

## Settlement Agreement and Release

This Settlement Agreement and Release (hereinafter "Agreement") is entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 2003 between the Deborah A. Lane and Joshua E. Loya (collectively "Plaintiffs"), on the one hand, and the Santa Cruz Metropolitan Transit District ("Santa Cruz Metro") on the other.

### WITNESSETH

WHEREAS, Santa Cruz Metro is a political subdivision of the State of California and operates a fixed route transit system in the metropolitan area of Santa Cruz, California;

WHEREAS, Plaintiffs have brought suit in the United States District Court for the Northern District of California, Case Number C 02-01808 (the "Lawsuit"), in which they allege that Santa Cruz Metro violated various California and federal statutes and regulations;

WHEREAS, Santa Cruz Metro does not concede that it has violated these California and federal statutes and regulations; and

WHEREAS, Plaintiffs and Santa Cruz Metro now wish to effect a complete resolution and settlement of all claims, disputes and controversies relating to the allegations made by Plaintiffs and to resolve their differences and disputes by settling the Lawsuit.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the Parties agree as follows:

#### **1 Definitions.**

In addition to the terms defined elsewhere in the Agreement, the following terms shall have the meanings set forth below.

- 1.1 "Bus" means a vehicle used to provide public transportation on a fixed route.
- 1.2 "Bus stop" means a designated point on a fixed route at which a bus stops for the purpose of boarding or deboarding passengers.
- 1.3 "Call stop" means a bus stop that is announced to passengers on board a bus whether or not such bus stop is requested to be announced by a passenger.
- 1.4 "Fixed route" means a prescribed route on which a bus is operated according to a fixed schedule.
- 1.5 "Talking technology equipment" means equipment that can be programmed to announce call stops and fixed routes.

1.6 “Unannounced stop” means a bus stop that is not a call stop.

## **2 Required Announcements.**

2.1 Santa Cruz Metro will use buses with talking technology equipment on all routes on the following schedule:

2.1.1 With the exception of buses used on the Highway 17 route, talking technology equipment will be installed on all buses used on fixed routes on or before July 31, 2003.

2.1.2 Metro has ordered new buses for use on its Highway 17 route. Metro will install and program talking technology equipment on these buses within 45 days of the date that these buses are delivered and accepted by Metro. Metro will not place these buses in service until talking technology equipment has been programmed and installed on the buses.

2.2 Santa Cruz Metro will program the talking technology equipment so that:

2.2.1 it announces every bus stop as a call stop except those within 600 feet of an earlier stop;

2.2.2 it announces the fixed route number each time the door is opened while the bus is in service.

2.2.3 Notwithstanding the provisions of sections 2.2.1. and 2.2.2., above, the parties recognize that there may be occasions in which the talking technology equipment cannot be programmed to call every stop. The parties also recognize that problems not envisioned may arise that will hinder the operation of the talking bus technology equipment. Accordingly, the parties hereby agree that the inability to effectuate a call stop otherwise required to be made under this Agreement shall not be a violation of this Agreement if such inability is due to the limitations of the talking bus technology equipment in conjunction with a specific route.

2.3 At the request of an individual with a disability, Santa Cruz Metro will announce any bus stop. In addition, at the reasonable request of a person with a disability, Santa Cruz Metro personnel on duty at the time of the request will advise such disabled person of the location of the bus serving the disabled person's desired route, or, if the Metro personnel does not know the correct route, he/she will direct the disabled person to a knowledgeable Metro employee who can provide the requested information.

- 2.4 Whether by bus operators or using talking technology equipment, bus stops as defined herein will be announced loud enough to be heard.
- 2.5 Whether by bus operators or using talking technology equipment, Santa Cruz will make a good faith effort to announce the fixed route numbers required to be announced under this Agreement at a volume that can be heard by passengers waiting at bus stops.

### **3 Bus Operator Discipline.**

Santa Cruz Metro will ensure that complaints by riders relating to violations of the policies set forth in Paragraph 2 above will be handled in the same manner as other types of complaints received by Santa Cruz Metro.

### **4 Monitoring.**

- 4.1 Throughout the Term of this Agreement, Santa Cruz Metro will monitor compliance with Paragraph 2 (“Monitoring”) as follows:
  - 4.1.1 Santa Cruz Metro will retain an outside agency (the “Agency”) to conduct Monitoring. Santa Cruz Metro will ensure that the Agency uses personnel who are not easily identifiable and that such personnel will conduct Monitoring in such a way as to make it difficult to identify them as monitors.
  - 4.1.2 As it has done in the past, Santa Cruz Metro will ensure that the Agency spends at least 100 hours per quarter riding its buses to conduct Monitoring (“Basic Monitoring”).
  - 4.1.3 In addition to Basic Monitoring, if Santa Cruz Metro receives five (5) complaints in any given quarter that a given operator has violated any provision of this Agreement, it will retain the Agency to monitor that operator by riding his or her buses at least two (2) times in the next three (3) months (“Targeted Monitoring”).
  - 4.1.4 The information tracked and recorded by monitors in the future will be consistent with the information that monitors have tracked and recorded in the past.

### **5 Damages.**

- 5.1 Within thirty (30) days of the execution of this Agreement, Santa Cruz Metro will pay \$5,000 to Deborah A. Lane by sending a check in this amount, made out to

her, to Fox & Robertson, P.C. at the address in Paragraph 12. This amount will satisfy in full Ms. Lane's claims for all compensatory, statutory and punitive damages.

- 5.2 Within thirty (30) days of the execution of this Agreement, Santa Cruz Metro will pay \$5,000 to Joshua E. Loya by sending a check in this amount, made out to him, to Fox & Robertson, P.C. at the address in Paragraph 12. This amount will satisfy in full Mr. Loya's claims for all compensatory, statutory and punitive damages.
- 5.3 Address and taxpayer identification necessary to preparation of checks and 1099 tax form documentation will be provided to Santa Cruz Metro by side letter from Plaintiffs' counsel within three (3) days of execution of this agreement.

## **6 Attorneys' Fees and Costs**

Within thirty (30) days of the execution of this Agreement, Santa Cruz Metro will pay \$135,000 to Plaintiffs' Counsel by sending a check in this amount, made out to Fox & Robertson, P.C., to the address in Paragraph 12. This amount will satisfy in full Plaintiffs' claims for all attorneys' fees and costs incurred through the date of execution of this Agreement. This amount does not include any fees or costs incurred in litigation pursuant to the California Public Records Act, and nothing in this Agreement limits Plaintiffs or their counsel from seeking fees or costs in connection with such litigation.

## **7 Disposition of Documents and Solicitation of Clients.**

- 7.1 Plaintiffs and Plaintiffs' counsel agree that, at the end of the Term of this Agreement, they will return to Santa Cruz Metro all hard copies of documents produced in discovery by Santa Cruz Metro that do not contain attorney work product or attorney-client communications.
- 7.2 Plaintiffs and Plaintiffs' counsel agree that, at the end of the Term of this Agreement, they will destroy all hard copies of documents produced in discovery by Santa Cruz Metro that contain either attorney work product or attorney-client communications.
- 7.3 Plaintiffs and Plaintiffs' counsel agree that, with respect to any electronic copies of any documents produced in discovery by Santa Cruz Metro, they will either delete those documents or, if they are burdensome to find and delete, will not access those documents following the end of the Term of this Agreement.
- 7.4 Plaintiffs' counsel agree that they will not actively solicit clients with potential claims against Santa Cruz Metro. However, nothing in this Agreement prohibits

in any way Plaintiffs' counsel from representing clients with potential claims against Santa Cruz Metro as long as such clients were not actively solicited by Plaintiffs' counsel.

## **8 Term of Agreement.**

The Term of this Agreement will be two years from the date on which the last bus with talking technology equipment is put into service by Santa Cruz Metro. When that event occurs, Santa Cruz Metro will provide notice to Plaintiffs at the addresses in Paragraph 12.

## **9 No Admissions.**

The parties to this Agreement understand and acknowledge that this Agreement constitutes a compromise and settlement of disputed claims. No action taken by the parties hereto, or any of them, either previously or in connection with the Agreement, shall be deemed or construed to be:

- 9.1 An admission of the truth or falsity of any claims heretofore made;
- 9.2 An acknowledgment or admission by either party of any particular fault or liability as to the other party.

## **10 Release and Dismissal.**

- 10.1 Plaintiffs, for themselves, their heirs and assigns, do hereby forever release and discharge Santa Cruz Metro, its Board of Directors, subsidiaries, affiliates, successors, predecessors, assigns, directors, agents, employees, insurers, attorneys and representatives (collectively, referred to as the "Released Parties") from any and all causes of action, actions, judgments, liens, indebtedness, damages, losses, claims, liabilities and demands of whatsoever kind and character in any manner whatsoever arising from or relating to the accessibility of the Santa Cruz public transportation system, and/or retaliation by any of the Released Parties, occurring prior to the execution of this Agreement. Plaintiffs understand and expressly agree that this Agreement extends to all of their claims of every nature and kind, known or unknown, suspected or unsuspected, past, present, or future, arising from or relating to any alleged violation by the Released Parties occurring prior to the execution of this Agreement, relating to the accessibility of the Santa Cruz public transportation system for persons with disabilities and/or retaliation by any of the Released Parties.
- 10.2 Plaintiffs and Santa Cruz Metro mutually waive any and all rights and benefits conferred by the provisions of Section 1542 of the Civil Code of the State of California. This section provides as follows:

“A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.”

- 10.3 Within fifteen (15) days of execution of the Agreement by all parties, Plaintiffs shall move to dismiss the Lawsuit with prejudice, subject to the reservation of jurisdiction by the U.S. District Court to enforce the Agreement,

## **11 Entire Agreement.**

This Agreement contains all the agreements, conditions, promises and covenants among Santa Cruz Metro, Plaintiffs, and their respective counsel regarding matters set forth in it and supersedes all prior or contemporaneous agreements, drafts, representations or understandings, either written or oral, with respect to the subject matter of the present Agreement.

## **12 Communications to Santa Cruz Metro and Plaintiffs’ Counsel.**

All notices or communications required by this Agreement shall be in writing by facsimile and U.S. Mail or overnight delivery service addressed as follows:

- 12.1 To Plaintiffs’ counsel (or their successors):

Timothy P. Fox, Esq.  
Fox & Robertson, P.C.  
910 - 16th Street  
Suite 610  
Denver, CO 80202

Linda D. Kilb, Esq.  
Disability Rights Education & Defense Fund  
2212 Sixth Street  
Berkeley, CA 94710

- 12.2 To Santa Cruz Metro:

Margaret Gallagher, Esq.  
District Counsel  
Santa Cruz Metropolitan Transit District  
370 Encinal Street  
Suite 100  
Santa Cruz, CA 95060

**13 Severability.**

If any such provision or any part of this Agreement shall at any time be held unenforceable, then the remaining provisions of this Agreement shall remain effective and enforceable.

**14 Execution in Counterparts.**

This Agreement may be signed in counterpart and shall be binding and effective immediately upon execution of one or more counterparts by all parties. All parties shall sign three copies of this document and each such copy shall be considered an original.

**15 Governing Law.**

This Settlement Agreement shall be governed and construed in accordance with the laws of California.

Santa Cruz Metropolitan Transit District

Deborah A. Lane

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

\_\_\_\_\_

Its: \_\_\_\_\_

Joshua E. Loya

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APPROVED AS TO FORM:

RIVKIN RADLER LLP

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D. Douglas Shureen  
1330 North Dutton Avenue  
Suite 200  
Santa Rosa, CA 95401-4646

Attorney for Defendant

APPROVED AS TO FORM:

FOX & ROBERTSON, P.C.

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Attorneys for Plaintiffs