

Public Records Request #4257

The following materials have been gathered in response to public records request #4257. These materials include:

- Nigel Hutchinson v. City of Charlotte: Settlement Agreement And Release

This information was provided as a response to a public records request on 10/16/20 and is current to that date. There is a possibility of more current information and/or documents related to the stated subject matter.

Further Information

For further information about this request or the Citywide Records Program, please contact:

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

Civil Action No. 3:15-CV-517

NIGEL HUTCHINSON,
Plaintiff,

v.

CITY OF CHARLOTTE,
Defendant.

SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT AGREEMENT AND RELEASE ("Settlement Agreement") is made as of this 17th day of June, 2016, by and between NIGEL HUTCHINSON ("Plaintiff" or "Hutchinson") and the CITY OF CHARLOTTE, ("Defendant" or "City") (together referred to as "THE PARTIES").

WITNESSETH:

WHEREAS, the Plaintiff Nigel Hutchinson, commenced a civil action on October 28, 2015, against the City of Charlotte, in connection with Plaintiff's separation from his employment with the City on or around April 21, 2015, and which is now pending in the United States District Court for the Western District of North Carolina and bearing civil docket number 3:15-CV-517 ("the lawsuit"); and

WHEREAS, the parties have agreed upon a compromise settlement of all claims made by Hutchinson and a dismissal of all claims against the City-- or its agents, officers and employees-- set forth or which could have been set forth in the lawsuit with prejudice;

NOW, THEREFORE, in consideration of the foregoing premises and such other valuable consideration as is set forth in this Settlement Agreement, the adequacy of which is hereby acknowledged, the parties hereto agree that:

1. WARRANTIES.

1.1. All parties warrant and represent, each to the other, that the persons executing this Settlement Agreement are legally competent, that they possess full actual and apparent authority to enter into this Settlement Agreement, and that they have been fully

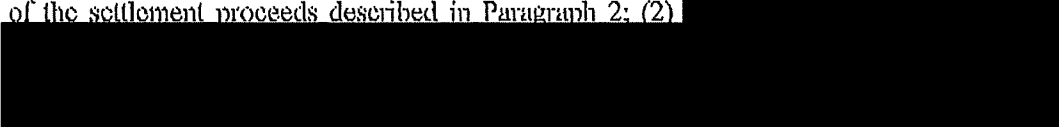
informed and have full knowledge of the terms, conditions and effects of this Settlement Agreement.

1.2. All parties warrant and represent, each to the other, that they have, either personally or through their attorney or attorneys, fully investigated to such parties' satisfaction all facts surrounding the various claims, controversies, and disputes and are fully satisfied with the terms and effects of this Settlement Agreement.

1.3. All parties warrant and represent, each to the other, that no promise or inducement has been offered or made except as herein set forth, nor has there been any representation made by the City as to any tax effects or consequences resulting out of or under the terms of this Settlement Agreement, and that this Settlement Agreement is executed without reliance upon any statement or representation by any party or its agent.

1.4. Hutchinson and his attorneys, warrant and represent that there are no outstanding liens to the matters encompassed by the Settlement Agreement. Hutchinson further agrees to indemnify the City and hold harmless the City, its successors, agents and assigns, from any lien, claim or entitlement to any portion of the monies paid or to be paid under the terms and conditions of this Settlement Agreement, such indemnity to include any judgments and attorneys' fees and costs, regardless of whether a judgment is entered. Hutchinson and his attorneys, further warrant and represent that a satisfaction of outstanding liens has occurred or will occur. Specifically, Hutchinson expressly acknowledges that there are no outstanding liens against the estate they have an independent legal obligation under 42 C.F.R. § 411.24(h), as currently in effect or hereinafter modified, to satisfy any Medicare lien or interest, which Hutchinson agrees is his sole and separate obligation.

1.5 Hutchinson and his attorneys, warrant and represent, that if Hutchinson causes any breach of any part of this Settlement Agreement, the City of Charlotte shall have the right to pursue legal action against him, including but not limited to (1) full recoupment of the settlement proceeds described in Paragraph 2; (2)



2. PAYMENT.

2.1. In consideration of and for the full settlement and compromise of the various contentions, claims, disputes and causes of action as set forth in this Settlement Agreement, the City shall pay or cause to be paid on its behalf the following sum: *Seventeen Thousand Dollars (\$17,000.00)*; the City shall also change Hutchinson's rehire status from 'not eligible to rehire' to 'eligible for rehire,' contingent upon the covenant made by Hutchinson in paragraph 3.2; and the City shall make full payment of the mediator's fee of *One Thousand Eight Hundred Dollars (\$1,800.00)* connected to the lawsuit, directly to Stephen J. Dunn of Van Hoy, Reutlinger, Adams & Dunn, PLLC, on behalf of both parties as full and final satisfaction of the mediator's cost.

2.2. Payment due within ten (10) days after execution of this Settlement Agreement by Hutchinson and his attorneys, payable in two checks: One check in the amount of \$11,168.33 payable to Nigel Hutchinson, and one check in the amount of \$5,831.67 payable to The Angel Law Firm, PLLC for attorney fees. Both checks will be sent to The Angel Law Firm, PLLC, 109 Church Street N. Concord, NC 28025. By their signature on this Settlement Agreement, the executing parties acknowledge the receipt and adequacy of this payment.

2.3. Contemporaneous with execution of this Settlement Agreement, Hutchinson, and his attorneys, agree to submit to the City, through its attorney, all applicable tax documentation, including specifically a completed W-2 form.

2.4. The parties stipulate and agree that the present value of the sums to be paid to Plaintiff as set forth in paragraph 2.1 is Seventeen Thousand Dollars (\$17,000.00), and shall include all costs and attorneys' fees. The execution of this Settlement Agreement shall constitute a binding admission and acknowledgement by Hutchinson, and his attorneys, of the adequacy of these sums and payment.

3. RELEASE AND COVENANT TO NOT APPLY FOR EMPLOYMENT WITH THE CITY OF CHARLOTTE.

3.1 Nigel Hutchinson does hereby forever release and discharge: (1) the City of Charlotte, together with its principals and direct and indirect departments, agencies and affiliated entities, including but not limited to Charlotte Water; and (2) the City of Charlotte's current and former officers, employees, agents, successors and assigns, whether or not acting within the course and scope of their agency or employment, of and from any and all actions, causes of action, claims and demands of any kind whatsoever, known and unknown, liquidated and unliquidated, past, present and future arising prior to the date of this Settlement Agreement including any and all private and other causes of action that arise under Title VII of the Civil Rights Act of 1964 (Pub. L. 88-352), 42 U.S.C. § 1981, 42 U.S.C. § 1983, contract law, common law, Title XVIII or XIX of the Social Security Act (Pub. L. 74-271), or any other federal or state law, as currently in effect or hereinafter amended, and any claims set forth or which could have been set forth in the lawsuit.

3.2

4. LAWSUIT DISMISSED WITH PREJUDICE

4.1 Upon execution of this Settlement Agreement and after consultation with the City's attorney in this lawsuit, and in any event within ten (10) days of receipt of the proceeds described in paragraph 2.1, Hutchinson, through his attorneys, shall cause to be filed a Stipulation of Dismissal with Prejudice of the lawsuit and of all claims set forth or which could have been set forth in the lawsuit.

5. NO ADMISSION OF LIABILITY AND NON-DISPARAGEMENT.

5.1 It is expressly understood and agreed that this Settlement Agreement is a compromise and settlement of disputed claims, that it is intended merely to terminate the present claims with respect to the persons or entities herein released and that the performance of obligations under the Settlement Agreement is not to be construed as an acknowledgement of wrongdoing or negligence by any of the parties or entities herein released.

5.2 The parties further expressly understand and agree that all provisions of this Agreement are statements that are protected from discovery or disclosure in other litigation as statements made pursuant to Rule 408 of the Federal Rules of Civil Procedure. No statement made in the course of the settlement procedure created in this Settlement Agreement shall be deemed as an admission by any party in any other litigation.

5.3 Hutchinson, including his attorneys, further agrees to not engage in any disparagement of the City or its agents, by any and all means of communication, as it relates to the lawsuit or the events alleged in and underlying this lawsuit. The City further agrees that its officers, executives, the Human Resources Department of the City of Charlotte, or anyone authorized to communicate on behalf of the City of Charlotte regarding Hutchinson, shall not engage in any disparagement of Hutchinson to any person or entity, by any and all means of communication, as it relates to the lawsuit or the events alleged in and underlying this lawsuit.

6. CONFIDENTIALITY.

6.1. The parties acknowledge that the contents of this Settlement Agreement and Release and the terms of the settlement between the parties are confidential to the extent provided by law. Accordingly, the parties expressly agree not to voluntarily comment upon, discuss, or disclose to any person or entity any information concerning the terms, conditions, and provisions of this Settlement Agreement and Release or any other matter relating to the settlement of this dispute.

6.2. Provided, however, that the parties may discuss the terms and provisions of this Settlement Agreement and Release and the terms of this settlement with their financial advisors, but only to the extent necessary to comply with tax and other reporting obligations. Notwithstanding the foregoing, any financial advisors informed of the terms of the settlement shall also be informed by the party disclosing such information of the confidential nature of such information and shall expressly agree to comply with the provisions of this Settlement Agreement and Release.

7. SEVERABILITY

7.1. In the event any provision or part of this Settlement Agreement is found to be invalid or unenforceable, only that particular provision or part so found, or as applied to any subset of the parties, and not the entire Settlement Agreement, will be inoperative,

provided, however, that if any portion of paragraph 2 is held to be invalid, then the entire Settlement Agreement will fail of its essential purpose and will not be enforceable in its entirety. In such event, Payces will repay to the City and/or its Assignee all amounts previously paid to them by no later than ten (10) days after the Agreement becomes unenforceable.

8. ENTIRE AGREEMENT.

8.1 This Settlement Agreement constitutes the entire agreement among the parties and no other promises or covenants exist or survive the execution of this Settlement Agreement other than as is set forth in this Settlement Agreement.

9. LAW GOVERNING.

9.1 The validity, construction, interpretation and administration of the Settlement Agreement shall be governed by the laws of the State of North Carolina.

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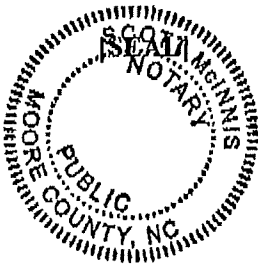
IN WITNESS WHEREOF, the undersigned have set their hands and seals all as of the date first set forth above.

Nigel Hutchinson (SEAL)
Nigel Hutchinson

SWORN TO AND SUBSCRIBED before me this the 15th day of June, 2016.

Scott McInnis
NOTARY PUBLIC

My Commission Expires: July 25, 2018



Daniel E. Peterson (SEAL)
Daniel E. Peterson, Assistant City Attorney
Attorney for Jessica N. Christy and the City of
Charlotte *DEP*

SWORN TO AND SUBSCRIBED before me this the 17th day of ~~March~~ June, 2016.

Darcy McCormick
NOTARY PUBLIC

My Commission Expires: 9/27/2020

[SEAL]

