

## SETTLEMENT AGREEMENT AND GENERAL RELEASE

THIS SETTLEMENT AGREEMENT AND GENERAL RELEASE (hereafter, "Release" or "Agreement") of all claims against the City of San Leandro includes without limitation, the San Leandro City Council, the City's officials, departments, commissions, past and present employees and managers, independent contractors, attorneys, agents and assigns ("City"), is made by DeWayne Stancill ("Stancill").

### RECITALS

WHEREAS, Stancill worked in the City's Police Department from October 1998 until January 25, 2010;

WHEREAS, Stancill believes he had a medical condition at his separation from City employment that entitles him to a CalPERS Industrial Disability Retirement;

WHEREAS, Stancill filed a lawsuit against the City in Alameda County Superior Court, Case No. RG09469513, on August 19, 2009. The City and Stancill also have an arbitration pending before Matthew Goldberg and a pending appeal in front of the California Unemployment Insurance Commission;

WHEREAS, The City and Stancill dispute and deny any and all alleged wrongdoing in any of their pending lawsuits and administrative actions; and

The parties now desire to resolve, fully and forever, any and all actual and potential grievances, disputes, controversies, claims, actions and lawsuits between them, including without limitation Stancill's lawsuit pending in the Alameda County Superior Court, the arbitration before Mr. Goldberg, and the unemployment insurance appeal, in order to avoid the uncertainties, expenses and costs of litigation. The parties further desire to permanently bring an end their employment relationship. As further

described below, this Agreement is contingent upon Stancill being approved to receive Industrial Disability Retirement benefits from CalPERS.

**THE PARTIES AGREE AS FOLLOWS:**

**TERMS**

1. Stancill will provide the City with a competent opinion from a qualified doctor of medicine illustrating that: (1) he has been substantially physically incapacitated from performing the usual duties of his police officer position from the date of his separation from employment on January 25, 2010 to present; (2) the incapacity will exist for a permanent or extended duration of six months or longer; and (3) his injury or disease arose out of and in the course of employment as a local safety member.

2. If Stancill satisfies the conditions described in Paragraph 1, the City will pay Stancill a lump sum of \$135,000 within ten (10) business days of the execution of this agreement. It is understood between Stancill and the City that this payment is not for wages, and that it encompasses injuries allegedly suffered by Stancill in the course of employment with the City. The City will issue Stancill a 1099 reflecting this amount. Stancill shall be responsible for any and all payment of taxes, penalties or other payments to state and federal taxing authorities, except the employer's share of payroll taxes, if any, and shall defend, indemnify and hold the City harmless from any determination that City failed to make appropriate payroll deductions from said sum, including penalties. As further described below, Stancill will be required to repay this money to the City unless the parties complete the settlement process described herein.

3. If Stancill is provided the payment described in Paragraph 2, and if necessary in order for Stancill to become eligible for an IDR, Stancill will provide

CalPERS with the funds necessary to reinstate his membership in the CalPERS system and become eligible to receive an Industrial Disability Retirement ("IDR"). Stancill will also file a completed application for disability retirement with CalPERS, including all information necessary to process the application. If necessary in order for Stancill to become eligible for an IDR, the City will temporarily reinstate him in an unpaid status to process his IDR. If such reinstatement is not necessary to process Stancill's IDR application, Stancill shall not be temporarily reinstated prior to the processing of his IDR application.

4. If Stancill satisfies the conditions in Paragraph 3, and CalPERS requests that the City make a determination regarding his eligibility for an IDR, the City will make a determination regarding whether he is eligible for an IDR. Stancill agrees to provide the City with all information deemed necessary to reach such a conclusion by the City and/or CalPERS, which at a minimum shall include a competent opinion from a qualified doctor of medicine illustrating that: (1) he has been substantially physically incapacitated from performing the usual duties of his police officer position from the date of his separation from employment on January 25, 2010 to present; (2) the incapacity will exist for a permanent or extended duration of six months or longer; and (3) his injury or disease arose out of and in the course of employment as a local safety member. If Stancill provides the City with this information and the City determines that Stancill is eligible for an IDR, the City will convey to CalPERS that his eligibility for IDR benefits began on January 26, 2010.

5. If Stancill is deemed eligible to receive IDR benefits pursuant to his application for such benefits made as a part of this Agreement and is granted IDR

benefits pursuant to the process described in the Agreement, the parties will fully and forever resolve any and all actual and potential grievances, disputes, controversies, claims, actions and lawsuits between them, including without limitation Stancill's lawsuit pending in Alameda County Superior Court Case No. RG09469513, the arbitration before Mr. Goldberg, and Stancill's unemployment insurance appeal. If Stancill is not deemed eligible for IDR benefits upon his application for such benefits made pursuant to this Agreement, is not granted IDR benefits pursuant to the process described in this Agreement, or if he fails to satisfy his obligations described above, he shall return the \$135,000 paid by the City, shall forfeit any reinstatement rights he received pursuant to Paragraph 3, and Stancill's termination status that was in place prior to this Agreement shall be reinstated. Stancill shall be required to return any and all monies paid to him pursuant to this Agreement within twenty-one (21) days of such a determination. In addition, the temporary stay of Stancill's lawsuit, the arbitration and the unemployment appeal shall be lifted and the parties shall be free to pursue all rights, remedies and claims therein.

6. In order to allow the parties sufficient time to complete the IDR process described above, the parties agree that Stancill's pending arbitration shall be stayed for a period of ninety (90) days. The parties shall similarly stay resolution of the unemployment insurance appeal until a determination has been made regarding Stancill's application for an IDR pursuant to this Agreement. The City shall provide plaintiff's counsel with a status update regarding implementation of the settlement terms every thirty (30) days or sooner if the situation changes. If Stancill believes that the City is not proceeding in good faith with respect to the settlement terms described above,

plaintiff's counsel shall notify defense counsel in writing, and if the issue is not sufficiently cured within seven (7) days of the written notice, Stancill may contact arbitrator Matthew Goldberg and revoke his consent to delay the decision. If Stancill revokes his consent to delay the decision, or if a decision is rendered by Mr. Goldberg, Stancill shall be required to return any and all monies paid to him pursuant to this Agreement within twenty-one (21) days; in addition, the temporary stay of Stancill's lawsuit, the arbitration and the unemployment appeal shall be lifted and the parties shall be free to pursue all rights, remedies and claims therein. The parties may agree to extend the arbitration stay in the arbitration beyond ninety (90) days, or any of the other matters being stayed, upon express written agreement of the parties.

7. If Stancill is granted an IDR pursuant to his application as a part of this Agreement, the waivers, agreements and conditions in Paragraphs 8 through shall 26 shall take effect. If Stancill is denied an IDR pursuant to his application as a part of this Agreement, or does not satisfy his requirements described above, he shall be required to return any and all monies paid to him pursuant to this Agreement within twenty-one (21) days, shall forfeit any reinstatement rights he received pursuant to Paragraph 3, and Stancill's termination status in place prior to this Agreement shall be reinstated. In addition, the temporary stay of Stancill's lawsuit, the arbitration and the unemployment appeal shall be lifted and the parties shall be free to pursue all rights, remedies and claims therein.

8. In consideration of the foregoing, and upon receipt of an IDR, Stancill and his heirs, executors, assigns and successors, fully and forever release, discharge and covenant not to sue or otherwise institute any legal or administrative proceeding against

the City, including, without limitation, the San Leandro City Council, the City's officials, departments, commissions, past and present employees, attorneys, managers, agents and assigns with respect to any matter arising out of, connected with or related in any way to Stancill's employment with the City occurring prior to the execution of this Agreement and/or any act or omission occurring prior to the execution of this Agreement. This includes any and all claims related or stemming from Case No. RG09469513 and his pending arbitration with the City.

9. Within ten (10) business days of the City receiving notice that Stancill has been granted an IDR, the City will take the following steps:

a. The City Manager will issue the exoneration memorandum attached hereto as Exhibit A. The exoneration memorandum shall be filed in Stancill's personnel file as well as in the Departmental Action file for Departmental Action 08-03 ("DA 08-03").

b. The following documents shall be removed from Stancill's personnel file, if and to the extent they exist therein:

i. all documents regarding DA 08-03, including but not limited to all exhibits, transcripts, memoranda, notes, and reports. These documents shall be stored in the DA 08-03 file as required by law until they are removed pursuant to subsection (c);

ii. the memorandum jointly prepared by Lieutenants Tankson and Ballew dated April 13, 2009, recommending that Stancill not pass probation as a Sergeant. This memorandum will instead be replaced with a Personnel Action Form, attached hereto as Exhibit B, indicating that

"Stancill's probationary Sergeant position has ended and he is being returned to his Police Officer position."

- iii. any and all termination letters to Stancill, including drafts. These documents shall be stored in the DA 08-03 file as required by law until they are removed pursuant to subsection (c);
  - iv. any and all letters to Stancill regarding administrative leave, including drafts; and
  - v. any and all documents related to any harassment allegation(s) and/or investigation(s) wherein Stancill was a subject, including but not limited to the Estrin report, the March 24, 2008 letter from Justinian Caire regarding the Estrin investigation. The written reprimand Stancill received from Dale Attarian shall be removed from Stancill's personnel file and destroyed three (3) years from its date of issuance consistent with Police Department practice on May 25, 2011.
- c.. The Departmental Action file for DA 08-03 shall be maintained separate and apart from Stancill's personnel file and shall not be filed under Stancill's name.
- d. The City may maintain the DA 08-03 file until September 12, 2011, or as otherwise required by law, but in no case shall the file be retained beyond September 12, 2013, on which date the DA 08-03 file shall be destroyed in accordance with Government Code section 34090.
- e. Any files concerning the harassment allegation(s) and/or investigation(s) where Stancill was a subject shall not be kept in any file under Stancill's name.

To the extent such files are retained, they shall be held by Human Resources and shall remain confidential to the extent allowable by law.

f. The 2008 performance evaluation for Stancill shall be deemed final and placed in his personnel file.

g. The City agrees to provide Stancill copies of his personnel file upon request from Stancill or his attorney in exchange for a reasonable copying fee.

h. Stancill shall be retroactively reinstated as of January 25, 2010, and shall be considered voluntarily and irrevocably retired from his employment with the City effective January 25, 2010. Stancill agrees that he shall not return to work for the City pursuant to this or any other provision in the Agreement.

i. The City shall return to Stancill the two peace officer badges that were previously purchased by him.

j. The City shall issue to Stancill a retirement identification card.

k. For purposes of this section, Stancill shall be considered honorably retired within the meaning of Penal Code sections 12027 and 12027.1. Upon Stancill's qualifying at a gun range in accordance with the qualification standards of the San Leandro Police Department and providing documentation of same, the City shall approve Stancill's concealed weapons permit on the back of his retirement identification card. Thereafter, the City shall act in accordance with Penal Code sections 12027 and 12027.1 in approving or revoking the permit on an annual basis.

10. Within five (5) business days after the City Manager has issued the exoneration memorandum described above, and all requirements of Paragraph 9 have



been fulfilled, Stancill agrees to deliver to counsel for the City a Dismissal with Prejudice of his claims in Alameda Superior Court Case No. RG09469513, his pending arbitration, and his appeal for unemployment insurance benefits. Simultaneously, at such time as Stancill delivers (or causes to be delivered) said dismissals, the City will deliver a payment in the amount of \$179,000 to the law firm of Sundeen Salinas & Pyle. In addition, Stancill agrees to dismiss with prejudice all outstanding administrative charges and/or claims of any kind which are or may be pending against the City.

11. Stancill agrees that if he is granted an IDR and is retroactively reinstated and deemed retired, that he does not possess any rights or claims to future employment with the City because he has voluntarily and irrevocably retired. Stancill further promises and agrees not to accept or apply for employment or otherwise seek to be hired, rehired, or reinstated by the City. If Stancill applies for employment with the City in contravention of this paragraph, the City may reject his application based solely on the promises contained in this paragraph, and Stancill will not have any legal basis to challenge that decision.

12. Stancill understands and expressly agrees that this Agreement and the waivers herein extend to all claims of every nature and kind, known or unknown, suspected or unsuspected, past, present or future, arising from or attributable to Stancill's employment with the City and/or any act or omission by the City prior to the execution of this Agreement. Stancill acknowledges that any and all rights granted him under Section 1542 of the California Civil Code or any analogous state or federal law or regulation are expressly waived. Stancill recognizes and acknowledges that factors which have induced him to enter into this Agreement might turn out to be incorrect or

different from what he had previously anticipated, and Stancill expressly assumes all of the risks of this waiver of California Civil Code Section 1542. Section 1542 of the California Civil Code, reads as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

13. Stancill 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 City.

14. Any inquiries regarding Stancill shall be directed to the City Manager. In response to any such inquiry, the City Manager shall provide the dates of Stancill's employment and state that Stancill retired. This provision may be waived by Stancill in writing, and such waiver will be limited to the specific purpose identified in the waiver. The parties acknowledge that the City will comply with Government Code Sections 1030 *et. seq.*, and that nothing in this Agreement supersedes any such requirement.

15. The parties agree to cooperate fully to achieve a binding settlement in this matter, including, without limitation, signing any documentation required by the Court or any administrative agency.

16. In the event that any term, condition or provision of this Agreement shall be held by a court of competent jurisdiction to be invalid or against public policy, that term, condition or provision shall be deemed to be deleted, and the remaining terms, conditions and provisions shall continue in effect.

17. The validity, interpretation and performance of this Agreement shall be construed and interpreted according to the laws of the State of California.

18. Stancill represents and warrants that he has full power to make the releases and agreements contained in this Agreement. Stancill expressly represents and warrants that he has not assigned, encumbered or in any manner transferred all or any portion of the claims covered by these releases and agreements. Stancill acknowledges and agrees that this warranty and representation is an essential and material term of the Agreement.

19. The parties acknowledge that this Agreement constitutes the sole and entire agreement of the parties in this matter, that any modifications may only be effected by a writing signed by all affected parties, and that this Agreement and Release supersedes any prior written or oral agreement concerning the subject matter of its provisions. The parties agree that there are no representations, agreements, arrangements or understandings, either written or oral, between or among the parties relating to the subject matter of this Agreement which are not fully expressed in this Agreement.

20. Each party has had the opportunity to participate in drafting the Agreement. Any terms, conditions or provisions of the Agreement shall not be construed against one party and in favor of another by virtue of who actually drafted or circulated the Agreement.

21. The parties agree to execute all documents and perform all acts necessary to effectuate the terms and purposes of this Agreement.

22. The parties agree to execute in counterparts, with the same force and

effect as if executed in a single, complete document.

23. Stancill acknowledges that he has been represented by counsel in connection with this matter. Stancill also acknowledges that he has read and understood the foregoing Agreement and Release and that he is signing this Agreement voluntarily and without coercion. Stancill further acknowledge that the waivers he has made are knowing, conscious and with full appreciation that they are forever foreclosed from pursuing any of the rights they have waived.

24. Stancill unequivocally affirms that he has no intention of filing a claim for workers' compensation benefits. If he does apply for workers' compensation – contrary to the intention of the parties, the parties agree that a compromise and release will be entered into based solely on the consideration in this settlement, and that such claims should be summarily dismissed in City's favor.

25. The parties agree to execute in counterparts, with the same force and effect as if executed in a single, complete document.

DATED: 01-20-2011

DeWayne Stancill  
DeWayne Stancill

DATED: \_\_\_\_\_

\_\_\_\_\_  
City of San Leandro

APPROVED AS TO FORM:

Dated: 1-20-11, 2011

By: Erin [Signature]  
Attorney for DeWayne Stancill

effect as if executed in a single, complete document.

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25. The parties agree to execute in counterparts, with the same force and effect as if executed in a single, complete document.

DATED: 01-20-2011

DeWayne Stancill  
DeWayne Stancill

DATED: 1/28/11

[Signature]  
City of San Leandro

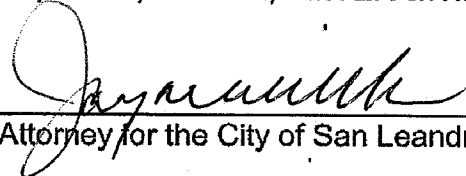
APPROVED AS TO FORM:

Dated: 1-20-11, 2011

By: [Signature]  
Attorney for DeWayne Stancill

Dated: 1/28, 2011

MEYERS, NAVE, RIBACK, SILVER & WILSON

By:   
Attorney for the City of San Leandro

# **EXHIBIT A**

MEMORANDUM

TO: JERRY DEWAYNE STANCILL  
FROM: STEPHEN HOLLISTER, CITY MANAGER  
DATED: [insert appropriate date]  
RE: APPEAL REGARDING DEPARTMENTAL ACTION 08-03

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Pursuant to Section 30.5 of the Memorandum of Understanding between the City of San Leandro and the San Leandro Police Officers Association, I have investigated the merits of the appeal you filed challenging the decision of Police Chief Ian Willis to sustain violations of San Leandro Rules and Regulations 11.1.450 (Refusal to Testify in Departmental Investigation), 11.1.495 (Withholding Information), 11.1.600 (Conduct to be Creditable), and 11.1.765 (Inefficiency).

After reviewing all the materials provided, and having considered the presentations of both parties, it is my determination that:

You are hereby EXONERATED of the allegation in Departmental Action 08-03 that you violated Regulations 11.1.450 (Refusal to Testify in Departmental Investigation), 11.1.495 (Withholding Information), 11.1.600 (Conduct to be Creditable), and 11.1.765 (Inefficiency).

It is further my determination that the sustained findings and all documents related to Departmental Action 08-03 shall be removed from your personnel files, and that the internal affairs log shall reflect that you were EXONERATED of all charges investigated as part of Departmental Action 08-03.



# **EXHIBIT B**

DRAFT

CITY OF SAN LEANDRO  
PERSONNEL ACTION FORM

EMPLOYEE NAME: STANCILL, JERRY "DEWAYNE" ✓ DATE PREPARED: 4/15/09

EFFECTIVE DATE OF ACTION: 4/15/09 LAST DAY WORKED: \_\_\_\_\_ (Retirements only)

PRESENT STATUS: PC# 07-104-015 RECOMMENDED: PC# 07-102-066

POSITION TITLE: POLICE SERGEANT POSITION TITLE: POLICE OFFICER

DEPT POLICE BUDGET # 21-004 DEPT POLICE BUDGET # 21-004

SALARY: \$8862/mo RANGE 200 STEP 4 SALARY: \$ 7754/mo RANGE 201 STEP 5

- Probationary Appointment From Employment List  
Name of Former Incumbent \_\_\_\_\_
- Provisional Appointment
- Temporary Appointment from \_\_\_\_\_ to \_\_\_\_\_
- Part-time Appointment Not to Exceed 999 Hours Per Fiscal Year
- Part-time Appointment Not to Exceed 959 Hours Per Calendar Year (PERS Retirees Only)
- Successful Completion of Probationary Period (Performance Evaluation Required)
- Earned Salary Step Increase (Performance Evaluation Required)
- Rotation Allowance: Amount \_\_\_\_\_
- Transfer in Comparable Class
- Second Classification
- Acting Assignment from \_\_\_\_\_ through \_\_\_\_\_ Acting for: \_\_\_\_\_
- Resignation
- Retirement (Service) Date \_\_\_\_\_ (Day following last day worked)
- Retirement (Disability) Date \_\_\_\_\_ (Day following last day worked)
- Retirement (Individual Disability) Date: \_\_\_\_\_ (Day following last day worked)
- Suspension for Cause \_\_\_\_\_ day(s)
- Leave of Absence Type \_\_\_\_\_  
Dates of Absence \_\_\_\_\_ through \_\_\_\_\_
- Discharge for Cause
- Release from Probationary Status
- Release from Assignment: \_\_\_\_\_ Part-time \_\_\_\_\_ Temporary
- Abandonment of Part-time Position

REASON: \_\_\_\_\_

OTHER  
Please Explain: Return to Police Officer position effective 4/15/09

Recommended by Department Head	Date	Verified by Human Resources Analyst	Date	Approved by Human Resources Director	Date
<i>[Signature]</i>	4/15/09	<i>[Signature]</i>	4/15/09	<i>[Signature]</i>	4/15/09

Remarks: Stancill's probationary Sgt. position has ended and he is being returned to his Police Officer position.

<u>HUMAN RESOURCES USE ONLY</u>		<u>PAYROLL USE ONLY</u>	
NEW _____ CHANGE _____ REHIRE _____	FEMALE _____ MALE _____	DEDUCTIONS	
AAP Code _____ BBCC Code _____		___ FWT	
BTHNIC CODE: A B H I W U 2+	MARITAL STATUS: S M D W	___ SWT	
UNIT	Hiring Salary Adjusted to Step _____ per	___ DCOMP	
___ SLPOA _____ NON REP (Confidential)	City Manager Approval	___ UNION (dues)	
___ SLCEA _____ NON REP (PT)	Part-time PERS Member Enrolled	___ POA (dues)	
___ SLMO _____ SLCEA	Full-time w/Another Agency	MISC	
Comments: <u>Emp # 12104</u>		___ Direct Deposit	
_____		Comments: _____	
_____		_____	
_____		_____	

4/23/09  
822