

ORDINANCE NUMBER 3214

AN ORDINANCE AUTHORIZING THE SETTLEMENT OF THE CASE OF ANITA DUNKLIN V. COLBY WOOTEN, CITY OF VESTAVIA HILLS, ET AL, BEING CIVIL ACTION NUMBER 01-DV-2021-903578.00 PRESENTLY PENDING IN THE DISTRICT COURT FOR JEFFERSON COUNTY, ALABAMA; AUTHORIZING AND DIRECTING THE MAYOR AND CITY MANAGER TO PAY THE FUNDS DESCRIBED HEREIN AND TO TAKE ANY ACTION AND EXECUTE AND DELIVER ANY AND ALL DOCUMENTS NECESSARY TO EFFECTUATE SAID SETTLEMENT.

THIS ORDINANCE NUMBER 3214 is approved, adopted and enacted by the City Council of the City of Vestavia Hills, Alabama on this the 11th day of March, 2024.

WITNESSETH THESE RECITALS:

WHEREAS, Alabama law at Title 11-43-56, *Code of Alabama, 1975*, provides that the City Council shall have the management and control of the finances and all of the property, real and personal, belonging to the City; and

WHEREAS, Title 11-43-43, *Code of Alabama, 1975*, provides that all legislative powers granted to cities shall be exercised by the City Council; and

WHEREAS, Title 11-40-1, *Code of Alabama, 1975*, declares municipalities bodies corporate and gives them the power to contract and be contracted with; provided, however, that the contract is in writing as required by Title 11-47-5, *Code of Alabama, 1975*; that the execution and delivery of the contract shall have first been approved by the City Council, *Town of Boligee v. Greene County Water and Sewer Authority*, 77 So.3d 1166 (2011), in the form of an ordinance or resolution, *Van Antwerp, et al v. Board of Commissioners of City of Mobile*, 217 Ala. 201, 115 So. 239 (1928); that the contract be signed by the Mayor as required by Title 11-43-83, *Code of Alabama, 1975*; and that the contract be signed by the City Manager as required by Title 11-43-21(7), *Code of Alabama, 1975*; and

WHEREAS, Title 11-47-24(b), *Code of Alabama, 1975*, provides that all municipal corporations of the State of Alabama are authorized to contract at governmental expense for policies of liability insurance to protect the City and its employees in the course of their employment; and

WHEREAS, Title 11-47-190, *Code of Alabama, 1975*, provides that municipalities may be liable for negligence; and

WHEREAS, Title 11-93-2, *Code of Alabama, 1975*, establishes the maximum amount of damages recoverable against governmental entities with a limit of One Hundred Thousand Dollars (\$100,000.00); and

WHEREAS, the case of *Anita Dunklin v. Colby Wooten, City of Vestavia Hills, Alabama, et al*, (hereinafter referred to as “lawsuit”) was filed on February 28, 2022 as civil action number 01-DV-2021-903578.00 in the District Court of Jefferson County, Alabama, and said lawsuit is presently pending; and

WHEREAS, Anita Dunklin, by and through her attorney of record, has offered to settle the lawsuit for the sum of One Thousand Dollars (\$1,000.00), which is an amount less than the deductible on the City’s general comprehensive liability policy; and

WHEREAS, attorney J. Bentley Owens, III, legal counsel of record representing the City in the lawsuit, and City Attorney Patrick H. Boone, by letter dated March 4, 2024, have recommended that the City accept the Plaintiff’s offer of settlement in the amount of One Thousand Dollars (\$1,000.00); and

WHEREAS, a copy of the letter, dated March 4, 2024, from City Attorney Patrick H. Boone and J. Bentley Owens, III is attached hereto, marked as Exhibit A and is incorporated into this ordinance by reference as though set out fully herein; and

WHEREAS, a formal Settlement Agreement is attached hereto, marked as Exhibit B and is incorporated into this ordinance by reference as though set out fully herein.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF VESTAVIA HILLS, ALABAMA, AS FOLLOWS:

1. The recitals set forth in the premises above are hereby incorporated into this ordinance by reference as though set out fully herein.

2. The City Manager and Mayor are hereby authorized and directed to settle the lawsuit described in the premises above pursuant to the written recommendation of City Attorney Patrick H. Boone and special legal counsel and attorney of record, J. Bentley Owens, III, pursuant to the terms, provisions and conditions hereinafter set forth below.

3. The total amount of settlement to be paid by and/or for and on behalf of the City of Vestavia Hills, Alabama (“City”) shall be the sum of One Thousand Dollars (\$1,000.00).

4. The lawsuit against the City and Colby Wooten named in the lawsuit shall be dismissed with prejudice.

5. The Plaintiff shall forever discharge and release the City and Colby Wooten in the lawsuit from any and all damages arising out of the incident made the basis of this lawsuit and shall make no claim for any attorney fee whatsoever against the City and Colby Wooten.

6. The Mayor and City Manager are hereby authorized and directed to pay the funds described in section 3 above and to take any action and execute and deliver any and all documents necessary to effectuate said settlement.

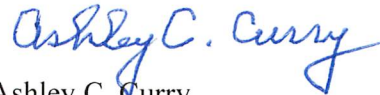
7. The settlement authorized herein is a compromise, adjustment and settlement of a doubtful and disputed claim and the payment of the sum recited in section 3 above is not an admission of liability by the City of Vestavia Hills, Alabama or any of its public officials or public employees and the City expressly denies liability.

8. The Mayor and City Manager are hereby authorized and directed to execute and deliver the Settlement Agreement marked as Exhibit B for and on behalf of the City of Vestavia Hills, Alabama and Vestavia Hills Police Officer Colby Wooten.

9. If any part, section or subdivision of this ordinance shall be held unconstitutional or invalid for any reason, such holding shall not be construed to invalidate or impair the remainder of this ordinance, which shall continue in full force and effect notwithstanding such holding.

10. The provisions of this Ordinance Number 3214 shall become effective immediately upon the passage, approval and adoption thereof by the City Council of the City of Vestavia Hills, Alabama and the publication and/or posting thereof as required by Alabama law.

ORDAINED, APPROVED, ADOPTED, DONE and ORDERED on this the 11th day of March, 2024.



Ashley C. Curry
Mayor

ATTESTED BY



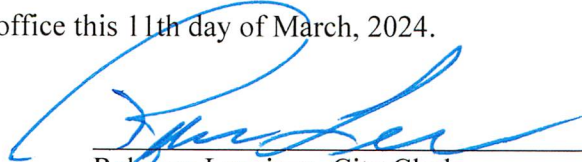
Rebecca Leavings
City Clerk

CERTIFICATION OF CITY CLERK

STATE OF ALABAMA)
JEFFERSON COUNTY)

I, Rebecca Leavings, City Clerk of the City of Vestavia Hills, Alabama, do hereby certify that the above and foregoing is a true and correct copy of an ordinance duly and legally adopted by the City Council of the City of Vestavia Hills, Alabama, on the 11th day of March, 2024 while in regular session, and the same appears of record in the minute book of said date of said City.

Witness my hand and seal of office this 11th day of March, 2024.



Rebecca Leavings, City Clerk

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (the "Agreement") is made by and between Anita Dunklin (hereafter referred to as "Plaintiff") and the City of Vestavia Hills, Alabama; the Vestavia Hills Police Department; and Colby Wooten (hereinafter referred to as "Defendants"), collectively "the Parties."

Recitals

A. On or about August 26, 2021, Plaintiff filed a complaint in the District Court for Jefferson County, Alabama, 01-DV-2021-903578.00. Plaintiff filed an Amended Complaint on October 6, 2021, in which Plaintiff claims to have been injured when her photo was placed on the Vestavia Hills Police Department's Facebook page identifying her as a person who may have been involved in the crime of identity theft.

B. Plaintiff's claims are disputed. Defendants responded to the Amended Complaint denying all liability. Moreover, Defendants do not waive any argument or defense identified in any answer to the Complaint or Amended Complaint and/or any arguments raised in the Motion for Summary Judgment, Doc. 117.

C. The Parties have reached agreement on a settlement and enter into this Agreement solely to avoid the litigation costs, vicissitudes, and the uncertainty inherent in any litigation. Defendants continue expressly to deny any liability.

D. In order to effect a dismissal with prejudice of the pending lawsuit and to secure a general release of Defendants, the Parties enter into this agreement.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, and other good and valuable consideration by all Parties hereto, the Parties hereby agree as follows:

1. Defendants, by and through the City of Vestavia Hills, shall pay to Serious Injury Law Group PC Birmingham, counsel for the Plaintiff, the sum of One Thousand Dollars (\$1,000.00) within thirty (30) days of the execution of this Agreement and the approval by City Council of such Agreement and payment.

2. The Plaintiff does hereby unconditionally and irrevocably release, hold harmless, and forever discharge Defendants, as well as their agents, servants, employees and officials, of and from any and all rights, claims and demands,

liabilities, debts, sums of money, actions, causes of action, suits, covenants, contracts, controversies, agreements, promises, damages, judgments, or executions, whatsoever, in law or in equity, contingent or accrued, which Plaintiff has, had, or might subsequently have growing out of, arising from, or connected with any and all matters alleged in the Amended Complaint.

3. The Plaintiff expressly agrees to be responsible for satisfying any and all past, present, or future medical expenses, liens, levies, judgments, subrogation interest, or any other obligations, whether known or unknown, arising out of injuries she claims were sustained as a result of the incident described in the Amended Complaint and herein, and shall indemnify, hold harmless and defend Defendants, and any and all released parties, including any fictitious defendants, identified in the Amended Complaint from such duty or responsibility to satisfy any pending or future liens or obligations.

4. It is further agreed that any and all claims of the Plaintiff pending in the District Court of Jefferson County, Alabama, and bearing Case Number 01-DC-2021-903578.00, shall be dismissed with prejudice, costs taxed as paid.

5. The Parties expressly understand, stipulate and agree that in the event any of the provisions contained in the Agreement are violated, they will be subject to appropriate sanctions by the court having general jurisdiction over them.

6. Neither this Agreement nor any term or provision hereof may be changed, modified, waived or discharged, or terminated orally, or in any manner other than by an instrument in writing signed by the party against whom the enforcement of the change, modification, waiver, discharge or termination is sought.

7. This Agreement may be executed in any number of counterparts, and all of such counterparts when executed and delivered (including delivery by facsimile or electronically) shall constitute a single fully executed agreement. Notwithstanding, the Plaintiff understands and expressly agrees that the Settlement Agreement and Release is not effective unless and until approved by the Vestavia Hills City Council.

8. This Agreement contains the entire agreement of the Parties with respect to the subject matter hereof, and supersedes any other agreements, whether written or oral, between or among any of the parties to this Agreement.

9. No provision of this agreement is to be interpreted to the disadvantage of a party because that party (or its representative) drafted that provision.

10. This Agreement is contractual and shall be construed and enforced in accordance with the laws of the State of Alabama, and jurisdiction and venue shall remain with the Jefferson County District Court for purposes of enforcement and interpretation.

11. This Agreement, the obligations of the parties hereunder and the releases herein are conditioned, and shall only become effective, upon execution of this Agreement by all Parties hereto.

Dated this _____ day of _____, 2024.

City of Vestavia Hills

Plaintiff

By: Jeff Downes
City Manager

Anita Dunklin, Individually

EXHIBIT A

RECOMMENDATION FOR SETTLEMENT OF LAWSUIT

TO: City Manager Jeffrey D. Downes

FROM: City Attorney Patrick H. Boone and
Special Legal Counsel J. Bentley Owens, III

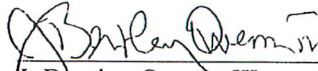
DATE: March 4, 2024

IN RE: Anita Dunklin, Plaintiff v. Colby Wooten, City of Vestavia Hills, Sterling Jewelers, Ltd. d/b/a Kay Jewelers, Signet Jewelers, Ltd., Signet Service Plans, Inc., Sterling Jewelers Insurance Agency, Inc., et al, Defendants
Jefferson County District Court Case No. 01-DV-2021-903578

The Plaintiff, by and through her attorney, has offered to settle the above lawsuit against the City of Vestavia Hills, Alabama and Vestavia Hills Police Officer Colby Wooten upon payment by the City for One Thousand Dollars (\$1,000.00). We recommend that the City Council accept the offer of settlement all in accordance with the terms and provisions of Ordinance Number 3214.



Patrick H. Boone
City Attorney



J. Bentley Owens, III
Special Legal Counsel