

SETTLEMENT AGREEMENT

\$ 680,000

HUD/  
DOJ  
Settlement

This Settlement Agreement (“Agreement”) is entered into among the United States of America, acting through the United States Department of Justice and on behalf of the Office of Inspector General and Office of General Counsel of the United States Department of Housing and Urban Development (“HUD”)(collectively the “United States”), the Fairfield Housing Authority and the City of Fairfield, California, (collectively “Defendants”), and *qui tam* Relator David Samloff (“Relator”)(hereafter collectively referred to as “the Parties”), through the Parties’ authorized representatives.

RECITALS

A. Defendant Fairfield Housing Authority (“FHA”) administers the Section 8 Housing Choice Voucher (“HCV”), HCV Homeownership, and, among other federally funded programs, the Family Self-Sufficiency (“FSS”) programs for the City of Fairfield, California. The FSS Program administered by the FHA provides case management for Section 8 families who desire to improve their earning potential and move towards financial independence and homeownership. The FHA is located at 823-B Jefferson Street, Fairfield, California 94533.

B. Defendant City of Fairfield is a city in Solano County, California, with its City Hall located at 1000 Webster Street, Fairfield, California 94533. The City of Fairfield employs FHA personnel and the City Council of the City of Fairfield serve on FHA’s Board.

C. On March 5, 2015, Relator filed a *qui tam* action in the United States District Court for the Eastern District of California captioned *United States ex rel. David Samloff v. City of Fairfield and Fairfield Housing Authority*, action number 2:15-cv-

00490, pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b). A first amended complaint was filed on February 10, 2016. (Collectively, the “Civil Action”). The Civil Action includes two False Claims Act causes of action (Counts I-II) alleging that Defendants intentionally defrauded the United States to receive grant funds by knowingly submitting fraudulent grant applications for two full-time FSS Program Coordinators for calendar years 2012, 2013 and 2014. Moreover, Relator alleges that Defendants, on a monthly basis from January 2012 through November 2014, stated to HUD that Defendants were in compliance with the FSS Program Coordinator grants by employing two full-time FSS Program Coordinators, when no full-time FSS Program Coordinators were employed by the City of Fairfield or the FHA. Relator also alleges (Count III) a claim for retaliation and wrongful termination under 31 U.S.C. §3730(h).

D. The United States contends that it has certain civil claims against Defendants that occurred from January 1, 2011 through November 30, 2014, arising from the following alleged conduct: (1) Defendants applied for and received an FSS Program Coordinator grant from HUD in the amount of \$135,816.00 to fund two full-time FSS Program Coordinators in 2012 and did not employ any full-time FSS Program Coordinators in 2012; (2) Defendants applied for and received an FSS Program Coordinator grant from HUD in the amount of \$135,816.00 to fund two full-time FSS Program Coordinators in 2013 and did not employ any full-time FSS Program Coordinators in 2013; (3) Defendants applied for and received an FSS Program Coordinator grant from HUD in the amount of \$105,711.00 to fund two full-time FSS Program Coordinators from January 2014 through November 2014 and did not employ any full-time FSS Program Coordinators during that period; (4) On a monthly basis, from

January 2012 through November 2014 (*i.e.*, 35 months), Defendants were required to, and did, enter data in HUD's Voucher Management System affirming that Defendants were spending the granted FSS Program Coordinator funds on two full-time FSS Program Coordinators when no such coordinators were employed. That conduct is referred to below as the Covered Conduct.

E. This Settlement Agreement is neither an admission of liability by Defendants nor a concession by the United States that its claims are not well founded.

F. Relator claims entitlement under 31 U.S.C. § 3730(d) to a share of the proceeds of this Settlement Agreement and to Relator's reasonable expenses, attorneys' fees and costs.

To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, and in consideration of the mutual promises and obligations of this Settlement Agreement, the Parties agree and covenant as follows:

#### TERMS AND CONDITIONS

1. Defendants shall pay six hundred and eighty thousand dollars (\$680,000.00) ("Settlement Amount") to the United States within forty-five (45) days after the Effective Date of this Agreement, as defined in Paragraph 25 below. Payments shall be made by electronic funds transfer pursuant to written instructions to be provided by the Office of the United States Attorney for the Eastern District of California. If the payment is not timely received, Defendants shall also pay the United States interest on the Settlement Amount at a rate of 10% per annum compounded daily from the Effective Date of this Agreement through the date payment is received.

2. Conditioned upon the United States receiving the Settlement Amount from Defendants and as soon as feasible after receipt, the United States shall pay \$129,200.00 to Relator by electronic funds transfer.

3. Subject to the exceptions in Paragraph 4 (concerning excluded claims), below, and conditioned upon Defendants' full payment of the Settlement Amount, the United States releases Defendants, together with their present and former parent corporations, predecessors, successors, heirs, transferees, affiliates, agencies, direct and indirect subsidiaries, brother or sister corporations, divisions, partners, licensees, and joint ventures; current or former corporate owners; and the corporate successors and assigns of any of them, from any civil or administrative monetary claim the United States has for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812, the Contract Disputes Act, 41 U.S.C. §§ 7101 – 7109, or the common law theories of breach of contract, payment by mistake, unjust enrichment, and fraud.

4. **Release and Exclusions by Relator.**

a. Subject to the exceptions in Paragraph 5 below, and conditioned upon Defendants' full payment of the Settlement Amount, along with any interest owed thereon, and subject to the exceptions to releases set forth in Paragraph 4b, Relator, for himself and for his heirs, successors, attorneys, agents, and assigns, releases Defendants, together with their present and former parent corporations, predecessors, successors, heirs, transferees, affiliates, agencies, direct and indirect subsidiaries, brother and sister corporations, divisions, partners, licensees, and joint ventures; current or former corporate owners; and the corporate successors and assigns of any of them, from any civil

or administrative monetary claim the Relator has on behalf of the United States for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733.

b. **Matters Excepted from Release by Relator.** Notwithstanding the foregoing, or any other terms of this Agreement, this Agreement expressly does not resolve or release:

i. Relator's right pursuant to 31 U.S.C. § 3730(d) to reasonable expenses necessarily incurred, plus reasonable attorneys' fees and costs relating to Counts I and II of the Civil Action, the amount of which claim will be addressed separately by Relator, Relator's counsel, and Defendants. If Defendants and Relator are unable to reach agreement on the amount of the attorneys' fees and costs payments, the United States District Court for the Eastern District of California shall have continuing jurisdiction to issue an order with regard to the payment of attorneys' fees and costs.

ii. Relator's claims and remedies for retaliation and wrongful termination set forth in Count III of the Civil Action, including but not limited to Relator's claim under 31 U.S.C. § 3730(h).

iii. Relator's right pursuant to 31 U.S.C. § 3730(d) to reasonable expenses necessarily incurred, plus reasonable attorneys' fees and costs relating to claims and remedies for retaliation and wrongful termination set forth in Count III of the Civil Action, including but not limited to Relator's claim under 31 U.S.C. § 3730(h).

Other than Relator's claims expressly excluded from release herein, Relator waives all rights he may have by virtue of Section 1542 of the California Civil Code, which provides:

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 HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

5. Notwithstanding the releases given in Paragraphs 3 and 4 of this Agreement, or any other term of this Agreement, the following claims of the United States are specifically reserved and are not released:

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any criminal liability;
- c. Except as explicitly stated in this Agreement, any administrative liability, including the suspension and debarment rights of any federal agency;
- d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;
- e. Any liability based upon obligations created by this Agreement;
- f. Any liability of individuals not specifically named as Defendants herein;

6. Relator and his heirs, successors, attorneys, agents, and assigns shall not object to this Agreement but agree and confirm that this Agreement is fair, adequate, and

reasonable under all the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B), and that the Settlement Amount is fair, adequate, and reasonable under all the circumstances. Subject to the exceptions in Paragraph 5, and conditioned upon Relator's receipt of the payment described in Paragraph 2, Relator and his heirs, successors, attorneys, agents, and assigns fully and finally release, waive, and forever discharge the United States, its agencies, officers, agents, employees, and servants, from any claims arising from the filing of the Civil Action or under 31 U.S.C. § 3730, and from any claims to a share of the proceeds of this Agreement and/or the Civil Action.

7. Defendants waive and shall not assert any defenses Defendants may have to any criminal prosecution or administrative action relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action. Nothing in this paragraph or any other provision of this Agreement constitutes an agreement by the United States concerning the characterization of the Settlement Amount for purposes of the Internal Revenue laws, Title 26 of the United States Code.

8. Defendants, together with their present and former affiliates, agencies, parents, subsidiaries, divisions and subdivisions, fully and finally release the United States, its agencies, officers, agents, employees, and servants, from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that Defendants had asserted, could have asserted, or may assert in the future against the United States, its agencies, officers, agents, employees, and servants, related to the

Covered Conduct and the United States' investigation and prosecution thereof.

Defendants understand and acknowledge that if the facts and/or potential claims with respect to liability or damages regarding the matters released herein are found hereafter to be different from facts now believed to be true or claims now believed to be available ("Unknown Claims"), Defendants expressly accept and assume the risks of such possible difference in facts and/or potential claims and agree that this Settlement Agreement shall remain effective notwithstanding any such differences. Defendants intend by this Settlement Agreement, and the releases contained herein, to release fully, finally and forever all Unknown Claims that arise out of or relate to the matters released herein. Defendants hereby expressly waive all rights they may have by virtue of Section 1542 of the California Civil Code, set forth above. Defendants' releases herein shall be effective whether or not they release claims that are currently known, unknown, foreseen or unforeseen.

**9. Release by Defendants of Relator.**

Released Defendants, as defined in Paragraph 4a, and subject to the exceptions to releases set forth in Paragraph 4b, fully and finally release the Relator, as defined in Paragraph 4a, as follows:

a. **Matters Released.** Released Defendants fully and finally release the Relator from any and all claims, rights, demands, suits, matters, issues, actions, causes of action, liabilities, damages, losses, obligations, sanctions, costs, loss of services, loss of earnings, compensation of any nature whatsoever, and judgments of any kind or nature whatsoever, from the beginning of time through the Effective Date of this Agreement, whether known or unknown, contingent or absolute, that the Released



Defendants have against the Relator related to the Covered Conduct, and investigation and prosecution thereof. Released Defendants hereby expressly waive all rights they may have by virtue of Section 1542 of the California Civil Code, set forth above.

b. **Matters Excepted from Release.** Notwithstanding the foregoing, or any other terms of this Agreement, this Agreement does not resolve or release any claim, defense, right of offset, or counterclaim that Defendants may have against Relator from, or in any way connected to, his claims and remedies for retaliation and wrongful termination set forth in Count III of the Civil Action or his employment with Defendants.

10. Defendants agree to the following:

a. **Unallowable Costs Defined:** All costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47) incurred by or on behalf of Defendants, and Defendants' present or former officers, directors, employees, shareholders, and agents in connection with:

- (1) the matters covered by this Agreement;
- (2) the United States' audit(s) and civil investigation(s) of the matters covered by this Agreement;
- (3) Defendants' investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil [and any criminal] investigation(s) in connection with the matters covered by this Agreement (including attorneys' fees);
- (4) the negotiation and performance of this Agreement;

(5) and any payments that Defendants may make to Relator, including costs and attorneys' fees, are unallowable costs for government contracting purposes (hereinafter referred to as "Unallowable Costs").

b. Future Treatment of Unallowable Costs: Unallowable Costs will be separately determined and accounted for by Defendants, and Defendants shall not charge such Unallowable Costs directly or indirectly to any contract with the United States.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Within 90 days of the Effective Date of this Agreement, Defendants shall identify and repay by adjustment to future claims for payment or otherwise any Unallowable Costs included in payments previously sought by Defendants or any of its subsidiaries or affiliates from the United States. Defendants agree that the United States, at a minimum, shall be entitled to recoup from Defendants any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously-submitted requests for payment. The United States, including the Department of Justice and/or the affected agencies, reserves its rights to audit, examine, or re-examine Defendants' books and records and to disagree with any calculations submitted by Defendants or any of its subsidiaries or affiliates regarding any Unallowable Costs included in payments previously sought by Defendants, or the effect of any such Unallowable Costs on the amount of such payments.

11. Defendants agree to cooperate fully and truthfully with the United States' investigation of individuals and entities not released in this Agreement. Upon reasonable

notice, Defendants shall encourage, and agree not to impair, the cooperation of its directors, officers, and employees, and shall use its best efforts to make available, and encourage, the cooperation of former directors, officers, and employees for interviews and testimony, consistent with the rights and privileges of such individuals. Defendants further agree to furnish to the United States, upon request, complete and unredacted copies of all non-privileged documents, reports, memoranda of interviews, and records in Defendants' possession, custody, or control concerning any investigation of the Covered Conduct that it has undertaken, or that has been performed by another on its behalf.

12. The Settlement Amount shall not be decreased as a result of Defendants' decision not to apply for, or accept, FSS Program Coordinator-related grants from HUD, beginning in 2014.

13. This Agreement is intended to be for the benefit of the Parties only.

14. Upon receipt of the Settlement Amount described in Paragraph 1, above, the Parties shall promptly sign and file in the Civil Action a Joint Stipulation of Dismissal of Counts I-II of the Civil Action pursuant to Rule 41(a)(1). That joint stipulation of dismissal shall be with prejudice as to the United States' and Relator's claims as to the Covered Conduct pursuant to and consistent with the terms and conditions of this Agreement, shall be without prejudice as to the United States as to any other claims, and shall not dismiss the matters excepted from release by Relator in Paragraph 4b.

If the Court requires a dismissal be filed prior to receipt of the Settlement Amount, Relator and the United States shall sign and file in the Civil Action a Joint Stipulation of Dismissal without prejudice, subject to the terms of this Settlement Agreement, of the False Claims Act allegations (Counts I-II) in the Civil Action pursuant

to Rule 41(a)(1). That joint stipulation of dismissal shall not dismiss the matters excepted from release by Relator in Paragraph 4b and will ask the court to retain jurisdiction of the False Claims Act counts until the Settlement Amount is paid. The Parties hereby agree that upon receipt of the Settlement Amount, the Joint Stipulation of Dismissal of the False Claims Act claims (Counts I-II) will be considered to be with prejudice as to Relators, with prejudice as to the United States with respect to the Covered Conduct as defined in the Agreement, and otherwise without prejudice to the United States.

15. Except as otherwise set forth herein, each Party shall bear its own legal fees and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

16. Each party and signatory to this Agreement represents that it freely and voluntarily enters into this Agreement without any degree of duress or compulsion whatsoever, after having been apprised of all relevant information and data by its legal counsel. Each of the Parties further warrants and represents that no other Party or its representative has made any promise, representation or warranty, express or implied, except as expressly set forth in this Settlement Agreement, and that no Party has relied on any inducements, promises, or representations made by any Party to this Settlement Agreement, or its representatives, or any other person, except as expressly set forth herein.

17. Each Party warrants that it has been represented by, and has sought and obtained the advice of, independent legal counsel with regard to the nature, purpose, and effect of this Settlement Agreement. The Settlement Agreement was negotiated by the

Parties and their respective counsel, each of whom had the opportunity to participate in the drafting thereof. The Parties hereby declare that the terms of this Settlement Agreement have been completely read, fully understood, and voluntarily accepted following opportunity for review by legal counsel of their choice.

18. This Agreement is governed by the laws of the United States. The exclusive jurisdiction and venue for any dispute relating to this Agreement is the United States District Court for the Eastern District of California. For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

19. This Agreement constitutes the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties.

20. The undersigned counsel represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.

21. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement.

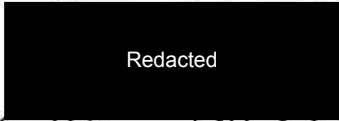
22. This Agreement is binding on Defendants' successors, transferees, heirs, and assigns.

23. This Agreement is binding on Relator's successors, transferees, heirs, and assigns.

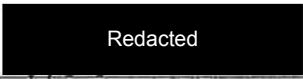
24. All parties consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public.

25. This Agreement is effective on the date of signature of the last signatory to the Agreement ("Effective Date"). Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

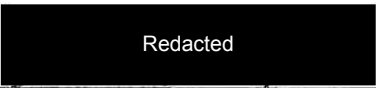
THE UNITED STATES OF AMERICA

DATED: 8/24/16 BY:   
M Anderson Berry  
Assistant United States Attorney  
Eastern District of California


DEFENDANT CITY OF FAIRFIELD

DATED: 8/23/16 BY:   
David White  
City Manager  
City of Fairfield

Approved as to form and content:

DATED: 8/24/16 BY:   
Toussaint S. Bailey  
Richards, Watson & Gershon  
44 Montgomery Street, Suite 3800  
San Francisco, CA 94104  
Assistant City Attorney for the City of Fairfield

DEFENDANT FAIRFIELD HOUSING AUTHORITY

DATED: 8/23/16 BY:   
David White  
Executive Director  
Fairfield Housing Authority

Approved as to form and content:

DATED: 8/24/16 BY:

Redacted

Toussaint S. Bailey  
Richards, Watson & Gershon  
44 Montgomery Street, Suite 3800  
San Francisco, CA 94104  
Assistant General Counsel for the Fairfield Housing  
Authority

RELATOR DAVID SAMLOFF

DATED: 8/19/16 BY:

Redacted

David Samloff  
Relator

Approved as to form and content:

DATED: 8-19-16 BY:

Redacted

Scott M. Stillman  
McGuinn, Hillsman & Palefsky  
535 Pacific Avenue  
San Francisco, CA 94133  
Counsel for Relator David Samloff

# Redaction Log

Reason	Page (# of occurrences)	Description
Redacted	15 (3) 14 (4)	Other redaction reasons.