

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IHSAN MALKAWI, on Behalf of Herself and
Others Similarly Situated,

Plaintiff,

-against-

CITY OF YONKERS,

Defendant.

No. 7:20-cv-02893-VB

**STIPULATION AND ORDER OF SETTLEMENT
("Stipulation")**

WHEREAS, Plaintiff Ihsan Malkawi ("Plaintiff") commenced an action by filing a Complaint on behalf of herself and others similarly situated on April 8, 2020, against the City of Yonkers ("Yonkers" or "Defendant," and together with Plaintiff, the "Parties") alleging that, by the Yonkers Police Department ("YPD") requiring that arrestees remove any religious head covering for photographs, Defendant violated their federal, state, and constitutional rights under the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. § 2000cc *et seq.* ("RLUIPA"), the First Amendment, and the New York State Constitution (the "Complaint");

WHEREAS, Yonkers continues to deny any and all liability arising out of all of Plaintiff's allegations in the Complaint;

WHEREAS, the Parties wish to voluntarily resolve Ms. Malkawi's individual claims in this matter;

IT IS HEREBY AGREED between the Parties that:

All terms defined in the “WHEREAS” clauses above are hereby incorporated into the body of this Stipulation.

The “Effective Date” of this Stipulation is the date on which this Stipulation is approved by the Court.

**YPD POLICY & PROCEDURE MANUAL, TRAINING
AND DETENTION FACILITIES**

1. Revisions to Policy & Procedure Manual. Yonkers shall amend its Policy & Procedure Manual to include a new section governing the treatment of arrestees who wear religious head coverings. The language to be included is documented in Exhibit A and made a part hereof.

2. Training. Within sixty (60) days of the Effective Date, Yonkers shall develop and implement in-service training for its detention officers and any other officers stationed in the Detention Services Division or that detain individuals (including but not limited to the youth services officer division and the detective division) that covers the revisions to the Policy & Procedure Manual referenced in Exhibit A. The YPD will share all of its training materials with Plaintiff’s counsel for comment in advance of implementation.

REPORTING

3. Annual Review and Reporting. The YPD’s implementation of Exhibit A shall be subject to annual review by the Inspections Unit/Quality Assurance Division of the YPD. The Inspections Unit/Quality Assurance Division annual review shall be reported to Plaintiff’s counsel for three years following the Effective Date which report will include the number of arrestees whose religious head coverings were removed for purposes of photographing, the name and sex of such arrestee and the type of religious head covering such arrestee wore (the “Reporting Period”). In instances where a religious head covering is removed, a copy of the written

documentation setting forth the reasons for the removal will be provided to Plaintiff's counsel. The foregoing information will be provided in accordance with N.Y.C.P.L. § 160.50/160.55, if applicable to an arrestee's arrest records.

4. Material Changes to Policy & Procedure Manual. For a period of three years after the Effective Date of this Stipulation, notice of any potential material changes to the Policy & Procedure Manual provisions involving the removal of religious head coverings as set forth in Exhibit A shall be provided to Plaintiff's counsel prior to the enactment of such material changes. "Material changes" are changes that significantly alter the circumstances under which removal of a religious head covering by the YPD is permitted. The parties agree that, if they cannot reach agreement about any proposed material changes to the Policy & Procedure Manual provisions involving the removal of religious head coverings (or to the practices and procedures related to such removal), either party is entitled to seek relief from the Court with respect to the changes at issue.

5. Attorneys' Eyes Only. Any and all documents provided to Plaintiff's counsel by Yonkers pursuant to this Stipulation shall be considered Confidential and deemed to be for Attorneys' Eyes Only. Any application to de-designate documentation supplied to Plaintiff's counsel shall be made to the Court for good cause shown.

ENFORCEMENT AND COURT JURISDICTION

6. Good Faith. The parties shall attempt in good faith to resolve disputes over the terms and/or implementation of this Stipulation without judicial intervention.

7. Continued Jurisdiction. The Parties consent to the jurisdiction of this Court beginning on the Effective Date and continuing for three years for the purpose of enforcing and resolving good-faith disputes about the terms of this Stipulation.

APPLICATIONS AND PARTIES BOUND

8. This Stipulation applies to, and is intended to be binding upon, Plaintiff, Defendant, and Defendant's officers, agents, employees, successors, and assigns and all counsel.

9. This Stipulation does not, and shall not be deemed to, constitute an admission by Defendant as to the validity or accuracy of any of the allegations, assertions, or claims made by Plaintiff in the Complaint or otherwise. This Stipulation does not constitute an admission of any wrongdoing, responsibility, or any finding on the merits of this Civil Action. Rather, Plaintiff and Defendant enter into this Stipulation to amicably resolve their differences and avoid the costs and uncertainties of continued litigation.

10. The 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 Stipulation and that Plaintiff has the sole right and exclusive authority to execute this Stipulation and receive the sum or sums specified in it, as well as any monies due and owed her attorneys; 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 Stipulation.

SETTLEMENT AMOUNT, ATTORNEY'S FEES, COSTS AND DISMISSAL

11. Within thirty days of the Effective Date, Defendant shall wire to Plaintiff's counsel \$175,000.00 in full satisfaction of any and all claims that were or could have been raised by Plaintiff and against Defendant, including claims for fees, attorneys' fees, expert fees, costs, expenses and any pre-judgment interest Plaintiff may have been entitled to.

12. Within seven days of the Effective Date, Plaintiff will file a stipulation of dismissal of this Action with prejudice.

13. It is understood and agreed that the Parties shall bear their own attorneys' fees and costs concerning any subsequent efforts to enforce the terms of this Stipulation. The Parties expressly acknowledge and agree that no fee shifting provision of any statute or constitutional provision (whether state or federal) authorizing recovery of attorneys' fees and costs shall apply to subsequent efforts to enforce the terms of this Stipulation. To the extent any applicable statute authorizes recovery of attorneys' fees and costs, Plaintiff agrees that any such claim shall not be asserted by Plaintiff or Plaintiff's counsel and shall be waived for subsequent efforts to enforce the terms of this Stipulation.

RELEASE

14. In consideration of the payment called for herein and other good and valuable consideration, the Plaintiff and her successors and assigns hereby completely releases and forever discharges Defendant and Defendant's present and future officers, directors, stockholders, attorneys, insurers, agents, servants, representatives, employees, subsidiaries, affiliates, partners, predecessors and successors in interest, and assigns and all other persons, firms or corporations with whom any of the former have been, are now or may hereafter be affiliated (sometimes referred to herein as "Releasees" or "Released Parties"), of and from any and all past, present or future claims, demands, obligations, actions, causes of action, claims, rights, damages, costs, losses of services, expenses and compensation of any nature whatsoever, whether based on a statute, the United States or New York Constitution, tort, contract or other theory of recovery, and whether for compensatory or punitive damages, which the Plaintiff now has, or which may hereafter accrue or otherwise be acquired, on account of, or may in any way grow out of, or which are the subject of the Complaint (and all related pleadings) including, without limitation, any and all known or unknown claims of Plaintiff which have resulted or may result from the alleged acts

or omissions of the Defendant. This release shall be a fully binding and complete settlement between the Plaintiff and the Defendant, their assigns and successors.

ENTIRE AGREEMENT AND SUCCESSORS IN INTEREST

15. This Stipulation contains the entire agreement between the Plaintiff and the Defendant with regard to the matters set forth herein and shall be binding upon and inure to the benefit of the executors, administrators, personal representatives, heirs, successors, and assigns of each.

REPRESENTATION OF COMPREHENSION OF DOCUMENT

16. In entering into this Stipulation, the Plaintiff represents that Plaintiff has read the terms of this Stipulation and that those terms are fully understood and voluntarily accepted by Plaintiff. In entering into this Stipulation, Plaintiff has retained and consulted with Plaintiff's own independent attorneys selected by Plaintiff of Plaintiff's own free will, and has fully and freely consulted with them on matters relating to this settlement and its terms and conditions. Plaintiff acknowledges that this Stipulation has been negotiated by the respective Parties through counsel and the Parties. Plaintiff has been advised to obtain or has obtained independent professional advice relating to the legal, tax, financial or other (favorable or adverse) consequences of any kind arising out of this Stipulation; the Defendant and Defendant's legal representatives may not refer any advisor, attorney or firm for such purpose; and the Plaintiff is not relying on the advice of the Defendant or anyone associated with it, including its attorneys for such purpose. Plaintiff represents and warrants that Plaintiff has read and discussed this Stipulation fully with Plaintiff's attorneys and fully understands its terms and conditions, and voluntarily accepts them as Plaintiff's own free and voluntary act.

GOVERNING LAW

17. This Stipulation shall be construed and interpreted in accordance with laws of the State of New York.

MULTIPLE COUNTERPARTS

18. This Stipulation may be executed by the Parties in multiple counterparts (although not required) and all of such counterparts so executed shall collectively constitute this one agreement and shall be deemed to establish this one Stipulation. For purposes of executing this Stipulation, a document signed and transmitted by facsimile machine or scan and email is to be treated as an original document. Neither Plaintiff nor Defendant may raise the use of a facsimile machine or scan or the fact that any signature was transmitted through the use of a facsimile or scan and email as a defense to the enforcement of this Stipulation.

CAPTIONS AND SECTION HEADINGS; CONSTRUCTION

19. Captions and Section headings used in this Stipulation are for convenience only and are not a part of this Stipulation and shall not be used in construing it. The terms, conditions and other provisions of this Stipulation have been negotiated between the parties, with each party having had the benefit of its own legal counsel. The construction and interpretation of any clause or provision of this Stipulation shall be construed without regard to the identity of the party that prepared this Stipulation, and no presumption shall arise as a result that this Stipulation was prepared by one party or the other.

SEVERABILITY

20. In the event that any one or more of the provisions of this Stipulation shall be held invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, the validity,

legality and enforceability of the remaining provisions of this Stipulation shall not in any way be affected or impaired thereby.

EFFECTIVENESS

21. This Stipulation may be executed immediately but shall only become effective after the Court has approved the settlement. By his or her signature below, each party represents and warrants that he or she has the full authority to bind the person, persons or entity for whom execution of this Stipulation is being made.

Dated: April 19 2021
New York, New York

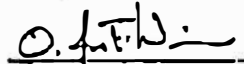
IHSAN MALKAWI

By: 
Ihsan Malkawi


CITY OF YONKERS

By: 

**EMERY CELLI BRINCKERHOFF
ABADY WARD & MAAZEL LLP**

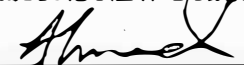
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Attorneys for Plaintiff

Dated: 4/19, 2021
New York, New York

SO ORDERED.

HON. VINCENT L. BRICCETTI