

## **SETTLEMENT AGREEMENT AND RELEASE IN FULL**

This Settlement Agreement and Release in Full ("Agreement") is confidential, and is made by and between Michael L. Holmes, together with his heirs, beneficiaries, executors, administrators, successors, attorneys, and assigns (hereinafter referred to as "Holmes") and PIATT COUNTY, ILLINOIS, RENEE FRUENDT, DALE LATTZ, RANDY SHUMARD, ROBERT MURRELL, SHANNON CARROLL, and RAYMOND SPENCER, together with each of their respective heirs, administrators, executors, attorneys, affiliates, subsidiaries, predecessors, successors, assigns, consultants, insurers, reinsurers, brokers, legal representatives, representatives of any kind, trustees, officers, directors, shareholders, members, board members, managers, partners, agents, employees, and assigns, both personally and as associated with PIATT COUNTY, ILLINOIS, RENEE FRUENDT, DALE LATTZ, RANDY SHUMARD, ROBERT MURRELL, SHANNON CARROLL, and RAYMOND SPENCER (collectively hereinafter referred to as "Releasees"). Holmes and Releasees are each separately referred to herein as a "Party" and collectively as "the Parties."

### **SECTION I – RECITALS**

1.1 Holmes filed a Complaint in the United States District Court for the Central District of Illinois, Urbana Division, Case Number 2:21-cv-02020 (*Michael L. Holmes v. Piatt County, Illinois, Renee Freundt, Dale Lattz, Randy Shumard, Robert Murrell, Shannon Carroll and Raymond Spencer*), alleging First Amendment Retaliation of Freedom of Speech, Section 1983 *Monell* claim, Conspiracy pursuant to 42 U.S.C. § 1983, Deprivation of Liberty Interest in Violation of the Fourteenth Amendment of the U.S. Constitution, Violation of FMLA, 29 U.S.C. § 2615, Interference, Violation of FMLA, 29 U.S.C. § 2615, Retaliation, Illinois Whistleblower Act, and State Law Retaliatory Discharge, all of which are disputed by Releasees.

1.2 It is the desire of all Parties to the above-described charges and other administrative filings or causes of action to fully and finally settle and resolve, for valuable consideration, any and all actual and potential claims and disputes that Holmes may have with Releasees. Accordingly, the Parties have reached this agreement and compromise after considering the substantial expense and uncertainty of future litigation, trials, and appeals, and with the desire to resolve all pending or potential disputes, administrative matters, and litigation in their entirety, including, but not limited to: United States District Court for the Central District of Illinois, Urbana Division, Case Number 2:21-cv-02020, and all other state and federal agency or court filings made by Holmes against Releasees.

1.3 Therefore, without admitting the validity of or any liability for the claims or allegations asserted by Holmes and to resolve all disputes between the Parties and in consideration of the following terms, conditions, covenants, and promises as set forth in this Agreement, the Parties have agreed as follows:

## **SECTION II - SETTLEMENT AND PAYMENT**

2.1 Dismissal of Actions. Holmes shall voluntarily dismiss, with prejudice, any pending administrative or litigation proceedings, including, but not limited to, Case No. 2:21-cv-02020 pending in the United States District Court for the Central District of Illinois. Holmes will withdraw or dismiss any and all other actions filed against Releasees within seven days after payment under this Agreement has been tendered, together with any other documents needed to effectuate complete and final termination of all pending administrative or litigation proceedings. Holmes agrees that he and his attorneys will file a request to withdraw all claims for relief (including attorneys' fees) in any pending administrative or litigation proceedings. Other than Case No. 2:21-

cv-02020 pending in the United States District Court for the Central District of Illinois, Holmes represents and warrants that he does not have any other claims against Releasees and that no such claims are pending before any court, agency, or other person/entity other than those identified herein.

2.2 Consideration by Releasees. In full settlement of any and all claims and/or other actions, including claims for attorneys' fees and/or costs, Holmes may have against Releasees, Holmes has agreed that the Releasees shall pay a total of One Hundred Fifty Thousand Dollars (\$150,000.00) within fourteen days after the Effective Date of this Agreement and receiving IRS Form W-9s completed by all payees. Releasees shall apportion this amount by issuing the following checks:

(a) One payment of Fifty Thousand Dollars (\$50,000.00), less all required federal and state withholdings and deductions, made payable to Michael L. Holmes. This lump sum will be treated as income for which Holmes will receive an IRS Form W-2 Payment will be sent to Mr. Ronald S. Langacker, Langacker Law, Ltd., 210 N. Broadway Ave., Urbana, IL 61801;

(b) One payment of Fifty Thousand Dollars (\$50,000.00) made payable to Michael L. Holmes which will not be subject to payroll deductions and will not be treated as income and for which Holmes will receive a Form 1099 to be issued in accordance with IRS rules and regulations. Payment will be sent to Mr. Ronald S. Langacker, Langacker Law, Ltd., 210 N. Broadway Ave., Urbana, IL 61801; and

(c) One payment of Fifty Thousand Dollars (\$50,000.00), made payable to Langacker Law, Ltd. This lump sum is for Holmes' attorneys' fees. Payment will be sent to Mr. Ronald S. Langacker, Langacker Law, Ltd., 210 N. Broadway Ave., Urbana, IL 61801.

2.3 Full Release of Claims for Costs and Attorneys' Fees. Holmes expressly agrees and acknowledges that this Agreement also resolves and settles all claims for an award of costs and attorneys' fees associated with the claims being released. Accordingly, Holmes releases and waives his respective claims for an award of costs and attorneys' fees related thereto.

2.4 Agreement Not to Apply for Employment. Holmes will not apply for employment/re-employment with Piatt County, Illinois, work for Piatt County, Illinois through a hiring/placement agency or otherwise seek to be employed by, or contracted to work with Piatt County, Illinois from this day forward. This Agreement shall be sufficient grounds for Piatt County, Illinois to refuse to consider any future applications by Holmes.

2.5 Tax Liability. It is understood by the Parties that the settlement terms referred to in paragraph 2.2 are for the purposes of resolving all disputes between Holmes and Releasees. Holmes shall take full and complete responsibility for any and all tax liability due and owing on his behalf as a result of his receipt of any settlement value. Holmes agrees to indemnify and hold harmless Releasees from any claims, demands, deficiencies, levies, assessments, executions, judgments or recoveries by any governmental entity against Releasees for any amounts claimed due and owing on Holmes' behalf on account of this Agreement or pursuant to claims made under any federal or state tax laws, and any costs, expenses or damages sustained by Releasees by reason of any such claims, including any amounts paid by Releasees as taxes, deficiencies, levies,

assessments, fines, penalties, interest or otherwise, due and owing on Holmes' behalf. In the event that any taxing body determines that amounts and/or additional amounts should have been withheld from the payments provided to Holmes, Holmes acknowledges and assumes all responsibility for his share of payment of any such taxes, including, but not limited to, any amounts and/or additional amounts Releasees would have been required to withhold from Holmes.

### **SECTION III – HOLMES' RELEASE AS TO RELEASEES**

3.1 Holmes' Release and Covenant Not to Sue. In consideration for the consideration described in paragraph 2.2, as well as the promises and releases contained herein. Holmes hereby waives, releases, discharges, and covenants not to sue Releasees with respect to any and all causes of action, potential causes of action, suits, disputes, liabilities, claims in law and equity, rights, damages, demands, personal injuries, and attorneys' fees and costs by reason of any matter, cause, or thing whatsoever, which in any way results from, arises out of, or pertains to Holmes' employment, layoff, termination and/or resignation, or any other events occurring before the Effective Date of this Agreement, which are known or unknown, fixed or contingent, and by reason of any matter, cause, thing, charge, claim, right or action whatsoever under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2601 et seq., the Americans with Disabilities Act of 1990, 42 U.S.C. §12101 et seq., Family and Medical Leave Act of 1993, 29 U.S.C. §2601 et seq., Employee Retirement Income Security Act of 1973, 29 U.S.C. §1001 et seq., the Illinois Gender Violence Act, 740 ILCS 82, et seq., the Civil Rights Act of 1866 and 1871, 42 U.S.C. § 1981; the Civil Rights Act of 1991, 42 U.S.C. § 1981, 42 U.S.C. § 1983, the Illinois Human Rights Act, 775 ILCS 5/5-101 et seq., the Equal Pay Act, 29 U.S.C. §206, the Fair Labor Standards Act, 29 U.S.C.

§201 et seq., U.S.C., the Older Workers Benefit Protection Act of 1990, 29 U.S.C. §626 et seq., the Illinois Wage Payment & Collection Act, 820 ILCS 115/1 et seq., the Illinois Whistleblower Act, 740 ILCS 174/1 et seq., the Illinois Workplace Transparency Act, 820 ILCS 96/1 et seq., Age Discrimination in Employment Act, Consolidated Omnibus Budget Reconciliation Act of 1985, and/or any local ordinance or regulation, any other provision of federal and state statutory or common law or regulations, and for any and all tort and/or contract claims, including, but not limited to, breach of contract, wrongful termination, intentional or negligent infliction of emotional distress, retaliatory discharge, breach of any fiduciary duties, tortious interference with contractual relationship, defamation, false light, invasion of privacy, or any other statutory, tort, contract, or any other causes of action whatever.

Holmes further releases any claim he has or may have or may acquire against Releasees under the Illinois Family Expense Act or any similar statute, contract or court order which makes Holmes responsible for any medical or mental health bills.

Nothing in this Agreement shall be construed to prohibit Holmes from participating in any investigation or proceeding conducted by the IDHR, EEOC, or a comparable state or local agency. Notwithstanding the foregoing, Holmes agrees to waive his right to recover damages, benefits, or other sought remedies from any such entity or agency related to his employment with Piatt County.

Any proceeding to enforce the terms of this Agreement is expressly excluded from this Agreement.

Holmes is not waiving any rights he may have to: (a) his own vested accrued employee benefits under Piatt County's health, welfare, or retirement benefit plans as of the Separation Date; (b) benefits and/or the right to seek benefits under applicable workers' compensation statutes; (c) pursue claims which by law cannot be waived by signing this Agreement; (d) unemployment benefits previously received from the Illinois Department of Employment Security; and/or (e) enforce this Agreement.

3.2 Release of Age Claims. Holmes agrees to the same terms of release as specified in the preceding paragraph 3.1 to release any claims under the Age Discrimination in Employment Act and the Older Workers Benefit Protection Act. Holmes specifically acknowledges and agrees that this release of age claim is entered into knowingly and voluntarily and the consideration received is in exchange for more than to which Holmes was already entitled. Holmes acknowledges that he was advised to consult an attorney about the effects of this release.

3.3 Right of Review and Revocation. In accordance with the Age Discrimination in Employment Act, the Older Workers' Benefit Protection Act, and the Illinois Workplace Transparency Act, Holmes acknowledges that he has a right to review this release for at least twenty-one (21) days, and further understands that he may revoke the waiver and release contained in this paragraph within seven (7) days of signing the release of said claim by delivering a written revocation via U.S. Mail and e-mail to the attorney at the addresses set forth on Exhibit A.

3.4 Entire Agreement. No promise has been made to pay or give Holmes any greater or further consideration for this Agreement. Holmes has had an opportunity to seek legal counsel prior to executing this Agreement.

## **SECTION IV - WARRANTIES**

4.1 Capacity of Holmes. Holmes represents and warrants to Releasees that he has the full power, capacity, and authority to enter into the Agreement, and that no portion of any claim, right, demand, action, or cause of action that Holmes has or might have had arising out of the acts, events, transactions, and occurrences referred to herein has been assigned, transferred, or conveyed to any person not a Party to the Agreement, by way of subrogation, operation of law, or otherwise, and that no releases or settlement agreements are necessary or need to be obtained from any other person or entity to release and discharge completely any of Holmes' claims released in the Agreement.

4.2 Full and Final Release. Holmes represents and warrants to Releasees that he understands and agrees that the Agreement shall act as a full and final release of all claims of every nature and kind whatsoever that have arisen or that could have arisen between, Holmes on the one hand, and Releasees, on the other, prior to the date of execution of the Agreement, whether such claims are currently known or unknown, and whether they were foreseeable or unforeseeable.

4.3 Binding on Holmes. Holmes represents and warrants to Releasees that he understands that, if the facts upon which the Agreement are found hereafter to be different from the facts now believed to be true, the Agreement will remain binding and effective and the Parties expressly accept and assume the risk of such possible differences and agree that the Agreement shall remain binding and effective, notwithstanding such potential differences.



4.4 Voluntary Action by Holmes. Holmes acknowledges that he has entered into the Agreement freely, knowingly, and voluntarily; it is further understood and agreed that the Agreement was reached and agreed to by the Parties in order to avoid the expense of continued litigation, as well as the uncertainties of potential litigation.

4.5 Liens. Holmes represents and warrants that he is responsible for satisfying any and all outstanding claims or liens of any type against the proceeds of the settlement, and that he and his counsel agree to indemnify and hold harmless the Releasees and Heyl, Royster, Voelker & Allen with respect to any such claims or liens and all costs and expenses, including counsel's fees, in connection therewith. Moreover, Holmes hereby agrees to defend and indemnify the Releasees and Heyl, Royster, Voelker & Allen against any claim against proceeds of settlement pursued by or on behalf of any party to this suit, or any claim against the proceeds of settlement by or on behalf of any Party.

Holmes assumes all responsibility for satisfaction of any and all rights to payment, claims, or liens, of any kind, that arise from or are related to payments made or services provided to him, or on his behalf, and expenses, costs, or fees incurred in connection with the claims asserted by him related to the injuries arising out of the facts alleged in the charges, including, without limitation, all subrogation claims, liens, or other rights to payment relating to medical treatment or lost wages that have been or may be asserted by any health care provider, insurer, governmental entity, employer, or other person or entity. Holmes will indemnify, defend and hold the Releasees and all other generally released individuals or entities harmless from any and all such claims, liens, and rights to payment, known or unknown. Specifically, if any governmental entity, or anyone acting on behalf any

governmental entity, seeks damages, including double damages, or any other damages from any generally released person or entity relating to payments by such governmental entity, or anyone acting by contract for such governmental entity, relating to the injuries to Holmes arising out of the facts alleged in the charges, Holmes will indemnify the generally released persons and entities for, and hold the released persons and entities harmless from, any and all such damages, claims, and rights to payments, including any attorneys' fees, sought by such entities.

#### **SECTION V - DENIAL OF LIABILITY**

5.1 Releasees' Denial of Liability. The Parties expressly represent and warrant to each other that it is understood and agreed that the Agreement is a compromise of disputed claims, and that the exchange of consideration by virtue of the Agreement and any other acts, omissions, or statements by the Releasees are not to be construed as an admission of liability for any claims or defenses, with liability being expressly denied. Holmes hereby represents and warrants to Releasees that it is understood and agreed that neither the Agreement nor anything contained in the Agreement shall be interpreted or construed as an admission of liability. Nothing contained in the Agreement or in the fact that Releasees submitted it to Holmes for his consideration shall be used or offered by Holmes, directly or indirectly, as evidence in any judicial, administrative, or other legal proceeding, or be construed as an admission of any liability or wrongdoing on the part of the Releasees, of any violation of federal or state statutory or common law or regulation.

## **SECTION VI – CONFIDENTIALITY**

6.1 Confidentiality. Holmes expressly represents and warrants to the Releasees that it is understood and agreed that, as a material condition of the agreement in exchange of consideration hereunder, he will not disclose the terms or conditions of this settlement or provide a copy of this agreement except as provided herein.

The Parties and their agents, including counsel, hereby acknowledge this Agreement and all of the terms and information contained herein, all of the negotiations leading to it, all of the communications generated pursuant to it, and the implementation hereof (collectively, "Confidential Settlement Communications"), to be confidential. The Parties and their agents, including counsel, agree to maintain all such Confidential Settlement Communications in the strictest of confidence, not to be disclosed to any person not a party to this Agreement except (i) in response to a judicial order compelling disclosure; (ii) to insurers or reinsurers; (iii) to auditors of, to accountants, financial advisors, tax advisors of, or to counsel to the Parties; (iv) in response to a subpoena or demand from a governmental or regulatory agency; (v) in any action by any party to enforce the terms of this Agreement; (vi) by written agreement of all of the Parties; (vii) as required to include on any financial statements and tax returns or other required filings or reports; (viii) spouses or (ix) where otherwise required by law. However, to the extent the Parties might disclose this information to these limited categories of entities and individuals, they agree to advise any such entity or individual of the strict confidentiality provisions, and that the confidentiality provision pertains to all persons that have knowledge of or are informed about the terms and conditions of the Agreement as set forth in this section.

If either party should violate the terms of this non-disclosure provision, the non-breaching party shall have all remedies available to him or it under Illinois law.

6.2 Non-Disparagement. Holmes agrees not to, directly or indirectly, make statements, orally or in writing, or take any actions, which defame, attack, paint in a negative light or which could reasonably be expected to harm the reputation, operations, and/or goodwill of the Releasees, or in any way, indirectly or directly, cause, facilitate or encourage the making of such statements or the taking of such actions by anyone else.

Releasees agree not to, directly or indirectly, make statements, orally or in writing, or take any actions, which defame, attack, paint in a negative light or which could reasonably be expected to harm the reputation, operations, and/or goodwill of Holmes, or in any way, indirectly or directly, cause, facilitate or encourage the making of such statements or the taking of such actions by anyone else.

Nothing in Sections 6.1 or 6.2 shall prevent any party or its employee(s) from testifying in this or other proceedings if the party, or its employee(s), is a party to the other proceeding or required to testify pursuant to a subpoena or otherwise lawfully compelled to testify. If Holmes should violate the terms of this non-disparagement provision, such a violation shall be considered a breach of this Agreement and shall be liable to the other party for any damages or harm arising out of that breach.

## **SECTION VII - GENERAL PROVISIONS**

7.1 Entire Agreement. The Agreement constitutes the entire agreement by the Parties hereto with respect to all of the matters discussed herein, and supersedes all prior or

contemporaneous discussions, communications, or agreements, expressed or implied, written or oral, by or between the Parties.

7.2 Governing Law. The Agreement shall be interpreted and governed according to the laws of the State of Illinois. Any lawsuit brought to enforce or interpret this Agreement shall be brought in the United States District Court for the Central District of Illinois ("Central District"), and if the Central District concludes it does not have jurisdiction, in Piatt County, Illinois.

7.3 Binding On Successors. The provisions of the Agreement shall be binding upon and shall inure to the benefit of the successors, assigns, heirs, executors, and administrators of the respective Parties.

7.4 No Amendment Without A Writing. The Parties hereto agree that no amendment or modification of the Agreement shall be binding or valid, unless made in writing and signed by each. Any waiver by any Party of the breach of any provision of the Agreement shall not operate or be construed as a waiver of any subsequent breach.

7.5 Severability/Validity/Enforceability. The paragraphs and provisions of the Agreement are severable; if any paragraph or provision is found unenforceable, the remaining paragraphs and provisions will remain in full effect.


7.6 Effective Date. The Agreement shall become effective and enforceable after the date of execution by both Parties of the Agreement and the expiration of the seven-day revocation period in Section 3.3 (the Effective Date").

7.7 Execution of Documents. Holmes and Releasees agree to execute such further documents and take such further steps as may be necessary to fully effectuate the performance of this Agreement. This Agreement may be executed in any number of counterparts which together shall constitute original documents.

7.8 Fair Meaning. This Agreement is the product of negotiations during which all Parties have had an opportunity to make alterations, changes, and deletions to the text. This Agreement should be read as if drafted equally by all concerned with no presumption or penalty attached to any Party for its particular role in producing any preliminary or final draft of this Agreement.

IN WITNESS WHEREOF, the undersigned have executed this Settlement Agreement and Release in Full as of the date first above written.

DATED: 05/18/23

  
\_\_\_\_\_  
MICHAEL L. HOLMES

DATED: \_\_\_\_\_

\_\_\_\_\_  
PIATT COUNTY, ILLINOIS

BY ITS: \_\_\_\_\_

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IN WITNESS WHEREOF, the undersigned have executed this Settlement Agreement and Release in Full as of the date first above written.

DATED: \_\_\_\_\_

\_\_\_\_\_  
MICHAEL L. HOLMES

DATED: 5/17/2023

\_\_\_\_\_  
PIATT COUNTY, ILLINOIS

BY ITS: Chair of Piatt County Board

**EXHIBIT A**

Mr. Brian M. Smith  
Heyl Royster Voelker & Allen, P.C.  
301 N. Neil Street, Suite 505  
Champaign, IL 61820  
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