

## SETTLEMENT AGREEMENT

**AND NOW**, the undersigned, Plaintiff Marianne Bessey and Defendants Charles Shelton, Donald West and the City of Philadelphia, in settlement of their dispute as described herein, hereby mutually covenant and agree as follows:

**WHEREAS**, on or about March 30, 2007, Plaintiff Marianne Bessey commenced a civil action against Charles Shelton, Donald West and the City of Philadelphia, in the United States District Court for the Eastern District of Pennsylvania, Docket No. 07-cv-0291 (“the Federal Action”);

**WHEREAS**, the complaint alleges that Charles Shelton and Donald West arrested Plaintiff without probable cause on April 1, 2005, while she was handing out leaflets outside the Mann Music Center in Fairmount Park in Philadelphia. The Complaint further alleges that the arrest resulted from the City’s maintenance of unconstitutional policies and practices, including the failure to train its officers in the rights of protesters;

**WHEREAS**, all Defendants in the Federal Action have denied the allegations in the Federal Action; and

**WHEREAS**, Plaintiff and Defendants now seek to settle the Federal Action. It is expressly acknowledged that Defendants do not admit any liability to Plaintiff by entering into this Agreement to settle the matter;

**THEREFORE**, the parties agree as follows:

- 1) No later than February 26, 2009, the City of Philadelphia shall provide all of its Civil Affairs officers with additional training, in the form of video or in-person presentation, regarding the rights of protesters, which shall specifically instruct officers:

- In the absence of a specific danger or actual obstruction of vehicular or pedestrian travel, a protester or group of protesters has the right to stand anywhere the protester or protesters choose to stand on a public sidewalk or public right-of-way, regardless who owns or has permission to use that right-of-way. Civil Affairs officers will not attempt to broker or negotiate an agreement between property owners and protesters that would limit the protesters' ability to stand where they choose, so long as their chosen location does not create a danger or impede vehicular or pedestrian access to the right-of-way or to any residence or business. In situations where groups with opposing viewpoints seek to protest at a particular location, Civil Affairs Officers maintain the ability to negotiate for people with opposing viewpoints to stand in different areas in order to prevent disruption so long as those persons are within sight and sound of their audience.
- Civil Affairs officers will not place any temporal limits on protests and, in particular, will not tell protesters that they must cease activity when the Civil Affairs officer plans or wants to leave the location. Civil Affairs officers may inform protesters and/or property owners that the officers intend to leave, but it is up to the protesters whether they will stay after the officers leave.
- Civil Affairs officers must keep in mind that some activists, for a variety of reasons, may not wish to engage in small talk with the officers, and that the officers should not expect that interaction and cannot react negatively toward activists who are not friendly or willing

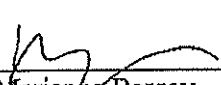
to engage in conversation. Police officers may engage Plaintiff in conversation to reasonably ascertain and convey necessary information. Civil Affairs officers must refrain from expressing either agreement or disagreement with the subject of the protest while on assignment.

- In the case a question or dispute about protester rights arises, Civil Affairs officers should seek guidance from their supervisor and, where that does not yield clear direction, from the Department legal counsel.
- 2) Counsel for Defendants shall give Plaintiff's counsel an opportunity to review the training materials described above prior to their implementation, but in any event no later than February 2, 2009. By February 6, 2009, Plaintiff's Counsel will inform counsel for Defendants if she believes the training does not comply with the requirements of this agreement.
  - 3) The training materials described above shall be incorporated into the Civil Affairs Division training for all new officers.
  - 4) Civil Affairs Officers will implement, follow and enforce the training referred to in paragraph 1 with respect to Plaintiff and all other protesters.
  - 5) Within forty-five (45) days of the receipt of a copy of this Agreement executed by Plaintiff, Defendants shall pay Plaintiff the sum of \$5,000.00 by check mailed or delivered to Plaintiff's counsel.
  - 6) Within forty-five (45) days of the receipt of a copy of this Agreement executed by Plaintiff, Defendants shall pay the sum of \$17,500.00 in costs and fees to Plaintiff's counsel.

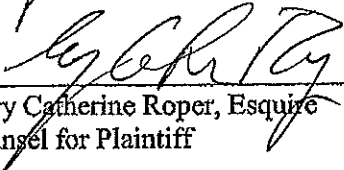
- 7) It is expressly understood that any party to this Agreement may, within ninety (90) days of dismissal of the Federal Action, rescind this Agreement and reinstate the Federal Action by (1) notifying counsel for the other parties in writing of the rescinding party's intention to rescind and the reason therefore; and (2) contacting the Court and requesting reinstatement of the action on the grounds that the settlement has failed. If Plaintiff rescinds this Agreement, she shall simultaneously return any payments made to counsel for Defendants.
- 8) Plaintiff and Defendants hereby mutually release and forever discharge each other, and their agents and attorneys, from any and all claims, counterclaims, demands, debts, liabilities, accounts, damages, reckoning, obligations, costs, expenses, liens, actions, causes of action, or losses of any kind whatsoever, whether known or suspected, unknown or unsuspected, anticipated or unanticipated, direct or indirect, fixed or contingent, which exist, may exist or have existed up to the date of this Settlement Agreement, relating to any claims which have been or could have been asserted in the Federal Action.
- 9) This Settlement Agreement may not be amended or supplemented, and no waiver of, or consent to, or departures from provisions hereof shall be effective, unless set forth in a writing signed by all parties.
- 10) It is further agreed and expressly understood that there are no other understandings or agreements, verbal or otherwise, in relation to any matter pertaining to this Settlement Agreement which are not expressly set forth herein.
- 11) This Settlement Agreement and Release has been freely, knowingly, and voluntarily executed by Plaintiff and Defendants after consultation with the legal counsel of their choice.

12) This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement may be executed by facsimile or electronic copy in any image format (e.g. .pdf, .jpg, .bmp).

IN WITNESS WHEREOF, and intending to be legally bound hereby, the undersigned have set their signatures below.


  
\_\_\_\_\_  
Marianne Bessey

Date: 1-8-09

  
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Mary Catherine Roper, Esquire  
Counsel for Plaintiff

Date: 1-9-09

For the City:

  
\_\_\_\_\_  
Nicole Morris, Esquire  
Counsel for Defendants

Date: 1/9/09