


NAME & TITLE	James L. Shea, Baltimore City Solicitor	CITY OF BALTIMORE	
AGENCY NAME & ADDRESS	Department of Law Suite 101, City Hall		
SUBJECT	<i>Jamal Wilson v. Donald Gaff</i> District Court for the District of Maryland Case No. RDB-19-2587		

# MEMO

**TO:** Honorable President and Members  
of the Board of Estimates

**Date:** July 5, 2022

## ACTION REQUESTED OF BOARD OF ESTIMATES

The Department of Law respectfully requests authorization to approve the settlement of a lawsuit brought by Jamal Wilson. The lawsuit was filed solely against Officer Donald Gaff. Plaintiff alleges numerous claims of misconduct against the Defendant Officer under federal and state law.

## AMOUNT OF MONEY AND SOURCE OF FUNDS

The total amount of the proposed settlement is \$130,000.00.  
Funds are available in account number 1001-000000-2041-716700-603070.

## BACKGROUND/EXPLANATION

On September 11, 2016, Defendant Officer Gaff was patrolling the area near the 600 Block of E. Patapsco Street when he stopped to investigate a vehicle that was double parked and blocking traffic. Plaintiff was a passenger in the vehicle. Neither the vehicle driver nor the Plaintiff passenger complied with Officer Gaff's instructions to move the vehicle and/or produce identification. The encounter became physical, and several officers were required to detain and arrest Plaintiff. During the arrest, Plaintiff was injured and subsequently treated at Mercy Medical Center.

Plaintiff was charged with resisting arrest. After a review of the Officer's body-worn camera, the charges against Plaintiff were dismissed. Charges were then filed against Officer Gaff, for Second Degree Assault and Misconduct in Office. Officer Gaff was convicted at trial of both charges, though the second degree assault conviction was overturned on appeal.

Plaintiff then filed a timely LGTCA notice, alleging Defendant Gaff assaulted him, using excessive force, and violated his civil rights. Plaintiff's claims include state claims of assault, false arrest; false imprisonment; violations of the Md. Declaration of Rights; and violation of the Fourth and Fourteenth Amendments to the U.S. Constitution.

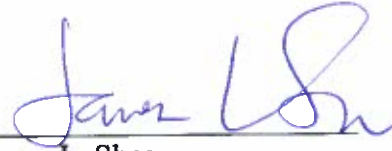
In order to resolve this case, avoiding the expense, time, and uncertainties of further protracted litigation and the potential for an excess judgment, BPD and the City agreed to offer Plaintiff a

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settlement payment of \$130,000.00, for complete settlement of the case. In return, Plaintiff Wilson has agreed to dismiss his civil lawsuit against Defendant Officer Gaff.

Based on a review by the Settlement Committee of the Law Department, a recommendation to settle is made to the Board of Estimates to approve the settlement of this case to avoid a potential adverse jury verdict.



James L. Shea  
Baltimore City Solicitor

APPROVED BY THE BOARD OF ESTIMATES

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Clerk

Date

## **SETTLEMENT AGREEMENT AND RELEASE**

**THIS SETTLEMENT AGREEMENT AND RELEASE** (the "Agreement") is made and entered into this 16, day of June, 2022, by, between, and among Jamal Wilson (collectively, the "Releasing Party"), and the Mayor and City Council of Baltimore (the "City") and Officer Donald Gaff, (collectively, the "Released Parties"). The Released Parties together with the Releasing Party are referred to herein as the "Settling Parties."

### **RECITALS**

WHEREAS, the Releasing Party filed a Complaint in the United States District Court for the District of Maryland (Northern Division) against the Released Parties substantially or similarly styled *Jamal Wilson v. Officer Donald Gaff*, Case No. 1:19-cv-02587-RDB (the "Litigation"), arising out of the alleged unlawful search, seizure, and detainment of the person or property in an unreasonable manner of the Releasing Party, by the Officer Defendant, on or about September 11, 2016, at or around the 600 block of E. Patapsco Street in Baltimore, Maryland; and

WHEREAS, the Releasing Party alleges he sustained a violation of his rights under 42 U.S.C. 1983 – Fourth and Fourteenth Amendments, related to conduct of the Released Parties ("the Occurrence"; hereinafter "Releasing Party's Losses"); and

WHEREAS, the Settling Parties are desirous of settling and terminating all existing or future claims, disputes, and actions between and among them whatever nature, arising from on in any way connected with the Litigation or the Occurrence and bring complete resolution to this matter.

## AGREEMENT

**NOW THEREFORE**, in consideration of the mutual promises and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Settling Parties hereby covenant and agree as follows:

1. **Recitals:** The foregoing recitals are incorporated into and made part of this Agreement.
2. **Payment:** In consideration of the Settling Parties' entry into this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the Settling Parties, the City shall make the sum total payment to the Releasing Party of One Hundred and Thirty Thousand Dollars and Zero Cents (\$130,000.00), on behalf of the Released Parties, payable to "Justin Schnitzer, Attorney for Jamal Wilson", as full and final payment for making the Release and abiding by the terms set forth in this Agreement (the "Settlement Sum").
3. **Dismissal:** Within ten (10) business days, or receipt of Settlement Sum, whichever comes sooner, the Releasing Party shall file with the Court a Joint Stipulation of Dismissal with Prejudice as to the Released Parties.
4. **Approval by City's Board of Estimates:** The Settling Parties understand that payment of the Settlement Sum as set forth in this Agreement is subject to, and contingent upon, the prior approval of the City's Board of Estimates. In the event that the Board of Estimates rejects the settlement, this Agreement will become void and of no legal effect, upon which time the parties could continue to seek whatever redress which is available regarding the Occurrence through the Litigation.
5. **Warranty of Capacity to Enter Into Release:** The Releasing Party represents and warrants that no other person or entity has any interest in the claims, demands, allegations, or

causes of action referred to in this Settlement Agreement except as otherwise set forth herein and that they have the sole right and exclusive authority to execute this Settlement Agreement, to receive the sum specified in it and to release all claims on their behalf, and that they have not sold, assigned, transferred, conveyed or otherwise disposed of any claim, demand, obligation or causes of action referred to in this Settlement Agreement. If any person should assert a claim on behalf of the Releasing Party for damages against any of the Released Parties claiming that the Releasing Party did not have the right or authority to enter into this Settlement Agreement or receive the Settlement Sum hereunder, the Releasing Party agrees to indemnify, defend, and hold harmless the Released Parties from any and all claims or contentions, damages, costs, liability and attorneys' fees as a consequence or result of such claim or lawsuit.

6. **General Release and Covenant not to Sue:** In consideration of the payment of the Settlement Sum and other good and valuable consideration, the Releasing Party, his heirs, assigns, agents, representatives, attorneys and successors in interest hereby unconditionally release and forever discharge and covenant not to sue the Released Parties, their officials, agents, employees, employers, agencies, departments, directors, officers, members, representatives, assigns, attorneys, successors in interest, and all other persons, firms, governmental entities and corporations from any and all Claims which the Releasing Party may now or hereafter have or claim to have, arising out of, or in any way related to, the Occurrence and the allegations or claims asserted, or that could have been asserted, in the Litigation, provided, however, the obligations of the Settling Parties under this Agreement shall continue in full force and effect.

"Claims" includes, but not limited to, any and all losses, costs, expenses, debts, actions (statutory, in law or in equity), causes of action, suits, damages, claims, demands and all other claims, liabilities and obligations of any nature whatsoever including but not limited to any and all

claims for discrimination under Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1991, the Age Discrimination in Employment Act, the Equal Pay Act, the Older Worker Benefits Protection Act, the Family and Medical Leave Act, the Consolidated Omnibus Budget Reconciliation Act, the Americans With Disabilities Act, the Employee Retirement Income Security Act, and any comparative state law, whether presently known or unknown, including attorneys' and consultant's fees.

7. **Costs and Expenses:** Each party will be responsible for his, her or its own costs and expenses incurred in connection with the prosecution, defense, and settlement of the claims asserted by the Releasing Party against the Released Parties.

8. **No Admission of Liability:** It is understood and agreed by the Settling Parties that this Agreement and the releases contained herein shall not be construed as an admission of liability on the part of the Released Parties, any such liability being expressly denied, and that rather, the purpose of this Agreement is to fully and finally resolve all differences amongst the Settling Parties and to allow the Settling Parties to avoid the time, expense and uncertainties of protracted litigation.

9. **Medicare/Medicaid Liens:** The Releasing Party understands that Section 111 of the Medicare, Medicaid and SCHIP Extension Act of 2007 ("MMSEA") imposes a lien (the "Medicare Lien") for reimbursement of certain payments made by Medicare. The Settling Parties understand and believe that there are no outstanding Medicare Liens. Notwithstanding this, in the event that payment of the claims results in an obligation to reimburse Medicare, the Releasing Party agrees to make such reimbursement and agrees that his attorneys may retain sufficient funds in the attorneys' escrow account to satisfy the Medicare Lien. If the Releasing Party or his attorneys fail to satisfy a Medicare Lien, and that failure causes the Released Parties to pay or

reimburse any person or entity any amount MMSEA specifies, the Releasing Party agrees to reimburse the Released Parties' payment or reimbursement to such person or entity. Upon receipt of documentation from Medicare that any Medicare Lien is satisfied, the Releasing Party will send a copy of such documentation to the Released Parties.

10. **No Evidence of Need to Indemnify:** It is understood and agreed by the Settling Parties that this Agreement and/or corresponding settlement or payment of the Settling Sum is not to be construed as evidence of an obligation on behalf of the City to indemnify any person who may be covered under this Agreement for claims of intentional conduct, as such contention is expressly denied.

11. **Entire Agreement of the Parties:** It is understood and agreed by the Parties that this Agreement constitutes the entire Agreement among the Settling Parties with respect to the subject matter hereof and supersedes all other prior and contemporaneous written or oral agreements and discussions. This Agreement may only be awarded by a writing signed by all parties hereto.

12. **Drafting of the Agreement:** The Settling Parties acknowledge and agree that this Agreement represents the products of negotiations and shall not be deemed to have been drafted exclusively by any one party. In the event of a dispute regarding the meaning of any language contained in this Agreement, the Settling Parties agree that the same shall be accorded a reasonable construction and shall not be construed more strongly against one party other than the other.

13. **Severability:** In the event that any covenant, condition, or other provisions contained in this Agreement is held to be invalid, void, or illegal by any court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement and shall in no way affect, impair or invalidate any other covenant, condition or other provision contained

herein. If such condition, covenant, or other provision shall be deemed invalid due to its scope of breadth, such covenant, condition, or other provision shall be deemed valid to the extent of the scope of breadth permitted by law.

14. **WAIVER OF JURY TRIAL:** TO THE EXTENT AN ACTION IS FILED IN ANY COURT FOR A BREACH OF ANY COVENANT, TERM OR CONDITION OF THIS AGREEMENT, THE SETTling PARTIES HEREBY VOLUNTARILY WAIVE ANY AND ALL RIGHTS TO A TRIAL BY JURY.

15. **Knowing and Voluntary Act:** Each of the Settling Parties represent that each has read this Agreement and acknowledge that each has been represented or had the opportunity to be represented by legal counsel of their own choice throughout all of the negotiations which preceded the execution of this Agreement and that each party has voluntarily executed this Agreement with the consent and/or on the advice of such legal counsel. Each of the Settling Parties further acknowledge that each and such party's counsel have had adequate opportunity to make whatever investigation or inquiry they may deem necessary or desirable in connection with the subject matter of this Agreement prior to the execution hereof and the delivery and acceptance of the considerations specified herein. The Settling Parties shall bear their own costs, including, but not limited to, attorney's fees associated with the Litigation or the Occurrence.

16. **Survival of Terms:** The Settling Parties agree that this Agreement shall upon approval inure to the benefit of the Settling Parties and their respective agents, assigns, partners, heirs, executors, administrators, and personal or legal representatives. The Settling Parties understand and agree that the terms, covenants, and conditions set forth in this Agreement shall survive the closing of the Agreement.



17. **Governing Law:** This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Maryland, without giving effect to its conflicts of law provisions, and any disputes arising out of or under this Agreement shall be subject to the exclusive jurisdiction of the state or federal courts located in Baltimore City, Maryland.

18. **Counterparts:** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same instrument. An emailed, facsimile or copy signature will be binding and legal in all respects as if it were an original signature to this Agreement.

**\*\*\*INTENTIONALLY BLANK, PROCEED TO NEXT PAGE FOR SIGNATURES\*\*\***


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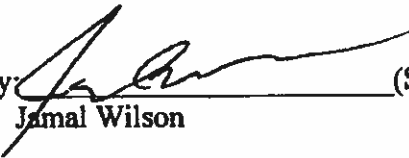
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**CAUTION: READ BEFORE SIGNING BELOW. BY SIGNING THIS AGREEMENT YOU GIVE UP AND WAIVE IMPORTANT LEGAL RIGHTS.**

**THE UNDERSIGNED READ THE FOREGOING AGREEMENT AND RELEASE AND FULLY UNDERSTAND IT.**

IN WITNESS WHEREOF, the Parties have executed this Agreement by the duly authorized representatives as of the date first written above:

  
\_\_\_\_\_  
WITNESS

By:  (SEAL)  
\_\_\_\_\_  
Jamal Wilson

MAYOR AND CITY COUNCIL OF BALTIMORE and RELEASED PARTIES

\_\_\_\_\_  
WITNESS

By:  (SEAL)  
\_\_\_\_\_  
James L. Shea, City Solicitor

**\*\*\*END OF AGREEMENT\*\*\***