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 Payne, et al. v. City of Rohnert Park, et al., Case No. 4:19-cv-05058-HSG

**RECOMMENDED ACTION:** By minute order, approve a settlement agreement in Payne, et al. v. City of Rohnert Park, et al., Case No. 4:19-cv-05058-HSG, in substantially the same form as attached.

**BACKGROUND:** On or about August 16, 2019, Plaintiffs Brain Payne, Jesse Schwartz, Joshua Surratt, Jason Harre, Jacob Ford, Sean Harr, and Terence McGilbra initiated litigation against the City of Rohnert Park, specifically naming the City of Rohnert Park, Officer Tatum, Officer Huffaker, Officer Snyder, Commander Taylor, and Director Masterson. The complaint in the litigation alleged purported violations of constitutional, federal and state laws, and violations of Plaintiffs’ civil rights, that arose out of alleged vehicle stops and searches on November 25, 2015, December 1, 2015, September 6, 2016, October 3, 2016, October 18, 2016, and December 8, 2016. The parties reached a conditional settlement on January 15, 2020, requiring approval by Rohnert Park City Council and CJPRMA 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 single payment of $1,175,000 by the City’s insurer. The Settlement Agreement acknowledges that all of Plaintiffs’ 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 and California Joint Powers Risk Management Authority.

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1 Plaintiffs Haar and McGilbra were not named in the initial complaint, but joined the lawsuit through an amended complaint filed January 31, 2020.
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 between and among defendants City of Rohnert Park ("City"), on its own behalf and on behalf of its Police Department and its employees Christopher Snyder ("Snyder"), Jeffrey Taylor ("Taylor"), Brian Masterson ("Masterson"), and City employees DOES 1 through 50 (hereinafter collectively "City Defendants"); and defendants Brendon "Jacy" Tatum ("Tatum"); Joseph Huffaker ("Huffaker"); and plaintiffs Brian Payne, Jesse Schwartz, Joshua Surratt, Jason Harre, Jacob Ford, Sean Haar, and Terrence McGilbra (hereinafter collectively "Plaintiffs" or referenced to individually by surname). Settlement is conditioned on approval by the Rohnert Park City Council, the REMIF Board, and the CJPRMA Board. Settlement is also further conditioned on execution of this Agreement by Plaintiffs, and each of them, in the presence of a notary approved as to form by plaintiffs’ counsel. This Agreement incorporates by reference as though fully set forth herein all of the statements on the record made by all parties on January 15, 2020 agreeing to the conditional settlement in the U.S. District Court as supervised by Magistrate Judge Beeler. Therefore, as conditioned, settled and agreed, the parties state the terms of the Agreement as follows:

RECITALS

A. WHEREAS, on or about October 18, 2016, Ford was detained, searched and property including medical cannabis seized by Tatum and Snyder.

B. On or about October 3, 2016, Harre was detained, searched and property including medical cannabis seized by Tatum and Huffaker.

C. On or about December 1, 2015, Tatum and Huffaker stopped a vehicle in which Schwartz was a passenger, and he was detained, searched, taken into custody and property seized including medical cannabis.

D. On or about November 25, 2015, Payne was detained, searched and property including medical cannabis seized by an officer alleged to be employed by the City defendants and may have been Tatum or Huffaker near Asti Road.

E. On or about December 2015, Surrat was detained, searched and property including medical cannabis seized by Huffaker and Tatum.

F. On or about December 8, 2016, Haar was detained, searched and property including medical cannabis seized by Tatum and Huffaker.

G. On or about September 16, 2016, McGilbra was detained, searched and property including medical cannabis seized by Tatum and Huffaker.

H. The separate incidents as outlined in paragraphs A through G above shall be identified collectively as the “Dispute”.

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I. On or about August 15, 2019, Plaintiffs, not including Haar and McGilbra, filed a Complaint in the United States District Court, Northern District of California, against the City Defendants, Tatum, and Huffaker, entitled Brian Payne, et al. v. City of Rohnert Park, et al., Case No. 3:19-cv-05058-HSG (the complaint, and the amended complaint filed January 31, 2020 naming Haar and McGilbra as additional plaintiffs) all henceforward referred to as the “Lawsuit”).

J. In the Lawsuit, the 7 Plaintiffs alleged, inter alia, that the City Defendants, Tatum, and Huffaker violated the constitutional, federal and state civil rights of the 7 Plaintiffs through their actions, or inactions, all as more fully set forth in the Lawsuit. The City Defendants, Tatum, and Huffaker have all denied liability for each of these claims and causes of action. By the Lawsuit, the 7 Plaintiffs sought recovery of personal injury damages and economic and non-economic damages, fees and costs against the City Defendants, Tatum, and Huffaker that each Plaintiff believed available to him under federal and California constitutions and laws.

K. The City Defendants, Tatum, and Huffaker have denied the allegations of the 7 Plaintiffs in their individual and representative capacities in this Agreement and in the Lawsuit. The combined allegation/causes of action and denials of liability in this Agreement and the Lawsuit are again herein referenced as the “Dispute.” The Dispute includes any claims or causes of action the 7 Plaintiffs may have against the City Defendants, Tatum, and Huffaker that discuss, refer or relate to the Dispute including but not limited to the detention, search and seizure of persons and property, deprivation of civil rights, RICO violations, use of force, arrest and criminal prosecution of any Plaintiff by the City Defendants, Tatum, Huffaker, and also including but not limited to claims of malicious prosecution of Plaintiffs by the City Defendants, Tatum, and Huffaker, false arrest and abuse of process of Plaintiffs by the City Defendants, Tatum, and Huffaker; claims by Plaintiffs for reimbursement of criminal defense fees and costs against the City Defendants, Tatum, and Huffaker; and all other claims and causes of action by Plaintiffs against the City Defendants, Tatum, and Huffaker all under state or federal laws and constitutions based on the Dispute, the Lawsuit and including any charges in any criminal prosecution/forfeiture action of Plaintiffs by the District Attorney.

L. It is the desire of the parties to this Agreement to affect a full and complete compromise, settlement and resolution of the Dispute and Lawsuit between and among the Plaintiffs, defendants Tatum, Huffaker, and the City Defendants. The parties acknowledge that all claims and causes of action, (whether past, present or future) of the Plaintiffs 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, REMIF and CJPRMA, Plaintiffs, and each of them, shall dismiss Tatum, Huffaker, the City Defendants, and Does 1 through 50 from the Lawsuit and the entire action, with prejudice, each side to bear their
own fees and costs; and Plaintiffs shall not file any new or amended lawsuits against Tatum, Huffaker, and the City Defendants that discuss, refer or relate to the Dispute or the Lawsuit. Upon the City’s receipt of this fully executed Settlement Agreement by Plaintiffs, signed in the presence of a notary, and signed as approved to form by Plaintiffs’ counsel, the City shall pay the sum total settlement amount, inclusive of all damages, fees and costs, of One Million and One Hundred And Seventy Five Thousand Dollars and no cents ($1,175,000.00) in the form of one check made payable as follows: Schwaiger Law Firm IOLTA. The following tax ID reporting number for tax reporting purposes will be used by the City for reporting the settlement payments. Tax ID No. 83 2234 022 (for attorney Izaak D. Schwaiger) and said check shall be sent by U.S. Mail to Plaintiffs’ counsel addressed: Schwaiger Law Firm, 130 Petaluma Avenue, Suite 1A, Sebastopol, CA 95472.

2. Plaintiffs forgo, waive, release and relinquish 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 federal and state 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 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, the Lawsuit, and the Dispute.

   b. Plaintiffs acknowledge 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. Plaintiffs 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 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
Plaintiffs and their 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. Plaintiffs and their 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 Plaintiffs, and Plaintiffs and their 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 Plaintiffs.

4. Plaintiffs and their legal counsel agree that they will not publicize this Agreement and further agree that if contacted by any third party about the Lawsuit, Dispute, or Agreement, that they will only reply that the 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 expires January 15, 2021. Confidentiality does not apply to any communications between law enforcement agencies and plaintiffs.

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 Lawsuit and the Dispute, other than as included in Paragraph 1 above.

6. Plaintiffs hereby warrant that they have not assigned, transferred, encumbered or hypothecated any claim of right or cause of action which is the subject matter of this Settlement Agreement. Plaintiffs hereby represent that they have 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. Plaintiffs hereby warrant that, except for the Lawsuit, they have not and do 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 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 and Huffaker and the City Defendants and their present and former council members, agents, servants, employees, officers, owners, representatives, successors-in-interest, and assignees.

9. Plaintiffs understand, acknowledge and agree to the special conditions as follows:

   a. Liability for all causes of action in the Lawsuit are 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. Plaintiffs understand, acknowledge and agree that it is possible that other injuries, property damages or claims arising from the Lawsuit 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 discuss, refer or relate to the Lawsuit and Dispute now known or unknown to Plaintiffs.

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. Plaintiffs Brian Payne, Jesse Schwartz, Joshua Surrat, Jason Harre, Jacob Ford, Sean Haar, and Terrence McGilbra have been represented by the Schwaiger Law Firm, Izaak D. Schwaiger.

b. Defendants City of Rohnert Park, Christopher Snyder, Jeffrey Taylor, and Brian Masterson have been represented by Bertrand, Fox, Elliot, Osman & Wenzel, Gregory M. Fox.

c. Defendant Brandon Tatum has been represented by Angelo, Kilday & Kilduff, LLP, Bruce A. Kilday and Derick E. Konz

d. Defendant Joseph Huffaker has been represented by Allen Glaessner, Hazelwood & Werth, LLP, Dale L. Allen and Patrick Moriarty.

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. Plaintiffs and Plaintiffs’ counsel agree that all tax obligations, if any, which may arise from the payments set forth above shall be the sole obligations of Plaintiffs and their legal counsel, and Plaintiffs and their 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 Plaintiffs, and defendants Tatum, Huffaker, and the City Defendants’ 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: ________________, 2020

___________________________________
Brian Payne

SHOW NOTARY ACKNOWLEDGEMENT HERE FOR MR. PAYNE’S SIGNATURE

DATED: ________________, 2020

___________________________________
Jesse Schwartz

SHOW NOTARY ACKNOWLEDGEMENT HERE FOR MR. SCHWARTZ’S SIGNATURE

DATED: ________________, 2020

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Joshua Surrat

SHOW NOTARY ACKNOWLEDGEMENT HERE FOR MR. SURRAT’S SIGNATURE

DATED: ________________, 2020

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Jason Harre

SHOW NOTARY ACKNOWLEDGEMENT HERE FOR MR. HARRE’S SIGNATURE

DATED: ________________, 2020

___________________________________
Jacob Ford

SHOW NOTARY ACKNOWLEDGEMENT HERE FOR MR. FORD’S SIGNATURE
ATTORNEY CERTIFICATION

I, IZAAK D. SCHWAIGER, do hereby certify that I am the attorney of record for the above named settling Plaintiffs and that my clients, to the best of my knowledge, are capable of understanding the contents of this Agreement, each provision of which I have fully explained to them and I am satisfied that my clients have understood, agreed to and accepted these terms.

DATED: _______________, 2020

IZAAK D. SCHWAIGER
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