

04/25/19

City Council Special Meeting

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agenda posted

COMPROMISE AND RELEASE AGREEMENT

City of Lemoore v. Holly Andradé Blair, Kings County Superior Court, Case No. 19C-0043

This Compromise and Release Agreement (“Agreement”) is made by and between the City of Lemoore (“City” or “Petitioner”) and Holly Andradé Blair (“Respondent”) (referred to herein collectively as the “Parties” or individually as “Party”) to resolve all claims, issues, and disputes in *City of Lemoore v. Holly Andradé Blair*, Kings County Superior Court, Case No. 19C-0043 (“the Action”).

RECITALS

WHEREAS, Respondent was elected to serve as a member of the City of Lemoore City Council on November 8, 2016, and was sworn into office on December 6, 2016;

WHEREAS, State law, the Lemoore Municipal Code (the “Code”) and the Lemoore Council Rules of Procedure (the Rules”) provide certain administrative and procedural due process protections, and confidential treatment related to complaints and adverse comments about City employees or bona fide volunteers;

WHEREAS, Respondent has made repeated public statements directed at the job performance of certain City employees or bona fide volunteers;

WHEREAS, as a result of such public comments, two public safety officers did file four internal complaints regarding Respondent’s conduct, alleging that Respondent’s conduct threatens to undermine their credibility, standing in the community, ability to perform as public safety officers, and effectiveness in supporting criminal prosecutions to their detriment, Respondent denies those assertions;

WHEREAS, on or about August 21, 2018, the Lemoore City Council approved and adopted Resolution No. 2018-42 censuring Respondent for, among other things, discussing private personnel matters publicly, failing to direct her concerns and complaints related to City staff to the City Manager, and making unsupported, public allegations of dishonesty about City employees (the “Censure”), Respondent denies those assertions;

WHEREAS, on November 2, 2018, the City sent Respondent a cease-and-desist letter requesting Respondent, among other things, cease and desist making public comments that “infringe or could infringe upon the rights of [] City employees”;

WHEREAS, despite the censure and the City’s request that she cease and desist, Respondent stated on several occasions that she would not stop making such public comments and, in fact, did not stop.

WHEREAS, on or about March 18, 2019, Respondent filed an anti-SLAPP special motion to strike the petition (the “anti-SLAPP”), triggering additional pleadings, legal argument before the Court, and the expenditure of additional fees and costs; and

WHEREAS, the Parties now wish to resolve all claims, issues, and disputes related to the Action and all motions related thereto, including, but not limited to, the anti-SLAPP. The Parties desire to protect the privacy rights of City employees or volunteers as well as the First Amendment and protect City’s employees’ due process rights, and to protect the City liability.

NOW. THEREFORE, in consideration of the mutual promises and covenants herein, and for other good and valuable consideration, the Parties have agreed to resolve the Action, without any admission of liability or wrongdoing, and agree as follows.

TERMS AND CONDITIONS

1. **Recitals.** The statements and recitals set out above are incorporated herein by reference.
2. **Public Comment.** Respondent agrees to refrain from publicly making or adopting any negative comments about individual City employees or volunteers, including the City Manager, whether by name, rank or other identifying information from which one could infer their identity. Respondent further agrees to direct any and all such comments regarding individual City employees or volunteers to the City Manager or his or her designee consistent with State law, the Code and the Rules. For the City Manager, Respondent shall address any concerns in a properly agendized closed session under City Manager evaluation. Respondent shall remain free to criticize the City Council, city departments, or the City government as a whole, consistent with the First Amendment, State law, the Code, and the Rules.
3. **Release Payment.** Petitioner agrees to pay Respondent’s attorneys’ fees and costs in this matter in the amount of \$38,000 in three payments as follows: \$11,000 within 30 days following final execution of this Agreement, \$11,000 by July 30, 2019, and \$16,000 by July 30, 2020. The payment will be made in the form of a check or warrant made out to the Law Firm of Melo and Sarsfield, LLP, and shall be delivered to the firm at their business address in Visalia, California. This payment is not an admission of liability or agreement that any fees are owed either under the current litigation or as a result of Respondent’s Anti-SLAPP Motion.
4. **The Censure.** In the event Respondent agrees to conform her behavior, by signing this agreement, consistent with paragraph 2 above immediately following the adoption of this Agreement, Petitioner agrees to forthwith relieve Respondent of the restrictions set forth in the Censure and to allow Respondent to serve on committees and boards in her capacity as a City Council Member and to represent the City and the Council at public functions in her official capacity on the same terms and conditions as other City Council Members.

5. **Enforcement.** Any violation of this Agreement will give rise to penalties for each violation, in the amount of \$1,000.00 to be paid by the Party who has committed the violation to the other Party. In the event litigation becomes necessary to enforce this Agreement, including but not limited to this enforcement provision, the prevailing Party in the litigation will also be entitled to recovery of all reasonable attorneys' fees and costs associated with such litigation and enforcement efforts.

6. **Continuing Jurisdiction and Dismissal.** The Court shall adopt this Agreement and retain jurisdiction over the Action and this Agreement until December 31, 2020; the end of Respondent's current term; or the end of her second term following re-election, whichever occurs later. At the end of Respondent's service as a Council Member for the City of Lemoore, Petitioner will file a Request for Dismissal of the Action with prejudice. Petitioner will provide Respondent notice, by way of a file-stamped copy of Petitioner's Request for Dismissal, sent via email and regular U.S. mail to the Respondent's attorneys, on the day the same is filed with the Court. The Parties understand and agree that, as a consequence of Petitioner's filing of the Request for Dismissal, the Action will become closed. The Parties agree and waive any and all objections to Court monitoring the social media presence or sites of all Council Members for City of Lemoore and City of Lemoore social media presence or sites to ensure compliance with this Agreement.

Upon the execution of this Agreement by both parties, Respondent will dismiss with prejudice the Anti-SLAPP Motion filed in the present case. Respondent will provide Petitioner notice, by way of a file-stamped copy of Respondent's Request for Dismissal, sent via email and regular U.S. mail to the Petitioner's attorneys, on the day the same is filed with the Court.

7. **Ratification by City Council and Effective Date.** This Agreement shall be executed by the Parties and adopted by the Court as indicated below. This Agreement shall become binding and effective only upon the execution by both Parties, and upon ratification by the City Council.

8. **No Admission of Liability.** It is understood and agreed that this Agreement is a compromise of disputed claims and that nothing in this Agreement shall be construed as an admission of liability by any Party.

9. **Release of Claims.** The Parties mutually agree and accept said terms and conditions as set forth in this Agreement, including the payment set forth in paragraph 3 herein, in full settlement and compromise of the above-entitled matters described as the Action and agree that same shall fully and forever discharge and release all claims and causes of action, or appeal rights, whether now known or now unknown, which either Party has, or might have or could have asserted, against the other Party, its officials, employees, representatives or agents, in the Action, arising out of the incidents, pleadings and/or the anti-SLAPP special motion to strike, which are the subject thereof, including restitution, disgorgement, damages, incentive or enhancement award, attorneys' fees and costs.

10. **Civil Code section 1542.** This Agreement includes an express waiver by the Parties of Civil Code section 1542, which states:

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.

Therefore, the Parties expressly acknowledge that this release is intended to include in its effect, without limitation, all claims and causes of action that they do not know or suspect to exist in their favor and that this release contemplates the extinguishment of all such claims and causes of action.

11. **Joint Statement.** The Parties agree to issue the Joint Statement attached hereto as Exhibit A following execution of this agreement and approval of the Court. No other comments regarding this litigation shall be made except as required by law, including but not limited to court orders, the California Public Records Act, Government Code section 6250 *et. seq.*, to enforce this Agreement, or to defend against any lawsuit filed against the Parties, jointly or individually.

12. **Representation by Counsel.** Each of the Parties acknowledges and agrees that they have been represented by independent legal counsel of their own choice throughout the negotiation of this Agreement and that they are executing this Agreement having had sufficient opportunity to investigate the facts and obtain advice of such counsel.

13. **Voluntary Agreement.** Each Party affirms and acknowledges that she/it has read, fully appreciates, and understands the words, terms, and provisions of this Agreement, is entirely satisfied with the settlement described, and has duly executed this Agreement voluntarily and of her/its full free will and accord. Each Party had an opportunity to review and consult with their respective legal counsel on this matter.

14. **Entire Agreement.** This Agreement constitutes the entire agreement between Petitioner and Respondent. No other promises, agreements, or statements between the Parties shall be binding unless made in writing and signed by all Parties hereto.

15. **Amendments.** This Agreement cannot be changed or supplemented orally and may be modified or superseded only by written instrument executed by all Parties.

16. **Interpretation.** Each of the Parties acknowledges and agrees that this Agreement is to be construed as a whole according to its fair meaning and not in favor of nor against any of the Parties as draft-man or otherwise.

17. **Other Documents.** The Parties hereby agree to execute all such other documents and to take all such other action as may be reasonably necessary to effectuate the purpose of this Agreement.

18. **Choice of Law.** This Agreement shall be governed by and interpreted under the laws of California applicable to instruments, persons, transactions and subject matter which have legal contacts and relationships exclusively within the State of California.

19. **Severability.** If any provision of this Agreement is held to be invalid, void or unenforceable, the remaining portions of the Agreement shall remain in full force and effect.

20. **Warranty of Authority.** Each of the persons signing this Agreement represents and warrants that such person has been duly authorized to sign this Agreement on behalf of the Party indicated, and each of the Parties by signing this Agreement warrants and represents that such party is legally authorized and entitled to enter into this Agreement.

21. **Binding Effect.** This Agreement is for the benefit of an shall be binding on all Parties and their successors, assigns, heirs, executors, administrators, predecessors, partnerships, employees, attorneys, insurers sureties, agents, representatives, directors, officers, receivers, trustees and/or stockholders.

22. **Execution in Counterparts.** This Agreement may be executed in several counterparts and, subject to the requirements of paragraph 8 herein, shall be deemed legally effective at such time as counterparts thereof duly executed on behalf of all Parties have been furnished and delivered to the attorneys for all Parties to this Agreement. Signed copies and facsimile versions of this Agreement shall have the same force and effect as signature of the original.

IN WITNESS WHEREOF, the Parties hereto have executed the Agreement as dated below.

Dated: _____, 2019

City of Lemoore, Petitioner

Name:
Title:
City of Lemoore

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Dated: _____, 2019

Holly Andradé Blair, Respondent

Holly Andradé Blair
As an Individual and as Council Member

ADOPTED BY THE COURT:

Dated: _____, 2019

Judge Kathy Ciuffini
Kings County Superior Court

EXHIBIT A

The City of Lemoore continues to serve the interests of all residents and employees. These commitments are front and center in the decision to reach a settlement agreement in this case of *City of Lemoore v. Holly Andradé Blair*. As leaders who serve with the trust of Lemoore residents, we make this agreement to provide greater protection for our employees, balanced against the free speech rights of all residents. Additionally, this agreement relieves the City of future litigation costs and expenses and aims to create a more positive and lasting impact to our City. Today's decision was also impacted by the fact that we take our fiduciary role very seriously. We believe our residents have a right to know how City resources have been used, and it is imperative to inform our residents of costs related to legal action in matters related to this case. The settlement agreement is a public document and the particular terms can be viewed in the agreement. However, in the spirit of transparency, including the cost of settlement, which none of the monies will be paid to Council member Blair, the City has spent nearly \$100,000 litigating this case. We are confident that this direction will allow the City of Lemoore to move forward in its effort to protect and serve our residents and bring about continuity with the Council, City employees, and all residents of Lemoore.

RESOLUTION NO. 2019- 15

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LEMOORE
REGARDING RESTRICTIONS PLACED ON COUNCIL
MEMBER HOLLY ANDRADÈ BLAIR**

WHEREAS, the City Council of the City of Lemoore adopted Resolution 2018-42 on August 21, 2018, publicly censuring Council Member Blair and removing Council Member Blair from any committee or board she sits on in her capacity as a Council Member and banned her from representing the City and the Council at public functions in any official capacity;

WHEREAS, the City Council of the City of Lemoore has agreed to remove this restriction placed on Council Member Blair and Council Member Blair will be allowed to once again to sit on committees or boards in her capacity as a Council Member and to represent the City and the Council at public functions in her official capacity as approved by the Council majority;

NOW, THEREFORE, the City Council hereby determines that Council Member Blair will be allowed to once again to sit on committees or boards in her capacity as a Council Member and to represent the City and the Council at public functions in her official capacity as approved by the Council majority.

This resolution shall be effective immediately after its passage and approval.

Certification. The City Clerk shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions.

* * * * *

The foregoing resolution was approved and adopted at a special meeting of the City Council of the City of Lemoore held on the 25 day of April 2019, by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

APPROVED:

Edward Neal, Mayor

ATTEST:

Marisa Avalos, City Clerk

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