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11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 SAN FRANCISCO DIVISION

14 AMERICAN SMALL BUSINESS LEAGUE,) CASE NO. CV 18-1979 WHA
15 Plaintiff,)
16 v.) **STIPULATION OF SETTLEMENT OF FEE**
17 UNITED STATES DEPARTMENT OF) **MOTION**
DEFENSE, *et al.*,)
18 Defendants,)
19 LOCKHEED MARTIN CORPORATION,)
20 Defendant-Intervenor.)
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22
23 IT IS HEREBY STIPULATED by and between the undersigned plaintiff American Small
24 Business League ("Plaintiff") and defendants United States Department of Defense and United States
25 Department of Justice ("Defendants"), by and through their respective attorneys, as follows:

- 26 1. Defendants shall pay \$500,000 (five hundred thousand dollars and zero cents) to Plaintiff
27 in full and complete satisfaction of Plaintiff's claims for attorneys' fees, costs, and litigation expenses in
28 this action under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, as amended, as set forth in

1 Plaintiff's motion for attorney's fees filed on December 9, 2019 (the "Motion"), ECF No. 159. This
2 payment shall constitute full and final satisfaction of any and all of Plaintiff's claims for attorneys' fees,
3 costs, and litigation expenses in the above-captioned matter (except for the payment of expert deposition
4 expenses which has previously been agreed to) as of the date of the full execution of this agreement, and
5 is inclusive of any interest. Payment of this money will be made by electronic funds transfer or check
6 promptly after notification of the filing of this Stipulation and after receipt of necessary information
7 from Plaintiff in order to effectuate the payment. Defendants will make all reasonable efforts to make
8 payment within thirty (30) days of the date that Plaintiff's counsel provides the necessary information
9 for the electronic funds transfer or the filing of this Stipulation, whichever is later, but cannot guarantee
10 payment within that time frame.

11 2. Plaintiff will file a notice of withdrawal of the Motion and settlement of the fee issue
12 within two business days of execution of this agreement, and in any event, no later than February 10,
13 2020.

14 3. The provisions of California Civil Code Section 1542 are set forth below:

15 "A general release does not extend to claims that the creditor or releasing party does not know or
16 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."

17 Plaintiff having been apprised of the statutory language of Civil Code Section 1542 by Plaintiff's
18 attorney, and fully understanding the same, nevertheless elects to waive the benefits of any and all rights
19 Plaintiff may have pursuant to the provision of that statute and any similar provision of federal law.
20 Plaintiff understands that, if the facts concerning any injuries, liability for damages pertaining thereto, or
21 liability for attorneys' fees, costs or litigation expenses are found hereafter to be other than or different
22 than the facts now believed by it to be true, this Stipulation shall be and remain effective
23 notwithstanding such material difference.

24 4. This Stipulation does not apply to any future FOIA requests or subsequent litigation by
25 Plaintiff and nothing in this Stipulation shall affect plaintiff ASBL's right to make or seek enforcement
26 of, including by litigation, any future FOIA request to any agency of the United States government and
27 to seek to recover attorney's fees in any such litigation.. This Stipulation also does not prevent Plaintiff
28 from continuing to litigate in this case whether (i) the documents produced on January 6, 2020 in

1 response to the Court's Order on Joint Motion for Summary Judgment (ECF No. 153) were properly
2 withheld or redacted pursuant to Exemption 4, and (ii) documents were properly withheld or redacted
3 pursuant to Exemption 5, although Plaintiff is precluded from seeking any fees, including those relating
4 to these two issues, that have been incurred prior to the date of the full execution of this Stipulation,
5 other than the \$500,000 settlement set forth above.

6 5. The parties acknowledge that this Stipulation is entered into solely for the purpose of
7 settling and compromising the claims set forth in the Motion for Attorney's Fees without further
8 litigation of those fee claims, and it shall not be construed as evidence or as an admission on the part of
9 Defendants, the United States, its agents, servants, or employees regarding any issue of law or fact, or
10 regarding the truth or validity of any allegation or claim raised in this action, or as evidence or as an
11 admission by the Defendants regarding Plaintiff's entitlement to attorneys' fees, costs, or other litigation
12 expenses under FOIA. Nor shall this Stipulation be construed as an admission by Plaintiff that it was
13 not entitled to the full amount of fees sought in its motion. This Stipulation shall not be used in any
14 manner to establish liability for fees or costs in any other case or proceeding involving Defendants, or
15 lack of liability in any case brought by Plaintiff.

16 6. This Stipulation is binding upon and inures to the benefit of the parties hereto and their
17 respective successors and assigns.

18 7. If any provision of this Stipulation shall be held invalid, illegal, or unenforceable, the
19 validity, legality, and enforceability of the remaining provisions shall not in any way be affected or
20 impaired thereby.

21 8. This Stipulation shall constitute the entire agreement between the parties, and it is
22 expressly understood and agreed that this Stipulation has been freely and voluntarily entered into by the
23 parties hereto. The parties further acknowledge that no warranties or representations have been made on
24 any subject other than as set forth in this Stipulation.

25 9. The persons signing this Stipulation warrant and represent that they possess full authority
26 to bind the persons on whose behalf they are signing to the terms of the Stipulation.

27 10. This Stipulation may not be altered, modified or otherwise changed in any respect except
28 in writing, duly executed by all of the parties or their authorized representatives.

1 11. It is contemplated that this Stipulation may be executed in several counterparts, with a
2 separate signature page for each party. All such counterparts and signature pages, together, shall be
3 deemed to be one document.

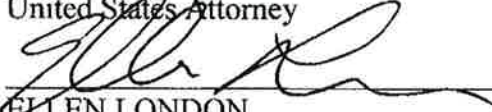
4 IT IS SO STIPULATED.

5 DATED: *January 31, 2020* CANNATA, O'TOOLE, FICKES & OLSON LLP



6
7 KARL OLSON
Attorney for Plaintiff

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9 DATED: *Jan, 31, 2020* By: DAVID L. ANDERSON
United States Attorney



10 ELLEN LONDON
11 SAVITH IYENGAR
12 Assistant United States Attorneys
13 Attorneys for Defendants
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