

EXHIBIT 5

Plaintiff's Motion to Enforce Settlement
Agreement

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November 2, 2023

Mr. David Kallman
Mr. Stephen Kallman
Kallman Law Group

Via email only at dave@kallmanlegal.com and steve@kallmanlegal.com

Re: ***Hambley v. Ottawa County et al., Case No. 23-7180-CZ***

Dear Dave and Steve:

I am writing in response to your request that my client, Health Officer Adeline Hambley, present any settlement offer she has to resolve her lawsuit against the County, the Board of Commissioners, and individual commissioners, which would include her resignation as the Health Officer as a settlement term. My client will only agree to present such an offer to settle where she has to resign if the entire Board of Commissioners knows about and rejects the other offer to settle that we made yesterday.

Yesterday, as you know, we communicated Ms. Hambley's offer to settle this matter to you as the lawyer for all defendants in this case, after you inquired if we wanted to make a settlement offer. Ms. Hambley's initial settlement offer included the following terms, which are quoted exactly from the original below:

- *Health Officer Hambley stays in her position.
- *The County pays her attorney fees and costs. However, the County doesn't pay for the cost of the hearing, and receives a 20% discount to pay fees/costs now as part of a settlement. Attorney fees/costs are \$102,522.64 as of October 31, 2023. With 20 percent discount, that becomes \$86,818.11. If we end up with successful settlement, I won't charge further to get a settlement across the finish line. You'll get a copy of the final bill to ensure there are no charges for the hearing.
- *Everyone in Public Health except for Ms. Hambley and Ms. Mansaray gets an extra week of vacation that they must use or lose by December 31, 2024, as a reflection of how stressful the last 10 months have been on them.
- *The County dismisses the charges against Hambley and drops the hearing.

The charges are entirely resolved and cannot form the basis of future charges.

*If the County files any other charges against Hambley before December 31, 2024, the County must first use HR's employment attorney to do an investigation and make it available to Hambley before filing new charges.

*Everyone maintains their positions about the charges, i.e., no one concedes the other side's position.

*Hambley releases the litigation case entirely, and releases all of her claims as of date of settlement (including any possible punitive, non-economic, economic, etc.).

*Deputy Marcia Mansaray agrees to resign effective January 5, 2024, with severance pay and benefits for a year. Deputy health officer position is posted internally and externally through normal HR practices, which means Hambley as health officer has ultimate authority to select, but using a hiring committee to advise. News of Mansaray's resignation as part of the agreement will be announced as soon as settlement is finalized.

*Hambley may continue to use Sarah Howard as separate legal counsel if needed, but only up to \$1,000 per month unless prior authorization from Doug Van Essen/Insurance Authority. Bill for attorney fees will be submitted monthly to County (if applicable) with enough of a description of work to enable payment.

*Mutually-acceptable joint statement to be released to the effect of: it is best for the County for everyone to put this matter behind them and for the parties to do their best to work with one another cooperatively going forward.

(Emails, 11/1/2023, Attached.) I emailed again after sending this offer on behalf of my client, correcting my math error above and clarifying that the attorney fee payment would actually be \$82,018.11.

You then called me to say that you had a counteroffer, which included among other terms that my client would agree to resign and become Deputy Health Officer, and Ms. Mansaray would agree to resign and receive three months of severance. We emailed back and rejected your counteroffer, but we advised that our original offer stated above in this letter is still open. You have asked whether Ms. Hambley has an offer to settle her litigation which would include her resignation as Health Officer.

It is my understanding that not all of the defendants know about this exchange of offers. The defendants include not only the individual named defendants, but also the

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entire Board of Commissioners. The entire Board, as a defendant in the case, has the right to know about settlement offers exchanged and the context of those discussions, and I ask that you share this letter and the attached emails with the entire Board. The most productive time to share that with the entire Board would be immediately, and not to wait until Monday morning's hearing.

In the event that the entire Board knows about Ms. Hambley's settlement offer above and votes to reject it, we will provide a firm settlement offer to you to present to the Board that involves her agreement to resign as one of the terms. However, that number is going to be very large, and it is important that everyone understands why that is. As I explained to you, Ms. Hambley's economic damages alone if this Board votes to unlawfully terminate her on Monday are extensive. This is, in part, because she is a legacy participant of the County pension system. We have done a rough calculation of the loss in value to her in her pension benefit if she is illegally fired on Monday. The loss to her is approximately \$3.9 million in total dollars. This number is not reduced to present value, of course, but it also does not account for the tax penalty she would receive if she was awarded that as part of a judgment after litigation. For sake of illustration here, I will assume that reduction to present value is canceled out by the increased amount she would be awarded to account for taxes she would be assessed for receiving this as damages instead of as an earned pension benefit over time.

In addition to the economic loss in her pension benefits, she will have potentially large economic losses for the time she goes without being able to find comparable employment, as that term is defined under legal precedent. There are essentially no comparable positions to a county health officer which will become open on a regular basis. I have no doubt that Ms. Hambley will eventually find other meaningful employment opportunities if she is illegally fired on Monday, but it may take some time to find something "comparable" or something that she desires to take which is not comparable. If, for example, it takes her a full year to mitigate her damages by accepting replacement employment, that would add \$180,000, or the value of her salary and benefits, to her economic losses. That assumes her replacement employment made the same or more than her position as health officer.

Ms. Hambley's engagement agreement with me is a standard contingent fee contract, meaning that in the event of a monetary settlement, she owes me one-third for attorney fees after the advanced costs of litigation are paid. So attorney fees at that level are also factored into her settlement offers in a scenario where she agrees to resign as health officer.

I also anticipate that Ms. Hambley's non-economic damages for reputation damage and other forms of emotional distress will be valued significantly as part of the court case if it continues, likely at some multiplier of her economic losses. This additional element of the damage claim will also be reflected in Ms. Hambley's settlement offer if it includes her resignation.

All of that is to say that, given the value of Ms. Hambley's court claims in the event that the Board illegally votes to terminate her on Monday, her initial settlement offer to the Board which includes her resignation as health officer is going to involve the County's payment to her of something in the neighborhood of \$8,000,000 (eight million dollars).

Another important consideration for the Board is that, in the event that we are negotiating in terms of Ms. Hambley agreeing to resign, Ms. Hambley will not agree to stay as the health officer until the County hires another health officer. If the State does not approve Mr. Kelly as the interim health officer, which seems like a realistic possibility given my read of the situation and the prerequisite qualifications, the State is most likely to approve instead a current employee of OCDPH as interim health officer. The most likely candidate who qualifies is Deputy Health Officer Marcia Mansaray. One of the reasons Ms. Mansaray offered to include her resignation as part of the settlement offer where Ms. Hambley stays as health officer is because we all know that the Board majority feels negatively about Ms. Mansaray. Ms. Mansaray believed that offering her resignation as part of that package would help the Board move on and feel that those involved in pandemic decisions were now fully removed from Public Health. We can debate whether the Board's views are well-founded on that point, but Ms. Mansaray is willing to offer that concession if Ms. Hambley stays as the health officer. Otherwise, Ms. Mansaray does not wish to leave and is more than happy to accept the call to serve as interim by the State's DHHS while the County selects a new health officer – presumably this time by posting the position and using normal HR practices to accept applications and interview for the job.

Yet another point of consideration is that, in the event that we are negotiating for Ms. Hambley's resignation, another term besides the monetary component that she will seek is the County's agreement that the health officer position be posted and recommended to the Board after execution of the usual HR practices – just as she was last year. She also intends to seek as a settlement term that the County agree that any candidate eventually accepted by the Board have the agreement of both Dr. Gwen Unzicker as the medical director and Marcie VerBeek as HR director. Practically speaking, the County needs to go through the normal posting process and HR practices

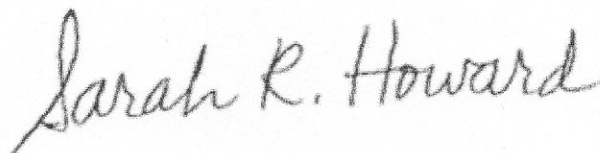
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when it hires another health officer – whether it agrees to do so as part of a settlement or not. The person you end up with as a new health officer approved by State DHHS may not end up all that much different than Ms. Hambley, except that this Board pays millions of dollars for the ability to select a new person itself.

As you know, Ms. Hambley presented her original settlement offer to you on behalf of all of your clients because she thinks it is best for the County to put the litigation behind them – to cut off the liability for legal fees now (and indeed get a 20 percent discount on mine), and to save all of the parties and other related witnesses from going through extensive document discovery, sworn depositions under oath, and further proceedings in the Michigan courts. I understand that Chairman Moss ultimately probably has the votes necessary to obtain an unlawful termination of Ms. Hambley on Monday. Unless we are able to achieve a settlement, the case will continue in the courts in earnest after the Board vote occurs on Monday.

I will be there with Ms. Hambley at Monday's hearing. I presume that the Board will vote as an initial matter to go into closed session to receive legal advice and discuss Ms. Hambley's current settlement offer in closed session. I will be prepared to deliver an offer to the Board with Ms. Hambley's actual settlement proposal involving her resignation if you advise me that the Board wants to receive it after the Commissioners come to that conclusion in their closed session.

Very truly yours,
PINSKY SMITH, PC



Sarah Riley Howard

SRH/nr
Enclosure