

**SETTLEMENT AGREEMENT, RELEASE AND COVENANT NOT TO SUE**

THIS SETTLEMENT AGREEMENT, RELEASE AND COVENANT NOT TO SUE ("the agreement") is made and entered into between, on the one hand, the State of California (i.e., the Rules Committee of the California Senate) and Mr. Cliff Berg (hereinafter "defendants") and, on the other hand, Gary Artz (hereinafter "Artz"). Artz and defendants are sometimes collectively referred to herein as "the parties" and all agreements, releases and covenants referred to as having been made between the parties are intended to be between Artz, on the one hand, and defendants, on the other hand.

WHEREAS Artz was employed by defendant State of California during various times during and prior to June, 1991; and

WHEREAS Artz filed a complaint in the Superior Court of the State of California, Sacramento County, denominated and numbered *Artz v. State of California, Senate Rules Committee and Cliff Berg, et al.*, No. 531070 (hereinafter sometimes referred to as "the action"); and

WHEREAS said Superior Court action was brought against defendants, and was purportedly premised upon causes of action for violation of the California Fair Employment and Housing Act, Breach of Contract, Breach of Implied-In-Fact Contract, and Violation of Public Policy arising out of his employment and his termination therefrom; and;

WHEREAS all parties desire to resolve all claims and disputes between them and to avoid further litigation with its incident costs and expenses; and

WHEREAS the parties now agree that the disputes alleged in the action have been settled; and

WHEREAS Artz, based upon different theories than those in the action may have the right, but for this agreement, to file other claims or complaints against defendants or their current or former officers, agents, employees, representatives, or related agencies or entities arising out of Artz's employment or other business relationship as alleged in the action

or arising out of any other matter related to allegations in the action or similar allegations, or any other matters whatsoever; and

WHEREAS in consideration for this agreement, Artz and defendants now wish to release each other, their successors and assigns, and their current or former officers and/or directors, agents, employees, and affiliated agencies or entities (including but not limited to those named in the action), from any and all liabilities and obligations in any way related to Artz's employment with Defendant State of California, or any other matter whatsoever; and

WHEREAS plaintiff's counsel of record herein, Carl Stein, represents that to the best of his knowledge, no attorney, consultant, or other person or entity other than the law firm of Carl M. Stein, Attorney at Law, (or persons associated therewith) has an existing lien upon or the right to make any claim upon any portion of the proceeds of this settlement, and further represents that no attorney or attorneys other than attorneys affiliated with Mr. Stein have appeared in any court or administrative forum on behalf of Artz in connection with the disputes which are the subject of this agreement; and

WHEREAS each of the parties hereto declares and affirms that this agreement is entered into voluntarily and with the aid of legal counsel and that they have read this agreement and are fully aware of its contents and of its legal effect;

NOW THEREFORE, for valuable consideration the receipt and sufficiency of which are hereby acknowledged, and in consideration of the mutual covenants and agreements hereinafter expressed, the parties agree as follows:

#### GENERAL RELEASE

(1) Artz, on behalf of himself and his heirs, estate, executors, administrators, successors and assigns, fully releases and discharges Defendants and all agents, officers, directors, employees, attorneys, affiliated organizations, successors, assigns and insurers of Defendants, and each of them, from all actions, causes of action, claims, judgments, obligations, damages and liabilities, of whatsoever kind and character, occurring at any time or times prior to the date of this release including, but not limited to, any such claims arising out of or relating to Artz's employment with the State of California and/or any

acts or events involving him and Defendants or their agents. Artz represents and warrants that he has not assigned any such claim on his behalf. Further, Artz agrees that by this release he waives any claim for damages or other remedy incurred at any time after the date of this release because of alleged continuing effects of any alleged acts or omissions involving Defendants that occurred on or before the date of this release, and any right to sue for monetary or injunctive relief against the alleged continuing effects of acts or omissions that occurred before the date of this release.

(2) Artz understands and expressly agrees that this release extends to all claims of every nature and kind whatsoever, known or unknown, suspected or unsuspected, past or present, which existed before the execution of this release including, but not limited to, any and all federal, state or local law claims, any claims involving sex, age, race, national origin, religious, disability, or other discrimination or harassment [including but not limited to actions under Title VII of the U.S. Civil Rights Act, the Age Discrimination in Employment Act, the California Fair Employment and Housing Act, or any federal, state or local anti-discrimination law or ordinance, and any claims in tort or contract related to his employment or to any acts or omissions of Defendants involving Artz]. Artz further understands and agrees that this release extends to all forms of damages or other relief of any kind whatsoever, including back-pay or benefits, punitive damages, compensation for emotional distress or other personal injury of any kind, injunctive or administrative relief, or any other remedy whatsoever.

#### **WAIVER OF SECTION 1542**

(3) The parties hereby expressly waive and relinquish all rights and benefits under Section 1542 of the California Civil Code which provides:

"Section 1542. 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."

(4) Each of the parties hereto understands the statutory language of Section 1542 of the California Civil Code but nevertheless elects to and hereby does release each of the other parties from all claims each may have against the other, whether known or unknown, arising from the subject matter of this agreement, and specifically waives any rights which each may have under said Civil Code Section. It is further agreed and stipulated by the parties that each of the parties hereto fully understands that if the facts or law with respect to this agreement or to the action are found hereafter to be other than or different from the facts now believed by him or his to be true, each expressly accepts and assumes the risk of such possible differences in facts or law and agrees that this agreement shall be and remain effective, notwithstanding any such differences.

#### COVENANT NOT TO SUE

(5) The parties hereby agree not to make any demand or claim, or commence, prosecute, cause or permit to be prosecuted, any action at law or in equity, or any proceeding of any description against defendants or the current or former officers and/or directors (including but not limited to those named in the action) agents, employees, servants, or affiliated agencies or entities of defendants on account of any grievance, personal injuries, compensatory or punitive damage, attorneys' fees, costs, loss of services, wages, benefits, or expenses arising out of, or that might thereafter arise out of, the employment or other business relationship of Artz as alleged in the action or any other currently existing matter whatsoever whether known or unknown.

#### DEFENDANTS' PROMISE/WITHHOLDING ALLOCATION

(6) Defendant State of California on behalf of itself and Cliff Berg agrees to pay to Artz the sum of Five Thousand Dollars (\$5,000.00).

(7) Zero percentage (0%) of said amount shall be regarded as compensation for back pay or benefits, nor shall any amount be subject to employer withholding. Rather, the entire amount shall be regarded and treated as compensation for matters which are not subject to employer withholding. The above allocation for withholding was determined by

the good faith estimate provided by counsel for Artz, Mr. Carl Stein, and is expressly accepted as valid and reasonable by all parties and their counsel. It is specifically regarded as reasonable because, among other reasons, much of the amount is needed to offset litigation expenses, and in light of Artz' re-employment, the only likely recovery Artz could have hoped for from the action would have been for non-taxable tort damages.

### **CONFIDENTIALITY AGREEMENT**

(8) In consideration of this agreement, the parties agree that the monetary terms of this agreement are a private matter, which will not be divulged in any form to others. Consequently, defendants and their officers and directors agree not to divulge the monetary terms of this agreement except to their directors, attorneys, accountants and financial consultants, who, in turn, agree not to divulge its contents. Artz agrees not to divulge the monetary terms of this agreement except to his attorneys, tax or financial advisors, and immediate family members, who, in turn shall not divulge its contents. Neither the parties to this agreement nor their agents, attorneys, accountants, or consultants, shall divulge the contents of this agreement during the course of discovery or otherwise in connection with any action or proceeding, but compliance with any order or other lawful compulsion by an entity or agent of government shall not constitute a breach of this confidentiality agreement. It is further agreed that this understanding regarding strict confidentiality is a material and essential provision of the agreement between these parties. If any party to this agreement can establish and prove a breach of this confidentiality clause, appropriate and provable damages can be sought in a competent legal forum.

### **AGREEMENT TO DISMISS WITH PREJUDICE**

(9) Artz agrees to dismiss with prejudice (each side to bear its own costs and attorney's fees) the Sacramento County Superior Court action denominated and numbered *Artz v. State of California, Senate Rules Committee and Cliff Berg, et al.*, No. 531070, within ten (10) days of receipt of the payment of money referred to in paragraph six (6) above, or, in the event judgment is entered against Artz, he agrees not to appeal, oppose or hinder in any

way the court's dismissal of said action and entry of dismissal in said action (each side to bear its own costs). Endorsed copies of said dismissal shall be mailed to attorneys of record for defendants immediately following approval by the clerk and/or court.

#### **ADDITIONAL DOCUMENTS**

(10) Each of the parties agrees to execute and provide, at the request of any other party, any and all such other documents or other written instruments as may reasonably be necessary to effectuate the purposes of this agreement.

#### **APPLICABLE LAW**

(11) This agreement shall be construed and interpreted in accordance with the laws of the State of California.

#### **ATTORNEY'S FEES**

(12) In the event of litigation relating to this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and costs.

#### **PARTIAL INVALIDITY**

(13) If for any reason any provision of this agreement shall be determined to be invalid or inoperative, the validity and effect of the other provisions hereof shall not be affected thereby.

#### **SUCCESSORS AND ASSIGNS**

(14) All promises, covenants, releases, and obligations referred to herein shall bind and inure to the benefit of the respective heirs, executors, administrators, successors and assigns of the parties hereto.

#### **MERGER**

(15) This Settlement Agreement, Release and Covenant Not to Sue incorporates the entire understanding among the parties, and recites the sole considerations for the promises exchanged herein. In reaching this agreement, no party has relied upon any representation or promise except those expressly set forth herein.

(17) THE PARTIES HERETO DECLARE AND AFFIRM THAT THIS AGREEMENT IS ENTERED INTO VOLUNTARILY AND WITH THE AID OF LEGAL COUNSEL AND THAT THEY HAVE READ THIS AGREEMENT AND ARE FULLY AWARE OF ITS CONTENTS AND OF ITS LEGAL EFFECT.

DATED: 2-21-94

GARY ARTZ

[REDACTED]

DATED: 3-21-94

CARL M. STEIN, ATTORNEY AT LAW  
[APPROVED AS TO FORM]

By:

[REDACTED]

Carl M. Stein  
Attorney of Record  
for Plaintiff Gary Artz

DATED: 3/24/94

STATE OF CALIFORNIA,  
SENATE RULES COMMITTEE

By:

[REDACTED]

Cliff Berg, Executive Officer

DATED: 3/24/94

CLIFF BERG, Individually

[REDACTED]

DATED: 3/25/94

NOSSAMAN, GUTHNER, KNOX & ELLIOTT

By:

[REDACTED]

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Defendants  
ornia, Senate Rules  
Committee and Cliff Berg