



## City Attorney Dennis Herrera News Release

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For Immediate Release:

July 7, 2014

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# Cheated janitors to receive \$1.34 million in restitution in healthcare benefits settlement

*Herrera negotiates agreement ending legal appeal; affirming administrative order and S.F. Superior Court ruling to benefit 275 current and former workers*

SAN FRANCISCO (July 7, 2014)—City Attorney Dennis Herrera today finalized a settlement agreement with GMG Janitorial, Inc., ending the local company’s legal appeal of an Oct. 16, 2013 San Francisco Superior Court ruling to pay some \$1.34 million to 275 of its current and former employees who were denied health care benefit expenditures to which they were entitled under the City’s Health Care Security Ordinance, or HCSO. Enacted in 2006, the HCSO established the popular “Healthy San Francisco” program and created an employer spending requirement to fund health care benefits for employees in the City.

Under terms of the stipulated amended judgment entered with the Superior Court this morning, GMG Janitorial will remain liable for the full amount of benefits owed to workers under the original administrative orders and court ruling. The company is required to pay installments of at least \$200,000 every six months to a third-party settlement administrator, who will disburse payments to eligible employees, most of whom are Latino. Financial incentives included in the settlement to satisfy the debt sooner involve dollar amounts otherwise owed to the City, to ensure that workers receive their full compensation plus any interest accrued. The agreement contains additional provisions governing former employees who can’t be located and securing the debt through liens on the owner’s personal assets.

“This agreement will fully compensate employees who were denied benefits, while also assuring law-abiding competitors that they’ll no longer be undercut by businesses that cheat,” said City Attorney Dennis Herrera. “I think this settlement reflects the strong ruling Judge Marla Miller issued last October, and I hope it sends an unmistakable message that our Health Care Security Ordinance has teeth, and that we’re committed to enforcing it aggressively. As always on these

[MORE]

kinds of cases, I'm grateful to everyone in the Office of Labor Standards Enforcement for their outstanding work."

"When low-wage workers are denied their rightful health care benefits, the human consequences are incalculable," said OLSE Manager Donna Levitt. "Workers at GMG Janitorial weren't getting their health care needs addressed when the case came to our attention, and it was gratifying to see GMG start providing their workers health care benefits after OLSE began its investigation. The settlement finalized today will compensate these employees for what they were rightfully due in the first place. The vast majority of San Francisco employers comply with both the letter and the spirit of the law, which is why it's so important that violators are brought to justice."

The court order issued by Judge Marla J. Miller last October found "substantial evidence" to support prior findings by San Francisco's Office of Labor Standards Enforcement and an administrative law judge that GMG Janitorial, Inc. failed to make the required expenditures on behalf of its workers for the period 2008 to 2010. After losing its administrative appeal before the administrative law judge, GMG Janitorial filed suit in Superior Court on July 2, 2012, arguing that the OLSE exceeded its authority under local law by ordering full restitution, and that the administrative law judge's findings were unsupported by the evidence. Judge Miller's ruling decisively rejected both contentions in ordering the company to pay \$1,339,028 to its employees "in order to correct its failure to make the required expenditures." The order additionally allowed the City to recover its costs in the action in an amount to be determined.

The San Francisco City Attorney's Office played a key role in working with then-Supervisor Tom Ammiano and Mayor Gavin Newsom to craft the City's groundbreaking universal health care law enacted in 2006. Almost immediately thereafter, the office embarked on a four-year legal battle to defend the law from a challenge by the Golden Gate Restaurant Association. The ordinance was conclusively upheld when the U.S. Supreme Court denied review in the case on June 28, 2010.

San Francisco's OLSE enforces labor laws adopted by San Francisco voters and the San Francisco Board of Supervisors. In addition to investigating violations of the Health Care Security Ordinance, OLSE also enforces San Francisco's Minimum Wage Ordinance; Paid Sick Leave Ordinance; Minimum Compensation Ordinance; Health Care Accountability Ordinance; and Sweatfree Contracting Ordinance. Violations of the Health Care Security Ordinance may be reported to OLSE at (415) 554-7892 or HCSO@sfgov.org. Its website is <http://www.sfgov.org/olse>.

The case is: *GMG Janitorial, Inc. v. City and County of San Francisco et al.*, San Francisco Superior Court, Case No. 512328, filed July 2, 2012.

# # #

ENDORSED  
FILED  
San Francisco County Superior Court  
JUL 07 2014  
CLERK OF THE COURT  
BY: GINA GONZALES  
Deputy Clerk

DENNIS J. HERRERA, State Bar #139669  
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Attorneys for Respondents  
CITY AND COUNTY OF SAN FRANCISCO, et al.

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN FRANCISCO  
UNLIMITED JURISDICTION

GMG JANITORIAL, INC., a California corporation,

Petitioner,

vs.

Case No. CPF-12-512328

**STIPULATED AMENDED JUDGMENT AND SETTLEMENT AGREEMENT**

CITY AND COUNTY OF SAN FRANCISCO, a Chartered California City and County; DEPARTMENT OF ADMINISTRATIVE SERVICES, a department of the City and County of San Francisco; OFFICE OF LABOR STANDARDS ENFORCEMENT, an office within the Department of Administrative Services; OFFICE OF THE CONTROLLER, an office of the City and County of San Francisco; HEARING OFFICER PETER KEARNS, an individual in his official capacity as Administrative Law Judge for the City and County of San Francisco; REAL PARTIES IN INTEREST, and DOES 1 THROUGH 100, INCLUSIVE,

Respondents / Real Parties in Interest.

**RECITALS**

Petitioner GMG Janitorial Services, Inc. ("GMG") brought a petition for writ of administrative mandate against the above listed Respondents (the "City") in this action, seeking thereby to overturn an administrative order issued on December 7, 2011 by the San Francisco Office of Labor Standards

1 Enforcement ("OLSE"). The OLSE administrative order required GMG to make back payments in the  
2 amount of \$1,339,028.39 to 275 of its former and current employees.

3 The OLSE administrative order was based on the conclusions of an OLSE investigation that  
4 GMG was required under the Health Care Security Ordinance ("HCSO") to make \$1,339,028.39 in  
5 health care expenditures on behalf of 275 employees from 2008 – 2012, but that GMG had wholly  
6 failed to make such expenditures. The OLSE order therefore ordered \$1,339,028.39 in back-payments  
7 to those employees as a corrective action under the HCSO. See Exhibit A, attached.

8 On December 22, 2011, GMG submitted a timely administrative appeal of the OLSE order. On  
9 May 1, 2012, the administrative law judge issued his decision, denying GMG's appeal and upholding  
10 the OLSE order in full. The ALJ decision ordered GMG to make the required payments to its current  
11 and former employees by June 20, 2012.

12 On July 6, 2012, GMG filed its Petition for Writ of Administrative Mandate under Code of  
13 Civil Procedure Section 1094.5, seeking to overturn the administrative hearing officer's decision for  
14 abuse of discretion. GMG's petition alleged that the HCSO did not authorize the back-pay remedy that  
15 the OLSE ordered, and therefore the ALJ had abused his discretion in upholding that remedy.

16 On August 21, 2013, the City filed its Motion for Judgment against GMG. GMG filed its  
17 Opposition and the City filed its reply to the opposition.

18 On October 16, 2013, following oral argument, the trial court granted the City's motion and  
19 issued a judgment denying GMG's petition for writ of mandate (the "10/16/13 Judgment"). See  
20 Exhibit B, attached.

21 On December 13, 2013, GMG filed timely notice of appeal of the 10/16/13 Judgment, as well  
22 as the order granting the City's motion.

23 On February 4, 2014, the Clerk of the Superior Court certified to the Court of Appeal the  
24 Clerk's Transcript, the Reporter's Transcript, and the Administrative Record.

25 On February 27, 2014, the City filed its *ex parte* application for court orders to enforce the  
26 10/16/13 Judgment. In its moving papers, the City argued that the 10/16/13 Judgment, properly  
27 construed under the provisions of the HCSO and the state statutes governing enforcement of  
28 judgments, was a money judgment and that the City was the judgment creditor of that judgment. GMG

1 opposed the application and on March 3, 2014, the court denied the motion without prejudice and  
2 instructed the City to file it as a noticed motion if it still sought the requested relief.

3 On March 4, 2014, the City filed its noticed motions for court orders to enforce the 10/16/13  
4 Judgment, setting it for hearing on March 27, 2014. In its moving papers, the City argued that the  
5 10/16/13 Judgment, properly construed under the provisions of the HCSO and the state statutes  
6 governing enforcement of judgments, was a money judgment and that the City was the judgment  
7 creditor of that judgment. The City further argued that the filing of an appeal from the 10/16/13  
8 Judgment did not automatically stay the judgment. GMG filed its opposition to the City's motions on  
9 March 13, 2014, arguing that the judgment was not a money judgment and the City was not a  
10 judgment creditor under the applicable statutes. GMG further argued that the filing of the appeal acted  
11 as an automatic stay of the 10/16/13 Judgment, so as to prevent its enforcement.

12 Taken together, the above described proceedings and disputes constitute "the Action" to which  
13 this Stipulated Amended Judgment and Settlement Agreement refer. As is plain from the above  
14 recitals, there are many matters contested and unsettled at the present time, including the validity of  
15 the 10/16/13 Judgment as well as whether it constitutes a money judgment and whether the City may  
16 enforce the judgment on behalf of the employees.

17 On March 20, 2014, after considerable negotiation, GMG and the City (the "Parties") reached a  
18 settlement of their disputes, including both this action and the appeal therefrom, embodied in a written  
19 last and final offer from the City, which was signed by Gina Gregori, GMG's President and sole  
20 shareholder on March 20, 2014. See Exhibit C, attached.

21 As the attached settlement agreement makes clear, the parties agree to settle this matter in the  
22 form of a Stipulated Amended Judgment and Settlement Agreement to be entered as an order of this  
23 Court ("Amended Judgment").

24 The record of the administrative proceedings having been introduced into evidence, evidence  
25 of the legislative history of the San Francisco Health Care Security Ordinance ("HCSO") having been  
26 judicially noticed by the Court, the Court having considered all of the papers on file in this action, the  
27 Parties having stipulated to the provisions set forth herein, the Court having reviewed these provisions,  
28 the Parties having agreed to the issuance of this Order, and good cause appearing therefore,

**STIPULATED AMENDED JUDGMENT**

The Court hereby FINDS that there is substantial evidence in the record to support the challenged findings of the ALJ in this matter.

The Court further FINDS that the ALJ and the OLSE acted in accordance with the language and intent of both the HCSO and its implementing regulations in ordering GMG to pay 275 of its employees a total of \$1,339,028.39 in order to correct its failure to make health care expenditures on behalf of those same employees for the period 2008-2010, as the HCSO required.

The Court therefore further FINDS that the City has not acted in excess of its jurisdiction in this matter, nor has it failed to proceed in the manner required by law.

Consequently, IT IS HEREBY ORDERED that the writ of mandate applied for by GMG is DENIED;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED:

**A. JURISDICTION.** This Court has jurisdiction over the subject matter of this lawsuit as set forth in the Complaint, the related motions, and the appeal of the 10/16/13 Judgment, and over the Parties to this Action, and has authority to issue this Amended Judgment.

**B. OCTOBER 16, 2013 JUDGMENT.** The 10/16/14 Judgment is hereby replaced by this Amended Judgment, which resolves all matters remaining at issue in this Action.

**C. MONEY JUDGMENT.** This Amended Judgment is a money judgment, and the City is a judgment creditor under Title 9 of the Code of Civil Procedure, governing enforcement of judgments. GMG shall pay \$1,339,028.39 to the City in satisfaction of its obligations under December 7, 2011 OLSE order to make back-payments to 275 current and former employees. The City will then distribute this money to the 275 employees listed in the order in the amounts specified therein.

**D. INTEREST.** This Amended Judgment shall bear interest at the annual rate of 10%, beginning on the October 16, 2013 date of the original Judgment.

**E. FEES, COSTS..**

1. Except as otherwise provide in this Amended Judgment, the parties shall bear their own fees and costs.

1           2. GMG shall separately pay the fees of David Cook for his representation of the City in  
2 proceedings to enforce the Judgment, in the total amount of \$10,000, on or before entry of this  
3 Amended Judgment. This provision shall be excepted from the stay of the Amended Judgment during  
4 performance of the Settlement Agreement.

5           3. Should GMG fail to comply with the terms of the Settlement Agreement set out below, and  
6 the City then file any motion of other action to enforce this Amended Judgment, the City shall be  
7 entitled under Section 14.4(e) of the HCSO and by agreement of the parties to recover its reasonable  
8 attorneys' fees and costs in taking such action.

9           4. Upon entry of this Amended Judgment, but after payment of Mr. Cook's fees as provided  
10 above, this Amended Judgment shall be stayed during the performance of the terms of the Settlement  
11 Agreement set out below. This stay shall remain in effect until all terms of the Settlement Agreement  
12 are fully and completely performed by GMG. Any failure by GMG to perform the terms of the  
13 Settlement Agreement, as provided below, shall result in the termination of this stay and the City  
14 seeking to enforce the Amended Judgment.

15           5. Upon the full and complete performance of all terms of the Settlement Agreement by  
16 GMG, the City shall file a complete satisfaction of judgment in this action.

17           **F. RECORDATION.** This Amended Judgment shall be filed with the San Francisco  
18 Superior Court and recorded against any and all assets of GMG or Gina Gregori, individually.

19           **G. NO WAIVER OF RIGHT TO ENFORCE.** The failure of the City to enforce any  
20 provision of this Amended Judgment, shall in no way be deemed a waiver of such provision or in any  
21 way affect the validity of either the Amended Judgment or the Settlement Agreement. The failure of  
22 the City to enforce any such provision shall not preclude the City from later enforcing the same or any  
23 other provision. No oral advice, guidance, suggestion or comments by the City's employees or  
24 officials regarding matters covered in Amended Judgment shall be construed to relieve GMG or Ms.  
25 Gregori of their obligations thereunder.

26       / / /

27       / / /

28       / / /

## **SETTLEMENT AGREEMENT**

**H. SETTLEMENT AMOUNT.** GMG remains liable under this agreement for the entire \$1,339,028.39 amount of the Amended Judgment, unless otherwise excused by this settlement agreement.

### **I. PAYMENT SCHEDULE.**

1. GMG shall pay off the Settlement Amount by making a payment totaling at least \$200,000 every six months to the Settlement Administrator. The first such payment shall be due on or before entry of this Amended Judgment by the Court.

2. The second settlement payment shall be due on or before a date six months from the original payment, with subsequent payments due on or before the date six months after the previous payment.

3. Should GMG fail to comply with its obligation to make timely payments as provided above, the Settlement Administrator shall give notice to GMG of its default by the 10th day of the same month in which payment was due.

4. Should GMG fail to cure the default within 10 days after notice is provided to GMG, this Settlement Agreement shall be declared in default, the remainder owed on the Amended Judgment shall be in due in full, the stay on the Amended Judgment shall be lifted, and the City shall be free to pursue enforcement of the Amended Judgment.

5. GMG may accelerate this payment schedule by making payments in excess of \$200,000, or more frequently than every six months, or by paying the entire settlement amount due.

### **J. SETTLEMENT ADMINISTRATION.**

1. Settlement payments and distribution to employees shall be administered by a third party administrator hired and managed by the City (the "Settlement Administrator"). The costs of the administrator and associated costs of administration shall be paid for by GMG. GMG shall timely remit the settlement payments to the Settlement Administrator who shall deposit them in a bank account established for this purpose.

2. The Settlement Administrator will make every good faith, reasonable effort to locate and identify every employee who benefitted from the December 7, 2011 OLSE administrative

1 order directing GMG to make back payments in the total amount of \$1,339,028.39 to 275 of its former  
2 and current employees. GMG will fully cooperate in good faith with the Settlement Administrator in  
3 locating each and every employee benefitting from the back-pay order, including but not limited to  
4 providing the Settlement Administrator with a list of the best available contact information for those  
5 employees.

6           3.     Regarding amounts owed to employees who cannot be located and/or do not file  
7 claims with Settlement Administrator by a time six months after GMG's last payment under the  
8 settlement agreement, GMG will be excused from liability under the Amended Judgment for up to  
9 \$375,000 in back pay against which no employee claims are filed, with any remaining amount owed  
10 under the Amended Judgment paid to the City. Subject to paragraph 6 below, the cost of the  
11 Administrator paid by GMG shall be credited against any final payment owed by GMG under this  
12 Agreement.

13           4.     Should GMG have otherwise completely satisfied its payment obligations under  
14 this settlement agreement within 2 years from entry of this agreement, GMG will be excused from an  
15 additional \$25,000 in liability under the Amended Judgment that would otherwise be owed to the City  
16 after payments to all employees who could be located, bringing the possible total excuse from liability  
17 for back pay to \$400,000.

18           5.     Should GMG pay off the entire settlement amount early, the final payoff of the  
19 settlement amount will close the window on employee location and identification efforts by the  
20 Settlement Administrator, provided that at least 1 year has passed since both of the following 1) GMG  
21 provided the administrator the identifying information on those employees required above, and 2)  
22 GMG made its first settlement payment.

23           6.     GMG shall receive credit against the final payment in its payment schedule for  
24 any amounts GMG pays to administer this settlement agreement. This shall be in addition to any other  
25 credits GMG to which is entitled under other provisions of this settlement agreement.

26           **K.     SECURITY FOR PAYMENT AGREEMENT.**

27           1.     In exchange for allowing GMG a long-term payment schedule under this  
28 Settlement Agreement, both GMG and Gina Gregori, personally, will provide the City with recorded

1 security interests in all assets of both GMG and of Gina Gregori, personally.

2           2.     In exchange for allowing GMG a long-term payment schedule under this  
3 Settlement Agreement, Gina Gregori also agrees to personally guarantee the Amended Judgment,  
4 including this Settlement Agreement, and to back her personal guarantee with recorded security  
5 interests in favor of the City in Ms. Gregori's personal assets, including her property.

6           3.     In exchange for allowing GMG a long-term payment schedule under this  
7 Settlement Agreement, Gina Gregori and GMG also assign to the City any future inheritance, interest,  
8 or claim in favor of GMG or Ms. Gregori, upon its realization.

9           4.     The above written security interests will be provided to the City on or before  
10 entry of this Amended Judgment, and will be recorded.

11           5.     The City will not execute on these security interests unless and until the  
12 settlement agreement is not fully performed, and 30 days have passed since the City provided GMG  
13 with notice of default.

14           **L.     RELEASE.**

15           1.     **Mutual Provisions.** It is the intention of the Parties that this Agreement shall be  
16 effective as a full and final accord and satisfactory release of all claims between the Parties for all  
17 matters alleged in the Complaint and other pleadings filed in Action. In furtherance of this intention,  
18 the Parties acknowledge that each, respectively, is familiar with Section 1542 of the Civil Code of the  
19 State of California, which provides as follows:

20                   A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS A CREDITOR  
21                   DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE  
22                   TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM  
23                   MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE  
24                   DEBTOR.

25           The Parties hereby waive and relinquish any rights and benefits which each has or may have  
26 under Section 1542 of the Civil Code to the full extent that each may lawfully waive all such rights  
27 and benefits pertaining to claims released by this Agreement. The Parties acknowledge that each is  
28 aware that it may hereafter discover facts in addition to or different from those which he or she knows  
or believes to be true with respect to the subject matter of this Agreement, but it is the intention of the  
Parties to hereby fully and finally forever settle and release any and all matters, disputes, and

1 differences, known or unknown, or which have existed or will ever exist between the Parties regarding  
2 the released claims, and that in furtherance of this intention, the settlement herein given shall be and  
3 remain in effect as a full and complete general release of such claims notwithstanding discovery or  
4 existence of any such additional or different facts.

5           **b. Release By GMG and Gina Gregori.** In consideration of the promises set  
6 forth in this Agreement, together with other good and valuable consideration, the receipt, adequacy,  
7 and sufficiency of which are hereby expressly acknowledged, GMG and Gina Gregori, whether in  
8 their representative or individual capacities, release and discharge the City and County of San  
9 Francisco, as well as its employees, officers, directors, servants, relatives, insurers, attorneys, agents,  
10 representatives, heirs, executors, administrators, successors, and assigns of the City and County of San  
11 Francisco from any and all civil claims, counterclaims, demands, actions, suits, rights, causes of action  
12 and liabilities of any nature, known or unknown, suspected or unsuspected, whether legal, equitable or  
13 statutory, including, but not limited to civil penalties and punitive damages, costs, expenses and  
14 attorneys' fees (1) that GMG and Gina Gregori, whether in their representative and individual  
15 capacities, did allege or could have alleged in their pleadings in the Action; and/or (2) arising in any  
16 way from the City and County of San Francisco's activities related to the Action.

17           **c. Release By the City.** In consideration of the promises set forth in this  
18 Agreement, together with other good and valuable consideration, the receipt, adequacy, and  
19 sufficiency of which are hereby expressly acknowledged, the City releases and discharges GMG and  
20 Gina Gregori, whether in their representative or individual capacities, as well as their beneficiaries,  
21 employees, officers, directors, servants, relatives, insurers, attorneys, agents, representatives, heirs,  
22 executors, administrators, successors, and assigns from any and all actions, causes of action and claims  
23 that were alleged the Action or could have been alleged regarding enforcement of the HCSO during  
24 the Effective Date.

25           **M. DISMISSAL OF APPEAL.** GMG will dismiss its appeal of the 10/16/14 Judgment  
26 with prejudice, upon entry of the Amended Judgment. GMG further agrees that it will not file an  
27 appeal of the the Amended Judgment, or other wise contest its validity. At the same time, the City will  
28

1 stay any action enforcing the 10/16/14 Judgment or the Amended Judgment, which will remain stayed  
2 while the settlement agreement is being satisfactorily performed by GMG.

3 **N. ENTIRE AGREEMENT.** This Agreement supersedes and makes void any prior  
4 agreement, oral or written, with respect to the subject matter hereof. The Parties to this Agreement  
5 understand and agree that no representations, warranties, agreements, or covenants have been made  
6 with respect to this Agreement, other than those set forth herein, and that in executing this Agreement  
7 the parties are not relying upon any representation, warranty, agreement, or covenant not set forth  
8 herein.

9 **O. SEVERABILITY.** If any term or provision of this Agreement or any application  
10 thereof shall be held invalid or unenforceable, the remainder of this Agreement and any application of  
11 the terms and provisions shall not be affected thereby, but shall remain valid and enforceable.

12 **SO STIPULATED:**

DENNIS J. HERRERA  
City Attorney  
JERRY THREEET  
Deputy City Attorneys

15 DATED: 6/6/14

By:

JERRY THREEET  
Attorneys for Respondents  
CITY AND COUNTY OF SAN  
FRANCISCO

19 DATED: 5/6/14

GINA GREGORI  
Both Individually and as President of  
GMG JANITORIAL, INC.

22 APPROVED AS TO FORM

23 DATED: 5/6/14

STEVEN KAY, Counsel to GMG and  
GINA GREGORI

25 **SO ORDERED:**

26 DATED: JUL 07 2014

ERNEST H. GOLDSMITH  
JUDGE OF THE SUPERIOR COURT

GENERAL SERVICES AGENCY  
OFFICE OF LABOR STANDARDS ENFORCEMENT  
DONNA LEVITT, MANAGER



*[Sent via certified mail and email to jkevin@reubenlaw.com]*

## DETERMINATION OF VIOLATION

December 7, 2011

John Kevlin  
Reuben and Junius LLP  
One Bush Street, Suite 600  
San Francisco, CA 94104

RE: *Determination of Violation of the San Francisco Health Care Security Ordinance,*  
Case No. HCSO-359

Dear Mr. Kevlin:

As you know, the San Francisco Office of Labor Standards Enforcement (OLSE) has been investigating whether GMG Janitorial ("GMG") has been in compliance with the San Francisco Health Care Security Ordinance (HCSO). OLSE has determined that GMG violated the HCSO by failing to make all of the required Health Care Expenditures for the period between January 2008 and December 2010. As such, OLSE mandates that GMG take the corrective actions and pay the administrative penalties outlined below.

### I. HCSO EMPLOYER SPENDING REQUIREMENT

The HCSO requires covered employers to make health care expenditures to or for the benefit of their covered employees each quarter.<sup>1</sup> The required health care expenditure for a covered employer shall be calculated by multiplying the total number of hours paid for each of its covered employees during the quarter by the applicable health care expenditure rate.<sup>2</sup> In determining whether a covered employer has made its required health care expenditures, payments to or on behalf of a covered employee shall not be considered if they exceed the following amount: the number of hours paid for the covered employee during the quarter multiplied by the applicable health care expenditure rate.<sup>3</sup> The required health care expenditure must be made regularly, and no later than 30 days after the end of the preceding quarter.<sup>4</sup> The required health care expenditure must be made in full each quarter.<sup>5</sup>

Covered employers shall keep, or cause to be kept, for a period of four years from the covered employees' dates of employment, records sufficient to establish compliance with the health care expenditure requirement, including, as applicable, records of health care expenditures made, calculations of health care expenditures required under this Ordinance for each covered employee, and proof documenting that such expenditures were made at least quarterly each year.<sup>6</sup>

All records necessary to establish compliance with the Employer Spending Requirements of the HCSO shall be made accessible by covered employers to OLSE.<sup>7</sup>

## II. OLSE INVESTIGATION AND ENFORCEMENT

OLSE has the authority to conduct investigations and shall enforce the obligation of covered employers to satisfy the HCSO's health expenditure requirements.<sup>8</sup> All covered employers shall cooperate fully with OLSE in connection with any investigation of an alleged violation of this Ordinance or with any audit or inspection conducted by OLSE.<sup>9</sup>

In February 2011, OLSE initiated an investigation of GMG's compliance with the HCSO for the period January 2008 to December 2010. Michelle Barrett, counsel for GMG, provided information to my office on March 7, 2011 and April 20, 2011, and met with representatives from my office and the Office of the City Attorney on August 19, 2011.

On August 31, 2011, OLSE sent a Notice of Violation, which required, among other things, that GMG pay \$1,330,002.86 to 275 current and former employees by September 10, 2011. Ms. Barrett submitted a written response to this Notice on September 9, 2011. You provided information regarding "the financial hardship of GMG Janitorial, Inc." on October 3, 2011 and additional documentation regarding medical reimbursements on November 4, 2011, November 7, 2011, and December 5, 2011. Based on those documents and inquiries made to verify them, I modified the assessment of overdue health care expenditures.

Michelle Barrett reported to me that an HRA with Flex-Plan has been set up for 2011 expenditures.

As of the date of this Determination, GMG has not taken the corrective actions established in OLSE's August 31, 2011 Notice of Violation.

## III. OLSE FINDINGS

OLSE makes the following findings with respect to the period January 2008 to December 2010:

1. An average of 100 or more persons per week performed work for compensation for GMG for each of the twelve (12) calendar quarters within the period.
2. GMG engaged in business within the City of San Francisco and was required to obtain a valid San Francisco business registration certificate. As such, GMG was "covered" as a "large business" under the HCSO.<sup>10</sup>
3. As a large, covered employer, GMG has been subject to the following hourly Health Care Expenditure rates: \$1.76 in 2008, \$1.85 in 2009, \$1.96 in 2010, and 2.06 in 2011.<sup>11</sup>
4. GMG employed over three hundred people during the period. Based on the hours they worked in San Francisco, two hundred and eighty-nine (289) of these employees were entitled to \$1,585,775.82 in required health care expenditures by GMG.

5. GMG made an offer of health benefits to certain employees (hereafter referred to as "benefited employees"), including office staff, managers, and some janitors. GMG made \$315,180.88 in health care expenditures – in the form of health or dental insurance premiums – on behalf of forty-five (45) of the aforementioned benefited employees. Notwithstanding the fact that some of these expenditures were in excess of the quarterly requirements for individual employees, these insurance premium payments constituted qualifying health care expenditures under the HCSO and are, therefore, credited against GMG's mandatory expenditures.<sup>12</sup>
6. GMG reimbursed \$7,081.16 for out-of-pocket medical, dental and vision expenses to benefited employees. These direct reimbursements constituted qualifying health care expenditures under the HCSO and are, therefore, credited against GMG's mandatory expenditures.<sup>13</sup>
7. GMG purportedly set-aside additional funds for the purpose of reimbursing additional out-of-pocket medical expenses incurred by GMG employees. This purported set-aside did not constitute a contribution to "a health savings account ...or to any other account having substantially the same purpose or effect" and is, therefore, not credited against GMG's mandatory expenditures.<sup>14</sup>
8. GMG made some reimbursements to employees for medical expenses resulting from workplace injuries. These reimbursements did not constitute qualifying health care expenditures under the HCSO and are, therefore, not credited against GMG's mandatory expenditures.<sup>15</sup> Payments for long term disability insurance are likewise not credited.
9. GMG made no other health care expenditures to or on behalf of its covered employees.
10. Accounting for the qualifying expenditures made, GMG failed to make \$1,339,028.39 in health care expenditures to or on behalf of two hundred and seventy-five (275) employees.

#### IV. CORRECTIVE ACTION

OLSE may order employers who violate this Ordinance to take any actions it deems necessary to correct the violation(s) committed.<sup>16</sup> In order to remedy the aforementioned failure to make the required health care expenditures, OLSE hereby mandates that GMG take the following corrective actions:

1. By January 6, 2012, make \$1,339,028.39 in payments to the two hundred and seventy-five (275) current and former employees listed in the enclosed Exhibit A. Make these payments by check to the individuals in the amounts listed in the "TOTAL DUE" column of Exhibit A.
2. Along with each payment, provide a copy, in both Spanish and English, of the enclosed

"Notice to Current or Former Employee."

3. GMG may deliver the checks and notices to current employees in the same manner that GMG currently issues itemized pay statements. Otherwise, GMG shall mail the checks and notices to each individual via first-class mail to the most recent address GMG has maintained in its records. In either case, GMG shall make a good faith effort to deliver the checks to the intended recipients (including, but not limited to, re-sending any checks upon GMG's receipt of updated address information).
  4. Within five (5) days of issuing the checks, mail (via first class mail) or email copies of the checks and addresses to my attention.
- 
5. GMG shall afford the individuals at least sixty (60) days to cash the checks. After this sixty (60) day period, GMG may issue a stop-payment order for any un-cashed checks.
  6. Within fifteen (15) days following the sixty (60) day period, mail (via first class mail) to my attention:
    - a. An accounting, with supporting evidence, of the checks that were cashed and un-cashed. Absent clear evidence that checks were cashed, OLSE will presume the checks were not cashed.
    - b. A check, made payable to the "The City and County of San Francisco" in the amount of the un-cashed checks. OLSE shall hold the money in escrow for claimants whom the Labor Standards Enforcement Officer, despite his/her best efforts, including any required public notice, cannot locate. Funds so held for three years or more shall be dedicated to the enforcement of the Health Care Security Ordinance.
  7. Furthermore, December 21, 2011, GMG must establish that it satisfied the health care expenditure requirement for the first three quarters of 2011 (January 1, 2011 through September 30, 2011), which are the quarters immediately following the investigation period. Please mail (via first class mail) or email, to my attention, "records sufficient to establish compliance" with the health care expenditure requirement for these quarters.<sup>17</sup> These should include the complete rosters submitted to Flex-Plan showing the amount of the health care expenditure made for each employee for each quarter, one copy of any documents sent to employees in connection with this benefit, and, a final summary plan description and adoption agreement for the HRA.

**V. ADMINISTRATIVE PENALTIES AND INTEREST**

The City may impose administrative penalties and interest upon employers who fail to make required health care expenditures on behalf of their covered employees.<sup>18</sup> The amount of the penalty may be up to one-and-one-half times the total expenditures that an employer failed to make, plus simple annual interest of up to ten percent, from the date payment should have been made, not to exceed \$1,000 per employee per week.<sup>19</sup>

Letter to John Kevlin  
December 7, 2011  
Page 5

OLSE hereby imposes an administrative penalty upon GMG in the amount of \$66,900.08 for the foregoing violations. Payment of this administrative penalty shall be made payable to the "City and County of San Francisco" and is due by January 6, 2012.<sup>20</sup> Please mail the check to the Office of Labor Standards Enforcement, attn: Donna Mandel, City Hall, Room 430, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

#### VI. APPEAL RIGHTS

You may appeal this Determination within fifteen (15) days from the date this document is served. The appeal must:

- 1) be in writing and specify the basis for the appeal in detail,
- 2) indicate a return address,
- 3) be accompanied by the penalty amount,
- 4) be filed with the Controllers Office, City Hall, Room 430, 1 Dr. Carlton B. Goodlett Place, San Francisco CA 94102, and
- 5) be filed with a copy to the Office of Labor Standards Enforcement, attn: Donna Mandel, City Hall, Room 430, 1 Dr. Carlton B. Goodlett Place, San Francisco CA 94102.<sup>21</sup>

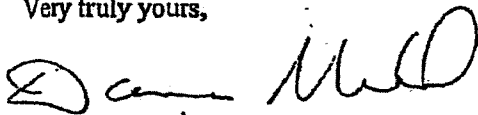
Within fifteen (15) days of receiving a proper request for appeal, the Controller or his or her designee shall appoint a hearing officer to hear and decide the administrative appeal and shall so advise OLSE and the appellant.<sup>22</sup> You shall have the burden of proving that the basis for the Determination of Violation is incorrect.<sup>23</sup>

If you fail to file an appeal within fifteen (15) days in accordance with these provisions, it shall constitute concession to the assessment and the Determination shall be deemed final.<sup>24</sup>

For reference, a copy of the Final Regulations Implementing the Health Care Security Ordinance is available at: <http://sfgsa.org/Modules/ShowDocument.aspx?documentid=1246>. Regulations 9 and 10 are entitled "Corrective Action and Administrative Penalties" and "Administrative Penalties," respectively.

If you have any questions about the content of this letter, please contact me by telephone at (415) 554-4791 or by email at [donna.mandel@sfgov.org](mailto:donna.mandel@sfgov.org).

Very truly yours,



Donna Mandel  
Compliance Officer

Letter to John Kevlin  
December 7, 2011  
Page 6

Enclosures: *Exhibit A: Calculation of Overdue Health Care Expenditures  
Notice to Former or Current Employee*

cc: Michelle Barrett, Littler Mendelson  
Deputy City Attorney Jill Figg

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<sup>1</sup> HCSO § 14.3(a); Regulation 1.1(A).

<sup>2</sup> HCSO § 14.3(a).

<sup>3</sup> HCSO § 14.3(a).

<sup>4</sup> Regulation 6.2(A).

<sup>5</sup> Regulation 6.2(D).

<sup>6</sup> HCSO § 14.3(b); Regulation 7.2(A)(3).

<sup>7</sup> HCSO § 14.3(b); Regulation 7.2(C).

<sup>8</sup> HCSO § 14.3(a); Regulation 8.1.

<sup>9</sup> Regulation 7.4.

<sup>10</sup> HCSO § 14.1(b)(3) and (11); Regulation 2.2(A) and (C)(1).

<sup>11</sup> Regulation 5.2

<sup>12</sup> HCSO § 14.1(b)(7)(c); Regulation 4.2(A)(1).

<sup>13</sup> HCSO § 14.1(b)(7)(b); Regulation 4.2(A)(4).

<sup>14</sup> HCSO § 14.1(b)(7)(a); Regulation 4.2(A)(3).

<sup>15</sup> HCSO § 14.1(b)(7) provides, in part, health care expenditures "shall not include any payment made directly or indirectly for workers' compensation or Medicare benefits." See also Regulation 4.2(B).

<sup>16</sup> Regulation 9.1

<sup>17</sup> Regulation 7.2(A)(3). See also HCSO § 14.3(b).

<sup>18</sup> HCSO § 14.4(e)(1).

<sup>19</sup> HCSO § 14.4(e)(1).

<sup>20</sup> Regulation 9.3(A).

<sup>21</sup> Regulation 10.1(A).

<sup>22</sup> Regulation 10.1(B).

<sup>23</sup> Regulation 10.2.

<sup>24</sup> Regulation 10.1(A)

GENERAL SERVICES AGENCY  
OFFICE OF LABOR STANDARDS ENFORCEMENT  
DONNA LEVITT, MANAGER



## NOTICE TO CURRENT OR FORMER EMPLOYEE

Current or former employee of GMG Janitorial (GMG):

The San Francisco Office of Labor Standards Enforcement (OLSE) conducted an investigation and determined that GMG failed to satisfy the health care expenditure requirements of the San Francisco Health Care Security Ordinance (HCSO) for the period January 2008 to December 2010. In order to remedy this violation, the OLSE has ordered GMG to issue you a check in the amount of the required health care expenditures GMG failed to make on your behalf (based on your dates of employment and hours worked). Although this payment is intended to redress GMG's past failure to make the required health care expenditures, this money is not restricted to any particular use.

In the future, GMG is required to satisfy the employer spending requirement of the Health Care Security Ordinance by making quarterly expenditures for all covered employees. The amount of the expenditure should be at the rate of \$2.06 per hour you are paid in 2011 (\$2.20 in 2012) and must be used to provide you with health care. These expenditures are due no later than January 30, April 30, July 30 and October 30 of each year.

If you have any questions about this Notice, your rights under the Health Care Security Ordinance, or the amount of the enclosed check, please contact our office by telephone at (415) 554-7892 or by email at [hcsosf@sfgov.org](mailto:hcsosf@sfgov.org).

Sincerely,

A handwritten signature in black ink, appearing to read "Donna Mandel".

Donna Mandel  
Compliance Officer

GENERAL SERVICES AGENCY  
OFFICE OF LABOR STANDARDS ENFORCEMENT  
DONNA LEVITT, MANAGER



**Empleados actuales o anteriores de GMG Janitorial (GMG):**

La Oficina de Cumplimiento de Normas Laborales (OLSE) de San Francisco llevó a cabo una investigación y determinó que GMG no para satisfacer el requisito de gasto de la salud de la ordenanza de Seguridad Cuidado de la Salud de San Francisco (HCSO) para el período enero 2008 a diciembre 2010. Para poner remedio a esta violación, el OLSE ha ordenado GMG que le escriba a usted un cheque por la suma de los gastos que GMG no hizo en su nombre (en base a las fechas de su empleo y horas trabajadas). ~~A pesar de este pago está destinado a corregir los~~ fracasos del pasado de GMG para hacer que el gasto en salud requiere atención, este dinero no se limita a un uso particular.

En el futuro, GMG tiene la obligación de satisfacer el requisito de gasto del empleador de la HCSO por hacer gastos trimestrales de todos los empleados cubiertos. El importe de los gastos se debe a una tasa de \$ 2.06 por hora que se le pagan en el año 2011 (\$2.20 en 2012) y debe ser utilizada para proveer servicios de salud. Estos gastos se deben a más tardar el 30 de enero, 30 de abril, 30 de julio y 30 de octubre de cada año.

Si usted tiene alguna pregunta sobre este aviso, sus derechos bajo la Ordenanza de Seguridad de Atención Médica, o la cantidad del cheque adjunto, por favor póngase en contacto con nuestra oficina por teléfono al (415) 554-7892 o por correo electrónico a [hcsa@sfgov.org](mailto:hcsa@sfgov.org).

Atentamente,

A handwritten signature in black ink, appearing to read "Donna Mandel".

Donna Mandel  
Oficial de Cumplimiento

GENERAL SERVICES AGENCY  
OFFICE OF LABOR STANDARDS ENFORCEMENT  
DONNA LEVITT, MANAGER



**PROOF OF SERVICE**

I, Maneerat Vipusithimakool, declare as follows:

I am a citizen of the United States, over the age of eighteen years, and not a party to this case. I am employed by the City and County of San Francisco at the Office of Labor Standards Enforcement, City Hall, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

On December 7, 2011, I served the following document(s):

**DETERMINATION OF VIOLATION**

on the following persons at the locations specified:

John Kevlin  
Reuben and Junius LLP  
One Bush Street, Suite 600  
San Francisco, CA 94104

in the manner indicated below:



**BY UNITED STATES MAIL:** Following ordinary business practices, I sealed true and correct copies of the above documents in addressed envelope(s) and placed them at my workplace for collection and mailing with the United States Postal Service. I am readily familiar with the practices of the San Francisco Office of Labor Standards Enforcement for collecting and processing mail. In the ordinary course of business, the sealed envelope(s) that I placed for collection would be deposited, postage prepaid, with the United States Postal Service that same day.



**BY PERSONAL SERVICE:** I sealed true and correct copies of the above documents in addressed envelope(s) and caused such envelope(s) to be delivered by hand at the above locations by a professional messenger service. A declaration from the messenger who made the delivery ☐ is attached or ☐ will be filed separately with the court.



**BY OVERNIGHT DELIVERY:** I sealed true and correct copies of the above documents in addressed envelope(s) and placed them at my workplace for collection and delivery by overnight courier service. I am readily familiar with the practices of the Office of Labor Standards Enforcement for sending overnight deliveries. In the ordinary course of business, the sealed envelope(s) that I placed for collection would be collected by a courier the same day.

I declare under penalty of perjury pursuant to the laws of the State of California that the foregoing is true and correct.

Executed December 7, 2011 at San Francisco, California.

Maneerat Vipusithimakool  
Maneerat Vipusithimakool

ORIGINAL

ENDORSED  
FILED  
San Francisco County Superior Court

OCT 16 2013  
CLERK OF THE COURT  
BY: GINA GONZALES  
Deputy Clerk

1 DENNIS J. HERRERA, State Bar #139669  
City Attorney

2 JILL FIGG DAYAL, State Bar #168281

VINCE CHHABRIA, State Bar #208557

3 JERRY THREET, State Bar #205983

Deputy City Attorneys

4 Fox Plaza

1390 Market Street, Fifth Floor

5 San Francisco, California 94102-5408

Telephone: (415) 554-3914

6 Facsimile: (415) 437-4644

7 Attorneys for Respondents

CITY AND COUNTY OF SAN FRANCISCO, et al.

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF SAN FRANCISCO

11 UNLIMITED JURISDICTION

12 GMG JANITORIAL, INC., a California  
corporation,

13 Petitioner,

14 vs.

15 CITY AND COUNTY OF SAN  
16 FRANCISCO, a Chartered California City and  
County; DEPARTMENT OF  
17 ADMINISTRATIVE SERVICES, a  
department of the City and County of San  
18 Francisco; OFFICE OF LABOR  
STANDARDS ENFORCEMENT, an office  
19 within the Department of Administrative  
Services; OFFICE OF THE CONTROLLER,  
20 an office of the City and County of San  
Francisco; HEARING OFFICER PETER  
21 KEARNS, an individual in his official capacity  
as Administrative Law Judge for the City and  
22 County of San Francisco; REAL PARTIES IN  
INTEREST, and DOES 1 THROUGH 100,  
23 INCLUSIVE,

24 Respondents and Real Parties in  
Interest.

Case No. CPF-12-512328

JUDGMENT ~~Proposed~~

~~DENYING WRIT OF MANDATE~~

26 The above-entitled matter came on regularly for hearing on the Motion for Judgment of  
27 Respondents CITY AND COUNTY OF SAN FRANCISCO ("CITY"), DEPARTMENT OF  
28 ADMINISTRATIVE SERVICES, OFFICE OF LABOR STANDARDS ENFORCEMENT, OFFICE

1 OF THE CONTROLLER, and HEARING OFFICER PETER KEARNS (the "ALJ") (collectively  
2 "Respondents" or the "City") on September 16, 2013, at 9:30 a.m., in Department 302 of this Court,  
3 the Honorable MARLA J. MILLER, judge presiding. Respondents were represented by DENNIS  
4 J. HERRERA, City Attorney, appearing through JERRY THREET, Deputy City Attorney. Petitioner  
5 GMG JANITORIAL, INC. was represented by its counsel, B. Douglas Robbins, of WOOD  
6 ROBBINS, LLP.

7 The record of the administrative proceedings having been introduced into evidence, evidence  
8 of the legislative history of the San Francisco Health Care Security Ordinance ("HCSO") having been  
9 judicially noticed by the Court, the Court having considered all of the papers on file in this action, the  
10 evidence presented at the hearing, and the written and oral arguments of counsel, and good cause  
11 appearing therefor,

12 The Court hereby FINDS that there is substantial evidence in the record to support the  
13 challenged findings of the ALJ in this matter.

14 The Court further FINDS that the ALJ and the OLSE acted in accordance with the language  
15 and intent of both the HCSO and its implementing regulations in ordering GMG to pay 275 of its  
16 employees a total of \$1,339,028.39 in order to correct its failure to make health care expenditures on  
17 behalf of those same employees for the period 2008-2010, as the HCSO required.

18 The Court therefore further FINDS that the City has not acted in excess of its jurisdiction in  
19 this matter, nor has it failed to proceed in the manner required by law.

20 Consequently, IT IS HEREBY ORDERED that:

- 21 1. The writ of mandate applied for herein is DENIED;
- 22 2. The OLSE Order to GMG to pay 275 of its employees a total of \$1,339,028.39 is  
23 upheld;
- 24 3. Respondents shall recover their costs and disbursements in this action in an amount to  
25 be determined.

26 Dated: October 16, 2013

27 By:   
28 Judge of the San Francisco Superior Court

MARLA J. MILLER

**SETTLEMENT TERMS - CITY'S LAST & BEST OFFER***GMG Janitorial v. City and County of San Francisco*

San Francisco Superior Court Case No. CPF-12-512328

March 19, 2014

**STIPULATED AMENDED JUDGMENT**

- entry of stipulated money judgment in favor of the City as representative of the 275 employees in question, in the amount of \$1,339,028.39
- stipulated judgment amount to bear interest at the annual rate of 10%, beginning 10/16/2013.
- stipulation that the City is entitled under the HCSO to recover its reasonable fees related to any effort to enforce the stipulated judgment should the settlement agreement not be performed by GMG.
- separate provision for GMG to separately pay fees of David Cook in the amount of \$10,000, due upon entry of judgment and settlement agreement.
- stay of the stipulated judgment upon its entry and until the settlement agreement is fully performed by GMG.
- City to file complete satisfaction of the judgment upon completion of performance of the settlement agreement by GMG.

**SETTLEMENT AGREEMENT**

- GMG will remain liable for the entire amount of the \$1.4 million back pay order unless otherwise excused by the terms of this settlement agreement.
- GMG will make payments to a third party administrator every six months to be distributed by the administrator to the employees who benefit from the OLSE order challenged by GMG and upheld by the trial court.
- the third party administrator will be selected and employed by the City, with GMG bearing the costs of the administrator. GMG shall receive credit on the back end of its payment schedule for any amounts paid to employee the administrator.
- GMG will fully cooperate in good faith with the third party administrator in locating each and every employee benefitting from the back-pay order.
- regarding amounts owed to employees who cannot be located and/or do not file claims with the third party administrator, by a time six months from GMG's last payment under the settlement agreement, GMG will be excused from liability for up to \$375,000 in back pay against which no employee claims are filed, with any remaining amount owed under the judgment and settlement agreement paid to the City.
- GMG is required to pay a total of at least \$200,000 every six months under the settlement agreement.
- GMG may accelerate the payment schedule if financially able to do so.
- Should GMG completely satisfy its payment obligations under this settlement agreement within 2 years from entry of this agreement, GMG will be excused from an additional \$25,000 in liability that would otherwise be owed to the City after payments to all employees who could be located, bring the possible total excuse from liability to \$400,000.
- Should GMG pay off the entire settlement amount early, the final payoff of the settlement amount will close the window on employee location and identification efforts by the third party administrator, provided that at least 1 year has passed since both of the following 1) GMG provided the administrator identifying information on those employees, and 2) GMG made its first settlement payment.
- In exchange for allowing GMG a long-term payment schedule, GMG will provide the City with recorded lien interests in all GMG assets.
- In addition, Ms. Gregori will personally guarantee the stipulated judgment and settlement agreement, and as will back her guarantee with recorded security interests in favor of the City in Ms. Gregori's personal assets, including her property.
- In addition, Ms. Gregori and GMG will assign to the City of any future inheritance or claim in favor of GMG or Ms. Gregori, upon its realization.

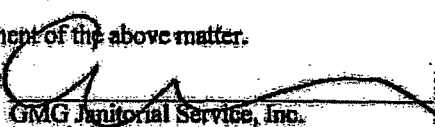
- The City will agree not to execute on these security interests unless and until the settlement agreement is not performed.
- GMG will dismiss its appeal with prejudice, upon entry of the judgment and settlement agreement. At the same time, the City will stay any action enforcing the judgment, which will remain stayed while the settlement agreement is being performed by GMG.
- The settlement agreement will include a mutual release.
- GMG will separately pay to the City's outside counsel, David Cook, the sum of \$10,000 for his attorneys' fees incurred to enforce the judgment to date, upon entry of the stipulated judgment and settlement agreement.

GMG and Ms. Gregori accept these terms in settlement of the above matter.

  
Gina Gregori, individually

Date:

3/20/14

  
GMG Janitorial Service, Inc.  
by: Gina Gregori, President,  
GMG Janitorial Service, Inc.

Date:

3/20/14