

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Agreement") is made and entered into as of this ____ day of February, 2012, by and between Daniel Minten ("Minten") on the one hand and Douglas L. Weber, both individually and in his official capacity as Sheriff of Osceola County, Iowa, ("Weber") and Osceola County ("Osceola County Board") on the other hand (collectively "Defendants").

WHEREAS, Weber is the elected Sheriff for Osceola County, Iowa;

WHEREAS, Daniel Minten worked as a Deputy Sheriff for the Osceola County Sheriff's Department for approximately 21 years until February 1, 2010;

WHEREAS, on February 1, 2010, Weber terminated Minten's employment as a Deputy Sheriff with the Osceola County Sheriff's Department;

WHEREAS, on January 10, 2011, Minten commenced a lawsuit in the U.S. District Court for the Northern District of Iowa, Court File No. C11-4004-MWB ("Action"), against Weber, both individually and in his official capacity as Sheriff of Osceola County, Iowa, claiming that Weber terminated Minten's employment as a Deputy Sheriff with the Osceola County Sheriff's Department based on Minten's exercise of Minten's right to free speech under the First Amendment of the U.S. Constitution;

WHEREAS, in the Action, Minten asserted claims against Weber under 42 U.S.C. §1983 seeking damages for back pay, equitable relief in the form of reinstatement or front pay, punitive damages and attorney fees.

WHEREAS, Weber denied any liability to Minten in the Action.

WHEREAS, on December 22, 2011, the District Court in the Action filed an Order denying Weber's Motion for Summary Judgment and granting Minten's Motion for Summary Judgment on liability only;

WHEREAS, trial was scheduled to begin on Minten's damages and equitable relief on February 6, 2012;

WHEREAS, Weber intended to appeal the District Court's denial of Weber's Motion for Summary Judgment, the District Court's granting of Minten's Motion for Summary Judgment, the District Court's denial of Weber's Motion to Amend Answer, and various rulings on the parties' motions in limine and various evidentiary rulings with respect to evidence associated with the trial of the case for punitive damages;

WHEREAS, Defendants and Minten now wish to settle all claims between them including, but not limited to, those which were or should have been a part of the Action;

WHEREAS, Defendants and Minten acknowledge that as a result of Minten's reinstatement as a Deputy Sheriff as set forth in this Agreement, Minten has a risk that Weber may terminate him the

day after signing this Agreement and Defendants have a risk that Minten may not perform properly as a Deputy Sheriff;

WHEREAS, Defendants and Minten further acknowledge that this Agreement addresses those risks;

WHEREAS, Defendants and Minten further acknowledge and agree that they are entering into this Agreement in good faith and that they will endeavor to genuinely cooperate with one another without rancor in carrying out their respective duties; and

WHEREAS, Defendants further acknowledge and agree that neither Weber nor the Osceola County Board has any present intention of terminating Minten after reinstatement and Minten acknowledges and agrees that he will perform his duties as a Deputy Sheriff to the best of his ability upon reinstatement.

NOW THEREFORE, for the consideration set forth below, including, but not limited to, Weber's agreement to reinstate Minten to full employment as a Deputy Sheriff with the Osceola County Sheriff's Department, Minten and Weber enter into the following agreement.

1. Minten's Limited Release of Defendants.

Minten, together with his respective heirs, personal representatives, assigns, successors in interest, insurers and agents, hereby releases and forever discharges Defendants, together with their respective heirs, personal representatives, assigns, successors in interest, successor organizations, successor Sheriffs, insurers and agents, from any and all action and actions, cause and causes of action, liens, claims, counter-claims, suits, proceedings, debts, dues, sums of money, damages, contracts, controversies, agreements, promises, variances, liabilities, judgments, claims and demands whatsoever at law or in equity, which Minten ever had, now has or hereafter may have against Defendants arising out of Minten's employment as a Deputy Sheriff with the Osceola County Sheriff's Department including, but not limited to, any claims which were asserted or should have been asserted in the Action. Without limiting the generality of the foregoing, this release includes, but is not limited to: (a) any and all claims related to Minten's employment with Osceola County Sheriff's Department; (b) any and all claims for additional compensation, bonuses, or benefits under any benefit plan, policy, or practice; (c) claims for payment of wages, bonuses and commissions of any kind; (d) claims of discrimination under Title VII of the Civil Rights Act of 1964, as amended, the Age Discrimination in Employment Act (the "ADEA"), the Americans with Disabilities Act, any state Human Rights Act, or any other claims recognized under any federal, state or local civil rights laws based on age or any other protected status including religion; (e) claims for breach of contract, breach of fiduciary duty, fraud or misrepresentation, or fraudulent inducement; (f) claims for sick pay or vacation pay; (g) claims for the ongoing payment of insurance premiums or insurance coverage; (h) claims for expense reimbursement; (i) claims for defamation; (j) claims for intentional or negligent infliction of emotional distress; (k) claims for breach of a covenant of good faith and fair dealing; (l) claims for wrongful end of employment; (m) claims for retaliation or for "whistle blowing"; (n) claims for unlawful employment practices; (o) claims for compensatory, consequential or punitive damages, back pay, front pay, costs, attorneys fees, interest or other expenses; and (p) all claims based on

promissory estoppel, negligence or under any other theory, whether legal or equitable, that arose prior to the date of execution of this Agreement.

2. Defendants Weber's and Osceola County's Limited Release of Minten.

Defendants, together with their respective heirs, personal representatives, assigns, successors in interest, successor organizations, successor Sheriffs, insurers and agents, hereby releases and forever discharge Minten, together with his respective heirs, personal representatives, assigns, successors in interest, insurers and agents, from any and all action and actions, cause and causes of action, liens, claims, counter-claims, suits, proceedings, debts, dues, sums of money, damages, contracts, controversies, agreements, promises, variances, liabilities, judgments, claims and demands whatsoever at law or in equity, which Defendants ever had, now have or hereafter may have against Minten arising out of Minten's employment as a Deputy Sheriff with the Osceola County Sheriff's Department including, but not limited to, any claims which were asserted or should have been asserted in the Action.

3. Defendants' Monetary Payments to Minten.

In consideration of the releases set forth in paragraphs 1 and 2 above, Defendants agree to pay to Minten \$270,000 as set forth in this Agreement no later than eight (8) days after the execution of this Agreement. Minten and Defendants agree that payment shall be allocated as follows: (i) \$131,001.48 shall be allocated as back pay to Minten, (ii) \$26,356.20 shall be allocated to re-pay the amount Minten received from the Iowa Public Employees' Retirement System ("IPERS") while Minten was unemployed in conjunction with reinstating Minten's employment with the Osceola County Sheriff's Department as set forth below and (iii) \$112,642.32 be allocated to pay Minten's attorney fees. Each of these allocations shall be paid as follows. The \$131,001.48 allocation for Minten's back pay shall be paid to Minten in the form of payroll check in the gross amount of \$131,001.48 with appropriate deductions for FICA taxes, income tax withholding, and IPERS deductions. The \$26,356.20 allocated to pay the amount Minten was paid by IPERS shall be paid directly to IPERS. The \$112,642.32 allocated to pay Minten's attorney fees shall be paid directly to Minten's attorneys, Mohrman & Kaardal, P.A. Osceola County shall issue a 1099 to Mohrman & Kaardal, P.A. for the \$112,642.32 allocated to pay Minten's attorney fees. However, Osceola County shall not issue a 1099 to Minten for the \$26,356.20 allocated to pay IPERS.

4. Reinstatement of Minten's Employment.

On March 1, 2012, Defendants shall reinstate Minten as a Deputy Sheriff in the Osceola County Sheriff's Department. In conjunction with Defendants' reinstatement of Minten's employment as a Deputy Sheriff, Defendants and Minten agree that it is the intent of this Agreement that Minten be restored to the same status of employment Minten had as if Minten had not been terminated on February 1, 2010. In order to act in accordance with this intent, the Defendants and Minten agree as follows:

- a. Under the Osceola County Sheriff's Department's Contract with the AFSCME Iowa Council 61 and AFL-CIO Local 1741 in effect as of the date of this Agreement ("Union Contract"), and otherwise with respect to Minten's reinstatement as a Deputy Sheriff,

Minten's seniority under the Contract and his reinstatement as a Deputy Sheriff shall assume that Minten was not terminated from employment on February 1, 2010. By way of example, if Minten had precisely 21 years of seniority on February 1, 2010 and Minten's employment is reinstated on February 15, 2012, Minten shall be considered as having 23 years and one month of seniority upon Minten's reinstatement.

- b. Minten shall be fully reinstated to his sick pay as if Minten had never been terminated. Minten shall be entitled to his pro rata portion of vacation pay for the current calendar year as of March 1, 2012.
 - c. Weber acknowledges and agrees that he shall honor Minten's requests for days off consistent with the Union Contract on a first come, first served basis as is done for all other Deputy Sheriffs in the Osceola County Sheriff's Department .
5. Future Termination of Minten's Employment After Reinstatement.

With respect to Minten's reinstatement as a Deputy Sheriff, the Osceola County Board and Weber, acting as the current Sheriff of Osceola County and on behalf of his successors in office, and Minten agree to the following:

- a. With respect to any future adverse action regarding Minten's employment with the Osceola County Sheriff's Department, Weber and the Osceola County Sheriff's Department may not rely on any fact which occurred prior to March 1, 2012 in taking any adverse action with respect to Minten's employment.
- b. Any adverse action with respect to Minten's employment shall be subject to the grievance procedure set forth in the Union Contract and any future union contract including, but not limited to, any termination of Minten or reduction of Minten's employment from full time to part time. However, Minten shall have discretion over whether to engage in the grievance procedure.
- c. If Weber, or any future Sheriff of the Osceola County Sheriff's Department, either terminates Minten's employment or reduces Minten from a full time employee to a part time employee for any reason other than "just cause," as defined in section 5. d. below, Minten shall be entitled to payment from the Osceola County Sheriff's Department as follows:
 - i. If Minten's employment is terminated for any reason other than "just cause" at any time prior to March 1, 2014, Minten shall be entitled to liquidated severance of three years' pay and benefits which the parties stipulate and agree would equal \$66,500 annually or \$199,173.66 for the three years.
 - ii. If Minten's employment is terminated for any reason other than "just cause" at any time after March 1, 2014 and prior to March 1, 2016, Minten shall be entitled to liquidated severance of two years' pay and benefits which the parties stipulate and agree would equal \$66,500 annually or \$132,782.40 for the two years.

- iii. If Minten's employment is terminated for any reason other than "just cause" at any time after March 1, 2016 and prior to March 1, 2018, Minten shall be entitled to liquidated severance of one year's pay and benefits which the parties stipulate and agree would equal \$66,500 for the one year.
- d. "Just Cause" for purposes of paragraph 5. c., is limited to the seven factors set forth in Iowa Code Annotated §341A.11. Understanding that the several of these factors are subjective in nature, the parties agree that certain terms in factors 1-5 and 7 should be interpreted as follows.
- i. With respect to factor 1 involving "[i]ncompetency, inefficiency, or inattention to or dereliction of duty," the parties agree that such "[i]ncompetency, inefficiency, or inattention to or dereliction of duty" does not include immaterial acts of "[i]ncompetency, inefficiency, or inattention to or dereliction of duty;"
 - ii. With respect to factor 2 involving "[d]ishonesty, intemperance, immoral conduct, insubordination, discourteous treatment of the public or a fellow employee, or any other act of omission or commission tending to injure the public, or any other willful failure to properly conduct oneself, or any willful violation of the provisions of this chapter or the rules to be adopted hereunder," any act supporting Minten's termination under this factor must be a serious act materially impacting Minten's work as a Deputy Sheriff;
 - iii. With respect to factor 3 involving "[m]ental or physical unfitness for the position held," any such "[m]ental or physical unfitness for the position held" must be a serious mental or physical unfitness which materially impacts Minten's work as a Deputy Sheriff;
 - iv. With respect to factor 4 involving "[d]ishonest, disgraceful, or prejudicial conduct," any act supporting Minten's termination under this factor must be a serious act materially impacting Minten's work as a Deputy Sheriff;
 - v. With respect to factor 5 involving "[d]runkness or habitual use of intoxicating liquor, or use of narcotics, or any other habit-forming drug, liquid, preparation or controlled substance," "drunkenness" does not include Minten's social use of alcohol while off duty; and
 - vi. With respect to factor 7 involving "[a]ny other act or failure to act or to follow reasonable regulations prescribed by the sheriff which in the judgment of the commission is sufficient to show the offender to be unsuitable or unfit for employment," any act supporting Minten's termination under this factor must be a serious act materially impacting Minten's work as a Deputy Sheriff.

- e. If Minten believes either or both Defendants have breached this Agreement, Minten may commence an arbitration proceeding to collect the amounts Minten claims are due under paragraph 5. c.. With respect to such arbitration, the parties stipulate and agree:
- i. The dispute shall be submitted to binding arbitration under the American Arbitration Association ("AAA") to be held in Mason City, Iowa;
 - ii. The parties shall pay one half of the fees and costs charged by the AAA for such arbitration;
 - iii. Any decision either by (i) arbitration in the grievance procedure of the Union contract or any union contract or (ii) the Civil Service Commission or any Court on appeal shall be inadmissible in the AAA arbitration proceeding and have no res judicata or collateral estoppel effect in the AAA arbitration;
 - iv. The AAA arbitrator shall have authority to rule on only two issues. First, did Minten's employer have "just cause", as defined in paragraph 5. d. above, to terminate Minten's employment as a Deputy Sheriff. Second, if the arbitrator Answers no, the arbitrator must award to Minten the amount set forth in paragraph 5. c. i, ii, or iii based on the date of Minten's termination. The AAA arbitrator shall not have authority to rule on any other issues including, but not limited to, reinstating Minten's employment.

6. Osceola County's and Weber's Obligations to Restore Minten to Full Status with IPERS.

Osceola County and Weber agree to undertake any and all actions necessary to restore Minten to the status Minten would have been in as if Minten had not been terminated on February 1, 2010 and Minten had continued to work through the date of Minten's reinstatement. These actions include:

- i. Reimbursing IPERS in the amount of retirement benefits previously paid to Minten as set forth in paragraph 3 above;
- ii. Paying The Employer's share of the retirement contribution to IPERS as a result of paying Minten his back pay as set forth in paragraph 3 above; and
- iii. Paying any amounts to IPERS as result of Weber or the Osceola County Sheriff's Department failure to pay these contributions timely due to Minten's termination of employment including, but not limited to, interest and penalties.

Any such amounts Weber or the Osceola County Sheriff's Department pays to IPERS or anyone else, other than the amount set forth in 6. i. above, to fulfill its obligations under this paragraph 6 shall not be included in the \$270,000 payment made to or on behalf of Minten as set forth in paragraph 3 above.

7. No Admission of Liability.

It is expressly understood and agreed that this Settlement Agreement and Release shall not be construed as an admission of liability by the parties hereby released or anyone else.

8. Enforcement of Settlement Agreement.

This Settlement Agreement and Release may be pleaded as a full and complete defense to any action, suit or other proceeding which may be instituted, prosecuted or attempted by either party in breach of this Agreement. In addition, nothing in this Settlement Agreement and Release is intended to release either parties' right to enforce this Settlement Agreement and Release.

9. Merger Clause.

This Settlement Agreement and Release sets forth the entire agreement between Minten and Defendants and all previous discussions, understandings, representations, negotiations, and agreements related in any way, directly or indirectly, to the matters included in this Agreement are merged herein.

10. Acknowledgement.

Minten and Defendants acknowledge that they have fully read and understand this Agreement and Release and acknowledge that this Agreement and Release is final and binding upon them regardless of the adequacy of consideration and regardless of the extent of damages allegedly suffered by any one of them.

11. Signing of the Agreement.

This Agreement may be signed in counterparts and by facsimile. The Agreement shall be deemed to be executed on the last day any such counterpart is signed.

12. Governing Law.

This Agreement shall be governed and interpreted under the laws of the State of Iowa.

13. Construction.

The terms of this Agreement shall be construed in an evenhanded fashion as between the parties. Should it be determined that there is a lack of clarity or ambiguity as regards any of the language of the Agreement, the issue of the meaning of such language shall be resolved in a manner consistent with the relevant terms of this Agreement and the Settlement Agreement and without regard to authorship.

14. Stipulation of Dismissal.

The parties agree to enter into a Stipulation of Dismissal with prejudice as set forth in Exhibit A providing for the dismissal of the Action.

15. Provisions Required Under Title VII and ADEA.

Minten agrees that he has read this Agreement, that he has been advised to consult with an attorney prior to signing this Agreement and that he has, in fact, consulted with an attorney of his choosing before executing this Agreement. Minten has been informed that the terms of this Agreement shall be open for acceptance and execution by him for a period of twenty-one (21) days during which time he may consider whether to accept this Agreement. Minten has been informed of his right to rescind or cancel this Agreement within seven (7) calendar days of signing it to preserve any claims he may have against Osceola County Sheriff's Department arising under Title VII of the Civil Rights Act of 1964, as amended. To be effective, the rescission must be in writing and delivered by to Osceola County Sheriff's Department's counsel at: Douglas L. Phillips, Klass Law Firm, L.L.P., Mayfair Center, Upper Level, 4280 Sergeant Road, Suite 290, Sioux City, Iowa 51106 within the seven-day period. The notice of rescission must be delivered by mail and must be: 1) postmarked within the 7-day period; 2) properly addressed to Douglas L. Phillips, Klass Law Firm, L.L.P., Mayfair Center, Upper Level, 4280 Sergeant Road, Suite 290, Sioux City, Iowa 51106, and 3) sent by certified mail return receipt requested. If Minten rescinds this Agreement, Defendants will have no obligation to provide the payments to Minten, IPERS or Mohrman & Kaardal as set forth above.

16. Acknowledgement of Minten Surgery.

Defendants acknowledge and agree that Minten recently underwent surgery for which he is recovering. Minten believes that he will be sufficiently recovered from the surgery to start work on March 1, 2012 and Minten will provide a letter from his physician releasing him Minten to work as a Deputy Sheriff. However, Defendants acknowledge and agree that Minten may need to use sick days upon his reinstatement in order to completely heal from the surgery.

DATED: February 17, 2012

Daniel Minten
DANIEL MINTEN

DATED: February __, 2012

Douglas Weber, in his capacity as Sheriff of Osceola County, Iowa:

By: Douglas Weber
Its: Sheriff

DATED: February __, 2012

Douglas Weber
DOUGLAS WEBER, individually,

DATED: February 22, 2012

Osceola County, Iowa:

By: Mike Schull
Its: Chairman

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION

Daniel Minten,

Plaintiff,

Case No. 5:11-CV-04004

Hon. Mark W. Bennett,

vs.

STIPULATION OF DISMISSAL


Douglas L. Weber, individually and in his
official capacity as Sheriff of
Osceola County, Iowa,

Defendant.

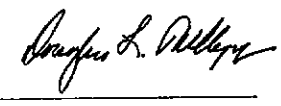
COMES NOW the parties, Plaintiff, Daniel Minten, and Defendant Douglas L. Weber, individually and in his official capacity as Sheriff of Osceola County, Iowa, and hereby stipulate and agree that Plaintiff's claims are hereby dismissed with prejudice and on the merits pursuant to Rule 41(a) of the Federal Rules of Civil Procedure. The Court may enter a dismissal accordingly.

Dated: February 29, 2012.

Attorneys for Plaintiff:


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