

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made by and between Robert Van Tuinen (“Plaintiff”) and the defendants (collectively the “Parties”) in the case styled *Van Tuinen v. Yosemite Community College District, et al.*, Case No. 1:13-cv-01630-LJO-SAB, Eastern District of California, Fresno Division (“Subject Lawsuit”), including the Yosemite Community College District, Dr. Joan Smith, Jill Stearns, Michael Guerra, Brenda Thames, Becky Crow, and Christine Serrano (“Defendants”).

Recitals

WHEREAS, Plaintiff brought the Subject Lawsuit against Defendants because of the facts set forth in his Complaint filed in the Subject Lawsuit and to challenge the policies, practices, and procedures of Defendants relative to free speech activities on the properties owned and controlled by Defendant Yosemite Community College District, including the then-existing version of the Yosemite Community College District Administrative Procedure 3900 titled “Time, Place & Manner” (“Administrative Procedure 3900”) and the Modesto Junior College “Guidelines and Procedure for Requesting College Facilities for Free Speech (“College Guidelines”)” (collectively, the “Old Procedures”); and

WHEREAS, Defendants, as an institution of higher education and officers and employees thereof, place great value on the free exchange of ideas; and

WHEREAS, prior to execution of this Settlement Agreement, the Yosemite Community College District amended Board Policy 3900, Administrative Procedure 3900, and the College Guidelines, now known as Modesto Junior College Expectations for On-Campus Free Speech Activities. Copies of the amended policies are attached hereto as Exhibit A, Exhibit B, and Exhibit C, respectively (collectively, the “New Policies and Procedures”); and

WHEREAS, the Parties desire to settle all claims set forth in the Subject Lawsuit;

NOW THEREFORE, the Parties agree to settle such claims on the following terms:

Obligations and Commitments

1. Within twenty one days of the execution of this Settlement Agreement, Defendant Yosemite Community College District will pay \$50,000 (the “Settlement Payment”) to Plaintiff and his attorneys. Upon receipt, Plaintiff acknowledges the sufficiency of these funds in settlement of all damages and attorney’s fees.

2. Within three business days of Plaintiff’s attorneys’ receipt of the Settlement Payment, Plaintiff shall file a stipulation of dismissal of the Subject Lawsuit which shall include a dismissal with prejudice of all his claims against Defendants.

3. Defendants will not revert to the Old Policies, while reserving the ability and right to amend the New Policies and Procedures to conform to changes in the law and to changes in circumstances of the Yosemite Community College District, subject to constitutional limits.

4. Plaintiff, for himself and all of his agents, legal and personal representatives, successors and assigns, past, present and future, fully releases and forever discharges Defendants, and each of them, and each of their respective affiliates, members, officers, directors, employees, servants, agents, legal and personal representatives, insurers, bonding companies, sureties, successors and assigns, past, present and future, from any and all claims, rights, demands, actions, damages, and causes of action, whether in law or in equity, contract or tort set forth in the Subject Lawsuit (the "Claims").

5. Plaintiff represents and warrants that he has not assigned or otherwise transferred, by way of subrogation, operation of law, or otherwise, any right to any other person or entity to assert any of the Claims against Defendants. Plaintiff further represents and warrants that he has not initiated any proceeding or litigation against any Defendant other than the Subject Lawsuit and will not initiate any such proceeding or litigation in the future in regard to any claim released hereunder.

6. Plaintiff acknowledges and represents that this Settlement Agreement and the release herein evidences the settlement of the Claims and that Defendants' enactment of the New Policies and Procedures, and the Settlement Payment is not and shall not be construed to be an admission of liability by Defendants. It is understood and agreed that the Settlement Payment is made for the purpose of avoiding any cost associated with litigation and to settle all of Plaintiff's Claims against Defendants.

Additional Terms

7. This Settlement Agreement has been, and shall for all purposes be deemed to have been, executed and delivered within the state of California, and the rights and obligations of the Parties hereto shall be construed and enforced in accordance with and governed by the laws of the state of California.

8. This Settlement Agreement is the entire agreement with respect to the subject matter hereof. It supersedes all prior and contemporaneous and oral and written agreements and discussions. It may be modified or amended by the Parties only by an agreement in writing.

9. This Settlement Agreement may be executed in counterparts by any of the signatories hereto, including by facsimile transmission, and as so executed shall constitute one agreement.

10. Plaintiff expressly waives and releases all rights and benefits afforded by Section 1542 of the Civil Code of the State of California and does so understanding and acknowledging the significance and consequence of such specific waiver of Section 1542. Section 1542 of the California Civil Code states as follows:

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

Plaintiff hereby expressly waives the provisions of California Civil Code Section 1542 and further expressly waives any right to invoke said provisions now or at any time in the future.

11. The Parties represent that in executing this Agreement, the Party does not rely upon and has not relied upon any representation, promise, or statement not expressly contained herein and that the Party has conferred with his, her, or its own attorney, with regard to the basis or effect of this Agreement.

12. This Agreement constitutes an integration of the entire understanding and agreement by, between, and among the Parties hereto and supersedes and is in lieu of any and all other arrangements, statements or promises, written or oral, between and among the Parties. Any representations, warranties, promises, understandings, or conditions, whether written or oral, not specifically incorporated herein, shall not be binding upon any of the Parties hereto.

13. Should any provision of this Agreement be declared or determined by any court to be illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected thereby and the illegal or invalid part, term or provision shall be deemed not to be a part of this Agreement.

14. This Agreement cannot be amended, modified, or supplemented in any respect except by written agreement entered into by the Parties hereto.

15. This Agreement shall not be construed against any one Party, but shall be construed as if jointly prepared by the Parties hereto. Any uncertainty or ambiguity shall not be interpreted against any one Party.


PLEASE READ CAREFULLY AND DISCUSS WITH YOUR REPRESENTATIVE. THIS AGREEMENT AND GENERAL RELEASE INCLUDES A RELEASE OF ALL KNOWN AND UNKNOWN CLAIMS.

IN WITNESS WHEREOF, the Parties hereto, having read and understood this Settlement Agreement, have voluntarily and with full knowledge executed by each of the Parties so signing on the date by which they appeared before a Notary Public for the state in which the Settlement Agreement was signed.

Date: _____, 2014

Robert Van Tuinen

Date: February 24, 2014



Joan Smith, Ed.D.
On behalf of the Yosemite
Community College District