

SETTLEMENT AND RELEASE

THIS AGREEMENT is made and entered in on ~~January~~^{February} 4, 2021, by and between the City of Sacramento ("City,") Police Officer Joshua Smith ("Officer Smith,") and the Sacramento Police Officers Association ("SPOA"), regarding the disposition of Internal Affairs case number IAD2019-053 and Labor Relations case number 8665 which have resulted in Officer Smith receiving a ten (10) hour suspension without pay.

Specifically, the Agreement is as follows:

1. Officer Smith hereby acknowledges that his conduct, as outlined in the notice of intent to discipline in case number IAD2019-022 violated City Policy and Police Department General Orders. As a result, a final notice of suspension for Internal Affairs case number IAD2019-053 will be reissued as a ten (10) hour suspension, of record only.
2. Within thirty (30) calendar days upon execution of this Agreement, the City will reimburse Officer Smith a total of \$572.41, less normal and customary payroll deductions, which represents ten (10) hours of pay for Officer Smith, whose regular rate of pay at the time of his suspension was \$57.240575.
3. The retention period for the final notice of suspension letter will be reduced to eighteen (18) months. The final notice of suspension letter will be removed from Officer Smith's official personnel file and any other personnel file, with the exception of files maintained by Internal Affairs Division, eighteen (18) months from the date of the last signature of this Agreement, provided Officer Smith has not had further formal discipline imposed during that time period. If formal discipline is imposed during that time period, in accordance with the Memorandum of Understanding (MOU) between the City and the SPOA (Article 21.5 (a) Discipline and Documented Counseling Retention), the eighteen (18) month retention period will restart and this suspension may be used as the basis for progressive discipline.
4. The final notice of suspension will be maintained in Officer Smith's Internal Affairs file in accordance with California statute.
5. Officer Smith and the SPOA waive the right to appeal the ten (10) hour suspension to the Civil Service Board. Officer Smith and the SPOA waive the right to appeal, challenge, grieve, litigate, or otherwise file any claim regarding any matter concerning the proposed ten (10) hour suspension, or any associated circumstances or issues, to the Civil Service Board, or in any other administrative or judicial forum related to this matter. Officer Smith further agrees to withdraw, with prejudice, any and all current appeals, challenges, grievances, litigation, or claims, with the exception of valid workers' compensation claims, concerning the matters referenced in this Agreement, or any associated circumstances or issues, to the Civil Service Board, or in any other administrative or judicial forum. This entire settlement agreement and waiver only applies to causes of action arising from the incident outlined in IAD2019-053.

6. Officer Smith and the SPOA agree that any and all issues associated with the matters in this Agreement are hereby resolved and that this Agreement is an acknowledgment by the parties that the resolution is mutually satisfactory and constitutes final settlement. By this Agreement, it is the intent of the parties to effect final and comprehensive settlement.
7. Officer Smith and his representative agree to withdraw any and all claims that have been filed with state or federal fair employment agencies regarding the matters referenced in this Agreement. In addition to withdrawing any and all claims that have been filed with a state or federal fair employment agency, Officer Smith hereby releases and forever discharges the City and its successors, assigns, officers, agents, employees and any and all persons, firms and corporations having an interest in them or any of them of and from any and all claims and demands of any kind, nature and description whatsoever and from any liabilities, damage, injuries, action or causes of action either at law or in equity which Officer Smith has or in the future may have against any such entities or any one or more of them, arising out of or in any way related to or connected to the matters referenced in this Agreement or the final notice of suspension referenced above, including, but not limited to, mental and emotional distress, psychic injury, bodily injury, attorneys' fees, and costs of suit.
8. Officer Smith understands and acknowledges that various federal and state laws provide the right to file charges, claims or complaints against an employer for discrimination on the basis of race, ancestry, color, religion, sex, marital status, national origin, age physical or mental disability or sexual preference. Among these laws are Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1991, the Americans With Disabilities Act, the California Family Rights Act of 1991, the California Fair Employment and Housing Act, as amended, or any successor or replacement statutes.
9. With full understanding of the rights afforded him under these and all other available state, federal and local laws, Officer Smith agrees, to the extent permitted by law, that he will not file or cause to be filed against the City, its officers, agents, employees or representatives, and does fully and finally release, discharge, indemnity and hold the City, its officers, agents, employees or representatives harmless from any charges, complaints or actions based on any alleged violation of these or other available laws, including but not limited to, common law and/or statutory claims relating to wrongful discharge whether in tort or on a contractual theory as it relates to IAD2019-053. Officer Smith agrees and represents that the City has not engaged in unlawful discriminatory conduct or actions against him related to or arising out of the facts and circumstances at issue in Internal Affairs case number IAD2019-053 and Labor Relations case number 8665.
10. Officer Smith hereby agrees to waive and release all claims arising from or related to his employment and the facts and circumstances underlying this Agreement whether known, unknown, contingent, liquidated, or non-liquidated. He has read and understands and knowingly waives the benefit of the provisions of California Civil Code Section 1542, which 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.”

11. Officer Smith understands and acknowledges the significant and consequence of this Release and of the specific waiver of section 1542, and expressly consents that this Release shall be given full force and effect as to all claims, whether known or unknown.
12. Officer Smith acknowledges, agrees, and understands that this Agreement is executed voluntarily and without duress or undue influence on the part of or on behalf of any person, corporation, or entity, and that he had been afforded an opportunity to discuss and review this Agreement with his representative.
13. The agreement in this case does not establish precedent, nor does it interpret any employee rights under the language of the Agreement, the Rules and Regulations of the Civil Service Board, or any applicable policies or procedures of the Police Department, or the City.
14. This Agreement memorializes and constitutes the entire agreement and understanding between parties as to all matters referred to or included herein, and supersedes and replaces all prior negotiations, proposed agreements, and agreements, whether written or oral.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

FOR THE CITY:


Howard Chan (Feb 3, 2021 11:28 PST)


Howard Chan
City Manager


daniel hahn (Jan 30, 2021 17:17 PST)

Daniel Hahn
Chief of Police


Christopher C Conlin (Feb 2, 2021 18:34 PST)

Chris Conlin
Assistant City Manager


Aaron A Donato (Jan 25, 2021 10:07 PST)

Aaron Donato
Labor Relations Manager

FOR THE EMPLOYEE:


Officer Joshua Smith


Sacramento Police Officer Association *attorney for*

APPROVED AS TO FORM:

Brett M. Witter
Brett M. Witter (Jan 25, 2021 11:02 PST)

Brett M. Witter
Supervising Deputy City Attorney