

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

I. PARTIES

A. The parties to this Settlement Agreement and Mutual Release (hereinafter "Agreement") are:

1. COUNTY OF CALAVERAS and its respective agents, representatives, assigns, administrators, employees, experts, insurers, reinsurers and attorneys (hereinafter "County of Calaveras").

2. BRENT HARRINGTON and his respective agents, representatives, assigns, heirs, executors, experts, insurers and attorneys (hereinafter "Harrington").

3. SHAELYN STRATTAN and her respective agents, representatives, assigns, heirs, executors, experts, insurers and attorneys (hereinafter "Strattan").

4. ROBERT SELLMAN and his respective agents, representatives, assigns, heirs, executors, experts, insurers and attorneys (hereinafter "Sellman").

5. MICHAEL KENNETH NEMEE and his respective agents, representatives, assigns, heirs, executors, experts, insurers and attorneys (hereinafter "Michael Neme").

6. MICHELLE SEOBHAN MCKEE NEMEE and her respective agents, representatives, assigns, heirs, executors, experts, insurers and attorneys (hereinafter "Michelle Neme").

County of Calaveras, Harrington, Strattan, Sellman, Michael Neme and Michelle Neme shall collectively be referred to throughout this Agreement as "the Parties."

II. RECITALS/BACKGROUND FACTS

A. On May 15, 2009, Michael Neme and Michelle Neme filed a declaratory relief action against County of Calaveras entitled *Neme v. County of Calaveras*, Calaveras County Superior Court Case No. CV 35721 (hereinafter "Case No. 35721").

B. On June 4, 2009, Michael Neme and Michelle Neme filed a petition for writ of mandate against County of Calaveras entitled *Neme v. County of Calaveras*, Calaveras County Superior Court Case No. CV 35775 (hereinafter "Case No. 35775").

C. On October 7, 2009, Michael Neme and Michelle Neme filed a chapter 11 bankruptcy petition in the United States Bankruptcy Court for the Eastern District of California, Case No. 09-93249 (hereinafter "Bankruptcy Case").

D. On December 7, 2009, Michael Neme and Michelle Neme filed a second petition for writ of mandate against County of Calaveras entitled *Neme v. County of*

Calaveras, Calaveras County Superior Court Case No. CV 36297 (hereinafter “Case No. 36297”).

E. On December 29, 2009, Michael Nemea and Michelle Nemea filed with the Bankruptcy Court an application to remove to the Bankruptcy Court Case No. 35721 and Case No. 35775. The Bankruptcy Court assigned Case No. 35721 with Adversary Proceeding No. 09-9088, and assigned Case No. 35775 with Adversary Proceeding Number 09-9089.

F. On January 27, 2010, County of Calaveras filed an application to remand Case No. 35721 and Case No. 35775 to the superior court.

G. On March 9, 2010, the Bankruptcy Court entered an order denying the application to remand with respect to Case No. 35721 and granting the application to remand with respect to Case No. 35775.

H. On October 7, 2011, Michael Nemea and Michelle Nemea filed an adversary proceeding in the Bankruptcy Court against Harrington, Strattan, Sellman and County of Calaveras entitled *Nemea v. Harrington*, Adversary No. 11-09068 (hereinafter “Case No. 11-09068”).

I. The Bankruptcy Court held a court trial in Case No. 35721 (Adv. No. 09-9088) in October 2011. The Bankruptcy Court issued a Memorandum Opinion in Case No. 35721 (Adv. No. 09-9088) on November 21, 2011. On December 15, 2011, the Bankruptcy Court entered judgment in Case No. 35721 (Adv. No. 09-9088) in favor of County of Calaveras and against Michael Nemea and Michelle Nemea on all claims stated in the second amended complaint.

J. On December 19, 2011, the Bankruptcy Court in Case No. 35721 (Adv. No. 09-9088) taxed costs against Michael Nemea and Michelle Nemea in the amount of \$7,500.82.

K. On December 22, 2011, Michael Nemea and Michelle Nemea filed a notice dismissing Robert Sellman from Case No. 11-09068.

L. On December 29, 2011, Michael Nemea and Michelle Nemea filed a notice of appeal with respect to the judgment entered in Case No. 35721 (Adv. No. 09-9088), electing to have the appeal heard at the United States District Court for the Eastern District of California. The District Court assigned the appeal Case No. 1:12-cv-00002.

M. On May 14, 2012, the Bankruptcy Case filed by Michael Nemea and Michelle Nemea was converted to a chapter 7.

N. On June 22, 2012, the District Court issued an order dismissing the appeal in Case No. 1:12-cv-00002 on the ground that the appeal was moot. The District Court entered a judgment in the case on June 22, 2012.

O. On July 11, 2012, Michael Nemea and Michelle Nemea filed a notice of appeal, appealing the judgment in Case No. 1:12-cv-00002 to the Ninth Circuit Court of Appeals. The Ninth Circuit assigned the appeal Case No. 12-16570.

P. On August 28, 2012, Michael Nemea and Michelle Nemea received their chapter 7 discharge in their Bankruptcy Case.

Q. On December 13, 2012, Michael Nemea and Michelle Nemea filed in the United States District Court for the Eastern District of California, a motion/application to withdraw the reference with respect to Case No. 11-09068. The District Court assigned Case No. 1:12-cv-02048 to the matter. On January 8, 2013, the District Court entered an order withdrawing the reference and staying the action pending resolution of Ninth Circuit Case No. 12-16570.

R. On September 19, 2013, County of Calaveras filed a motion for summary disposition with respect to Ninth Circuit Case No. 12-16570. On January 6, 2014, the Ninth Circuit granted County of Calaveras' motion for summary disposition and summarily affirmed the judgment of the District Court in Case No. 1:12-cv-00002.

S. On February 5, 2014, County of Calaveras filed a motion for attorneys' fees with the Ninth Circuit in Case No. 12-16570, requesting an award of attorneys' fees under the Court's inherent power to award attorneys' fees upon finding that an appeal was frivolous or prosecuted in bad faith.

T. On February 10, 2014, the Ninth Circuit issued its mandate in Case No. 12-16570.

U. On March 14, 2014, following resolution of Ninth Circuit Case No. 12-16570, the District Court lifted the stay on Case No. 1:12-cv-02048 and issued an order setting a mandatory scheduling conference, said conference being held on May 13, 2014.

V. On April 10, 2014, the Ninth Circuit issued an order in Case No. 12-16570 granting County of Calaveras' motion for an award of attorneys' fees and referring the matter to a special master to determine the actual amount of the award. On May 13, 2014, the special master entered an order awarding County of Calaveras attorneys' fees in the amount of \$33,791. The attorney fee award is jointly and severally against Michael Nemea, Michelle Nemea and their attorney Kenneth M. Foley.

W. The following matters/issues remain outstanding between the Parties:

1. *Nemea v. County of Calaveras*, Calaveras County Superior Court Case No. CV 35775;

2. *Nemea v. County of Calaveras*, Calaveras County Superior Court Case No. CV 36297;

3. *Nemea v. Harrington et al.*, United States District Court for the Eastern District of California, Case No. 1:12-cv-02048;

4. The cost award in the amount of \$7,500.82 in favor of County of Calaveras and against Michael Nemea and Michelle Nemea in *Nemea v. County of Calaveras*, United States Bankruptcy Court for the Eastern District of California, Case No. 09-9088; and

5. The attorney fee award in the amount of \$33,791 in favor of County of Calaveras and against Michael Nemea, Michelle Nemea and Kenneth M. Foley in *Nemea v. County of Calaveras*, Ninth Circuit Court of Appeals Case No. 12-16570.

The Parties are now desirous of resolving and settling all disputes and claims they may now have, or may ever have, that are based on acts or omissions occurring prior to the date of this Agreement, or based on any of the bankruptcy actions, lawsuits, petitions, appeals, cost awards and attorney fee awards as specifically outlined in the "Recitals/Background Facts" above, as well as any other disputes or claims the Parties hereto may now have or may have ever had against each other. In consideration of the above premises and the mutual promises contained herein, the Parties covenant and agree as follows:

III. TERMS AND CONDITIONS

A. Within fourteen (14) days of execution of this Agreement by County of Calaveras, Harrington, Strattan and Sellman, Michael Nemea and Michelle Nemea shall file a dismissal with prejudice in the following state court actions that remain pending and unresolved: (1) *Nemea v. County of Calaveras*, Calaveras County Superior Court Case No. CV 35775; (2) *Nemea v. County of Calaveras*, Calaveras County Superior Court Case No. CV 36297.

B. Within fourteen (14) days of execution of this Agreement by County of Calaveras, Harrington, Strattan and Sellman, Michael Nemea and Michelle Nemea shall execute a Stipulation of Dismissal with Prejudice in accordance with Federal Rule of Civil Procedure 41(a)(1) and return the executed Stipulation to counsel for County of Calaveras for filing in *Nemea v. Harrington*, United States District Court for the Eastern District of California, Case No. 1:12-cv-02048-SKO.

C. As consideration for the dismissal with prejudice of Case No. CV 35775, Case No. CV 36297, and Case No. 1:12-cv-02048-SKO, as well as all other covenants, promises and agreements contained in this Agreement, County of Calaveras waives and relinquishes its right to the \$7,500.82 in costs awarded in Case No. 09-9088 against Michael Nemea and Michelle Nemea as well as the \$33,791 in attorneys' fees awarded in Case No. 12-16570 against Michael Nemea, Michelle Nemea and Kenneth M. Foley. Although Kenneth M. Foley is not a party to this Agreement, as part of this Agreement, County of Calaveras waives and relinquishes its right to the \$33,791 as against Kenneth M. Foley.

D. It is understood and agreed among the Parties to this Agreement that this Agreement represents a compromise resolution of all the pending lawsuits as outlined in the Recitals/Background Facts as well as the outstanding cost and attorney fee awards, and that the Parties simply intend to fully and finally resolve all matters that are pending among them to avoid further litigation.

E. The Parties understand and agree that this Agreement applies to all claims, whether known or unknown, and do hereby state that this is a full and final agreement in accord

with its terms, applying to all unknown, unanticipated and unsuspected claims, injuries, damages and expenses, as well as to those now known or disclosed and set forth above, and the Parties to this Agreement do hereby knowingly and voluntarily waive all rights or benefits provided to the Parties by the terms and provisions of California Civil Code section 1542 or any other comparable statute or law which may exist under the laws of the State of California or any other state or territory, and the Parties to this Agreement acknowledge and decree that this waiver is an essential and material term of this Agreement. California Civil Code section 1542 provides 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 OF HER MUST HAVE
MATERIALLY AFFECTED HIS OR HER
SETTLEMENT WITH THE DEBTOR.**

The Parties each acknowledge that, if they/their attorneys or agents may later discover facts different from or in addition to those that they now know or believe to be true with respect to the released claims, they agree that this release shall remain effective in all respects despite the discovery or existence of any different or additional facts.

F. The Parties to this Agreement each covenant and agree that they will not, at any time hereafter, initiate, maintain, prosecute, or in any way knowingly aid in the initiation, maintenance or prosecution of any claim, demand or cause of action against any other party to this Agreement, for any damages, loss, injury, cost, expenses, attorneys' fees, or indemnity of any kind arising out of or in any way connected with the matters with respect to which this Agreement is given. The Parties further agree that this Agreement may be pled as a full and complete defense to, and may be used as a basis for an injunction against any action, suit or other proceeding which can be instituted, prosecuted or attempted in breach of this Agreement; and agree to defend, indemnify and hold and save harmless any party or parties so served from all such loss, damage or costs and expenses in preparation for the defense of this suit, preparing or providing the existence of the validity of this Agreement, and all other expenses of defending such action or suit, whether such costs or expenses are taxable or otherwise.

G. The Parties each further represent and warrant that they own the right to release each and all of the claims released herein, that no other person, law firm or attorney has or has had any interest in the claims released herein, that he/she or it have not transferred, sold, assigned conveyed or otherwise disposed of any of the claims released herein, and represent and warrant that he/she or it has the full right and authority to enter into this Agreement.

H. The Parties agree that this Agreement shall be both binding upon and inure to the benefit of themselves and their respective heirs, executors, administrators, assigns, agents, servants, employees, attorneys, successors, predecessors, independent contractors, vendors, partners, affiliates, joint venturers, and representatives, both past and present and each of them.

I. The Parties further declare that no promise, inducement or agreement, not herein expressed, has been made to the Parties and that this Agreement contains the entire agreement between the Parties hereto, and the terms of this Agreement are contractual and not a mere recital. It is understood and agreed, and the undersigned do hereby state that reliance is placed wholly upon the judgment, belief and knowledge of the undersigned as to the nature, cause, extent, and duration of any injuries and damages and that no statement with regard thereto made by or on behalf of any Parties herein released has in any way influenced the making of this compromise settlement and the execution of this Agreement.

J. The language of this Agreement shall be construed as a whole according to its fair meaning, and not strictly for or against any of the Parties. The Parties each acknowledge that he/she or it has read this Agreement and understands all of the terms thereof. In connection with the negotiation and consummation of this Agreement, each of the Parties acknowledges that he/she or it has been represented by counsel of his/her or its choice. The Parties each acknowledge that each and every term of this Agreement has been explained to them by their respective counsel and that they fully understand said terms. The Parties each warrant and represent that he/she or it executes this Agreement voluntarily and without duress or undue influence of any kind; that this Agreement contains the entire agreement between the Parties; and that the terms of this Agreement are contractual and not a mere recital.

K. This Agreement constitutes the entire agreement between the Parties and supersedes any and all other agreement whether written or oral with respect to its subject matter. All modifications and amendments to this Agreement must be in writing, signed and dated by each of the Parties.

L. If any provision of this Agreement or the application thereof is held invalid, the invalidity shall not affect other provisions or applications of this Agreement which can be given effect without the invalid provisions or application; and to this end the provisions of this Agreement are declared severable.

M. This Agreement may be executed in counterparts, and if so executed and delivered, all of the counterparts together shall constitute one and the same agreement. The Parties agree that facsimile or electronic copies or photocopies of the signatures of the Parties will be accepted by the Parties and may be utilized.

N. Notices in connection with this Agreement shall be in writing and addressed as follows:

County of Calaveras
Brent Harrington
Shaelyn Strattan
Robert Sellman
c/o McCormick, Barstow, et al.
7647 N. Fresno Street
Fresno, CA 93720
Attn: Scott M. Reddie

Michael Nemees
Michelle Nemees
c/o Kenneth M. Foley
37 North Main Street, Suite No. 209
P.O. Box 1269
San Andreas, CA 95249

The undersigned have read the Agreement and accept and agree to the provisions contained therein and hereby execute it voluntarily and with full understanding of its consequences.

IT IS SO AGREED:

Dated: Aug 12,
June __, 2014

Debbie Pente
Board Chair, on behalf of County of
Calaveras

Dated: June __, 2014

Brent Harrington

Dated: June __, 2014

Shaelyn Strattan

Dated: June __, 2014

Robert Sellman

Dated: June __, 2014

Michael Kenneth Nemees

Dated: June __, 2014

Michelle Seobhan McKee Nemees

Michael Nemees
Michelle Nemees
c/o Kenneth M. Foley
37 North Main Street, Suite No. 209
P.O. Box 1269
San Andreas, CA 95249

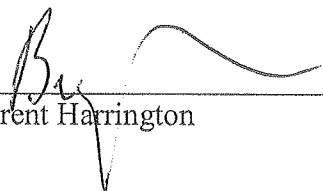
The undersigned have read the Agreement and accept and agree to the provisions contained therein and hereby execute it voluntarily and with full understanding of its consequences.

IT IS SO AGREED:

Dated: June __, 2014

_____, on behalf of County of
Calaveras

Dated: June 24, 2014


Brent Harrington

Dated: June __, 2014

Shaelyn Strattan

Dated: June __, 2014

Robert Sellman

Dated: June __, 2014

Michael Kenneth Nemees

Dated: June __, 2014

Michelle Seobhan McKee Nemees

Michael Neme
Michelle Neme
c/o Kenneth M. Foley
37 North Main Street, Suite No. 209
P.O. Box 1269
San Andreas, CA 95249

The undersigned have read the Agreement and accept and agree to the provisions contained therein and hereby execute it voluntarily and with full understanding of its consequences.

IT IS SO AGREED:

Dated: June __, 2014

_____, on behalf of County of
Calaveras


Dated: June __, 2014

Brent Harrington

Dated: June __, 2014

Shaelyn Strattan

Dated: June 25, 2014


Robert Sellman

Dated: June __, 2014

Michael Kenneth Neme

Dated: June __, 2014

Michelle Seobhan McKee Neme

Michael Nemece
Michelle Nemece
c/o Kenneth M. Foley
37 North Main Street, Suite No. 209
P.O. Box 1269
San Andreas, CA 95249

The undersigned have read the Agreement and accept and agree to the provisions contained therein and hereby execute it voluntarily and with full understanding of its consequences.

IT IS SO AGREED:

Dated: June __, 2014

_____, on behalf of County of
Calaveras

Dated: June __, 2014

Brent Harrington

Dated: June 30, 2014



Shaelyn Strattan

Dated: June __, 2014

Robert Sellman

Dated: June __, 2014

Michael Kenneth Nemece

Dated: June __, 2014

Michelle Seobhan McKee Nemece

Michael Neme
Michelle Neme
c/o Kenneth M. Foley
37 North Main Street, Suite No. 209
P.O. Box 1269
San Andreas, CA 95249

The undersigned have read the Agreement and accept and agree to the provisions contained therein and hereby execute it voluntarily and with full understanding of its consequences.

IT IS SO AGREED:

Dated: June __, 2014

_____, on behalf of County of
Calaveras

Dated: June __, 2014

Brent Harrington

Dated: June __, 2014

Shaelyn Strattan

Dated: June __, 2014

Robert Sellman

Dated: June 30, 2014



Michael Kenneth Neme

Dated: June 30, 2014



Michelle Seobhan McKee Neme