

Agreement Between CAL FIRE Local 2881 (Local 2881) and the State of California, California Department of Human Resources (CalHR) and California Department of Forestry and Fire Protection (CAL FIRE) Regarding the Inclusion of Cash In Lieu of Health Benefits Into the Regular Rate of Pay for Purposes of Calculating Overtime

WHEREAS section 11.1.1.2.4 of the Bargaining Unit 8 MOU entitles an employee meeting certain conditions to receive \$155 per month (subject to proration) if they elect not to enroll in a health plan administered or approved by CalPERS and in a dental plan administered and approved by CalHR; and

WHEREAS section 11.1.1.2.5 of the Bargaining Unit 8 MOU entitles an employee meeting certain conditions to receive \$130 per month (subject to proration) if they elect not to enroll in a health plan administered or approved by CalPERS, but enrolls in a dental plan administered and approved by CalHR; and

WHEREAS Local 2881 has asserted claims on behalf of Local 2881 and current and former employees that CalHR and/or CAL FIRE has failed to include the above-described cash in lieu of health benefits in the regular rate of pay for purposes of calculating overtime; and,

WHEREAS Local 2881 previously entered into a tolling agreement with CalHR and CAL FIRE concerning these claims, effective as of May 1, 2018; and,

WHEREAS CalHR changed the State's policy effective July 1, 2018 resolving these issues prospectively by requiring cash in lieu of health benefits to be included in the regular rate of pay for purposes of calculating overtime; and

WHEREAS a dispute exists between the parties regarding CalHR and CAL FIRE's retroactive liability, including the existence and extent of damages and entitlement to recovery; and

WHEREAS, the parties to this agreement wish to avoid the potential uncertainty, expense, and delay related to litigation or participation in other administrative or civil proceedings, and have therefore entered into negotiations to resolve the parties' dispute; and,

WHEREAS CalHR and CAL FIRE negotiated a conceptual settlement agreement with Local 2881 concerning these claims on June 18, 2019;

NOW THEREFORE, the parties agree as follows:

1. In settlement of this dispute, and as set forth herein, the State of California agrees to issue retroactive pay to Bargaining Unit 8 individuals who received the above-described cash in lieu of health benefits between November 1, 2015 and June 30, 2018. In particular, the State of California will pay eligible Bargaining Unit 8 members the difference between the overtime that they already received for this period of time, and the overtime that they would have received if CalHR and CAL FIRE had included cash in lieu of health benefits pay in the regular rate of pay for purposes of calculating overtime.

2. Individuals will only qualify for pay under this settlement agreement if they were employed in a Bargaining Unit 8 classification which entitled them to overtime compensation, and received cash in lieu of health benefits between November 1, 2015 and June 30, 2018.

3. The rate of pay for any settlement payments will be based upon the \$155 per month (subject to proration) benefit the employee received in lieu of health and dental benefits, or the \$130 per month (subject to proration) the employee received in lieu of health benefits only.

4. In addition, the State of California agrees to pay 50% liquidated damages to Bargaining Unit 8 members entitled to pay under the terms of this settlement agreement. The gross amount of this liquidated damages payment will be half of the amount of any settlement payment made pursuant to paragraph one herein. However, the State of California will not be obligated to pay any costs or attorney fees.

5. Payment of the retroactive pay and liquidated damages will require a legislative appropriation. CalHR and CAL FIRE will work with the Department of Finance to seek the appropriation from the Legislature as expeditiously as possible.

6. The parties to this agreement will jointly submit a list of the individuals entitled to payment, including the amounts owed, to the State Controller's Office.

7. The parties recognize that all settlement payments will be subject to federal and state taxes, and any other deductions required by law.

8. The parties agree that individuals will not receive any settlement payment until and unless they sign the Individual Employee Release set forth at Attachment A hereto.

9. The parties agree to send a joint letter, along with the Individual Employee Release, to potential settlement payment recipients. The joint letter is set forth at Attachment B hereto. CAL FIRE will send the joint letter and Individual Employee Release to the individual's current address on file with CAL FIRE. If the individual is no longer employed by CAL FIRE, CAL FIRE will send the joint letter and Individual Employee Release to the individual's last known address.

10. CAL FIRE will send the joint letter and Individual Employee Release within 60 days of the execution of this settlement agreement. The settlement agreement will be considered executed as of the date all signatories below have signed the agreement.

11. CAL FIRE will not owe any interest provided it sends the joint letter and Individual Employee Release to individuals within the timeframes described in paragraph nine. If CAL FIRE fails to send the joint letter and individual employee releases within the timeframes described in paragraph nine, any individuals who are issued this joint letter and Individual Employee Release outside of these timeframes shall be entitled to simple interest at the annual

rate of 7%, commencing on June 18, 2019, and accruing until the date the joint letter and individual employee release is sent.

12. The parties agree that this settlement agreement is not intended to modify any term of the Bargaining Unit 8 Memorandum of Understanding.

13. Local 2881 agrees to, and hereby does, withdraw any and all grievances and claims concerning or in any way related to the above-captioned dispute, with prejudice.

14. Local 2881 and the law firm of Messing, Adam and Jasmine LLP agree they will not initiate, pursue, assist, join or encourage any lawsuit, grievance, or other legal proceeding against the State of California, CalHR, CAL FIRE and any related entities, and their agents, officers, members and employees, arising from the dispute settled herein for the period of time prior to the execution of this settlement agreement.

15. Local 2881, on behalf of themselves, their heirs, executors, administrators and assigns, hereby expressly releases the State of California, CalHR, CAL FIRE and any related entities, and their agents, officers, members and employees from any and all claims, causes of action, suits, demands, grievances, debts, expenses, accounts, obligations, costs, agreements, liens, or damages of any kind, regarding the above-described claim for the period of time prior to the execution of this settlement agreement.

16. This settlement agreement also constitutes a release of all unknown, undisclosed, or unanticipated injuries or damages related to the circumstances surrounding the above-described claim for the period of time prior to the execution of this settlement agreement. California Civil Code section 1542 reads as follows:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

Local 2881 having consulted with counsel, or having the opportunity to do so, has read the provisions of California Civil Code section 1542 and expressly waives to the fullest extent of the law all rights it may otherwise have under the terms of that code section regarding the above-described claim.

17. Local 2881 understands and acknowledges the consequence of this waiver of Civil Code section 1542 is that it will not be permitted to make any claim for damages or injuries related to the above-described claim which may exist as of the date of this settlement, but which Local 2881 does not know exist, regardless of whether Local 2881's lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause for the period of time prior to the execution of this settlement agreement.

18. This agreement supersedes all prior discussions, oral or written agreements, statements, and representations concerning the subject of this settlement, and constitutes the entire agreement between the parties on such matters.

19. Nothing in this agreement shall be construed as an admission of liability, an admission of wrongdoing, or violation of law by any party to this agreement.

20. Prior to attempting to enforce the terms of this agreement in a court of law, the parties may mutually agree to invoke the grievance and arbitration provisions of the MOU, at the fourth (CalHR) level of review, in an effort to resolve any future disputes which may arise involving this agreement.

21. If any provision of this agreement is deemed by a court or tribunal of competent jurisdiction to be void, illegal, or otherwise unenforceable, the parties agree to replace any stricken term with a legal, enforceable term of approximately the same intent.

22. The parties are entering into this settlement freely and voluntarily, after having been given the opportunity to seek the advice of counsel in this matter.

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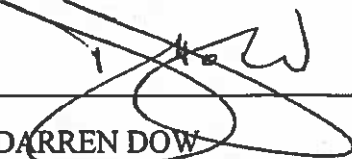
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23. The parties agree that scanned signatures sent via email may be used in lieu of original signatures and, when all necessary signatures are obtained, shall have the full force and effect as though all signatures were executed on one document.


IT IS SO STIPULATED.

Date: 12/3/2019



DARREN DOW
CAL FIRE Local 2881

Date: 12/3/2019



GARY MESSING
Counsel for CAL FIRE Local 2881

Date: _____

STEPHANIE PORTELA
Chief of Labor Relations
CAL FIRE

Date: _____

PAUL M. STARKEY
Deputy Director of Labor Relations
Department of Human Resources

Date: _____

CHRISTOPHER THOMAS
Labor Relations Counsel
Department of Human Resources

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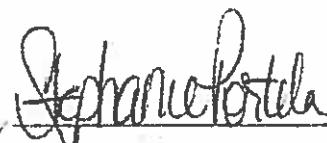
Date: _____

DARREN DOW
CAL FIRE Local 2881

Date: _____

GARY MESSING
Counsel for CAL FIRE Local 2881

Date: 12/5/2019

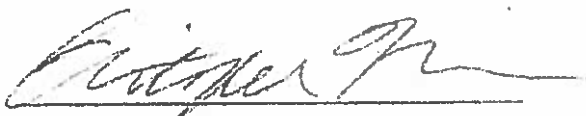


STEPHANIE PORTELA
Chief of Labor Relations
CAL FIRE

Date: _____

PAUL M. STARKEY
Deputy Director of Labor Relations
Department of Human Resources

Date: 12-4-19



CHRISTOPHER THOMAS
Labor Relations Counsel
Department of Human Resources

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IT IS SO STIPULATED.

Date: _____

DARREN DOW
CAL FIRE Local 2881

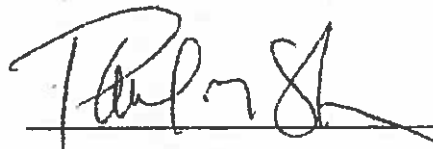
Date: _____

GARY MESSING
Counsel for CAL FIRE Local 2881

Date: _____

STEPHANIE PORTELA
Chief of Labor Relations
CAL FIRE

Date: 12/5/19



PAUL M. STARKEY
Deputy Director of Labor Relations
Department of Human Resources

Date: _____

CHRISTOPHER THOMAS
Labor Relations Counsel
Department of Human Resources

ATTACHMENT A

INDIVIDUAL EMPLOYEE RELEASE

1. I, EMPLOYEE NAME, by signing below, acknowledge that I have read, understand and agree to the terms and conditions contained in the Settlement Agreement to which this Individual Employee Release is attached. The settlement agreement may be viewed electronically, in its entirety, by logging on to the Local 2881 Rank-and-File Website at <http://www.calfirelocal2881.org/members/> or through the Messing Adam and Jasmine, LLP website at <http://mailabor.com/doc/Local2881CashInLieuSettlementAgreement.pdf>.

2. I further understand and agree that upon execution of this Individual Release, I will receive a payment pursuant to the terms of the Settlement Agreement. This amount will be subject to all applicable federal and state taxes and assessments, and any other deductions required by law. The details concerning the gross amount of my payment are as follows:

The total amount of all payments will be [INSERT GROSS AMOUNT OF PAYMENT].

This will include a supplemental EDWC payment in the amount of [INSERT GROSS AMOUNT OF PAYMENT], a supplemental UPOT payment in the amount of [INSERT GROSS AMOUNT OF PAYMENT], and a liquidated damages payment in the amount of [INSERT GROSS AMOUNT OF PAYMENT].

3. On behalf of myself, my heirs, executors, administrators and assigns, I hereby expressly release the State of California, Respondent, any related entities, and their agents, officers, members and employees from any and all claims, causes of action, suits, demands, grievances, debts, expenses, accounts, obligations, costs, agreements, liens, or damages of any kind, arising from the dispute in this matter for the period of time prior to the execution of this settlement agreement.

4. I understand that this settlement agreement also constitutes a release of all unknown, undisclosed, or unanticipated injuries or damages related to the circumstances surrounding the claims raised by CAL FIRE Local 2881 arising from the dispute in this matter for the period of time prior to the execution of this settlement agreement. California Civil Code section 1542 reads as follows:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

5. Having consulted with counsel, or having the opportunity to do so, I have read the provisions of California Civil Code section 1542 and expressly waive to the fullest extent of the law all rights I may otherwise have under the terms of that code section related to the circumstances surrounding the claims raised by CAL FIRE Local 2881 in this matter for the period of time prior to the execution of this settlement agreement.

[INSERT DATE]

CASH IN LIEU OF HEALTH SETTLEMENT

6. I understand and acknowledge the consequence of this waiver of Civil Code section 1542 is that I will not be permitted to make any claim for damages or injuries related to the grievance which may exist as of the date of this settlement, but which I do not know exists, regardless of whether my lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

7. I acknowledge and warrant that my execution of this Individual Release is free and voluntary.

Instruction: For identification purposes, please legibly print your first name, middle initial, and last name in the space below.

Printed name: _____

Dated: _____

Signature: _____

Last four digits of social security number: _____

[INSERT DATE]
CASH IN LIEU OF HEALTH SETTLEMENT

ATTACHMENT B

JOINT LETTER TO INDIVIDUALS ENTITLED TO PAYMENT

Dear Former or Current CAL FIRE employee:

CalHR and CAL FIRE and CAL FIRE Local 2881 have recently entered into a settlement agreement of a claim raised by CAL FIRE Local 2881.

In the underlying claim, CAL FIRE Local 2881 alleged that, prior to July 1, 2018, CalHR and CAL FIRE failed to include cash in lieu of health benefit pay in the regular rate of pay for purposes of calculating overtime. This relates to the entitlement of an employee meeting certain conditions to receive \$155 per month (subject to proration) if they elect not to enroll in a health plan administered or approved by CalPERS and in a dental plan administered and approved by CalHR, and the entitlement of an employee meeting certain conditions to receive \$130 per month (subject to proration) if they elect not to enroll in a health plan administered or approved by CalPERS, but enroll in a dental plan administered and approved by CalHR.

Under the terms of the settlement agreement, the State of California will pay eligible Bargaining Unit 8 members back pay equaling the difference between the overtime they already received between November 1, 2015 and June 30, 2018, and the overtime that they would have received if CalHR and CAL FIRE had included cash in lieu of health benefit pay in the regular rate of pay for purposes of calculating overtime. In addition, the State of California will pay eligible Bargaining Unit 8 members an additional amount in liquidated damages, in an amount equal to half of the back pay.

The settlement agreement may be viewed electronically, in its entirety, by logging on to the Local 2881 Rank-and-File Website at <http://www.calfirelocal2881.org/members/> or through the Messing Adam and Jasmine, LLP website at <http://majlabor.com/doc/Local2881CashInLieuSettlementAgreement.pdf>.

You have been identified as a qualifying individual subject to payment under the terms of the parties' settlement agreement. In order to receive your payment, you must sign and date the Individual Employee Release which is set forth herein. The Individual Employee Release contains information which indicates what your gross payment will be, but does not account for any federal or state taxes, and any other deductions required by law, that will be assessed. You must return your completed release by email to cashinlieusettlement@fire.ca.gov or by mail to the following address:

Department of Forestry and Fire Protection
Labor Relations Office
P.O. Box 944246
Sacramento, CA 94244-2460

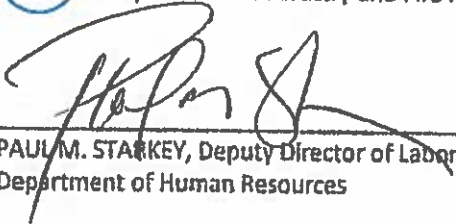
[INSERT DATE]
CASH IN LIEU OF HEALTH SETTLEMENT

If you have any questions about this, you may contact CAL FIRE at cashinlieu@fire.ca.gov or CAL FIRE Local 2881 Rank and File Representative Darren Dow at ddow@l2881.org.

Sincerely,



STEPHANIE PORTELA, Chief of Labor Relations
California Department of Forestry and Fire Protection



PAUL M. STARKEY, Deputy Director of Labor Relations
Department of Human Resources



GARY MESSING, Chief Counsel for Local 2881
CAL FIRE Local 2881



DARREN DOW, State Rank and File Representative for Local 2881
CAL FIRE Local 2881

[INSERT DATE]
CASH IN LIEU OF HEALTH SETTLEMENT