

1
2
3
4
5
6
7
8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
10

11
12 **TIMOTHY J. DESMOND,**

13 Plaintiff,

14 v.
15

16 **XAVIER BECERRA, in his Official**
17 **Capacity as Attorney General of the State of**
18 **California, et al.**

19 Defendants.
20

1:16-cv-01206-DAD-BAM

Settlement Agreement

21 This Settlement Agreement ("Agreement") is entered into by plaintiff Timothy J. Desmond
22 (Plaintiff) and defendants Attorney General Xavier Becerra, in his official capacity, Secretary of
23 Food and Agriculture Karen Ross, in her official capacity, Branch Chief of the Fairs and
24 Expositions Branch John Quiroz, in his official capacity, and Chief Executive Officer of the 21st
25 District Agricultural Association John Alkire, in his official capacity (collectively, "Defendants"
26 and with Plaintiff, collectively, "the Parties").
27

1 WHEREAS Plaintiff commenced this civil action, *Desmond v. Harris, et al.*, 1:16-cv-
2 01206-DAD-BAM (E.D. Cal.), on August 15, 2016, alleging that: (1) he created a painting called
3 *The Attack*; (2) he was precluded by Defendants from displaying that painting at the 2015 Big
4 Fresno Fair because of defendants' enforcement of California Government Code section 8195,
5 which precludes the State from selling or displaying "the Battle Flag of the Confederacy, also
6 referred to as the Stars and Bars, or any similar image, or tangible personal property, inscribed
7 with such an image unless the image appears in a book, digital medium, or state museum that
8 serves an educational or historical purpose," Cal. Gov't Code § 8195(a); and (3) his First
9 Amendment rights were violated as a consequence; and

10 WHEREAS Plaintiff alleges that *The Attack* was eligible to be, and should have been
11 displayed, at the 2015 Big Fresno Fair; and

12 WHEREAS Plaintiff sought relief in this action precluding Defendants from, inter alia,
13 continuing to enforce California Government Code section 8195; and

14 WHEREAS the parties agree that Section 8195 did not provide a valid justification for
15 precluding *The Attack* from being shown at the 2015 Fresno Fair; and

16 WHEREAS Defendants have not admitted or acknowledged, and do not admit or
17 acknowledge, any fault, liability, or wrongdoing of any kind and deny the material allegations
18 contained in Plaintiff's Complaint in this action, either in or outside of this Agreement;
19

20 WHEREAS Defendants have stated their position on the application of California
21 Government Code section 8195 as set forth in paragraph 2 of this Agreement; and

22 WHEREAS Plaintiff submitted *The Attack* to the 2016 Big Fresno Fair and it was displayed
23 and judged therein; and

24 WHEREAS the Parties agree that it is in their collective best interest to settle this matter
25 and avoid further costs and the uncertainties of litigation;
26

1 The Parties hereby agree:

2 1. Plaintiff will dismiss this action, *Desmond v. Harris, et al.*, 1:16-cv-01206-DAD-
3 BAM (E.D. Cal.), with prejudice.
4

5 2. Defendants represent that the following accurately depicts their position with respect
6 to California Government Code section 8195:

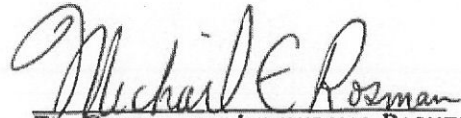
7 It is the position of the Defendants, including the Attorney General, that
8 California Government Code section 8195 applies only to the State of
9 California and not to private individuals. *See* Cal. Gov't Code § 8195(a). This
10 conclusion derives from the plain language and the legislative history of the
11 statute. Specifically, "the State of California may not sell or display the Battle
12 Flag of the Confederacy, also referred to as the Stars and Bars, or any similar
13 image, or tangible personal property, inscribed with such an image unless the
14 image appears in a book, digital medium, or state museum that serves an
15 educational or historical purpose." *Id.*

12 Section 8195 neither affects the rights of private individuals to carry, display, or
13 sell a Confederate Flag or any similar image either on private or government
14 property nor authorizes the government to restrict the display or sale of a
15 Confederate Flag or any similar images, by private individuals in a government
16 forum.

15 3. Defendants shall be completely released and forever discharged to the fullest
16 extent permitted by law from: (1) the claims, allegations, and causes of action asserted in the
17 Complaint in this action; and (2) any and all claims, allegations, causes of action, and suits that
18 Plaintiff could have brought or hereafter could bring against Defendants (or any of them) based
19 on the facts alleged in the Complaint in this action. Plaintiff waives and relinquishes all rights
20 and benefits conferred by California Civil Code Section 1542, which provides: A general release
21 does not extend to claims which the creditor does not know or suspect to exist in his or her favor
22 at the time of executing the release, which if known by him or her must have materially affected
23 his or her settlement with the debtor. Plaintiff also waives any right or benefits afforded by any
24 similar statute or law in California or any other jurisdiction. Nothing in this paragraph should be
25 construed as releasing claims unrelated to the facts alleged in the Complaint.
26
27
28

1 4. The Parties shall bear their own costs and attorneys' fees in connection with this
2 action and waive any right that they may have to recover from each other costs and attorneys'
3 fees incurred in this action.

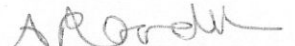
4
5 Dated: May 1, 2017


By: CENTER FOR INDIVIDUAL RIGHTS

MICHAEL E. ROSMAN

Attorneys for Plaintiff

6
7
8
9
10 Dated: May 1, 2017


By: ATTORNEY GENERAL OF CALIFORNIA

ALEXANDRA ROBERT GORDON
Deputy Attorney General

Attorneys for Defendants