

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

FRANCES REITZ,)	
)	Case No. 2015-CV-01854
Plaintiff,)	
)	Judge Sharon Johnson-Coleman
v.)	
)	
OFFICER MARTIN CREIGHTON, #5119,)	
SERGEANT ROBERT LEE, OFFICER)	
VINCENT CLARK, and the CITY OF)	
NAPERVILLE,)	
)	
Defendants.)	

SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT AGREEMENT AND RELEASE is hereby entered into as of the 23rd day of January 2020, by and between FRANCES REITZ ("PLAINTIFF") and THE CITY OF NAPERVILLE, ("DEFENDANT"); collectively referred to as the "PARTIES."

RECITALS

WHEREAS, PLAINTIFF has alleged that she sustained damages as a result of the conduct of DEFENDANT, which is described in the Complaint in the litigation filed in U.S. District Court for the Northern District of Illinois, Frances Reitz v. The City of Naperville, and Naperville Police Officers Martin Creighton, Robert Lee, and Vincent Clark, as Case No. 2015-CV-01854, (hereinafter called "Plaintiff's Suit" or "the lawsuit"), and which is hereinafter referred to as the "Occurrence;"

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 DEFENDANT, its agents, employers, employees, assigns, officers, directors or representatives, their respective insurance carriers, successors, predecessors, parent or affiliated companies, for personal injury, property damage, constitutional injury, tort injury or any other damages allegedly sustained by the Plaintiff that in any way arise 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 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 Plaintiffs 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 DEFENDANT, 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, Frances Reitz v. The

City of Naperville, filed in the U.S. District Court for the Northern District of Illinois, under Case Number 2015-CV-1854, shall be dismissed with prejudice upon confirmation that this settlement has been approved by the City of Naperville City Council. 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 DEFENDANT. Plaintiff shall also agree to the dismissal of Naperville Police Officers Martin Creighton, Robert Lee, and Vincent Clark, with prejudice and without costs or attorneys' fees for any party, prior to and as a condition of settlement with the Defendant City of Naperville. It is understood by the parties that the dismissed individual Defendants are made a part of this Release to the full extent PLAINTIFF has agreed to release the City of Naperville as set forth in paragraph 2.

4. Monetary Payment

The payment of FOUR HUNDRED THIRTY THOUSAND DOLLARS AND ZERO CENTS (\$430,000) from the City of Naperville to PLAINTIFF under this Settlement Agreement and Release shall constitute the sole consideration to PLAINTIFF from the DEFENDANT. The amount of \$430,000 is inclusive of all attorneys' fees and costs and shall be payable to FRANCES REITZ and THE BLAKE HORWITZ LAW FIRM, LLC, her attorneys, within thirty (30) days after the City of Naperville has formally approved the settlement. 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 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.

PLAINTIFF will not pay any costs and/or attorney fees in conjunction with this paragraph to any Defendant for any reason.

7. Non-Disparagement

Upon execution of this Agreement, Francis Reitz agrees that she will never at any time make any disparaging remarks to members of the press or to any third party about either the litigation or Martin Creighton, Robert Lee, Vincent Clark and any other City of Naperville employee which could negatively impact any such individual's reputation or employment.

Upon execution of this Agreement, Martin Creighton, Robert Lee, Vincent Clark, and any official spokesperson for the City of Naperville agree that they will never at any time make any disparaging remarks about either the litigation or Frances Reitz to members of the press or to any third party which could negatively impact her reputation or employment.

The parties reserve the right to seek damages for any alleged violation of this provision but understand that any material breach of this paragraph, if proven through subsequent litigation, would not repudiate the entire agreement.

8. Fees and Costs of Pending Lawsuit

The payment by the City of Naperville to PLAINTIFF and his attorney of \$430,000.00 shall be inclusive of all costs and fees as a result of PLAINTIFF's lawsuit, including attorneys' fees and court costs.

9. Court Approval

This Agreement is not subject to approval by the court and shall be effective pending final approval by the City of Naperville City Council at its regularly scheduled meeting on February 4, 2020. Should the City Council be unable to vote on this agreement at the February 4 meeting, it will then vote at its next scheduled meeting on February 18, and the City of Naperville acknowledges that it will take all reasonable steps necessary to still have the settlement check delivered to Plaintiff's counsel by March 5, 2020.

10. 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.

11. Non-Admission of Liability

This Agreement shall not in any way be construed as an admission by the DEFENDANT, 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 DEFENDANT 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.

12. 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.

13. 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 attorney 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.

14. 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 DEFENDANT, DEFENDANT'S counsel, or anyone associated with DEFENDANT 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 DEFENDANT regarding the taxability of all or any portion of this settlement. The City of Naperville will issue a 1099 to THE BLAKE HORWITZ LAW FIRM, LLC, 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 DEFENDANT, 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.

15. 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.

16. 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 DEFENDANT'S 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.

17. 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.

18. Agreement of Parties to Destroy and Return all HIPAA Mental Health Records of Plaintiff

Defendants shall destroy all documents and materials (depositions, documents, paperwork, notes) which relate to the mental health of the plaintiff. Defense counsel shall tender an affidavit to Plaintiff, within 15 days of the signing of this release, establishing that all documents shall be destroyed. All Defendants are prohibited from speaking to and/or discussing with a non-party, the mental health status of the Plaintiff.

Defendants shall cooperate with Plaintiff and not object to any request made by Plaintiff to remove mental health references from the public record. The decision to remove mental health references from the public record shall be left to the presiding Judge.

19. 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.

20. 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.


21. Execution in Counterparts

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

22. 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.


FRANCES REITZ

DATE: 1.24.2020


BLAKE HOROWITZ
Attorney for Plaintiff

DATE:


JOHN J. TIMBO
Attorney for Defendant City of Naperville

DATE: 1-24-2020


MICHAEL DISANTO
Attorney for Defendant City of Naperville

DATE: