
GENERAL RELEASE & SETTLEMENT AGREEMENT

RECITALS

1. **Michael Bailey**, and any and all of his heirs, personal representatives, executors, administrators, attorneys, successors, and assigns are hereinafter collectively referred to as "**RELEASOR**."

2. Teller County, Colorado; Pueblo County, Colorado; and any of their current or former entities, officials, officers, employers, successors, assigns, attorneys, employees, agents, servants, insurers, self-insurers, and reinsurers, if any, are hereinafter collectively referred to as "**RELEASEES**."

3. **RELEASOR** and **RELEASEES** are collectively referred to as "the Parties."

4. **RELEASOR** filed his original Complaint in this matter on September 7, 2017, in the United States District Court for the District of Colorado, Civil Action No. 1:17-cv-02146, hereinafter referred to as "the Civil Action." The Civil Action arose out of **RELEASOR'S** detention in the Teller County and Pueblo County Jails from September 8, 2015, through October 30, 2015 ("the Incident") and injuries alleged to have arisen out of that Incident. The factual allegations and claims made by **RELEASOR** have been and continue to be denied and disputed by **RELEASEES**.

5. **RELEASOR** has decided to enter into this General Release on the terms set out in these recitals and agreement below and reach a complete resolution of any claims arising out of the Incident and/or the Civil Action as well as any and all claims of any kind **RELEASOR** may have against **RELEASEES** occurring up to the date of the execution by **RELEASOR** of this General Release for damages and/or injuries of any kind, known and unknown, foreseen and unforeseen. For the purpose of this General Release, all of the claims asserted in the Civil Action whether remaining or dismissed and all other actual or potential claims or disputes among the parties shall be referred to hereafter collectively as the "Claims."

RELEASE

Release, Covenant Not to Sue, Hold Harmless, and Indemnification.

1. **RELEASOR** agrees irrevocably and unconditionally to release, discharge, and hold harmless and does release and forever discharge **RELEASEES** from any and all claims occurring up to the date of the execution by **RELEASOR** of this General Release for any and all damages and/or injuries pursuant to any federal or state statute, constitution, common law, contract or otherwise, known and unknown, foreseen and unforeseen, occurring up to the date of execution of this General Release, including but not limited to those which may now or hereafter arise out of, or result in any way from the

Incident described in the recitals and/or the Civil Action, and/or which have or could have been made, as well as any and all matters relating thereto, and any and all consequences thereof.

2. **RELEASOR** understands and agrees that this General Release prevents any appeal of any of the dismissals, stipulated or otherwise, against any parties or for any claims made in the Civil Action.

3. **RELEASOR** represents and warrants that, other than that which is set forth in the Recitals to this General Release, he has not filed or caused to be filed or asserted any claim or charge in or with any court or agency based on or related to the Incident or Claims and agrees that he will not file any claim or charge in or with any court or agency based on or related to the Incident or Claims against **RELEASEES**.

4. Pursuant to the Medicare, Medicaid, and SCHIP Extension Act of 2007, **RELEASOR** hereby certifies and affirmatively represents and warrants as follows: (1) he is not now receiving nor has he ever received Medicaid benefits in any way related to the Incident; (2) he is not now receiving nor has he ever received Medicare benefits; and (3) he is not now receiving nor has he ever received Social Security Disability Benefits. In the event **RELEASEES** are subject to any further claims or demands under such actual or purported benefit assignment, lien, subrogation, or other right of substitution for such benefits, **RELEASOR** will defend, indemnify, and hold **RELEASEES** harmless from such claims or demands.

5. **RELEASOR** agrees that as part of the consideration to **RELEASEES** he has agreed to pay any and all assignments, liens, attorney liens, hospital liens, subrogations and/or other claims including but not limited to those arising from medical treatment for any illnesses or injuries he alleges he incurred as a result of the Incident. **RELEASOR** agrees that it is the sole responsibility of **RELEASOR** and his counsel to identify all such assignments, liens, attorney liens, hospital liens, subrogations and/or claims, and that **RELEASEES** do not make any representation as to who may have such assignments, liens, attorney liens, hospital liens, subrogations and/or claims. In the event **RELEASEES** are subjected to further claims by any person, firm, corporation, or entity, whether or not listed herein, under any actual or purported lien or right of substitution, including but not limited to any lien for medical expenses, **RELEASOR** will hold **RELEASEES** harmless from any such claims or demands and indemnify **RELEASEES** for any judgment obtained and attorney fees incurred by reason of such purported assignments, liens, attorney liens, hospital liens, subrogations and/or claims.

6. **RELEASOR** understands and agrees that he is solely responsible for all tax obligations, including all reporting and payment obligations, that may arise as a consequence of this General Release and the monetary consideration provided to him pursuant to it. **RELEASOR** agrees that **RELEASEES** have provided no representation or advice as to how this consideration is to be characterized or allocated or as to the tax treatment or tax reporting or payment obligations for the monetary consideration set out herein.

7. **RELEASOR** further warrants that he fully realizes that he may have sustained unknown and unforeseen losses; costs; expenses; damages; liabilities; claims; bodily, personal, or psychological injuries; damage to property; or business losses, and the consequences thereof which may be at this time, heretofore, and hereafter unknown, unrecognized, and not contemplated by **RELEASOR**, which resulted or may or will result from the above-mentioned Incident and all matters incident or related thereto, and that no promise or inducement has been offered except as herein set forth and that all agreements and understandings between the Parties are expressed herein and that this General Release was executed without reliance upon any statement or representation by **RELEASEES**, and that **RELEASOR** is legally competent to execute this General Release. **RELEASOR** accepts full responsibility and assumes the risk of any mistake of fact or law as to any damages, losses, or injuries, whether disclosed or undisclosed, including any mistake in medical diagnosis or prognosis for any injuries, known or unknown, sustained as a result of the above-mentioned Incident and all matters incident and related thereto applicable to the claims and any potential claims **RELEASOR** has or may have against **RELEASEES**.

Consideration.

8. **RELEASEES** agree to pay **RELEASOR** the amount of [REDACTED] by tendering payment via check totaling that amount payable to the ACLU Foundation of Colorado and delivered to **RELEASOR'S** attorneys within fourteen (14) calendar days of the receipt of this General Release fully executed by **RELEASOR**.

9. **RELEASEES** and **RELEASORS** agree to entry of a Consent Decree as set out herein as Exhibit 1 of this General Release. Should the Court decline to enter the Consent Decree, Defendants Teller County, Colorado and Pueblo County, Colorado will implement the provisions of the proposed decree as set out in Exhibit 1 for the three-year term set out therein.

10. It is agreed that consideration for this General Release is as set forth herein, includes, consistent with the provisions of the Consent Decree described in Paragraph 9, above, dismissal of all claims and the Civil Action with prejudice, and includes the above monetary consideration which shall be full and final payment for all claims released herein and all claims that might have been asserted in any state or federal judicial or administrative forum up to the date of execution of this General Release, including any claims for attorney fees and costs.

Voluntariness, Denial of Liability, Entire Agreement.

11. **RELEASOR** has carefully read the above and foregoing General Release and knows the contents thereof and has signed the same as his own free and voluntary

act and after having had the opportunity to have the same explained by counsel. **RELEASOR** expressly states that he has been advised of his right to consult additional professionals of his choice, including physicians, lawyers, and accountants, regarding any and all known and unknown, foreseen and unforeseen, damages, losses, injuries, costs, losses of services, expenses, liabilities, claims, and the consequences thereof, of whatsoever kind and nature, that **RELEASOR** may have or will incur, whether suspected or unsuspected. **RELEASOR** further expressly understands and agrees that the signing of this General Release shall be forever binding and no rescission, modification, or release of **RELEASOR** from the terms of this General Release will be made for any mistake.

12. It is expressly understood and agreed that the acceptance of the above-mentioned consideration is in full accord and satisfaction of a disputed claim and that payment of said sum is not to be construed in any way as an admission of liability on the part of **RELEASEES** but, on the contrary, **RELEASEES** specifically deny any wrongdoing, misconduct, or liability on account of said Incident or any matters related or incidental hereto, or otherwise.

13. **RELEASOR** understands and agrees that as a condition precedent to entering into this General Release and the exchange of the consideration set out herein, any and all individually named former or current employees of the County of Pueblo, Colorado, and the County of Teller, Colorado, were dismissed with prejudice by Plaintiff and that all agreements and understandings between **RELEASOR** and **RELEASEES** are otherwise embodied and expressed herein and that the terms of this General Release are contractual and not mere recitals.

[INTENTIONALLY LEFT BLANK]

Approved as to form:

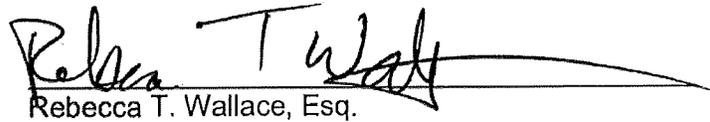
FOR RELEASOR:

KILLMER, LANE & NEWMAN, LLC



Darold W. Killmer, Esq.
Michael Paul Fairhurst, Esq.

ACLU OF COLORADO



Rebecca T. Wallace, Esq.

FOR RELEASEES:

VAUGHAN & DeMURO

Gordon L. Vaughan, Esq.

PUEBLO COUNTY ATTORNEY'S OFFICE

Cynthia Mitchell, Assistant County Attorney

COUNTY OF TELLER, COLORADO

Paul W. Hurcomb, County Attorney

Exhibit 1 – Consent Decree

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 17-cv-02146-CBS

MICHAEL BAILEY,

Plaintiff,

v.

TELLER COUNTY, COLORADO; and
PUEBLO COUNTY, COLORADO.

Defendants.

CONSENT DECREE

Before the Court is the parties' joint motion for entry of a consent decree. (Doc. No. ____). Upon consideration of the motion, and for good cause, it is ORDERED that the motion is GRANTED.

Background

1. On September 7, 2017, Plaintiff filed a Complaint alleging Defendants violated his constitutional right to due process of law by holding him in jail without bringing him before a judge for a first appearance on his criminal charges, including bond setting, for 52 days.
2. Defendants have denied and continue to deny any violation of the constitutional rights of Plaintiff.
3. Following mediation, the Parties have reached an amicable resolution of their differences and, on [REDACTED], entered into, and finalized, a General Release and Settlement

Agreement (“Settlement Agreement”). The Settlement Agreement provides, in part, that the Parties will submit as non-monetary relief to entry of this Consent Decree.

4. The Parties jointly submit this proposed Consent Decree, agree to the power of this Court to enter a Consent Decree enforceable against the Defendants Teller County, Colorado and Pueblo County, Colorado, and agree to the continuing jurisdiction of this Court over this matter to enforce the Consent Decree.

5. The Parties stipulate to the jurisdiction of the Court over the Parties and subject matter of this action and have waived the entry of findings of fact and conclusions of law.

6. The Consent Decree is final and binding upon the Parties as to the issues resolved, as well as upon their successors and assigns.

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

7. Defendants Teller County, Colorado and Pueblo County, Colorado shall take the following action for all individuals arrested by either jurisdiction on a warrant issued by a county or district court located in Teller or Pueblo County:

The arresting jurisdiction will bring new arrestees before a county court for a C.R.C.P. Rule 5 advisement (in person or by video) without unnecessary delay and will specifically endeavor to bring the arrestee before the county court at the next in-custody advisement after arrest, but, in any event, the arresting jurisdiction will bring the defendant before a county court no later than the second “court day” after arrest. A “court day” is defined as any day the county court is in session. If the arrest occurs before 6:00 a.m. on a court day, the day of arrest shall be counted as one of the two court days. If arrest occurs

after 6:00 a.m. on a court day, the day of arrest shall not be counted as one of the two court days.

8. The Defendant Counties are required to comply with the terms of this Decree for a period of three years beginning on the date this Consent Decree is signed by the Court.

9. However, if subsequent legislation or Colorado Supreme Court or U.S. Supreme Court law arises that is directly on point and provides an alternate time frame by which an arrestee must be brought before a court for C.R.C.P. Rule 5 advisement, this Consent Decree shall be void.

10. This Court shall retain jurisdiction of this case for purposes of compliance with this Decree and entry of such further orders or modifications as may be necessary or appropriate to effectuate its provisions.

11. Prior to filing any motion challenging the adequacy of compliance with this Consent Decree, Plaintiff shall first notify counsel for Defendant and attempt to negotiate an informal resolution without involving the Court. If the Defendant Counties and Plaintiff are unable to informally resolve the issue within fourteen days, Plaintiff may file a motion with this Court seeking enforcement of the Decree.

12. Plaintiff's claims are DISMISSED with prejudice, except that the Court retains jurisdiction to enforce the terms of this Decree.

Done this ____ day of _____, 2018.

BY THE COURT:
