

SETTLEMENT AGREEMENT AND ORDER

This Agreement (“Agreement”) is entered into by and between NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE CHARLOTTE-MECKLENBURG BRANCH NO. 5376, JUSTIN LAFRANCOIS, AMERICAN CIVIL LIBERTIES UNION OF NORTH CAROLINA, WILLIAM G. ADAMS, JAMIE MARSICANO, SOUTHEAST ASIAN COALITION VILLAGE, and, LINDSAY CURLEE (collectively, “Plaintiffs”), and the CITY OF CHARLOTTE, KERR PUTNEY, and JOHNNY JENNINGS, in their official capacity as Chief of Charlotte-Mecklenburg Police Department, (“Defendants”);

WHEREAS, Plaintiffs sued Defendants in Mecklenburg County Superior Court, File No. 20 CVS 8563, alleging that the Charlotte-Mecklenburg Police Department kettled and used chemical munitions, including CS or tear gas, against protesters on or around June 2, 2020 and then blocked egress and that these and subsequent actions violated protesters’ rights to assemble, to freedom of speech and to due process under the North Carolina Constitution;

WHEREAS, Plaintiffs’ lawsuit seeks to enjoin CMPD from kettling protesters, and from using chemical munitions against them without first issuing clear dispersal orders with clear egress routes and sufficient time to comply;

WHEREAS, the Honorable Karen Eady-Williams granted Plaintiffs a temporary restraining order;

WHEREAS, the Honorable George Bell then denied Plaintiffs’ motion for a Preliminary Injunction;

WHEREAS, the parties have engaged in written discovery and depositions;

WHEREAS, after the June 2, 2020 incident and since the lawsuit was filed, Defendants have amended their directives and policies to ban the use of CS gas on protesters, to commit that protesters will not intentionally be kettled or trapped, and that CMPD will not operate a plan that operates as a kettle,; “kettling” is defined as “a method of crowd control in which police form lines around the crowd and prevent people from leaving a particular area”; and, to reflect that Riot Control Agents (RCAs) will not be used to intentionally corral or contain protest crowds, and, that RCAs, when used, will only be deployed to one side of any protest crowd. The Parties have not reached an agreement as to CMPD’s use of non-RCA kettling

WHEREAS, Defendants have also amended their directives and policies on dispersal orders, including requiring that warnings be communicated repeatedly, loudly and clearly in English and Spanish to the crowd by acoustic broadcast, and over police radio;

WHEREAS, Defendants agree that going forward, each dispersal order will include a stated timeframe for the intended audience to comply and at least two unobstructed egress routes.

Part III. H. has been added to define egress routes;

Part IV. F.2b.(5) has been added to require that subsequent dispersal orders be given if a crowd reassembles in a different area than where a dispersal order had previously been given, unless exigent circumstances exist;

Part IV. F.2b.(6) has been added to require that dispersal order and egress routes be audibly communicated repeatedly, loudly and clearly to the crowd and over police radio and that egress routes will not be blocked intentionally by RCAs or physical presence;

Part IV. F.2b.(7) has been added to require that all dispersal orders be documented in the Deployment Log;

Part IV. G. has added a preliminary section stating that RCAs are intended to disperse unlawful individuals or crowds, stop riots, deny access to protected areas and protect the safety of others; will not be used to intentionally corral or contain crowds; that dispersal orders must be given, absent exigent circumstances, before RCAs are deployed; and that once deployed in a location, subsequent or simultaneous RCAs will not be deployed to intentionally hinder or prevent routes of egress;

WHEREAS, Defendants have amended their Civil Enforcement Unit (CEU) Standard Operating Procedure (SOP) as follows:

Part III. O has been amended to remove CS as a chemical agent used for crowd control;

Part IV. C. (4) has been added to require that all pre-planned CEU operations or pre-planned use of RCAs must be approved by the Incident Commander before being executed by CEU personnel;

Part IV. E. (2) has been added to require notification at the Deputy Chief level of all CEU activations;

Part IV. G. (11) has been added to require that less-lethal munitions, such as pepperballs, will be used in a manner consistent with training and shall not be intentionally targeted at the head, neck or genital area unless use of lethal force would be justified;

Part IV. K has been added to require that all CEU personnel and officers assigned to Public Order Bikes and Dual Sports will wear and activate Body Worn Cameras at all times they

are engaged with the public in an operational capacity, or at the discretion of the Incident Commander or designee.

Defendants also agree that CMPD officers will not intentionally use their bicycles as less than lethal weapons against protesters, unless the officer reasonably believes the subject poses a threat to the safety of the officers or others. This section will not affect officers' ability to use their bicycles as a "fence" to direct or limit crowd movement or separate groups in conflict.

Defendants further agree that all CEU personnel will wear and display legible and accurate identification numbers during CEU deployments.

WHEREAS, Plaintiffs and Defendants share the common goal of safeguarding the right to assemble, freedom of speech and due process for all Charlotte residents; and

WHEREAS, Plaintiffs and the Defendants desire to resolve their disputes on mutually agreeable terms;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, Plaintiffs and Defendants hereby agree to the following terms of settlement:

I. WARRANTIES

- A. Each party warrants and represents to the other that it has been fully informed and has full knowledge of the terms, conditions and effects of this Agreement.
- B. Each party warrants and represents to the other that no promise or inducement has been offered or made except as herein set forth, and that this Agreement is executed without reliance upon any statement or representation by any other party or its agent.
- C. Each party warrants and represents to the other that they have been advised to consult with legal counsel and have consulted with legal counsel prior to executing this Agreement.

II. OBLIGATIONS

- A. Defendants agree to abide by all the changes to policy and directives as stated above.
 - a. CMPD will make public only the sections of its directives and Standard Operating Procedures that were amended pursuant to this Agreement.
- B. In turn, Plaintiffs will dismiss the Superior Court action 20-CVS-8563. Defendants shall pay Plaintiffs' mediation costs of \$2,111.62. Nothing in this agreement shall be construed as waiving any person's rights to bring claims, actions, causes of action, of any kind or nature whatsoever at law, in equity, or otherwise against Defendants (in

both their official and individual capacities), and all successors related to the use of force during the June 2, 2020 protests.

III. ASSURANCES

The parties understand and agree that they shall continue to be bound by the terms of the Protective Order in this case.

IV. COMPROMISE OF DISPUTED CLAIMS

Each party understands and agrees that this settlement is in compromise of disputed claims; that no covenant herein is to be construed as an admission of liability on the part of Defendants; that each Defendant denies any liability for such claims; and that each party intends merely to resolve the disputed claims between them without further litigation.

V. SCOPE OF AGREEMENT

This Agreement shall be binding upon and inure to the benefit of the parties or their agents, officers, employees, successors, assigns, heirs, executors, and administrators for a period of four (4) years. Failure to comply with the terms of this settlement agreement shall be subject to claims for breach of contract and costs and attorneys' fees and pursuant to N.C. Gen. Stat. §6-21.7 in Mecklenburg County Superior Court.

Execution of this Agreement does not affect CMPD's authority to make changes to any of its policies or directives, in good faith, to ensure compliance with State or federal laws or trainings, or as needed based on the Department's standard policy management processes.

VI. SIGNATURES AND EXECUTION

The parties agree that facsimile and electronic signatures shall be treated as original signatures. The Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same Agreement.

I have read, understand and agree with the terms and conditions stated in this Agreement, and by my signature I acknowledge my agreement and my opportunity to have consulted with counsel of my own choosing, and that in signing this agreement I intend to be legally bound by it.

National Association for the Advancement of Colored People Charlotte-Mecklenburg Branch No. 5376 by:

National Association for the Advancement of Colored People Charlotte-Mecklenburg Branch No. 5376 by:

Corine Mack Jun 28, 2021
Corine Mack (Jun 28, 2021 16:35 EDT)

NAME Corine Mack (Date)

Position President

Southeast Asian Coalition Village by:

NAME (Date)

Position

American Civil Liberties Union of North Carolina by:

NAME (Date)

Position

Jamie Marsicano (Date)

Lindsey Curlee (Date)

NAME (Date)

Position

Southeast Asian Coalition a/k/a SEAC Village by:

NAME *T. J. Taylor Joyal* (Date) *7/3/2021*
Position *Organizer/ Board.*

American Civil Liberties Union of North Carolina by:

NAME (Date)

Position

Jamie Marsicano (Date)

Lindsey Curlee (Date)

NAME (Date)


Position

Southeast Asian Coalition a/k/a SEAC Village by:

NAME (Date)

Position

American Civil Liberties Union of North Carolina by:



Chantal Stevens 7/7/21
Executive Director (Date)

Jamie Marsicano (Date)

Lindsey Curlee (Date)

NAME (Date)

Position

Southeast Asian Coalition a/k/a SEAC Village by:


NAME (Date)

Position

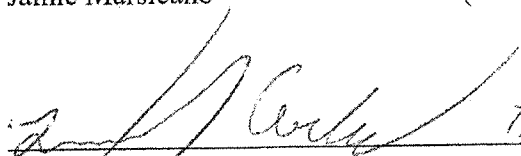
American Civil Liberties Union of North Carolina by:

NAME (Date)

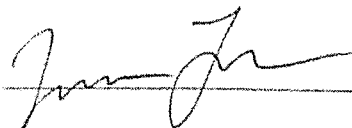
Position

 7/6/21

Jamie Marsicano (Date)

 7/1/21

Lindsay Curlee (Date)

 7/6/21
Justin Lafrancois (Date)

William G. Adams (Date)

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City of Charlotte by:

Name (Date)

Position


Chief Johnny Jennings in his Official Capacity by:

Name (Date)

Position

Justin Lafrancois

(Date)

 7/6/2021

William G. Adams

(Date)

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City of Charlotte by:

Name

(Date)

Position

Chief Johnny Jennings in his Official Capacity by:

Name

(Date)

Position

Chief Kerr Putney in his Official Capacity by:

Name (Date)

Position