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June 3, 2020

Alyson McCormick  
Sparks City Attorney's Office  
431 Prater Way  
Sparks, Nevada 89431

Stanley Brown, Jr.  
127 East Liberty Street  
Reno, Nevada 89501

Re: Supplement to Settlement Offer

Dear Alyson and Stan:

Thank you to Alyson for the notice that the offer to settle of May 19, 2020 will be discussed at the Sparks City Council meeting of June 22, 2020.

I had written that letter to you two, as you two understand the facts of the case. Because the letter is going to be discussed by council members who are not familiar with the facts of the case, I write this letter in the hopes that you will transfer it to the city's Risk Manager (who I assume is Brandon Sendall) and thus both the Risk Manager and the city council will have it in mind in determining whether to settle the case at this time or not.

Based upon the sworn testimony at Mr. Fichman's preliminary hearing, as well as the record in state court and the discovery to date, I am confident that Mr. Fichman can prove the following facts by a preponderance of the evidence at the least:

1. The Plaintiff, Zyhere Fichman, is a young black man. In June of 2017 he was living in Panther Valley with his grandmother. He was also a member of a rap group named "YLOC," an acronym that stood for "Young Lyricists Out of Control."
2. "YLOC" itself is not a gang. However, there were members or a member of "YLOC" that did belong to a gang. However, Mr. Fichman in June of 2017 did not belong to any gang.
3. Joseph Mercer in June of 2017 was a patrol officer, employed by the Sparks Police Department. He was not a detective. However, he was assigned by SPD to the Regional Gang Unit. At this juncture we don't know who in the Regional Gang Unit supervised Officer Mercer, whether generally or on this case. But by all appearances he took on detective-like duties relative to this case.
4. On June 2, 2017 at approximately 10:30pm, one Kelly Kendrick, then 19-years-old and residing at 1877 El Rancho Drive, Apartment 232, Sparks, Nevada 89431, called 9-1-1 from a neighbor's

phone and contended hysterically that she had been the victim of an armed robbery.

5. The first two officers on the scene were Officer Kimberly Hodge and Officer Chris Rowe. Officer Hodge wrote a police report; Officer Rowe did not. A neighbor, Yvonne Hernandez, both told Officer Hodge and later testified at the preliminary hearing that the police interviewed Ms. Kendrick. Ms. Kendrick only said that she believed the robber was her ex-boyfriend. That person is not Mr. Fichman, but an individual named Sirmario DeLaPaz. She said that there were a total of five robbers in the group. She said the reason for the robbery was because “they” had asked her for money to buy drugs, and she refused to give “them” any money.

6. Officer Hodge spoke with neighbors named Kennedy Garrett, Diane Ratliff, Yvonne Hernandez and Roderick Miller, all of whom resided in apartments that neighbored Ms. Kendrick’s. Quite frankly, their description was inconsistent with Ms. Kendrick’s claim of a gang of five thugs carrying down numerous items of Ms. Kendrick’s.

7. Ms. Miller and Mr. Garrett stated that they heard fighting from apartment 232 at around 9:00pm. However, they knew that Kendrick and her boyfriend fought all of the time. They assumed it was an argument between the two of them. They heard a door slam and about twenty – thirty minutes later they heard loud knocking on Kendrick’s door. Miller and Garrett ignored the noise at first; however, five to ten minutes later there was more knocking and it was even louder. Miller and Garrett turned off their lights and watched the parking lot from their window. They didn’t hear anything for a bit but then heard Kendrick crying and asking for help. They said they did not see any vehicles or people until a few minutes later, when they saw a man wearing a white shirt with dark hair jogging in the parking lot by himself and running south.

8. Officer Mercer was the third officer on the scene, but took over the investigation because he believed the suspects were “gang-affiliated.” Nevertheless, from that conversation alone Mercer was on notice that the only person Ms. Kendrick could identify as a robber was Mr. DeLaPaz.

9. At no time did Mercer obtain either a written statement from Kendrick or record an oral statement from Kendrick. The best – indeed the only – evidence is what she claimed at her preliminary hearing testimony. And she claimed Mercer was the one who raised the possibility that the gunman was Fichman.

10. She claimed that the gunman and the four others were all dressed in black. She claimed she could only see the gunman’s eyes, hair and forehead. The gunman had an “afro”-style haircut and spoke in a “low smooth voice.” The gunman was wearing black pants, boots, and big black jacket, with his face covered with a mask or a bandanna. She claimed the gunman said, “Shut the fuck up. Don’t say anything. Turn around.” And “I want you to listen to me very carefully. If you get up, I will shoot you in the fucking head.”

11. However, Kendrick claimed that when she looked at the peepholes, she saw who she thought was DeLaPaz, and he was wearing a white shirt with Japanese letters on the side of the arm. That

description is consistent with what the neighbors saw, as referenced above, but inconsistent with a person wearing black pants, black boots and a big black jacket.

12. Kendrick contended that the “gang of robbers” carried out her 55” television, her 32” television, her Playstation, all her games, her movies, her Roku, and a lot of jewelry. That description is inconsistent with the noise – or more pointedly, lack of noise – that the other neighbors heard.

13. Kendrick believed that DeLaPaz and the other “robbers” were at a location on Grove Street in Reno. That location is approximately five or ten miles away from where Fichman resides. Nevertheless, Officer Hodge drove Kendrick to the location on Grove Street. Kendrick was unable to identify any perpetrator there. She claimed one of the perpetrators was a guy named “Niko.”

14. Kendrick did not know where Fichman resided and had never been to his home. However, Officer Mercer had had prior contacts with Fichman and knew where he lived. So, Mercer chose to go to Fichman’s residence, rather than the residence where Kendrick thought the perpetrators would be.

15. Mercer called Hodge and advised that he had detained four young black men in the 1600 block of Wedekind and asked her to bring Kendrick there to see if they could identify them. Thus, Officer Hodge took Kendrick from the place where she thought the perpetrators were to the place where Officer Mercer thought the perpetrators were.

16. At that location Fichman was present with three other young men, Carlos Lee, Anthony Henry, and Tyler Hernandez. Per Kendrick’s testimony, she identified Fichman as Fichman. She did not say to Mercer that Fichman was the gunman. Again, we do not have a written statement or an audiotape recording where Kendrick claimed the contrary.

17. Kendrick immediately exculpated Henry as one not involved in the robbery. In fact, of those four, Officer Mercer arrested only Fichman. The other three not only were not arrested, Officer Mercer did not attempt to interview any one of them.

18. The address at 1600 Wedekind was the address of Fichman’s mother’s. She allowed Officer Mercer to search the residence. Officer Mercer found no clothing consistent with Kendrick’s description, and found no items matching the description of the stolen items.

19. When a Sparks Police Department detective engages in a show-up identification procedure, that detective utilizes a form that the witness signs off. In this case, no such form was utilized.

20. When Officer Mercer arrested Fichman, Fichman was dressed completely inconsistently with Ms. Kendrick’s description. He was wearing grey sweatpants, no shirt and no boots.

21. At the preliminary hearing, Carlos Lee testified to a complete alibi for Fichman. Fichman was

with him and the others the entire day, including and especially during the timeframe of the alleged robbery.

22. Officer Mercer caused Fichman's vehicle, a black 2007 Honda Accord, to be impounded. He sought and obtained a search warrant on the vehicle. On June 9, 2017, he searched the vehicle and found nothing that was consistent with Kendrick's description, other than a box of Remington 9mm ammunition. There was an empty box in the car that at one time contained a highpoint firearm C-9mm gun.

23. Kendrick testified that she told Mercer that it was "220% possible that Fichman was the gunman." However, and even though Mercer indicated that the case was closed as of June 10, 2017, Mercer obtained information that Kendrick was recanting. Kendrick had written messages on social media indicating that Fichman was not one of the robbers, and that the officers had put Fichman's name into her head.

24. When Officer Mercer interviewed Fichman, he claimed that Fichman's version had inconsistencies. Yet, Fichman's version was perfectly consistent with Carlos Lee's testimony. At that point in time Fichman had possession of his cell phone, which he would have given over to Officer Mercer if Mercer had asked for it. The cell phone showed a series of text messages between Fichman and his girlfriend, Samantha Lopez, during the timeframe of the so-called robbery, where Fichman revealed that he was still at "the house" (meaning his mother's residence).

25. Officer Mercer met with Kendrick in Fernley in light of her social media messages, where she stated that she did not know Fichman, she stated she thought DeLaPaz "did it," but that Fichman's "rap group" was the police's concern.

26. After Justice of the Peace Wilson bound Fichman over for trial. Fichman filed both a pre-trial petition for writ of habeas corpus and a motion to suppress Kendrick's pre-trial identification testimony. Before the presiding judge (the Honorable Scott N. Freeman) could rule on these matters, the State of Nevada dismissed the case against Fichman with prejudice.

27. Shortly after we filed and served the Civil Rights Complaint, Officer Mercer tendered his resignation from the Sparks Police Department, indicated that he no longer wished to be involved in law enforcement, and indicated he was moving to Texas.

28. Prior to June 2, 2017, Officer Mercer had been in an unmarked vehicle in the neighborhood of Fichman's residence on many prior occasions. He had arrested other members of YLOC.

29. After June 2, 2017 Mercer pulled Fichman over on May 26, 2018 and pulled him over a second time several months after that. Fichman had not done anything wrong on either occasion, and Mercer did not arrest or cite him on either occasion.

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30. As a result of the arrest leading to dismissal with prejudice, Fichman and his family incurred: \$15,000 of attorney's fees; \$9,000 of non-refundable bail premiums; \$1,000 investigation fees; and lost income at Chewy's Inc. (a job which he had obtained on June 2, 2017) at \$15/hr x 176hrs/mo x 4mos (\$10,560). That is, special damages are \$35,560.00.

31. While Fichman was in jail for four months, his uncle died, and because he was in jail he could not go to his funeral. His uncle had raised him as a boy. He was only 27 when he passed.

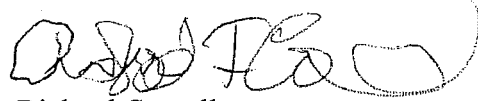
32. At this juncture, and at \$350/hr the undersigned has generated over \$23,000 in attorney's fees.

33. Judge Du denied the City's Motion to Dismiss. I enclose a copy of the Order for the risk manager's review.

Thank you very much for your consideration of these facts.

With all best wishes, I remain,

Very truly yours,

A handwritten signature in black ink, appearing to read "Richard Cornell", written in a cursive style.

Richard Cornell