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CONFIDENTIAL AND FOR SETTLEMENT PURPOSES ONLY

August 18, 2017

Mayor Dick Heaton
Mayor, City of Bardstown
Hand Delivered

Re: Offer in compromise to litigation

Dear Mayor Heaton:

This written offer is made following a meeting that occurred in my office more than a month ago. At that meeting, I outlined the substantial claims that Kecia Copeland has against the City and former City Officials. We discussed the nature of the claims and how they could directly impact the City. We also discussed my client's willingness to compromise her claims so as to minimize the financial harm to the City. You subsequently asked that I write a statement of the claims so that you could review them with the council.

Given that you and the council have much knowledge of the conduct at issue, coupled with the voluminous nature of the documents, this letter will only serve to broadly outline the claims. You will need to rely upon your knowledge of the history of the matter, and the people involved. Without limitation, Ms. Copeland, as the individual directly impacted, will make the following claims:

1. Defamation of Character and Being Cast in False Light. These torts are widely recognized by Kentucky law. See *Stringer v. Wal-Mart Stores, Inc.*, 151 S.W.3d 781 (Ky. 2004).¹ They are easily proven against the City. Defamation requires proof that negative and defamatory language was made about Ms. Copeland by City officials. The False Light claim is similar but doesn't require proof that Ms. Copeland was actually defamed. As reviewed by Kentucky's Supreme Court in *McCall v. Courier-Journal and Louisville Times Co.*, 623 S.W.2d 882, 888 (Ky. 1981):

"Much has been written as to the similarity of "false light" and defamation. The purpose of a false light action is to protect the individual in not being made to appear before the public in an unreasonably objectionable false light and otherwise than as he is. To sustain this action, the person need not be defamed.

¹ A jury returned a verdict in the Plaintiffs' favor on each of their claims, awarding each Appellant \$ 2,000,000 in compensatory damages -- \$ 1,000,000 for "injury to reputation" and \$ 1,000,000 for "embarrassment, humiliation, and mental anguish" -- and \$ 3,000,000 in punitive damages. The total award exceeded \$20,000,000.

It is sufficient that the publicity attribute to him characteristics, conduct or beliefs that are false, and that he is placed before the public in a false position. See comment b to Restatement (Second) of Torts, Sec. 652E (1976)."

Liability is imposed if we can show that City officials knew of or acted in reckless disregard as to the false depiction being made about Ms. Copeland. The evidence of this is overwhelming.

The council knows well what former Mayor John Royalty, and members of his administration, did to Ms. Copeland. There is substantial evidence that the City's Mayor and others improperly gathered information about Ms. Copeland and disseminated the material to the public and media (under the guise of anonymity) for the purpose of creating the false impression that she was dishonest, had committed crimes, and was an arsonist. The fire run sheets were obtained outside of the normal Open Records protocol recognized by the City Clerk. This was coupled with the defamatory Ripoff Report, and inappropriately obtained Courtnet reports used to create a false impression of Ms. Copeland.² The conduct by City officials was purposeful and malicious, much more than merely reckless which is all that's required. Based on the City's own investigation into the matter, the dossier was almost certainly created by the Mayor, and/or others within his administration, or others with whom he conspired.

The decision to give the misleading information (ie, to publically disseminate) to the media was made by the City Clerk. She admitted in testimony during the lawsuit against the City by former Captain Tom Roby, that she was aware of the contents of the dossier but nonetheless exercised discretion before giving the information to the media. This same City Clerk was recently disciplined because she continued disregarding Ms. Copeland's privacy by exceeding her authority and viewing or obtaining private utility records about Ms. Copeland. See *Exhibit A*. The Clerk resigned her position. This occurred under the current administration, and after Ms. Copeland had made express requests that the Clerk be removed because of her involvement in actions of the former administration.

In addition, and candidly even more compelling, will be proof that the Mayor or representatives of his office, specifically provided information to news outlets and asked that it be reported that Ms. Copeland had committed arson. I have personally spoken with two reporters that will testify that the Mayor or someone from his office provided the fire run reports to them and specifically said that Ms. Copeland had "committed arson." WHAS actually ran a segment about the untrue allegations. Ms. Copeland called WHAS and advised them of the actual facts, and they immediately pulled the segment. The other outlets chose not to report on the allegations. This is shocking conduct.

² For effect, and as we will show, to amplify the intended false negative publicity of Ms. Copeland, the Interim Police Chief appeared at a public session before the media to allege that Ms. Copeland had misused public money in the form of her iPad.

2. The second class of claims relate to the unlawful invasion of privacy by City officials. The deceptive nature of what these officials did to gain access to Ms. Copeland's private emails is well-established by the City's own investigation. Rather than review those facts, I refer to the details uncovered during that investigation. See *Exhibit B*. Emails that predated Ms. Copeland's time on the Bardstown City Council were wrongly accessed, viewed, copied and disseminated. This was done for the purpose of embarrassing and causing harm to Ms. Copeland. The City must now atone for that conduct. There are few reported cases discussing damages for invasion into someone's private emails (likely because most settle), but the reported cases that do exist show very favorable outcomes to the aggrieved party.³
3. Civil conspiracy. Kentucky's highest court defined civil conspiracy "As a legal term the word 'conspiracy' means a corrupt or unlawful combination or agreement between two or more persons to do by concert of action an unlawful act, or to do a lawful act by unlawful means.' The Supreme Court reaffirmed this definition when it again addressed the issue of conspiracy in *Montgomery v. Milam, Ky.*, 910 S.W.2d 237, 42 12 Ky. L. Summary 39 (1995). The Court emphasized that in order to prevail on a claim of civil conspiracy, the proponent must show an unlawful/corrupt combination or agreement between the alleged conspirators to do by some concerted action an unlawful act." Again, it's very clear that multiple actors worked together, under the direction of then Mayor Royalty, to wrongly cause damage to Ms. Copeland. This equates to a civil conspiracy.
4. The final class of claims relate to Intentional Infliction of Emotional Distress, or Outrage as more commonly known. All of the facts support substantial damages on this claim. It would be impossible to credibly dispute that agents of the City conspired to harm Ms. Copeland. She was bullied, harassed, humiliated, defamed and distressed by a conspiracy of multiple actors, all of whom were in authority positions within the City. She sought protection from almost everyone holding a position of power within the City, including the City Attorney. Because of the completely outlandish conduct toward her, she ultimately sought medical attention and was prescribed medication to deal with some of the emotional issues caused by this conduct. I'm not releasing her medical records for review. It's my belief that her privacy has been invaded enough.

These are a glimpse of the claims we intend to pursue. I'm not including a detailed listing of every cause of action, because to do so isn't needed. If we're forced to move forward, I do intend to investigate applicable claims under KRS Chapter 344, Kentucky's Civil Rights Act because of the racial undertones identified both in John Royalty's deposition and the City's investigation.

³ See *Cheng v. Romo*, 2012 U.S. Dist. LEXIS 169535, Civil Action No. 11-10007-DJC, 2012 U.S. Dist. LEXIS 169535, (D. Mass. Nov. 28, 2012) where the wife of a doctor utilized an old computer to gain access and view private emails of his former partner. The jury was appalled at the invasion of privacy and awarded \$200,000 in compensatory damages because of the invasion. The Court then awarded \$241,071.03 *additionally* in attorney fees.

That Ms. Copeland has credible legal claims that could produce a large verdict against the City is obvious. Verdicts arising from similar conduct are difficult to find, likely because conduct of such an obvious and egregious nature compel insurers to settle. When cases like this do go to trial, six and seven figure verdicts are common. Note that insurers recently settled a series of claims in June of this year against the Montgomery County Board of Education for conduct, which reprehensible, pales in comparison to that of City officials herein.⁴ See Exhibit C.

Ms. Copeland has struggled with her decision of how to respond to the City's misconduct. She considered stepping down, filing suit, and putting on full display how a crew of City officials openly wronged her, and others recklessly participated or failed to take any action to stop it. Ultimately she decided to give the City a chance to do the right thing and acknowledge that she was wrongly victimized. I have made my demand to you in person, and have been patient with your caution toward the situation. The time has now come to announce the City's intention.

Please note that my demand contemplates that the League of Cities will likely not pay the cost of defending the City or a judgment like they are/will on other pending matters against the City. It's my understanding that the League has denied coverage for the claims Royalty has made against the council related to his removal. My offer assumes they will take the same position toward this claim. If the League were indemnifying the loss, our position would be much more aggressive. You should contemplate that the City will likely carry the cost of multiple attorneys having to defend the City and its former officers (including defending Royalty) through what could be years of litigation. These costs alone will dwarf Ms. Copeland's compromised demand. In addition to the costs, I hope the City recognizes what could be an enormously negative exposure. Ms. Copeland's desire to avoid this is a big part of why she is authorizing this reduced demand. By paying her modest demand the City would be acknowledges the wrong done to her while also saving a considerable amount of money and avoiding negative exposure. If the City is not willing to pay the claim, then we will be forced to seek all the justice that a jury will find proper.

Because of the delays, I need an answer quickly. Please understand that my offer to compromise is rather firm and already includes the concessions we believe are more than fair. I look forward to your response.

⁴ The Montgomery Board paid a total of \$1.2 million to settle claims against a Superintendent accused of bullying and retaliating against employees within the district. An administrator received a \$250,000 settlement after the Education Professional Standards Board found that the Superintendent badgered and demeaned her. Another received a \$150,000 settlement in a lawsuit involving allegations that the Superintendent retaliated against her and interfered with her getting a job. The Former Athletic Director Gene received a \$150,000. He did not file a lawsuit but was pursuing legal action if not for the settlement. The largest settlement was \$500,000 paid after a lengthy 2 ½ year legal battle which produced overwhelmingly negative publicity for the district. See attached Exhibit C.

Respectfully submitted,

McCOY & SPARKS, PLLC

A handwritten signature in black ink, appearing to read "Keith A. Sparks". The signature is written in a cursive style with a long horizontal stroke across the top and a vertical line extending downwards from the middle.

Keith A. Sparks

Cc: Hon. Timothy Butler