

## **SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release (“Agreement”) is made by Robert Hogenauer, Frontier California, Inc., the City of Lake Elsinore, and R.J. Noble Company, hereinafter sometimes individually referenced as “Party” and collectively referenced as the “Parties.”

### **1. RECITALS**

1.1. Mr. Hogenauer contends that he had a bike accident on May 26, 2014, on Machado Street in the City of Lake Elsinore. Mr. Hogenauer further contends the accident was the result of negligence attributable to Frontier California, Inc., the City of Lake Elsinore, and R.J. Noble Company.

1.2. In effort to recover damages allegedly caused by the May 26, 2014 bike accident, Mr. Hogenauer filed Riverside Superior Court Case No. RIC1605766, naming as defendants Frontier California, Inc., the City of Lake Elsinore, and R.J. Noble Company.

1.3. Frontier California, Inc., the City of Lake Elsinore, and R.J. Noble Company each deny liability to Mr. Hogenauer, and each further contends that any responsibility for the May 26, 2014 bike accident is attributable to one or more of the other Parties. The City of Lake Elsinore contends that it is entitled to a defense and indemnity from Frontier California, Inc., and R.J. Noble Company, both of which deny the contention.

1.4. The May 26, 2014 accident, Riverside Superior Court Case No. RIC1605766, and the related contentions of liability among the Parties shall hereinafter be collectively referenced as the “Incident.”

1.5. This Agreement is intended to resolve, without any admission of wrongdoing, any and all claims and potential claims that the Parties may have against one another as of the date of this Agreement relating to the Incident.

1.6. The date of this Agreement shall be deemed to be October 3, 2017.

### **2. TERMS**

2.1. \$35,000.00 shall be paid to Robert Hogenauer by, or on behalf of, the City of Lake Elsinore. The payment shall be made to “Law Offices of David C. Siegel and Robert Hogenauer” and delivered to the Law Offices of David C. Siegel, 2445 Fifth Avenue, Suite 330 San Diego, CA 92101.

2.2. \$20,000.00 shall be paid to Robert Hogenauer by, or on behalf of, Frontier California, Inc. The payment shall be made to “Law Offices of David C. Siegel and Robert Hogenauer” and delivered to the Law Offices of David C. Siegel, 2445 Fifth Avenue, Suite 330 San Diego, CA 92101.

2.3. \$20,000.00 shall be paid to Robert Hogenauer by R.J. Noble Company's insurance carrier. The payment shall be made to "Law Offices of David C. Siegel and Robert Hogenauer" and delivered to the Law Offices of David C. Siegel, 2445 Fifth Avenue, Suite 330 San Diego, CA 92101.

2.4. The Parties hereby release and forever discharge one another and each of the other's agents, principals, employers, employees, attorneys, insurers, joint powers insurance authority, indemnitors, predecessors, successors, assigns, officers, directors, shareholders, parents, subsidiaries, or affiliates (collectively "Releasees"), from any and all claims, demands, actions, causes of action, suits at law or equity, debts, sums of money, accounts, controversies, rights, damages, penalties, fines, costs, attorney fees, losses, expenses, contracts, agreements, promises or liabilities whatsoever, known or unknown, suspected to exist, or not suspected to exist, anticipated or not anticipated, described in Riverside Superior Court Case No. RIC1605766 or this Agreement or otherwise related to the Incident; provided, however, that this release does not extend to the Parties' specific obligations pursuant to the terms of this Agreement.

2.5. Each Party understands and acknowledges the significance and consequence of a specific waiver of the protection of California Civil Code Section 1542. Each Party specifically waives the protection of Section 1542 of the California Civil Code, which provides that:

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.

2.6. This release and Agreement includes any and all claims and liens for medical services, government benefits, legal services, or liens of any other kind whatsoever, whether actual or asserted, present or prospective, any claims, causes of action, or rights to attorney fees, penalties, fines, interest, and costs incurred, whether actual or asserted, present or prospective. Mr. Hogenauer represents that he has not received, and does not expect to receive, Medicare benefits in connection with any injury sustained as a result of the Incident. Mr. Hogenauer waives any private cause of action that he may now or at any later time have against any other Party or Releasees pursuant to 42 U.S.C. § 1395y in relation to the Incident. Mr. Hogenauer further agrees for himself, his heirs, agents, executors, administrators, and assigns to fully and expressly indemnify, save and hold harmless and defend the other Parties and Releasees from and against all claims, demands, causes of action, damages, costs and losses, and liabilities arising out of any lien or claim described herein. In the event of any claim, lien, demand, cause of action described herein, Mr. Hogenauer agrees to promptly comply with reasonable requests for information or documents.

2.5. The Parties acknowledge that they may hereafter discover facts or circumstances different from, or in addition to, those that they now know or believe to be true with respect to this Agreement and/or the released claims, and the Parties agree that this Agreement shall nevertheless be and remain fully effective in all respects. Each Party represents that he or it has independently evaluated the risk and has come to his or its own conclusion regarding the legality of this Agreement. Each Party agrees that it will not initiate, or cause to be initiated, any challenge to the legality of this Agreement.

2.6. The monetary payments required by this Agreement shall be made within 30 days of the date this Agreement is fully executed.

2.7. Mr. Hogenauer shall file a request for dismissal with prejudice of Riverside Superior Court Case No. RIC1605766 in its entirety within 5 days of delivery of the monetary payments due him under the Agreement.

2.8. Except as otherwise provided in section 2.9 below, it is expressly understood that each Party shall bear its own costs and attorney fees with respect to Riverside Superior Court Case No. RIC1605766 and with respect to all other claims released herein.

2.9. In an action brought to enforce this Agreement, an action which claims a breach of this Agreement, or an action wherein this Agreement is successfully raised as a defense, the prevailing party or parties shall be entitled to recover reasonable attorney fees and costs.

2.10. The Parties to this Agreement have each been represented by independent legal counsel in negotiating the settlement reflected by this Agreement and in drafting this Agreement. They and their attorneys have made such investigations of the facts concerning this Agreement as they have felt was necessary, they have each relied upon their own and their own legal counsel's investigations and not upon any representations of any Party in deciding to enter into this Agreement, except for the representations expressly set forth in this Agreement.

2.11. The language of this Agreement is the product of the mutual effort of the Parties and their respective legal counsel. This Agreement shall be construed fairly as to all Parties, and it shall not be construed for or against any Party on this basis to which that Party participated in drafting it.

2.12. This Agreement shall be governed by California law and the Riverside Superior Court shall retain jurisdiction pursuant to Code of Civil Procedure section 664.6 to enter judgment pursuant to the terms of the Settlement Agreement and to enforce performance in full of the Settlement Agreement. The venue for any action relating to this Agreement shall be the Superior Court for the County of Riverside.

2.13. This Agreement may be pleaded or asserted by or on behalf of the Parties or Releasees as a defense and bar to any action or claim that may be brought against a Party or Releasee by anyone with respect to any of the matters within the scope of this Agreement, excepting only the obligations of this Agreement.

2.14. This Agreement constitutes a single, integrated contract expressing the Parties' entire Agreement concerning its subject matter. All prior discussions and negotiations concerning the subject matter of this Agreement have been merged and integrated into, and are superseded by, this Agreement. This Agreement may not be modified except by writing signed by all Parties to be bound by the modification.

2.15. The individuals signing on behalf of any entity represent that they have proper

authority to do so.

2.16. This Agreement may be executed in counterparts, including facsimile and electronically transmitted counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument.

**CAUTION: READ BEFORE SIGNING**

DATED: \_\_\_\_\_

By: \_\_\_\_\_  
ROBERT HOGENAUER

DATED: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Position: \_\_\_\_\_

For FRONTIER CALIFORNIA, INC.

DATED: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Position: \_\_\_\_\_

For R.J. NOBLE COMPANY

DATED: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Position: \_\_\_\_\_

For CITY OF LAKE ELSINORE

APPROVED AS TO FORM:

DATED: \_\_\_\_\_

LAW OFFICES OF DAVID C. SIEGEL

By: \_\_\_\_\_  
DAVID SIEGEL  
ATTORNEY FOR ROBERT  
HOGENAUER

DATED: \_\_\_\_\_

DIAMOND & DRAGOJEVIC, LLP

By: \_\_\_\_\_  
SCOTT R. DIAMOND  
ATTORNEYS FOR FRONTIER  
CALIFORNIA, INC.

DATED: \_\_\_\_\_

GIBBS & FUERST, LLP

By: \_\_\_\_\_  
MICHAEL T. GIBBS  
KEVIN L. BORGEN  
ATTORNEYS FOR CITY OF LAKE  
ELSINORE

DATED: \_\_\_\_\_

WOOD, SMITH, HENNING & BERMAN LLP

By: \_\_\_\_\_  
JASON C. GLESS  
COURTNEY A. JAKOFSKY  
ATTORNEYS FOR R.J. NOBLE  
COMPANY