

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Frank A. Baker,

Case No. 17-cv-00496 (RHK/DTS)

Plaintiff,

vs.

the City of St. Paul,

**SETTLEMENT AGREEMENT
AND RELEASE**

Defendant.

This Settlement Agreement and Release is made by and between Plaintiff Frank A. Baker and Defendant City of St. Paul.

WHEREAS, Plaintiff filed a civil complaint in this matter alleging, *inter alia*, that on June 24, 2016, Defendant violated Plaintiff's Fourth Amendment rights to be free from unreasonable seizure and the use of excessive and unreasonable force. Plaintiff claims that Defendant is liable for his injuries and damages;

WHEREAS, Defendant expressly denied Plaintiff's allegations and liability for Plaintiff's alleged damages;

WHEREAS, the parties wish to settle and resolve all outstanding disputes and claims between them to avoid the uncertainties and costs associated with continued litigation of this matter; and

WHEREAS, the parties to this Settlement Agreement and Release have successfully conciliated all issues of dispute in the above-entitled matter.

NOW, THEREFORE, in consideration of the mutual promises established herein, the parties agree as follows:

1. The City of St. Paul will issue payment to the Gaskins, Bennett, Birrell, Schupp, LLP, Trust Account and to a qualified structured settlement annuity company as outlined below, for the total sum of two million dollars (\$2,000,000.00) within a reasonable time following the City Council's approval of this agreement. These payments are in complete satisfaction for all damages, medical liens, costs and attorneys' fees in this matter for Plaintiff. Plaintiff will be responsible for payment of valid liens and subrogation claims and will indemnify the City of St. Paul from any such obligation.

2. Payments: In consideration of the release set forth herein, the Defendant agrees to pay the sums outlined below:

A. Payments due at the time of settlement as follows:

\$1,000,000.00 payment to Gaskins, Bennett, Birrell, Schupp, LLP Trust Account.

B. The sum of \$1,000,000.00 to New York Life Insurance Company to fund a structured settlement annuity that will provide Periodic Payments made according to the schedule as follows (the "Periodic Payments"):

PAYEE: Frank A. Baker

\$4,512.31 payable monthly for his lifetime with twenty (20) years (240 payments) guaranteed, commencing 7/1/2017 with the last guaranteed payment on 6/1/2037.

All sums set forth herein constitute compensatory damages, and not punitive damages, on account of personal physical injuries and physical sickness, within the meaning of Section 104(a)(2) of the Internal Revenue Code of 1986, as amended.

3. Payee's Rights to Payments: Plaintiff acknowledges that the Periodic Payments cannot be accelerated, deferred, increased or decreased by the Plaintiff or any Payee; nor shall the Plaintiff or any Payee have the power to sell, mortgage, encumber, or anticipate the Periodic Payments, or any part thereof, by assignment or otherwise.

4. Payee's Beneficiary: Any payments to be made after the death of the Payee shall be made to the Estate of the Payee or to such person or entity as shall be designated in writing by the Payee to the Assignee. If no person or entity is so designated by the Payee, or if the person designated is not living at the time of the Payee's death, such payments shall be made to the estate of the Payee. No such designation, nor any revocation thereof, shall be effective unless it is in writing and delivered to the Assignee. The designation must be in a form acceptable to the Assignee before such payments are made.

5. Consent to Qualified Assignment: Plaintiff acknowledges and agrees that the Defendant will make a "Qualified Assignment", within the meaning of Section 130(c) of the Internal Revenue Code of 1986, as amended, of the Defendant's liability to make the Periodic Payments for Frank A. Baker as set forth herein to New York Life Insurance and Annuity Corporation (the "Assignee"). The Assignees obligation for payment of the Periodic Payments shall be no greater than that of the Defendant (whether by judgment or agreement) immediately preceding the assignment of the Periodic Payments obligation.

Any such assignment if made shall be accepted by the Plaintiff without right of rejection and shall completely release and discharge the Defendant from the Periodic Payment Obligation assigned to the Assignee. The Plaintiff recognizes that, in the event of such assignment, the Assignee shall be the sole obligor with respect to the Periodic Payments obligation, and that all other releases with respect to the Periodic Payments obligation that pertain to the liability of the Defendant shall thereupon become final, irrevocable and absolute.

6. Right to Purchase an Annuity: The Defendant, itself or through its Assignee, shall fund the liability to make the Periodic Payments for Frank A. Baker through the purchase of an annuity policy from New York Life Insurance Company (the "Annuity Issuer"). The Assignee shall be the sole owner of the annuity policy and shall have all rights of ownership. The Assignee may have the Annuity Issuer mail payments directly to the Payee. The Plaintiff shall be responsible for maintaining a current mailing address with the Annuity Issuer.

7. Discharge of Obligation: The obligation of the Assignee to make each Periodic Payment shall be discharged upon mailing of a valid check or electronic funds transfer in the amount of such payment on or before the due date to the last address or bank account on record for the Payee named in this Settlement Agreement and Release. If the Payee or designated beneficiary notifies the Assignee that any check or electronic funds transfer was not received, the Assignee shall direct their Annuity Issuer to initiate stop payment action and, upon confirmation that the check was not previously negotiated or electronic funds transfer deposited, the Annuity Issuer shall process a replacement

payment in the amount of such payment to the designated address or bank account of the Payee.

8. In consideration of the above payment Plaintiff, by execution of this Settlement Agreement and Release, hereby fully and completely releases the City of St. Paul, and all of the past and present agents, officers and employees, predecessors, and successors in interest of the City of St. Paul in their official and individual capacities, of any and all claims for damages, costs and attorneys fees which Plaintiff has or may have, whether presently known or unknown, arising in law or in equity, which were made, or which could have been made, in the above-entitled action. Plaintiff agrees that upon execution of this Settlement Agreement and Release all such claims, differences, demands, rights, and causes of action, which Plaintiff now has or may have against the City of St. Paul, and all of the past and present agents, officers, and employees, predecessors, and successors, and successors in interest of the City of St. Paul, in their official and individual capacities, whether currently known or unknown, arising in law or equity, which were made or which could have been made in the above-entitled action, are fully released, satisfied, discharged and settled. This means that Plaintiff releases all employees of the City of St. Paul from any and all claims for damages, costs and attorneys fees, known or unknown, that were or could have been brought in relation to the set of facts presented in the above-entitled action.

9. The parties to this Settlement Agreement and Release hereby stipulate that the payment of the sums specified above include any claim for attorneys' fees and costs

which could have been brought in relation to the set of facts presented in the above entitled action.

10. Plaintiff agrees that the terms of this Settlement Agreement and Release are binding on him and his personal representatives, heirs, successors and assigns.

11. The parties agree that this Settlement Agreement and Release constitutes all of the agreements and understandings between Plaintiff and Defendant. There are no other written or oral agreements or understandings which modify the terms set forth in this Settlement Agreement and Release.

12. Plaintiff, by execution hereof, acknowledges that this Settlement Agreement and Release has been read by his by legal counsel, and that he understands and fully agrees to each and every provision hereof.

Dated: 3/28/17

Frank A. Baker
Frank A. Baker, Plaintiff

Subscribed and sworn to before me
on

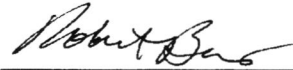
Ryan Vettleson
Notary Public

My Commission Expires 1/31/2020



Dated: 3/28/17

GASKINS, BENNETT, BIRRELL, SCHUPP,
LLP



Robert Bennett, #6713
Andrew J. Noel, #322118
Kathryn H. Bennett, #0392087
333 South Seventh Street, #3000
Minneapolis, MN 55402-2440
Telephone: (612) 333-9500
Attorneys for Plaintiff
Tax ID No. 41-1662579

Dated:

SAMUEL J. CLARK
Saint Paul City Attorney

Portia Hampton-Flowers, #210869
Deputy City Attorney
Cheri M. Sisk, #032999X
Assistant City Attorney
750 City Hall and Courthouse
15 West Kellogg Boulevard
St. Paul, MN 55102-1620
Telephone: (651) 266-8770

Attorneys for Defendant City of Saint Paul