

**IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT IN AND FOR MIAMI-
DADE COUNTY, FLORIDA**

JAVIER ORTIZ,

Case No.

Plaintiff,

v.

CITY OF MIAMI, a municipality of the
state of Florida,

Defendant.

COMPLAINT

Plaintiff, complaining of the Defendant, alleges and says:

PARTIES

1. Plaintiff Javier Ortiz is a resident of Miami-Dade County, Florida.
2. Defendant City of Miami is a municipality incorporated within the state of Florida and is therefore a subdivision of the state of Florida.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over this action pursuant to [Fla. Stat. § 26.012](#), because this is an action at law not cognizable by the county courts, with damages in excess of \$75,000.00 exclusive of costs, interest, and attorneys' fees, and also involves equitable claims including rescission of contract, declaratory judgment, and injunctive relief.

4. This Court has personal jurisdiction over the City of Miami because it is a municipality incorporated within the state of Florida.
5. This Court is the proper venue for this case pursuant to [Fla. Stat. § 47.011](#), as the defendant resides in Miami-Dade County, the cause of action accrued in Miami-Dade County, and the Settlement Agreement that is the subject of this action was executed in Miami-Dade County, Florida.

STATEMENT OF FACTS

6. On or about May 2, 2023, Plaintiff and Defendant entered into a Settlement Agreement and General Release ("Settlement Agreement").
7. The Settlement Agreement was executed to resolve numerous pending grievances and lawsuits between the parties, including Grievance No. 22-05, Grievance No. 22-270, EEOC Charge No. 510-2021-03103, and Internal Affairs Case Number C21-162.
8. Under the terms of the Settlement Agreement, Defendant agreed to reinstate Plaintiff to the position of Captain of Police.
9. Defendant agreed to take all actions necessary to reinstate Plaintiff from the date of his original termination to the date he was administratively reassigned on May 2, 2023, as if there was no break in service.
10. Defendant agreed to pay Plaintiff all backpay, including all pay incentives to which he would have been entitled, at his Captain rate of pay from the time he was originally terminated to May 2, 2023.
11. Defendant agreed that Plaintiff would be administratively reassigned to the Office of the Chief on the C-shift, with the Chief of Police as his point of contact.

12. Defendant agreed to restore Plaintiff's vacation and sick balance that Plaintiff would have accrued from the date of his dismissal to his return date.
13. Defendant agreed to restore Plaintiff's seniority as though there was no break in service.
14. In exchange, Plaintiff agreed to enter the Deferred Retirement Option Program (D.R.O.P.) on November 7, 2023.
15. Plaintiff agreed that the last day of his employment with Defendant would be on November 7, 2025.
16. Plaintiff agreed to certain limitations on his duties and activities while administratively reassigned.
17. Paragraph 12 of the Settlement Agreement contains a non-disparagement clause, which states: "The Parties agree that neither Party shall make any disparaging statements about either the CITY or ORTIZ."
18. Paragraph 12 further provides that when asked about the Settlement Agreement, the terms of the Settlement Agreement, or about the City or Ortiz, both parties shall respond with a specific agreed-upon statement.
19. Paragraph 1(i) of the Settlement Agreement specifically states that "The CITY agrees that it will be bound by the nondisparaging agreement and public statement specifically stated in Paragraph 12 when discussing this Settlement Agreement, any terms of this Settlement Agreement or ORTIZ in general."
20. Paragraph 2(i) of the Settlement Agreement specifically states that "ORTIZ agrees that he will be bound by the nondisparaging agreement and public statement

specifically stated in Paragraph 12 when discussing this Settlement Agreement, any terms of this Settlement Agreement or the CITY in general."

21. On October 6, 2023, City of Miami Commissioner Joe Carollo, representing himself as a public official, called Plaintiff "the most corrupt cop in America" during a radio broadcast.
22. On February 13, 2025, at a public City of Miami Commission meeting, City Attorney George Wysong made disparaging remarks about Plaintiff, referring to him as "a former, well, an almost former police captain, named Javier Ortiz."
23. At the same meeting, Mr. Wysong further disparaged Plaintiff by stating, "I don't believe any of these people. Like I'm not putting my hand on the bible for either of these officers," referencing Plaintiff.
24. Also at the February 13, 2025 commission meeting, Commissioners Reyes and Carollo, in their positions as public officials, made additional disparaging remarks about Plaintiff, including discussions about "getting rid of" Plaintiff.
25. Commissioner Carollo made disparaging remarks about Plaintiff and former Police Chief Art Acevedo regarding Plaintiff's testimony in a federal civil trial in which Plaintiff is named as a federal witness for the plaintiff.
26. These statements by City officials constitute clear violations of the non-disparagement clause in Paragraph 12 of the Settlement Agreement.
27. Plaintiff remains employed with the City of Miami Police Department but faces mandatory retirement on November 7, 2025, pursuant to the Settlement Agreement.
28. Plaintiff has performed all of his obligations under the Settlement Agreement.

CLAIMS FOR RELIEF

Count I - Breach of Contract

(against defendant City of Miami)

29. Plaintiff repeats and realleges the allegations set forth in paragraphs 1 through 28 as if fully set forth herein.
30. Plaintiff and Defendant entered into a valid and enforceable contract.
31. The Settlement Agreement dated May 2, 2023, constitutes a valid and binding contract between Plaintiff and Defendant.
32. Defendant materially breached the contract.
33. Defendant, through its officials acting in their official capacities, breached the non-disparagement clause in Paragraph 12 of the Settlement Agreement by making disparaging statements about Plaintiff.
34. Commissioner Joe Carollo, representing himself as a public official, called Plaintiff "the most corrupt cop in America" on October 6, 2023.
35. City Attorney George Wyson referred to Plaintiff as "a former, well, an almost former police captain" and stated he "wouldn't put his hand on the bible" for Plaintiff at a February 13, 2025 commission meeting.
36. Commissioners Reyes and Carollo made additional disparaging remarks about Plaintiff at the same meeting, including discussions about "getting rid of" Plaintiff.
37. Plaintiff has suffered damages as a result of Defendant's breach.
38. Plaintiff has suffered harm to his professional reputation as a result of these disparaging statements.

39. Plaintiff faces the impending loss of his employment on November 7, 2025, which would not be required if Defendant had not breached the Settlement Agreement.

40. Plaintiff has suffered emotional distress and mental anguish as a result of the public disparagement by City officials.

Count II - Rescission of Contract

(against defendant City of Miami)

41. Plaintiff repeats and realleges the allegations set forth in paragraphs 1 through 28 as if fully set forth herein.

42. Plaintiff and Defendant entered into a valid and enforceable contract.

43. The Settlement Agreement dated May 2, 2023, constitutes a valid and binding contract between Plaintiff and Defendant.

44. There exists proper grounds for rescission of the contract.

45. Defendant materially breached the Settlement Agreement by violating the non-disparagement clause in Paragraph 12, which was a material term of the agreement.

46. The non-disparagement clause was a material and essential term of the Settlement Agreement, as evidenced by its specific inclusion in both Paragraph 12 and in the individual obligations of each party in Paragraphs 1(i) and 2(i).

47. Defendant's breach of the non-disparagement clause undermines the fundamental purpose and integrity of the Settlement Agreement.

48. Plaintiff has acted within a reasonable time to seek rescission.

49. Plaintiff is filing this action before his scheduled retirement date of November 7, 2025, and within a reasonable time after discovering the breaches of the Settlement Agreement.

50. The parties can be returned to their pre-contract status.

51. The parties can be restored to their pre-Settlement Agreement positions by rescinding the retirement requirement while maintaining Plaintiff's employment with the City of Miami Police Department.

52. Plaintiff has no adequate remedy at law.

53. Monetary damages alone would be inadequate to compensate Plaintiff for the loss of his career, seniority, and benefits that would result from forced retirement.

Count III - Declaratory Judgment

(against defendant City of Miami)

54. Plaintiff repeats and realleges the allegations set forth in paragraphs 1 through 28 as if fully set forth herein.

55. There exists a bona fide, actual, present practical need for a declaration.

56. Plaintiff requires a judicial declaration regarding the enforceability of the retirement provision in the Settlement Agreement in light of Defendant's material breach of the non-disparagement clause.

57. The declaration deals with a present, ascertained state of facts or present controversy.

58. The controversy concerns Defendant's breach of the Settlement Agreement through disparaging statements made by City officials and the effect of that breach on Plaintiff's obligation to retire on November 7, 2025.
59. Plaintiff's rights are dependent upon the facts and law applicable to the facts.
60. Plaintiff's right to continued employment beyond November 7, 2025, is dependent upon the legal effect of Defendant's breach of the Settlement Agreement.
61. Defendant has an actual, present, adverse and antagonistic interest in the subject matter.
62. Defendant has an interest in enforcing the retirement provision of the Settlement Agreement despite its breach of the non-disparagement clause.
63. All antagonistic and adverse interests are before the Court.
64. Both Plaintiff and Defendant are parties to this action, and no other parties have an interest in the subject matter.
65. The relief sought is not merely the giving of legal advice.
66. Plaintiff seeks a binding judicial determination of the parties' rights and obligations under the Settlement Agreement in light of Defendant's breach, not merely legal advice.

Count IV - Injunctive Relief

(against defendant City of Miami)

67. Plaintiff repeats and realleges the allegations set forth in paragraphs 1 through 28 as if fully set forth herein.

68. Plaintiff has a substantial likelihood of success on the merits.

69. Plaintiff has demonstrated that Defendant breached the Settlement Agreement by violating the non-disparagement clause, which constitutes a material breach of the agreement.

70. Plaintiff will suffer irreparable harm if an injunction is not granted.

71. If Defendant is permitted to enforce the retirement provision of the Settlement Agreement, Plaintiff will be forced to retire on November 7, 2025, resulting in the irreparable loss of his career, seniority, and benefits.

72. The threatened injury to Plaintiff outweighs any possible harm to Defendant.

73. The harm to Plaintiff from forced retirement outweighs any harm to Defendant from Plaintiff's continued employment, as Plaintiff has been performing his duties satisfactorily since his reinstatement.

74. The granting of an injunction will not disserve the public interest.

75. The public interest is served by enforcing contractual obligations and preventing wrongful termination based on a breached agreement.

Count V - Specific Performance

(against defendant City of Miami)

76. Plaintiff repeats and realleges the allegations set forth in paragraphs 1 through 28 as if fully set forth herein.

77. Plaintiff and Defendant entered into a valid, binding contract.

78. The Settlement Agreement dated May 2, 2023, constitutes a valid and binding contract between Plaintiff and Defendant.

79. The contract is clear, definite, and certain in its terms.

80. The Settlement Agreement clearly defines the parties' obligations, including the non-disparagement clause in Paragraph 12.

81. Plaintiff has performed or is ready, willing, and able to perform his obligations under the contract.

82. Plaintiff has complied with all of his obligations under the Settlement Agreement and is willing to continue doing so.

83. The remedy at law is inadequate.

84. Monetary damages are inadequate to compensate Plaintiff for the loss of his career, seniority, and benefits that would result from forced retirement.

85. Specific performance is necessary to prevent the irreparable harm that would result from Plaintiff's forced retirement.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in his favor and against Defendant, and grant the following relief:

1. A declaration pursuant to [Fla. Stat. § 86.011](#) that Defendant breached the Settlement Agreement by violating the non-disparagement clause, and that Plaintiff is relieved from the obligation to retire on November 7, 2025.
2. Rescission of the portion of the Settlement Agreement requiring Plaintiff to retire on November 7, 2025, while maintaining his employment with the City of Miami Police Department with all rank, seniority, and benefits.
3. A temporary and permanent injunction pursuant to [Fla. R. Civ. P. 1.610](#) preventing Defendant from enforcing the retirement provision of the Settlement Agreement and from taking any adverse action against Plaintiff based on his refusal to retire on November 7, 2025.
4. An order requiring Defendant to continue Plaintiff's employment beyond November 7, 2025, with all rank, seniority, and benefits, in accordance with the pre-Settlement Agreement terms of his employment.
5. Compensatory damages against Defendant in an amount to be determined at trial, but in excess of \$75,000.00, for harm to Plaintiff's reputation and career prospects resulting from Defendant's breach of the non-disparagement clause.
6. Reasonable attorneys' fees and costs incurred in bringing this action pursuant to [Fla. Stat. § 57.105](#).
7. Such other relief as the Court deems just and proper.

JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable.

Respectfully submitted,

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