

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Melissa Hill,

Civil File No. 12-CV-738-MJD-AJB

Plaintiff,

vs.

**SETTLEMENT AGREEMENT AND
RELEASE**

The City of Minneapolis; Minneapolis Police Department; Officer Amy Vreeland; The United States Federal Protective Service; FPS Inspector Jesse Rodriguez; DECO, Inc.; Timothy Sarkela; John Kangas; Michael Thoms,

Defendants.

1. PARTIES TO THE SETTLEMENT AGREEMENT

This Settlement Agreement and Release (“Agreement”) is entered into on _____ by and between Plaintiff Melissa Hill and the following parties (hereinafter referred to collectively as “Defending Parties”):

1. The City of Minneapolis;
2. The United States, through its agency the Federal Protective Service (FPS);
3. DECO, Inc. and all DECO-affiliated entities, including but not limited to DECO Security Services;
4. Timothy Sarkela;
5. John Kangas; and
6. Michael Thoms.

2. RECITALS:

A. The City of Minneapolis is a municipal governmental unit performing an array of services and functions, including the operation and maintenance of public rights-of-way located within its borders; and the protection and preservation of public health and welfare within City

limits. The Minneapolis Police Department is a division of the City of Minneapolis that provides local law enforcement services. Officer Amy Vreeland is a police officer with the Minneapolis Police Department.

B. FPS is a federal agency responsible for providing protective security and law enforcement services for properties owned or leased by the U.S. General Services Administration (GSA), including the Federal Office Building located at 212 Third Avenue South, Minneapolis, Minnesota (hereinafter “Federal Building”). At all times relevant to these proceedings, Inspector Jesse Rodriguez was a law enforcement official employed by FPS.

C. DECO, Inc. (hereinafter “DECO”) is a privately held company providing an array of services to government agencies and private organizations, including protective security services for various properties. FPS contracted with DECO to provide protective security services for GSA-owned/leased properties located in Minneapolis, including the Federal Building. At all times relevant to these proceedings, Michael Thoms was employed by DECO as a sergeant of the security guard force; and Timothy Sarkela and John Kangas were employed by DECO as Protective Security Officers (PSOs).

D. Plaintiff Melissa Hill filed a lawsuit entitled *Hill v. City of Minneapolis et al.*, Court File No. 12-cv-738 (MJD/AJB) (“this Action”) against the City of Minneapolis, Minneapolis Police Officer Amy Vreeland, FPS, FPS Inspector Jesse Rodriguez, DECO, Timothy Sarkela, John Kangas and Michael Thoms arising from an incident that occurred on June 9, 2011 at the Federal Building. Plaintiff asserts constitutional and state tort claims, including violations of her First, Fourth and Fourteenth Amendment Rights, and seeks compensatory damages as well as injunctive relief, as more fully set forth in the Second Amended Complaint, attached hereto as Exhibit A.

E. In addition to this Action, Plaintiff also filed an administrative action against FPS on the basis of the June 9, 2011 incident, pursuant to the Federal Tort Claims Act (FTCA) (“the Administrative Claim”). Notice of the Administrative Claim was provided by Plaintiff’s counsel to the United States Department of Homeland Security (DHS) on or about November 29, 2011, and remains active pending investigation. Documents reflecting the Administrative Claim are attached hereto as Exhibit B.

F. Defending Parties have denied, and continue to deny, Plaintiff’s allegations, damages, claims for relief, and all liability in both this Action and the Administrative Claim.

G. FPS was dismissed from this Action on sovereign immunity grounds by Order of the Honorable Michael Davis, dated March 18, 2011, affirming the Report and Recommendation of Magistrate Arthur Boylan. Nonetheless, FPS subsequently participated in settlement negotiations, and has agreed to be a party to and bound by this Settlement Agreement and Release. FPS collaborated with DECO to establish and agree to the non-monetary consideration specified in Paragraph 4(A) below, and has specifically authorized DECO to take the actions specified therein in the performance of its security services contract with FPS.

H. The parties and their insurers now desire to settle all claims that have been asserted, or could have been asserted, by any party as a result of the June 9, 2011 incident, pursuant to the terms negotiated and set forth below.

WHEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, the Parties hereby stipulate and agree as follows:

3. PAYMENT

A. The City of Minneapolis, the United States, and DECO shall pay the total amount of Five Thousand and no/100 (\$5,000.00) Dollars to the American Civil Liberties Union of

Minnesota Foundation (“ACLU”) for the attorneys’ fees and out-of-pocket costs expended in the representation of Ms. Hill as follows:

- i. Nine Hundred Ninety-Nine and 99/100 Dollars shall be paid to the ACLU by the City of Minneapolis;
- ii. One Thousand and 01/100 Dollars shall be paid to the ACLU by the United States; and
- iii. Three Thousand and no/100 Dollars shall be paid to the ACLU by DECO and/or its insurer.

B. Following their receipt of a signed and properly executed copy of this Agreement from Plaintiff, along with documents required by the Minneapolis finance department including a W-9 form from the ACLU, as well as the ACLU’s employer identification number, the Defending Parties shall deliver a check or checks for the full amount of the settlement to the ACLU c/o Teresa Nelson, 2300 Myrtle Avenue, Suite 180, St. Paul, MN 55114-1879, pursuant to the schedule below:

- i. City of Minneapolis within 30 days;
- ii. DECO within 10 business days; and
- iii. United States as soon as practicable.

C. Plaintiff specifically understands and agrees that the payment specified in this provision is in full satisfaction of all compensatory damages and defense costs, including attorneys’ fees, which have been claimed, or could have been claimed, in this Action or the Administrative Action. By executing this Agreement and accepting payment hereunder, Plaintiff hereby waives any other claim against the above-named Defendants for payment or reimbursement of attorney’s fees and/or defense costs that were or could have been incurred as a

result of the June 9, 2011 incident. Plaintiff will not seek any award of costs or attorneys' fees from the Court, under any legal doctrine or theory, regardless of whether those attorneys' fees or costs were actually paid by Plaintiff.

4. NON-MONETARY CONSIDERATION

DECO, FPS, and the City of Minneapolis further stipulate and agree as follows:

A. DECO:

- i. DECO stipulates and agrees that, as of the date of this Agreement, writing with non-permanent chalk on public sidewalks is not, in and of itself, unlawful in the City of Minneapolis; and that PSOs working at GSA-owned/leased properties in Minneapolis are not permitted to stop, seize, detain, or search individuals who write in non-permanent chalk on the public sidewalks surrounding federal property unless there is reasonable suspicion to believe a crime or security threat has occurred or will occur. DECO further agrees that the act of writing with non-permanent chalk on a public sidewalk is not currently, in and of itself, a factor supporting reasonable suspicion.
- ii. DECO shall establish written guidelines instructing PSOs working at GSA-owned/leased federal properties in Minneapolis that there are currently no Federal, State of Minnesota, or Minneapolis laws prohibiting individuals from writing with non-permanent chalk on public sidewalks in the City of Minneapolis. Counsel for DECO shall provide written notice to counsel for Plaintiff upon issuance of said guidelines.

- iii. DECO shall establish a written guideline for PSOs working at GSA-owned/leased federal properties in Minneapolis that they shall not issue Notices of Trespass pursuant to Minn. Stat. § 609.605 and Mpls. Code § 385.380 to individuals engaged in legal activity on public sidewalks surrounding federal property. Counsel for DECO shall provide written notice to counsel for Plaintiff upon issuance of such guidelines.
- iv. DECO stipulates and agrees that searches of individuals by DECO personnel at GSA-owned/leased federal properties in Minneapolis shall be:
 - a. consistent with state and federal laws governing search and seizures; and
 - b. documented in a writing setting forth the reason for the search; the basis for reasonable suspicion or probable cause (whichever standard is applicable); and the results of the search.
 - c. This provision does not apply to compulsory searches of entrants to a federal building via x-ray scanner or wand if the individual voluntarily enters the federal building and passes under the x-ray scanner.
- v. DECO shall provide training to its PSOs working at GSA-owned/leased federal properties on First and Fourth Amendment rights, including the guideline established in Paragraph 4(A)(ii) above, as follows:
 - a. During the initial “basic training” provided to newly-hired PSOs;

- b. During the 40-hour “refresher training” provided to PSOs every three years.
- vi. The provisions of Paragraph 4(A)(ii) and the reference thereto in the training provision of 4(A)(v) shall be deemed null and void by operation of law should the act of writing with non-permanent chalk on public sidewalks in Minneapolis be prohibited by Federal, State of Minnesota, or Minneapolis law after the date of this Agreement.

B. FPS:

- i. FPS shall ensure that the Form 3155 “Offense/Incident Report” associated with the June 9, 2011 incident is destroyed or otherwise removed completely from Plaintiff Melissa Hill’s record. Counsel for FPS shall provide written confirmation of such action to counsel for Plaintiff.
- ii. FPS hereby authorizes DECO to agree to the provisions set forth in Paragraph 4(A) above in order to effectuate this Settlement Agreement and Release. By signing this Agreement, FPS agrees that it has had ample opportunity to participate in the settlement negotiations in this case, that it has specifically discussed the provisions of Paragraph 4(A) with DECO and counsel, and that it has authorized DECO to agree to the provisions set forth in Paragraph 4(A).
- iii. FPS agrees to cooperate in good faith with DECO so that DECO may establish guidelines, training, and procedures in compliance with DECO’s obligations under Paragraph 4(A) without being deemed to have breached the parties’ security services contract, or to have infringed upon the

authority or jurisdiction of FPS or GSA. FPS agrees to review guidelines in draft established by DECO pursuant to Paragraphs 4(A)(ii) and 4(A)(iii) above to ensure that they are not in conflict with FPS' requirements and/or policies for GSA-owned properties. Once any FPS recommended changes are incorporated by DECO, FPS waives any objection that same is in conflict with FPS' requirements and/or policies for GSA-owned properties. Once the guidelines are final, FPS shall provide copies of said guidelines to those individuals, government agencies, and/or other third-parties not privy to this Agreement who have an interest in the FPS-DECO contract. If FPS' requirements and/or policies for GSA-owned properties change in the future, FPS will notify DECO of the change and work with DECO to update the guidelines they have developed.

C. CITY OF MINNEAPOLIS:

- i. The City of Minneapolis stipulates and agrees that the Minneapolis Police Department's law enforcement personnel are prohibited from issuing Notices of Trespass to individuals engaged in legal activity on the public sidewalks surrounding federal property, pursuant to Minn. Stat. § 609.605 and Mpls. Code § 385.380.
- ii. The City of Minneapolis shall establish written guidelines for the Minneapolis Police Department and its law enforcement personnel regarding the issuance of Notices of Trespass pursuant to Minn. Stat. § 609.605 and Mpls. Code § 385.380. The written guidelines will state that City of Minneapolis law enforcement officials are not authorized to

issue Notices of Trespass to individuals engaged in legal activities on the public sidewalks surrounding federal property. Counsel for the City of Minneapolis shall provide written notice to counsel for Plaintiff upon issuance of such guidelines.

- iii. The City of Minneapolis shall provide a one-time training session to the Minneapolis Police Department regarding the written guidelines established pursuant to Paragraph 4(C)(ii) at the next department-wide training session. Thereafter, the City of Minneapolis shall include the written guidelines in the Minneapolis Police Department policy manual, beginning with the next publication or edition of the manual.

5. GENERAL RELEASE

By the signing of this Agreement for good and valuable consideration, the sufficiency of which is hereby acknowledged, Plaintiff Melissa Hill and Defending Parties do hereby completely, fully and forever release, remise, acquit and forever discharge each other, along with their respective insurers, including but not limited to Philadelphia Insurance Companies; their respective employees, including but not limited to Officer Amy Vreeland; and their respective former employees, including but not limited to Inspector Jesse Rodriguez, from any and all known and unknown, past, present and future claims, actions, causes of action, suits, demands, rights and damages of whatever kind or nature arising out of, connected or in any way related to, the June 9, 2011 incident.

This Release specifically includes, without limiting the generality of the foregoing, the claims asserted by Plaintiff in this Action, as well as in the Administrative Claim.

This Release is a general Release and also releases the heirs, executors, administrators, representatives, agents and assigns, parents, successors, affiliates, principals, officers and directors of the Parties, and all other persons, firms or corporations who are or might be liable for the damages claimed or which could have been claimed in this Action or the Administrative Claim.

The Parties further understand and expressly agree that the claims released by this Agreement include all unknown damages and consequences arising out of any of the claims released herein, regardless of whether such damages or consequences occur in the future.

Collectively, these released claims are referred to as “Released Claims.”

6. DISMISSAL OF CLAIMS WITH PREJUDICE

A. DISMISSAL OF DISTRICT COURT AND ADMINISTRATIVE ACTIONS:

- i. The parties agree that within seven (7) days following the full execution of this Agreement the parties will execute and file a Stipulation for Dismissal With Prejudice of this Action.
- ii. Plaintiff hereby agrees to withdraw the Administrative Action. The written withdrawal directed to Federal Protective Service Legal Office, DHS, Office of the General Counsel, of the Administrative Action is attached as Exhibit C.

B. PRIOR DISMISSAL OF CERTAIN INDIVIDUAL DEFENDANTS: Upon final agreement by the parties to the terms set forth herein, but prior to execution of this Agreement, Officer Amy Vreeland and Inspector Jesse Rodriguez shall be dismissed from this Action with prejudice. The parties will execute and file a Stipulation for Dismissal with Prejudice prior to final execution of this Agreement.

7. NO ADMISSION OF LIABILITY

The Parties recognize and agree that the settlement set forth in this Agreement is the compromise of disputed claims and that the consideration tendered and accepted hereunder is not intended, nor shall it be construed by anyone, to be an admission of liability by or on behalf of any of the Parties, by whom all such liabilities are expressly denied, the Parties intending by this Agreement merely to avoid the litigation and buy their peace. Defending Parties have denied, and continue to deny, the allegations in the Second Amended Complaint.

8. LIABILITY OF SETTLING PARTIES EXTINGUISHED

It is understood and agreed that the purpose, intent and legal effect of this Agreement is to extinguish the entire liability of the Parties arising out of or connected with the Released Claims, and to forever bar any recovery by way of subrogation, indemnity or contribution against any party by any other party relating to or arising out of the Released Claims.

9. THIRD-PARTY CLAIMS

If any party to this Agreement makes any claim against a third person who is not a party to this Agreement, which claim is related to or arises out of the claims released hereunder relating to the June 9, 2011 incident, then the party making such claims shall, to the fullest extent permitted by law, indemnify, defend and hold harmless the other parties to this Agreement from any claims for contribution, indemnity, subrogation or other reimbursement of such third party.

10. COMPLETE AGREEMENT

The parties acknowledge that no promise or inducement has been made or offered except as set forth herein, and that the parties execute this Agreement without reliance upon any statement or representation by anyone as to the nature and extent of the losses, injuries or damages or of the probable or possible consequences thereof. The Parties understand and agree that this Agreement contains the entire agreement between the Parties with respect to the

Released Claims, and that the terms of this Agreement are contractual and not a mere recital. By their signatures below, the Parties each represent that they have carefully read this Agreement, know and understand the terms and effect hereof, have fully discussed the terms and effect of this Agreement with their attorneys, and have signed this Agreement as their free and considered act. This Agreement includes separate signature pages.

11. SURVIVAL OF PROVISIONS

In the event and to the extent that any provision of this Agreement is declared invalid or unenforceable for any reason, such provisions shall be deleted and a new, legally valid and enforceable provision shall replace it. No invalid or unenforceable provision shall be construed to invalidate any other provision contained in this Agreement.

12. INTERPRETATION

The parties agree that should any dispute arise over the interpretation of this Agreement, any rule requiring interpretation against the party drafting the various provisions shall not apply and the agreement shall instead be interpreted in a neutral manner. The parties acknowledge that any disputes concerning this Agreement are to be construed in accordance with Minnesota law, regardless of the domiciles of the parties, the state in which they executed the Agreement, or other facts which could affect choice of law.

13. SIGNING

This Agreement may be executed simultaneously or in counterparts, each of which will be deemed an original, but all which together will constitute one and the same Agreement.

Dated: _____

MELISSA HILL

APPROVED AS TO FORM:

**MASLON EDELMAN BORMAN &
BRAND, LLP**

Dated: _____

WILLIAM Z. PENTELOVITCH #85078

NADEGE J. SOUVENIR #387957

MELISSA MURO LAMERE #0393295

3300 Wells Fargo Center

90 South Seventh Street

Minneapolis, MN 55402-4140

(612) 672-8200

and

TERESA NELSON #269736

American Civil Liberties Union of Minnesota

2300 Myrtle Avenue, Suite 180

St. Paul, MN 55114-1879

(651) 645-4097

Attorneys For Plaintiff Melissa Hill

Dated: _____

DECO, INC.

By: _____

(Print Name)

Its: _____

(Print Title)

Dated: _____

TIMOTHY SARKELA

Dated: _____

JOHN KANGAS

Dated: _____

MICHAEL THOMS

APPROVED AS TO FORM:

COUSINEAU McGUIRE CHARTERED

Dated: _____

PETER VAN BERGEN # 0112033
MEAGHAN C. BRYAN #388268
Attorneys for DECO, Inc., Timothy Sarkela,
John Kangas, and Michael Thoms
1550 Utica Avenue South, Suite 600
Minneapolis, Minnesota 55416-5318
(952) 546-8400

Dated: _____

CITY OF MINNEAPOLIS
By: _____
(Print Name)
Its: _____
(Print Title)

APPROVED AS TO FORM:

FOR THE CITY OF MINNEAPOLIS

Dated: _____

SUSAN L. SEGAL
Minneapolis City Attorney
By: **TIMOTHY S. SKARDA (#10176X)**
ANDREA KLOEHN NAEF (#0386497)
Assistant City Attorneys
Attorneys for City Defendants
350 South 5th Street, Room 210
Minneapolis, MN 55415
(612) 673-2553

Dated: _____

THE UNITED STATES
By: _____
(Print Name)
Its: _____
(Print Title)

APPROVED AS TO FORM:

FOR THE UNITED STATES

Dated: _____

B. TODD JONES

United States Attorney

BY: **DAVID W. FULLER** #390922

Assistant U.S. Attorney

300 South Fourth Street, Suite 600

Minneapolis, MN 55415

(612) 664-5600