

**SETTLEMENT AGREEMENT  
BETWEEN THE VISTA UNIFIED SCHOOL DISTRICT AND  
THE VISTA TEACHERS ASSOCIATION**

This Settlement Agreement ("Settlement Agreement") is made and entered into this 1<sup>st</sup> day of June 2011, by and between The Vista Unified School District ("Plaintiff" or "District") and the Vista Teachers Association ("Defendant" or "VTA"), collectively referred to as "Parties."

**RECITALS**

- A. Plaintiff filed a lawsuit against Defendant in the San Diego Superior Court, Case No. 37-2010-00059830-CU-MC-NC ("Suit"), for declaratory relief and unjust enrichment. Specifically, Plaintiff seeks, among other things, a declaration that the language contained in Section 6.10 of the 1995 Collective Bargaining Agreement, and Section 9.10 of the 1997, 2001, and 2004 Collective Bargaining Agreements, which purport to authorize Defendant to reimburse Plaintiff for anything less than "all compensation" paid to any VTA Chapter Presidents on an account of any leave of absence taken under Education Code section 44987 is illegal, void, and unenforceable. Plaintiff also seeks a judicial determination that Defendant has been unjustly enriched by Plaintiff by the amount of money paid by Plaintiff to VTA Chapter Presidents as compensation paid on account of the Education Code section 44987 leave.
- B. The Parties desire to enter into this Settlement Agreement in order to provide for certain payments in full settlement and discharge of all claims which have, or might be made, by reason of the Suit described in Recital A above and which were, or could have been alleged, in the Suit, upon the terms and conditions set forth below.

**AGREEMENT**

The Parties agree as follows:

**1. Mutual Release and Discharge.**

- a. In consideration set forth in Section 2, Plaintiff hereby completely releases and forever discharges Defendant, its successors, administrators, attorneys, past present and future officers, directors, board members and employees from any and all claims, demands, causes of action, and requests which Plaintiff may have had, may now have, or may hereafter have, against them on account or arising out of the facts, claims, counts and causes of action, which are or could have been alleged in the Suit up to and including the date this Settlement Agreement is executed.

b. In consideration set forth in Section 2, Defendant hereby completely releases and forever discharges Plaintiff, its successors, administrators, attorneys, past present and future officers, directors, board members and employees from any and all claims, demands, causes of action, and requests which Defendant may have had, may now have, or may hereafter have, against them on account or arising out of the facts, claims, counts and causes of action, which are or could have been alleged in the Suit up to and including the date this Settlement Agreement is executed.

c. The Parties hereby waive any and all rights based upon the provisions of California Civil Code Section 1542, which reads 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 to him or her must have materially affected his or her settlement with the debtor.”

The Parties understand and agree that they are expressly and completely waiving any benefits that Civil Code Section 1542, and any other laws, legal decisions, and legal principles of similar effect might provide tot them in the future.

**2. Payments and Actions Required for Funding.**

a. In consideration of the release set forth above, Defendant agrees to make payment to Plaintiff as follows:

\$80,000 payable to “Vista Unified School District,” with Payment to be delivered to Peter Fagen at the law firm of Fagen Friedman & Fulfrost, LLP, 1 Civic Center Drive, Suite 300, San Marcos, California 92069

b. The Parties agree to revise Article 9.10 of the July 1, 2010 through June 30, 2013 VUSD & VTA Contract to state the following:

“The VTA President will have release time of up to one hundred percent (100%) of his/her contract. The cost of this release time will be borne by the VTA. Education Code section 44987 specifically provides that ‘Following the school district’s payment of the employee for the leave of absence, the school district shall be reimbursed by the employee organization of which the employee is an elected officer for all compensation paid the employee on account of the leave. Reimbursement by the employee organization shall be made within 10 days after its receipt of the school district’s certification of payment of compensation to the employee.’ This issue shall not be subject to further bargaining by VTA and the District unless and until that language is revised or deleted by the Legislature.”

- c. The Parties agree that to the extent that ratification is necessary based on Defendant's internal procedures, the date for a ratification vote by Defendant's membership shall be no later than May 30, 2011 and/or will take place prior to ratification by Plaintiff's Board of Education.
  - d. The undersigned attorneys of record are hereby authorized and directed by Plaintiff to dismiss, **WITH PREJUDICE**, the aforementioned Suit now pending as against Defendant herein. In exchange for the originally signed Settlement Agreement and Release and the originally signed Request(s) for Dismissal, with prejudice being provided to counsel for Defendant, funding of the settlement will occur, as described above, within thirty (30) days.
  - e. It is understood and agreed to by the Parties that this settlement is a compromise of a doubtful and disputed claim, and the payments are not to be construed as an admission of liability on the part of Defendant, by whom liability is expressly denied.
  - f. The obligation of Defendant to make Payment shall be discharged upon the mailing of a valid check in the amount of such payment to the designated address of the District named in Section 2(a) of this Settlement Agreement.
3. **Joint Drafting and Mutual Interpretation.** This Settlement Agreement shall be construed and interpreted in a neutral manner. This Settlement Agreement is a negotiated document and shall be deemed to have been drafted jointly by the Parties, and no rule of construction or interpretation shall apply against a particular party based on the assumption or contention that the Settlement Agreement was drafted by one of the Parties. This Settlement Agreement was negotiated between the Parties at arm's length with each party receiving advice from independent legal counsel of its own choosing.
  4. **Amendments.** This Settlement Agreement cannot be changed or supplemented orally and may be modified or superseded only by written instrument executed by both Parties.
  5. **Confidentiality.** The Parties agree that neither they nor their attorneys nor representatives shall hereafter reveal to anyone, other than as may be mutually agreed to in writing or otherwise required by law or court order, any of the terms of this Settlement Agreement.
  6. **Governing Law.** This Settlement Agreement shall be construed and interpreted in accordance with the laws of the State of California.
  7. **Additional Documents.** The Parties agree to cooperate fully and execute any and all supplementary documents and to take all additional actions which may be necessary or appropriate to give full force and effect to the basic terms and intent of this Settlement Agreement.

8. **Entire Agreement.** This Settlement Agreement contains the ENTIRE AGREEMENT and COMPLETE understanding concerning this subject matter between the Parties and supersedes and replaces all prior negotiations and proposed agreements, written and oral.
9. **Attorneys' Fees.** The Parties agree to bear their own attorneys' fees and costs.
10. **Effectiveness.** This Settlement Agreement shall become effective immediately following execution by each of the Parties and approval or ratification by the Vista Unified School District Board of Education.

Plaintiff:

Vista Unified School District

By: Steve Pilly

Duly Authorized Representative

Title: Board President

Date: \_\_\_\_\_

Defendant:

Vista Teachers Association

By: Bard J. Fee

Duly Authorized Representative

Title: President

Date: 5-26-11

**APPROVED AS TO FORM AND CONTENT:**

Attorney for Plaintiff:

FAGEN FRIEDMAN & FULFROST, LLP

By: Nelly M. Fagan

Date: 6-01-2011

Attorney for Defendant:

TOSDAL, SMITH, STEINER & WAX

By: R. Steiner

Date: 5/30/11

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