

NAME & TITLE	James L. Shea, City Solicitor	CITY OF BALTIMORE	
AGENCY NAME & ADDRESS	Department of Law Suite 101, City Hall		
SUBJECT	<i>Kenyon Joyner v. MCCB, et al.</i> , 24-C-21-003293 OT		

MEMO

TO: Honorable President and Members
of the Board of Estimates

Date: April 18, 2022

ACTION REQUESTED OF BOARD OF ESTIMATES

The Department of Law respectfully requests authorization to approve the settlement of a lawsuit brought by Kenyon Joyner. Plaintiff alleges he suffered physical, mental and emotional injury after a Baltimore City Police Officer body-slammed the Plaintiff into the ground.

AMOUNT OF MONEY AND SOURCE OF FUNDS

The total amount of the proposed settlement is \$40,000.00. Funds are available in account number 1001-000000-2041-716700-603070.

BACKGROUND/EXPLANATION

According to the Complaint, on January 7, 2019, BPD Officers responded to a call for service stemming from a fight at a McDonalds on Falls Road. When the officers arrived, they stopped suspect Robert Dayshawn. A pat down was conducted and a stop ticket was given to Dayshawn. During the stop, Plaintiff approached Officer Ciotti, who was talking to Dayshawn and was issuing him the stop ticket. Plaintiff crouched down and stated words to the effect "I'm filming this," and then placed his cell phone close (approximately 1 foot) to Officer Ciotti's face as he was placing suspect Dayshawn under control. Ciotti perceived the object and Plaintiff as a threat, and pushed Plaintiff away. Another Officer then pushed Plaintiff against a nearby wall and body-slammed him to the ground. Plaintiff was then placed under arrest. The entire incident was captured on the body worn cameras of numerous officers who responded to the underlying incident. In addition, a third-party independent witness (Robert Smith) was present for the entire incident.

In order to resolve this lawsuit economically and to avoid the expense, time, and uncertainties of litigation, the parties have agreed to settle in the amount of \$40,000.00. In return, Plaintiff has agreed to dismiss any and all claims against the City, and its employees, agents and representatives. 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 potential litigation.



James L. Shea
City Solicitor

APPROVED BY THE BOARD OF ESTIMATES

Clerk

Date



SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT AGREEMENT AND RELEASE (the "Agreement") is made and entered into this 3rd day of March, 2021, by and among Kenyon Joyner (the "Releasing Party"), and The Mayor and City Council of Baltimore (the "City"), the Baltimore Police Department ("BPD"), Officer David Ciotti ("Ciotti"), Officer Dion Brooks ("Brooks"), Officer Douglas Gibson ("Gibson"), Officer Horace McGruff ("McGruff"), Officer Jeremy Zimmerman ("Zimmerman"), Officer Michael Vaughn ("Vaughn"), Officer Tanesha Todd ("Todd"), Officer Victor Liu ("Liu"), Officer Dante Boon ("Boon"), Officer Daniel Jenson ("Jenson"), Officer Mary McLaughlin ("McLaughlin"), Officer Matthew Toby ("Toby"), and Officer Kelly Steinhorn ("Steinhorn") (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 lawsuit in the Circuit Court for Baltimore City, captioned *Kenyon Joyner v. State of Maryland, et al.*, Civil Case No.: 24-C-21-003293 OT (the "Litigation"), arising out of an alleged incident that occurred on or about January 7, 2019, at or near the intersection of Falls Road and W. 41st Street in Baltimore City, Maryland, between the Releasing Party and several BPD Officers (the "Occurrence"); and

WHEREAS, the Releasing Party alleges that he sustained personal injuries, economic losses and/or other damages, whether presently known or unknown, related to the Occurrence (hereinafter "Releasing Party's Losses"); and

WHEREAS, the Released Parties deny and dispute the allegations asserted in the Litigation; and

WHEREAS, the Settling Parties now desire to fully compromise and settle finally and forever the Litigation and the Occurrence and any other existing or future claims or disputes asserted or which could have been asserted of whatever nature, including without limitation, any and all claims, causes of action, costs and demands of whatever name or nature, in any manner by the Releasing Party arising, growing out of, or on account of any Releasing Party's Losses, the Occurrence, the Litigation, or any other instance against the City, BPD, the BPD Officers, or any other persons, known or unknown, or any of the Released Parties.

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:** Within sixty (60) days of the final and full execution of this Agreement by the Settling Parties, the City shall make the sum total payment to the Releasing Party of Forty-Thousand Dollars and Zero Cents (\$40,000.00) (the "Settlement Sum"), as full and final payment for making the release herein and abiding by the terms set forth in this Agreement. Payment shall be made by check, payable to Kenyon Joyner and Greenberg Law Office, and mailed to Greenberg Law Office, Attn.: Matt Rogers, 6 E. Biddle Street, Baltimore, MD 21202.
3. **Dismissal:** Within one (1) business day after approval of this Agreement by the City's Board of Estimates, the Releasing Party shall file, or authorize counsel for the

Settling Parties to file, in the Court where the Litigation is proceeding, a Joint Stipulation of Dismissal with Prejudice, pursuant to Md. Rule 2-506(b), 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, whereupon the parties could continue to seek relief through the Litigation regarding the Occurrence.

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 he has the sole right and exclusive authority to execute this Settlement Agreement, to receive the sum specified in it and to release all claims on his behalf, and that he has 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 monies 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 releases and forever discharges and covenants 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, entities, 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, Releasing Party's Losses, and/or the allegations or claims asserted, or that could have been asserted, in the Claim, provided, however, the obligations of the Settling Parties under this Agreement shall continue in full force and effect. "Claims" include, but are not limited to, any and all losses, costs (including attorneys' fees), expenses, debts, actions (constitutional or 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, BPD, or the Settling Parties 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 amended by a writing signed by all parties hereto.

12. **Drafting of the Agreement.** The Settling Parties acknowledge and agree that this Agreement represents the product of negotiations by the Settling Parties 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 than the other.

13. **Severability:** In the event that any covenant, condition, or other provision 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 IN CONNECTION WITH ANY COVENANT, TERM OR CONDITION OF THIS AGREEMENT, THE SETTLING PARTIES HEREBY KNOWINGLY, VOLUNTARILY, AND INTELLIGENTLY WAIVE ANY AND ALL RIGHTS TO A TRIAL BY JURY.

15. **Knowing and Voluntary Act:** Each of the Settling Parties represents that each has read this Agreement and acknowledges 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 and knowingly executed this Agreement of their own free will and/or with the consent and/or on the advice of such legal counsel. Each of the Settling Parties further acknowledges that each and/or 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.

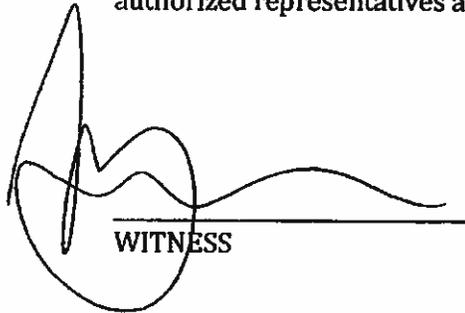
16. **Survival of Terms:** The Settling Parties agree that this Agreement shall upon approval inure to the benefit of the Settling Parties and their respective agents, assigns, partners, heirs, executors, administrators, and personal or legal representatives. The Settling Parties understand and agree 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 legal actions presenting disputes arising out of or under this Agreement shall be subject to the exclusive jurisdiction of the Circuit Court for 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.

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

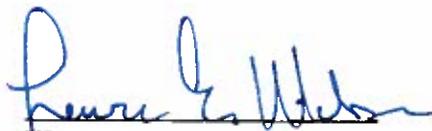


WITNESS

PLAINTIFF



Kenyon Joyner ^{Joyner} ~~3/31/2022~~ (SEAL)
3/31/2022

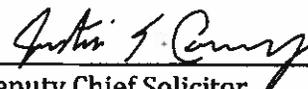


WITNESS

MAYOR AND CITY COUNCIL OF BALTIMORE

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

Approved as to Form and Legal Sufficiency

By: 

Deputy Chief Solicitor
Department of Law