.

(c) Martinez represents to SWA that he has in fact consulted with attorney of his own choosing before executing this Agreement.

(d) Martinez acknowledges that this Settlement Agreement and Mutual Release is written in a manner designed to be understood by him and that he has read it carefully and understands its terms.

(e) Martinez acknowledges that under the Older Workers Benefit Protection Act he has 21 days from receipt of this Agreement to consider it before signing it. Martinez has decided to sign it sooner and does hereby voluntarily waive the 21-day period provided by the said Act.

(f) Martinez has the right to revoke this Agreement and Release within seven (7) days following his execution of the Agreement, and this Agreement shall not become effective until expiration of that seven-day period. If Martinez decides to revoke this Agreement, he must provide written statement of revocation by hand delivery or registered mail counsel for the District within seven (7) days following his execution of the Agreement.

7. **No Admission of Liability.** This agreement is a compromise and settlement of disputed claims being released herein, and therefore, this Agreement and the Settlement Amount do not constitute an admission of liability on the part of SWA, its officers, directors, agents, affiliated entities, successors, heirs, assignees, employees, insurers, attorneys or representatives, or an admission, directly or by implication, that they have violated any law, rule, regulation, policy or any contractual right or other obligation owed to Martinez. SWA specifically denies all allegations of improper or unlawful conduct made by Martinez in his lawsuit, and any or all administrative claims. SWA enters into this agreement merely to avoid further litigation.

8. **Mutual Non-Disparagement.** In further consideration of the covenants herein, Martinez agrees not to disparage SWA, its present or former employees, officers or Board members in any manner likely to be harmful to them or to their work, professional reputations or personal reputations. SWA agrees that its General Manager, Assistant General Manager, Director of Engineering, and Director of Administrative Services will not disparage Martinez to third parties in any manner likely to be harmful to his work, professional reputation or personal reputation. Notwithstanding the foregoing, the Parties (including SWA's officers or Board members) may respond to any request for information when required by legal process. Moreover, if Martinez decides to run for any public office, SWA and its employees and agents shall be released of any obligations under this paragraph 8.

9. **Neutral Reference.** Martinez agrees that any reference checks initiated by him or at his request will be directed to the Director of Administrative Services Dina Yorba, or to her successor. SWA shall only supply Martinez' dates of service, positions held, and salary earned.

10. **No Assignment or Transfer of Claims.** Martínez represents and warrants that he has not heretofore assigned, transferred or purported to assign or transfer to any other person or entity any rights, claims or causes of action herein released and discharged and no other person or entity has any interest in the matters herein released or discharged.

11. **No Further Claims.** Martínez expressly agrees that he will not continue and/or institute any legal or administrative proceedings against SWA, or any person or entity released in this Agreement, before any court, administrative agency, arbitrator, or any other tribunal whatsoever, by reason of any claim, liability or cause of action, including workers compensation, whether known or unknown, being released herein, and in any way related to his employment with SWA or separation therefrom, unless required by law. If any such action is brought, this Agreement will constitute an Affirmative Defense thereto. Should Martínez legally have the right to participate in any action against SWA in the future pertaining to or arising out of his employment or separation from it, Martínez expressly agrees that he shall have no right to recover damages, costs, or other compensatory relief.

12. **Court Costs and Legal Fees.** The Parties agree that each party shall be responsible for and pay the party's own court costs and attorneys' fees.

13. **Entire Agreement.** This Agreement constitutes the entire written agreement of compromise and settlement between the Parties. There are no other agreements, whether oral or written, modifying its terms. The terms of this Agreement can be modified only by a writing signed by the Parties, expressly stating that such modification is intended.

14. **Advice of Counsel.** In executing this Agreement, the Parties acknowledge that they have consulted with and have been advised by their respective attorneys, and that they have executed this Agreement after independent investigation and without fraud, duress or undue influence. The Parties further acknowledge and agree that they have had a reasonable period of time for deliberation before executing this Agreement.

15. **Venue.** The Parties to this Agreement expressly agree that the only proper venue for any lawsuit arising out of the breach of this Agreement shall be in the State of California, County of San Diego.

16. **Ambiguities.** This Agreement has been reviewed by the Parties and their respective

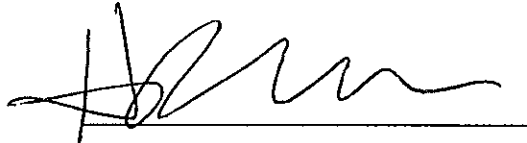
attorneys, and the Parties have had a full opportunity to negotiate the contents thereof. The parties expressly waive any common law or statutory rule of construction that ambiguities should be construed against the drafter of this Agreement, and agree that the language in all parts of this Agreement shall be in all cases construed as a whole, according to its fair meaning.

17. **Severability.** Should any provision of this Agreement be declared or determined by any court to be illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected by said illegal or invalid part, term, or provision, and shall be deemed not to be a part of this Agreement.

18. **Signature in Counterparts.** This Agreement may be executed in counterparts, and if so executed, each such counterpart shall have the force and effect of an original.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the dates set forth below.

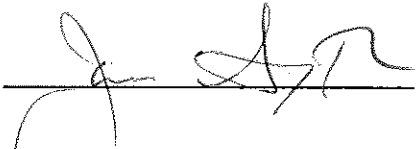
Dated: MARCH 26, 2014



HECTOR MARTINEZ

Dated: MARCH 31, 2014

SWEETWATER AUTHORITY

By: 

James Smyth
General Manager