

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

ERICA BAKER,

Plaintiff,

v.

No. 2:22-cv-00574-GJF-GBW

**CITY OF TRUTH OR CONSEQUENCES,
and CITY MANAGER BRUCE SWINGLE,**

Defendants.

**SETTLEMENT AGREEMENT AND
FULL AND FINAL RELEASE OF ALL CLAIMS**

THIS SETTLEMENT AGREEMENT AND FULL AND FINAL RELEASE OF ALL CLAIMS (“Agreement”) is entered into by and between Erica Baker (“Baker”) and the City of Truth or Consequences (“City” or “TorC”) and Bruce Swingle (“Swingle”) (collectively, “Parties”), on ^{August 21,} _____, 2023.

RECITALS

1. Baker was employed by the TorC Police Department (“TCPD”) from July 2011 until her termination on July 19, 2021.
2. On January 4, 2022, Baker filed a Charge of Discrimination with the New Mexico Human Rights Bureau (“NMHRB”) (22-01-0014-S) and the Equal Opportunity Commission (39B-2022-0093) alleging that Swingle and the City discriminated against her based on sex and spousal affiliation and had retaliated against her. Upon her request, on April 29, 2022, the NMHRB issued Baker an Order of Non-Determination.

3. On August 8, 2022, Baker filed a lawsuit in the United States District Court for the District of New Mexico entitled *Erica Baker, Plaintiff, v. City of Truth or Consequences, and City Manager Bruce Swingle*, Cause No. 1:22-cv-00574, alleging the following causes of action:

- Count I: Violations of the New Mexico Whistleblower Protection Act, NMSA 1978, Section 10-16C-3;
- Count II: Violation of the First Amendment to the United States Constitution Actionable Under 42 U.S.C. Section 1983;
- Count III: Violations of Article II, Section 17 of the New Mexico Constitution Actionable Under the New Mexico Tort Claims Act;
- Count IV: Violations of the Fourteenth Amendment to the United States Constitution Actionable Under 42 U.S.C. Section 1983;
- Count V: Violations of Article II, Section 18 of the New Mexico Constitution Actionable Under the New Mexico Tort Claims Act;
- Count VI: Violations of Title VII of the Federal Civil Rights Act for Sex-Based Discrimination;
- Count VII: Retaliation Actionable Under Title VII of the Civil Rights Act;
- Count VIII: Violations of Section 28-1-7(A) of the New Mexico Human Rights Act for Sex-Based Discrimination;
- Count IX: Violations of Section 28-1-7(A) of the New Mexico Human Rights Act for Discrimination Based on Spousal Affiliation;
- Count X: Violations of the Equal Protection Clause of the United States Constitution Actionable Under 42 U.S.C. Section 1983; and
- Count XI: Conspiracy Actionable Under 42 U.S.C. Section 1985.

(“Lawsuit”)

4. The City and Swingle strongly denied and continue to deny any and all allegations of wrongdoing as claimed in the Lawsuit.

5. On July 26, 2023, the Parties engaged in mediation and have agreed to settle all claims which have or could have been brought by Baker in the Lawsuit and any and all claims arising out of her employment with the City.

AGREEMENT

For and in consideration of the mutual promises and consideration set forth below, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

A. CONSIDERATION: BAKER TO THE CITY AND SWINGLE

Baker agrees to:

1. Execute the Agreement and Full and Final Release and comply with all of the terms and conditions of this Agreement.
2. Dismiss the Complaint with prejudice and comply with the terms and conditions of this Agreement.
3. Take no action to attempt to revive, reinstate, or otherwise re-file the Lawsuit, or to file or assert any other civil or administrative actions, claims, charges, or suits relating to any matter released herein against any of the Released Parties .

Baker agrees and acknowledges that Swingle and the City and its divisions, departments, related entities, and current and former employees, and their agents and representatives, will have no further obligation to her except as set forth in this Agreement.

B. CONSIDERATION: THE CITY TO BAKER

In exchange for Baker signing this Agreement, Baker will receive the following consideration:

1. A check for the lump sum amount of \$200,000.00 (two-hundred thousand) (“the Settlement Amount”) issued to the Rodey Law Firm. The Settlement Amount is inclusive of attorney fees, costs, or other reimbursement of whatever nature arising from or in connection with the events outlined, described, or otherwise contemplated by the Lawsuit. Baker agrees that the Settlement Amount is sufficient consideration for her release of all claims.

The City, including Swingle, and/or the Released Parties defined below, take no position

on the tax consequences to Baker of the Settlement Amount. Baker specifically agrees to the above form of payment, to pay any applicable taxes, and agrees that any dispute related to the Settlement Amount, fees, and/or costs charged or payable to her attorneys will not invalidate this Agreement. In the event there is any tax or withholding liability on all or any portion of the payment set forth in Paragraph B1, Baker agrees to be fully responsible for any such liability and to indemnify and hold harmless Swingle, TorC, and the Released Parties for any liability, interest, penalty or other assessment levied by the Internal Revenue Service or the New Mexico Taxation and Revenue Department, including payment of attorney fees and costs incurred in connection with any actions taken by the Internal Revenue Service or the New Mexico Taxation and Revenue Department, and to hold harmless and indemnify Swingle, TorC, and the Released Parties from any other lawsuit or action related to the tax consequences of the Settlement Amount.

2. The City will change the designation of Plaintiff's separation of employment from TCPD from a termination to a resignation.

C. RELEASE BY BAKER

Baker, for herself, her dependents, heirs, personal representatives, assigns and legal representatives, does hereby release and forever discharge Swingle, and the City and all of their family members, elected officials, past and present cabinet secretaries, division heads, directors, officers, supervisors, managers, officials, agents, employees, representatives, attorneys, insurers, and any related or affiliated entities, divisions, departments, successors and assigns, each in their individual and official capacities (referred to collectively herein as "Released Parties"), from any and all legal, equitable or administrative claims, charges or causes of action arising out of or relating to any incidents, events or occurrences prior to the date of this Agreement, and any other matters, claims or incidents, actions or omissions up to the date Baker signs this Agreement including, but not limited to: any claims for damages of whatever kind or character (compensatory

or punitive), attorney's fees, back or front pay, wages, vacation pay, benefits, fringe benefits, disability benefits, adjustments to, reduced or lost pension or retirement benefits, losses, costs and expenses, moving or relocation expenses, rental or lease expenses, any and all claims or damages arising out of any constitutional claims, statutory claims, alleged discriminatory or retaliatory actions, personal injury, sexual harassment, retaliation, breach of contract (express or implied), defamation, interference with prospective or existing employment or contractual relations, infliction of mental or emotional distress, negligent or intentional misrepresentation, fraud, promissory estoppel, wrongful discharge, prima facie tort, any claims or damages alleged in the Lawsuit, and any other claims or damages arising out of or relating in any way to Baker's employment with or separation from TCPD/the City or the Released Parties, whether arising under common law, federal or state constitution, statute, or regulation, the City or TCPD Directives, Policies, Procedures, or under or pursuant to any express or implied contract, or for any other reason. This release expressly includes, but is not limited to, all claims asserted or that could have been asserted in the Lawsuit.

Various state and federal laws prohibit employment discrimination based on age, sex, race, color, national origin, religion, ancestry, disability, physical or mental handicap, mental condition, or veteran status. These laws are enforced through state, federal and local agencies, including the EEOC and the NMHRB.

This Agreement specifically includes, but is not limited to, any claims which Baker has or may have under Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972 (42 U.S.C. §§ 2000e-2000e-15), the Civil Rights Act of 1866 (42 U.S.C. § 1981), the Civil Rights Act of 1991, Executive Order 11246, the Americans with Disabilities Act (42 USC § 12101, et seq.), the Family Medical Leave Act (the "FMLA"), the New Mexico Human Rights Act (NMSA 1978, § 28-1-1, *et seq.*), the Whistleblower Protection Act (NMSA

1978, § 10-16C-1, *et seq.*), the Age Discrimination in Employment Act as amended (42 U.S.C. § 621, *et seq.*) (the “ADEA”), the Older Worker’s Benefit Protection Act (42 U.S.C. § 626) (the “OWBPA”), the Employee Retirement Income Security Act (29 U.S.C. § 1001, *et seq.*) (“ERISA”), the New Mexico Tort Claims Act (NMSA 1978, § 41-4-1, *et seq.*), the Public Employees Bargaining Act, N.M.S.A. 1978 Section 10-7E-1 to Section 10-7E-25, the New Mexico Fraud Against Taxpayers Act, N.M.S.A. Section 44-9-1 *et seq.*, and any state or federal laws or regulations relating to employment discrimination, retaliation and wrongful discharge.

Baker further agrees that the Released Parties may plead this Agreement as a complete bar to any action or suit before any court or administrative body with respect to any claim released herein, to the extent permitted by law. Baker hereby agrees to waive any entitlement to any relief, whether monetary or otherwise, should any claims be pursued by an agency or other person with respect to any claim released herein.

D. INDEMNIFICATION AND HOLD HARMLESS

Baker agrees that she shall never attempt to commence or to file any appeal, claim, or suit against any of the Released Parties for any claim covered by this Agreement. In the event Baker commences or files a complaint, charge, claim or suit that has been released herein, Baker agrees to pay for the defense of the claim, including attorney’s fees, costs, and any other expenses, and to indemnify and hold the Released Parties harmless.

E. MODIFICATION

This Agreement is not subject to any modification, waiver, or addition that is made orally. This Agreement is subject to modification, waiver, or addition only by means of a writing signed by each of the Parties.

F. CONTROLLING LAWS

This Agreement shall be interpreted under the laws of the State of New Mexico.

G. SEVERABILITY/COUNTERPARTS

If any part or parts of this Agreement are found to be unenforceable, the remaining portions of this Agreement shall remain in effect. This Agreement may be signed in counterparts.

H. FULL SETTLEMENT AND SATISFACTION

Baker agrees that the Settlement Amount and other consideration described above constitute full settlement and an accord and satisfaction of all claims released above, even though such claims and their validity and value are disputed by the City and Swingle.

I. NO ADMISSION OF LIABILITY

Baker acknowledges that the City and Swingle deny any and all liability or obligation for all claims covered by this Agreement and that this settlement and Agreement shall not be regarded as an admission of liability or responsibility of any kind for any purpose. This Agreement shall not be admissible in any proceeding, except as necessary in a proceeding to enforce the terms of this Agreement or to establish or prove the defenses of payment, release, accord and satisfaction, waiver or estoppel, or as otherwise required by Court order.

J. COMPLETE AND BINDING AGREEMENT

The terms of this Agreement are contractual and not a mere recital. All agreements and understandings between the Parties are expressed in this Agreement, and it replaces all prior Agreements. This Agreement shall be binding upon and shall inure to the benefit of the Parties named herein, their legal representatives, successors, and assigns.

K. BAKER EXPRESSLY ACKNOWLEDGES HER UNDERSTANDING

Baker has read this agreement and fully understands it. Baker understands that the Settlement Amount and consideration described above is all of the money or benefits she will receive as a result of the claims released above.

L. OTHER AGREEMENTS

Baker hereby warrants that she (i) has not assigned or transferred to any person/entity any portion of any claim which is waived, released, or discharged herein, (ii) does not have or know of any outstanding claims other than those released herein and (iii) does not reserve any claims against the City, Swingle, or any of the Released Parties from the effect of this Agreement.

The Parties hereto acknowledge that this Agreement, the compromise and settlement evidenced thereby, and any evidence relating thereto, each and all: (i) shall never be admissible as evidence against the persons herein released in any present or future suit, claims or proceeding of any nature, except as necessary to enforce rights granted pursuant to this Agreement and the instruments, documents and agreements referenced herein; (ii) but may be asserted by and introduced as evidence for the persons hereby released as an absolute and final defense and bar to any claim released herein in any present or future suit or proceeding of any nature. Further, should either party file a lawsuit to enforce the Agreement, the prevailing party will be entitled to reasonable attorney's fees and costs. This relates solely to enforcing the Agreement and not to any claim either party might have in the future.

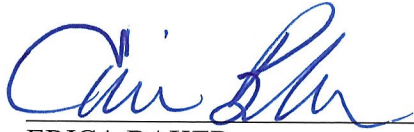
M. IMPLEMENTATION

Baker agrees to sign any documents and do anything else that in the future is needed to implement this Agreement.

ENTIRE AGREEMENT

BAKER HAS CAREFULLY READ AND FULLY UNDERSTANDS ALL OF THE PROVISIONS OF THIS AGREEMENT, WHICH SETS FORTH THE ENTIRE AGREEMENT BETWEEN BAKER AND SWINGLE AND THE CITY AND ACKNOWLEDGES THAT SHE HAS NOT RELIED UPON ANY REPRESENTATION OR STATEMENTS, WRITTEN OR ORAL, NOT SET FORTH IN THIS DOCUMENT.

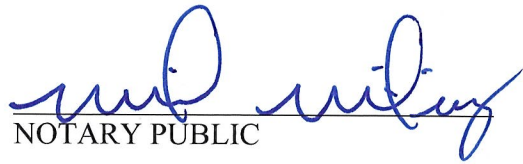
IN WITNESS WHEREOF, the Parties hereto, personally or by their authorized representatives, have subscribed to and signed this Agreement as of the day and year first above written.



ERICA BAKER

STATE OF NEW MEXICO)
)ss.
COUNTY OF SIERRA)

THE FOREGOING instrument was acknowledged before me on 21, 2023 by Erica Baker.



NOTARY PUBLIC

My Commission Expires:

April 22, 2024

MARIBEL MARTINEZ
NOTARY PUBLIC
STATE OF NEW MEXICO
COMMISSION # 1128586
COMMISSION EXPIRES: 04-22-2024

THE CITY OF TRUTH OR CONSEQUENCES

[Signature]
By: ANGELA GONZALES
Title: CITY MANAGER

STATE OF NEW MEXICO)
)ss.
COUNTY OF SIERRA)

THE FOREGOING instrument was acknowledged before me on 2023, by Angela Gonzales on behalf of the City of Truth or Consequences.

My Commission Expires:
Aug 25, 2024

[Signature]
NOTARY PUBLIC
STATE OF NEW MEXICO
NOTARY PUBLIC
TAMMY M. GARDNER
COMMISSION # 1129373
EXPIRES AUGUST 25, 2024

[Signature]
BRUCE SWINGLE

STATE OF NEW MEXICO)
)ss.
COUNTY OF SIERRA)

Aug 24 2023, by Bruce Swingle. THE FOREGOING instrument was acknowledged before me on

My Commission Expires:
Aug 25, 2024

[Signature]
NOTARY PUBLIC
STATE OF NEW MEXICO
NOTARY PUBLIC
TAMMY M. GARDNER
COMMISSION # 1129373
EXPIRES AUGUST 25, 2024