

# Exhibit

# A

**From:** Smith, Craig  
**Sent:** Sunday, March 17, 2019 9:11 PM  
**To:** 'Mike Rynd'; 'Daniel Karp'  
**Cc:** Barbara Schwabauer; Valerie Meyer; 'Woodard, Karen (CRT)'; Kathleen Lawrence; 'Schellenberg, Kali (CRT)'; 'ronald.levitan@maryland.gov'; 'Phillip M. Pickus -State Police-'; 'Carl Zacarias'; Howard, Theodore; Walsh, Brian; Dennis Corkery; Debbie Jeon; Sonia Kumar; Norwood, Kendra; Broder, Moshe; Lemley, Charlie; Cohen, Madeline  
**Subject:** Savage et al v. Pocomoke City et al. - K. Sewell acceptance of Rule 68 offer  
**Attachments:** Kelvin Sewell Acceptance of 3-8-19 Rule 68 Offer from Pocomoke City (3-17-19).pdf

Dan, Mike:

I've attached notice that Kelvin Sewell accepts the offer that Pocomoke City made to him on March 8, 2019, for judgment under Rule 68.

Best,  
Craig

Craig Smith | Attorney at Law  
**Wiley Rein LLP**  
1776 K Street NW | Washington, DC 20006  
T: 202.719.7297 | [csmith@wileyrein.com](mailto:csmith@wileyrein.com)  
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**WASHINGTON LAWYERS' COMMITTEE**  
FOR CIVIL RIGHTS AND URBAN AFFAIRS

Via Email

March 17, 2019

Daniel Karp (brunokarp@bkcklaw.com)  
Michael Rynd (mrynd@bkcklaw.com)

**Re: Franklin Savage, et al., and United States v. Pocomoke City et al.; No. 1:16-cv-00201-ELH; Kelvin Sewell's Acceptance of Rule 68 Offer**

Dear Messrs. Karp and Rynd:

We write to inform you that Kelvin Sewell accepts the offer made to him under Federal Rule of Civil Procedure 68 made on March 8, 2019, by Pocomoke City. Mr. Sewell's signature confirming his acceptance is below. We will follow up with your office about any requested changes to the proposed consent decree in due course.

We have attached the March 8 offer to this letter so that all parties have the offer and acceptance in a single pdf package for reference.

Mr. Sewell's signature confirming acceptance:

Sincerely yours,

Theodore A. Howard  
Charles C. Lemley  
Brian G. Walsh  
Craig Smith  
Kendra P. Norwood  
Madeline J. Cohen  
Moshe B. Broder

Deborah A. Jeon  
Sonia Kumar

Dennis A. Corkery

*Counsel for Plaintiffs*

Attachment: March 8, 2019 Rule 68 Offer to Kelvin Sewell

cc:

Ronald Levitan (ronald.levitan@maryland.gov)  
Phillip Pickus (phillip.pickus@maryland.gov)  
Carl Zacarias (czacarias@treasurer.state.md.us)  
Karen Woodard (karen.woodard@usdoj.gov)  
Barbara Schwabauer (barbara.schwabauer@usdoj.gov)  
Valerie Meyer (valerie.meyer@usdoj.gov)  
Kali Schellenberg (kali.schellenberg@usdoj.gov)

**KARPINSKI, COLARESI & KARP, P.A.**

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E. I. CORNBROOKS, IV**

**SANDRA D. LEE \*\*  
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\* ADMITTED IN MD AND D.C.  
\*\* ADMITTED IN MD, N.Y. AND D.C.

March 8, 2019

via email and U.S. Mail

Craig M. Smith, Esquire  
Theodore A. Howard, Esquire  
Brian G. Walsh, Esquire  
Kendra P. Norwood, Esquire  
Moshe Benjamin Broder, Esquire  
Charles C. Lemley, Esquire  
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*Attorneys for Plaintiffs*

KARPINSKI, COLARESI & KARP, P.A.  
ATTORNEYS AT LAW

March 8, 2019  
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RE: 336-108; 336-129  
Civil Action No: 1:16-cv-201  
*Savage et al., v. Pocomoke City, et al.*

**RULE 68 OFFER OF JUDGMENT**  
**CONFIDENTIAL AND PRIVILEGED UNLESS ACCEPTED**

Dear Counsel:

Pursuant to Rule 68 of the Federal Rules of Civil Procedure, I am hereby submitting a written offer of judgment to Plaintiff Kelvin Sewell on behalf of Pocomoke City to allow judgment to be taken against Pocomoke City in this case in the sum certain of Four Hundred Fifty Thousand and One Dollars (\$450,001.00), exclusive of any attorneys' fees, and for entry into the attached proposed consent decree, subject to the following:

First, acceptance of the offer of judgment constitutes full satisfaction of all claims for damages and other relief of any description that have been or could have been requested in this case by Mr. Sewell, relating in any manner to alleged acts or omissions arising out of Mr. Sewell's employment and termination of employment by or with Pocomoke City or since, and which were alleged or which could have been alleged in the above-referenced lawsuit.

Second, Pocomoke City agrees that the Court shall assess reasonable attorneys' fees and other costs against it, in an amount to be determined by the Court.

Third, Pocomoke City will agree to enter a consent decree with Mr. Sewell, the proposed terms of which are substantially set forth in the draft consent decree attached hereto as Exhibit A. Pocomoke City agrees to negotiate in good faith if any changes to the consent decree are requested.

Fourth, acceptance of the offer, payment of the offered amount, and entry into the consent decree, constitutes a release, discharge, and relinquishment of any and all claims against Pocomoke City, Bruce Morrison, Russell Blake, Ernest A. Crofoot, and the County Commissioners of Worcester County, and any and all other officials, employees, agency, department, or instrumentality of any description related in any way to them, and those in privity with them, and including any and all insurers of said individuals or entities. It is the express intent of this offer that payment of the Four Hundred Fifty Thousand and One Dollars (\$450,001.00), referenced above, assessment of attorneys' fees and other costs, and entry into the consent decree, extinguishes any and all claims that have been, could have been, or could be, made by Mr. Sewell with respect to any liability or potential liability arising out of Mr. Sewell's employment and termination of employment by or with Pocomoke City or since, alleged or which could have been alleged in the above-referenced case against the individuals and/or entities for whose benefit this offer of judgment is being made. This offer is for judgment to be taken against Pocomoke City only, but it is expressly made for the benefit of Bruce Morrison, Russell Blake, Ernest A. Crofoot,

KARPINSKI, COLARESI & KARP, P.A.  
ATTORNEYS AT LAW

March 8, 2019

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the County Commissioners of Worcester County, and Pocomoke City.

Fifth, it is understood and agreed that this offer of judgment is being made for purposes of Rule 68 of the Federal Rules of Civil Procedure, to attempt to resolve disputed claims, and is not and may not be construed as an admission of liability or that Mr. Sewell has suffered any damage.

Sixth, this offer is not contingent upon the acceptance by any other Plaintiff or the Plaintiff/Intervenor in this case of any other offer of judgment.

Finally, upon acceptance and payment, the Mr. Sewell agrees to file an order of satisfaction, execute a release and settlement agreement, execute a dismissal with prejudice in favor of all beneficiaries of this offer of judgment, and otherwise to formalize Mr. Sewell's release and discharge of all claims by Mr. Sewell against all beneficiaries of this offer of judgment.

Sincerely yours,

KARPINSKI, COLARESI & KARP

A handwritten signature in blue ink, appearing to read "Daniel Karp / m".

By: Daniel Karp

DK:mr

Enclosure

cc: Barbara Ann Schwabauer, Esquire  
Karen D Woodard, Esquire  
Kathleen O'Malley Lawrence, Esquire  
Valerie L. Meyer, Esquire  
Kali Jones Schellenberg  
Carl N. Zacarias, Esquire  
Ronald M. Levitan, Esquire  
Phillip Pickus, Esquire

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND  
NORTHERN DIVISION**

FRANKLIN SAVAGE, et al.,

Plaintiffs,

and

UNITED STATES OF AMERICA,

Plaintiff-Intervenor,

v.

POCOMOKE CITY, et al.,

Defendants.

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Case No. 1:16-cv-00201-ELH

**CONSENT DECREE BETWEEN PLAINTIFF KELVIN SEWELL AND DEFENDANT  
POCOMOKE CITY**

**I. INTRODUCTION**

1. This action comes before this Court upon the filing of a Complaint by Plaintiffs Franklin Savage, Kelvin Sewell and Lynell Green (collectively “Plaintiffs”) on January 20, 2016. Plaintiffs filed the operative Second Amended Complaint on September 29, 2016, pleading claims against Defendants Pocomoke City, former City Manager Russell Blake, former City Manager and City Attorney Ernest A. Crofoot, Mayor Bruce Morrison (collectively, “the Pocomoke Defendants”), the County Commissioners of Worcester County (“the County”), the State of Maryland (“the State”), Worcester County Sheriff Reggie Mason, Worcester County Sheriff’s Office (“WCSO”) members (former) Chief Deputy Dale Smack, Sergeant Nathaniel Passwaters, and Corporal Rodney Wells, and Sergeant Patricia Donaldson and Corporal Brooks Phillips of the

Maryland State Police (“MSP”). Plaintiffs’ claims arise from their employment with the Pocomoke City Police Department and include, *inter alia*, allegations of race-based employment discrimination and retaliation. The United States of America (“United States” or “Plaintiff-Intervenor”) moved to intervene in this action, intervention was granted, and the United States’ Complaint in Intervention was filed on December 1, 2016. The United States’ Complaint in Intervention alleges violations of Title VII against Pocomoke City, the State of Maryland, and Sheriff Mason in his official capacity.

3. This Court has jurisdiction of the action under 42 U.S.C. §§1988 and 2000e-5(f), and 28 U.S.C. §§ 1331, 1343(3), 1343(4) and 1345.

4. Plaintiff Kelvin Sewell and Defendant Pocomoke City, desiring that certain of Mr. Sewell’s claims be settled by an appropriate Consent Decree (“Decree”) and an offer of judgment, and without the burden and risks of protracted litigation, agree to the jurisdiction of this Court over the parties and the subject matter of this action. Mr. Sewell and Pocomoke City also hereby waive, for purposes of this Decree only, hearings and findings of fact and conclusions of law on all issues, including the liability alleged under Title VII, 29 U.S.C. §201 *et seq.*, 42 U.S.C. §1981, 42 U.S.C. §1983, and/or 42 U.S.C. § 1985, and further agree to the entry of this Decree as final and binding between them with regard to the issues raised by Mr. Sewell in the Second Amended Complaint filed by Plaintiffs in this case. Mr. Sewell also agrees to dismiss all claims he has pleaded against Pocomoke City, Bruce Morrison, Ernest A. Crofoot, Russell Blake, and the County.

5. This Decree, being entered into with the consent of the parties shall not constitute an adjudication or finding on the merits of the case as to any party.

6. In resolution of this action, Mr. Sewell and Pocomoke City hereby AGREE to, and the Court expressly APPROVES, ENTERS and ORDERS, the following:



## **II. PARTIES AND DEFINITIONS**

7. “Days” refers to calendar days. If any deadline referenced in this Decree falls on a weekend or federal holiday, the deadline will be moved to the next business day.

8. “Entry” of the Decree refers to the date that the Clerk of Court enters this Decree.

9. “Defendant” refers only to Pocomoke City, and includes its current, former and future agents, employees, officials, designees, and successors in interest.

10. “Parties” refers collectively to Plaintiff Kelvin Sewell and Defendant Pocomoke City.

11. “Pocomoke City Police Department” (“PCPD”) refers to the former workplace of Plaintiff Kelvin Sewell. The PCPD is mentioned as the relevant workplace throughout this decree, but it is not a legally separate entity from Pocomoke City.

12. “Discrimination” includes disparate treatment and unlawful harassment based on race.

## **III. GENERAL INJUNCTIVE RELIEF**

13. Defendant, by and through its officials, agents, employees, and all other persons in active concert or participation with Defendant in the performance of employment or personnel functions, shall not engage in any act or practice that discriminates against any employee or applicant because of race in violation of Title VII.

14. Defendant, by and through its officials, agents, employees, and all other persons in active concert or participation with Defendant in the performance of employment or personnel functions, shall not retaliate against or in any way adversely affect the terms or conditions of employment of any person because that person has opposed any practice made unlawful by Title VII, filed a charge with the U.S. Equal Employment Opportunity Commission (“EEOC”), or

testified, assisted or participated in any manner in an investigation, proceeding or hearing under Title VII, including this case or this Consent Decree.

#### **IV. DEVELOPMENT AND REVISION OF RELEVANT POLICIES**

15. Within one hundred and twenty (120) days from the date of this Decree, Defendant shall review and, to the extent necessary, adopt or amend written policies and procedures in effect for the PCPD related to discrimination to ensure proper handling of complaints, including:

- a. defining the manner in which an employee may complain of discrimination, including procedures for officers detailed to the Worcester County Criminal Enforcement Team or other full-time details for PCPD officers to report discrimination or harassment in connection with their detail;
- b. establishing a requirement that employees and supervisors promptly report any discrimination;
- c. providing for the investigation of complaints of discrimination, including policies relating to the prompt and objective investigation of such complaints, including complaints pertaining to an employee's detail; and
- d. providing for an appropriate range of discipline for violations of the policy.

16. Within one hundred and twenty (120) days from the date of this Decree, Defendant shall review and, to the extent necessary, adopt or amend written policies and procedures in effect for the PCPD to appropriately address Title VII's prohibition of retaliation against individuals who have made claims of discrimination under Title VII or who have participated in the investigation or litigation of such claims.

17. Within one hundred and twenty (120) days from the date of this Decree, Defendant shall review and, to the extent necessary, adopt or amend written policies and procedures in effect for the PCPD (and for any decision makers with respect to employment practices of the PCPD) regarding conflicts of interest to ensure the neutral enforcement of the policies described in paragraphs 15-16.

18. Within ten (10) days from the date upon which Defendant adopts or amends the written policies and procedures set forth in Paragraphs 15-17, Defendant shall take the following steps:

(a) Defendant shall distribute copies of any new or revised policies pursuant to paragraphs 15-17 to all individuals, including supervisors, working in the PCPD as well as any Pocomoke City officials or other individuals involved in the decision making for the PCPD or involved in receiving or responding to complaints of discrimination or otherwise provide oversight for the policies in paragraphs 15-17. Each employee, agent, and/or official of the Defendant who receives a copy shall sign an acknowledgment that the copy has been received and read. The signed acknowledgment by each employee shall be placed in the employee's personnel file, and a signed acknowledgement by each supervisor or human resources personnel shall also be maintained by the City's Human Resources office.

(b) Defendant shall publicize such policies and procedures by, *inter alia*, posting them in all buildings and facilities used for posting EEO information in effect for the PCPD, by email to all employees of and/or working in the PCPD, and on any internet or intranet website used for posting notices or policy changes for or concerning policies in effect for the PCPD.

(c) Defendant shall ensure that each new employee, supervisor, or human resources personnel receives a copy of the written policies and procedures at the time of the new employee's hire or at the time of the supervisor's selection or appointment. Each new employee, supervisor, or human resources personnel shall sign an acknowledgement that she or he has read and understands such policies and procedures. The signed acknowledgment by a new employee shall be placed in the employee's personnel file, and the signed acknowledgment by a new supervisor or human resources personnel also shall be maintained by the County's Department of Human Resources.

## **V. TRAINING**

19. Within one-hundred and fifty (150) days after entry of the Consent Decree, Defendant, at its own cost, will provide training as set forth below:

(a) Defendant shall provide training to all non-supervisory employees of and/or working in the PCPD regarding the new policies and procedures adopted or amended pursuant to Paragraphs 15-17. Such training will be provided by Defendant with the understanding that the training is mandatory for all non-supervisory employees of and/or working in the PCPD.

(b) Defendant shall provide training to (1) all supervisory and managerial employees of and/or all supervisors and managers holding positions in the PCPD; and (2) any manager, supervisor, or human resources personnel (without regard to whether they work in the PCPD) involved in receiving or responding to complaints of discrimination, or otherwise involved in providing oversight for the enforcement of the policies described in Paragraphs 15-17, regarding the new policies and procedures adopted or amended pursuant to Paragraphs 15-17.

(c) This training also will be administered within sixty (60) days of hire or promotion for newly hired non-supervisory employees (as described in Subparagraph (a)) or newly

hired, promoted, or elected supervisors, managers, administrators, and human resources officials (as described in Subparagraph (b)) during the life of this Decree.

20. Within forty-five (45) days after the adoption of any written policies or procedures by the PCPD as described in Paragraphs 15-17, Defendant, at its own cost, will provide mandatory training to any City human resources personnel involved in receiving or responding to complaints of discrimination regarding the new policies and procedures adopted by the PCPD. This training also will be administered within sixty (60) days of hire or promotion for newly hired or promoted City human resources personnel involved in receiving or responding to complaints of discrimination during the life of this Decree.

21. All persons who undergo training pursuant to Paragraphs 19-20 will sign an acknowledgment of attendance at the training. Defendant will keep on file all signed acknowledgments for the duration of this Decree and provide it to any other Party within one (1) week upon written request.

## **VI. INDIVIDUAL RELIEF FOR KELVIN SEWELL**

22. In settlement of Kelvin Sewell's claims identified in Paragraph 4 *supra*, Defendant agrees to the following and it is hereby ordered by the Court that within seven (7) days of the date of entry of this Decree that Defendant shall pay Kelvin Sewell a monetary award in the amount of \$450,001.00. Payment of the offered amount, and entry into this Decree, constitutes a release, discharge, and relinquishment of any and all claims against Pocomoke City, Bruce Morrison, Russell Blake, Ernest A. Crofoot, and the County, and any and all other officials, employees, agency, department, or instrumentality of any description related in any way to them, and those in privity with them, and including any and all insurers of said individuals or entities. It is the express intent of the parties that payment of the \$450,001.00 referenced above and entry into this Decree,

extinguishes any and all claims that have been, could have been, or could be, made with respect to any liability or potential liability arising out of Mr. Sewell's employment as a law enforcement officer with the Pocomoke City Police Department or since, alleged or which could have been alleged in the above-referenced case, excluding any claims for Mr. Sewell's attorneys' fees and other costs. This offer and Decree will result in a judgment to be taken against Pocomoke City only, but it is expressly understood that the agreement is for the benefit of all of those named or referred to above, including without limitation, Bruce Morrison, Russell Blake, Ernest A. Crofoot, and the County. This offer and Decree do not relate to the claims asserted by Kelvin Sewell against any other Defendants in this case.

23. Plaintiff shall submit a motion for attorneys' fees and other costs to the Court as provided by Local Rule 109.

24. Defendant will provide a neutral reference for Kelvin Sewell to any potential employer that contacts the Defendant. The neutral reference will only consist of Kelvin Sewell's dates of employment (November 18, 2010 - July 1, 2015) and salary information. No mention of the EEOC Charge, this action, or a termination for cause will be made part of the reference.

## **VII. RECORDKEEPING AND COMPLIANCE MONITORING**

25. While the Decree remains in effect, Defendant shall retain records necessary to document the implementation of this Decree. Defendant shall furnish records and documents relevant to its compliance with the implementation of this Decree to counsel for Kelvin Sewell within thirty (30) days of any written request to Defendant's counsel.

26. While the Decree remains in effect, Defendant will retain all records, including any papers, electronic files or writings of any kind, reports, studies, memoranda, letters, notes, charts, tables, rosters, manuals, guidelines, rules, lists, tabulations, press releases, books, articles, treatises,

recordings or transcriptions of minutes, electronic files, machine readable format files, computer files, or audio or video recordings, electronic mail, and facsimiles, that come into its possession relating to complaints or charges of employment discrimination based on discrimination or retaliation made by employees of and/or holding positions of employment in the PCPD: (a) internally; (b) with the EEOC; or (c) through or with any other federal or state agency authorized to receive such complaints.

#### **VIII. DISPUTE RESOLUTION**

27. The parties shall attempt to resolve informally any dispute that may occur under this Decree. The parties shall engage in good faith efforts to resolve the issue before seeking action by the Court. If the parties are unable expeditiously to resolve the issue, any party may move the Court for resolution, provided that written notice is first provided to the other party at least seven (7) days in advance of taking such action.

#### **IX. RETENTION OF JURISDICTION**

28. The Court will retain jurisdiction over this Decree for the purposes of implementing the relief provided herein, and resolving any disputes or entering any orders that may be necessary to implement the relief provided herein.

#### **X. ADDITIONAL PROVISIONS**

29. The time limits set forth throughout this Decree may be expanded upon mutual consent of the Parties or upon motion to the Court following written notice to the other parties.

30. All documents required to be delivered under this Decree to Plaintiffs will be sent to the following address:

[DESIGNATED PLAINTIFFS' COUNSEL]

31. All documents required to be delivered under this Decree to Defendant will be sent to the following addresses:

Daniel Karp, Esquire  
Karpinski, Colaresi & Karp, P.A.  
120 East Baltimore Street  
Suite 1850  
Baltimore, Maryland 21202

32. Any party may update mailing or electronic addresses to all other parties without requiring any changes to this Consent Decree.

#### **XI. DURATION OF THE DECREE**

33. Unless otherwise ordered by this Court, and absent the pendency of any motion related to this Decree, this Decree shall expire without further order of the Court on the latest of the following dates:

- a. Three years from the date of the entry of the Decree; or
- b. Upon fulfillment of the Parties' obligations as described in Sections III through VI.

34. Any party may move the Court to extend the duration of the Decree upon a showing of good cause.

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It is so ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

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Hon. Ellen L. Hollander  
United States District Judge

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[DESIGNATED COUNSEL FOR KELVIN SEWELL]

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