

SETTLEMENT AGREEMENT

This Settlement Agreement concerning *Houle v. City of Duluth, et al.*, Federal District of Minnesota Case No. 23-cv-528 (WMW/LIB) (the “Action”) is entered into by and among Plaintiff Brandon Houle (“Houle,” or “Plaintiff”) and Defendants Morgan Cekalla (“Cekalla”), Beau Hughes (“Hughes”), Adam Huot (“Huot”), in their individual and official capacities, and the City of Duluth (the “City”), with Plaintiff and Defendants collectively referred to herein as the “Parties,” as of the latest date shown on the signature pages below.

WHEREAS, on or about March 5, 2023, Houle commenced the Action in the Federal District Court for the District of Minnesota (the “Court”); and

WHEREAS, as a result of settlement negotiations, the Parties agree to resolve the Action and any potential future action arising from the facts and circumstances alleged in the Action;

NOW, THEREFORE, the Parties, desiring fully and finally to settle the Action and any other claims, known or unknown, that Plaintiff may have against Defendants and parties known or unknown, including employees or agents of the City, arising from the facts alleged in the Action, and in consideration of the promises and covenants hereinafter contained, and intending to be legally bound, agree as follows:

1. **Dismissal of claims against Cekalla, Hughes, and Huot.** Within 10 days of the effective date of this Settlement Agreement, the Parties, through their respective counsel, shall execute, and Houle shall file with the Court a stipulation for dismissal and proposed order dismissing Cekalla, Hughes, and Huot, in their individual and official capacities, from the Action. A form of stipulation and proposed order are attached hereto as Exhibits A and B, respectively.

2. **Release of all claims.** Plaintiff provides a full, final, and general release of all claims, known or unknown, against the Defendants and all parties, known or unknown (collectively, the “Released Parties”), arising out of the facts and circumstances alleged in the Action, including any state tort claim, state or federal statutory claim, civil rights claim, 42 U.S.C. § 1983 claim, punitive damages claim, claims for costs, expenses, interest, attorney’s fees under Minn. Stat. § 549.211 or 42 U.S.C. § 1988. It is specifically understood and agreed this Settlement Agreement includes the release and discharge of any and all unnamed potential tortfeasors, and Houle accepts the compensation stipulated to in this Agreement in full satisfaction of any and all injuries and/or damages which have heretofore arisen or which may hereafter arise.

3. **No admission of liability or wrongdoing.** There is no admission of liability or wrongdoing by any Party, and all Parties understand that this settlement represents a mutual agreement to resolve disputed claims and to buy present and future peace as between the Parties on any matter covered by the foregoing releases.

4. **Dismissal of Action.** Within 10 days of entry of the Court's order of dismissal as to Cekalla, Hughes, and Huot, referenced in Paragraph 1, above, Houle and the City, through their respective counsel, shall execute, and Houle shall file with the Court a stipulation for dismissal and proposed order dismissing the Action, with prejudice. A form of stipulation and proposed order are attached hereto as Exhibits C and D, respectively.

5. **Settlement payment.** Counsel for Plaintiff shall provide counsel for the City with payee information and any necessary tax identification information. Within 20 days of the later of (a) receipt of such payee and tax information or (b) the Court's entry of the order of dismissal as to Cekalla, Hughes, and Huot, referenced in Paragraph 1, above, the City shall make a settlement payment to Plaintiff in the amount of ninety thousand dollars (\$90,000.00). Payment shall be made by one check drafted to "The Law Office of Zorislav R. Leyderman IOLTA Trust."

6. **Attorneys' fees and costs.** Each Party shall be responsible for its own fees and costs related to the Action. Houle specifically represents and warrants there are no attorneys' liens served, filed, or noticed with regard to this cause of action or the proceeds related to this cause of action, and the only attorney who is entitled to any payment from the proceeds of this settlement is Zorislav Leyderman.

7. **Liens.** Houle specifically represents and warrants all medical, hospital, and other expenses arising out of the aforementioned incident have been paid or will be paid out of the proceeds of this settlement.

Houle agrees to fully satisfy, indemnify, and hold the Released Parties harmless from any and all penalties, liens, conditional payments, demands, and actions in law or equity, or other payments that may be required if Houle's representations as to his entitlement (or lack thereof) to Medicare or Social Security benefits is in any way misrepresented. Further, the Parties acknowledge this case may be reportable under the SCHIP law and Houle will cooperate with the Released Parties so they may fulfill all reporting requirements.

Houle specifically represents and warrants no person, firm, corporation, governmental entity or other entity has any right to proceed by way of subrogation, enforcement of a lien or otherwise against the party hereby released.

Houle hereby agrees to indemnify and hold harmless the Released Parties from any liability whatsoever to any person, firm or corporation beyond the consideration already paid as a part of this release, including, without limitation, liability for claims of negligence, constitutional claims, breach of contract, fraud, misrepresentation, strict liability and/or breach of express or implied warranty and/or actions for enforcement of any liens and including, without limitation, any subrogation claim and/or lien enforcement claim arising from payment of any insurance benefits, Medicare payments, medical assistance claim, or otherwise, which may now exist or hereafter arise by reason of the matters referred to in the Amended Complaint or other pleadings in the above entitled matter. It is agreed all liens or any statutory obligation will be satisfied by the proceeds of this settlement.

Houle agrees to consider the interests of Medicare pursuant to 42 U.S.C. § 1395y(b)(2) and its associated regulations. Houle further agrees to hold harmless the Released Parties should Houle fail to reimburse Medicare for conditional payments, and to indemnify the Released Parties from any and all injury related obligation/Medicare rights (past, present and future) arising out of 42 U.S.C. § 1395y(b)(2) and its associated regulations, including but not limited to Medicare's attorney's fees, if any are permitted under the statute. Houle also agrees to satisfy all subrogation and lien interests of Medicare/Medicaid (Minnesota Medical Assistance).

8. **Acknowledgements.**

a. The Parties each represent that they have read and understand this Settlement Agreement, that they have had the opportunity to review and discuss this Settlement Agreement with their respective counsel, and that they intend to be bound by the terms of this Settlement Agreement.

b. The Parties each represent that they enter into and execute this Settlement Agreement voluntarily and without any duress or undue influence on the part of, or on behalf of, any Party.

c. All Parties and their respective counsel participated in negotiating and drafting this Agreement. For all purposes, this Agreement shall be deemed to have been drafted jointly by all of the Parties, with no presumption in favor of one Party over another in the event of any ambiguity.

9. **Counterparts.** This Settlement Agreement may be executed by the Parties in any number of counterparts, each of which shall be deemed to be an original and all of which, collectively, shall be deemed to be one and the same instrument.

10. **Integration clause.** This Settlement Agreement contains the entire agreement between and among the Parties hereto, and supersedes all prior and contemporaneous discussions, negotiations, understandings, and agreements, whether oral or written, express or implied, between or among them relating to the subject matter of this Settlement Agreement. This Settlement Agreement may not be amended orally, and no purported oral amendment, even if accompanied by partial or complete performance, shall be of any legal force or effect or constitute an amendment of this Settlement Agreement. This Settlement Agreement may only be amended in writing signed by all Parties.

IN WITNESS WHEREOF, each of the Parties has executed this Settlement Agreement on the date set forth opposite his, her, or its name below. **The undersigned hereby certify that they have read and fully understand all of the terms, provision, and conditions of this Settlement Agreement, and have executed this Settlement Agreement voluntarily.**

PLAINTIFF



Brandon Houle

02 / 07 / 2024
Date: _____

DEFENDANTS

Morgan Cekalla

Date: _____

Beau Hughes

Date: _____

Adam Huot

Date: _____

CITY OF DULUTH

By: _____
Mayor

Date: _____

Attest: _____
City Clerk

Date: _____

Countersigned: _____
City Auditor

Date: _____

Approved as to form: _____
City Attorney

Date: _____

Exhibit A

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Brandon Houle,

Case No. 23-CV-00528-WMW/LIB

Plaintiff,

vs.

City of Duluth; and Officers Adam Huot,
Morgan Cekalla, and Beau Hughes, in
their individual and official capacities,

Defendants.

**STIPULATION FOR DISMISSAL OF DEFENDANTS ADAM HUOT, MORGAN
CEKALLA, AND BEAU HUGHES**

The undersigned attorneys hereby advise the Court that all claims by Plaintiff Brandon Houle against Defendants Morgan Cekalla, Beau Hughes, and Adam Huot, in their individual and official capacities, in the above-entitled case of action are hereby dismissed with prejudice.

IT IS HEREBY STIPULATED BY AND BETWEEN Plaintiff Brandon Houle and Defendants City of Duluth and Morgan Cekalla, Beau Hughes, and Adam Huot, in their individual and official capacities, by and through their respective undersigned counsel, that Plaintiff's claims against Morgan Cekalla, Beau Hughes, and Adam Huot, in their individual and official capacities, are hereby dismissed with prejudice.

Plaintiff specifically acknowledges this dismissal is voluntarily entered into, and further that no payment or separate consideration is being paid for entering into this dismissal from or on behalf of Morgan Cekalla, Beau Hughes, or Adam Huot. The

parties also agree that no costs or disbursements or attorney's fees, including attorney's fees pursuant to 42 U.S.C. § 1988 will be sought, recovered, or paid by Plaintiff or the dismissed Defendants.

The undersigned hereby pray for an Order of the Court dismissing all claims against Defendants Morgan Cekalla, Beau Hughes, and Adam Huot, in their individual and official capacities.

IT IS FURTHER STIPULATED that, without further notice, all of Plaintiff's claims against Morgan Cekalla, Beau Hughes, and Adam Huot, in their individual and official capacities, are dismissed on the merits and with prejudice, without costs or disbursements or attorneys' fees to any party.

Dated:

/s/
Zorislav R. Leyderman, (#0391286)
The Law Office of Zorislav R. Leyderman
222 South 9th Street, Suite 1600
Minneapolis, MN 55402
zrl@ZRLlaw.com
Telephone: 612-470-7179
Attorney for Plaintiff Brandon Houle

Dated:

JESSICA J. FRALICH, City Attorney

and

/s/

ELIZABETH SELLERS TABOR (#0395652)

Assistant City Attorney

411 West First Street, Rm. 440

Duluth, MN 55802

etabor@duluthmn.gov

Telephone: 218-730-5281

*Attorneys for Defendants City of Duluth,
Officers Morgan Cekalla and Beau Hughes in
their individual and official capacities and
Officer Adam Huot in his official capacity*

Dated:

/s/

STEPHANIE A. ANGOLKAR (#388336)

9321 Ensign Avenue South

Bloomington, MN 55438

stephanie@iversonlaw.com

Telephone: 952-548-7200

*Attorney for Defendant Officer Adam Huot in
his individual capacity*

Exhibit B

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Brandon Houle,

Case No. 23-CV-00528-WMW/LIB

Plaintiff,

vs.

City of Duluth; and Officers Adam Huot,
Morgan Cekalla, and Beau Hughes, in
their individual and official capacities,

Defendants.

PROPOSED ORDER

Based upon the stipulation of dismissal of Defendants Morgan Cekalla, Beau Hughes, and Adam Huot, in their individual and official capacities (Doc. ____), and all the files, records, and proceedings herein,

IT IS HEREBY ORDERED that Defendants Morgan Cekalla, Beau Hughes, and Adam Huot, in their individual and official capacities, are dismissed with prejudice, and without costs, disbursements, or attorney's fees to any party.

Dated this ____ day of _____, 2024.

BY THE COURT:

Honorable Wilhelmina M. Wright
United States District Court

Exhibit C

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Brandon Houle,

Case No. 23-CV-00528-WMW/LIB

Plaintiff,

vs.

City of Duluth; and Officers Adam Huot,
Morgan Cekalla, and Beau Hughes, in
their individual and official capacities,

Defendants.

STIPULATION FOR DISMISSAL WITH PREJUDICE

Defendants Morgan Cekalla, Beau Hughes, and Adam Huot, in their individual and official capacities, having previously been dismissed from the action, Plaintiff Brandon Houle and sole remaining Defendant City of Duluth stipulate that this action is dismissed with prejudice.

Dated:

/s/
Zorislav R. Leyderman, (#0391286)
The Law Office of Zorislav R. Leyderman
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Minneapolis, MN 55402
zrl@ZRLlaw.com
Telephone: 612-470-7179
Attorney for Plaintiff Brandon Houle

Dated:

JESSICA J. FRALICH, City Attorney

and

/s/

ELIZABETH SELLERS TABOR (#0395652)

Assistant City Attorney

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Telephone: 218-730-5281

Attorneys for Defendant City of Duluth

Exhibit D

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Brandon Houle,

Case No. 23-CV-00528-WMW/LIB

Plaintiff,

vs.

City of Duluth; and Officers Adam Huot,
Morgan Cekalla, and Beau Hughes, in
their individual and official capacities,

Defendants.

PROPOSED ORDER

Based upon the Parties' Stipulation for Dismissal (Doc. ___), and all the files,
records, and proceedings herein,

IT IS HEREBY ORDERED that the action is dismissed with prejudice, and
without costs, disbursements, or attorney's fees to any party.

Dated this ____ day of _____, 2024.

BY THE COURT:

Honorable Wilhelmina M. Wright
United States District Court