

FULL AND FINAL RELEASE AND SETTLEMENT AGREEMENT

1.0 Parties and Controversy.

1.1 The parties to this Full and Final Release and Settlement Agreement ("Agreement") are as follows:

- A. Gary Branson ("Plaintiff"); and
- B. The City of Commerce City, Colorado, to include the Commerce City Police Department as well as the City's divisions, insurers, principals, attorneys, agents, employees, successors, servants, elected officials, officers, and directors, past and present (referred to as "Defendant").

1.2 The case or controversy giving rise to this Agreement stems from an incident on November 24, 2012 in Commerce City, Colorado (the "Incident") and is the subject of the civil action filed in the United States District Court for the District of Colorado, Civil Action No. 13-cv-03090-REB-NYW (the "Lawsuit").

2.0 Release.

2.1 Plaintiff hereby releases, acquits, and forever discharges Defendant as well as all other related persons and entities, both past and present, including, but not limited to, Defendant's departments, divisions, insurers, principals, attorneys, agents, employees, successors, servants, elected officials, officers, and directors, of and from any and all liabilities, claims, demands, rights, controversies, agreements, damages, actions, causes of action, expenses, attorney's fees, costs, interest, compensation, judgment, and any and all consequential and punitive damages, of whatever kind or nature, either in law or equity, which exist or might exist with regard to any and all claims in any way related to or arising from the facts and circumstances surrounding the Incident or alleged in the Lawsuit.

2.2 The parties hereby acknowledge and agree that this Agreement, and the terms thereof, shall be binding on their agents, attorneys, servants, employers, employees, principals, heirs, executors, administrators, insurers, successors, assigns, subrogees, subrogors, lienholders (including but not limited to Medicare), and any and all other persons or entities which have or may have any claim on behalf of the parties, related to or arising from the Incident or the Lawsuit, or which are or may be entitled to share in any settlement related to or arising from the Incident or the Lawsuit.

2.3 Plaintiff hereby acknowledges that a portion of the consideration given for this Agreement is being given for the full and final release of any and all unknown losses, claims, injuries, costs, expenses, and damages which either may have occurred in the past and are not yet known, or which may occur in the future and are not presently known related to or arising from the Incident or the Lawsuit. Plaintiff agrees to voluntarily and knowingly assume the risk of any mistake of fact, either mutual or unilateral, with respect to said losses, claims, injuries, costs, expenses and damages, and shall not, under any circumstances, seek to present further claims of

any kind or in any forum whatsoever (including in any court, or before any administrative or investigative body or agency whether public, quasi-public or private) either himself, on behalf of or as a member of any group or class, or by, through or on behalf of his agents, attorneys, servants, employers, employees, heirs, executors, administrators, insurers, successors, assigns, subrogees, subrogors, and lienholders (including but not limited to Medicare) related to or arising from the Incident or the Lawsuit as against the persons and entities herein released.

2.4 Plaintiff specifically agrees that he is solely responsible for payment of any and all of his medical/health care providers and/or any other entity that may be entitled to share in any settlement proceeds related to his alleged injuries and/or damages, including any and all liens (including but not limited to Medicare), subrogated interests or assignments for same, as well as any expenses incurred subsequent to this Agreement. Plaintiff agrees to indemnify and defend Defendant against any claims asserted by any third party, including but not limited to Plaintiff's medical/health care providers and/or insurers (including but not limited to Medicare) or any other governmental entity. Plaintiff agrees to indemnify Defendant against any claims brought by third parties seeking contribution, indemnification, reimbursement, subrogation, or payment for any claim, lien or judgment recovered or asserted related to the allegations that were or could have been asserted against Defendant related to the Incident or the Lawsuit.

2.5 Every provision of this Agreement is intended to be severable unless otherwise noted. In the event that any term or provision hereof is declared to be illegal or invalid for any reason whatsoever by a court of competent jurisdiction, such illegality or invalidity shall not affect the balance of the terms and provisions hereof, which terms and provisions shall remain binding and enforceable.

2.6 It is understood and agreed that the payment and consideration set forth in Section 3.1 of this Agreement is in full settlement and compromise of Plaintiff's disputed claims; that the payment and consideration made under this Agreement are not to be construed as an admission of liability on the part of the persons and entities hereby released; and that any and all liability is by said persons and entities hereby expressly denied.

3.0 Terms.

3.1 In consideration of the releases set forth at Section 2.0 above, Defendant agrees to cause payment to be made to Plaintiff as follows: A cash payment, made payable in two separate drafts, in the total amount of Two Hundred Sixty-Two Thousand and Five Hundred dollars (\$262,500.00) shall be made payable to the KLN Client Trust account.

3.2 Defendant agrees to make an initial payment in the amount of \$162,500.00 upon the execution of this Agreement and no later than January 15, 2016 with the remaining funds of \$100,000.00 to be withheld until Plaintiff resolves and pays all liens related to Medicare's entitlement to reimbursement.

3.3 Once all liens related to Medicare's entitlement to reimbursement are resolved, and Plaintiff provides Defendant with the Medicare Benefits Coordination & Recovery Center (BCRC) Final Demand Letter obtained by Plaintiff, confirming either that Medicare has no


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interest in Plaintiff's claim or that Medicare was reimbursed and the lien was satisfied, Defendant agrees to make payment to Plaintiff in the remaining amount of \$100,000.00 within fifteen days of Defendant's receipt of documentation showing the amount on the BCRC Final Demand Letter was paid.

3.4 Plaintiff and Defendant agree that each shall bear his/its own attorney's fees and costs associated with the Incident and the Lawsuit.

4.0 Medicare.

4.1 Plaintiff represents and warrants he is a Medicare beneficiary, as that term is defined by 42 USC §1395c (Social Security Act). Plaintiff warrants that if he has ever been enrolled in a Medicare Advantage Plan (MAP) and/or Prescription Drug Plan (also known as Medicare Part "C" or Part D), that he has disclosed the name of the (se) plan(s), enrollment periods, and policy number(s) for such plans to Defendant before signing this Agreement. If Plaintiff has ever been enrolled in a MAP, Plaintiff has notified Defendant of any known MAP liens/conditional payments, has provided Defendant with final lien documentation from all such plans, or written confirmation from all such plans that no lien is being asserted against any recovery in this matter, and/or evidence such liens have been paid. Plaintiff understands that payment/disbursement of remaining settlement funds by Defendant to Plaintiff is contingent upon Plaintiff providing satisfactory evidence of MAP and/or Prescription Drug Plan liens/conditional payment information and final satisfaction of these liens to Defendant.

4.2 Plaintiff acknowledges and understands that because of his Medicare status, Defendant are required to comply with 42 USC §1395y(b) – the Medicare Secondary Payer Act (MSP) - which includes the requirement that Defendant ensure reimbursement to the Centers for Medicare & Medicaid Services (CMS) of conditional payments for items and services related to this claim and electronic reporting to CMS certain information about the settlement. Plaintiff additionally acknowledges and understands that any potential obligations to protect Medicare's interest with regard to future related medical care is solely required by Plaintiff.

4.3 The Parties intend to satisfy any conditional payment obligations related to this claim, whether demanded by CMS, its recovery contractor, any MAP or Medicare Prescription Drug Plan or their recovery contractor(s), which have been asserted or are to be asserted against Plaintiff, which obligations are to be paid from the settlement amount as described in Section 3.2 and 3.3 of this Agreement.

4.5 Defendant makes no warranties, implied or express, or any other representations whatsoever as to the impact Mandatory Insurance Reporting compliance may have, adverse or otherwise, on Plaintiff's entitlement to Medicare and/or Social Security benefits. To properly discharge Defendant's reporting obligations, Plaintiff represents and warrants the following material information is true and correct:

1. Social Security Number (SSN):
2. Legal name: Gary Branson; and
3. Date of Birth:


(Initials)

Plaintiff further acknowledges and understands that Defendant must provide injury information to CMS regarding claims alleged and/or released by this Agreement, and understands that he may at any time prior to the execution of this Agreement discuss/negotiate with Defendant regarding the ICD-9 and/or ICD-10 diagnostic codes (including but not limited to " ICD 9 Code 311: Depressive Disorder Not Elsewhere Classified") Defendant intends to report to Medicare as required by law, but Plaintiff may not do so thereafter. Any injury codes reported by Defendant as required by 42 USC §1395y(b)(8) is for the purpose of complying with Defendant' legal obligation to do so only, and does not in any way whatsoever limit the general nature of this release between the Parties, which Release specifically applies to any and all injuries now claimed or which may be claimed in the future to be related to the incident giving rise to this claim and settlement, whether presently known or unknown.

4.6 In entering into this Agreement, the parties have considered Medicare's interest with regard to future related medical care. Defendant has discharged this obligation by informing Plaintiff, as set forth in this Agreement, that the settlement which is the subject of the Agreement includes compensation for future related medical care Plaintiff may receive, and Plaintiff acknowledges it is, upon his receipt of the settlement sum set forth in the Agreement, his sole obligation to protect Medicare's asserted interest with regard to future related medical care.

4.7 Defendant warrants and Plaintiff acknowledges that payment of the settlement amount in the manner described herein constitutes the entire benefit available from Defendant as the primary plan (defined under 42 USC §1395y(b)(2)(ii)) for this accident, and plan benefits from Defendant are thereafter exhausted.

4.8 Plaintiff hereby agrees, on his behalf and on behalf of his heirs, executors, successors and/or assigns, to indemnify and hold forever harmless the Defendant from and against any and all claims, demands or actions, known or unknown, including those arising under the Medicare Secondary Payer Act, made against the Defendant by any person or entity, public or private or otherwise, on account of, or in any manner related to or arising from, the Incident, because of the terms of the Agreement, resulting in the payment of the settlement amount in the manner described in the Agreement. Plaintiff waives any right he may have to a private cause of action claim under 42 USC §1395y(b)(3)(A).

5.0 Confidentiality.

5.1 Plaintiff and his attorneys agree to keep confidential the amount of the consideration paid under the terms of the Agreement. Plaintiff and his attorneys shall not disclose the amount of the settlement to anyone other than their attorneys, accountants, or other financial advisors as necessary to manage the settlement proceeds. Plaintiff and his attorneys may disclose any information required to Medicare for the purpose of resolving any and all liens related to the factual circumstances giving rise to the Incident and/or the Lawsuit. Such persons and entities will be advised of the need to keep the matters confidential. Any permissible disclosure of the amount of the settlement shall be made in a manner so as not to result in public dissemination of such information.

5.2 It is further agreed that this confidentiality agreement applies not only to Plaintiff and his attorneys but also to all employees of his attorneys, expert witnesses, investigators, or anyone engaged by his attorneys who were in any way associated with the investigation, settlement, or prosecution of any claim in any way relating to the injuries and/or damages alleged by Plaintiff in the Incident and the Lawsuit. Except by Court Order to the contrary, this Agreement may be used only in a subsequent proceeding in which Defendant alleges breach of or indemnification under this Agreement, in which case it will be filed under seal to maintain confidentiality.

6.0 Representation of Comprehension of Document.

In entering into this Agreement, the parties represent that the terms of this Agreement have been completely read and explained; and that the terms of this Agreement are fully understood and voluntarily accepted by the parties.

7.0 Warranty of Capacity to Execute Release.

Plaintiff represents and warrants that no other person or entity has, or has had, any interest in the claims, demands, obligations, and causes of action referred to in this Agreement, except as otherwise set forth herein; that he has the sole right and exclusive authority to execute this Agreement and receive the consideration specified in it; and that he has sold, assigned, transferred, subrogated, liened or otherwise disposed of any of the claims demands, obligations, or causes of action referred to in this Agreement. Plaintiff hereby agrees to fully indemnify and defend Defendant against any claims which might be asserted by any person or entity asserting any such derivative right.

8.0 Tax Liability Clause.

7.1 It is understood, between the parties to this Agreement that Plaintiff has not relied upon any representations, express or implied, made by Defendant or any of its representatives, as to the tax consequences of this Agreement and that Plaintiff releases Defendant from any and all liability in connection with any such tax consequences.

7.2 Plaintiff agrees to indemnify and hold Defendant harmless from any claims, demands, liens and/or lawsuits by the Internal Revenue Service, any other governmental agency, or any other creditor which may arise out of the settlement payment of this Lawsuit.

9.0 Governing Law and Forum.

This Agreement shall be construed and interpreted in accordance with the laws of the State of Colorado.

10.0 Entire Agreement and Successors In Interest.

This Agreement contains the entire Agreement between Plaintiff and Defendant with regard to the matters set forth in it. This Agreement may not be changed orally. This Agreement shall be binding upon and inure to the benefit of the executors, administrators, personal representatives, heirs, successors, and assigns of each.

11.0 Counterparts/Facsimile Signatures.

This Agreement may be executed in two or more counterparts and shall be fully effective when executed by all parties. This Agreement may also be executed on multiple copies via facsimile and shall be effective as if all signatures were affixed to one copy.

12.0 Effectiveness.

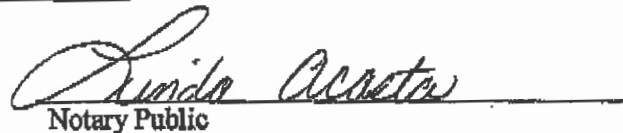
An electronically stored executed copy of this Agreement has the same force and effect as the original.

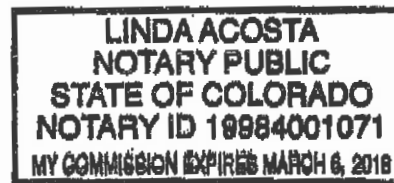

Gary Branson

STATE OF COLORADO)
COUNTY OF Pueblo) ss.

SUBSCRIBED AND SWORN to before me this 15 day of January 2016 by Felipe Rubio.

My Commission expires: 3-6-2018


Notary Public




(Initials)

APPROVED AS TO FORM:

Attorney for Plaintiff:


David Lane

Attorney for Defendant:



Eric Ziporin

Attorney for Gary Plaintiff:



Jennifer Reba Edwards

APPROVED AS TO FORM:

Attorney for Plaintiff:



David Lane

Attorney for Defendant:

Eric Ziporin

Attorney for Gary Plaintiff:

Jennifer Reba Edwards