

# VILLAGE OF CLAYTON

425 Mary Street  
Clayton, NY 13624  
315-686-5552

## RESOLUTION NO. 3 OF 2024 SETTLEMENT OF CLAIM – DAVID CORNELL

**WHEREAS**, Local and State Law Enforcement were summoned to investigate an incident in the early hours of July 20, 2019 and sought to remove David Cornell from the area of the Lost Navigator, a bar/tavern in the Village; and

**WHEREAS**, David Cornell declined to leave the area of the Lost Navigator and was eventually arrested and charged with various offenses under NY Penal Law; and

**WHEREAS**, David Cornell alleged that he sustained injuries in the early hours of July 20, 2019 while outside the Lost Navigator; and

**WHEREAS**, David Cornell brought claims for personal injuries against the Village of Clayton and various Local and State Law Enforcement for alleged: use of excessive force; failure to prevent the use of excessive force, false arrest, battery, assault and false imprisonment; and

**WHEREAS**, the Village promptly investigated and submitted its claim for defense and indemnification to its insurance carrier and which retained Sugarman Law Firm. LLP, Paul B. Mullin, Esq. to defend the Village and Local Police Officers in the claim; and

**WHEREAS**, David Cornell's false arrest and false imprisonment claims were previously dismissed, but excessive force claim, failure to intervene claim and battery and assault claims cannot be resolved by motion, remain disputed, and are scheduled for Jury Trial commencing February 20, 2024, and

**WHEREAS**, financial risk remains associated with defense of the remaining claims; and

**WHEREAS**, David Cornell agrees to settle all claims in the matter for the total sum of \$125,000 paid by the insurance carrier for the Village of Clayton on behalf of the Village and its law enforcement officers and \$25,000 paid by the State of New York on behalf of the State law enforcement officers, and waives payment of any attorney's fees, costs, expenses and like; and

**WHEREAS**, the Parties agree that such settlement is not an admission of fault by any of the parties but is an effort to avoid various risk and financial exposure associated with a Jury Trial; and

**WHEREAS**, David Cornell agrees to provide a General Release in favor of all named parties for all claims arising out of the underlying litigation; and

**WHEREAS**, David Cornell agrees to non-disparagement language in regard to the settlement of the parties and to defend and hold harmless all parties, and the insurance carrier making payment, for any and all liens, known or unknown, that may exist in relation to this matter; and

**WHEREAS**, any alleged evidence of the settlement cannot be used in any other proceeding or action against any of the named parties; and

**WHEREAS**, the attorneys representing the Village of Clayton and its Officers in the underlying litigation and the Village's General Counsel recommend settlement of the underlying litigation on the terms specified above; and

**WHEREAS**, United State District Judge David N. Heard reviewed and supports settlement of the underlying action on the terms specified above; and

**WHEREAS**, the Village Board has considered all of the above and considers settlement of the action on such terms as being the best interest of the Village of Clayton, NY and its Officers and is prepared to proceed.

**NOW, THEREFORE, BE IT RESOLVED**, by the Village Board for the Village of Clayton, New York that:

1. The foregoing recitations are incorporated herein and made a part hereof as if set forth herein.

2. The Village Board hereby approves the recommendation of the Village Attorneys and Litigation Counsel and approves settlement of all claims in the underlying litigation as specified above with no concession of Liability.
3. The Mayor for the Village of Clayton, NY and attorneys for the Village of Clayton, NY, their respective agents, officers and employees are hereby authorized to sign all documents and take all steps necessary to settle the underlying litigation as specified above.
4. This resolution shall take effect immediately.

The foregoing Resolution was offered by Board Member, Trustee McDowell, and seconded by Board Member, Trustee Riddoch, and upon roll call vote of the Board was duly adopted as follows:

Nancy L. Hyde, Mayor	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
Robert McDowell	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
Allen Heberling	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
Robert Wierzba	Absent	
Robert Riddoch	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>

Dated: February 12, 2024

  
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Joanne Lenhard-Boye, Village Clerk