

SETTLEMENT AGREEMENT, GENERAL RELEASE AND
COVENANT NOT TO SUE

THIS SETTLEMENT AGREEMENT, GENERAL RELEASE AND COVENANT NOT TO SUE (“Agreement”) relating to claims against the City and County of San Francisco (“City”) is made by and between Flint Paul (“Plaintiff”) and the City.

WHEREAS, Plaintiff has been employed by the City since April 17, 1995, first as a Q2 Police Officer and then, beginning on June 22, 2013, as a Q052 Sergeant III, with the San Francisco Police Department (“Department”); and

WHEREAS, Plaintiff claims that during and as a result of Plaintiff’s employment with the City, Plaintiff suffered damages on account of wrongful conduct by the City including, without limitation, unlawful harassment and failure to prevent harassment on the basis of sex, gender, gender identity, and gender expression under Government Code section 12940; and

WHEREAS, on May 1, 2017, Plaintiff filed a complaint of discrimination with the City’s Department of Human Resources (EEO File No. 2355) and on July 23, 2018, filed a complaint of discrimination with the City’s Department of Human Resources (EEO File No. 2709) (collectively, the “EEO Complaints”); and

WHEREAS, on September 21, 2017, Plaintiff filed a charge of discrimination and retaliation with the United States Equal Employment Opportunity Commission (“EEOC”) and the California Department of Fair Employment and Housing (“DFEH”), Charge No. 550-2017-01108, and on October 25, 2018, Plaintiff filed a second charge of discrimination and retaliation with the EEOC and DFEH, Charge No. 550-2019-00135 (collectively the “EEOC/DFEH Charges”); and

WHEREAS, the parties now desire to avoid the expense, burden and delay of litigation, and without admitting or acknowledging any liability, to resolve all of Plaintiff’s claims, as well as the EEO Complaints and EEOC/DFEH Charges, and any and all lawsuits and claims brought by Plaintiff against the City, fully and forever in consideration of the promises contained herein,

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. In exchange for the promises by Plaintiff in this Agreement, including but not limited to the releases in Paragraph 3, and complete settlement of Plaintiff's claims, the EEO Complaints, and the EEOC/DFEH Charges, the City will pay the total amount of one hundred fifty thousand dollars (\$150,000) (the "Settlement Amount") allocated as follows:

a. One hundred thousand dollars (\$100,000) of the Settlement Amount will be considered and treated as general damages for personal injury, including allegations of emotional injury. This amount will not be considered or treated as back wages. No taxes, deductions or withholdings will be deducted from this amount. In the event the appropriate taxing authorities should finally determine, contrary to the intention of the parties, that the City should have withheld amounts for tax purposes, Plaintiff agrees to indemnify the City for any and all tax liability which may result from such failure to withhold. This amount shall be paid by check made payable to "Flint Paul." Counsel for the City will advise Plaintiff's counsel when the check is available for pickup at the Offices of the City Attorney, 1390 Market Street, 7th Floor, San Francisco, CA 94102.

b. Fifty thousand dollars (\$50,000) of the Settlement Amount will be allocated for attorney's fees and costs. This amount shall be paid by check made payable to "Legal Aid at Work." Counsel for the City will advise Plaintiff's counsel when this check is available for pickup at the Offices of the City Attorney, 1390 Market Street, 7th Floor, San Francisco, CA 94102.

2. a. The Department will issue a Department Bulletin ("DB") consistent with the City's Gender Inclusion Policy issued June 28, 2019, and applicable law. The DB will include language addressing the harmful effects of misgendering on a transgender person. The Department will prepare the initial draft of the DB and will provide to Plaintiff's counsel for input. The Department will have final discretion and authority over the DB language. The Department will make reasonable efforts to issue the DB within five months of final approval of the Settlement Agreement, and will provide written confirmation to Plaintiff and Plaintiff's counsel of issuance.

b. The City will provide a training addressing transgender issues to all EEO Investigators in the Department of Human Resources (“DHR-EEO), to be conducted by the City’s Office of Transgender Initiatives. The training will be two hours, at minimum, and mandatory for all DHR-EEO Investigators. The training will cover topics including but not limited to: proper investigation of claims brought by transgender, gender non-conforming, non-binary, and related claimants; the importance of enforcing policies on use of chosen names and pronouns; and the negative effects of misgendering on transgender people. The City will make reasonable efforts to complete the training within five months of final approval of the Settlement Agreement, and will provide written confirmation to Plaintiff and Plaintiff’s counsel of completion.

3. a. In consideration of the Settlement Amount and the other promises by the City in this Agreement, and for other good and sufficient consideration, Plaintiff, for Plaintiff, Plaintiff’s heirs, executors, administrators, assigns and successors, fully and forever releases and discharges the City, its constituent departments (including the Department), commissions, agencies, boards, predecessors, successors, subsidiaries, related entities, and current and former officers, directors, trustees, agents, employees and assigns (collectively “Releasees”) from any and all liabilities, claims, demands, contracts, debts, damages, acts or omissions, obligations and causes of action of every nature, kind and description, in law, equity, or otherwise, whether or not now known or unknown, which heretofore do or may exist, in any way arising out of, connected with or related to Plaintiff’s employment with the City, the EEO Complaints, or the EEOC/DFEH Charges, and the negotiation, terms and execution of this Agreement, up to and including the date that Plaintiff signs this Agreement (the “Signature Date”) (collectively, the “Released Claims”). The Released Claims include, but are not limited to, any matter, cause or thing in any way arising out of, connected with or related to the EEO Complaint and the EEOC/DFEH Charges, and any and all past, pending or contemplated lawsuits; claims; EEOC, DFEH or other administrative charges or internal complaints; and grievances brought by or on behalf of Plaintiff against any Releasee not set forth herein, in any way arising out of, connected

with or relating to Plaintiff's employment with the City through the Signature Date. The Released Claims do not include workers compensation claims or any claims arising from an application for retirement benefits, including disability retirement benefits.

b. The release contained in this Paragraph 3 is a complete and general release that will forever bar Plaintiff from pursuing the Released Claims against any Releasee. Plaintiff covenants not to sue or otherwise institute or in any way actively participate in or voluntarily assist in the prosecution of any legal or administrative proceedings against any Releasee regarding the Released Claims. However, this Agreement does not prevent Plaintiff from responding as required by law to any court order, subpoena, or government investigation (such as by the EEOC or similar agency) or providing other disclosures as required by law in any action against Releasees, or from initiating or participating in proceedings about matters other than the Released Claims. Plaintiff understands and agrees that Plaintiff is waiving any rights Plaintiff may have had, now has, or in the future may have to pursue any and all remedies available to Plaintiff under any cause of action in any way arising out of, connected with or related to the Released Claims. Such causes of action shall include without limitation claims of discrimination, harassment, retaliation, defamation, invasion of privacy, intentional infliction of emotional distress, negligent infliction of emotional distress, breach of contract, breach of the covenant of good faith and fair dealing, violation of the California Public Safety Officers Procedural Bill of Rights Act, violation of the provisions of the California Labor Code, the City's Charter, Administrative Code, ordinances, Civil Service Commission Rules and other City enactments, the Meyers-Milias-Brown Act, violation of any memoranda of understanding covering Plaintiff, and claims under Title VII of the 1964 Civil Rights Act, as amended, the Civil Rights Act of 1991, the California Fair Employment and Housing Act, the Americans with Disabilities Act, the Rehabilitation Act, the Family and Medical Leave Act, the California Family Rights Act, the California and United States Constitutions, the Equal Pay Act of 1963, the Age Discrimination in Employment Act of 1967, the Older Workers Benefit Protection Act,

the Civil Rights Acts of 1866, and any other laws and regulations relating to employment or to discrimination.

c. Plaintiff understands and expressly agrees that the release contained in this Paragraph 3 extends to all Released Claims of every nature and kind, known or unknown, suspected or unsuspected, and that any and all rights under Section 1542 of the California Civil Code or any analogous state law or federal law or regulation are hereby expressly waived.

Section 1542 of the California Civil Code 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.

4. In further consideration of the foregoing, Plaintiff hereby agrees, acknowledges and recognizes that this Agreement is a “no fault” settlement in light of disputed claims, and that nothing contained in this Agreement shall constitute or be treated as an admission of liability or wrongdoing by the Plaintiff or the City, which liability or wrongdoing is expressly denied by both parties.

5. Plaintiff represents that either (a) there are no existing liens or partial liens in existence, including without limitation any attorney’s fees, medical reimbursement, unemployment or disability compensation liens, which attach to the EEO Complaints or the EEOC/DFEH Charges, the amounts specified in this Agreement, or to any recovery paid to Plaintiff in connection with the settlement of the EEO Complaints and the EEOC/DFEH Charges, nor is any person or entity entitled to establish a lien for any payment or payments they have made or will make to Plaintiff or on behalf of Plaintiff as a consequence of any of the matters arising out of, connected with or relating to Plaintiff’s employment with the City, the EEO Complaints or the EEOC/DFEH Charges, or (b) to the extent there are any such liens, Plaintiff will pay and retire all such liens. Plaintiff agrees to defend, indemnify and hold harmless the City against any and all claims by any person or entity purporting to hold any lien, interest, or other claim, whether for medical care, unemployment and/or disability

compensation, attorney's fees, or otherwise, involving Plaintiff and in any way arising from, connected with or related to Plaintiff's employment with the City, the EEO Complaints or the EEOC/DFEH Charges.

6. Plaintiff represents and warrants that Plaintiff has full power to make the releases and agreements contained herein. Plaintiff expressly represents and warrants that Plaintiff has not assigned, encumbered or in any manner transferred all or any portion of the claims covered by the releases and agreements contained herein. Plaintiff acknowledges and agrees that this warranty and representation is an essential and material term of this Agreement. Plaintiff agrees to indemnify the affected Releasee for any claims brought against any Releasee by purported assignees of Plaintiff, including costs of judgment and reasonable attorneys' fees.

7. Plaintiff agrees that within five (5) court days of receiving a fully-executed copy of this Agreement, Plaintiff will notify the EEOC to withdraw the EEOC Charges with prejudice, and will copy counsel for the City on those notifications. In addition, Plaintiff acknowledges and agrees the City will close the EEO Complaints and any other pending internal complaints as resolved by this Agreement. In addition, Plaintiff represents that either (a) there are no other outstanding DFEH, EEOC or other administrative charges or complaints that are or may be pending relating to Plaintiff's employment with the City through the Signature Date, or (b) to the extent any such charges have been or are filed by Plaintiff or on Plaintiff's behalf, Plaintiff agrees to dismiss or withdraw any such charges, with prejudice. Plaintiff expressly acknowledges that the list of outstanding matters may not be exhaustive, but Plaintiff nevertheless agrees to dismiss with prejudice all litigation, claims, grievances, and administrative charges of any nature, kind and description against any Releasee that arise out of any right or claim released in this Agreement, whether or not listed in this Agreement.

8. All parties shall bear their own attorney's fees, legal expenses, and costs, except as otherwise specifically provided herein.

9. Plaintiff acknowledges that this Agreement is contingent upon approval by the Police Commission and the San Francisco Board of Supervisors, and that this Agreement will not become effective absent such approval.

10. The parties acknowledge that this Agreement constitutes the sole agreement in this matter, that it supersedes any prior oral or written agreements, and that it may be modified only by a writing signed by all parties to this Agreement, and approved by the Police Commission and the San Francisco Board of Supervisors.

11. If any provision of this Agreement is found to be unenforceable, then the remaining provisions shall remain valid and enforceable.

12. This Agreement is made and entered into within and shall be governed by, construed, interpreted and enforced in accordance with the laws of the State of California, without regard to the principles of conflicts of laws. The parties agree that the San Francisco Superior Court will have jurisdiction to enforce this Agreement. All disputes arising out of this Agreement shall be resolved by the San Francisco Superior Court.

13. Plaintiff acknowledges that Plaintiff has the right to consult with an attorney concerning this Agreement, including the releases contained herein.

14. Plaintiff acknowledges that Plaintiff has read and understands this Agreement and that Plaintiff agrees to its terms and signs this Agreement voluntarily and without coercion. Plaintiff further acknowledges that the release and waivers Plaintiff has made herein are knowing, conscious and with full appreciation that Plaintiff is forever foreclosed from pursuing any of the rights or claims so released or waived.

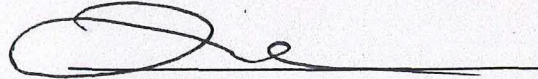
15. This Agreement has been reviewed by the parties and their respective attorneys, and each have had full opportunity to negotiate the contents of this Agreement. The parties each waive any common law and statutory rule of construction that ambiguity should be construed against the drafter of this Agreement, and agree that the language in all parts of this Agreement shall be in all cases be construed as a whole, according to its fair meaning.

16. In reaching a settlement of the EEO Complaints and the EEOC/DFEH Charges resulting in the execution of this Agreement, Plaintiff and City have considered and sought to protect the interests of the Centers for Medicare and Medicaid Services (“CMS”), the federal agency that runs Medicare. Plaintiff represents and warrants that Plaintiff is not Medicare eligible pursuant to 42 U.S.C. 1395c and will not become Medicare eligible within thirty months from the date of this Agreement. Plaintiff and Plaintiff’s counsel agree to defend, indemnify and hold harmless City against any and all claims arising out of or related to the terms of this paragraph, including without limitation, any claims by CMS.

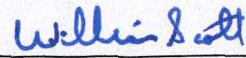
17. In connection with the Age Discrimination in Employment Act (“ADEA”), Plaintiff acknowledges that the City has advised Plaintiff to consult with an attorney prior to signing this Agreement. As set forth in the ADEA, 29 U.S.C. Section 626(f)(1), Plaintiff hereby acknowledges the following: (a) that this Agreement is written in a manner calculated to be understood by Plaintiff and that Plaintiff in fact understands the Agreement; (b) that this Agreement specifically refers to and waives rights or claims arising under the ADEA; (c) that this Agreement applies only to claims arising up to and including the date that Plaintiff signs this Agreement; (d) that in exchange for this Agreement, Plaintiff received value beyond that to which Plaintiff is already entitled; (e) that the City has advised Plaintiff in writing to consult with an attorney before executing the Agreement; and (f) that Plaintiff has been provided with an adequate period of time to review this Agreement. Plaintiff further acknowledges that Plaintiff is entitled to consider this Agreement for twenty-one (21) days before signing and that Plaintiff has made a knowing and voluntary decision to sign this Agreement before expiration of the twenty-one (21) day period. Plaintiff may revoke this Agreement for a period of seven (7) days after executing the Agreement. Any such revocation must be communicated in writing to Rose Darling, Deputy City Attorney, at the San Francisco City Attorney’s Office, 1390 Market Street, Fifth Floor, San Francisco, CA 94102. This Agreement shall not become effective or enforceable until the revocation period has expired.

18. This Agreement may be executed in separate counterparts, each of which shall be deemed an original, and all of which shall constitute one single instrument. The parties agree that their signatures on any facsimile or electronic transmission thereof shall be fully binding upon them in the same manner as if the parties had each signed the same original Agreement.

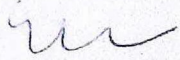
DATED: 9/14/20


FLINT PAUL


DATED: 10/21/2020


WILLIAM SCOTT
Chief, San Francisco Police Department

APPROVED AS TO FORM AND SUBSTANCE:

By: 
ELIZABETH KRISTEN
LISA BIXBY
Legal Aid at Work

DATED: September 8, 2020

By: 
LINDSAY NAKO
DAVID NAHMIAS
Impact Fund

DATED: September 4, 2020

Attorneys for Plaintiff Flint Paul

DENNIS J. HERRERA
City Attorney

By _____
ROSE DARLING
Deputy City Attorney

DATED: _____

By _____
KATHARINE HOBIN PORTER
Chief Labor Attorney

DATED: _____

Attorneys for Defendant
City and County of San Francisco

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DATED: _____

FLINT PAUL

DATED: _____

WILLIAM SCOTT
Chief, San Francisco Police Department

APPROVED AS TO FORM AND SUBSTANCE:

By: _____

ELIZABETH KRISTEN
LISA BIXBY
Legal Aid at Work

DATED: _____

By: _____

LINDSAY NAKO
DAVID NAHMIAS
Impact Fund

DATED: _____

Attorneys for Plaintiff Flint Paul

DENNIS J. HERRERA
City Attorney

By _____

ROSE DARLING
Deputy City Attorney

DATED: September 16, 2020

By _____

KATHARINE HOBIN PORTER
Chief Labor Attorney

DATED: September 16, 2020

Attorneys for Defendant
City and County of San Francisco