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CONFIDENTIAL

October 29, 2024

(Through Office of the Mayor)

Honorable Board of Estimate and Contract
City Hall
Mount Vernon, New York

Re: **Settlement of Lawsuit in the matter of –
ROMAN, ISRAEL v. City of Mount Vernon
Settlement Amount: \$130,000.00**

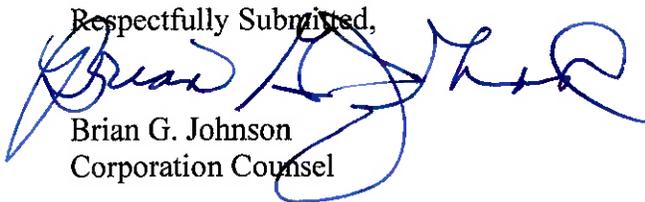
Honorable Members:

Pursuant to Section 152 of the City Charter, the undersigned respectfully requests the approval of this Honorable Board to settle the above-captioned matter against the City of Mount Vernon for the total sum of \$130,000.00.

Attached please find letter dated October 24, 2024, from The Quinn Law Firm explaining why it would be in the best interests of the City of Mount Vernon to settle this matter for the above amount.

If your Honorable Body agrees, a Resolution approving the settlement of this claim should be adopted.

Respectfully Submitted,



Brian G. Johnson
Corporation Counsel

Cc: Mayor
Comptroller
Law Department

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SETTLEMENT MEMORANDUM

October 24, 2024

Via Email

The Honorable Brian Johnson, Esq.
Corporation Counsel
City of Mount Vernon Department of Law
1 Roosevelt Square
Mount Vernon, New York 10501

Re: *Israel Roman v. City of Mount Vernon, et al.*
Docket No: 22-CV-2214 (KMK)(VR)

Dear Mr. Johnson:

Please allow this correspondence to summarize the settlement of the claims of Plaintiff Israel Roman ("Roman" or "Plaintiff") in the above-referenced civil matter.

In this case, plaintiff Israel Roman and his girlfriend, Jennifer Nero, went to the apartment of an acquaintance, Jose Roman (no relation), to settle a child care dispute. Nero hit Jose over the head with a baseball bat, causing an injury. Nero was arrested, charged and eventually pled guilty to the assault. Israel was arrested and charged as an accessory. The charges against Israel were eventually dismissed, and this civil lawsuit ensued.

As we had previously reported, a trial was scheduled to commence on October 28, 2024, before the Hon. Kenneth Karas in the United States District Court, Southern District of New York. Prior to the start of pretrial motions, the parties engaged in preliminary settlement discussions. Plaintiff issued a demand letter on August 21, 2024 seeking Five Hundred Thousand Dollars (\$500,000.00) in full settlement of all claims and inclusive of costs and attorney's fees.

On August 27, 2024, we submitted a pretrial report to the City which conveyed Plaintiff's demand, and outlined our assessment of damages and potential exposure. We also inquired as to the City's willingness to make a counter offer or engage in pretrial settlement negotiations. Ultimately, we obtained authority to settle the case in the amount of (One Hundred and Twenty-Five Thousand Dollars (\$125,000.00)). Plaintiff countered with a final demand of One Hundred and Thirty Thousand Dollars (\$130,000.00). We then obtained authority for the additional Five Thousand Dollars (\$5,000.00) and settled the case for One Hundred and Thirty Thousand Dollars (\$130,000.00), inclusive of costs and attorney's fees.

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1. Claims

Heading into the trial, Plaintiff's three remaining claims were: (i) a Section 1983 claim for false arrest; (ii) a Section 1983 claim alleging an unlawful strip search; and (iii) a state-law and Section 1983 claim alleging malicious prosecution.

A. False Arrest

The false arrest claim was asserted against Officers Hylton and Cerqua, and focused on whether, based on information they received in the apartment from the Victim (Jose Roman), there was probable cause to arrest plaintiff (Israel Roman) for any crime. In the police report, the victim is quoted as stating that plaintiff punched him repeatedly with a closed fist. That would clearly be sufficient to establish probable cause. However, in his deposition, the victim backed away from that statement, and agreed with a leading question from plaintiff's attorney to the effect that he had told the officers that he was bum-rushed. The Court held that was sufficient to create an issue of fact on the false arrest claim.

B. Strip Search

The unlawful strip search claim centered on whether plaintiff was subjected to an unlawful strip search and, if so, whether the search was conducted by Officer Hylton or Officer Cerqua. Plaintiff was unable to identify them specifically as being involved in the search, but testified that the officers who drove him from the scene conducted the strip search. The Court found that that testimony created an issue of fact. According to plaintiff, the strip search itself was of the "squat and cough" variety. He did not claim that he was subjected to an invasive strip search. To be clear, the officers denied that they ever subjected plaintiff to a strip search, lawful or otherwise.

C. Malicious Prosecution

The malicious prosecution claim was asserted against Det. Burnett, who signed the felony complaint, and Det. Lloyd, who signed a superseding misdemeanor information. This claim turned on information obtained during the interviews of Jennifer Nero and of plaintiff that were conducted by Det. Burnett and Det. Lloyd on the day following the incident. We believe there was probable cause to charge plaintiff as an accessory. However, the Court cited the same prevarication in the victim's testimony and concluded that this presented a question of fact. In trying these claims, the focus would have been on the fact that plaintiff was charged not as a primary aggressor but rather as an accessory. The fact that Jennifer Nero pled guilty to striking the victim with the bat is irrelevant because plaintiff was with her at the time and, according to the victim, was part of the group that burst into his apartment and "bum rushed" him.

2. Case Valuation and Assessment of Potential Damages/Exposure

We were confident in our ability to try the case, and believe that the individual officers would have made good witnesses. However, it is always impossible to predict the likelihood of success at trial. Given the potential exposure of an adverse verdict, particularly in the context of plaintiff's attorney's fees, we agreed that settling this matter for One Hundred and Thirty

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Thousand Dollars (\$135,000.00) was in the best interest of the City. The plaintiff was a credible witness at his deposition, and would have made a reasonably good impression in Court.

A. Damages

- Plaintiff was in custody from a Saturday afternoon until Monday morning, when he was arraigned and released on his own recognizance. If he prevailed on the false arrest claim, his damages would have consisted of compensation for that period of detention, which estimated would amount to \$25,000 to \$35,000.
- Following arraignment, plaintiff was required to return to Court approximately five (5) times before the charges were eventually withdrawn. We estimated \$10,000 to \$15,000 for the inconvenience caused to plaintiff by these obligatory court appearances. Plaintiff was represented by a public defender and therefore did not incur attorney' fees for his criminal defense.
- Plaintiff had a lost wage claim, though it was not significant. Plaintiff testified that the amount of the claim was \$180.
- If plaintiff prevailed on the strip search claim, his damages would have consisted of the mental anguish and/or embarrassment of having his underwear pulled down for a few seconds. He testified in both his 50-h and his deposition that he had never seen a psychologist or psychiatrist. Damages would therefore be limited to garden variety mental anguish which we estimate would range from \$20,000 to \$50,000.

B. Comparable Awards/Settlements

In the Second Circuit, strip search cases that have no proof of damages, as is the case here, typically fall in the \$25,000-50,000 range, often after an application for remittitur:

- *Kelleher v. Fearon*, 90 F. Supp. 2d 354 (S.D.N.Y. 2000), Judge Colleen McMahon remitted a \$125,000 award to \$25,000;
- *Jenkins v. Cty. of Nassau*, 540 F. Supp. 3d 310 (E.D.N.Y. 2021) after a bench trial the Court awarded \$40,000 before an attorney's fees award of \$124,688;
- *Gonzalez v. City of Schenectady*, No. 1:00-CV-0824, 2002 U.S. Dist. LEXIS 28953 (N.D.N.Y. Dec. 28, 2002) the court reduced a \$75,000 award to \$40,000 before attorney's fees;
- *Cotto v. City of Middletown*, 158 F. Supp. 3d 67 (D. Conn. 2016) the court reduced an award of \$61,000 to \$32,500;
- *Wilson v. Aquino*, 233 F. App'x 73 (2d Cir. 2007) the Second Circuit upheld an award of \$25,000 in punitive damages in a case that awarded nominal damages and involved an improper strip search, conducted privately but also involving kicking and punching the plaintiff; and
- *Ciarolo v. City of N.Y.*, 216 F.3d 236, 237-38 (2d Cir. 2000) the Second Circuit affirmed a jury's verdict of \$19,645 in compensatory damages, where strip search

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resulted in plaintiff suffering post-traumatic stress disorder, undergoing therapy and taking anti-depressants.

Awards in other Circuits follow the same trend:

- *Kennedy v. L.A. Police Dep't*, 901 F.2d 702, 705 (9th Cir. 1989) (affirming jury's award of \$25,000 in compensatory damages in case with no aggravating factors);
- *Abshire v. Walls*, 830 F.2d 1277, 1279 (4th Cir. 1987) (affirming two awards of \$500 and one award of \$1,000 in case with no aggravating factors);
- *Joan W. v. City of Chi.*, 771 F.2d 1020, 1023-25 nn.1-9 (7th Cir. 1985) (ordering remittitur of jury's verdict of \$112,000 to \$75,000, where plaintiff suffered emotional distress and officers conducting strip search threatened plaintiff, used vulgar language and laughed at plaintiff).

Accordingly, on the top end, we believed the exposure in this case for plaintiff's damages would have been \$75,000-\$100,000.

3. Attorney's Fees:

If plaintiff were to prevail then there would also have been an attorney's fee award under 28 USC 1988. As in other federal cases, the potential risk of a sizable attorney's fee award affects the settlement analysis. This case is no different.

Here, our fees after over four years of litigation total approximately \$100,000, and the cost of pretrial motions and trial would have resulted in approximately an additional \$50,000 - \$70,000. Given the hourly rates that are typically awarded to plaintiff's attorneys in Section 1983 cases, we estimated the potential exposure to a fee award to total three times our fees, or in the order of \$500,000. Accordingly, we estimated the total exposure if plaintiff were to prevail at trial at \$575,000 to \$600,000.

To that end, we recommended countering plaintiff's demand of Five Hundred Thousand Dollars (\$500,000.00) and ultimately were able to settle the case for One Hundred and Thirty Thousand Dollars (\$130,000.00), inclusive of costs and attorney's fees. Additionally, there was no admission of liability on the part of the City or any individual defendant, all claims were withdrawn as against the individual defendants as a precondition to settlement and the settlement was with the City of Mount Vernon only.

Thank you for the opportunity to represent the City in this matter. If you have any questions or would need any additional information then please do not hesitate to contact the undersigned directly.

Respectfully submitted,

The Quinn Law Firm PLLC



Andrew C. Quinn