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### Request for City Council Committee Action From the City Attorney's Office

Date: October 18, 2002  
To: Ways & Means/Budget Committee  
Referral to: None

**Subject:** Forcia v. City of Minneapolis.

**Recommendation:** That the City Council approve settlement of the lawsuit filed by Michael Forcia, Federal District Court file no. 01-1129 (DSD/SRN), in the amount of \$125,000.00, and reasonable attorneys fees in an amount to be determined by the court, payable to Michael Forcia and his attorney, Larry Leventhal, and to authorize the City Attorney to execute any documents necessary to effectuate the settlement and release of claims, payable from Fund/Org. 6900 150 1500 4000.

**Previous Directives:** None.

Prepared by: Timothy S. Skarda, Assistant City Attorney, 673-2553

Approved by: *[Signature]*  
Jay M. Heffern  
City Attorney

Presenter in Committee: Jay M. Heffern, City Attorney

**Financial Impact** (Check those that apply)

- No financial impact - or - Action is within current department budget.  
(If checked, go directly to Background/Supporting Information)
- Action requires an appropriation increase to the Capital Budget
- Action requires an appropriation increase to the Operating Budget
- Action provides increased revenue for appropriation increase
- Action requires use of contingency or reserves
- Other financial impact (Explain): Payment from Fund/Org. 6900 150 1500 4000
- Request provided to the Budget Office when provided to the Committee Coordinator

**Community Impact:**

City Goals: Build Community

**Background/Supporting Information**

This incident involves allegations of assault, battery, negligence, violation of the Minnesota Human Rights Act, deprivation of Constitution rights under to 42 U.S.C. § 1983, denial of equal protection and failure to prevent wrongs arising from an incident that occurred on November 1, 1999.

The Plaintiff, a Native American, was assisting with a food drive at Peacemaker Center on November 1, 1999. He observed several young female Native Americans lying in the street. The Plaintiff testified that he feared they had been struck by a car and went to investigate. When he got closer he observed one woman being pinned to the ground by a Minneapolis police officer. The Plaintiff believed that the officers were acting inappropriately and ran back to the Peacemaker Center to get assistance.

Officers Sand and Fuller, the individually named police officers defendants in the lawsuit, responded to a radio transmission for assistance from the arresting officers who had stopped the women who were in a stolen vehicle. The driver and passengers from the stolen vehicle were on the ground in the street when Officers Sand and Fuller arrived. The arresting officers pointed out the Plaintiff, who was running, and asked Officers Fuller and Sand to stop him. Officers Sand and Fuller were not told why the Plaintiff was to be detained and were not told that the Plaintiff was not in the stolen vehicle and had no connection with the vehicle. Because the Plaintiff was running, Officers Sand and Fuller did not have any further conversation with the arresting officers until after detaining the Plaintiff. Officers Fuller and Sand testified that they believed the Plaintiff was fleeing from a felony, but were not aware of any specific reason to arrest or detain the Plaintiff.

Officers Sand and Fuller followed the Plaintiff to the Peacemaker Center. The Plaintiff testified that Officer Sand grabbed the Plaintiff's wife and pushed one of his children. The Plaintiff testified that Officer Sand then pushed the Plaintiff from behind so that he was outside the building. The Plaintiff testified that he was slapped in the face and tackled. Officer Sand testified that he approached the Plaintiff, took his arm and asked him to come outside. Officer Sand testified that the Plaintiff stiffened his arm and pulled away when Officer Sand attempted to get the Plaintiff out of the building. The officers testified that the Plaintiff became angry and began yelling obscenities. Once outside, the Plaintiff pulled his arm from Officer Sand's control. Officer Fuller, coming from the rear of the building, saw Officer Sand struggling with the Plaintiff and performed a leg sweep, taking the Plaintiff to the ground. After being assisted to his feet, the officers testified that the Plaintiff spit in Officer Fuller's face. Officer Fuller pushed the Plaintiff's head away with his open hand to prevent further spitting.

Numerous individuals involved in the food bank program witnessed the confrontation between the Plaintiff and the officers. Generally, it was agreed that the Plaintiff was pulled outside by officers; that the Plaintiff was agitated, loud and upset; and that the Plaintiff was taken to the ground. Saliva was transferred from the Plaintiff to Officer Sand. The officers characterize the action as spitting and the Plaintiff and his witnesses as an accidental discharge because he was agitated. Witnesses describe Officer Fuller as slapping or striking the Plaintiff in the face, while the officers say that Officer Fuller quickly pushed the Plaintiff's face away after having been spat upon.

The Plaintiff was transported a short way from the scene, issued a citation and released. The criminal charges were subsequently dismissed. The Plaintiff has no criminal record. The Plaintiff has asserted that he will produce testimony from numerous political and community leaders attesting to his good character and positive involvement in the community.

The Plaintiff landed on his right shoulder when he was taken to the ground. He suffered abrasions on his shoulder and knees. The Plaintiff complained of pain to his neck and right shoulder. The Plaintiff's shoulder was treated conservatively with physical therapy until May 23, 2001, when he had surgery. A variety of tests indicated that the Plaintiff has degenerative changes to his neck and shoulder, as well as, damage to the shoulder ligaments caused by a partial shoulder separation. The ligament damage and the onset of pain are attributed to the November 1<sup>st</sup> injury. Prior to the incident of November 1, 1999, the Plaintiff had never been treated for shoulder or neck pain. The Plaintiff continues to complain of shoulder

and neck pain. He has incurred \$9,074.13 in medical expenses for which HealthPartners seeks reimbursement.

The Plaintiff is a self-employed baker who owns and operates a donut shop, *The Donut Connection*, in Moundsview, Minnesota. Since the incident, the Plaintiff testified that he had to reduce his hours and hire additional workers for the bakery because of shoulder pain. The Plaintiff supplied verification that from November of 1999, to October 16, 2002, he incurred approximately \$80,000.00 in additional labor costs. He will continue to hire additional workers into the foreseeable future. The payment of wages and taxes on the additional employees was verified and documented through the Plaintiff's accountant. There is no evidence that the Plaintiff hired any additional workers prior to the incident or that an increase in his business required the additional workers. The Plaintiff has testified that his injury caused him to forgo opening a second donut shop in Minneapolis.

A settlement conference was held on October 16, 2002, attended by Council Member Barbara Johnson and Inspector Sharon Lubinski. The Plaintiff demanded \$256,666 in damages and attorney's fees. A proposed settlement was reached in which the Plaintiff would be paid \$125,000.00 plus attorney's fees in an amount to be determined by the district court after submissions and arguments from the parties. When the court has determined the amount of attorney's fees, that amount will be submitted to this committee for approval. Based upon the hours expended in defending the lawsuit, attorney's fees are estimated to be in the range of \$9,000 to \$12,000.

We believe that settling this lawsuit as described would be in the best interests of the City of Minneapolis. Council Member Johnson and Inspector Lubinski concur in recommending approval of the tentative settlement. While the individual officers, Sand and Fuller, appear to have been acting reasonably based on the knowledge that they had, for the purposes of this lawsuit the additional information that the Plaintiff was not involved in the underlying incident could be attributed to the officers. Essentially, a jury would be asked to determine whether the actions of the officers were reasonable in dealing with a civilian observer who was not interfering with the underlying arrest or apprehension and had left the scene of the arrest. Once this additional knowledge is attributed to the officers, the chance of the City prevailing in the lawsuit becomes problematic. Additionally, Mr. Forcia is a sympathetic witness who suffered a real injury with damages that he has been able to document. Mr. Forcia's damages are ongoing and continuing into the future. Mr. Forcia may be somewhat culpable in his personal interactions with the officers, however, he did not seek out that confrontation and had left the scene of the underlying incident. Given the level of past damages, the potential for future damages, the possibility of liability for the City and the potential for additional attorney's fees we believe that the proposed settlement is in the best interests of the City of Minneapolis.