

SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS

This Settlement Agreement and Release of All Claims (“Agreement”) is made by plaintiffs Andrew Weinberger, Gideon Weinberger, and Tobias Weinberger (hereinafter referred to as “plaintiffs”), and is for the benefit of Sebastiani Theatre Foundation, Inc., Sebastiani Building Investors, Inc., City of Sonoma, Rhoten Productions, LLC (hereinafter referred to as the “defendants”) and the other persons and entities identified in paragraph 4 below. Defendants and the persons identified in paragraph 4 below are referred to as “Released Parties.” Plaintiffs and defendants may be referred to collectively as “the Parties” or individually as a “Party.”

RECITALS

A. THE ACTION

Plaintiffs filed a Complaint for Damages against some of the defendants in Sonoma County Superior Court on November 6, 2019 (Case Number SCV-265477). This Complaint for Damages will be described herein as The Action. The Action asserted causes of action for General Negligence, Premises Liability and Wrongful Death against defendants. The Action alleged that decedent Lilla Weinberger died on March 24, 2019 because of injuries she sustained in a fall at The Sebastiani Theatre, located at 476 1st Street East, in Sonoma. Plaintiffs sought to recover compensatory damages and costs incurred in prosecuting The Action. Plaintiffs acknowledge and affirm that they are the only persons who may assert a wrongful death claim arising out of the death of Lilla Weinberger.

B. DENIAL OF LIABILITY

Defendants deny the allegations asserted by plaintiffs in The Action and defendants deny that they have any liability regarding the death of Lilla Weinberger. Nevertheless, defendants

wish to avoid the cost and uncertainty of litigation and their insurance carriers have agreed to pay the amount necessary to settle the Action, based upon the terms stated in this Agreement..

C. SETTLEMENT

The Parties, through their counsel, have engaged in good faith settlement discussions with the assistance of mediator Ken Gack and they have agreed that in exchange for payment by the defendants' insurance carriers Nonprofits Insurance Alliance of California and Liberty Mutual Insurance to plaintiffs and their attorneys Abbey Weitzenberg Warren & Emery of the amount of Eight Hundred Seventy Five Thousand Dollars (\$875,000), plaintiffs will execute this Agreement and abide by its terms. Plaintiffs request that the settlement checks in the total amount of Eight Hundred Seventy Five Thousand Dollars (\$875,000) be made payable to "Abbey Weitzenberg Warren & Emery in trust for Andrew Weinberger, Gideon Weinberger, and Tobias Weinberger," The terms of this settlement are as stated below in this Agreement.

TERMS AND CONDITIONS OF AGREEMENT

1. **Background, Purpose and Scope of Release.** In exchange for the following consideration stated below, plaintiffs fully release and discharge forever the Released Parties from any and all liabilities, claims, monetary demands, causes of action, complaints, obligations, costs, losses, damages, injuries, attorney fees, and any other legal responsibility, of any form whatsoever, whether or not known or anticipated, which plaintiffs have now or may incur, own or claim by reason of any matter or thing arising from any cause or matter whatsoever between plaintiffs and Released Parties prior to the date of the execution of this Agreement.

2. **Consideration.** As consideration to plaintiffs for executing this Agreement and performing the acts stated in this Agreement, Released Parties agree to pay to plaintiffs the amount of Eight Hundred Seventy Five Thousand Dollars (\$875,000) in checks made payable as

follows: “Abbey Weitzenberg Warren & Emery in trust for Andrew Weinberger, Gideon Weinberger, and Tobias Weinberger.”

This payment will take place within thirty (30) days of Released Parties’ receipt of this signed Agreement.

3. **Acknowledgements.** Plaintiffs acknowledge and agree that the amount being paid by Released Parties, by and through their insurers, under this Agreement: i) is in full discharge of any and all of Released Parties’ potential liabilities or obligations to plaintiffs and in satisfaction of all of the plaintiffs’ potential claims against Released Parties; (ii) is in full discharge of any and all alleged claims against Released Parties for damages of any kind; and (iii) fully and completely settles all claims by plaintiffs or any attorney plaintiffs have retained against Released Parties for attorney fees, costs, disbursements, up to and including the date of the execution of this Agreement.

4. **General Release of Claims.** In exchange for the above consideration, and plaintiffs hereby fully release and discharge forever Defendants (Sebastiani Theatre Foundation, Inc., Sebastiani Building Investors, Inc., City of Sonoma, Rhoten Productions, LLC) and Released Parties and their employees, managers, volunteers, directors, officers, individually and collectively, from any and all liabilities, claims, causes of action, complaints, obligations, costs, losses, damages, injuries, attorney fees, and any other legal responsibility, of any form whatsoever, whether or not known or anticipated, which plaintiffs have or may incur, own or claim by reason of any matter or thing arising from any cause or matter whatsoever between Plaintiff and Released Parties, including the allegations and claims stated in The Action prior to the date of the execution of this Agreement. This waiver and release is intended as a general release and includes all actions and relationships between the Parties, including, but not limited

to, anything in connection with any claims for negligence or tort committed by Released Parties. This Agreement covers any future damages that may arise after this Agreement related to any action which occurred prior to the execution of this Agreement even though those damages may not be fully known at this time.

5. **Waiver of California Civil Code Section 1542.** The release is intended to be complete and final and to cover not only claims, demands, liabilities, damages, actions and causes of action which are known, but also claims, demands, liabilities, damages, actions and causes of action which are unknown or which plaintiffs do not suspect to exist in their favor which, if known at the time of executing this Agreement might have affected her actions, and therefore, plaintiffs expressly waive the benefit of the provisions of section 1542 of the California Civil Code, which states:

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.

Plaintiffs understand and acknowledge that the significance and consequence of this waiver of California Civil Code section 1542 is that even if plaintiffs should eventually suffer injury or harm arising out of or pertaining to the claims released herein (including those in The Action), they will not be able to make any claim for those injuries. Furthermore, plaintiffs acknowledge that they consciously intend these consequences even as to claims for injuries that may exist as of the date of this Agreement but which they do not know exist, and which, if known, would materially affect their decision to execute this Agreement, regardless of whether

their lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

6. **Advice of Counsel, Costs and Attorney Fees.** Plaintiffs acknowledge that: (a) they have carefully read this Agreement in its entirety; (b) they have had an opportunity to consider fully the terms of this Agreement; (c) they have been advised by Released Parties by this writing to consult with an attorney of her choosing in connection with this Agreement; (d) they fully understand the significance of all of the terms and conditions of this Agreement; (e) they have had answered to their satisfaction any questions they have asked with regard to the meaning and significance of any of the provisions of this Agreement; and (f) they sign this Agreement voluntarily and of their own free will and assent to all the terms and conditions contained herein. In addition, each party shall bear their own attorney fees and costs as part of this Agreement.

7. **Entire Agreement.** Plaintiffs agree that no promise, inducement, or other agreement has been made to Plaintiffs except what is expressly contained in this Agreement, and that this Agreement contains the entire agreement between Plaintiff and Released Parties.

8 **Binding on Successors.** The parties agree this Agreement shall be binding upon Plaintiffs and Released Parties, and their respective heirs, administrators, representatives, executors, successors, assigns, directors, officers, agents and affiliated entities, and shall inure to the parties, and each of them, and to their heirs, administrators, representatives, executors, successors, assigns, directors, officers, agents and affiliated entities and upon whom this Agreement shall also be binding.

9 **Governing Law.** This Agreement is entered into and governed by the laws of the State of California, with venue for any legal action or proceeding arising from or related to the

enforcement or construction of this Agreement to be in the Superior Court of the State of California, County of Sonoma.

10. **Severability.** If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions of this Agreement shall remain in full force and effect.

11. **Dismissal of The Action.** Plaintiffs agrees to promptly file with Sonoma County Superior Court a Request For Dismissal, with prejudice, of The Action in its entirety (all Parties and all causes of action/claims), but no later than within fifteen days after the payment in the amount of Eight Hundred Seventy Five Thousand Dollars (\$875,000) has been delivered to their attorneys at Abbey Weitzenberg Warren & Emery.

12. **Covenant Not to Sue.** Plaintiffs agree that they will never file any lawsuit against Released Parties involving in any manner the events related to The Action.

13. **Fees and Costs.** Each of the parties will bear and be responsible for their own attorney's fees, costs and expenses arising from or related to The Action. None of the parties to The Action may assert a claim against any other party for attorneys' fees or costs.

14. **Final Agreement.** Plaintiffs understand and agree that this Agreement constitutes the entire agreement concerning the subject matter herein, that no promise, agreement or inducement not herein expressed has been made to plaintiffs, and that this Agreement supersedes and replaces all prior and contemporaneous agreements, negotiations, representations, warranties and understandings of plaintiffs as to the subject matter of this Agreement. All terms and provisions of this Agreement are contractual and not a mere recital.

15. **Execution in Counterparts and Electronically.** This Agreement may be executed in one or more counterparts and transmitted electronically, all of which together will constitute one instrument and all of which will be considered duplicate originals.

16. **Indemnification.** Plaintiffs and their attorneys promise to satisfy any lien claims, as hereinafter described, and agree to indemnify, defend and hold harmless Released Parties and their heirs, executors, administrators, successors, assigns, servants, agents and employees, attorneys, and insurance companies from any loss, liability, claim, expense, demand or cause of action of any kind or character, including attorneys' fees and all actual court costs, arising from or occasioned by any lien, rights or obligation of any character whatsoever, including, but not limited to, those created by or pursuant to Section 688.1 of the Code of Civil Procedure of the State of California (relating to the liens of Judgment Creditors), Section 14124.70, et seq. of the Welfare and Institutions Code of the State of California (relating to Medi-Cal liens and liabilities) and/or any other State or Federal statutory lien or liability rights relating to or arising from claims against Released Parties, or benefits advanced to or for the benefit of Plaintiffs, Section 3045.1, et seq., of the Civil Code of the State of California (relating to hospital liens) and/or any other State or Federal Statutory lien or liability, or any contractual or common law lien or liability with particular but not exclusive reference to liens pertaining to or arising under Medicare or Social Security (including but not limited to Disability Insurance Benefits) laws, liens pertaining to physician, hospitals or other healing arts, persons or institutions, and of funeral or burial expenses provided pursuant to a public or private program containing reimbursement or subrogation provisions. Plaintiffs agree to indemnify, defend and hold harmless Released Parties and their heirs, executors, administrators, successors, assigns, servants, agents and employees, attorneys, and insurance companies from any claim or demand

form a person who claims to be an heir or wrongful death plaintiff, by virtue of his or her family relationship with Lilla Weinberger.

17. **Review and Understanding of Agreement.** Plaintiffs represent and warrant that they have had the opportunity to obtain and receive independent legal advice from attorneys of her choosing with respect to the legal effect of this Agreement, and further represent and warrant that they have carefully reviewed this entire Agreement and that each term hereof is understood.

18. **Effectiveness.** This Agreement shall become effective immediately following execution by Plaintiffs.

Dated: 5-5-, 2021

Andrew Weinberger
Andrew Weinberger

Dated: _____, 2021

Gideon Weinberger
Gideon Weinberger

Dated: 5-5-, 2021

Tobias Weinberger
Tobias Weinberger

Abbey, Weitzenberg, Warren & Emery, P.C.

Approved as to Form:

Dated: _____, 2021

Michael Green, Esq., counsel for plaintiffs
Andrew Weinberger, Gideon Weinberger
and Tobias Weinberger

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Dated: _____, 2021

Andrew Weinberger

Dated: 5/5, 2021

Gideon Weinberger

Dated: _____, 2021

Tobias Weinberger

Abbey, Weitzenberg, Warren & Emery, P.C.

Approved as to Form:

Dated: 5/9, 2021

Michael Green, Esq., counsel for plaintiffs
Andrew Weinberger, Gideon Weinberger
and Tobias Weinberger