

SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS

This Settlement Agreement and Release of All Claims ("Agreement") is made between DAVID MORSE ("RELEASOR") and UNIVERSITY OF CALIFORNIA AT BERKELEY POLICE DEPARTMENT CHIEF MITCHELL J. CELAYA III; UNIVERSITY OF CALIFORNIA AT BERKELEY POLICE DEPARTMENT DETECTIVE NICOLE MILLER; UNIVERSITY OF CALIFORNIA AT BERKELEY POLICE DEPARTMENT DETECTIVE SABRINA REICH; UNIVERSITY OF CALIFORNIA AT BERKELEY POLICE DEPARTMENT SERGEANT LEE HARRIS; UNIVERSITY OF CALIFORNIA AT BERKELEY POLICE DEPARTMENT OFFICER MICHAEL WYCKOFF; and UNIVERSITY OF CALIFORNIA AT BERKELEY POLICE DEPARTMENT OFFICER CRISTA MANCHESTER ("HEREINAFTER COLLECTIVELY REFERRED TO AS THE "DEFENDANTS") with respect to the following facts:

RECITALS

- A. On or about December 11, 2009, Plaintiff, DAVID MORSE (Hereinafter referred to as "MORSE") was arrested by members of the University of California at Berkeley Police Department.
- B. On or about December 9, 2010, MORSE initiated an action against the DEFENDANTS in the United States District Court for the Northern District of California, Case No. CV 10 5594 YRG ("the Action"), asserting claims for personal physical injuries as a result of alleged violation of his First, Fourth, Eighth Amendment rights and violation of his rights under the Privacy Protection Act. Plaintiff sought declaratory and injunctive relief, general and special damages and attorneys' fees and costs.
- C. The DEFENDANTS deny and dispute MORSE'S claims and allegations.
- D. In order to avoid the substantial expense and inconvenience of further litigation, the parties now desire to finally settle all claims asserted in, as well as all issues that were raised or could have been raised in the Action, on the terms set forth in this Agreement.

THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES CONTAINED HEREIN, IT IS HEREBY AGREED AS FOLLOWS:

TERMS OF AGREEMENT

1. Payment. In exchange for the promises and warranties of MORSE as set forth below, The Regents shall pay on behalf of the DEFENDANTS the total sum of One Hundred and \$162,500.00 (ONE HUNDRED AND SIXTY TWO THOUSAND FIVE HUNDRED DOLLARS and NO CENTS), by delivery to MORSE's attorneys GROSS BELSKY ALONSO LLP of a check for that amount made payable DAVID MORSE and GROSS BELSKY

ALONSO LLP ATTORNEY-CLIENT TRUST ACCOUNT. This amount settles all MORSE's monetary claims and is inclusive of all claims for fees and costs incurred in connection with the Action including but not limited to all claims made by GROSS BELSKY ALONSO LLP, THE FIRST AMENDMENT PROJECT, GONZALEZ & LEIGH, HOLME ROBERTS & OWEN AND/OR BRYAN CAVE. The check shall be delivered to Morse's attorneys within 90 days of the full execution of the Settlement Agreement. The Regents will issue an IRS Form 1099 only to GROSS BELSKY ALONSO LLP, and will not issue any Form 1099 to Morse. GROSS BELSKY ALONSO LLP takes responsibility for the issuance of any IRS Form 1099 that may be required to be issued to MORSE.

2. Updated Policies and Procedures and Training of Police Officers. As further consideration for the settlement of this action, the University of California at Berkeley Police Department agrees to revise and update their policies and procedures concerning the Privacy Protection Act ("PPA"), *i.e.*, the University of California at Berkeley Police Department Training Bulletin #2011-01 on the Privacy Protection Act (the "Training Bulletin" or the "Bulletin"), which shall include the following points:

- a. An acknowledgment that the PPA's protections are not limited to individuals or entities associated with traditional media outlets (such as newspapers, books, television or radio), but also includes new technologies such as the Internet, and also protects individuals even if not associated with a media outlet.
- b. Revision to the bullet point items appearing on page 7 of the Bulletin addressing subpoena procedures, in order to address the concern that the current language could be incorrectly read as contemplating a de facto seizure by means of "freezing" the scene. The revisions would also specify that the subpoena process requires an opportunity for the person or entity to object to the subpoena in court, prior to any production of documents by the person or entity.
- c. Revise the discussion of the Shield Law at page 8 of the Bulletin to include an explanation of the protections afforded to a person by Penal Code § 1524(g) and Evidence Code § 1070.
- d. Include in the Overview that the purpose of the PPA is to require the use of a subpoena, rather than a search warrant, to obtain materials protected under the PPA.
- e. In the section on "Police Response and Reporting," the Bulletin will delineate situations where documentary materials or work product materials can be seized or searched, and will also delineate situations where documentary materials and work product materials cannot be obtained through seizure or a search, but instead a subpoena is required.
- f. In the discussion of the exception to the PPA where a subpoena would be inadequate, to clarify that this exception applies only to documentary materials, and not to work product materials.

g. Revise the "Purpose" section to read as follows: "This Training Bulletin is intended to increase officers' awareness of the federal Privacy Protection Act (PPA) and the procedures for dealing with the searching and seizing, as evidence in criminal investigations, of materials (including photographs, video or audio recordings, notes, computers or electronic evidence) possessed by a person reasonably believed to have a purpose to disseminate to the public a newspaper, book, broadcast, or other similar form of public communication."

h. The University of California at Berkeley Police Department will revise the aforementioned Training Bulletins and related training materials by June 1, 2012,

i. The University of California at Berkeley Police Department shall provide training on the subject matter of the PPA Training Bulletin to all University of California at Berkeley Police Department officers, so that all sworn officers will be trained on the Bulletin, and all new officers will receive training on the Bulletin upon entry to the University of California at Berkeley Police Department. This training may be included in Advanced Officer Schools, lineup, detective training, and officer field training.

j. Upon finalization of the revisions to the Training Bulletin, counsel for the DEFENDANTS shall provide to plaintiff's counsel a copy of the Training Bulletin, and copies of any training materials developed concerning the Privacy Protection Act, Penal Code § 1524(g) and Evidence Code § 1070, subject to the protective order in this case and which shall be marked attorneys eyes only.

k. After the training of officers is conducted, counsel for the DEFENDANTS shall write a letter to plaintiff confirming that training has been conducted, describing the training, and describing the plans for training new officers.

3. Judicial Enforcement of the agreement to revise the Training Bulletins and Training. In the event the University of California at Berkeley Police Department does not comply with the terms of the Settlement Agreement concerning the revision of the Training Bulletin and training of police officers, plaintiff can seek judicial enforcement of the Settlement Agreement.

4. Protective Order. The parties will finalize and enter a protective order concerning confidential materials, which shall include a paragraph to cover the training materials that will survive the dismissal of the case.

5. Settlement Agreement is not a consent decree: Nothing in the Settlement Agreement shall be construed to create a consent decree between the parties, or permit the Court to retain jurisdiction after dismissal over the parties' Settlement Agreement.

6. General Release of All Claims. MORSE unconditionally, irrevocably and absolutely releases and discharges the DEFENDANTS, as well as its present or former employees, officers, agents, attorneys, affiliates, successors, assigns and all other representatives of the DEFENDANTS (collectively, "Released Parties"), from any and all causes of action,

judgments, liens, indebtedness, damages, losses, claims (including attorneys' fees and costs), liabilities and demands of whatsoever kind and character that MORSE may now or hereafter have against the Released Parties arising from incidents or events giving rise to this lawsuit (hereafter collectively, "Released Claims").

7. Unknown or Different Facts or Law. MORSE acknowledges that he may discover facts or law different from, or in addition to, the facts or law he knows or believes to exist with respect to a Released Claim. He agrees, nonetheless, that this Agreement and the releases contained in it shall be and remain effective in all respects notwithstanding such different or additional facts or law.

8. California Civil Code Section 1542 Waiver. MORSE expressly acknowledges and agrees that the releases contained in this Agreement include a waiver of all rights under Section 1542 of the California Civil Code. This statute reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
WHICH THE CREDITOR DOES NOT KNOW OF OR
SUSPECT TO EXIST IN HIS/HER FAVOR AT THE TIME OF
EXECUTING THE RELEASE, WHICH IF KNOWN BY
HIM/HER MUST HAVE MATERIALLY AFFECTED HIS/HER
SETTLEMENT WITH THE DEBTOR.

MORSE acknowledges that he has read all of this Agreement, including the above Civil Code section, and that he fully understands both the Agreement and the Civil Code section. MORSE waives any benefits and rights granted to her pursuant to Civil Code section 1542.

9. Dismissal of the Action. MORSE agrees to take all actions necessary to dismiss the Action, with prejudice, within 5 business days after MORSE'S attorneys receive the settlement check in this matter, including, but not limited to, executing and filing with the federal court a Stipulation requesting that the Court Dismiss this Action With Prejudice, each party to bear his, her or its own costs and attorney fees.

10. No Prior Assignments or Liens. MORSE represents and warrants that he has not assigned to any other person or entity any Released Claim.

- a. MORSE further expressly represents and warrants that there are no liens or claims, including, but not limited to Medicare, Medi-Cal, other health care providers, hospitals, insurance carriers, workers compensation carriers or attorneys, arising out of the subject incident against any of the amounts being paid by the DEFENDANTS as provided in this Agreement.
- b. MORSE agrees to defend and indemnify the DEFENDANTS against any claims for damages, compensation or otherwise by any lien and/or subrogation claimant, expressly including, but not limited to all public entities, Medicare, Medi-Cal and all other health care providers, hospitals, insurance carriers, workers compensation carriers or attorneys, arising out of the subject incident, to reimburse or make good any loss or damage or costs

that REGENTS may have to pay if any claim or litigation is brought by any lien and/or subrogation claimant.

11. No Admissions. By entering into this Agreement, the DEFENDANTS shall not be deemed or construed to have admitted to any liability for this incident. The parties agree that it is their mutual intention that neither this Agreement nor any terms hereof shall be admissible in any other or future proceedings against the DEFENDANTS except a proceeding to enforce this Agreement.

12. Attorneys' Fees and Costs. MORSE and the DEFENDANTS agree to bear their own attorneys' fees and expenses incurred in connection with the Action, or any Released Claim, except as otherwise set forth herein. MORSE acknowledges that neither he nor any attorney who has represented him in connection with the Action or the events underlying the Action (including without limitation GROSS BELSKY ALONSO LLP, THE FIRST AMENDMENT PROJECT, GONZALEZ & LEIGH, HOLME ROBERTS & OWEN AND/OR BRYAN CAVE) shall be entitled to receive any further payment from Defendants nor shall have any right to recovery of attorneys' fees and/or costs, except as provided in paragraph 1 of this Agreement.

13. Severability. Should it be determined by a court that any term of this Agreement is unenforceable, that term shall be deemed to be deleted. However, the validity and enforceability of the remaining terms shall not be affected by the deletion of the unenforceable terms.

14. Modifications. This Agreement may be amended only by a written instrument executed by all parties hereto.

15. Cooperation. The parties agree to do all things necessary and to execute all further documents necessary and appropriate to carry out and effectuate the terms and purposes of this Agreement.

16. Interpretation; Construction. The headings set forth in this Agreement are for convenience only and shall not be used in interpreting this Agreement. This Agreement has been drafted by legal counsel representing the DEFENDANTS, but MORSE and his counsel have fully participated in the negotiation of its terms. MORSE acknowledges he has had an opportunity to review and discuss each term of this Agreement with legal counsel and, therefore, the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

17. Entire Agreement. The parties to this Agreement declare and represent that no promise, inducement or agreement not herein discussed has been made between the parties, and that this Agreement contains the entire expression of agreement between the parties on the subjects addressed herein.

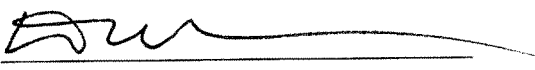
18. Counterparts. This Agreement may be executed in counterparts. The execution of a signature page of this Agreement shall constitute the execution of the Agreement, and the Agreement shall be binding on each party upon that party's signing of such a counterpart.

19. Advice of Counsel. The parties declare and represent that they are executing this Agreement with full advice from their respective legal counsel, and that they intend that this Agreement shall be complete and shall not be subject to any claim of mistake, and that the releases herein express a full and complete release and, regardless of the adequacy or inadequacy of the consideration, each intends the releases herein to be final and complete. Each party executes this release with the full knowledge that this release covers all possible claims, to the fullest extent permitted by law.

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

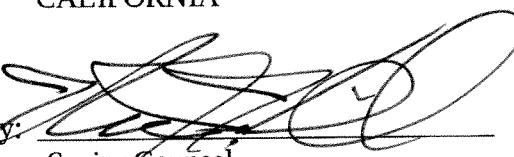
WHEREFORE, THE PARTIES HAVE VOLUNTARILY EXECUTED THIS AGREEMENT ON THE DATES SHOWN BELOW.

Dated: May 23, 2012

By: 
DAVID MORSE

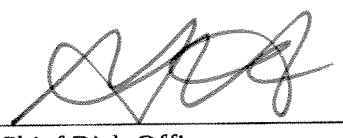
Dated: June 12, 2012

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

By: 
Senior Counsel

ACKNOWLEDGED:

Dated: June 11th, 2012

By: 
Chief Risk Officer
University of California

///

///

///

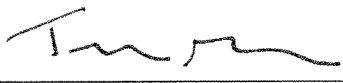
///

///

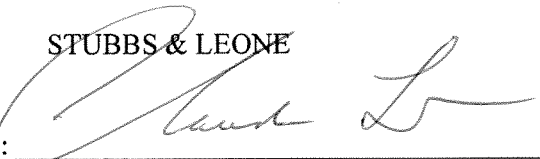
APPROVED AS TO FORM AND SUBSTANCE:

Dated: May 24, 2012

GROSS BELSKY ALONSO LLP

By: 
TERRY GROSS, ESQ.
Attorneys for plaintiff DAVID MORSE

Dated: May 30, 2012

STUBBS & LEONE
By: 
CLAUDIA LEED, ESQ.
Attorneys for Defendants UNIVERSITY OF
CALIFORNIA AT BERKELEY POLICE
DEPARTMENT CHIEF MITCHELL J.
CELAYA III; UNIVERSITY OF
CALIFORNIA AT BERKELEY POLICE
DEPARTMENT DETECTIVE NICOLE
MILLER; UNIVERSITY OF CALIFORNIA
AT BERKELEY POLICE DEPARTMENT
DETECTIVE SABRINA REICH;
UNIVERSITY OF CALIFORNIA AT
BERKELEY POLICE DEPARTMENT
SERGEANT LEE HARRIS; UNIVERSITY
OF CALIFORNIA AT BERKELEY POLICE
DEPARTMENT OFFICER MICHAEL
WYCKOFF; and UNIVERSITY OF
CALIFORNIA AT BERKELEY POLICE
DEPARTMENT OFFICER CRISTA
MANCHESTER