

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Agreement”) is entered into between MEGAN MARIA AGARD, CHICO BAKER, ROBERT DESERSA, KARA JANE LOGG, DEBORAH LOOKING BACK, PRAIRIE ROSE WHITE BUFFALO, AND PHILLIP LOUIS YOUNG HAWK, individually, (hereinafter collectively referred to as “Plaintiffs”), and WALWORTH COUNTY, SOUTH DAKOTA, AND WALWORTH COUNTY COMMISSIONERS JAMES HOUCK, KEVIN HOLGARD, SCOTT SCHILLING, MARION SCHLOMER, AND DAVIS MARTIN in their individual and official capacities (hereinafter collectively referred to as “Walworth County”).

RECITALS

A. The Plaintiffs, individually and on behalf of a putative class have commenced an action styled “MEGAN MARIA AGARD, CHICO BAKER, ROBERT DESERSA, KARA JANE LOGG, DEBORAH LOOKING BACK, PRAIRIE ROSE WHITE BUFFALO, AND PHILLIP LOUIS YOUNG HAWK, as named Plaintiffs on behalf of a class, -vs- WALWORTH COUNTY, SOUTH DAKOTA, AND WALWORTH COUNTY COMMISSIONERS JAMES HOUCK, KEVIN HOLGARD, SCOTT SCHILLING, MARION SCHLOMER, AND DAVIS MARTIN, all sued in their official and individual capacities, Defendants”, case file 1:20-cv-01018-CBK in United States District Court for the District of South Dakota, Northern Division, (the “Action”).

B. The Action alleges various deficiencies in the physical structure of the Walworth County jail and in the jail’s operation.

C. Plaintiffs and Walworth County now desire to settle all claims which have been asserted or which could have been asserted in the Action.

FOR GOOD AND VALUABLE CONSIDERATION, the parties agree as follows:

1. Release of Claims.
 - a. Plaintiffs do hereby release and discharge Walworth County, South Dakota, Walworth County Commissioners James Houck, Kevin Holgard, Scott Schilling, Marion Schlomer, and Davis Martin, all sued in their official and individual capacities, and their agents, employees, representatives,

subsidiaries, successors, insurers, reinsurers, heirs and assigns (hereinafter referred to as the “Releasees”) and any and all other persons and entities, from any and all claims, causes of action and damages of every kind including violation of constitutional rights, whether unanticipated, suspected or unsuspected, including any claim for increased damages pertaining to conditions and consequences flowing therefrom, which we now have or may have, arising out of or in any manner pertaining to any and all losses, injuries, costs, damages or expenses, attorney’s fees, or any other expenditure, resulting from or in any way arising out of Plaintiffs detention in the Walworth County Jail and which were or could have been asserted in the Action. Plaintiffs acknowledge that this Release and the consideration expressed herein, are in full and complete settlement, full and complete satisfaction, and full and complete compensation for any and all claims, demands, and causes of action that we may have against any and all persons, entities, corporations whatsoever such as are classified as joint tort-feasors, including but not limited to the Releasees, resulting from or in any way growing out of the claims set forth in the complaint or any complaint filed in the above-referenced Action, and in any related event which may have transpired during Plaintiffs’ detention at the Walworth County Jail.

- b. The Action, Agard et al v. Walworth County et al, case file 1:20-cv-01018-CBK pending in United States District Court, District of South Dakota, Northern Division, shall be dismissed, on the merits, with prejudice and without costs; and that a judgment of dismissal shall be entered accordingly, Plaintiffs further authorize their attorneys to sign a stipulation to dismiss the action described herein.

2. Consideration.

- a. Walworth County and the individually named Defendants agree, swear and promise that they will never incarcerate, house, hold, or detain any person in the current Walworth County Jail, or in any part of it, for any amount of time

whatsoever, no matter how brief. This agreement, oath and promise applies fully and completely even if Walworth County re-names the current Walworth County Jail, or any part of it, a “detention center,” a “holding facility,” a “temporary holding area,” or anything else.

- b. Walworth County agrees to pay \$91,000 to James D. Leach by November 12, 2020. This amount represents a mutual compromise of the complete and full attorneys’ fees and costs recoverable in the prosecution of this action and Plaintiffs² agree and waive all rights to seek further recovery of fees and costs.
- c. The consideration expressed herein is the sole and only consideration for the execution of this Release.
- d. The terms of this Agreement are contractual and enforceable as such.

3. No Admission of Liability.

This settlement is a compromise of disputed claims. The equitable relief agreed to and payment to be made pursuant to this settlement are not to be construed as an admission of liability by any of the Releasees.

4. Binding Effect.

The terms of this Agreement shall be binding upon and be enforceable against and shall inure to the benefit of Plaintiffs and Releasees and the successors and assigns of each. The parties acknowledge that this agreement was entered into by them to avoid the further risk of expense and litigation between Plaintiffs and Releasees. In entering into this agreement, Plaintiffs and Releasees represent that they have relied upon the advice of their respective attorneys concerning the legal consequence of this agreement and that the terms of this agreement have been completely read and understood and voluntarily accepted by them.

5. Entire Agreement.

Plaintiffs and Releasees further understand and agree that this document contains the entire agreement between them, and that the terms of this Agreement are contractual and not a mere recital. By their signatures below the undersigned each represent that they have carefully read this Agreement, know and understand the terms and effect hereof, have fully discussed the terms

and effect of this Agreement with their attorneys or clients, have authority to enter into this Agreement, and have signed this Agreement as their free and considered act.

Dated: _____
_____ Megan Maria Agard

Approved as to form:

Dated: _____
_____ James D. Leach

_____ Stephanie Pochop

Dated: _____

Chico Baker

Approved as to form:

Dated: _____

James D. Leach

Stephanie Pochop

Dated: _____

Robert Desersa

Approved as to form:

Dated: _____

James D. Leach

Stephanie Pochop

Dated: _____

Kara Jane Logg

Approved as to form:

Dated: _____

James D. Leach

Stephanie Pochop

Dated: _____

Deborah Looking Back

Approved as to form:

Dated: _____

James D. Leach

Stephanie Pochop

Dated: _____

Prairie Rose White Buffalo

Approved as to form:

Dated: _____

James D. Leach

Stephanie Pochop

Dated: _____

Phillip Louis Young Hawk

Approved as to form:

Dated: _____

James D. Leach

Stephanie Pochop

Dated: _____

Walworth County, South Dakota

By: _____ [sign name]
_____ [print name]

Its: _____

State of South Dakota)
)ss
County of Walworth)

On this the _____ day of December, 2020, before me the undersigned, a Notary Public within and for said County and State, personally appeared _____, known to me to be the person described in and who executed the foregoing instrument and acknowledged to me that he executed the same on behalf of Walworth County.

Notary Public

(SEAL)

Notary Print Name:
My Commission Expires:

James Houck, in his official and individual capacity

James Houck

State of South Dakota)
)ss
County of Walworth)

On this the _____ day of November, 2020, before me the undersigned, a Notary Public within and for said County and State, personally appeared James Houck, known to me to be the person described in and who executed the foregoing instrument and acknowledged to me that he executed the same in his official and individual capacity.

Notary Public

(SEAL)

Notary Print Name:
My Commission Expires:

Kevin Holgard, in his official and individual capacity

Kevin Holgard

State of South Dakota)
)ss
County of Walworth)

On this the _____ day of November, 2020, before me the undersigned, a Notary Public within and for said County and State, personally appeared Kevin Holgard, known to me to be the person described in and who executed the foregoing instrument and acknowledged to me that he executed the same.

Notary Public

(SEAL)

Notary Print Name:
My Commission Expires:

Scott Schilling, in his official and individual capacity

Scott Schilling

State of South Dakota)
)ss
County of Walworth)

On this the _____ day of November, 2020, before me the undersigned, a Notary Public within and for said County and State, personally appeared Scott Schilling, known to me to be the person described in and who executed the foregoing instrument and acknowledged to me that he executed the same.

Notary Public

(SEAL)

Notary Print Name:
My Commission Expires:

Marion Schlomer, in his official and individual capacity

Marion Schlomer

State of South Dakota)
)ss
County of Walworth)

On this the _____ day of November, 2020, before me the undersigned, a Notary Public within and for said County and State, personally appeared Marion Schlomer, known to me to be the person described in and who executed the foregoing instrument and acknowledged to me that he executed the same.

Notary Public

(SEAL)

Notary Print Name:
My Commission Expires:

Davis Martin, in his official and individual capacity

Davis Martin

State of South Dakota)
)ss
County of Walworth)

On this the _____ day of November, 2020, before me the undersigned, a Notary Public within and for said County and State, personally appeared Davis Martin, known to me to be the person described in and who executed the foregoing instrument and acknowledged to me that he executed the same.

Notary Public

(SEAL)

Notary Print Name:
My Commission Expires:

Approved as to form:

Dated: _____

Jamie Hare