Meeting Date: February 25, 2020
Department: City Attorney
Submitted By: Michelle Marchetta Kenyon, City Attorney
Prepared By: Maxwell Blum, Deputy City Attorney
Agenda Title: Approve a Settlement Agreement and Release Regarding Freeman v. City of Rohnert Park, et al., Case No. 4:18-cv-07661-HSG

**RECOMMENDED ACTION:** By minute order, approve a settlement agreement in Freeman v. City of Rohnert Park, et al., Case No. 4:18-cv-07661-HSG, in substantially the same form as attached.

**BACKGROUND:** On or about December 20, 2018, Plaintiff Huedell Freeman initiated litigation against the City of Rohnert Park, specifically naming the City of Rohnert Park, Rohnert Park Department of Public Safety, Officer Tatum, Officer Huffaker, Officer Sutter, and Director Masterson. The complaint in the litigation alleged purported violations of constitutional, federal and state laws, and violations of Plaintiff’s civil rights, that arose out of an alleged vehicle stop and search on December 29, 2016. The parties reached a conditional settlement on January 15, 2020, requiring approval by Rohnert Park City Council and REMIF Board.

**ANALYSIS:** Under the proposed Agreement, the Plaintiff would dismiss the City and all City-related persons or entities, as well as Officer Tatum and Officer Huffaker, in exchange for a payment of $287,500 by the City’s insurer. The Settlement Agreement acknowledges that all of Plaintiff’s claims are disputed by the City and that there is no admission of liability or responsibility.

**OPTIONS CONSIDERED:** None. The City Council’s approval is required to settle this pending litigation.

**STRATEGIC PLAN ALIGNMENT:** This action is consistent with Strategic Plan Goal B (achieve and maintain financial stability) and Strategic Plan Goal C (ensure effective delivery of public services).

**FISCAL IMPACT/FUNDING SOURCE:** None. Monetary payments required under the settlement agreement will be paid by the Redwood Empire Municipal Insurance Fund.

City Attorney Approval Date: 2/19/2020
Finance Director Approval Date: N/A
City Manager Approval Date: 2/19/2020
Attachments: Settlement Agreement and Release
SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Agreement") is entered into and between and among defendants City of Rohnert Park ("City"), on its own behalf and on behalf of its Police Department and its employees David Sutter ("Sutter"), Brian Masterson ("Masterson"), and City employees DOES 1 through 25 (hereinafter collectively "City Defendants"); Brandon "Jacy" Tatum ("Tatum"); Joseph Huffaker ("Huffaker"); and Plaintiff Huedell Freeman (hereinafter "Plaintiff" or "Mr. Freeman"). Settlement is conditioned on approval by the Rohnert Park City Council and the REMIF Board. This Agreement also incorporates as though fully set forth herein the Settlement Statement on the Record by the parties before Magistrate Judge Beeler in the United States District Court on January 15, 2020. Settlement is also further conditioned on execution of this Agreement by Mr. Freeman in the presence of a notary and approval as to form by his attorney. Therefore, as conditioned, settled and agreed, the parties state the terms of the Agreement as follows:

RECITALS

A. WHEREAS, on December 29, 2016, Plaintiff was involved in an Incident during which Tatum and Huffaker detained Plaintiff and searched and seized his property including medical cannabis. The events which transpired including all actions and inactions shall hereinafter be referred to as the "Dispute."

B. On or about December 20, 2018, Plaintiff filed a Complaint in the United States District Court, Northern District of California, against the City Defendants, Tatum, and Huffaker, entitled Huedell Freeman v. City of Rohnert Park, et al., Case No. 4:18-cv-07661-HSG (the complaint and any amended complaints are herein referred to as the "Lawsuit").

C. In the Lawsuit, Plaintiff alleged, inter alia, that the City Defendants, Tatum and Huffaker were negligent, and/or violated the constitutional, federal and state legal rights of Plaintiff through their actions, or inactions, all as more fully set forth in the Lawsuit. The City Defendants and Tatum and Huffaker deny liability in this Agreement and denied liability in their motions/answers to each of the plaintiff’s claims and causes of action. By the Lawsuit, Plaintiff sought recovery of personal injury damages, fees and costs against the City Defendants, Tatum and Huffaker that he believed available to him under Federal and California constitutions and laws.

D. The City Defendants, Tatum and Huffaker have denied the allegations of Plaintiff in their individual and representative capacities in this Agreement and the Lawsuit, and in any tort claims. The combined allegations, claims and causes of action in the Lawsuit and denials of liability in this Agreement and in the motions/answers in the Lawsuit (and in the response to the tort claim) are herein referenced as the "Dispute." The Dispute includes any claims or causes of action Plaintiff may have against the City Defendants, Tatum and Huffaker that discuss, refer or relate to the Dispute including but not limited to the detention, use of force, search and seizure of property and any criminal prosecution of Plaintiff by the City Defendants, Tatum and Huffaker, false arrest and abuse of process of Plaintiff by the City Defendants, Tatum and Huffaker and all other claims and
causes of action that discuss, refer or relate to state or federal laws and constitutions based on the Dispute, the tort claim, and the Lawsuit.

E. It is the desire of the parties to this Agreement to affect a full and complete compromise, settlement and resolution of the Dispute between and among the Plaintiff, Tatum, Huffaker, and the City Defendants. The parties acknowledge that all claims and causes of action, (whether past, present or future) of the Plaintiff are disputed, including with respect to existing facts, and this settlement is not intended to be and shall not be treated as an admission of fact, liability or responsibility in any manner whatsoever by Tatum, Huffaker, or the City Defendants. The statements herein set forth are intended as efforts to compromise pursuant to Section 1152 of the California Evidence Code.

NOW, THEREFORE, in consideration of the mutual covenants, conditions and promises contained herein, the parties agree as follows:

1. Based on this settlement, and when approved by the City Council and REMIF Board, Plaintiff shall dismiss Tatum, Huffaker, the City Defendants and Does 1 through 25 from the Lawsuit and dismiss the entire Action with prejudice, each side to bear their own fees and costs. And Plaintiff shall not file any new or amended tort claims or new or amended lawsuits against Tatum, Huffaker, and the City Defendants that discuss, refer or relate to the Dispute. Upon the City’s receipt of this fully executed Settlement Agreement by Plaintiff, signed in the presence of a notary, and signed as approved to form by Plaintiff’s counsel, the City/REMIF shall pay the sum total settlement amount, inclusive of all damages, fees and costs, of $287,500.00 (Two Hundred and Eighty Seven Thousand and Five Hundred Dollars and no cents) in the form of one check made payable as follows: Andrian & Gallenson/Huedell Freeman. The following tax ID reporting number for tax reporting purposes will be used by the City for reporting the settlement payments. Tax ID No. 68 0186212 (for attorney Stephen M. Gallenson / Jane Gaskell) and said check shall be sent by U.S. Mail to Plaintiff’s counsel Law Office, Andrian & Gallenson, 1100 Mendocino Avenue, Santa Rosa, CA 95401.

2. Plaintiff forgoes, waives, releases and relinquishes any and all claims, causes of action or rights to pursue a claim, causes of action, or lawsuit or any other action against Tatum, Huffaker, and the City Defendants before any City, County, State, Federal or other governmental agency or court concerning the matters described in the Lawsuit, the Dispute and this Agreement and any and all claims and causes of action raised or which could have been raised in connection with the Lawsuit and the Dispute under Federal or State laws, including Constitutional, tort, contract or statutory claims.

a. This Settlement Agreement, waiver and release shall redound to and is for the benefit of Tatum, Huffaker, and the City Defendants, including the City of Rohnert Park’s City Council, boards, departments, officers, employees (past and present), police officers (past and present), agents, servants, officials, owners, successors and assigns, attorneys, insurers. REMIF, and all other persons affiliated with the City, including but not limited to and any other person or legal entity charged with responsibility, whether directly, or indirectly or vicariously, for the facts and circumstances discussed, referred to or related to in this Agreement and the Lawsuit and the Dispute.
b. Plaintiff acknowledges the provisions of section 1542 of the Civil Code of the State of California, and hereby knowingly waives the benefit of such provisions on his behalf, and understands that said section provides 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.

3. Plaintiff will indemnify, defend and hold harmless Tatum, Huffaker, and the City Defendants, including the City of Rohnert Park’s City Council and its respective elected and appointed officials, boards, departments, officers, employees (past and present), police officers (past and present), agents, servants, officials, owners, successors and assigns, attorneys, insurers REMIF, and all other persons affiliated with the City, and each of them, from any loss, claims, expenses, liens, demands or causes of action of any kind or character through the assertion by any third party, any organization, or other person(s) whose claim arises from said person(s) providing Plaintiff and his attorneys any services, and/or monies in connection with the subject matter in the any Lawsuit, the Claim, the Dispute, this Settlement Agreement or who otherwise claims to have an interest in the settlement proceeds because said person(s) claims a right to the proceeds by some alleged legal, contractual, promise, financial, personal and/or business relationship with the Plaintiff and/or his attorneys. Plaintiff and his legal counsel have represented that there are no liens or monetary set asides required by any health care provider, insurance company, MediCare or MediCal for past, and present treatment and future treatment of Plaintiff, and Plaintiff and his attorney will defend, indemnify and hold harmless Tatum, Huffaker, and the City Defendants (and all persons identified above as included within the term City Defendants) in the event any person or entity including but not limited to MediCare or MediCal require reimbursement, set asides, or liens for past, present and future treatment of Plaintiff.

4. Plaintiff and his legal counsel agree that they keep the terms of this settlement confidential and will not publicize the terms of this Agreement including the settlement amount and further agree that if contacted by any third party about the Lawsuit, claim, Dispute or Agreement that they will only reply with the following statement: “This matter has been resolved in the mutual interest of the parties to allow the parties and each of them to move on in peace.” This confidentiality condition is a material part of this Agreement and extends until January 15, 2021. This confidentiality provision does not apply to any communications by a law enforcement agency with plaintiff or any communications by plaintiff in response to a lawfully issued subpoena.

5. Each party to this Settlement Agreement, and each party on whose behalf it is entered, shall bear the responsibility to pay its own attorneys’ fees, expert or consultants’ fees, and costs incurred, or that have arisen from the Dispute, other than as included in Paragraph 1 above.

6. Plaintiff hereby warrants that he has not assigned, transferred, encumbered or hypothecated any claim of right or cause of action which is the subject matter of this Settlement
Agreement. Plaintiff hereby represents that he has absolutely no knowledge that any other person has assigned, transferred, encumbered or hypothecated any claim of right or cause of action which is the subject matter of this Settlement Agreement.

7. Plaintiff hereby warrants that, except for the Lawsuit and the tort claim, he has not and does not intend to file or commence any other type of legal or administrative proceeding with any person, legal entity, City, County, State or Federal governmental or administrative agency or court concerning the facts and circumstances relating to the claims, Lawsuit and the Dispute under state and federal laws and constitutions.

8. This Settlement and Release Agreement is binding upon and shall redound to the benefit of Tatum, Huffaker and the City Defendants and their present and former agents, servants, employees, officers, owners, representatives, successors-in-interest, and assignees.

9. Plaintiff understands, acknowledges and agrees to the following special conditions:

   a. Liability for all claims is disputed, and this final compromise and settlement agreement shall never be construed as an admission of liability or responsibility by Tatum, Huffaker, or the City Defendants and any and all of the above named City related persons or entities at any time for any purpose.

   b. Plaintiff understands, acknowledges and agrees that it is possible that other injuries, property damages or claims arising from the Lawsuit, claims and Dispute not known now will develop or be discovered, or consequences or results of known injuries and all other special and general damages or property damages or any other claims may develop, worsen or be discovered, and this final compromise and release is expressly intended to cover and include, and does cover and include, any past, present and future injuries, aggravation of existing injuries and all other special and general injuries and damages or any and all past, present, and future claims, future consequences or results of known or unknown injuries, property damages or claims, including all rights, claims or causes of action based thereon that relate to the Lawsuit, Claims, and Dispute now known or unknown to Plaintiff.

10. This Settlement Agreement and Release, and any rights or obligations pursuant to it, are not assignable by any party without written consent of the other parties.

11. The parties acknowledge that they each have been represented by counsel:

   a. Plaintiff Huedell Freeman has been represented by Andrian & Gallenson, Stephen M. Gallenson and Jane Gaskell.

   b. Defendants City of Rohnert Park, Rohnert Park Department of Public Safety, David Sutter, and Brian Masterson have been represented by Bertrand, Fox, Elliot, Osman & Wenzel, Gregory M. Fox and Joanne Tran.
Each party acknowledges that they have discussed this Agreement with their counsel, been advised of and understand its meaning, and have been advised of and understand its legal consequences. Each party freely and voluntarily enters into this Agreement and assumes the responsibility of its legal consequences.

12. This Settlement Agreement and Release may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Settlement Agreement and Release.

13. Plaintiff and Plaintiff’s counsel agree that all tax obligations, if any, which may arise from the payments set forth above shall be the sole obligations of Plaintiff and his legal counsel, and Plaintiff and his legal counsel shall defend, indemnify and hold harmless Tatum, Huffaker, and the City Defendants against any and all costs, penalties, taxes or other payments made or required as a result of the allocation of those payments, if any, or any reporting of those payments.

14. This Agreement was entered into following negotiations between the attorneys for the Plaintiff, Tatum, Huffaker, the City Defendants and Magistrate Judge Laurel Beeler and the Settlement Agreement and Release shall be construed and interpreted in accordance with the laws of the State of California. Venue is the United States District Court, Northern District of California. This Agreement, which incorporates the Settlement Statements on the record made on January 15, 2020, sets forth the entire agreement between the parties with regard to the specific subject matter hereof. All agreements, covenants, representations and warranties, express and implied, oral and written, of the parties with regard to the specific subject matter hereof are contained in this Agreement. No other agreements, covenants, representations or warranties, express or implied, oral or written, have been made by any party to any other party with respect to the specific subject matter of this Agreement. All prior and contemporaneous conversations, negotiations, possible and alleged agreements and representations, covenants, and warranties with respect to the subject matter hereof are waived, merged herein and superseded by this Agreement. This is a fully integrated agreement.

15. Magistrate Judge Laurel Beeler of the United States District Court for the Northern District of California has jurisdiction to enforce the terms of this settlement.

16. A faxed, copied and/or other electronic representation/impression of Plaintiff’s and his attorney’s, Tatum’s, Huffaker’s, and the City Defendants’, acting by and through their legal counsel, original signatures on this original document or on a faxed, copied, and/or other electronic representation/impression of it shall have the same legal force and effect as any of the original signatures and the original document.

17. This Agreement, which incorporates the Settlement Statements on the record made on January 15, 2020, can be amended, modified or terminated only by a writing executed by each of the parties and no future representations, promises or conditions not set forth herein in connection with the subject matter of this Agreement shall be binding upon any party to this Agreement unless made in writing and signed by each party.
18. If any provision of this Agreement is held to be invalid or unenforceable, the remaining portion of the Agreement shall continue to be valid and will be performed, construed, and fully enforced to the fullest extent permitted by law, and the invalid or unenforceable term shall be deemed amended and limited in accordance with the intention of the parties, as determined from the face of the Agreement, to the extent necessary to permit the maximum enforceability or validation of the term or provision.

19. No breach of any provision of this Agreement may be waived unless in writing. Waiver of any one breach of any provision hereof shall not be deemed to be a waiver of any other breach of the same or any other provision hereof.

20. This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective heirs, representatives, successors, and permissible assigns.

IN WITNESS WHEREOF, the parties hereto enter into this Settlement Agreement and Release. Each person signing this Agreement represents and warrants that he or she has been duly authorized to enter into this Agreement by the person or entity on whose behalf the person is signing.

PLEASE READ CAREFULLY. THIS SETTLEMENT AGREEMENT AND GENERAL RELEASE INCLUDES A RELEASE OF ALL KNOWN AND UNKNOWN CLAIMS.

DATED: 2/4/2020

Huedell Freeman

SHOW NOTARY ACKNOWLEDGEMENT HERE FOR MR. FREEMAN’S SIGNATURE

ATTORNEY CERTIFICATION

I, STEPHEN M. GALLENSON / JANE GASKELL do hereby certify that I am the attorney of record for the above named settling Plaintiff and that my client, to the best of my knowledge, is capable of understanding the contents of this Agreement, each provision of which I have fully explained to him and I am satisfied that my client has understood, agreed to and accepted these terms.
DATED: Feb 4, 2020
STEVEN M. GALEN
JANE GASKELL
ON BEHALF OF CITY DEFENDANTS

DATED ____________, 2020
Gregory M. Fox
Attorney for City Defendants

ON BEHALF OF BRANDON “JACY” TATUM

DATED ____________, 2020
Bruce A. Kilday
Derick E. Konz
Attorneys for Brandon “Jacy” Tatum

ON BEHALF OF JOSEPH HUFFAKER

DATED ____________, 2020
Dale L. Allen
Patrick D. Moriarty
Attorneys for Joseph Huffaker
CALIFORNIA CERTIFICATE OF ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Sonoma

On 2/4/2020 before me, DEBRA M. WINTERS, Notary Public (here insert name and title of the officer)

personally appeared HUDFELL FREEMAN,

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Debra M. Winters

DEBRA M WINTERS
COMM. #2308380
Notary Public • California
Sonoma County
Comm. Exires Nov. 7, 2023

Optional Information

Although the information in this section is not required by law, it could prevent fraudulent removal and reattachment of this acknowledgment to an unauthorized document and may prove useful to persons relying on the attached document.

Description of Attached Document


The signer(s) capacity or authority is/are as:

☑ Individual(s)
☐ Attorney-in-Fact
☐ Corporate Officer(s)

☐ Guardian/Conservator
☐ Partner - Limited/General
☐ Trustee(s)
☐ Other:

representing: ______________________

Name(s) of Person(s) or Entity(ies) Signer is Representing

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