

JOINT STATEMENT OF THE CITY OF NAPA, ROBIN SLUSHER, AND JASON SLUSHER

The following joint public statement is being issued by Robin and Jason Slusher and the City of Napa, announcing the settlement of a lawsuit following the death of Kayleigh Slusher.

Kayleigh Slusher was three years old when she died on January 30, 2014. The murder of a child by her caretakers is unfathomable, and an unspeakable tragedy for her family and loved ones. Kayleigh's death shocked and saddened the entire Napa Community.

Napa police officers saw Kayleigh in her home on two separate occasions the week she died. Kayleigh's mother and then-boyfriend were convicted of her murder and are serving life sentences in prison.

Kayleigh's father, Jason Slusher, and grandparents, Benny and Robin Slusher, filed civil suit against the City of Napa and police officers Garrett Wade, Dominic Deguilio, Robert Chambers, and Garrett Smith, and the County of Napa, its CWS Supervisor Ken Adams, and CWS social workers Rocio Diaz-Lara and Nancy Lefler-Panela. The parties to the civil suit have agreed to settle the case for \$5 million, split equally between the County of Napa and City of Napa, as well as non-monetary relief changes in policies and training. The settlement agreement between Plaintiffs and the City is attached as Exhibit A.

Kayleigh Slusher's death was a terrible tragedy. The City of Napa has committed to doing everything in its power to prevent and protect other children from suffering child abuse and neglect, including with the added policies and training set forth in Exhibit A.

The Napa Police Department and Napa County Child Welfare Services accept and encourage members of the public to report any suspicion of child abuse and neglect. Such reports can be made anonymously by calling 911 or contacting the Napa County Child Welfare Services hotline at (707) 253-4261 or (800) 464-4216.

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Agreement”) is entered between and among Defendants City of Napa (“City”), on its own behalf and on behalf of its employees, Garrett Wade, Dominic Deguilio, Robert Chambers, Joshua Smith and Garrett Smith, hereinafter collectively “Named City Defendants”, and Plaintiffs Jason Slusher, individually and as the representative of the Estate of Kayleigh Slusher, and Robin and Benny Slusher and the estate of Benny Slusher, hereinafter collectively “Named Plaintiffs.” It is made with reference to and in consideration of the circumstances reflected in the following recitals.

RECITALS

A. WHEREAS, on or about February 1, 2014, Kayleigh Slusher was discovered murdered. Her mother, Sara Krueger, and her mother’s boyfriend, Ryan Warner, were convicted of first degree murder of Kayleigh and are currently serving life sentences for the murder of Kayleigh Slusher. On or about June 17, 2014, the Named Plaintiffs filed a claim with the City of Napa, which was rejected (the “City Claims”).

B. On or about May 29, 2015, Plaintiffs filed a Complaint in the United States District Court, Northern District, against the Named City Defendants entitled *Slusher v. County of Napa et al.*, Case Number *4:15-cv-02394 SBA*, (the “Federal Lawsuit”). That complaint was dismissed by the Hon. Sandra B. Armstrong, and appealed by the plaintiffs (United States Court of Appeals for the Ninth Circuit, Case No. **16-17304**) (the “Federal Appeal.”)

C. On or about December 20, 2016, Jason Slusher, individually and as successor in interest to Kayleigh Slusher, filed a complaint in Napa County Superior Court against the Named City Defendants, excluding Joshua Smith, entitled *Slusher v. City of Napa et al.*, Case No. 16CV001186 (the “State Lawsuit”).

D. The State Lawsuit also purported to be brought by plaintiff as a private attorney general under the Private Attorney General Act (PAGA).

E. The Federal Lawsuit, the Federal Appeal, and the State Lawsuit are collectively referred to herein as “the Lawsuits.”

F. In the Lawsuits, the Named Plaintiffs alleged, *inter alia*, that City Defendants, through the Police Department and its employees, were negligent and/or violated the constitutional familial rights of the Named Plaintiffs through their actions, or inactions all as more fully set forth in the Lawsuits. Named City Defendants denied each of these claims. By the Lawsuits, named Plaintiffs, individually and in their representative capacities, sought recovery of damages against the City Defendants that they believed available to them under Federal and California law.

G. Named City Defendants have denied the allegations of the Named Plaintiffs in their individual and representative capacities in the Lawsuits and in any Claims. The combined allegations in the Lawsuits and in the Claims are herein referenced as the “Dispute.”

H. It is the desire of the parties to this Agreement to affect a full and complete compromise, settlement and resolution of the Dispute between and among the Named Plaintiffs and City, on behalf of all Named City Defendants. The parties acknowledge that all claims (whether past, present or future) of the Named Plaintiffs as individuals and as representative plaintiffs under PAGA or any other representative capacity are disputed, including existing facts, and this settlement is not intended to be and shall not be treated as an admission of fact, liability or responsibility in any manner whatsoever. The statements here set forth are intended as efforts to compromise pursuant to Section 1152 of the California Evidence Code.

NOW, THEREFORE, in consideration of the mutual covenants, conditions and promises contained herein, the parties agree as follows:

1. Named Plaintiffs shall dismiss, Garrett Wade, Robert Chambers, Dominic Deguilio, Joshua Smith and Garrett Smith from the Lawsuits, with prejudice, each side to bear their own fees and costs. Upon the City's receipt of this fully executed Settlement Agreement by Plaintiffs', and signed as approved to form by Plaintiffs' counsel, the City shall pay the sum total amount, inclusive of fees and costs, of \$2,500,000.00 (Two Million Five Hundred Thousand Dollars and no cents) in the form of one check made payable to Haddad & Sherwin LLP Client Trust Account. Said check shall be sent by wire transfer or Federal Express using Haddad & Sherwin LLP's Fed-Ex account number for that shipment only [2303-4048-0] to Haddad & Sherwin LLP no later than December 16, 2018. The check shall not be negotiated until a dismissal of the Lawsuits is filed as described in Paragraph 4, below.

2. Named Plaintiffs forego, waive, release and relinquish any and all claims or rights to pursue a claim against Named City Defendants before any City, County, State, Federal or other governmental agency or court concerning the matters described in Recitals A through H, and any and all claims raised or which could have been raised in connection with the Claims and the Lawsuits, under Federal or State law, including constitutional, tort, contract or statutory claims.

(a) This Settlement Agreement, waiver and release shall redound to and is for the benefit of Named City Defendants, including the City of Napa's City Council, boards, departments, officers, employees (past and present), police officers (past and present), agents, servants, officials, owners, successors and assigns, attorneys, insurers and all other persons affiliated with the City, including but not limited to CSAC EIA, and any other person or legal entity charged with responsibility, whether directly, indirectly or vicariously, for the facts and circumstances mentioned in the above-mentioned Recitals, Paragraphs A-H, inclusive, and any fact or circumstance raised by, arising from or referenced in the Lawsuits, the Claims, and the Dispute.

(b) Named Plaintiffs acknowledge the provisions of section 1542 of the Civil Code of the State of California, and hereby knowingly waive the benefit of such provisions on their behalf, in both their individual and representative capacities, and understand that said section provides 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 him or her must have materially affected his or her settlement with the debtor.

3. Named Plaintiffs will indemnify, defend and hold harmless the Named City Defendants, including the City of Napa's City Council and its respective boards, departments, officers, employees (past and present), police officers (past and present), agents, servants, officials, owners, successors and assigns, attorneys, insurers and all other persons affiliated with the City, including but not limited to CSAC EIA, and each of them, from any loss, claims, expenses, liens, demands or causes of action of any kind or character through the assertion by any third party, any church, or any other person(s) whose claim arises from said person(s) providing Named Plaintiffs and their attorneys any services and/or monies in connection with the subject matter in the Lawsuits, the Claims, the Dispute, this Settlement Agreement or who otherwise claims to have an interest in the settlement proceeds because said person(s) claims a right to the proceeds by some alleged legal, contractual, promise, financial, personal and/or business relationship with the Named Plaintiffs and/or their attorneys. Named Plaintiffs have represented that there are no liens or monetary set asides required by any health care provider, insurance company, MediCare or MediCal for treatment and future treatment of Named Plaintiffs and Named Plaintiffs will defend, indemnify and hold harmless the Named City Defendants (and all persons identified above as included within the term Named City Defendants) in the event any entity including but not limited to MediCare or MediCal, require reimbursement, set asides or liens for past, present and future treatment of Named Plaintiffs.

4. Each party to this Settlement Agreement, and each party on whose behalf it is entered, shall bear the responsibility for and pay its own attorneys' fees, expert or consultants' fees, and costs incurred, or that have arisen from the Dispute, other than as included in Paragraph 1 and 2, above.

5. Each Named Plaintiff hereby warrants that he or she has not assigned, transferred, encumbered or hypothecated any claim of right or cause of action which is the subject matter of this Settlement Agreement. Each Named Plaintiff hereby represents that he or she has absolutely no knowledge that any other person has assigned, transferred, encumbered or hypothecated any claim of right or cause of action which is the subject matter of this Settlement Agreement. Should any party be in breach of the warranty provisions of this paragraph 7, the party in breach shall indemnify and hold the others free and harmless from any damages, losses or expenses resulting from such breach.

6. Each Named Plaintiff hereby warrants that, except for the Lawsuits and Claims, it has not and does not intend to file or commence any other type of legal or administrative proceeding with any person, legal entity, City, County, State or Federal governmental or administrative agency or court concerning the facts and circumstances relating to the Dispute.

7. The parties have met and conferred and successfully resolved the non-monetary relief issues raised by the Lawsuits. . Appendix A documents the changes in policy and training that have occurred since February 2016 and are continuing. The City will provide a letter summarizing the status of the non-monetary relief to the Settlement Judge and Named Plaintiffs'

counsel by March 1, 2019, and every six months thereafter until all elements of the non-monetary relief set forth in Appendix A have been instituted. All work Plaintiffs' counsel performs in reviewing matters related to the non-monetary relief shall be *pro bono*.

8. This Settlement and Release Agreement is binding upon and shall redound to the benefit of Named City Defendants the Named Plaintiffs, their present and former agents, servants, employees, officers, owners, representatives, successors-in-interest, and assignees.

9. The Named Plaintiffs understand, acknowledge and agree to the special conditions as follows:

(a) Liability for all claims is disputed, and this final compromise and settlement agreement shall never be construed as an admission of liability or responsibility by the Named City Defendants and any and all of the above named City related persons or entities at any time for any purpose.

(b) The Named Plaintiffs agree to dismiss with prejudice, each side to bear their own fees and costs, the Lawsuits against the Named City Defendants upon their receipt, acting by and through their legal counsel, of the settlement funds identified in paragraph 1 of this Agreement.

(c) Named Plaintiffs understand, acknowledge and agree that it is possible that other injuries, property damages or claims arising from the Lawsuits, Claims and Dispute not known now will develop or be discovered, or consequences or results of known injuries and all other special and general damages or property damages or any other claims may develop, worsen or be discovered, and this final compromise and release is expressly intended to cover and include, and does cover and include, any past, present and future injuries, aggravation of existing injuries and all other special and general injuries and damages or any and all other past, present, and future claims, future consequences or results of known or unknown injuries, property damages or claims, including all rights, claims or causes of action based thereon that discuss, refer or relate to the Lawsuits, Claims and Dispute now known or unknown to the Named Plaintiffs.

10. This Settlement Agreement and Release, and any rights or obligations pursuant to it, are not assignable by any party without the written consent of the other parties.

11. The parties acknowledge that they each have been represented by counsel:

(a) Plaintiffs Robin Slusher, Benny Slusher (deceased), Jason Slusher individually and as the successor in interest of Kayleigh Slusher, have been represented by the law office of Haddad & Sherwin LLP;

(b) Defendants City of Napa, Garrett Wade, Dominic Deguilio, Robert Chambers, Joshua Smith and Garrett Smith have been represented by Bertrand, Fox, Elliot, Osman & Wenzel, Gregory M. Fox and Joanne Tran.

Each party acknowledges that they have discussed this Agreement with their counsel, been advised of and understand its meaning, and have been advised of an understand its legal consequences. Each party freely and voluntarily enters into this Agreement and assumes the responsibility of its legal consequences.

12. This Settlement Agreement and Release may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Settlement Agreement and Release.

13. City will report the full amount of the payment called for under this Agreement (\$2,500,000.00) on IRS Form 1099 as payment to Haddad & Sherwin LLP Client Trust Account. In order to facilitate this payment, Haddad & Sherwin LLP will agree to provide, simultaneously with this executed Agreement, completed IRS Forms W-9. Named Plaintiffs and plaintiffs' counsel agree that all tax obligations, if any, which may arise from the payment set forth above shall be the sole obligations of each Named Plaintiff, and they each indemnify Named City Defendants against any and all costs, penalties, taxes or other payments made or required as a result of the allocation of those payments, if any, or the reporting of those payments.

14. This Agreement was entered into following negotiations between the attorneys for the Named Plaintiffs, Named City Defendants and Magistrate Judge Laurel Beeler and the Settlement Agreement and Release shall be construed and interpreted in accordance with the laws of the State of California.

15. Magistrate Judge Laurel Beeler of the United States District Court for the Northern District of California has jurisdiction to enforce the terms of this settlement.

16. A faxed, copied, and/or other electronic representation/impression of the Named Plaintiffs and their attorneys' original signatures on this original document or on a faxed, copied, and/or other electronic representation/impression of it shall have the same legal force and effect as any of the original signatures and the original document. Defendants City of Napa will need the original version of this Release with original signatures by the Named Plaintiffs and their attorneys. The original should also be scanned and emailed to Gregory M. Fox.

IN WITNESS WHEREOF, the parties hereto enter into this Settlement Agreement and Release. Each person signing this Agreement represents and warrants that he or she has been duly authorized to enter into this Agreement by the person or entity on whose behalf the person is signing.

Named Plaintiffs:

DATED: _____

Robin Slusher

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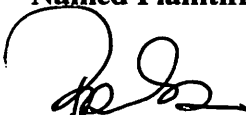
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DATED: 12/31/18

Named Plaintiffs:



Robin Slusher

DATED: 12/31/18



Robin Slusher, Successor in Interest to Benny
Slusher, Deceased

DATED: 12/3/18



Jason Slusher

DATED: 12/3/18



Jason Slusher, Successor in Interest to Kayleigh
Slusher, Deceased

Named Defendants:

DATED: _____

City of Napa

By: Steve Potter, Interim City Manager

APPROVED AS TO FORM.

HADDAD & SHERWIN, LLP

DATED: _____

Julia Sherwin

Attorneys for Named Plaintiffs

BERTRAND, FOX, ELLIOT, OSMAN &
WENZEL

DATED: _____

Gregory M. Fox, Esq.

Attorneys for Named City Defendants

DATED: _____

Robin Slusher, Successor in Interest to Benny
Slusher, Deceased

DATED: _____

Jason Slusher

DATED: _____

Jason Slusher, Successor in Interest to Kayleigh
Slusher, Deceased

Named Defendants:

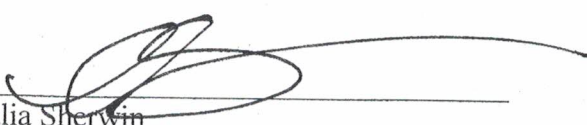
DATED: _____

City of Napa
By: Steve Potter, Interim City Manager

APPROVED AS TO FORM.

HADDAD & SHERWIN, LLP

DATED: 12/4/18



Julia Sherwin
Attorneys for Named Plaintiffs

BERTRAND, FOX, ELLIOT, OSMAN &
WENZEL

DATED: _____

Gregory M. Fox, Esq.
Attorneys for Named City Defendants

DATED: _____

Robin Slusher, Successor in Interest to Benny
Slusher, Deceased

DATED: _____


Jason Slusher

DATED: _____

Jason Slusher, Successor in Interest to Kayleigh
Slusher, Deceased

Named Defendants:

DATED: 12/5/18



City of Napa
By: Steve Potter, Interim City Manager

APPROVED AS TO FORM.

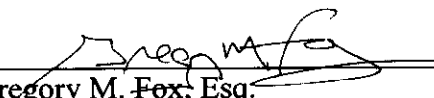
HADDAD & SHERWIN, LLP

DATED: _____

Julia Sherwin
Attorneys for Named Plaintiffs

BERTRAND, FOX, ELLIOT, OSMAN &
WENZEL

DATED: 12/4/18



Gregory M. Fox, Esq.
Attorneys for Named City Defendants

APPENDIX A

- (1) The department on February 10, 2016 formally reminded in writing all officers that any report of child abuse and neglect including domestic violence must be immediately cross reported to Child Welfare Services and the District Attorney verbally and in writing as mandated by law and NPD policies. This information set forth in existing policy will be included in the revised policy discussed in Section (6) below, and all cross reports must be sent both by telephone, and by faxing or emailing the Suspected Child Abuse and Neglect form to Child Welfare Services and the District Attorney as required by existing policy and law.
- (2) The department on May 31, 2016, formally notified in writing all sworn and unsworn officers and employees that in response to the California Supreme Court decision clarifying mandatory reporting duties of mandated reporters that the following procedures must occur: investigation of all reports of child abuse and neglect to occur as soon as practical, immediate cross reporting by officers to Child Welfare and the District Attorney of reports of child abuse and neglect even if the investigation determined the report was unfounded or unsupported, the cross reporting to be both verbal and in writing as required by law, the cross reporting is mandatory in all cases and not discretionary. This information as set forth in existing policy will be included in the revised policy discussed in Section (6) below, and all cross reports must be sent both by telephone, and by faxing or emailing the Suspected Child Abuse and Neglect form to Child Welfare Services and the District Attorney as required by existing policy and law.
- (3) The department in May and June 2016 trained officers in investigating and reporting on Drug Endangered Children. The department has been and continues to investigate reports and incidents of drug endangered children with quarterly meetings to discuss cases, trends and prosecution of offenders.
- (4) The department since 2013 has continuously participated in the Napa Children Exposed Domestic Violence Program designed to identify children exposed to domestic violence, provide help and reduce the systemic trauma experienced by children. The department has partnered with Dr. Kristi Brandt to train officers on the impacts of abuse on the development of children. All reports and incidents of domestic violence involving children are investigated..
- (5) The department policy requiring all police reports investigating child abuse and neglect be completed by end of shift unless a supervisor authorized a different completion time will be included in the revised policy discussed in Section (6) below.
- (6) The department is revising its written Child Abuse Policy to reflect and incorporate best practices and the revised policy is scheduled for final approval on or before January 2019. The department will provide a copy of the revised policy to plaintiffs' counsel.
- (7) The department will train all dispatchers on handling child abuse or neglect calls and risk factors for child abuse.

(8) All department officers will sign a mandatory written statement acknowledging that he or she understands and will comply with the Child Abuse And Neglect Reporting law (CANRA).

(9) The department will provide training to its officers on the National Strategy to Eliminate Child Abuse and Neglect Fatalities and the Department of Social Services manual Child Abuse and Neglect Reporting Law.

(10) The department has initiated contact with law enforcement expert Dan Scott for the purpose of consulting with him on investigating and reporting reports of child abuse and neglect and providing additional training for the officers.

(11) The department encourages and accepts reports of not only child abuse, but also neglect, including reports from Napa County Child Welfare Services workers, other mandated reporters, and members of the public as required by existing policy and law.