

DANYALL SIMPSON, et al. v. JAMES LANGER, et al.

SETTLEMENT AGREEMENT AND GENERAL RELEASE

This Settlement Agreement and General Release is made and entered into for and in consideration of the commitments set forth herein on this ___ day of _____, 2015, by and between Danyall Simpson (hereinafter referred to as “Plaintiff”), Compcare Health Services Insurance Corporation (hereinafter referred to as “Compcare”), the City of Milwaukee (hereinafter referred to as “the City”), and James Langer and Zoe Jackson (hereinafter referred to as “Defendants”).

WHEREAS, Plaintiff filed a Complaint with the United States District Court for the Eastern District of Wisconsin, Case Number 12-CV-500 alleging, among other things, violation of his rights to be free from excessive force, failure to intervene in the violation of his constitutional rights, and other violations of his civil rights under the United States Constitution; and,

WHEREAS, in addition to suing the City of Milwaukee directly, Plaintiff named individual defendants, including Officer Zoe Jackson and former Officer James Langer, who were alleged to have acted in the scope of their employment as Milwaukee Police Officers; and,

WHEREAS, Compcare was joined to the suit as an involuntary plaintiff for having provided benefits and payments for medical care on behalf of the Plaintiff; and

WHEREAS, the parties wish to resolve this matter without the expense and disruption of further litigation between them by amicably entering into this full and final settlement as to all claims Plaintiff and Compcare may have against all defendants, and any other persons or parties in connection with the underlying incident;

NOW, THEREFORE, in consideration of their mutual promises as set forth herein, and with their intention to be mutually and legally bound hereby, the parties covenant and agree as follows:

1. This agreement is subject to approval by the Common Council of the City of Milwaukee. It shall be deemed null and void, and have no force or effect, nor shall it be admissible for any purpose, in the event it is not so approved.

2. Plaintiff, Danyall Simpson, for himself, his heirs, personal representatives, executors, administrators, successors, agents and assigns, does hereby release and forever discharge the Defendants and the City, and all its departments, and all its current or former officers, employees or agents, and their successors, including without limitation, James Langer and Zoe Jackson, from any and all manner of action or actions, cause or causes of action, suits, debts, covenants, contracts, agreements, judgments, execution, claims, demands, bills, liens, subrogation claims, and expenses (including attorneys' fees and costs) whatsoever in law or equity, which he has had, now has or may have against the City or any of its current or former employees for or by reason of any transaction, matter, cause or thing whatsoever up to the date of this Agreement, whether based on tort, express or implied contract, or any federal, state or local law, statute or regulation, specifically including, but not limited to, any and all claims under 42 U.S.C. § 1983 based upon any provision in the United States Constitution; the Wisconsin State Constitution any other applicable statute or authority of law or common law that concern any claims which have arisen or could arise out of or be connected to the facts, issues or allegations made or referred in *Simpson, et al. v. Langer, et al.*, U.S.D.C. Case Number 12-CV-500.

3. Plaintiff agrees to execute a stipulation or joint motion to dismiss *Simpson, et al. v. Langer, et al.*, U.S.D.C. Case Number 12-CV-500 with prejudice and without further costs upon approval of this settlement by the Common Council. Plaintiff further agrees to execute any other documents that may be required to completely dismiss his claim, complaint or action against all defendants concerning the allegations raised in the pending complaint.

4. Plaintiff agrees to execute a general release of all claims in the form approved by the City Attorney, as described in the attached Exhibit A, upon approval of this settlement by the Common Council, and as a condition precedent to their receipt of any settlement funds herein.

5. In consideration of the general release, and the motion to dismiss the action, the City of Milwaukee will pay the total sum of Seventy Five Thousand Dollars (\$75,000.00) to the office of Plaintiff's attorney, Jonathan Safran of Samster, Konkel & Safran, S.C., therefore, payable to Samster, Konkel & Safran, S.C. Trust Account."

6. With respect to the payments referred to in paragraph 5, the parties acknowledge and agree that said payment is in full and final settlement of all damages which plaintiff has or could have claimed in this matter, including without limitation compensatory damages, punitive damages, attorney fees, costs, loss of earnings or earning capacity or other economic damages. This payment is inclusive of all claims for all attorney fees, including any attorneys who may have represented plaintiff in addition to the firm of Samster, Konkel & Safran, S.C.

7. Plaintiff and his attorney acknowledge and agree that Plaintiff will be solely responsible for the payment of any state or federal taxes that may be due as a result of the payments herein, and agree to indemnify, defend and hold the City harmless from and against any and all loss, liability, damage, deficiency or claim arising out of the City not making withholdings from this amount for state and federal income taxes. Plaintiff further acknowledges

and agrees that the sum of Seventy Five Thousand Dollars (\$75,000.00), payable as set for the above, is the maximum amount Defendant will pay in this matter, irrespective any tax consequence to Plaintiff.

8. This Agreement is binding upon and inures to the benefit of the Plaintiff, Compcare, the City, and the Defendants, and their respective heirs, representatives, successors, and assigns. The Plaintiff represents and warrant that he is the real party in interest with respect to all claims released in this Agreement and that he has not assigned to any other person or entity any claim that may be asserted against the City or Defendants. The Plaintiff further agrees that he will fully indemnify and hold the City and Defendants harmless for any money he is required to pay to any other person asserting any claim based on subrogation, derivation, or assignment that arises out of or relates to any claim released in this Agreement.

9. It is expressly understood and agreed between the parties that by entering into this Agreement, the defendants in no way admits that they have violated any federal, state, local statute or ordinance, or constitutional provision, or were otherwise negligent. It is further understood and agreed that this is a compromise settlement of disputed claims and that neither this Agreement nor the furnishing of the consideration provided for in this Agreement shall be deemed or construed at any time or for any purpose as an admission of liability by the City or any of the Defendants. Liability for any and all claims for relief is expressly denied by the City and all Defendants.

10. Plaintiff represents and certifies that he has carefully read and fully understand all of the provision and effects of this Settlement Agreement and General Release, and that his attorney has thoroughly discussed all aspects of this Agreement with him, that he is voluntarily entering into this Agreement, and that neither the City, nor the Defendants nor the Defendants'

attorney(s) made any representation concerning the terms or effects of this Agreement other than those contained herein.

11. Plaintiff expressly acknowledges that the Settlement Agreement and General Release are intended to include in its effect, without limitation, all claims concerning all incidents alleged in the Complaint, against any and all persons or entities, regardless of whether Plaintiff currently has the full knowledge of the facts or the extent of his damages, and that this Settlement Agreement and General Release contemplates the extinguishment of any such claim or claims, consistent with the terms of this Agreement.

12. This Settlement Agreement and General Release shall in all respects be interpreted, enforced and governed under the laws of the State of Wisconsin.

13. This Settlement Agreement and General Release sets forth the entire Agreement between the parties hereto, and fully supersedes any and all prior agreements or understandings between the parties hereto pertaining to the subject matter hereof, except that both parties shall continue to be bound by the terms of any protective orders which were issued with respect to the disclosure of information and documents in the discovery phase of *Simpson, et al. v. Langer, et al.*, U.S.D.C. Case Number 12-CV-500.

14. Plaintiff warrants that, other than his attorneys, and Compcare, no other person or other legal entity has any interest in any claims, demands, causes of action, obligations, damages or liabilities covered by this Agreement; that he has the sole right and exclusive authority to execute this Agreement and to receive the consideration hereunder; and that, other than any agreement he may have with his attorney, he has not sold, assigned, transferred, conveyed or otherwise disposed of any claim, demand, cause of action, obligation, damage, or liability covered by this Agreement.

15. Compcare, for itself, its personal representatives, administrators, successors, shareholders, agents and assigns, or any other interested party, does hereby release and forever discharge the Defendants and the City, and all its departments, and all its current or former officers, employees or agents, and their successors, including without limitation, James Langer and Zoe Jackson, from any and all manner of action or actions, cause or causes of action, suits, debts, covenants, contracts, agreements, judgments, execution, claims, demands, bills, liens, subrogation claims, and expenses (including attorneys' fees and costs) whatsoever in law or equity, which it has had, now has or may have against the City or any of its current or former employees for or by reason of any transaction, matter, cause or thing whatsoever up to the date of this Agreement, whether based on tort, express or implied contract, or any federal, state or local law, statute or regulation, or on any other applicable statute or authority of law or common law that concern any claims which have arisen or could arise out of or be connected to the facts, issues or allegations made or referred in *Simpson, et al. v. Langer, et al.*, U.S.D.C. Case Number 12-CV-500.

IN WITNESS WHEREOF, and intending to be legally bound hereby, the Plaintiff, Compcare, the City and the Defendants (through their attorneys) have executed the foregoing Settlement Agreement and General Release.

Dated: _____

Danyall Simpson, Plaintiff

Dated: _____

Jonathan Safran
Samster, Konkell & Safran, S.C.
Attorneys for Plaintiff

Dated: _____

Doug Lehrer
Matthiesen, Wickert & Lehrer, S.C.
Attorneys for Compcare

Dated: _____

Grant F. Langley, City Attorney
Robin Pederson, Assistant City Attorney
Attorneys for Defendants

Exhibit A

GENERAL RELEASE OF ALL CLAIMS

I, Danyall Simpson, in consideration of the promised payment of Seventy Five Thousand Dollars (\$75,000.00), do hereby forever release and discharge James Langer, Zoe Jackson, and the City of Milwaukee, and any other current or former employee or agent of the City of Milwaukee, from any and all claims and causes of action, in any way arising out of or related to, any claims concerning my stop, search, arrest, detention, or use of force claims, which are more thoroughly presented in the case of *Simpson, et al. v. Langer, et al.*, Case Number 12-CV-500, United States District Court for the Eastern District of Wisconsin, which states my claims for damages for alleged personal physical and psychological injury for tort-like rights and constitutional rights. This release is not limited just to the claims asserted in my lawsuit.

This release is also made for, and binding upon my heirs, successors and assigns. By this agreement, any liability of subsidiaries, parent corporations, insurers, predecessors, successors, officers, directors, agents or employees of the released parties is also released and discharged. Further, any other persons or entities that are or might be liable, even though their identity or involvement in the incidents may not be presently known, are fully released and discharged.

This release fully extinguishes all claims and causes of action, including but not limited to those for: compensatory damages; loss of society, companionship and consortium; punitive damages; costs and fees, including attorneys' fees; statutory damage awards; and liability based upon indemnification claims. In making this release, all rights to bring any other claims against anyone are fully extinguished since full compensation for all injuries and damages will be paid.

I, Danyall Simpson, further agree to indemnify and hold harmless the released parties against any claims which may be made by or on behalf of any child of mine living or to be born, for any claims or causes of action including those for loss of care, companionship, protection services or other benefits.

It is understood that the money paid for this unqualified release will be received not only as a full satisfaction for all known injuries and damages, but also will be received for future injuries and damages stemming from the events which form the basis for this lawsuit. The extent of any future injuries and damages is unknown, but it is understood that they may result in a condition substantially different than today. However, this document shall not be construed to release any person from liability, relative to any events which occur after the date on which this release document is fully executed.

It is understood and agreed that this settlement is a full compromise of a disputed claim, and neither this settlement, nor the payment of money, is to be construed as an admission of liability by the released parties. It is recognized that the released parties deny that they are liable for any claimed injuries or damages.

With full knowledge and understanding of the contents of this release, I voluntarily enter into this settlement and do so without having relied on any statement or representation by the released parties, their representatives, or anyone retained by them.

I agree to indemnify the released parties for any money they may have to pay to any other person or entity asserting any claim arising out of or related to any injuries or damages I sustained in this incident, including any claims based upon subrogation, derivation or assignment. Also, I will indemnify the released parties for any expenses incurred in defending such claims.

I understand that in making this release I will have no right to make a claim against anyone, including the parties released, for more money even if I later become dissatisfied with this settlement for any reason whatsoever. I also understand that I will not make any future claim or complaint against the City of Milwaukee or any other released party, regarding the events which form the basis for this lawsuit. However, this release does not preclude me from testifying in any proceeding, which may relate to the subject matter of this case, as described above, when either requested or compelled to do so by any governmental or administrative body.

The statements in this Full Settlement and Final Release are contractual terms, and are not mere recitals. Any questions concerning this release shall be determined and governed by the terms of this release and the laws of the State of Wisconsin.

I have read this release, which consists of two pages, and have had it explained to me by my lawyer, and understand that it is a full and complete compromise and full settlement of all claims for which I will be fully compensated, and I am satisfied that I understand it.

DANYALL SIMPSON

Subscribed and sworn to before me
this ____ day of _____, 2015.

Notary Public, State of Wisconsin
My Commission _____

CONSENT OF ATTORNEY

Pursuant to the provisions of Wis. Stat. § 757.38, I acknowledge that this Full Settlement and Final Release have been entered into on the advice and recommendation of myself as attorney for Danyall Simpson.

JONATHAN SAFRAN
Samster, Konkel & Safran, SC

Subscribed and sworn to before me
this ____ day of _____, 2015.

Notary Public, State of Wisconsin
My Commission _____

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