

STATE OF MINNESOTA
COUNTY OF HENNEPIN

DISTRICT COURT
FOURTH JUDICIAL DISTRICT

State of Minnesota by Rebecca Lucero,
Commissioner of the Minnesota Department of
Human Rights,

Case Type: Discrimination
Court File No. _____

Petitioner,

vs.

City of Minneapolis Police Department,
City of Minneapolis,

Respondent.

STIPULATION AND ORDER

Petitioner State of Minnesota by Rebecca Lucero, Commissioner of the Minnesota Department of Human Rights (“Commissioner”) filed a charge of discrimination against Respondent City of Minneapolis Police Department, City of Minneapolis alleging discrimination in public services based on race. The Commissioner brought a petition for stipulated injunctive relief to obtain preliminary injunctive relief pursuant to Minn. Stat. § 363A.28, subd. 6(e) (2018) to stop immediate and irreparable harm to the public, and in particular people of color, who are at risk of further harm due to the discriminatory practices alleged in the charge of discrimination, and to ensure the Commissioner’s charge can be investigated in an expeditious and efficient matter, while the Commissioner’s charge is pending. The Commissioner and Respondent City of Minneapolis (collectively “the Parties”) stipulate to the following and request that the Court approve this stipulation and order granting the proposed preliminary injunctive relief.

I. BACKGROUND

The Commissioner filed a charge of discrimination against the City of Minneapolis Police Department, City of Minneapolis on June 2, 2020 alleging a violation of the Minnesota Human Rights Act, Minn. Stat. ch. 363A (2018) (“MHRA”); the Minnesota Department of Human Rights (“MDHR”) file number for the charge is 71537.

The Commissioner’s charge alleged the City of Minneapolis Police Department discriminated in the area of public services based on race in violation of Minn. Stat. § 363A.12 (2018); in particular, the charge alleged the killing of George Floyd, an unarmed black man, while in custody of City of Minneapolis police officers was race-based discrimination and the Commissioner had reason to believe that the City of Minneapolis Police Department has engaged in a pattern and practice of race-based policing in violation of the MHRA.

The Commissioner has reason to believe that the City of Minneapolis has engaged in unfair discriminatory practices.

The Commissioner brought a petition to obtain preliminary injunctive relief pursuant to Minn. Stat. § 363A.28, subd. 6(e), while the Commissioner’s investigation of the charge of discrimination is ongoing.

The Parties agree that a preliminary injunction is necessary to immediately protect the public and facilitate MDHR’s investigation.

The Commissioner and the City of Minneapolis have reached an agreement on the terms of a preliminary injunction and request that this Court promptly enter this Stipulation and Order;

The Parties agree to entry by the Court of findings that: (i) the requirements of the MHRA will be carried out by the implementation of this Stipulation and Order; (ii) the Commissioner’s investigation of the charge of discrimination will be enhanced and assisted by the process

established for resolving any possible data practices and discovery disputes that may arise during the course of the Commissioner's investigation using the process set forth in this Stipulation and Order and by the protection of those who are involved in the Commissioner's investigation; (iii) the terms of the Stipulation and Order are reasonable and related to the Commissioner's charge of discrimination; (iv) the terms of this Order constitute a fair and equitable resolution of the Commissioner's application for temporary relief pursuant to Minn. Stat. § 363A.28, subd. 6(e); and the Parties agree that many previous efforts to address long-standing problems in policing have not achieved the hoped for reform.

Upon consent of the Commissioner and the City of Minneapolis, in consideration of the mutual promises and recitals contained in this Stipulation and Order, including the relinquishment of certain legal rights, the Parties agree the Court may enter an Order as follows:

II. JURISDICTION

This Court has jurisdiction over the subject matter of this action pursuant to Minn. Stat. § 363A.28, subd. 6(e) and has jurisdiction over the Parties. The Court shall retain jurisdiction of this action for the duration of the terms of this Stipulation and Order for purposes of entering all orders, judgments, and decrees that may be necessary to implement the relief and enforcing compliance with the terms provided herein.

III. PARTIES

This Stipulation and Order applies to and is binding only upon the following Parties:

- A. The State of Minnesota by Rebecca Lucero, Commissioner of the Minnesota Department of Human Rights; and
- B. The City of Minneapolis.

**IV.
SCOPE OF PRELIMINARY INJUNCTION**

The Parties to this Stipulation and Order acknowledge that this does not resolve or purport to resolve the underlying charge of discrimination filed by the Commissioner against the City of Minneapolis Police Department, City Minneapolis.

**V.
PRELIMINARY INJUNCTION OBJECTIVES**

Black, Indigenous, and communities of color have suffered generational pain and trauma as a result of systemic and institutional racism and long-standing problems in policing. This continuous harm was once again highlighted by the in-custody death of George Floyd. The Parties agree that many previous efforts have not resolved the historic problems in policing in this community.

The objectives of the terms of the preliminary injunctive relief identified below, pursuant to Minn. R. Civ. P. 65.01 and Minn. Stat. § 363A.28, subd. 6(e), are:

1. to stop immediate and irreparable harm to the public, in particular for people of color, who are at risk of further harm due to the discriminatory practices alleged in the charge of discrimination, while the Commissioner's charge is pending; and
2. to ensure the Commissioner's charge can be investigated in an expeditious and efficient matter.

**VI.
INJUNCTIVE RELIEF**

The City of Minneapolis is hereby **ORDERED** to do the following:

Immediate Implementation Changes

1. **BAN CHOKEHOLDS:** Within 10 days of the Effective Date, the City will amend Police Department Policy and Procedure Manual §§ 5-100 (Code of Conduct), 5-300 (Use of

Force), and 5-311 (Use of Neck Restraints and Choke Holds) to prohibit the use of all neck restraints or choke holds for any reason.

2. **DUTY TO REPORT:** Regardless of tenure or rank, any member of the City's Police Department who observes another member of the City's Police Department use any unauthorized use of force, including any choke hold or neck restraint, in violation of this Stipulation and Order, has an affirmative duty to immediately report the incident while still on scene by phone or radio to their Commander or their Commander's superiors.

3. **DUTY TO INTERVENE:** Regardless of tenure or rank, any member of the City's Police Department who observes another member of the City's Police Department use any unauthorized use of force, including any choke hold or neck restraint in violation of this Stipulation and Order, must attempt to safely intervene by verbal and physical means, and if they do not do so shall be subject to discipline to the same severity as if they themselves engaged in the prohibited use of force.

4. **CROWD CONTROL AUTHORIZATION:** During protests and demonstrations, use of all crowd control weapons must be authorized only by the Chief of Police, or if the Chief is unavailable, the Chief's designee at the rank of Deputy Chief or above. Crowd control weapons include, but are not limited to, chemical agents, rubber bullets, flash-bangs, batons, and marking rounds. The Police Department shall contemporaneously document the person who authorized the use of crowd control weapons and retain such documentation for a period of not less than seven years. Accordingly, within 10 days of the Effective Date, the City will amend Police Department Policy and Procedure Manual § 5-313 to reflect that chemical agents, regardless of canister size, may be used during crowd control situations if authorized only by the Chief of Police, or if the Chief is unavailable, the Chief's designee at the rank of Deputy Chief or above. Any other provisions of the Police Department Policy and Procedure Manual that identify the authorized use of other crowd control weapons must also be amended within 10 days of the Effective Date to reflect that use of such weapons must be authorized only by the Chief of Police.

5. **TIMELY DISCIPLINE DECISIONS:** For all recommendations that are pending as of the Effective Date of this Stipulation and Order, the Police Chief must issue a decision on any recommendation from the City's Office of Police Conduct Review (OPCR) within 45 calendar days of the Effective Date. For all recommendations of merit provided by the OPCR after the Effective Date of this Stipulation and Order, and for the duration of this Stipulation and Order, the Police Chief must issue a written memorandum explaining the basis their decision, including the relevant facts, policies and law supporting the decision, within 30 calendar days. If and when permitted by Minn. Stat. § 13.43, the decision and written memorandum will be immediately made available to the public via the City's website and must also be available for physical inspection. Within 90 calendar days of the Effective Date of this Stipulation and Order, the City shall amend any city ordinances to conform to the requirements of this paragraph. The City shall also amend any city ordinances to fashion an appropriate remedy for the person filing the complaint if a determination on the OPCR's recommendation of merit is not made within the 30 calendar day time period.

6. **BODY WORN CAMERA FOOTAGE REVIEW:** Civilian body worn camera footage analysts and investigators in the OPCR will have the authority to proactively and strategically audit body worn camera (BWC) footage and file or amend complaints on behalf of the Minneapolis Civil Rights Department. Within 90 calendar days of the Effective Date, the City of Minneapolis will submit to the Department of Human Rights a plan for detailing how it intends to strategically utilize this audit function to identify discriminatory practices in policing, including officer misconduct.

Building Toward Systemic Change

7. On or before July 30, 2020, the City Attorney shall prepare a report listing the State of Minnesota Laws that impede public transparency of police data and/or prevent the Mayor and Chief of Police and/or impede civilian oversight from disciplining and terminating police officers who do not adhere to Minneapolis Police Department policies and standards.

8. For the purpose of implementing the Stipulation and Order, which is related to the on-going investigation of the MDHR Commissioner's charge, the City will cooperate with MDHR, its investigators, any consultative experts it retains, and its attorneys and agents to provide access to City staff, employees, facilities, documents, and data. The investigation will comply with state laws regarding access to data including the Minnesota Government Data Practices Act, ch. 13, and the Minnesota Human Rights Act, ch. 363A. Upon the City's request, and in order to expedite MDHR's access to relevant evidence, MDHR shall provide the City with subpoenas prior to requesting documents or making any investigative inquiries or requests related to its investigation of the Commissioner's Charge or any alleged violations of this Stipulation and Order.

9. Pursuant to this Stipulation and Order, if the City objects to providing MDHR with access to documents, data, or information, based on the attorney-client privilege or the attorney work product doctrine, the City will inform MDHR within 30 calendar days of the request that it is withholding documents or data on this basis and will contemporaneously provide MDHR with an itemized privilege log describing the specific documents, data, or information withheld consistent with Minn. R. Civ. P. 26.02(f) and 34.03(c)(3).

10. Pursuant to this Order, if the City objects to providing documents, data, evidence or any other requested information on a basis other than a recognized legal privilege, the City shall provide a detailed list of its objections to specific documents or evidence to MDHR within 20 calendar days of receipt of the request. MDHR and the City agree to meet and confer regarding the disputed request. If the parties are unable to resolve the dispute, the City shall move this Court for a protective order.

11. The City shall prohibit all forms of retaliation, intimidation, coercion, or adverse action against any person, including any City employee, who reports misconduct or cooperates with MDHR's Commissioner's charge investigation. Any violation of this provision shall be considered a material breach of the Order and may result in further enforcement action by MDHR.

12. All forms of retaliation, interference, intimidation, and coercion against a City employee or any member of the public who reports misconduct or cooperates with MDHR's Commissioner's charge investigation, are strictly prohibited. This prohibited conduct includes anyone employed by the City's Police Department, or a representative of such employee, who intentionally aids, abets, incites, compels, or coerces a person to engage in any of the practices forbidden by this Stipulation and Order.

13. The City shall notify all employees that it is unlawful to intentionally obstruct or prevent any person from complying with the MHRA, MDHR's Commissioner's Charge investigation, or any order issued thereunder, or to resist, prevent, impede, or interfere with the Commissioner or any of the Commissioner's employees or representatives in the performance of their duties.

14. The Parties agree to defend the provisions of the Stipulation and Order in the event any provision of the Stipulation and Order is challenged in any federal, state, or county court and any administrative challenges filed with federal or state agencies, unless contrary to law.

VII. COSTS AND FEES

Fees and Costs. The Parties agree that, with the exception of any costs attributable to a special master if appointed by the court, the Parties are not entitled to and shall not seek from any court any other monetary relief or compensation, including damages or other fees, costs, expenses, or disbursements in connection with the Commissioner's petition brought pursuant to Minn. Stat. § 363A.28, subd. 6(e); and that, except to the extent stated in this agreement, the Parties are responsible for their own fees, costs, and expenses.

VIII. ENFORCEMENT AND RESERVATION OF REMEDIES

A. The Parties to this Stipulation and Order may request relief from this Court if issues arise concerning the interpretation of this Stipulation and Order that cannot be resolved through the process described in paragraph VIII.B below. This Court specifically retains continuing jurisdiction over the subject matter hereof and the parties hereto for the purposes of interpreting, enforcing, or modifying the terms of this Stipulation and Order; for the purposes of the process

established in this Stipulation and Order to resolve any discovery and/or data practices disputes during the course of the Commissioner's investigation; and/or for the purposes of granting any other relief not inconsistent with the terms of this Stipulation and Order, until this Order is terminated. The Commissioner or the City of Minneapolis may apply to this Court for any orders or other relief necessary to construe or effectuate this Stipulation and Order or seek informal conferences for direction as may be appropriate. The Parties shall meet and confer regarding any dispute prior to seeking relief from the Court.

B. If MDHR believes that the City of Minneapolis has not complied with the requirements of this Stipulation and Order, the Commissioner shall notify the City of Minneapolis of its noncompliance. The City of Minneapolis shall have 15 days after receipt of the notice to respond. If the Commissioner determines the City of Minneapolis has not complied with this Stipulation and Order, the Commissioner shall bring the noncompliance to this Court's attention by filing an appropriate motion.

C. If the City of Minneapolis does not comply with the requirements of this Stipulation and Order, the Court may enforce this Stipulation and Order by any one or any combination of the remedies available under the MHRA, including civil penalties, injunctive relief, or other relief available through the contempt powers granted to the Court.

D. The Commissioner specifically reserves her right and MDHR's right to seek recovery of litigation costs and expenses arising from any violation of this Stipulation and Order that require the Commissioner to file a motion with this Court for enforcement of this Stipulation and Order.

E. The Commissioner specifically reserves her right and MDHR's right to take actions to address violations that are not the subject of the Commissioner's petition brought pursuant to

Minn. Stat. § 363A.28, subd. 6(e), and, unless otherwise provided herein, any violations arising after the effective date.

**IX.
GENERAL TERMS**

A. **Government Data.** The Parties acknowledge that the release of information concerning this matter from MDHR's file is governed by the Minnesota Human Rights Act, Minn. Stat. ch. 363A; the Minnesota Government Data Practices Act, Minn. Stat. ch. 13; and the Official Records Act, Minn. Stat. §§ 15.17, *et seq.*

B. **Effective Date.** This Stipulation and Order is effective upon the date it is entered by the Court. The City of Minneapolis agrees to continue to initiate and implement all activities necessary to comply with the provisions of this Stipulation and Order pending entry by the Court.

**X.
TERMINATION**

This Stipulation and Order shall remain in effect pending final determination of the proceedings on the Commissioner's charge of discrimination filed against the City of Minneapolis, MDHR File No. 71537, and this stipulation provides the consent required under Minn. Stat. § 363A.28, subd. 6(e) for the temporary restraining order to extend beyond ten days. The Court shall retain jurisdiction for the duration of this Stipulation and Order to enforce the terms of the Order and to maintain the discovery and investigative request dispute process provided in this Stipulation and Order. This Court's jurisdiction shall terminate upon notice from the Parties.

THE PARTIES ENTER INTO AND APPROVE THIS STIPULATION AND ORDER AND SUBMIT IT TO THE COURT SO THAT IT MAY BE APPROVED AND ENTERED. THE PARTIES HAVE CAUSED THIS STIPULATION AND ORDER TO BE SIGNED ON THE DATES OPPOSITE THEIR SIGNATURES.

For the Minnesota Department of Human Rights

Date: June __, 2020

REBECCA LUCERO
Commissioner
Minnesota Department of Human Rights

For the City of Minneapolis

Date: June __, 2020

JACOB FREY
Mayor
City of Minneapolis

IT IS SO ORDERED.

Date: _____

Honorable Judge of the Hennepin County
District Court