

SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT AGREEMENT AND RELEASE is hereby entered into as of the 3rd day of September 2015, by and between MALIA “KIM” BENDIS (“PLAINTIFF”) and SERGEANT NICK LIBERIO, DETECTIVE TAMMY SPENCER (F/K/A TAMMY SPENCER-HALE), DETECTIVE WOJTEK KOWAL and THE CITY OF NAPERVILLE, (“DEFENDANTS”); collectively referred to as the “PARTIES.”

RECITALS

WHEREAS, PLAINTIFF has alleged that she sustained damages as a result of the conduct of DEFENDANTS, which is described in the Complaint in the litigation filed in U.S. District Court for the Northern District of Illinois, Malia “Kim” Bendis” v. Sgt. Nick Liberio, Detective Tammy Spencer-Hale, Detective Wojtek Kowal, Officer Juan Rios, and the City of Naperville, Case No. 15-cv-720, (hereinafter called “Plaintiff’s Suit” or “the lawsuit”), and which is hereinafter referred to as the “Occurrence;”

WHEREAS, PLAINTIFF has dismissed her claims against Officer Juan Rios with prejudice;

WHEREAS, the PARTIES desire to enter into this Settlement Agreement and Release to provide, among other things, for a full and final settlement and discharge of all claims, actions, and controversies of PLAINTIFF for damages, which are, could be, or could have been the object of litigation, on the terms and conditions set forth herein;

WHEREAS, it is the express intention of the PARTIES that the purpose of this Agreement is to extinguish all of the claims made by PLAINTIFF so that the PLAINTIFF is forever precluded from presenting a claim or seeking damages against DEFENDANTS, their agents, employers, employees, assigns, officers, directors or representatives, their respective insurance carriers, successors, predecessors, parent or affiliated companies, for personal injury,

Exhibit A

property damage, constitutional injury, tort injury or any other damages allegedly incurred by the Plaintiff that in any way arises out of or from the Occurrence;

WHEREAS, it is understood and agreed that this settlement and release is in full compromise of a disputed claim, and that neither this Settlement Agreement and Release, nor the payment pursuant to this Settlement shall be construed as an admission of liability.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises contained in this Settlement Agreement and Release, the parties hereby agree as follows:

1. Recitals Incorporated

The foregoing Recitals are incorporated into this Agreement and made a part hereof as though fully set forth herein.

2. PLAINTIFF'S Release

In consideration of the payment of the sum stated herein, PLAINTIFF does hereby irrevocably and unconditionally release, acquit and forever discharge Sergeant Nick Liberio, Detective Tammy Spencer (f/k/a Tammy Spencer-Hale), Detective Wojtek Kowal, Officer Juan Rios, and the City of Naperville, as well as its past, present, and future employees, agents, affiliates, parents, subsidiaries, divisions, servants, representatives, affiliates, predecessors, successors in interest, assigns, insurers, stockholders, officers, directors, underwriters, attorneys or any one of them, separately or jointly, and each member of the Naperville City Council, (hereinafter collectively called the "Released Parties"), from any and all past, present, or future charges, claims, complaints, demands, obligations, actions, promises, agreements, controversies, suits, losses, debts, claims for loss of services, comfort and society, personal injury, rights, damages, costs, expenses (including attorneys' fees and costs actually incurred), benefits, lost wages and compensations of any nature, or causes of action whatsoever, known or unknown,

expected or unexpected, including without limitation, rights arising out of alleged violations of any state or federal law, which arise from the Occurrence as plead in the Complaint, including all economic and non-economic damages, whether based in constitutional law, tort law, statute, contract or other theory of recovery, which PLAINTIFF now has, or which may hereafter accrue or otherwise be acquired, on account of, or in any way growing out of, or which are the subject of, the Occurrence, including, without limitation, any and all known or unknown claims for bodily, emotional and personal injuries to PLAINTIFF, or any future claim of PLAINTIFF's legal representatives, which have resulted or may result from the alleged acts or omissions of the Released Parties related to the Occurrence. This Release is entered into in settlement of Plaintiff's Suit based upon PLAINTIFF'S claims for damages allegedly caused by the Released Parties and is negotiated as a full and final release. This Release on the part of PLAINTIFF shall be a fully binding and complete settlement between PLAINTIFF and DEFENDANTS, and their respective assigns and successors. PLAINTIFF understands that this Release includes all claims that PLAINTIFF, PLAINTIFF'S heirs, legal representatives and assigns, may have either individually or in a representative capacity against the Released Parties arising out of the Occurrence.

3. Dismissal of Pending Lawsuit With Prejudice

In consideration of the Settlement Agreement and Release and the payment and obligations herein, it is understood and agreed that the pending lawsuit, Malia "Kim" Bendis" v. Sgt. Nick Liberio, Detective Tammy Spencer-Hale, Detective Wojtek Kowal, Officer Juan Rios, and the City of Naperville, filed in the U.S. District Court for the Northern District of Illinois, under Case Number 15-cv-720, shall be dismissed with prejudice upon receipt of the agreed upon settlement amount by Plaintiff's counsel. It is understood and agreed that this is a full and complete settlement of all controversies, actual or potential, related to the above referenced litigation by and between PLAINTIFF and the DEFENDANTS.

4. Monetary Payment

The payment of ONE HUNDRED SEVENTEEN THOUSAND FIVE HUNDRED DOLLARS (\$117,500.00) from the DEFENDANTS to PLAINTIFF under this Settlement Agreement and Release shall constitute the sole consideration to PLAINTIFF from the DEFENDANTS. The amount of \$117,500.00 is inclusive of all attorneys fees and costs and shall be payable to Malia “Kim” Bendis” and The HAMILTON LAW OFFICE, LLC, her attorney, within thirty (30) days of Plaintiff’s execution of this document. No portion of the sums set forth herein constitute exemplary or punitive damages, or interest.

5. General Release

PLAINTIFF hereby acknowledges and agrees the Release set forth in Paragraph two (2) hereof is a general release as to the Released Parties as to the Occurrence, and PLAINTIFF further expressly waives and assumes the risk of any and all claims for damages arising out of the Occurrence which exist as of this date but of which PLAINTIFF does not know or suspect to exist, whether through ignorance, oversight, error, negligence, or otherwise, and which, if known, would materially affect PLAINTIFF’s decision to enter into this Release. PLAINTIFF hereby acknowledges that the consideration received under this Release is intended to and does release and discharge the Released Parties from any and all claims for, or complications or consequences arising from the Occurrence, known and unknown.

6. Indemnification

In further consideration for the lump sum payment set forth herein, PLAINTIFF agrees to save, protect, indemnify, defend, and hold harmless the Released Parties from any liens or claims which have been filed or may be filed or asserted in the future relating to the Occurrence, including, but not limited to, any lien asserted by any attorney or law firm for legal services provided to the Plaintiff as a result of the Occurrence, or any liens filed by the Illinois state government, the

Federal government, Medicare, Medicaid, insurance companies, physicians, health care institutions for any medical care received by Plaintiff as a result of the Occurrence. PLAINTIFF acknowledges that all such claims or liens will be satisfied by PLAINTIFF. PLAINTIFF agrees to satisfy or otherwise resolve any claim, lien or subrogated interest for workers' compensation, disability, Medicare, Medicaid and other health care benefits paid or payable to the undersigned PLAINTIFF as a consequence of the Occurrence settled pursuant to this agreement.

PLAINTIFF agrees to fully satisfy and indemnify and hold the Released Parties harmless from all past, present and future rights of Medicare, including, but not limited to all penalties, liens, conditional payments, demands, and actions in law or equity arising out of the Medicare Secondary Payer Act ("MSP"), including the failure to satisfy all Medicare liens or conditional payments. PLAINTIFF acknowledges that payment of the settlement funds is conditioned upon PLAINTIFF's agreement to reimburse Medicare for any funds that Medicare would otherwise be entitled to recover under the Medicare Secondary Payer Act.

PLAINTIFF agrees to indemnify and hold harmless and defend the Released Parties from any cause of action, including, but not limited to any loss of Medicare or Social Security benefits, or any recovery the Centers for Medicare and Medicaid Services may pursue, including any recovery sought by Medicare for past, present and future liens or conditional payments. PLAINTIFF also agrees to release any right to bring any possible future action under the MSP against the Released Parties. Should Medicare require that it be reimbursed for any past, present or future medical expenses which it has paid for PLAINTIFF's medical treatment which is related to any occurrence-related injury, PLAINTIFF agrees to be solely responsible for same.

7. Fees and Costs of Pending Lawsuit

The payment by DEFENDANTS to PLAINTIFF of \$117,500.00 shall be inclusive of all costs and fees as a result of PLAINTIFF's lawsuit, including attorneys' fees and court costs.

8. Court Approval

This Agreement is not subject to approval by the court and shall be effective on the date contained herein.

9. Law Applicable

This Agreement shall in all respects be subject to and construed in accordance with and governed by the laws of the State of Illinois. Venue for any action arising out of the terms or conditions of this Agreement shall be proper only in the U.S. District Court for the Northern District of Illinois.

10. Non-Admission of Liability

This Agreement shall not in any way be construed as an admission by the DEFENDANTS, the Released Parties, or any of their officers, agents, or employees, that they have acted wrongfully with respect to PLAINTIFF or any other person. The DEFENDANTS and the Released Parties specifically disclaim any liability to or wrongful acts against PLAINTIFF or any other person, on the part of themselves, and the City of Naperville's employees or agents.

11. Agreement Inadmissible

This Agreement may not be used as evidence in any subsequent proceeding of any kind, except one in which any of the parties allege a breach of this Agreement.

12. Entire Agreement and Successors in Interest

PLAINTIFF acknowledges this Settlement Agreement and Release is the entire agreement and encompasses all terms and agreements negotiated by her in settlement of any and all claims relating to the Occurrence and that there is no other writing whatsoever. This Settlement Agreement and Release shall be binding upon and inure to the benefit of the executors, administrators, personal representatives, heirs, successors and assigns of PLAINTIFF. The parties

agree that the terms of the Settlement Agreement and Release are contractual and are not mere recitals.

13. Reliance By PLAINTIFF

This Settlement Agreement and Release has been negotiated by PLAINTIFF, in consultation with her attorney. PLAINTIFF warrants, represents, and agrees that PLAINTIFF is not relying on the advice of DEFENDANTS, DEFENDANTS' counsel, or anyone associated with DEFENDANTS as to the legal and income tax consequences of any kind arising out of this Settlement Agreement and Release. No representations have been made by DEFENDANTS regarding the taxability of all or any portion of this settlement. The City of Naperville will issue a 1099 to The Hamilton Law Office, and not to PLAINTIFF directly, however. PLAINTIFF accepts responsibility for satisfaction of any tax obligation that may result from this settlement.

Accordingly, PLAINTIFF hereby releases and forever holds harmless DEFENDANTS, the Released Parties, any and all counsel or consultants thereof, for any claim, cause of action, or other rights of any kind which PLAINTIFF may assert because legal, income tax, or other consequences of this Settlement Agreement and Release are other than those anticipated by PLAINTIFF.

14. Warranty of Capacity to Execute Agreement

PLAINTIFF represents and warrants that no other person or entity has or has had any interest in the claims, demands, obligations, or causes of action referred to in this Settlement Agreement and Release, except as otherwise set forth herein, that she has the sole right and exclusive authority to execute this Settlement Agreement and Release and receive the sums specified herein, and that she has not sold, assigned, transferred, conveyed or otherwise disposed of any of the claims, demands, obligations, or causes of action referred to in this Settlement Agreement and Release.

15. Representation of Comprehension of Document

PLAINTIFF represents PLAINTIFF has at all times been afforded the opportunity to consult with counsel of PLAINTIFF's choice concerning every aspect of this Settlement Agreement and Release. PLAINTIFF has neither sought nor obtained legal advice from DEFENDANTS' counsel concerning any aspect of PLAINTIFF's Suit or this Settlement Agreement and Release. PLAINTIFF represents that PLAINTIFF has completely read and understand all terms of this Settlement Agreement and Release and that she executes this Settlement Agreement and Release voluntarily with full knowledge of its significance and consequences.

16. Future Cooperation

PLAINTIFF agrees to cooperate fully, to execute any and all supplementary documents, and to take additional actions that may be necessary or appropriate to give full force and effect to the terms of this Settlement Agreement and Release which are not inconsistent with its terms.

17. Severability

The provisions of this Agreement are severable and if any of its provisions are found to be unenforceable, the other provisions shall remain fully valid and enforceable. This Agreement shall survive the termination of any arrangements contained herein.

18. Effect of Signature

By signing this Settlement Agreement and Release, PLAINTIFF affirms that she has read and fully understands this Agreement and its provisions, in consultation with her attorney, and fully intends to be bound by the terms of this Agreement.

19. Execution in Counterparts

This Agreement may be executed in counterpart and a photocopy shall have the same force and effect as the original.

20. Effectiveness

This Settlement Agreement and Release shall become effective upon execution by PLAINTIFF on the attached, notarized signature page.

IN WITNESS WHEREOF, the parties have agreed to the above terms and have authorized signature as set forth below.

CITY OF NAPERVILLE

MALIA "KIM BENDIS

By: Douglas Krieger
City Manager

By: Malia "Kim" Bendis

ATTEST:

Subscribed and sworn to before me this
_____ day of September, 2015

By: Pamela LaFeber
City Clerk

APPROVED:

TORREYA L. HAMILTON
Plaintiff's Attorney