

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

| | | |
|------------------------------------|---|---------------------|
| Mary Smith as Special |) | |
| Administrator of the Estate of |) | |
| Christopher Smith, |) | |
| |) | 14-cv-7718 |
| <i>Plaintiff,</i> |) | |
| |) | <i>(Judge Wood)</i> |
| <i>-vs-</i> |) | |
| |) | |
| City of Chicago and Chicago |) | |
| Police Officer Brownfield, #15752, |) | |
| |) | |
| <i>Defendants.</i> |) | |

**MOTION TO COMPEL PAYMENT OF
SETTLEMENT WITHOUT FACE-TO-FACE CONTACT**

Plaintiff, by counsel, moves the Court to order defendant City of Chicago to comply with its own public health guidelines to reduce in-person interactions and convey the settlement check in this case to plaintiff's counsel by United States Postal Service or other means (such as wire transfer) without requiring a face-to-face meeting.

Grounds for this motion are as follows:

1. The parties settled this matter, and the Court entered an Order approving the settlement on March 5, 2020. ECF No. 116.
2. On May 11, 2020, Counsel for defendants informed undersigned counsel by email that the settlement check was available. Counsel for defendants stated that the only way for plaintiff to obtain the check is for a

representative of plaintiff to go in person to Chicago's City Hall and retrieve the check through a face-to-face meeting.

3. Chicago's City Hall is closed for all but essential functions. As Mayor Lori Lightfoot explained when ordering the closure,

we must ensure we balance our mission of service delivery with the need to keep our workforce and the community safe, and reducing the amount of traffic in one of the City's largest municipal buildings will do just that.

Rosemary Sobol, *Chicago Mayor Lori Lightfoot closes City Hall to general public until further notice*, CHI. TRIB. (Mar. 20, 2020), available at <https://www.chicagotribune.com/politics/ct-chicago-city-hall-closed-to-general-public-20200320-y2g2rmgznnbg7hedw3vmexk7ze-story.html>.

4. In other words, reducing face-to-face meetings like the one demanded by defendants here is essential to stopping the spread of COVID-19. That is why Governor Pritzker has issued stay-at-home orders. It is why this Court remains closed to in-person hearings. And it is why defendant City of Chicago provides the following guideline to its residents, "Stay home as much as possible and avoid close contact with others." City of Chicago, *Coronavirus Response Center, Managing Your Health*, available at <https://www.chicago.gov/city/en/sites/covid-19/home/managing-your-health.html> (visited May 27, 2020).

5. The Court should order defendants to convey the check to plaintiff's counsel by United States Postal Service or other means (such as a wire transfer) without requiring a face-to-face meeting.

6. The easy solution of putting a check in the mail to avoid face-to-face contact has recently been adopted by Cook County. Alternatively, the City could follow the standard procedure of the Illinois Comptroller and pay judgments by mail or wire transfer.

7. Undersigned counsel shared a draft of this motion with defense counsel on May 27, 2020. In response, defendants insisted that plaintiff agree to an extremely onerous waiver of liability as a condition to delivery of the check by mail. Victoria R. Benson, Deputy Corporation Counsel, stated the following in an email of May 28, 2020 to undersigned counsel:

You have demanded, on threat of filing a motion to compel against the City, that we use the U.S. Mail to mail you the settlement check in Smith v. City of Chicago, et al., Case No 14 CV 7718, see attached. To avoid any further litigation costs and expenses, we will do so under the following circumstances only: Please email us the exact name and address to which the check is to be mailed and we will mail the check to that exact address via regular or certified mail. After that, our responsibility for providing the settlement amount to you and your client will be deemed ended. The City and all of its agents assume zero responsibility for whether you (or the addressee, if not you) receive the check, or if the check goes astray at any time after it is placed in a U.S. mailbox. We will pay the settlement amount only once. If the mailed check does not reach its proper destination, is stolen, or is diverted in any way, or if it is cashed in any allegedly unauthorized way, we assume no responsibility

for those events and will not issue any additional checks. Finally, in providing us with the mailing address in response to this email, you and your client will be deemed to have agreed to these terms, and to have agreed to indemnify the City of Chicago and all its agents in the amount of the check to be mailed, for any and all reasons, including, without limitation, if the check is cashed in an unauthorized fashion. As a condition for mailing you the check as you demand, we accept no additional conditions proposed by you.

8. Defendants' bizarre position ignores the reality that commercial parties have been transferring funds by mailing checks for decades without onerous waivers like the one proposed by the City. Our modern banking system has long had ample safeguards to resolve any problems when checks are sent through the mail.

It is therefore respectfully requested that the Court order defendants to transfer the check to plaintiff without a face-to-face meeting. If the transfer is accomplished by United States Postal Service, the Court should Order that defendants may not insist on any waiver of liability.

Respectfully submitted,

/s/ Joel A. Flaxman
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