

## SETTLEMENT AGREEMENT AND RELEASE

I, Antoine Tolbert ("RELEASOR" or "Plaintiff"), for the sole consideration of \$55,000.00 (Fifty-Five Thousand Dollars and No Cents) ("Settlement Sum") to be paid in accordance with the terms of this Settlement Agreement and Release (the "Agreement"), do hereby for myself and for my heirs, executors, administrators, attorneys, successors and assigns release, acquit and forever discharge Sgt. Lance Henderson, the City of Cleveland, the Cleveland Division of Police, and any and all of their agents, servants, successors, heirs, executors, administrators, employees, officers, directors, attorneys, affiliated entities, parents, subsidiaries, insurance carriers, shareholders, firms, predecessors and successors in interest (referred to collectively as the "RELEASEES"), of and from any and all claims, actions, causes of action, liens or conditional payments, demands, rights, damages, costs, loss of service, expense and compensation whatsoever of every name and nature, known or unknown, which the RELEASOR now has or which may hereafter accrue on account of or in any way growing out of any and all known and unknown, foreseen or unforeseen bodily and personal injuries, illnesses, loss of services and consortium, expenses (including medical), pain, suffering, mental anguish, and other damages which are the subject of the Complaint filed in the United States District Court for the Northern District of Ohio Case No. 1:22-cv-01489-DAP, captioned *Antoine Tolbert v. City of Cleveland* (hereafter "the Litigation").

### TERMS AND CONDITIONS

1. **Release.** For the consideration provided by RELEASEES in this Agreement, RELEASOR will dismiss with prejudice all claims in the Litigation including those claims that were previously dismissed either voluntarily or by court order, and herein release RELEASEES, both individually and in their official capacity, from all claims, liabilities, actions, allegations, and damages of any kind, both known and unknown to RELEASOR, that he now has/have or may have in the future against RELEASEES arising from the incidents and claims that were or could have been included in the Litigation.

2. RELEASOR further stipulates and agrees that he is responsible for payment of all outstanding and future bills relating to medical and prescription drug items or services associated with injuries or illnesses arising from or relating to the events and/or any injuries forming the basis of the claims asserted by him in the Litigation and will indemnify and hold harmless RELEASEES from any and all claims, demands, liens, subrogated interests, and causes of action of any nature or character that have been or may in the future be asserted by Medicaid, Medicare,

Cuyahoga County Job and Family Services, or any other governmental or private entity or person, arising from or related to this Agreement regarding the payment of the Settlement Sum, any conditional payments, or any medical expenses or payments arising from or related to any claims that are subject to this Agreement or the release set forth herein. Further, RELEASOR stipulates and agrees that he is releasing any claim for attorney's fees and litigation costs subject to the other terms of this Agreement. This release includes any claim for attorney's fees and litigation costs by previous counsel for RELEASOR as well as current counsel.

3. RELEASOR expressly waives and assumes the risk of all damages and losses which exist as of this date, but of which the undersigned does not know or suspect to exist, whether through ignorance, oversight, error, negligence, or otherwise, and which, if known, would materially affect RELEASOR'S decision to enter into this Settlement Agreement and Release. RELEASOR hereby acknowledges that his injuries, whether physical, psychological, or otherwise are permanent and continuing in nature and that this release is a full and final release of any and all claims for said injuries.

4. **Attorney fees.** The City of Cleveland has addressed the issue of attorney fees directly with counsel for Plaintiff, to be reflected in a future order of the Court.

5. **Dismissal.** The parties agree to execute and file with the appropriate Court a stipulated dismissal with prejudice of the Litigation no later than April 1, 2023, or such later date as mutually agreed to by the parties or ordered by the Court.

6. **Settlement Sum.** Provided all the terms and conditions contained in this Agreement are satisfied, the Parties agree that the full and final amount of settlement is \$55,000.00 (Fifty-Five Thousand Dollars and No Cents) to be paid as follows:

a) A check in the amount of \$55,000.00 (Fifty-Five Thousand Dollars and No Cents) payable to Antoine Tolbert.

b) To be delivered c/o Friedman Gilbert + Gerhardstein, 50 Public Square Suite 1900, Cleveland, OH 44113.

c) Paid within forty-five (45) days of the date this Agreement is fully and finally executed by both parties.

7. **Interest.** RELEASOR herein waives any and all claims for interest on the Settlement Sum.

8. **No Admission of Liability.** The terms of this Agreement represent a compromise of disputed claims and are not intended to be and shall not be construed as admissions of any liability or wrongdoing by Sgt. Lance Henderson, the City of Cleveland and/or its employees, by whom all liability and wrongdoing is expressly denied.

9. RELEASOR understands and agrees that he is responsible for his own respective tax treatment of the payment made as referenced herein with respect to any taxing authority, whether state, local or federal. RELEASOR agrees to defend, indemnify and hold harmless RELEASEES on any tax RELEASOR may or may not be responsible for.

10. **Representations.** Plaintiff represents the following:

(a) He has carefully read and reviewed this Agreement, and he knows and understands its full contents, and is voluntarily entering into this Agreement.

(b) He has not assigned to any person or entity any of the claims, or any portion of any of the claims, that were or could have been asserted in the Litigation.

(c) He is an adult of sound mind and is fully authorized and competent to execute this Agreement and does so relying on his own judgment concerning the nature, extent, and duration of any injuries, damages, and/or losses he has incurred.

(d) He is not relying on any statement, representation, omission, inducement, or promise of any other party in executing this Agreement, except as expressly stated in this Agreement.

(e) In entering into this Agreement, RELEASOR represents that he has relied upon the advice of his attorney, who is the attorney of his own choice, concerning the legal consequences of this Agreement; that the terms of this Agreement have been completely read and explained to RELEASOR by his attorney, who is licensed to practice law in the State of Ohio; and that the terms of this Agreement are fully understood and voluntarily accepted by RELEASOR.

(f) It is expressly understood and agreed that the aforementioned sum of \$55,000.00 and attorney fees as provided above is the sole consideration of this release and specifically includes any and all past, present or future interest due and owing, and the consideration stated herein is contractual, and not a mere recital, and all agreements and understandings between parties are embodied and expressed herein, and includes all sums due RELEASOR including pre-judgment and post-judgment interest, if any.

(g) The undersigned further represents that there are no liens or reimbursement right by any hospital, ambulance or service, or other medical provider, Medicare, Medicaid, insurance company, or attorney enforceable against the proceeds of this settlement or against RELEASEES or individuals and/or entities making a payment under this Release. If such a lien or reimbursement right is asserted against the proceeds herein or against RELEASEES or any individuals and/or entities making a payment under this Release, then, in consideration of the

payment made to the undersigned, the undersigned covenants to pay and satisfy such asserted lien or reimbursement right, or to satisfy the same on a compromise basis, and to obtain in any event a release of RELEASEES released herein and any individual or entity making the payment herein, and to indemnify and hold harmless said parties from any costs, expenses, attorney fees, claims, actions, judgments, or settlements resulting from the assertion or the enforcement of such lien or reimbursement right by any entity having such lien or reimbursement right.

**11. Additional Terms.**

(a) **Choice of Law.** This Agreement has been executed and delivered in the State of Ohio and the rights and obligations of the parties shall be construed and enforced under Ohio law.

(b) **Entire Agreement; Modification.** This Agreement is the entire agreement between the parties regarding the settlement of the claims identified herein and supersedes all prior and contemporaneous agreements, representations and undertakings, both oral and written. No other agreement exists. No supplement, modification, or amendment of this Agreement will be binding unless it is in writing and signed by both parties.

(c) **Waiver.** No waiver of any term of this Agreement constitutes a waiver of any other provision, whether similar or dissimilar. No waiver of any term constitutes a continuing waiver of that term. No waiver is binding unless signed in writing by the waiving party.

(d) **Severability.** If any term of this Agreement is for any reason invalid or unenforceable, the rest of the Agreement remains fully valid and enforceable.

(e) **Binding Effect; Assignment.** This Agreement binds and accrues to the benefit of both the parties and their successors and assigns. This Agreement cannot be assigned without the prior written consent of the other party.

(f) **Headings.** The headings in this Agreement are for convenience of reference only and do not constitute a part of it. The headings do not affect its interpretation.

(g) **Counterparts.** This Agreement may be executed in counterparts, each of which is considered an original, but all of which constitute one and the same instrument.

(h) **Cooperation.** The parties acknowledge that they have cooperated in the drafting and preparation of this Agreement.

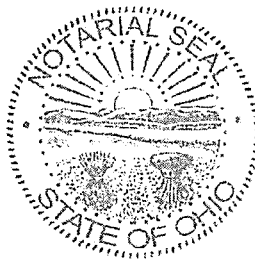
(i) **Additional Acts/Documents.** The parties shall perform all additional acts and execute and/or deliver all additional documents necessary to carry out the terms of this Agreement.

**RELEASOR AFFIRMS THAT HE READ THE RELEASE AND FULLY UNDERSTANDS IT**

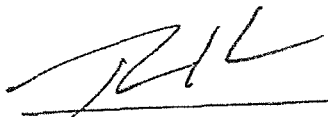
Executed in Columbus County, Ohio this 23<sup>rd</sup> day of March, 2023

  
ANTOINE TOLBERT

[Notary acknowledgment follows immediately]



RACHEL A. KOPEC  
Attorney At Law  
NOTARY PUBLIC  
STATE OF OHIO  
My Commission Has  
No Expiration Date  
Section 147.03 O.R.C.

  
Rachel A. Kopec (0090522)