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MEMORANDUM

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TO: Mayor Jerry L. Demings
and
County Commissioners

FROM: Jeffrey J. Newton, County Attorney 
Adolphus Thompson, Assistant County Attorney 
Contact: (407) 836-7320

DATE: January 9, 2020

SUBJECT: Consent Agenda Item for January 28, 2020
Settlement Agreement for *Gregory L. Wheatley v. Orange County, FL*
Case No. 2019-SC-033251-O

This item requests settlement approval by the Board for the *Gregory L. Wheatley v. Orange County, FL*, small claims action brought against Orange County. Mr. Wheatley alleged a Florida Consumer Collection Practices Act violation by Orange County's Fire and Safety's billing contractor, Intermedix (R1RCM), when Intermedix sought to collect from Mr. Wheatley monies due under a worker's compensation claim.

Orange County and Mr. Wheatley have come to an agreement to resolve the case for a total amount of \$3,000. to be paid by Intermedix. The agreement releases Orange County from any further claims related to this matter and will accompany a dismissal of the lawsuit filed.

ACTION REQUESTED: **Approval and execution of the Settlement and General Release Agreement in the case *Gregory L. Wheatley v. Orange County, FL*, Case No. 2019-SC-033251-O**

BCC Mtg. Date: January 28, 2020

SETTLEMENT AND GENERAL RELEASE AGREEMENT

THIS SETTLEMENT AND GENERAL RELEASE AGREEMENT (the "Settlement Agreement") is made as of the date of the last signature to this Settlement Agreement, by and between Gregory L. Wheatley ("Plaintiff"), and Orange County, Florida ("OC") (together, Plaintiff and OC are referred to herein as the "Parties" or "Settling Parties," each individually as a "Party").

AGREEMENT

NOW, THEREFORE, in consideration of the promises, agreements, covenants and representations contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

1. **Background: The Lawsuit.** On or about October 15, 2019, Plaintiff, by and through his retained counsel, filed an action against OC, captioned *Gregory L. Wheatley vs. Orange County, Florida*, Case No 2019-SC-033251-O, In The Court of the Ninth Judicial Circuit In and For Orange County, Florida (the "Lawsuit"). Plaintiff asserts a cause of action against OC for allegedly violating the provisions of the Florida Consumer Collection Practices Act during the collection of a debt allegedly owed by Plaintiff to OC. OC denies Plaintiff's material allegations in the Lawsuit.

2. **Payment.** Within twenty-one (21) calendar days following receipt of Plaintiff's executed original of this Settlement Agreement, a completed form W-9 from Plaintiff, and a completed form W-9 from counsel for Plaintiff, OC agrees to pay to the order of Colling, Gilbert, Wright & Cater, LLC, Trust Account the sum of three thousand and 0/100 Dollars (\$3,000.00) (the "Settlement Funds") as full and final settlement of the Parties' differences that have arisen in connection with OC and Plaintiff as defined below. No representations regarding the tax consequences of this settlement have been made by either Party. The Settlement Funds include \$1,000.00 to the Plaintiff and \$1,750.00 for attorney fees and \$250.00 in costs.

3. **Release of OC.** Plaintiff, and for each of his heirs, executors, administrators, predecessors, agents, servants, employees, associates, attorneys, representatives, insurers, successors and assigns, hereby fully releases and forever discharges from any and all manner of action or actions, suits, claims, damages, judgments, levies and executions, whether known or unknown, liquidated or unliquidated, fixed or contingent, direct or indirect which he and they ever had, have or ever can, shall or may have against OC, its executors, administrators, predecessors, agents, servants, employees, owners, shareholders, officers, directors, partners, associates, attorneys, representatives, clients, insurers, successors, assigns, parent organizations, subsidiaries, affiliates and divisions, and any other representative acting on its behalf, past, present or future, individually or in their corporate or personal capacity for, upon or by reason of any manner, act or thing including, but not limited to, any claims arising from or in connection with the claims alleged in the Lawsuit or related to the Accounts with OC.

4. **Dismissal.** In further consideration of the mutual promises contained herein, Plaintiff shall dismiss the Lawsuit with prejudice. Plaintiff will submit an agreed Final Order of Dismissal

with Prejudice as to OC, in a form suitable for submission to the Court. The Court shall retain jurisdiction to enforce the provisions of this Settlement Agreement, if necessary. Each Party will bear its own costs, including attorneys' fees, related to the Lawsuit and the dismissal of the Lawsuit, except as may be set forth in Paragraph 13 herein.

5. **No Admission of Liability.** The Parties represent and warrant to each other, that the Parties specifically understand and agree that the Parties' settlement and compromise of the claims and disputes regarding the Account and the Lawsuit is a compromise of disputed claims and that the existence of this Settlement Agreement or any payment made hereunder shall not be construed as an admission of liability or of the truth of the allegations, claims or contentions of any Party, and that there are no covenants, promises, undertakings or understandings between the Parties outside of this Settlement Agreement except as specifically set forth herein.

6. **Notice.** Any notice required to be given by this Settlement Agreement by Plaintiff to OC shall be given by electronic mail or by overnight courier and addressed as follows:

Orange County, Florida
201 S. Rosalind Ave., 3rd Floor
P.O. Box 1392
Orlando, FL 32801

Any notice required to be given by this Settlement Agreement by OC to Plaintiff shall be given by electronic mail or by overnight courier and addressed as follows:

Colling, Gilbert, Wright & Cater, LLC
Attention: Sean P. McCormack, Esquire
801 North Orange Avenue, Suite 830
Orlando, Florida 32801
Email: smccormack@thefloridafirm.com

7. **Enforceability regardless of tax consequences.** This Agreement is enforceable regardless of its tax consequences, including but not limited to the taxability of the Payment or any portion thereof. The Settling Party or Settling Parties receiving any taxable benefit hereunder agree(s) to be solely responsible for the taxes, interest, and penalties due and owing, if any. The Parties have made no representations regarding whether, or to what extent, the Payment constitutes a taxable event.

8. **Confidentiality.** The facts and statements exchanged in the negotiation of this settlement (the "Confidential Information") shall be confidential as to any third-party, except as required by law, court order, or as may be reasonably required by bureaus, auditors, accountants or tax consultants of the respective Parties, or any regulatory or governmental agency. It is understood that this paragraph shall not apply to disclosures to the Parties own employees, agents, accountants, tax preparers, and attorneys. The Parties further agree that matters of public record, are specifically excluded from this confidentiality clause. This confidentiality clause shall not prohibit the Parties from disclosing the terms of this Settlement Agreement to enforce the Settlement Agreement.

9. **Waiver.** Plaintiff acknowledges that the laws of some jurisdictions provide that a general release does not extend to claims which are not known or suspected to exist at the time this Settlement Agreement is executed, which if known, would have materially affected the settlement, and Plaintiff specifically waives the provisions of any similar statutory or other provision of law in the State of Florida.

10. **Further Assurances.** The Parties agree that, upon the request of any of the Parties, they will execute and deliver such further documents and undertake such further action as may reasonably be required to affect any of the agreements and covenants contained in this Settlement Agreement. Plaintiff further agrees to take any and all steps necessary to withdraw with prejudice his claims against OC in the Lawsuit.

11. **Governing Law.** This Settlement Agreement is intended to be performed in the State of Florida and the substantive laws of such state shall govern the validity, construction, enforcement, and interpretation of this Settlement Agreement. ANY ACTION OR SUIT TO ENFORCE ANY TERM OF THIS SETTLEMENT AGREEMENT SHALL BE TRIED BY A JUDGE, SITTING WITHOUT A JURY. BY EXECUTING THIS SETTLEMENT AGREEMENT EACH PARTY KNOWINGLY AND VOLUNTARILY WAIVES THE RIGHT TO A TRIAL BY JURY.

12. **Representations and Voluntary Action.** Plaintiff and OC represent, warrant and agree that each has been represented by their own counsel, that they have thoroughly read and understood the terms of this Settlement Agreement, conferred with their attorney on any questions in regard to this Settlement Agreement, and have voluntarily entered into this Settlement Agreement to resolve all claims relating hereto. The individuals signing this Agreement on behalf of the Parties are duly authorized and fully competent to do so. Additionally, Plaintiff warrants and represents that they are the sole and absolute legal and equitable owners of the claims at issue in the Lawsuit as set forth in this Agreement and released by the Plaintiff in Section 3; that the claims at issue in the Lawsuit have not been assigned, transferred or disposed of in fact, by operation of law or in any matter whatsoever; and that Plaintiff has the full right and power to execute and deliver the release in Section 3 and the other covenants contained herein.

13. **Costs and Attorneys' Fees.** Notwithstanding paragraph 2 above, the Parties agree that they will pay their own respective costs of court in the Lawsuit and their own attorneys' fees incurred in connection with the Lawsuit. In no event shall OC be required to pay any amount other than the one-time payment of Settlement Funds set forth in Paragraph 2.

14. **Counterparts.** This Settlement Agreement may be executed in any number of identical counterparts and via facsimile, electronic or digital signature, each of which shall be deemed to be an original for all purposes.

15. **Full Agreement.** The Parties hereto acknowledge and agree that this Settlement Agreement represents the full and complete agreement of the Parties with respect to the

resolution of the claims in the Lawsuit, and any amendments or modifications of this Settlement Agreement must be in writing and executed by both Parties to be effective.

16. **Construction.** This Settlement Agreement shall not be construed more strictly against one Party than against the other by virtue of the fact that the Settlement Agreement may have been drafted or prepared by counsel for one of the Parties, it being recognized that all Parties to this Settlement Agreement have contributed substantially and materially to the preparation of this Settlement Agreement.

17. **Captions.** The titles or captions of the paragraphs or sections contained in this Settlement Agreement are inserted only as a matter of convenience and for reference, and in no way define, extend or describe the scope of this Settlement Agreement or the intent or meaning of any provision hereof.

IN WITNESS WHEREOF, the Parties hereto have executed this Settlement and General Release Agreement effective as of the date of the last signature set forth below.

Gregory L. Wheatley

By: Gregory L. Wheatley
Date: 12/27/2019



ORANGE COUNTY, FLORIDA

By: Board of County Commissioners

By: Jerry L. Demings
Jerry L. Demings
Orange County Mayor

Date: 20 January 2020

ATTEST: Phil Diamond, CPA, County Comptroller
As Clerk of the Board of County Commissioners

By: Katie Smith
Deputy Clerk

Print: Katie Smith