

RELEASE AND SETTLEMENT AGREEMENT

THIS RELEASE AND SETTLEMENT AGREEMENT (“Agreement”) is made and entered into by and between Nancy Markham (“Plaintiff”) and City of Surprise, Michael Frazier, Terry Young, and Christopher Tovar (“Defendants”).

WHEREAS, the Plaintiff presented various claims against the Defendants, alleging that she sustained damages and suffered a deprivation of her constitutional and statutory rights, which are more fully described in Plaintiff's Complaint, filed in the United States District Court for the District of Arizona at Case No. 2:15-cv-01696-SRB on August 27, 2015 and amended on September 21, 2015 (the “Lawsuit”), and

WHEREAS, Defendants have and continue to deny these allegations; and

WHEREAS, the Plaintiff and the Defendants desire to settle the matters raised in the Lawsuit,

NOW, THEREFORE, in consideration for the mutual promises, covenants and conditions contained herein, Plaintiff and Defendants hereby agree as follows:

1. Settlement Payment

Defendants shall pay the sum of Forty-Thousand Dollars (\$40,000.00) by March 16, 2016 in a check payable to Aiken Schenk Hawkins & Ricciardi P.C.

Counsel for Plaintiff – the American Civil Liberties Union, the ACLU Foundation of Arizona, and Aiken Schenk Hawkins & Ricciardi P.C. – will timely submit an application pursuant to 42 U.S.C. § 1988 and 3613(c) for attorneys’ fees and costs for approval by the Court. Plaintiff will not seek fees relating to time spent on the application for fees. Defendants will oppose any application for fees and costs.

2. Repeal of §§105-104 and 105-106 of the Surprise Municipal Code

The City of Surprise, Arizona represents and warrants that it has or will repeal §§105-104 and 105-106 of the Surprise Municipal Code by Ordinance # 2016-07, which was adopted on March 15, 2016, a copy of which is attached hereto and marked Exhibit 1.

3. Publication of Repeal of §§105-104 and 105-106

The City of Surprise, Arizona will publish Ordinance # 2016-07, which was adopted on March 15, 2016, a copy of which is attached hereto and marked Exhibit 1, on its website,

including but not limited to, anywhere §§105-104 and 105-106 are referenced, and shall maintain such notice on the webpages for a period of at least one (1) year.

4. Future Actions by Surprise

The City of Surprise, Arizona agrees that it will not adopt an ordinance or policy that penalizes or punishes tenants, residents, or landlords for calls for police service, or penalizes or punishes them for criminal activity of which they are the victims.

The City of Surprise, Arizona agrees that it will not require crime-free lease addenda that would allow for penalizing or punishing residents or tenants for criminal activity of which they are the victim.

The City of Surprise, Arizona agrees that, for a period of five years from the effective date of this Agreement, if its legislative body or a City official seeks to adopt an ordinance or policy that regulates the subject matter at issue (a) in §§105-104 and 105-106 of the Surprise Municipal Code, attached hereto as Exhibit 2 and incorporated herein by reference as if set forth herein at length, or (b) in Plaintiff's Amended Complaint, attached hereto as Exhibit 3 and incorporated herein by reference as if set forth herein at length, that it will provide notice to the Executive Director of the American Civil Liberties Union of Arizona, currently at 3707 North 7th Street, Suite 235, Phoenix, Arizona 85011, at least thirty (30) days prior to the adoption of any such ordinance or policy.

5. No Admission of Liability

It is understood and expressly agreed that neither the payment of the settlement amount, nor the repeal of Surprise Municipal Code §§105-104 and 105-106, nor any other action agreed to or taken by the City of Surprise pursuant to this Agreement shall be construed as an admission of any liability or wrongdoing whatsoever on the part of the City or any of the named Defendants herein, who have always, repeatedly, and now expressly deny any liability or wrongdoing. The Parties acknowledge and agree that the payment is made in compromise and settlement of the Lawsuit.

6. Mutual Release

Plaintiff hereby releases and forever discharges Defendants, their departments, heirs, successors, present and former employees, officers, members, councilmembers, attorneys, agents, insurers, successors and assigns from and on account of any and all claims, actions, causes of action, claims for relief, liability, liabilities, demands, injuries, losses, and damages of

whatever name or nature, whether known or unknown, which may now exist or which may grow out of any act, omission, event or circumstances alleged in the Lawsuit.

Defendants hereby release and forever discharge Plaintiff, her heirs, successors, representatives, agents, attorneys, and assigns from and on account of any and all claims, actions, causes of action, claims for relief, liability, liabilities, demands, injuries, losses, and damages of whatever name or nature, whether known or unknown, which may now exist or which may grow out of any act, omission, event or circumstances alleged in the Lawsuit.

Parties shall have the right to bring a claim to enforce this Agreement upon determining it has been breached.

7. Mutual Non-Defamation Agreement

- A. Markham, on behalf of herself, her legal successor, heir, executor, administrator, assign, her legal counsel in this matter, including the American Civil Liberties Union, the ACLU Women’s Rights Project, the ACLU Foundation of Arizona, and Aiken Schenk Hawkins & Ricciardi P.C., knowingly and willingly agrees to not defame Defendants, Defendants’ predecessors, successors in interest, affiliates, subsidiaries, parents, related entities, past and present principals, agents, mayors, councilmembers, attorneys, police chiefs, police officers, officers, directors, shareholders and insurers, for any matter related in any way to the Lawsuit.
- B. The City and Individual Defendants, on behalf of themselves and any parent or related company or business, subsidiary, spouse, legal successor, heir, executor, administrator, and assign, knowingly and willingly agree to not defame Markham, legal successor, heir, executor, administrator, assign, her legal counsel in this matter, including the American Civil Liberties Union, the ACLU Women’s Rights Project, the ACLU Foundation of Arizona, and Aiken Schenk Hawkins & Ricciardi P.C., for any matter related in any way to the Lawsuit.
- C. Notwithstanding the above, parties are not prevented from disclosure of or discussion about any publicly available information about, or publicly filed submissions in, this Lawsuit.

8. Subject to City Council Consideration and Approval

The repeal of Surprise Municipal Code §§105-104 and 105-106 is subject to consideration, review and approval of and by the legislative body of the City of Surprise, namely the City of Surprise City Council, on March 15, 2016.

9. Authorization

Upon approval of the City of Surprise City Council on March 15, 2016, all persons executing this Agreement hereby represent and warrant that they have full right, power and authority to sign this settlement agreement. Ms. Markham, the City of Surprise, Michael Frazier, Terry Young, and Christopher Tovar further represent and warrant that they have the capacity to enter into this Agreement.

10. Advice of Counsel

This Agreement has resulted from negotiation by the parties represented by counsel, and in the event of ambiguity or otherwise, it shall not be construed against or in favor of any party on the grounds that counsel for such party was the draftsman of this Agreement or any particular part of it. Each party represents and warrants that the terms of this Agreement have been completely read by them and that the terms set forth herein are fully understood and voluntarily accepted by them. All parties further represent that they have relied upon the legal advice of their respective attorneys, who are the attorneys of their own choice, and that the terms of this Agreement have been completely read and explained to them by one or more of their attorneys and that they fully understand and voluntarily accept this Agreement.

11. Entire Agreement

This Agreement embodies the entire agreement between the parties with regard to the matters set forth herein and shall be binding upon and inure to the benefit of the executors, administrators, personal representatives, heirs, successors, and assigns of each. There are no other understandings or agreements, oral or otherwise in relation thereto, between the Plaintiff and the Defendants.

12. Modification

This Agreement may not be modified except by a writing executed by each party.

13. Governing Law and Jurisdiction

The terms of this Agreement shall be governed by the laws of the State of Arizona.

14. Dismissal of this Action

Upon execution of this Agreement and satisfaction of paragraphs 1, 2, and 3 of this Agreement, counsel for the parties will submit a stipulation to the Court seeking the entry of an order retaining federal court jurisdiction over the settlement for three (3) years and dismissing this lawsuit pursuant to Local Rule 40.2.

If the Court approves the aforesaid stipulation and agrees to enter the aforesaid order retaining jurisdiction and dismissing the lawsuit, the Court's approval of the aforesaid stipulation and entry of the aforesaid order will constitute the dismissal of the action with prejudice as to the substantive claims raised in the Lawsuit, pending only compliance with the terms of this Agreement. If the Court does not agree to enter the aforesaid order, the parties will file a stipulation of dismissal within three (3) days after the Court advises the parties that it does not so agree to retain jurisdiction, and the filing of that stipulation will constitute the dismissal of this action, with prejudice.

Upon the Court's ruling on this stipulation, Plaintiff's counsel's application for attorneys' fees and costs will follow.

15. Counterparts

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Facsimile signatures and signatures in PDF format transmitted by email shall be deemed originals.

16. Headings

The headings to various clauses of this Agreement have been inserted for convenience only and shall not be used to interpret or construe the meaning of the terms and provisions hereof.

17. Survival

All representations, warranties, covenants and agreements made herein shall be continuing, shall be considered to have been relied upon by the parties and shall survive the execution, delivery and performance of this Agreement.

18. Successors and Assigns

The rights and obligations set forth in this Agreement shall be binding on the parties and their successors and assigns.

19. Severability

If any provision of this Agreement or the application thereof is adjudicated to be void, invalid or unenforceable, such action shall not make the entire Agreement void, but rather only such provision. All remaining provisions shall remain in in full force and effect.

IN WITNESS WHEREAS, the parties hereto have executed this Agreement.

CAUTION: READ BEFORE SIGNING, THIS IS A RELEASE.

Nancy Markham
Nancy Markham, Plaintiff

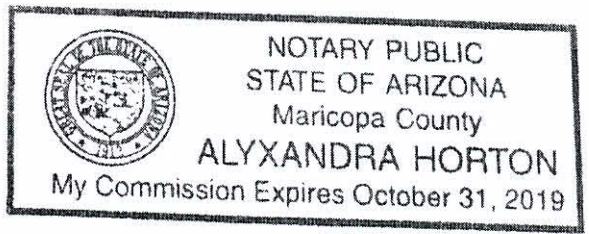
3/16/2016
Date

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this 16 day March, 2016 by Nancy Markham.

Alyxandra Horton
Notary Public

My Commission Expires:
10-31-19



City of Surprise, Arizona

By: _____
Its: _____

Date

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this ____ day of _____, 2016, by _____, as the _____ for the City of Surprise, Arizona.

Notary Public

My Commission Expires:

Michael Frazier
Michael Frazier, Defendant

3/17/16
Date

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this 17th day of March, 2016 by Michael Frazier.



Gloria G. Bianco
Notary Public

My Commission Expires:
11/29/2017

Terry Young
Terry Young, Defendant

3-21-2016
Date

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this 21st day of March, 2016 by Terry Young.

Nicole Perez
Notary Public

My Commission Expires:
February 18, 2018



Christopher Tovar
Christopher Tovar, Defendant

March 21, 2016
Date

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this 21st day of March, 2016 by Christopher Tovar.

Nicole Perez
Notary Public

My Commission Expires:
February 18, 2018

