

1/26/17

RESOLUTION NO. R-2016-16

**A RESOLUTION APPROVING
THE SETTLEMENT AGREEMENT AND GENERAL RELEASE
AND AUTHORIZING THE PAYMENT OF SETTLEMENT FUNDS
IN THE *LEWIS V. BABICZ ET AL* LITIGATION
(Settlement Amount: \$7,500)**

WHEREAS, the Village of Maywood ("Village") is a home rule municipality established and existing in accordance with the Constitution of the State of Illinois of 1970; and

WHEREAS, the Village of Maywood has reached terms on the settlement of the litigation in *Derrick Neal Lewis v. Officer Babicz, et al.*, 14 CV 8436, which was filed in the United States District Court for the Northern District of Illinois against Officer Babicz and Officer Rice (collectively referred to as "the Officers"); and

WHEREAS, the Plaintiff has provided a signed Settlement Agreement and General Release ("Release") to the Officers, releasing his claims against the Officers. A copy of the Release is attached to this Resolution as **Exhibit 1**; and

WHEREAS, pursuant to the Release, the Plaintiff has agreed to dismiss his lawsuit against the Officers; and

WHEREAS, the Board of Trustees of the Village finds that it is in the public's best interests that the Settlement Agreement and General Release be approved and the payment of the settlement funds be authorized.

NOW, THEREFORE, BE IT RESOLVED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF MAYWOOD, COOK COUNTY, ILLINOIS, AS FOLLOWS:

SECTION 1: The President and Board of Trustees of the Village of Maywood approve and authorize the execution of the Settlement Agreement and General Release, a copy of which is attached hereto as **Exhibit 1**. Further, the Board of Trustees authorize and direct the Village President and Village Clerk, or their designees, to execute the Release, and to execute and deliver all other instruments and documents that are necessary to fulfill the Village's obligations under the Release.

SECTION 2: The President and Board of Trustees of the Village of Maywood authorize the payment of settlement in the amount of Seven Thousand, Five Hundred and No/100 Dollars (\$7,500.00).

ADOPTED this 26th day of July, 2016, pursuant to a roll call vote as follows:

AYES: Mayor Edwenna Perkins, Trustee(s) I. Brandon, A. Dorris, M. Rogers,
M. Lightford and R. Rivers

NAYS: None

ABSENT: Trustee H. Yarbrough, Sr.

APPROVED by me as Village President, and attested by the Village Clerk, on
this 28th day of July, 2016.

ATTEST:



VILLAGE CLERK



VILLAGE PRESIDENT

Exhibit 1

SETTLEMENT AGREEMENT AND GENERAL RELEASE

(attached)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DERRICK NEAL LEWIS,)	
)	
Plaintiff,)	
)	
vs.)	2014 CV 8436
)	
MICHAEL BABICZ, and KYLE RICE)	
)	
Defendants.)	

SETTLEMENT AGREEMENT AND GENERAL RELEASE

This Settlement Agreement and Mutual Release (hereinafter the "Agreement") is made and entered into this ____ day of _____, 2016, by and between the following parties: Derrick Lewis ("Plaintiff") and Michael Babicz and Kyle Rice (hereinafter "Defendants").

PREAMBLE

WHEREAS, Plaintiff filed a Complaint against Defendants on November 4, 2014, and said case is presently pending in the Northern District Court of Illinois (hereinafter the "Lawsuit"); and

WHEREAS, Plaintiff asserts various claims against Defendants set forth more particularly in the pleadings in the Lawsuit, which claims Defendants have denied and continue to deny; and

WHEREAS, it is now the desire of Plaintiff and Defendants to fully and finally resolve and settle the Lawsuit, and enter into a full and final compromise, settlement and mutual release, on the terms set forth herein.

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged:

1. Incorporation of the Preamble. Each of the introductory statements contained in the preamble hereto are incorporated into Section 1 of this Agreement as material terms and provisions agreed to by Plaintiff and Defendants.

2. Compromise and Settlement. This Agreement constitutes the compromise and settlement of disputed claims that is made solely to avoid further costs of litigation. This Agreement, nothing contained herein, nor any actions taken by Plaintiff or Defendants in connection herewith, shall constitute, be construed as or be deemed to be, an admission of fault, liability or wrongdoing whatsoever on the part of any party, including in the Plaintiff's pending criminal proceeding. Nothing in this Agreement shall preclude the Plaintiff from raising any and all defenses in his criminal case.

3. Settlement of All Claims. Plaintiff and Defendants intend this Agreement to be a complete and total resolution and settlement of any and all claims of any kind, whether asserted or not asserted, known or unknown, that Plaintiff may have against Defendants up to the date of this Agreement, or the Village of Maywood with respect to the Lawsuit.

4. Dismissal of the Lawsuit. Within 10 days of receipt of the settlement payment described in Section 5 below, Plaintiff shall dismiss with prejudice the Lawsuit in its entirety.

5. Settlement Payment to Plaintiff. In consideration for the promises made herein, the Village of Maywood, on behalf of Defendants, agrees to pay the Plaintiff, the sum of **\$7,500, inclusive of all attorneys' fees and costs**, which sums shall be made payable to Derrick Neal Lewis and Mary Ann Lewis in the amount of \$7,500 and sent via FedEx addressed to Mary Ann Lewis, 2355 N. State Highway 360, Apt. 718, Grand Prairie, TX 75050. Said payment shall be made within thirty (30) calendar days after both parties execute this Agreement. The Plaintiff is responsible for paying his own attorneys' fees and costs.

6. Liens. The Plaintiff represents that he is not aware of any outstanding liens, including medical or attorney liens. The Parties agree that this Settlement in no way requires the Defendants to pay for any liens associated with this Lawsuit.

7. General Release and Covenant Not To Sue. Plaintiff, on behalf of himself and his heirs, executors, administrators, successors and assigns, for and in consideration of the payment set forth herein, irrevocably and unconditionally releases and forever discharges and acquits Defendants from any and all claims, charges, liabilities, debts, demands, grievances and causes of action of whatsoever kind up to the date of this

Agreement, whether at law or in equity, whether accrued, contingent or inchoate, and whether known or unknown, suspected or unsuspected, or otherwise which Plaintiff has, had or may have up to the date of this Agreement against Defendants, arising from or relating to acts or omissions of any kind through the date of this Agreement, or involving the future or continuing effects of any acts or omissions of any kind which occurred through the date of this Agreement.

The claims released and waived by this Agreement include, but are not limited to, claims relating to or arising out of the allegations and claims set forth in the pleadings in the Lawsuit, specifically claims for excessive force, and money damages and allegations of false arrest and mistreatment or other claims against Defendants up to the date of this Agreement under any federal, state or local constitution, statute, regulation, order, common law or other authority having the force of law.

Plaintiff acknowledges and agrees that the nature, materiality, extent and results of the claims compromised and released by this Agreement may not now all be known or anticipated by him. However, it is the intention of the parties hereto that this Agreement shall be effective as a bar to each and every claim, charge, liability, and/or cause of action of any kind up to the date of this Agreement that the Plaintiff may have against Defendants. Plaintiff further acknowledges and agrees that he may hereafter discover facts different from or in addition to those now known, suspected or believed to be true with respect to such claims, demands or causes of action and agrees that this release will be and remain effective in all respects notwithstanding any such differences or additional facts.

Plaintiff further covenants and agrees not to sue, to file a charge, to make a claim or demand, to commence or maintain, or assist or otherwise participate (except, as required by law, to give testimony), in any action or proceeding of any kind that would be precluded by the release of claims, charges, liabilities, and/or causes of action herein, in any court, before any government agency or in any other forum or to accept any money, benefit, or other relief from any proceeding, which would be precluded by this release, whether brought directly by him or brought by any other person, agency or entity which would provide relief or benefit to Plaintiff and agrees to indemnify Defendants against all

liability, costs and expenses and attorneys' fees in the event Plaintiff breaches this release and covenant not to sue.

It is expressly understood and agreed to by the parties that this release does not bar, prevent, or otherwise prejudice Plaintiff from asserting any defense or making any arguments in any criminal proceedings brought against him, including but not limited to the pending criminal case.

7. No Attorneys' Fees. Plaintiff waives his right, if any, to collect attorneys' fees incurred in this litigation from the Defendants. The Village of Maywood will pay all litigation related expenses incurred by Defendants, and the Village of Maywood waives its right, if any, to collect attorneys' fees and costs incurred in this litigation from the Plaintiff. Plaintiff and Defendants will each bear their own respective legal fees and expenses incurred by each of them, in the negotiation and preparation of this Agreement.

8. Choice of Law; Savings Provision. This Agreement will be governed by Illinois law without regard to the choice of law provisions thereof. If any provisions of this Agreement shall be invalidated or refused enforcement by any court of competent jurisdiction, the provisions not invalidated or refused enforcement shall remain in full force and effect.

9. Entire Agreement. This Agreement represents the entire agreement between Plaintiff and Defendants with respect to the matters set forth herein and supersedes all prior agreements or understandings, if any, between the parties. Plaintiff acknowledges that except for the explicit provisions of this Agreement, no promises or representations of any kind have been made to him by Defendants or his attorneys, to induce him to enter into this Agreement. No modification of this Agreement can be made except in writing and signed by Plaintiff and a representative of Defendants.

10. For Settlement Only. This Agreement is entered into for settlement purposes only and represents the compromise of disputed claims, actual or potential, which Plaintiff has or may believe he has up to the date of this Agreement. Neither this Agreement, the decision to enter into this Agreement, nor anything done pursuant to this Agreement, shall be construed to be an admission or evidence of any wrongdoing or liability by Plaintiff or Defendants, such wrongdoing and liability being expressly denied.

Nor will this Agreement, its existence or its terms, be admissible in any proceeding other than a proceeding to enforce the terms of this Agreement.

11. Representations and Warranties By All Parties. All of the parties represent and warrant as to himself, herself or itself that: (a) he, she or it has the capacity, full power and authority to enter into this Agreement; (b) the individual signing on behalf of the Village of Maywood is authorized to do so; (c) he, she or it has not assigned, encumbered or in any manner transferred all or any portion of the claims covered by this Agreement; (d) there are not other charges, complaints, suits, arbitrations or other claims or proceedings pending between the parties in any court, before any agency, or in any forum; and (e) no other person or party has any right, title or interest in any of the claims covered by this Agreement.

12. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of Plaintiff and Defendants and their respective personal representatives, agents, insurers, attorneys, executors, administrators, heirs, successors and assigns.

13. Knowing and Voluntary Signing of Binding Contract. Plaintiff represents and warrants that he has read this Agreement and understands all of its terms and executes this Agreement voluntarily and without duress or undue influence, and with full knowledge of its significance, intending to be legally bound. Plaintiff acknowledges that by signing this Agreement, he is GIVING UP ALL CLAIMS AGAINST ALL DEFENDANTS THAT MAY EXIST UP TO THE DATE OF THIS AGREEMENT.

14. Opportunity To Consult Advisors. Plaintiff and Defendants have had reasonable opportunity to consult with attorneys or other advisors of their own choosing before executing this Agreement.

15. Counterparts. This Agreement may be executed in counterparts, each of which may be signed separately and may be enforceable as an original, but all of which together shall constitute but one (1) agreement.

16. Effective Date. The effective date of this Agreement shall be the date the last Party signs this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement by affixing their signatures and the date of execution where indicated below.

DERRICK NEAL LEWIS

Derrick Lewis

Dated: 6-13-16

VILLAGE OF MAYWOOD ON
BEHALF OF MICHAEL BABICZ
AND KYLE RICE

Dated: _____

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

CLERK'S CERTIFICATE

I, Viola Mims, Clerk of the Village of Maywood, in the County of Cook and State of Illinois, do hereby certify that the annexed and foregoing is a true and correct copy of that certain Resolution now on file in my Office, entitled:

**RESOLUTION NO. R-2016-16
A RESOLUTION APPROVING
THE SETTLEMENT AGREEMENT AND GENERAL RELEASE
AND AUTHORIZING THE PAYMENT OF SETTLEMENT FUNDS
IN THE LEWIS V. BABICZ ET AL LITIGATION
(Settlement Amount: \$7,500)**

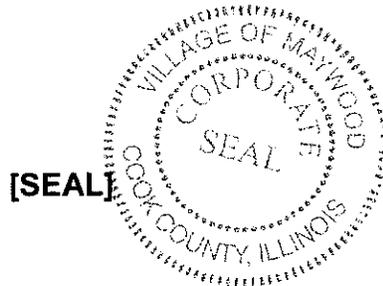
which Resolution was passed by the Board of Trustees of the Village of Maywood at a Regular Village Board Meeting on the 26th day of July, 2016, at which meeting a quorum was present, and approved by the President of the Village of Maywood on the 28th day of July, 2016.

I further certify that the vote on the question of the passage of said Resolution by the Board of Trustees of the Village of Maywood was taken by Ayes and Nays and recorded in the minutes of the Board of Trustees of the Village of Maywood, and that the result of said vote was as follows, to-wit:

- AYES:** Mayor Edwenna Perkins, Trustee(s) I. Brandon, A. Dorris, M. Rogers, M. Lightford and R. Rivers
- NAYS:** None
- ABSENT:** Trustee H. Yarbrough, Sr.

I do further certify that the original Resolution, of which the foregoing is a true copy, is entrusted to my care for safekeeping, and that I am the lawful keeper of the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Village of Maywood, this 28th day of July, 2016.





Village Clerk