

ED#24678

4-30-07 spacer +  
Stephanie Easland  
going to get me a few  
of signed agreement +  
will not sue for  
implement + be done

**MUNDELL, ODLUM & HAWS, LLP**

ATTORNEYS AT LAW  
150 EAST HOSPITALITY LANE  
CITY ATTORNEY SUITE 470  
SAN BERNARDINO, CALIFORNIA 92408-3595  
TELEPHONE (909) 890-9500  
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LOS ANGELES COUNTY OFFICE  
WESTLAKE PLAZA  
382 DOWNTOWN CENTER  
SUITE 321  
WESTLAKE VILLAGE, CA 91361  
Telephone (805) 446-2221  
\* A Professional Corporation

JAMES A. ODLUM  
jao@munodlaw.com

A California Limited Liability Partnership including a Professional Corporation

Please Reply to San Bernardino Office

April 9, 2007

Ms. Stephanie Easland  
City Attorney's Office  
300 North D Street  
San Bernardino, CA 92418-0001

CITY OF SAN BERNARDINO  
PURCHASING STORES  
RECEIVED  
07 APR 26 PM 3:41

Re: Lewis v. Larry Pitzer, et al  
United States District Court, Central District, Case No. EDCV05-473 (SGLx)

Dear Stephanie:

\*PEHP Payoff % + requirements  
according to Fire Mgmt.

Enclosed is a copy of the settlement agreement signed by Capt. Lewis and the union. The agreement allows counterpart signatures, so this, together with the copy signed by Chief Pitzer and the City, constitute one enforceable settlement.

CalPERS  
determination  
attached

Very truly yours,

James A. Odlum  
James A. Odlum



JAG:ljb  
encl.

Mou Concessions to Fire Mgmt PR#4 2/28/10

In lieu - In place of,  
instead of

Fiscal Year - Add 120 Admin 7/1/xx  
186 - Adjust pay code (632) difference between Capt + BC  
186 - non concess <> (051) diff. between 8.7% + 10% 8/1/xx

#14 7/31/08 = 120 ✓ #14 7/31/12 = 120 ✓  
#15 8/1/09 = 120 ✓  
#14 7/31/10 = 120 ✓  
#14 1/31/11 = 120 ✓

**SETTLEMENT AND GENERAL RELEASE AGREEMENT**

This Settlement and General Release Agreement ("Agreement") is entered into by and between the San Bernardino Professional Firefighters Union, Local 891 ("Union") and Richard Lewis (collectively "Plaintiffs"), on the one hand, and the City of San Bernardino ("City") and Larry Pitzer (collectively "Defendants"), on the other hand, based on the following circumstances.

**RECITALS**

A. On May 4, 2005, Plaintiffs filed a complaint in the California Superior Court for the County of San Bernardino, Case No. SCV 125902, against Defendants. On June 2, 2005, Case No. SCV 125902 was removed to the United States District Court, Central District of California and assigned Case No. EDCV05-473 VAP (hereafter "Lawsuit").

B. In the Lawsuit, Plaintiffs alleged causes of action arising from or related to the decision to promote Dennis Moon rather than Mr. Lewis to Battalion Chief. Mr. Moon was promoted to Battalion Chief effective October 5, 2004.

C. On May 25, 2006, the Court granted summary judgment to the City, dismissing the City from the Lawsuit. The Court granted partial summary judgment to Chief Pitzer, dismissing all claims against him except the claim for violation of 42 U.S.C. § 1983.

D. Defendants deny, and continue to deny, any and all allegations by Plaintiffs of wrongful act or omission.

E. The parties desire to resolve all pending actions between them, without the further expenditure of time or expense of litigation and, for that reason, enter into this Agreement.

10/2/07 1:42 PM

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\_\_\_\_ RL  
\_\_\_\_ Union  
\_\_\_\_ City  
\_\_\_\_ LP

#24678

AGREEMENTS

In consideration of the promises, covenants and conditions hereinafter set forth, IT IS AGREED AS FOLLOWS:

1. SETTLEMENT PAYMENT. The City agrees to pay Plaintiffs the total sum of Seventy Five Thousand Dollars (\$75,000.00). This payment shall be without withholding for taxes, and represents full settlement of Plaintiffs' claims for attorneys' fees, emotional distress and other non-wage damages. Said payment shall be made by check payable to "Goldwasser & Glave, LLP", delivered to Plaintiffs' counsel within twenty days of Plaintiffs' execution of this Agreement, provided that Defendants' counsel has received by then this Agreement and the Stipulation for Dismissal with Prejudice, bearing the signatures of Plaintiffs' counsel, and the Request for Dismissal with Prejudice, bearing the signature of Plaintiffs' counsel.

pd. by A/P

2. OTHER SUBSTANTIVE TERMS OF THE SETTLEMENT. As further consideration for this settlement, the parties agree as follows:

- a) Mr. Lewis will be paid back pay from the effective date of Mr. Moon's promotion to the present, less required tax withholdings. The back pay shall consist of the difference between Mr. Lewis's actual pay as Captain for all regular hours and what Mr. Lewis would have been paid during such period for such hours had he been a Battalion Chief. 10/6/04
- b) Mr. Lewis shall be compensated from the date of this agreement forward as if he had been promoted to the position of Battalion Chief (including all current and/or future benefits granted to Battalion Chiefs) with the exception listed in subsection c, below. 3/23/07
- c) Mr. Lewis shall be compensated for all future overtime hours at the Captain rate; to wit, time and one half (1.5) the regular rate of pay Lewis would receive for Fire Captains of

He doesn't get only.

PR#11 6/15/07  
\$68,562.26  
attached spreadsheet

PR#12 6/30/07

PR#12 6/30/07

(PC 632) \* update EG  
2006 P-5 10367  
P-4 8107  
2260 mo.

2007 P-5 11040  
8512  
#3 2008 2528 mo.

2008 P-5 11504  
P-4 8783  
#19 2008 2721 mo.  
# 193 x 2 = 386 (904)

2009 P-5 11845  
#26 10/31/09 P-4 9087  
2338 mo.  
(904) # 117/58.50 x 5 = 292.50

2

Prior Year Holiday Payoff  
#6 3/31/08  
includes additional BC pay.

RL  
SM Union  
City  
LP

PR# 9 5/15/09  
max vac. increase  
+15% eff 4/1/09

Mr. Lewis' experience and length of service.

- d) For a period of two years from the effective date of this Agreement, the City shall not reassign Mr. Lewis from the station he is currently assigned to without his consent.

3. STIPULATION FOR DISMISSAL AND REQUEST FOR DISMISSAL. Plaintiffs counsel shall deliver to counsel for Defendants a Stipulation for Dismissal with Prejudice signed by counsel, in the form attached hereto as Exhibit "A", and a Request for Dismissal with Prejudice, signed by Plaintiffs' counsel, in the form attached hereto as Exhibit "B." Counsel for Defendants shall be authorized to file said Stipulation for Dismissal with Prejudice and Request for Dismissal with Prejudice after the payment specified in paragraph 1 has been made. Each party shall bear its, her or his own attorneys' fees and costs. Plaintiffs further agree not to pursue an appeal of the summary judgment in favor of the City.

4. RELEASE, DISCHARGE AND COVENANT NOT TO SUE. Except for those obligations created by or arising out of this Agreement, Plaintiffs, and each of them, on behalf of themselves and any others claiming by or through them, hereby release and covenant not to sue Defendants and their agents, attorneys, employees, officers, directors, affiliated entities, attorneys, successors and assigns, and representatives, if any, past and present, with respect to any and all causes of action, actions, wages, judgments, liens, indebtedness, damages, losses, claims, liabilities, and demands of whatever kind and character based on acts or omissions occurring on or before the effective date of this Agreement, including but not limited to, claims relating to or arising from the decision not to promote Mr. Lewis to Battalion Chief. Without otherwise limiting the scope of the releases contained in this Agreement, nothing in this paragraph or in paragraph 5 shall limit or affect: (a) the Union's right to pursue claims unrelated

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to Mr. Lewis or to the decision not to promote him to Battalion Chief or (b) Mr. Lewis' rights under the California Workers' Compensation Act related to claims and/or injuries unrelated to the decision not to promote him to Battalion Chief.

5. WAIVER OF STATUTORY PROVISIONS. Plaintiffs understand and expressly agree that this Settlement and General Release Agreement extends to all claims of every nature and kind, known or unknown, suspected or unsuspected, direct or derivative, vested or contingent, past, present or future, arising from or attributable to any allegedly unlawful act or omission or employment practice occurring on or prior to the date of execution of this Agreement, whether set forth in any claim, charge, complaint, or pleadings referred to herein or not, and that any and all rights granted to Plaintiffs under Section 1542 of the California Civil Code or any analogous state or federal law or regulation are hereby expressly waived. Said Section 1542 of the California Civil Code reads 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.

6. DENIAL OF ANY VIOLATION; AGREEMENT NOT EVIDENCE. This Agreement and the settlement embodied herein do not constitute an admission by Defendants of any of the matters alleged in the Lawsuit or of any violation of federal, state or local law, ordinance or regulation or of any liability or wrongdoing whatsoever. Neither this Agreement nor anything in this Agreement shall be construed to be or shall be admissible in any proceeding as evidence of liability or wrongdoing by Defendants. This Agreement may be introduced, however, in any

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proceeding to enforce the Agreement.

7. WARRANTY OF NON-TRANSFER OF RELEASED MATTER. Plaintiffs warrant and represent that they have not heretofore assigned or transferred to any person not a party to this Agreement any released matter or any part or portion thereof.

8. PAYMENT OF TAXES. Plaintiffs agree that they shall be exclusively responsible for the payment of federal and state taxes, if any, which may be due as the result of the consideration paid under this paragraph 1 of this Agreement. Plaintiffs hereby agree fully to indemnify and hold harmless Defendants from payment of taxes, interest or penalties that may be required by any government agency at any time due to Plaintiffs' failure to pay federal or state taxes on the consideration paid under this Agreement.

9. COMPLETE AGREEMENT. This Agreement constitutes and contains the entire agreement and understanding between the parties concerning settlement of the Lawsuit and the other subject matters addressed herein, and supersedes and replaces all prior negotiations and all agreements, proposed or otherwise, whether written or oral.

10. COUNTERPART EXECUTION; EFFECT; PHOTOCOPIES. This Agreement may be executed in counterparts, and each counterpart, when executed, shall have the efficacy of a signed original. Photographic copies or facsimile copies of such signed counterparts may be used in lieu of the originals for any purpose, absent a genuine issue as to authenticity.

11. JOINT PREPARATION OF AGREEMENT. Each party has cooperated in the drafting and preparation of this Agreement. Hence, in any construction to be made of this Agreement, the same shall not be construed against any party on the basis that the party was the drafter.

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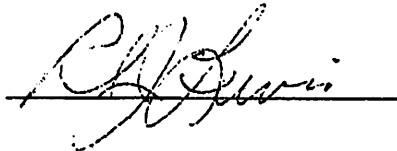
12. EFFECT OF WAIVER OF BREACH. No waiver of any breach of any term or provision of this Agreement shall be construed to be, or shall be, a waiver of any other breach of this Agreement. No waiver shall be binding unless in writing and signed by the party waiving the breach.

13. FULL UNDERSTANDING AND VOLUNTARY ACCEPTANCE. In entering into this Agreement, the parties represent that they have relied upon the advice of their attorneys, who are attorneys of their own choice, and that the terms of this Agreement have been completely read and explained to them by their attorneys, and that those terms are fully understood and voluntarily accepted by them.

14. COOPERATION IN FULFILLMENT OF AGREEMENT. All parties agree to cooperate fully and to execute any and all supplementary documents and to take all additional actions that may be necessary or appropriate to give full force to the basic terms and intent of this Agreement and which are not inconsistent with its terms.

Dated: 3-6, 2007

RICHARD LEWIS



Dated: 3/, 2007

SAN BERNARDINO PROFESSIONAL  
FIREFIGHTERS UNION, LOCAL 891

By: Scott Moss  
Name: Scott Moss  
Position: PRESIDENT

4/12/07 1:42 PM

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\_\_\_\_ City  
\_\_\_\_ LP

Dated: \_\_\_\_\_, 2007

CITY OF SAN BERNARDINO

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

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

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

Dated: \_\_\_\_\_, 2007


LARRY PITZER

\_\_\_\_\_

I, Corey W. Glave, counsel of record for Plaintiffs, approve as to content and form.

Dated: 3/23, 2007

COREY W. GLAVE  
GOLDWASSER & GLAVE



Corey W. Glave  
Attorneys for Plaintiffs

I, James A. Odlum, counsel of record for Defendants, approve as to content and form.

Dated: \_\_\_\_\_, 2007

JAMES A. ODLUM  
MUNDELL, ODLUM & HAWS

\_\_\_\_\_  
James A. Odlum  
Attorneys for Defendants .

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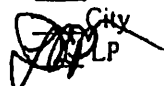
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C. On May 25, 2006, the Court granted summary judgment to the City, dismissing the City from the Lawsuit. The Court granted partial summary judgment to Chief Pitzer, dismissing all claims against him except the claim for violation of 42 U.S.C. § 1983.

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AGREEMENTS

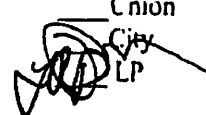
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Mr. Lewis' experience and length of service.

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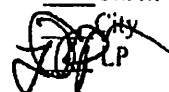
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Dated: \_\_\_\_\_, 2007

RICHARD LEWIS

\_\_\_\_\_

Dated: \_\_\_\_\_, 2007

SAN BERNARDINO PROFESSIONAL  
FIREFIGHTERS UNION, LOCAL 891

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

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

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

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I.P.

Dated: 3/21, 2007

CITY OF SAN BERNARDINO

By: [Signature]  
Name: Patrick J Morris  
Position: Mayor

Dated: 3-22, 2007

LARRY PITZER

[Signature]

I, Corey W. Glave, counsel of record for Plaintiffs, approve as to content and form.

Dated: \_\_\_\_\_, 2007

COREY W. GLAVE  
GOLDWASSER & GLAVE

\_\_\_\_\_  
Corey W. Glave  
Attorneys for Plaintiffs

I, James A. Odium, counsel of record for Defendants, approve as to content and form.

Dated: \_\_\_\_\_, 2007

JAMES A. ODLUM  
MUNDELL, ODLUM & HAWS

\_\_\_\_\_  
James A. Odium  
Attorneys for Defendants

RL  
Union  
[Signature]  
City  
CLP