

EXHIBIT 1

SETTLEMENT AGREEMENT AND FULL AND FINAL RELEASE OF CLAIMS

This Settlement Agreement and Full and Final Release of Claims (“Agreement”) is entered into by Aaron Kirk and Amy Kirk (on behalf of themselves and their minor daughter, Ruby Kirk), Grace Kirk, Sara Schutte, the City of Duluth, and the City of Duluth’s current and former employees and officials. Aaron Kirk, Amy Kirk, Grace Kirk, and Ruby Kirk by and through her parents Aaron Kirk and Amy Kirk, are collectively referred to as “Releasers.” Sara Schutte, the City of Duluth, and the City of Duluth’s current and former employees are collectively referred to as “Released Parties.” Agreement will be effective immediately upon the signatures of all parties.

WHEREAS, on or about June 12, 2023, Aaron Kirk and Amy Kirk filed a complaint in the United States District Court for the District of Minnesota against the City of Duluth, several current and former employees and officials of the City of Duluth including Sara Schutte, and Dustin James Turcotte, Case No. 23-CV-1758 (PJS/LIB) (“the Lawsuit”); and

WHEREAS, on January 5, 2024, the Clerk of Court entered an order of default against Dustin James Turcotte based on his failure to appear or to answer or otherwise plead (Doc. 38); and

WHEREAS, on March 13, 2024, Chief Judge Patrick J. Schiltz issued an order that dismissed all claims asserted in the Lawsuit against the City of Duluth and all named individual current and former employees and officials, except the claims in Count VI against Sara Schutte in her individual capacity and Releasers’ separate claims, in Count VII, against Dustin James Turcotte (Doc. 39); and

WHEREAS, Sara Schutte answered the complaint in the Lawsuit and denied all liability (Doc. 41); and

WHEREAS, the parties to this Agreement, in order to avoid the costs, burdens, and uncertainties of litigation, now wish to settle and resolve their dispute with finality.

NOW THEREFORE, in consideration of the promises, agreements, covenants, and provisions contained in this Agreement, the parties state and affirm their agreement as follows:

1. **Release of all claims.** Releasers, on behalf of themselves, their children, heirs, successors, and assigns, hereby fully and finally release the Released Parties, from any and all claims, causes of action, and damages, of any kind or nature whatsoever, known or unknown, that were asserted in the Lawsuit or that could have been asserted in the Lawsuit, relating to or arising out of in any way the events described in the Lawsuit, including but not limited to all claims for damages, injunctive relief, attorneys’ fees, costs, and other relief of any kind.

2. **Settlement Payment.** As consideration for this release, the City of Duluth shall make a single, lump-sum payment by and through counsel for Plaintiffs in the amount of \$135,000.00 (“the Settlement Payment”). Releasors acknowledge, agree, and represent that the purpose of this Agreement is to buy peace from further dispute and controversy, and the consideration herein may or may not fully compensate for alleged losses, recovery of interest, attorney fees, or costs and disbursements. The City shall make the Settlement Payment by check payable to: “Bradford Andresen Norrie & Camarotto IOLTA account” within thirty calendar days of the later of (a) receipt of payee information and any necessary tax identification information from Counsel for the Kirks and (b) the Court’s Order approving the settlement.
3. **No Effect on Pending Claims against Turcotte.** Neither the releases set forth herein, nor any other terms of this Agreement, are intended to release the Releasors’ separate claims against Dustin James Turcotte, which claims are expressly preserved and remain pending against Turcotte only. Releasors reserve the right to pursue and prosecute those claims and may collect all damages to which they are legally entitled from Turcotte. Releasors intend to release and bar any claim by any other party against the Released Parties only, and further intend that this Agreement be construed as a *Pierringer* release pursuant to *Pierringer v. Hoger*, 124 N.W.2d 106 (Wis. 1963) and *Frey v. Snellgrove*, 269 N.W.2d 918 (Minn. 1978).
4. **No Further Action or Appeal.** As further consideration for the Settlement Payment, Releasors agree that they will not commence or initiate any further action against the City with respect to the released claims, whether asserted directly or on behalf of their children, and specifically agree not to initiate an appeal from the district court’s order on the motion to dismiss in the Lawsuit (Doc. 39).
5. **No Admission of Liability or Wrongdoing.** The Released Parties deny all liability, wrongdoing, and culpability in the Lawsuit. The parties understand and agree that this Agreement is entered into as a compromise of all claims and disputes, and is not intended to be, nor shall it be construed as, an admission of any liability, fault, or wrongdoing by any individual, party, or entity.
6. **Dismissal of Action.** The Parties, through their respective counsel, shall execute, and Plaintiffs shall file with the Court, a stipulation for dismissal and proposed order dismissing the Action, with prejudice and without costs, upon receipt of the Court’s Order approving the settlement. The form of the stipulation and proposed order to be filed are attached hereto as Exhibits A and B, respectively.
7. **No Tax Representations.** No party has made any representations to the other concerning any tax implications of entering into this Agreement. The parties acknowledge that they may seek independent tax advice. Releasors acknowledge and agree that, should the consideration set forth above, or any part thereof, be

subject to any taxes, penalties, or interest, Releasors and/or their counsel shall be solely responsible for all such taxes, penalties, or interest.

8. **Liens and Subrogation.** Releasors specifically represent and warrant that all medical, hospital, and other expenses, if any, arising out of the Action have been paid or will be paid out of the proceeds of this settlement. Releasors specifically represent and warrant 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 Released Parties. The Releasors agree the Released Parties are not responsible for any medical, hospital, or other expenses or any subrogation, lien or other claim arising out of the aforementioned incident. Releasors agree they will satisfy all other liens or any statutory obligations by the proceeds of this settlement. Releasors hereby agree to indemnify and hold harmless the Released Parties from any and all lien enforcement, statutory obligation, and subrogation claims arising from or related to the Lawsuit.

Releasors specifically represent and warrant 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 attorneys who are entitled to any payment from the proceeds of this settlement are the Law Offices of Phillip F. Fishman and Bradford Andresen Norrie & Camarotto. Each Party shall be responsible for its own fees and costs related to the Action.

Releasors specifically represent that they are ineligible at this time for Medicare, Medicaid, Social Security, and Social Security Disability payments. Releasors agree to consider the interests of Medicare pursuant to 42 U.S.C. § 1395y(b)(2) and its associated regulations. Releasors further agree to indemnify and hold harmless the Released Parties from any and all claims asserted by Medicare, Medicaid, Social Security for conditional payments, medical assistance, or any claim (past, present and future), including all rights 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. Releasors also agree to satisfy all subrogation and lien interests of Medicare/Medicaid (Minnesota Medical Assistance). Releasors agree 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 Releasors 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 the Releasors will cooperate with the Released Parties so they may fulfill all reporting requirements.

9. **Voluntary Settlement.** The parties represent and agree that they have thoroughly discussed all aspects of this Agreement with attorneys of their choosing, that they have carefully read and fully understand all of the provisions of this Agreement, and that they are knowingly and voluntarily entering into this Agreement. All

parties and their respective counsel participated in negotiating and drafting this Agreement and had a reasonable period of time within which to consider 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. Each party represents that they enter into and execute this Settlement Agreement without any duress or undue influence on the part of, or on behalf of, any party.

10. **Binding Upon Successors and Assigns.** This Agreement shall be binding upon the parties and their heirs, administrators, representatives, executors, successors, and assigns.
11. **Governing Law.** This Agreement shall be interpreted, enforced, and governed under the laws of the State of Minnesota without regard to its choice of law rules or principles. The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any of the parties. All parties have been involved in drafting this Agreement.
12. **Severability.** Should any provision of this Agreement be declared or be determined by any court to be illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected thereby and said illegal or invalid part, term, or provision shall be deemed not to be a part of this Agreement.
13. **Entire Understanding.** This Agreement sets forth the entire agreement between the parties, and fully supersedes any and all prior agreements or understandings between the parties hereto pertaining to the subject matter hereof. 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 Agreement may not be modified or changed except in a writing signed by both parties.
14. **Execution.** This Agreement may be executed in counterparts, including electronic and PDF counterparts.

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.**

So agreed:

Date: _____

Aaron Kirk (on behalf of himself and his minor daughter, Ruby Kirk)

Date: _____

Amy Kirk

Date: _____

Grace Kirk

Approved as to form:

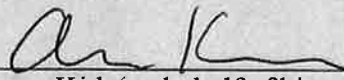
Date: _____

Counsel for Releasors

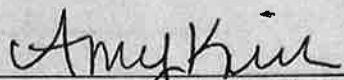
of this Settlement Agreement, and have executed this Settlement Agreement voluntarily.

So agreed:

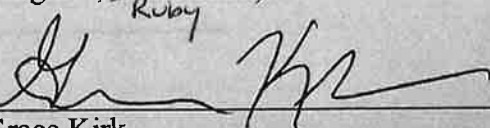
Date: 7-16-2024


Aaron Kirk (on behalf of himself and his minor daughter, Ruby Kirk)

Date: 7-16-2024



Amy Kirk (on behalf of herself and her minor daughter, ~~Grace~~ Ruby Kirk)

Date: 7-16-2024


Grace Kirk

Approved as to form:

Date: 7/23/24


Counsel for Releasors

RELEASED PARTIES

Date: _____
Sara Schutte

City of Duluth

By: _____ Date: _____
Mayor

Attest: _____ Date: _____
City Clerk

Countersigned: _____ Date: _____
City Auditor

Approved as to form:

_____ Date: _____
City Attorney

(end of document)

Exhibit A

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Aaron Kirk and Amy Kirk,

File No.: 0:23-cv-1758-PJS-LIB

Plaintiffs,

vs.

Sara Schutte and Dustin James Turcotte,

Defendants.

STIPULATION FOR DISMISSAL OF DEFENDANT SARA SCHUTTE

The undersigned attorneys hereby advise the Court that all claims by Plaintiffs Aaron Kirk and Amy Kirk against Defendant Sara Schutte, in her individual and official capacity, in the above-entitled case of action are hereby dismissed with prejudice.

IT IS HEREBY STIPULATED BY AND BETWEEN Plaintiffs Aaron Kirk and Amy Kirk and Defendant Sara Schutte, in her individual and official capacity, by and through their respective undersigned counsel, that Plaintiffs' claims against Sara Schutte, in her individual and official capacity, are hereby dismissed with prejudice.

Plaintiffs specifically acknowledge 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 Sara Schutte. The parties also agree that no costs or disbursements or attorneys' fees, including attorneys' fees pursuant to 42 U.S.C. § 1988 will be sought, recovered, or paid by Plaintiffs or the dismissed Defendant.

The undersigned hereby pray for an Order of the Court dismissing all claims against Defendant Sara Schutte, in her individual and official capacity.

IT IS FURTHER STIPULATED that, without further notice, all of Plaintiffs' claims against Defendant Sara Schutte, in her individual and official capacity, are dismissed on the merits and with prejudice, without costs or disbursements or attorneys' fees to any party.

Dated:

BRADFORD ANDERSEN NORRIE &
CAMAROTTO

s/
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Attorneys for Plaintiffs

Dated:

JESSICA J. FRALICH, City Attorney

and

s/ _____

ELIZABETH SELLERS TABOR (#0395652)

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etabor@duluthmn.gov

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Duluth, MN 55802

Telephone: 218-730-5281

Attorneys for Defendant Sara Schutte

Exhibit B

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Aaron Kirk and Amy Kirk,

File No.: 0:23-cv-1758-PJS-LIB

Plaintiffs,

vs.

Sara Schutte and Dustin James Turcotte,

Defendants.

PROPOSED ORDER

Based upon the stipulation of dismissal of Defendant Sara Schutte, in her individual and official capacity (Doc. ____), and all the files, records, and proceedings herein,

IT IS HEREBY ORDERED that Defendant Sara Schutte, in her individual and official capacity, is dismissed with prejudice, and without costs, disbursements, or attorneys' fees to any party.

Dated this ____ day of _____, 2024.

BY THE COURT:

Honorable Patrick J. Schiltz
United States District Court