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8 California Highway Patrol

9 BEFORE THE STATE PERSONNEL BOARD

10 APPEALS DIVISION

11
12 In the Matter of:

Case No. 13-1254

13 SHELTON SCARBER,

SETTLEMENT AGREEMENT AND
RELEASE OF ALL CLAIMS

14 Appellant.
15
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17 This Settlement Agreement and Release of All Claims (the "Agreement") is made and
18 entered into by and between the California Highway Patrol ("Respondent") a subdivision of the
19 California State Transportation Agency and Sheldon "Kyle" Scarber, ID No. 12499
20 ("Appellant"), a former Assistant Chief employed by the California Highway Patrol, collectively
21 referred to herein as the "Parties."

22 **RECITALS**

23 A. Respondent was an Assistant Chief in the Central Division of the California Highway
24 Patrol until his dismissal effective August 29, 2013.

25 B. The Parties desire to avoid the hazards of further litigation and to fully and finally
26 settle all disputes between them, including all potential costs and expenses. This Agreement
27 applies to any and all claims that Appellant may have against Respondent, whether known or
28 unknown, that existed prior to the execution of this Agreement.



1 C. In consideration of the mutual covenants and promises contained in the Agreement and
2 other good and valuable consideration, receipt of which is acknowledged, it is agreed by and
3 between the Parties as follows:

4 1. **Withdrawal and Dismissal of Action:** Appellant withdraws with prejudice his
5 appeal from the Notice of Adverse Action that was effective on the close of business August 29,
6 2013, and which is currently pending before the State Personnel Board in Case No. 13-1254 (the
7 "NOAA"). Appellant further agrees to waive any right he may have to appeal the NOAA either
8 before the Board or in any other forum or court of law.

9 Respondent agrees to withdraw from Appellant's Official Personnel File the NOAA. The
10 NOAA and all supporting material shall be maintained in a separate legal file in the custody of
11 Respondent as a sealed file, releasable under court order, by order of the State Personnel Board,
12 or by a release signed by Appellant. This Agreement shall be placed in Scarber's Official
13 Personnel File at the direction of the Office of the Commissioner.

14 2. **Resignation:** Appellant hereby agrees to resign voluntarily for personal reasons from
15 his position as Assistant Chief effective on the close of business, August 29, 2013. Appellant
16 received service retirement effective October 31, 2013.

17 3. **Acceptance of Resignation:** Respondent hereby agrees to accept Appellant's
18 voluntary resignation for personal reasons.

19 4. **Future Employment:** Appellant agrees to not seek or accept employment with the
20 CHP, either now or in the future, and if he should obtain employment in contravention of this
21 provision, he may be immediately dismissed without limitation to time and with no right of
22 appeal and no right to contest his dismissal.

23 5. **Non-Liability:** The Parties agree that this Agreement is a compromise of a disputed
24 matter and that entering into this Agreement is not, nor is it to be construed as, an admission of
25 liability, guilt or fault of either party.

26 6. **Concealed Firearm Privileges:** The Parties agree that Appellant is not eligible for
27 an identification certificate, card, badge, or carry concealed weapon license or endorsement (also
28 referred to as a CCW license) pursuant to Penal Code sections 538d(d)(4) and 25455 respectively

1 based on his employment with the California Highway Patrol. This waiver does not preclude
2 Appellant from obtaining a CCW license through regular and lawful county procedures if
3 possible.

4 **7. Complete General Release:** Appellant agrees, on behalf of himself, and his
5 successors, heirs, assigns, attorneys, agents, and representatives, and each of them, to
6 unconditionally, and forever discharge, and release the State of California, the California State
7 Transportation Agency, Respondent, its employees, managers, supervisors, officers, directors,
8 chiefs, commissioners, successors, heirs, assigns, attorneys, agents, and representatives, and each
9 of them, from any and all claims, debts, liabilities, demands, attorney fees and costs, and causes
10 of action of any kind, nature, and description, including all contingent claims, thereby resolving
11 any and all potential claims or disputes Appellant may have against any of these parties, known or
12 unknown up through the execution of this Agreement, including but not limited to any claims
13 that may or could be arise from his employment with Respondent.

14 Appellant acknowledges that Title VII of the Civil Rights Act of 1964, and the American
15 with Disabilities Act, the Age Discrimination in Employment Act and the California Fair
16 Employment and Housing Act provide him the right to bring action against Respondent because
17 of discrimination including on the basis of race, age, ancestry, color, religion, sex, marital status,
18 genetic information, gender, gender identity, gender expression, national origin, physical or
19 mental disability, sexual orientation, or medical condition. Appellant understands the rights
20 afforded to him under these Acts and agrees he will not file any action against Respondent, or any
21 entity or person connected with or employed by Respondent, based upon any alleged violation of
22 these Acts. Further, Appellant waives any rights to assert a claim for relief available under these
23 Acts against Respondent including, but not limited to, present or future wages, back pay, mental
24 or emotional distress, attorney's fees, reinstatement, or injunctive relief.

25 **8. Exclusion of Workers' Compensation Claims:** This Agreement shall not apply to
26 any Workers' Compensation claim made or to be made by the Appellant which the Appellant
27 cannot waive under law.

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1 **9. Hold Harmless.** The Parties represent and warrant that, except for this appeal from
2 the NOAA, they have not initiated any legal or administrative proceeding against each other. The
3 Parties further represent and warrant that they have not assigned, transferred, or purported to
4 assign or transfer to any person or entity any matter otherwise released herein. The Parties agree
5 to indemnify and hold harmless the other parties hereto, and their respective heirs, successors, and
6 assigns, against any other claim, demand, or cause of action arising out of or in connection with
7 any transfer, assignment, or purported transfer.

8 **10. Waiver of Civil Code 1542:** The release provided by Appellant to Respondent CHP
9 is intended to be complete and final and to cover not only claims, demands, liabilities, damages,
10 actions, and causes of action which are known, but also claims, demands, liabilities damages
11 actions, and causes of action which are unknown or which Appellant does not suspect to exist in
12 his favor which, if known at the time of executing this Agreement might have affected his
13 actions. Appellant understands and expressly waives all rights or benefits available to him under
14 California Civil Code § 1542, which provides:

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

19 Appellant understands and acknowledges that the significance and consequence of this
20 waiver is that even if he suffers additional damages relating to any claim released by this
21 Agreement, or related to his Appeal, his work for the CHP, and the NOAA, Appellant will be
22 unable to make any claim for those damages. Furthermore, Appellant acknowledges that he
23 intends these consequences even as to claims for damages that may now exist but which are not
24 known to Appellant, and which, if known, would materially affect his decision to execute these
25 releases, regardless of whether his lack of knowledge is the result of ignorance, oversight, error,
26 negligence, or any other cause.

27 **11. Promise Not To Sue:** Appellant will never sue or institute or participate in any legal
28 or administrative proceeding against the State of California, California State Transportation
Agency, California Highway Patrol, or their predecessor or successors in interest, or their

1 subdivisions, or any of their past, present, or future managers, Commissioners, Chiefs, Assistant
2 Chiefs, Captains, Lieutenants, Sergeants, other supervisors, officers, staff, or other employees, or
3 their agents, representatives, or attorneys relating to any claim released in this Agreement,
4 including the events at issue in this NOAA and related events which occurred prior to the signing
5 of this Agreement.

6 **12. Advice of Counsel:** The Parties know and understand the contents of this settlement
7 agreement with respect to their rights and obligations, and they have freely and voluntarily
8 entered into this agreement with the advice of their respective attorneys or representatives.

9 **13. Voluntary Consent to Agreement:** The Agreement is executed voluntarily and free
10 from duress, fraud, or undue influence on the part of any person or entity.

11 **14. Non-disparagement:** All Parties support this Agreement and agree not to speak
12 against it or mischaracterize it.

13 **15. Approval by the State Personnel Board:** The terms of the Agreement are null and
14 void and are not binding on the Parties if not approved by the State Personnel Board. The
15 Agreement shall become effective upon its adoption by the Board. The Parties will voluntarily
16 honor the terms and conditions of this Agreement until it is ruled upon by the Board.

17 **16. Attorneys' Fees And Costs:** The Parties shall each bear their respective costs and
18 attorneys' fees in connection with all matters settled herein.

19 **17. Entirety Clause:** The Agreement sets forth the entire understanding of the Parties in
20 connection with matters settled herein. No other representations, whether oral or written, have
21 any force or effect nor are considered as a term of this settlement agreement. This Agreement
22 may not be altered, amended, modified or otherwise changed in any respect whatsoever except by
23 a writing duly executed by authorized representatives of the Parties. The Parties agree that they
24 will make no claim at any time or place that this Agreement has been orally altered or modified or
25 otherwise changed by oral communication of any kind or character.

26 **18. Jurisdiction.** The Parties agree that any dispute concerning the terms and conditions
27 of the settlement agreement, or any alleged breach of those terms and conditions, are under the
28 jurisdiction of the State Personnel Board.

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19. Counterparts: This Agreement may be executed in counterparts each of which will be considered a part of the entire agreement. Further, a facsimile of signatures shall be considered as valid as originals.

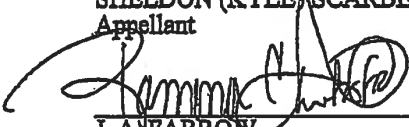
THE UNDERSIGNED HAVE READ THE FOREGOING AGREEMENT AND ACCEPT AND AGREE TO THE PROVISIONS CONTAINED HEREIN AND HEREBY EXECUTE THIS AGREEMENT VOLUNTARILY AND WITH FULL UNDERSTANDING OF ITS CONSEQUENCES.

IN WITNESS WHEREOF the Parties hereto do hereby assent to each of the terms and conditions as set forth above by signing below.

DATED: 12/12/2013



SHELDON (KYLE) SCARBER
Appellant

DATED: 12/17/13



J. A. FARROW
Commissioner
California Highway Patrol

APPROVED AS TO FORM AND CONTENT

DATED: 12-12-13


CHARLES MACGILL
Representative for Appellant

DATED: 12-12-13


LOREN E. DIEU
Deputy Attorney General
Representative for Respondent

DATED: 12-12-13


KIMBERLY A. HUNTER
General Counsel
California Highway Patrol

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PROOF OF SERVICE
(Code of Civil Procedure section 1013)

In the Matter of the Adverse Action of Sheldon Scarber
SPB Case No. 13-1254

I, WANONA G. IRELAND declare:

I am over the age of 18 years and not a party to the within action. I am an employee of the California Highway Patrol, Office of Legal Affairs, 601 North 7th Street, Sacramento, California, 95811. On December 23, 2013, I served the following documents on the parties listed below:

SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS

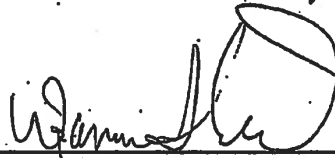
Service was made on:

CHUCK MAGILL
MAGILL & GUZMAN MAGILL
1060 FULTON, SUITE 806
FRESNO, CA 93721
lmagillaw@aol.com

STATE PERSONNEL BOARD
APPEALS DIVISION
801 CAPITOL MALL
SACRAMENTO CA 95814
appeals@spb.ca.gov

- Personal Delivery:** by delivery to said person at Sacramento, California.
- Mail:** By placing the sealed envelope(s), in accordance with the Department's ordinary practices as addressed. U.S. Mail packages are first-class postage prepaid, with the Department's mailroom for mailing in the United States, at Sacramento, California.
- Overnight:** By placing or causing be placed, true copies thereof, enclosed in a sealed envelope with the appropriate payment with the Golden State Overnight service at Sacramento, California.
- By Facsimile:** I caused the above-named document(s) to be transmitted via facsimile to the facsimile number(s) listed above.
- Other:** I caused the above-named document(s) to be transmitted via E-mail to the e-mail address listed above.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed by me on December 23, 2013, in Sacramento, California.


WANONA G. IRELAND
Senior Legal Analyst