

## SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (the “Settlement Agreement”) is made and entered into by and between **Plaintiff Mark Lopez** (“Plaintiff”) and City of Santa Fe and Santa Fe Police Department (“Santa Fe Defendants”). Plaintiff and Defendants are collectively referred to herein as “the Parties.”

### RECITALS

- A. On October 5, 2023, Plaintiff filed a Complaint in the First Judicial District of New Mexico, Santa Fe County, D-101-CV-2023-02458, alleging various claims against Santa Fe Defendants (the “Lawsuit”). The Lawsuit arises from a law enforcement investigation and Be On the Lookout “BOLO” Bulletin issued on March 2, 2022. Plaintiff asserted claims pursuant to the New Mexico Tort Claims Act, New Mexico Civil Rights Act, and punitive damages claims.
- B. Despite the fact that Santa Fe Defendants expressly deny liability, the Parties desire to finally and fully resolve all past, present, and potential disputes, claims, and issues between Plaintiff and the Santa Fe Defendants, relating to or arising out of the Lawsuit and litigation. As a result, the Parties have negotiated and entered into this Settlement Agreement in an effort to avoid further expense, inconvenience, and the distraction of burdensome and protracted litigation. This Settlement Agreement is intended to resolve any dispute which may exist arising in any way out of the investigation which occurred on March 2, 2022, including all claims regarding the identification of Plaintiff, all BOLO’s created, the BOLO which was disseminated, and Plaintiff’s Complaint and Amended Complaint. The Parties desire to enter into this Settlement Agreement, which provides for certain payment in full settlement and discharge of all claims that are, or might have been, the subject matter of the Lawsuit, upon the terms and conditions set forth below.

### AGREEMENT

The Parties agree as follows:

#### 1.0 Release and Discharge

1.1 In consideration of the agreement set forth in Section 2, Plaintiff hereby and on behalf of his heirs, executors, administrators, successors and assigns completely releases and forever discharges Santa Fe Defendants from all known and unknown, foreseen and unforeseen bodily and personal injuries, and property damage, and the consequences thereof, any and all past, present, and future actions, causes of action, claims, demands, rights,

damage, costs, loss of services, loss of use, diminution in value, expenses, wages, and compensation whatsoever, whether based on a statutory right, constitutional right, common law, tort, subrogation, contract, insurance, or other theory of recovery, including whether based on a theory of vicarious or independent liability or indemnification, which Plaintiff now has or which may hereafter accrue out of the events of March 2, 2022, the Lawsuit, and/or any act, omission, event, or circumstances related to or in any way growing out of, resulting from, or to result from the Lawsuit (“the Released Claims”).

1.2 This release and discharge shall apply to Santa Fe Defendants, as well as past and present employees, and agents, attorneys, insurers, The Traveler’s Companies, and all other persons, affiliates, partners, predecessors and successors in interest, and assigns, subsidiaries, parent corporations, firms or corporations with whom any of the former have been, are now, or may hereafter be affiliated with the Santa Fe Defendants and the Parties defined in this paragraph are hereinafter collectively referred to as the “Released Parties.”

1.3 This Settlement Agreement shall be a fully binding and complete settlement.

1.4 Plaintiff acknowledges and agrees that the release set forth above is a general release. Plaintiff expressly waives and assumes the risk of any and all claims for damages which exist as of this date, but of which he does not know or suspect to exist, whether through ignorance, oversight, error, negligence or otherwise, and which if known, would materially affect Plaintiff’s decision to enter into this Settlement Agreement. Plaintiff further agrees that this Settlement Agreement is a complete compromise of matters involving disputed issues of law and fact. Plaintiff assumes the risk that the facts or law may be other than what he believes.

1.5 Plaintiff and his attorneys represent and warrant that all bills, costs, rights of reimbursement for any and all liens resulting from or arising out of the alleged injuries, claims, or lawsuit are Plaintiff’s responsibility to pay. Plaintiff agrees to assume responsibility for satisfaction of any and all rights to payment, claims or liens of any kind that arise from or are related to payments made or services provided to him. Plaintiff agrees to assume responsibility for all expenses, costs or fees incurred related to his alleged injuries, claims or lawsuits including without limitation, all Medicare conditional payments, Medicare liens, subrogation claims, liens or other rights to payment, relating to medical treatment that have been or may be asserted by any health care provider, insurer, governmental entity, employer, or other person or entity. Plaintiff agrees to satisfy any and all claims for payments and liens arising out of the subject matter of this lawsuit from the proceeds of this settlement, including but not limited to medical liens, hospital liens, conditional payments, claims made by any public or private health insurers, any federal or state Medicare or Medicaid claims, and attorney liens from his current attorneys and former attorneys he has retained or who hold a lien on this cause, if any, and any and all other liens or subrogation rights of any kind which may have accrued as a result of medical care, hospital care, physical therapy, counseling or any other medical care or treatment rendered to Plaintiff Mark Lopez as a result of the alleged injuries and damages.

1.6 Plaintiff agrees to indemnify, defend and hold harmless the Released Parties, their respective heirs, executors, administrators, attorneys, agents, assigns, successors, servants, employees, directors, officers, related corporate entities, and insurers against loss, including attorneys' fees, for any medical or hospital liens, and claims by any governmental entity, Medicare, Medicaid, Social Security or any state or federal entity, including but not limited to, any claims, liens, subrogation or right of reimbursement claims of any insurance company and/or governmental healthcare provider, including any entity, asserting any assignment, subrogation, or direct right of action, under the Medicare Secondary Payer Statute 42 USC Section 1395y, 42 C.F.R. Sections 411.02411.37, Federal Medical Care Recovery Act, 42 U.S.C. Section 2651, et seq., 28 C.F.R. pt. 43 or any other statute or regulation, including, but not limited to, the Medicare, Medicaid, and SCHIP Extension Act of 2007 (MMSEA), or amended or replacement statutes or regulations, or by any other medical provider, by reason of the alleged occurrence, injuries and/or damages or the effects or consequences thereof.

1.7 Plaintiff agrees to indemnify, defend, and to hold harmless Released Parties, their respective heirs, executors, administrators, attorneys, agents, assigns, successors, servants, employees, directors, officers, related corporate entities, and insurers, from any and all past, present and future claims, liens, Medicare conditional payments and rights to payment, demands, causes of action, in law or in equity, whether known or unknown, which may hereafter be made or brought by Plaintiff, or any other person or entity, claiming damages, reimbursement, subrogation, indemnity, or contribution which might be filed or claimed as a result of the Lawsuit

1.8 If any governmental entity, or anyone acting on behalf of any governmental entity seeks damages, including multiple damages or interest, from the Released Parties relating to payment by such governmental entity, or anyone acting on behalf of such governmental entity, relating to Plaintiff Mark Lopez's alleged injuries, damages, claims, or lawsuit referred herein, Plaintiff will defend and indemnify the Released Parties, their respective heirs, executors, administrators, attorneys, agents, assigns, successors, servants, employees, directors, officers, related corporate entities, and insurers. It is the intent of Plaintiff that this indemnity agreement shall include indemnification to the Released Parties for any and all damages, claims, liens, Medicare conditional payments and rights to payment, judgments, awards, settlements, costs, attorneys' fees, or expenses, of whatever nature, related to his claims arising from the investigation and events of March 2, 2022 and noted in the Complaint and First Amended Complaint, it being the intent to completely and fully terminate any exposure or liability on the part of Released Parties.

2.0 **Consideration**

- a. The Santa Fe Defendants agree to pay Plaintiff as follows: Three Hundred Seventy-Five Thousand Dollars and 00/100 cents (\$375,000.00), payable to Rodey, Dickason, Sloan, Akin, & Robb, PA.

2.1 The Released Parties are Intended Beneficiaries of this Settlement Agreement.

3.0 **Attorneys' Fees**

Each party hereto shall bear all attorney's fees and costs arising from the actions of their own counsel in connection with the Lawsuit and this Settlement Agreement.

4.0 **Execution of Stipulated Dismissal**

Upon Plaintiff's receipt of the settlement payment, Santa Fe Defendants will execute the stipulated dismissal with prejudice. The Stipulation shall contain the Parties' agreement to dismiss the Complaint in its entirety, for all claims, with prejudice, with each side to bear their own attorneys' fees and costs.

5.0 **Representations and Warranties**

5.1 This Settlement Agreement is the result of negotiations between Parties who have obtained legal advice concerning the meaning and effect of this Settlement Agreement, or who have decided to forgo obtaining legal advice, and had sufficient time to consider the meaning and effect of this Settlement Agreement.

5.2 Any person executing this Settlement Agreement warrants that they have the full authority to enter into the terms and conditions of, and to execute this Settlement Agreement on behalf of the party for whom they are signing, irrespective of the competency of such party.

6.0 **Warranty of Capacity to Execute Agreement**

Plaintiff represents and warrants that no other person or entity has, or has had, any interest in the claims, demands, obligations, or causes of action referred to in this Settlement Agreement, except as otherwise set forth herein; that Plaintiff has the sole right and exclusive authority to execute this Settlement Agreement; and that Plaintiff has not sold, assigned, transferred, conveyed or otherwise disposed of any of the claims, demands, obligations or causes of action referred to in this Settlement Agreement.

7.0 **No Admission by Santa Fe Defendants**

The Parties understand and expressly agree that nothing contained in this Agreement

shall be construed as an admission by Santa Fe Defendants of any liability or wrongdoing whatsoever, but this Settlement Agreement represents a compromise and settlement of Plaintiffs' claims and an effort to avoid further litigation expenses. This Settlement Agreement and the fact of settlement of all claims arising or could have arisen from Plaintiff's Complaint and First Amended Complaint, including all negotiations, discussions, and proceedings connected with it, leading up to the settlement, as well as any action taken to carry out the terms of the settlement shall not constitute any admission of liability or give rise to any presumption or inference of any violation of any statute or law or of any fault, wrongdoing, or liability whatsoever.

Without limiting the foregoing, Santa Fe Defendants further agrees that this Settlement Agreement does not manifest an acceptance of any of Plaintiff's factual or legal positions taken or asserted relating in any way to the allegations made in the Complaint.

#### **8.0 Governing Law**

This Settlement Agreement shall be construed and interpreted in accordance with the laws of the State of New Mexico. This Settlement Agreement is the result of negotiations between the Parties, each of which has been represented and advised by competent counsel, so that any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Settlement Agreement shall have no force and effect. The Parties further agree that the language contained in, or not contained in, previous drafts of this Settlement Agreement shall have no bearing upon the proper interpretation of this Settlement Agreement. This Settlement Agreement shall be construed and interpreted to effectuate the intent of the Parties, which is to provide, through this Settlement Agreement, for a complete resolution of any and all claims arising out of Plaintiffs' Complaint and First Amended Complaint or Released Claims.

#### **9.0 Additional Documents**

All Parties agree to cooperate fully and execute any and all supplementary documents and to take all additional actions which may be necessary or appropriate to give full force and effect to the basic terms and intent of this Settlement Agreement.

#### **10.0 Entire Agreement and Successors in Interest**

This Settlement Agreement contains the entire agreement between Plaintiff and Santa Fe Defendants with regard to the matters set forth in it and shall be binding upon and inure to the benefit of the executors, administrators, personal representatives, heirs, spouses, successors and assigns of each. The Released Parties are third party beneficiaries under this Settlement Agreement. This Settlement Agreement, as well as the documents contemplated hereunder to effectuate this Settlement Agreement, is a fully integrated document, containing

the entire understanding among the Parties, and supersedes and integrates any prior understandings or written or oral agreements or negotiations among the Parties respecting the subject matter hereof.

#### 11.0 **Modifications and Amendments**

This Settlement Agreement shall not be amended or modified except as may be in writing and signed by all Parties to this Settlement Agreement.

#### 12.0 **Headings**

The headings used in this Settlement Agreement are used for convenience of reference only and do not constitute substantive matter to be considered in construing the terms of this Settlement Agreement.

#### 13.0 **Recitals**

The Recitals set forth herein are incorporated as a part of this Settlement Agreement, and the Parties represent and warrant the truth of all that is contained in the Recitals, as it applies to the party so representing. The Parties agree that the covenants set forth herein are contractual and not mere recitals.

#### 14.0 **Severability**

In the event that any portion of this Settlement Agreement is found to be unenforceable for any reason, the unenforceable provision(s) shall be considered to be severable. The remainder of this Settlement Agreement shall continue in full force and effect as fully as though such invalid, illegal, or unenforceable portion had never been part of this Settlement Agreement. Further, any Court considering any term alleged to be invalid, illegal, or unenforceable shall modify any challenged provision to the extent required to make it valid, legal, and enforceable and thereby give as much effect as possible to the intentions of the Parties to this Settlement Agreement, which is to provide, through this Settlement Agreement, for a complete resolution to any and all claims released in Section 1.0.

#### 15.0 **Waiver**

No delay or failure by a party to exercise any right under this Settlement Agreement, and no partial or single exercise of that right, shall constitute a waiver of that or any other right, unless otherwise expressly provided in this Settlement Agreement. No waiver of any terms of this Settlement Agreement shall constitute a waiver of any other terms, whether or not similar, nor shall any waiver be a continuing waiver.

#### 16.0 **Tax Consequences**

Plaintiff acknowledges that Plaintiff is responsible for all tax obligations and consequences arising from this Settlement Agreement, and that Santa Fe Defendants have not advised Plaintiff as to any issue relating to the tax consequences attendant to this Settlement Agreement, and that Plaintiff agrees to indemnify and hold harmless Santa Fe Defendants and/or any of the Released Parties from all liens, actions or claims on the part of the Internal Revenue Service or any other tax authority in connection with such payment. This indemnity and hold harmless agreement will apply as to the full amount of all such liens, actions or claims, and all expenses incurred therewith.

**17.0 Counterparts and Facsimile**

This Settlement Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon and all of which shall together constitute one and the same instrument. Signatures of the Parties may be submitted *via* email or facsimile.

**18.0 Effectiveness**

This Settlement Agreement shall become effective immediately following execution by Plaintiff.

**19.0 Breach of Agreement**

The Parties shall have the right to bring a claim in a Court of competent jurisdiction to enforce this Settlement Agreement upon determining it has been breached. The prevailing party in an action to enforce the Settlement Agreement shall be entitled to attorneys' fees and costs.

**\*\*REMAINDER OF PAGE INTENTIONALLY LEFT BLANK\*\***

