

SETTLEMENT AGREEMENT AND RELEASE

In exchange for the consideration described below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Neghasi Middleton ("Plaintiff"), James Caleb Elliott ("Defendant"), and Cobb County, Georgia ("County") hereby enter into this Settlement Agreement and Release ("Agreement").

Plaintiff filed in the United States District Court for the Northern District of Georgia a lawsuit styled: *Neghasi Middleton v. Cobb County, Georgia, James Caleb Elliott, individually and in his official capacity as an officer of Cobb County Police Department, and John R. Houser, individually and in his capacity as Chief of the Cobb County Police Department*. Civil Action File No. 1:18-CV-5099-MHC. The Complaint alleged that Cobb County, James Caleb Elliott and John R. Houser were liable for excessive force under 42 U.S.C. § 1983, arising from a use-of-force incident that occurred on November 6, 2017. Cobb County and John R. Houser were dismissed from the lawsuit on April 3, 2019. James Caleb Elliott remains a Defendant in the action. The purpose and intent of this Settlement Agreement and Release is to fully and finally resolve any and all claims for damages and other relief which were made, or which could have been made, by Plaintiff in the Complaint.

1.

In entering into this Agreement, Plaintiff represents that he has relied upon the legal advice of his attorney, whose representation he has chosen. Plaintiff acknowledges that, before signing this Agreement, Plaintiff has read and fully understands each paragraph thereof and that the meaning of this Agreement has been reviewed by Plaintiff's attorney, Ms. Tanya Miller, DuBose Miller Attorneys at Law, 75 14th Street N.E., Suite 2110, Atlanta, Georgia 30309.

2.

Plaintiff, for himself, his successors, and assigns, hereby releases and forever discharges: James Caleb Elliott, John R. Houser, Cobb County, Georgia, and all of its elected and appointed officials, officers, boards, commissions, employees, representatives, consultants, servants, agents, attorneys and volunteers (collectively and hereafter referred to as, "Released Parties") from any and all claims, demands, obligations, allegations, damages, costs, charges, attorney's fees, actions, rights, causes of action, and suits of any kind or nature whatever, whether known or unknown, that Plaintiff may have or claim to have as a result of any event occurring on or prior to the execution of this Agreement.

3.

The Released Parties will cause TWO HUNDRED SEVENTY-FIVE THOUSAND DOLLARS (\$275,000.00) to be paid as set forth below. Such checks will be delivered within 14 days of Cobb County's receipt of the signed Settlement Agreement and Release.

Payments: In consideration of the terms of the release, County on behalf of Defendant

agrees to pay the total settlement amount of \$275,000.00 as follows:

- \$147,590.12 as up-front cash, inclusive of attorneys' fees and expenses, paid to Plaintiff via check made payable to The Law Office of Tanya F. Miller; and
- \$127,409.88 payable to "American General Annuity Service Corporation" to fund a structured settlement annuity, which will make the Periodic Payments below.

Periodic Payments: County on behalf of Defendant agrees to make or cause to be made the following "Periodic Payments" payable to Neghasi Middleton ("Payee"):

\$1,815.08, monthly, guaranteed for seventy-two (72) months only, beginning October 15, 2020, with the last guaranteed payment on September 15, 2026.

All sums set forth herein constitute damages on account of personal physical injuries or physical sickness, within the meaning of Section 104(a)(2) of the Internal Revenue Code of 1986, as amended.

The Periodic Payment amounts are guaranteed based upon an annuity funding date of April 15, 2020. Any delay in funding the annuity may result in a delay of payment dates or change in payment amounts which shall be recorded in the annuity contract.

At the Plaintiff's request, the County will fund the liability to make the periodic payments through the purchase of an annuity. The total cost to County for the Periodic Payments portion of the settlement is \$127,409.88. No part of the sum being paid by County to provide Periodic Payments as set forth herein will be paid directly to Neghasi Middleton and/or any Payee. No costs may be deducted from any of the Periodic Payments; any transfer of the Periodic Payments is prohibited by the terms of the structured settlement and may otherwise be prohibited or restricted under applicable law. Any transfer of the Periodic Payments by the Payee may subject the Payee to serious adverse tax consequences.

Payee's Beneficiary: Any payments to be made after the death of any Payee under the terms of this Settlement Agreement shall be made the Estate of said Payee. Any further designation, or any revocation thereof, shall be effective once delivered to County or, when assigned, the Assignee. The designation must be in a form acceptable to County or, when assigned, the Assignee, before such payments are made.

Payee's Rights to Payments: Plaintiff acknowledges that the Periodic Payments cannot be accelerated, deferred, increased or decreased by Plaintiff and/or any Payee; nor shall Plaintiff and/or any Payee have the power to sell, mortgage, encumber, or anticipate the Periodic Payments, or any part thereof, by assignment or otherwise.

Consent to Qualified Assignment: Plaintiff acknowledges and agrees that County shall make a "qualified assignment," within the meaning of Section 130(c) of the Internal Revenue Code of 1986, as amended, of County's liability to make the Periodic Payments

set forth above to American General Annuity Service Corporation ("the Assignee"). The Assignee's obligation for payment of the Periodic Payments shall be no greater than that of County (whether by judgment or agreement) immediately preceding the assignment of the Periodic Payments obligation.

Such assignment shall be accepted by Plaintiff without right of rejection and shall completely release and discharge County from the Periodic Payments obligation assigned to the Assignee. Plaintiff recognizes that the Assignee shall be the sole obligor with respect to the Periodic Payments obligation, and that all other releases with respect to the Periodic Payments obligation that pertain to the liability of County shall thereupon become final, irrevocable and absolute.

Right to Purchase Annuity: County or, when assigned, the Assignee, reserves the right to fund the liability to make the Periodic Payments through the purchase of an annuity policy from American General Life Insurance Company ("the Annuity Issuer"). County or, when assigned, the Assignee, shall be the sole owner of the annuity policy and shall have all rights of ownership. County or, when assigned, the Assignee, may have the Annuity Issuer mail payments directly to the Payee. Plaintiff and/or Payee(s) shall be responsible for maintaining a current mailing address with the Annuity Issuer.

Discharge of Obligation: The obligation of County or, when assigned, the Assignee, to make each Periodic Payment shall be discharged upon the mailing of a valid check in the amount of such payment to the designated address of the Payee named above, or the deposit by electronic funds transfer in the amount of such payment to an account designated by the Payee named above. If a Payee notifies the Annuity Issuer that any check or electronic funds transfer was not received, the Annuity Issuer shall initiate a stop payment action and, upon confirmation that such check was not previously negotiated or electronic funds transfer deposited, shall process a replacement payment. (See Attachment "A").

4.

Within five business days of receipt of the settlement check and before distribution of funds to Plaintiff and Plaintiff's lienholders, Plaintiff will file a Dismissal with Prejudice of the Complaint pending in the United States District Court for the Northern District of Georgia in Civil Action File No. 1:18-CV-5099-MHC.

5.

Plaintiff agrees and acknowledges that the payment of the sum specified herein and performance of other provisions of this agreement are not and should not be construed as an admission of liability by Defendant James Caleb Elliott, John R. Houser, Cobb County or any other Released Party. All liability is expressly denied.

6.

Plaintiff agrees to indemnify and hold harmless the Released Parties from and against all claims (including indemnification of all third-party claims), demands, obligations, allegations, damages, costs, charges, attorneys' fees, actions, liens, hospital liens, attorneys' liens, rights, causes of action, suits of any kind or nature whatever, demands for payments, and proceedings, which may hereafter be asserted or brought by or on behalf of Plaintiff, his/her children, heirs, executors, administrators, assigns, successors in interest, or any other person or organization, to recover for personal injuries, economic losses, or any other loss sustained by Plaintiff or Plaintiff's heirs, executors, administrators, assigns, or successors in interest or resulting from personal injuries, economic losses, or any other loss sustained by Plaintiff or Plaintiff's heirs, executors, administrators, assigns, or successors in interest.

Plaintiff further agrees to indemnify and hold harmless the Released Parties harmless from any claims, demands, deficiencies, levies, assessments, executions, judgments or recoveries by any government entity against the Released Parties for any amounts claimed due on account of this Agreement or pursuant to claims made under any federal or state tax laws, and any costs, expenses or damages sustained by the Released Parties by reason of any such claims, including any amounts paid by the Released Parties as taxes, attorneys' fees, deficiencies, levies, assessments, fines, penalties, interest or otherwise. As further consideration for the payment herein, Plaintiff hereby agrees to hold harmless the Released Parties against any claims for subrogation or liens of any nature arising out of the said incident and/or resulting injuries and/or damages, including, but not limited to, a Medicare lien. Should any person or entity, including but not limited to, any insurer, reinsurer, health care provider and/or health insurance provider of Plaintiff and/or Medicare, make such a claim against the Released Parties for any such damages, Plaintiff hereby agrees to indemnify and hold harmless the Released Parties from any and all such claims, liens, charges, fees, costs, interest and other sums.

7.

Plaintiff, his attorneys, and the Released Parties agree that, to the extent allowed by law, neither they nor any of their representatives or agents will orally or in writing state or disclose to any person, corporation, or entity any terms of this Agreement. The parties mutually agree that \$100.00 of the settlement described above was provided in exchange for this Confidentiality Provision.

8.

Plaintiff attests, certifies, represents, and warrants to the Released Parties that Plaintiff is legally competent to execute this Agreement and that Plaintiff has not assigned, pledged, or otherwise in any manner whatsoever sold or transferred, either by instrument in writing or otherwise, any claim, cause of action, or other legal right of whatever kind and nature, that the Plaintiff has or may have by reason of the claims released herein.

9.

Plaintiff has not relied on any express or implied representation of any Released Party or any of their attorneys or agents as to the tax consequences of this Agreement.

10.

This Agreement shall be construed and interpreted in accordance with the laws of the State of Georgia without regard to principles of conflicts of law.

11.

This Agreement constitutes the entire agreement between Plaintiff and Released Parties pertaining to those subjects contained in it and supersedes all prior and contemporaneous agreements, representations and understandings. It is expressly understood and agreed that this Agreement may not be altered, amended, modified or otherwise changed in any respect or particular manner whatsoever except by a writing duly executed by Plaintiff and an authorized representative of the Released Parties.

12.

Plaintiff agrees to execute any and all supplementary documents, including a Dismissal with Prejudice with costs to be borne by the respective parties, and to take all additional actions that may be necessary or appropriate to give full force and effect to the basic intent and terms of this Agreement.

13.

If any provision of this Agreement is determined to be non-binding, invalid, illegal, or unconstitutional, all other provisions shall remain in full force and effect.

(continued on next page)

14.

This Agreement may be executed in multiple counterparts and all counterparts shall constitute one agreement binding on each of the parties hereto, regardless of whether each party hereto is a signatory to the same counterpart. Fax signatures in lieu of original signatures are acceptable.

IN AGREEMENT HERETO, Plaintiff and the below representative of County Cobb County have executed this agreement on the dates set forth below.

PLAINTIFF

COUNTY

Neghasi Middleton
Neghasi Middleton

[Signature]
Laura J. Murphree
Sr. Associate Attorney for Cobb County

3/13/2020
Date

3/13/2020
Date

Sworn to and subscribed
before me this 13th day
of March, 2020

[Signature]
Notary Public

My Commission Expires:

October 5, 2021



Approved by:
[Signature]
Tanya Miller
Attorney for Plaintiff

3/13/2020
Date

Uniform Qualified Assignment, Release and Pledge Agreement

Claimant-Secured Party: Neghasi Middleton
Assignor: Cobb County
Assignee-Debtor: AMERICAN GENERAL ANNUITY SERVICE CORPORATION
Annuity Issuer: AMERICAN GENERAL LIFE INSURANCE COMPANY
Annuity (Policy No.):
Effective Date:

This Qualified Assignment, Release, and Pledge Agreement is made and entered into by and among the parties hereto as of the Effective Date with reference to the following facts:

- A. Claimant-Secured Party has executed a settlement agreement or release dated _____ (the "Settlement Agreement") which requires Assignor to make certain periodic payments to or for the benefit of Claimant-Secured Party as stated in paragraph 16 of this Agreement (the "Periodic Payments").
- B. The parties desire to effect a "qualified assignment" within the meaning and subject to the conditions of Section 130(c) of the Internal Revenue Code of 1986, as amended (the "Code").
- C. The Assignee-Debtor desires to grant to Claimant-Secured Party a security interest to secure the liability being assumed by Assignee-Debtor to make the Periodic Payments.

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the parties agree as follows:

1. Subject to qualification under section 130(c) of the Code, Assignor hereby assigns and Assignee-Debtor hereby assumes all of Assignor's liability to make the Periodic Payments. Assignee-Debtor assumes no liability to make any other payment. Claimant-Secured Party hereby accepts and consents to the assignment by Assignor and the assumption by Assignee-Debtor of the liability to make the Periodic Payments, and upon the Effective Date Claimant-Secured Party releases Assignor from all liability to make the Periodic Payments.
2. The Periodic Payments constitute damages on account of personal injury or sickness in a case involving physical injury or physical sickness within the meaning of Sections 104 (a)(1) or 104(a)(2) and 130(c) of the Code.
3. Assignee-Debtor's liability to make the Periodic Payments is no greater than that of Assignor as determined immediately prior to this Agreement. None of the Periodic Payments may be accelerated, deferred, increased or decreased, anticipated, sold, assigned, pledged, or encumbered by Claimant-Secured Party.
4. The obligation assumed by Assignee-Debtor to make each applicable Periodic Payment shall be fully discharged upon the mailing of a valid check or wire transfer of funds on or before the due date for such Periodic Payment to the address of record specified by Claimant-Secured

Party if such check is duly negotiated or such wire transferred funds are duly received.

5. This Agreement shall be governed by and interpreted in accordance with the laws of Texas (without giving effect to the choice-of-law rules thereof).
6. Assignee-Debtor may fund the Periodic Payments by purchasing the Annuity from Annuity Issuer to serve as a "qualified funding asset" within the meaning of section 130(d) of the Code. All rights of ownership and control of the Annuity shall be and remain vested in Assignee-Debtor except as provided in paragraphs 11 and 12 of this Agreement.
7. Assignee-Debtor may have Annuity Issuer send payments from the Annuity directly to the payee(s) specified in paragraph 16. Such direction of payment shall be solely for Assignee-Debtor's convenience and shall not provide Claimant-Secured Party or any payee with any rights of ownership or control over the Annuity or against Annuity Issuer.
8. Assignee-Debtor's liability to make the Periodic Payments shall continue without diminution regardless of any bankruptcy or insolvency of Assignor.
9. In the event that the Settlement Agreement is declared terminated by a court of competent jurisdiction, the parties shall act in accordance with the orders of the court, provided however, that nothing in this paragraph shall preclude a party to this Agreement from appealing any order or judgement of a court. In the event that section 130(c) of the Code has not been satisfied, (i) the assignment by Assignor to Assignee-Debtor of the liability to make the Periodic Payments to Claimant-Secured Party described in paragraph 1 of this Agreement shall be of no force and effect, (ii) the Assignee-Debtor shall be acting in the transaction as the agent of the Assignor and the Annuity shall be owned by the Assignor which will continue to have the liability to make the Periodic Payments to Claimant-Secured Party, (iii) Assignee-Debtor shall have no liability to make any Periodic Payments to Claimant-Secured Party, and (iv) the parties hereto agree to cooperate in taking such actions as are reasonably necessary or appropriate to achieve the foregoing.
10. This Agreement shall be binding upon the respective representatives, heirs, successors and assigns of the parties hereto and upon any person or entity that may assert any right hereunder or to any of the Periodic Payments.

11. Assignee-Debtor hereby pledges and grants to Claimant-Secured Party a lien on and security interest in all of the Assignee-Debtor's right, title, and interest in the Annuity and all payments therefrom in order to secure the obligation of Assignee-Debtor to make the Periodic Payments. Assignee-Debtor and Claimant-Secured Party shall notify Annuity Issuer of the lien created under this Agreement, and Assignee-Debtor shall deliver the Annuity to Claimant-Secured Party upon execution of this Agreement and receipt by Assignee-Debtor of the Annuity from Annuity Issuer.

12. Assignee-Debtor shall have all rights of ownership and control in the Annuity, including the right to receive and retain all benefits under the Annuity, which are not inconsistent with the security interest granted under paragraph 11, and Claimant-Secured Party shall have no right to anticipate, sell, assign, pledge, encumber, or otherwise exercise any right with respect to the Annuity, so long as Assignee-Debtor has not failed due to insolvency or bankruptcy to make any of the Periodic Payments. If such a failure occurs and is continuing, Claimant-Secured Party shall have all of the rights and remedies of a secured party under the law then in effect in the State of Texas.

13. The Annuity will bear the following legend:

"NOTICE"

"This annuity contract has been delivered to the possession of

_____ for the sole purpose of perfecting a lien and security interest of such person in this contract.

_____ is not the owner of, and has no ownership rights in this contract and may not anticipate, sell, assign, pledge, encumber, or otherwise use this contract as any form of collateral. Please contact the issuer of this contract for further information".

14. In entering into this Agreement, Claimant-Secured Party represents that he or she has relied on the advice of his or her attorneys, who are the attorneys of his or her choice, concerning the legal and income tax consequences of this Agreement; that the terms of this Agreement have been completely read by and explained to Claimant-Secured Party; and that the terms of this Agreement are fully understood and voluntarily accepted by Claimant-Secured Party.

15. Any notice to a party hereunder shall be in writing and shall be deemed to have been given when mailed to the party's address of record.

16. Beneficiary Designation and Statement of Payee's Rights to Alter such Beneficiary Designation, if any:

A change of beneficiary may be requested in writing by proper notification to Annuity Issuer and/or Assignee.

Description of Periodic Payments:

Payee: Neghasi Middleton

Benefits: \$1,815.08 monthly, guaranteed for seventy-two (72) months only, beginning October 15, 2020, with the last guaranteed payment on September 15, 2026.

(end of benefits)

Assignor: Cobb County

Assignee-Debtor: American General Annuity Service Corporation

By: 
Authorized Representative

By: _____
Authorized Representative

Title: SR. Assoc. Atty

Title: _____

Claimant-Secured Party:


Signature of Claimant-Secured Party

Neghasi Middleton



Gregory A. Micoletti
Director
Structured Settlements

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Greg.Micoletti@aig.com

March 12, 2020

RE: Neghasi Middleton, 766997

To Whom It May Concern:

It is our understanding that all parties have reached agreement on the above captioned settlement, and that the premium of \$127,409.88 will be submitted to American General Annuity Service Corporation by April 15, 2020. This letter will confirm that American General Insurance Company will refund the full premium if the settlement changes before it is finalized.

The full amount paid will be returned, and no fees, interest or other debits will be removed from the premium value. Please note that the full refund will be processed within 10 business days from the time of request.

Sincerely,

A handwritten signature in black ink, appearing to read "Greg Micoletti", with a stylized flourish at the end.

Greg Micoletti