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12 UNITED STATES DISTRICT COURT  
13 NORTHERN DISTRICT OF CALIFORNIA  
14 SAN JOSE DIVISION

15 JOSEPH CIAMPI,

16 Plaintiff,

17 v.

18 CITY OF PALO ALTO, et al.,

19 Defendant.

Case No. C 09-02655 LHK (PSG)

**DEFENDANTS' OPPOSITION TO  
MOTION TO ENFORCE THE  
SETTLEMENT AGREEMENT**

20  
21 TO: PLAINTIFF JOSEPH CIAMPI:

22 Defendants City of Palo Alto and Palo Alto Police Officers Wagner, Temores and Burger  
23 ("City") hereby submit the following opposition to the Motion to Enforce Settlement Agreement and  
24 a Second Motion for Sanctions Against Defendants and Their Attorneys filed by Plaintiff Joseph  
25 Ciampi ("Ciampi") in this action.

26 **I. INTRODUCTION**

27 Ciampi's motion purports to seek enforcement of the settlement agreement reached on  
28 August 9, 2011. However, Ciampi seeks to insert terms that are far beyond the scope of the

1 agreement. Ciampi's proposed terms would give him the benefit of the settlement proceeds without  
2 requiring him to comply with the terms of the agreement stated on the record. Specifically, Ciampi  
3 seeks the ability to settle this lawsuit, and immediately file new claims based on the same events  
4 against individual employees agents or contractors for the City<sup>1</sup>.

5 Ciampi makes numerous specious claims in a lengthy brief. Rather than respond to each and  
6 every allegation, the City's response below will address those issues relevant to the enforcement of  
7 the settlement agreement. The actual issues are quite simple. The City seeks only compliance with  
8 those settlement terms agreed to and acknowledged on the record, which include a full release and  
9 dismissal of this action with prejudice. In order to obtain compliance, the City requests that the Court  
10 exercise its inherent authority and compel Ciampi to sign a complete settlement agreement and  
11 general release so that this action may properly be dismissed.

## 12 **II. BACKGROUND**

13 On August 9, 2011 the parties agreed to a settlement agreement that included a full dismissal  
14 of this action with prejudice and a general release with a full waiver of Civil Code section 1542.  
15 Transcript of Proceedings at 3: 12-13, *Ciampi v. City of Palo Alto* (No. 195) (hereinafter  
16 "Transcript"). Ciampi now seeks to enforce the settlement as a partial dismissal with only specified  
17 releases and only a limited waiver of Civil Code section 1542. Specifically, Ciampi claims that the  
18 settlement agreement includes a dismissal and release of claims only against the parties present at  
19 the August 9, 2011 settlement conference and that it does not include any City agents, servants,  
20 employees, directors, contractors, or representatives who were not specifically referenced on the  
21 record. See e.g. Plaintiff's Motion to Enforce Settlement Agreement, 7: 5-16. This claim is contrary  
22 to the record of the proceedings. Transcript at 4:20-5:12.

23 The City agrees with Ciampi that scope of the release was not intended to preclude future  
24 actions against third parties. However, the settlement was intended to include the City, which  
25 necessarily includes any person acting on behalf of the City, including the City's past and present  
26 agents, servants, employees, directors, contractors, and representatives. If Ciampi is allowed to

27 \_\_\_\_\_  
28 <sup>1</sup> The specific claims that Ciampi intends to file are not clear, though it appears from his various  
filings in this case that Ciampi intends to file suit against the City's experts, the City's  
Independent Police Auditor and possibly the City's in-house attorneys and outside counsel.

1 dismiss his lawsuit against the City and the currently named individual defendants and simply  
2 substitute new individual City defendants, the dismissal is meaningless to the City.

### 3 **III. DISCUSSION/ANALYSIS**

#### 4 **A. The Settlement Agreement Reached on August 9, 2011 is binding on the parties.**

5 This Court has the inherent power to enforce a settlement agreement in a case pending before  
6 it. *Metronet Services Corp. v. U.S. West Communications*, 329 F.3d 986, 1013-1014 (9<sup>th</sup> Cir., 2003)  
7 (judgment vacated on other grounds by *Quest Corp. v. Metronet Services Corp.* 540 U.S. 1147.  
8 (2004)).

9 A settlement agreement made in open court on the record is binding on the parties. *Doi v.*  
10 *Halekulani Coporation*, 267 F.3d 1131, 1137 (9<sup>th</sup> Cir., 2002). “As long as the oral settlement was in  
11 fact authorized, the client's later refusal to sign the written agreement does not invalidate the  
12 settlement.” Cal. Prac. Guide Fed. Civ. Pro. Before Trial Ch. 15-C.

13 In this case, both parties agreed to the general settlement terms in open court and both parties  
14 stated that they intended to be bound by the agreement. Transcript at 4: 4-9. Further, by filing a  
15 motion intended to enforce the settlement agreement, Ciampi has acknowledged that the settlement  
16 agreement is binding on the parties and enforcement of the agreement is proper.

#### 17 **B. The terms of the settlement agreement are not subject to reasonable dispute.**

18 The scope of the agreement is that articulated by the Court on the record. Specifically, the  
19 terms of the settlement include a “full and complete dismissal” of this action with prejudice and a  
20 general release with a full waiver of Civil Code section 1542. Transcript at 3: 12-13. In response to  
21 a question from Mr. Ciampi regarding the meaning of the term “with prejudice,” the Court stated  
22 “You’re done. This is it. Everything ends today, arising out of this incident. Nobody can do  
23 anything to anybody anymore.” Transcript at 5: 9-11.

24 An oral settlement agreement made on the record in open court need only contain the basic  
25 material terms. *Doi, Supra*, 276 F. 3d at 1138. The oral agreement need not contain every specific  
26 detail of the agreement. For example, in *Doi*, the plaintiff disputed the enforcement of “various  
27 terms of the written settlement agreement that were not among those terms agreed to in open court.”  
28 *Id.* at 1139. Among the terms that the plaintiff objected to were terms elaborating on the provisions

1 of the oral settlement agreement. In that case, in upholding the lower court's enforcement of the  
 2 settlement, the 9<sup>th</sup> Circuit found that the plaintiff "failed to demonstrate how any of the terms in the  
 3 written settlement agreement are in discord with the terms of the agreement stated in open court."  
 4 *Id.* at 1140.

5 The same is true in this matter. In fact, at the suggestion of Chief Magistrate Judge James,  
 6 the City prepared a proposed settlement agreement that tracks exactly the agreement reached  
 7 between Ciampi and the City and stated in open court. Declaration of Donald A. Larkin in Support  
 8 of Opposition to Motion to Enforce Settlement Agreement, Exhibit A. The material terms agreed to  
 9 in court were:

- 10 1. Payment by the City to Ciampi of \$35,000, inclusive of costs and attorneys' fees;
- 11 2. A general release with a waiver of Civil Code section 1542;
- 12 3. A full and complete dismissal; and
- 13 4. No admission of fault, liability of wrongdoing by either party.

14 Transcript at 3: 4-14. Based on Ciampi's question about the scope of the settlement, the Court stated  
 15 "You're done. This is it. Everything ends today, arising out of this incident. Nobody can do  
 16 anything to anybody anymore." Transcript at 5: 9-11. The written agreement prepared by the City  
 17 contains only those material terms, with a release that reflects the exact language used by the Court  
 18 to describe the scope of the agreement.

19 **C. The City's actions seeking to enforce the terms of the settlement were proper.**

20 Ciampi has framed the City's attempts to obtain compliance with the terms of the settlement  
 21 agreement as "extortion." Plaintiff's Motion to Enforce Settlement Agreement at 3: 18- 6: 3.  
 22 Ciampi's arguments lack merit. Ciampi's claims come from the City's statement that if Ciampi  
 23 persisted in his refusal to sign the settlement agreement, the City would file a motion to enforce the  
 24 settlement agreement and would seek sanctions in the form of attorneys' fees. Plaintiff's Motion to  
 25 Enforce the Settlement Agreement at 4: 14-16. In fact, a motion to enforce the settlement  
 26 agreement is the proper means to require a party to sign a settlement agreement agreed to in a  
 27 settlement on the record. *Doi, supra*, 276 F. 3d at 1136 (as further emphasized by the fact that  
 28 Ciampi brought just such a motion shortly after the City informed him the City would do so). Where

1 a party incurs needless time and expense in filing a motion to enforce a settlement agreement that  
2 was made on the record, sanctions in the form of costs and attorneys' fees are appropriate. (see e.g.  
3 *Armstrong v. City & County of San Francisco*, C 01-2611 VRW MEJ, 2004 WL 2713068 (N.D. Cal.  
4 June 15, 2004) In recommending sanctions, the *Armstrong* Court stated that, because “. . . a  
5 representative of Plaintiffs' counsel acknowledged the enforceability of the settlements in open court,  
6 the Court finds that Defendant incurred needless time and expense in filing this motion to enforce.”)

7 While the City acknowledges its original intentions to seek sanctions, in the interest of  
8 prompt resolution of this matter, it has not requested sanctions in responding to the present motion.

#### 9 **IV. CONCLUSION**

10 The City's position is that all of Ciampi's causes of action arising out of the March 15, 2008  
11 incident were fully settled on August 9, 2011. Both parties understood the terms of the settlement  
12 and both parties stated their agreement on the record. The City is prepared to uphold its end of the  
13 bargain, but is unwilling to renegotiate the terms of the settlement because Ciampi now has cold feet.  
14 The City now requests that the Court exercise its inherent authority and require Ciampi to execute the  
15 settlement document and stipulated dismissal.

16  
17 DATED: September 23, 2011

18  
19 By: /s/ Donald A. Larkin  
20 Donald A. Larkin  
21 Assistant City Attorney  
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