

RESOLUTION 2017-095

PASSED: AUGUST 14, 2017

**AUTHORIZING THE EXECUTION OF A SETTLEMENT
AGREEMENT REGARDING CASE 16 C 50156.**

WHEREAS, the City of DeKalb is a home rule municipality with the power and authority conferred thereupon by the Illinois Constitution, the Illinois Municipal Code and the City Code; and

WHEREAS, the City and certain City personnel were named as defendants in an action pending in the United States District Court for the Northern District of Illinois as case 16 C 50156; and

WHEREAS, the City Council has determined that it is advantageous from a business perspective to settle, resolve and compromise the case on the terms and conditions contemplated herein, in lieu of continuing to incur further litigation expense, with such determination made in the context of a full and complete denial of any liability or wrongdoing.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF DEKALB, ILLINOIS:

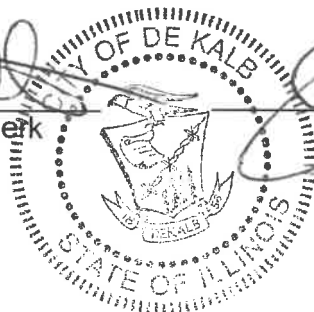
Section 1: The Mayor of the City of DeKalb is authorized and directed to execute a settlement agreement, substantially in the form attached hereto as Exhibit A and subject to such changes as shall be acceptable to him with the recommendation of the City Attorney. Thereafter, the City staff is authorized and directed to fully comply with the terms of said agreement.

Section 2: That the City Clerk of the City of DeKalb, Illinois be authorized and directed to attest the Mayor's Signature and shall be effective thereupon.

PASSED BY THE CITY COUNCIL of the City of DeKalb, Illinois, at a Regular meeting thereof held on the 14th day of August, 2017, and approved by me as Mayor on the same day. Passed by a 6-0-2 Omnibus roll call vote under the Consent Agenda. Aye: Finucane, Marquardt, Noreiko, Verbic, Faivre, Smith. Nay: None. Absent: Jacobson, Fagan.

ATTEST:


RUTH A. SCOTT, Deputy City Clerk




JERRY SMITH, Mayor

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This SETTLEMENT AGREEMENT AND MUTUAL RELEASE (the "Agreement") is made between Plaintiff, Kristina Brockman ("Brockman"), and Defendants, City of DeKalb ("DeKalb"), Chief Eugene Lowery, Officer Anthony Densberger, Officers Winters, and Officer Wilkens ("Individual DeKalb Defendants") (collectively, the "Parties").

BACKGROUND

1. Brockman has filed suit against the City of DeKalb, the Individual DeKalb Defendants, Steak USA LLC, and Vasilios Hristakos in the United States District Court for the Northern District of Illinois, known as Case Number 16 C 50156 (the "Lawsuit"). The Lawsuit arises out of an event on April 12, 2016 where Brockman alleges that she was assaulted by Mr. Hristakos at an establishment owned by Steak USA LLC and that her civil rights were violated by DeKalb and the Individual DeKalb Defendants. All Defendants herein deny any and all liability associated with Brockman's allegations against them.

2. The Parties desire to settle and dispose of any and all claims, known or unknown, that Brockman may have against DeKalb, all of the Individual DeKalb Defendants, Steak USA LLC, and Mr. Hristakos, and avoid the expense and inconvenience of further litigation.

Accordingly, the Parties agree as follows:

ARTICLE I. SETTLEMENT TERMS AND CONDITIONS

Section 1.1 Settlement Payment. In return for a full release of all claims between Brockman and the Defendants, DeKalb shall make payment to Brockman of seven thousand five hundred dollars (\$7,500.00) (the "Settlement Payment"). DeKalb shall make its portion of the Settlement Payment within a reasonable period after DeKalb City Council's approval. The Settlement Payment shall be made by check, payable to Brockman and Loevy & Loevy. The settlement payment set out herein is allocated to physical damages alleged by Plaintiff and not for Plaintiff's loss of wages.

Section 1.2 Assignment or Transfer of Proceeds. Brockman represents and warrants that she has not assigned or transferred, or purported to assign or transfer, and will not assign or otherwise transfer any right she has or may have to the Settlement Payment.

Section 1.3 Dismissal of Individual DeKalb Defendants. All Individual City Defendants shall be dismissed from litigation with prejudice prior to entry of general dismissal order. Further, all counts against DeKalb and all Individual City Defendants, other than Count II

as alleged solely against DeKalb, shall be dismissed with prejudice prior to entry of general dismissal order.

Section 1.4 Presentment of Settlement Agreement to DeKalb City Council. This Settlement Agreement is subject to review and approval by DeKalb City Counsel. DeKalb shall take all necessary steps to ratifying the agreement. In particular, DeKalb represents that it will present the settlement agreement to its City Council and City Council will decide whether to approve this settlement on or before August 15, 2017.

ARTICLE II. RELEASE AND WAIVER

Section 2.1 Release. In consideration of the payment set forth in Section 1.1, Brockman agrees to release DeKalb and the Individual DeKalb Defendants regarding any and all claims Brockman has or might have as of the time of execution of this Agreement, whether known or unknown. By way of explanation, but not limiting its completeness, Brockman hereby fully, finally and unconditionally releases, compromises, waives and forever discharges the Defendants (including Defendants' employees, agents, successors, representatives, assigns, affiliates, elected officials, directors, officers, and attorneys) from and for any and all claims, liabilities, suits, personal injuries, demands, debts, liens, damages, costs, attorneys' fees, grievances, injuries, actions or rights of action of any nature whatsoever, known or unknown, liquidated or unliquidated, absolute or contingent, in law or in equity, which were or could have been filed with any federal, state, local or private court, agency, arbitrator or any other entity, based directly or indirectly upon any and all of Plaintiff's contact with the Defendants on April 12, 2016 and at all times during the investigation of the events of April 12, 2016 by the Individual DeKalb Defendants and other DeKalb employees through the filing of the Lawsuit, and any alleged act or omission to act by any Defendant related to this Lawsuit, accruing prior or subsequent to the execution by the Parties of this Agreement. Brockman further waives any right to any form of recovery, compensation or other remedy in any action brought by her or on her behalf.

Section 2.2 Waiver. This Agreement includes and extinguishes all claims Brockman may have for equitable and legal relief, attorneys' fees and costs. More particularly, the Parties specifically intend and agree that this Agreement fully contemplates claims for attorney's fees and costs, which shall be resolved between Brockman and her attorney separately from this Agreement, and hereby waive, compromise, release and discharge any such claims and/or liens.

ARTICLE III. GENERAL PROVISIONS

Section 3.01 Governing Law. This Agreement will be governed and construed in accordance with the laws of the State of Illinois without giving effect to principles of conflict of laws.

Section 3.02 Enforcement of Rights. In the event that any party shall institute any action or proceeding to enforce or interpret any of the rights granted or released hereunder, the

prevailing party in such action or proceeding shall be entitled to recover all of its costs and expenses incurred in the action or proceeding, including but not limited to reasonable attorney's fees and court costs.

Section 3.03 Validity of Release. If any party should breach this Agreement by filing a claim or lawsuit in which such party asserts that the release contained in this Agreement is invalid, such party shall be in breach of this Agreement and shall be obligated to pay any and all attorneys' fees incurred as a result.

Section 3.04 Severability; Waiver. Whenever possible, each provision of the Agreement shall be interpreted in such a manner as to be valid under applicable Illinois law, but if any provision of the Agreement is held to be invalid or unenforceable for any reason, the remaining provisions will continue in full force only if the essential provisions of the Agreement for each party remain valid, binding, and enforceable. The waiver by either party of a breach of any provision of this Agreement will not operate as a waiver of any other or subsequent breach.

Section 3.05 Headings. Headings used in this Agreement are for reference purposes only and in no way define or limit the scope of such section or in any way affect this Agreement.

Section 3.06 Entire Agreement. This Agreement sets forth the entire, final, and exclusive agreement between Brockman and the Defendants. All prior negotiations and agreements, whether oral or written, between Brockman and any Defendant are incorporated into this Agreement. This Agreement may not be changed, modified, or altered except by an agreement in writing, signed by Brockman and the Defendants. The terms of this Agreement are contractual and not a mere recital.

Section 3.07 Liability. This Agreement is the compromise of disputed claims and fully and finally settles all claims known or unknown between Brockman and the Defendants stemming from the Lawsuit; it is intended to buy peace and to prevent any further involvements and disputes regarding the above-referenced matter. Neither the payment of any consideration hereunder or anything contained in this Agreement shall be interpreted or construed to be an admission on the part of, or to the prejudice of, any person or party named herein.

Section 3.08 Inadmissibility. This Agreement, its execution, and its implementation may not be used as evidence, and shall not be admissible, in any proceeding except one alleging a breach of this Agreement.

Section 3.09 Advice of Counsel. Brockman represents and acknowledges that she has consulted with legal counsel or other advisors in connection with this Agreement, and that she has relied upon the advice of such counsel or advisors in agreeing to the terms of this Agreement. The Defendants represent and agree that they fully understand and consent to the terms of this Agreement and understand the consequences of signing this Agreement. No presumption in favor of or against any party shall apply in interpreting the terms of this Agreement.

Section 3.10 Successors. This Agreement shall be binding upon and inure to the benefit of Brockman and the Defendants and each of their respective heirs, executors, administrators, employees, agents, successors, representatives, assigns, parent corporations, affiliates, subsidiaries, directors, officers, shareholders and attorneys (and employees and associates thereof).

Section 3.11 Counterparts. This Agreement may be executed in counterparts, and all such counterparts together shall constitute the entire agreement between Brockman and the Defendants. A faxed copy of this Agreement will be deemed to be the same as an original.

Section 3.12 Confidentiality.

- (a) The Parties shall keep confidential this Agreement and the information within the Agreement shall be kept confidential and shall not, without prior written consent of the other Party, or as required by law or court order, be disclosed to any third party for any reason, except as provided in section 3.12(b).
- (b) The Parties agree that neither they nor their agents will disclose anything relating to this Lawsuit or the details of the allegations and defenses asserted in this case, particularly but not limited to the declarations of Steak USA, LLC employees produced in this litigation, through any channels of communication such as social media networks (Facebook, Twitter, etc.), except as may be necessary in response to lawful process of any judicial or adjudicative authority or otherwise allowed by law. In addition, except as otherwise required by law, the Parties agree that neither they nor their attorneys or agents will disclose the terms of this Settlement Agreement and General Release to anyone except the Parties' attorneys, tax advisors, immediate family, and medical professionals, and that such persons shall be told that the information must be kept confidential.
- (d) The Parties represent and warrant that in negotiating the terms of this potential agreement, they have not already disclosed the proposed terms to any third parties.
- (e) If any non-party asks about the status of the Lawsuit, the Parties shall respond with words to the effect that "the dispute amicably resolved" or "I do not want to talk about it."
- (f) In the event of a breach or threatened breach of this confidentiality provision, the non-breaching party is entitled to seek monetary damages, immediate injunctive or other equitable relief (without posting a bond or other security or showing actual money damages), and/or any other rights or remedies, to enforce or prevent any violations of this provision. The prevailing party in an action to enforce this confidentiality provision shall be entitled to reasonable attorney's fees.

Section 3.13 The Parties shall not make any oral or written statement that disparages or places the opposing party in a false or negative light.

Section 3.14 Medicaid Compliance. It is not the purpose of this settlement agreement to shift responsibility of medical care in this matter to the Medicaid system. Instead, this settlement is intended to resolve a dispute between Brockman and the Defendants. In order to ensure compliance with Medicaid and applicable federal and state regulations, Brockman represents she or her attorney has reported this claim to Illinois Health Care and Family Services. Brockman acknowledges that Medicaid will be reimbursed out of these settlement proceeds for any and all payments made in the past related to this accident.

Brockman further acknowledges, warrants, and agrees to satisfy all liens, reimbursement right, subrogation interest or claims, including any automatic liens or obligations created by federal and/or state law, of medical assistance, Medicare, Medicaid, child support, income tax, and any doctor, hospital, insurance carrier, non-profit hospital and medical service organization, state or governmental agency, attorney or any other person, firm or corporation, which have been made or may be made in the future against the payments described in this Agreement; and Brockman further agrees to hold the Defendants harmless, and to defend and indemnify the Defendants against any suits, claims, crossclaims, judgments, costs or expenses of any kind, including attorney's fees, arising from assertion of any such liens, reimbursement right, subrogation interest or claim.

Section 3.15 Effective Date. The effective date of this Agreement shall be deemed to be the date of its execution, as stated below.

PLEASE READ CAREFULLY.

THIS DOCUMENT INCLUDES A RELEASE OF ALL CLAIMS.

By: _____

KRISTINA BROCKMAN

By: _____



Date: _____

Date: 8-14-17

Section 3.13 The Parties shall not make any oral or written statement that disparages or places the opposing party in a false or negative light.

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By: Kristina Brockman By: _____

KRISTINA BROCKMAN

CITY OF DEKALB AND INDIVIDUAL DEKALB DEFENDANTS

Date: 7/28/17 Date: _____