

## SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT AGREEMENT AND RELEASE (the "Settlement Agreement") is made and entered into this 18<sup>th</sup> day of February, 2014, by and between DENNIS O'BRIEN (the "Plaintiff") and the MENDOCINO COUNTY SHERIFF'S OFFICE AND THE COUNTY OF MENDOCINO ("Defendants").

### RECITALS

- A. Plaintiff filed a complaint against Defendants in the Superior Court, County of Mendocino, Court Action No. SCUJ-CVG-13-61758 (the "Complaint"). The Complaint alleged that the County violated Plaintiff's First Amendment rights to free speech, his constitutional right of assembly, and right of petition, when a Mendocino County Sheriff's Deputy allegedly prevented Plaintiff from signing a petition in front of Raley's Market, located in the Crossroads Shopping Center, on North State Street in Ukiah, California. Plaintiff alleges that the location where the events took place is a "public forum".
- B. Defendants filed a demurrer seeking dismissal of the Complaint and disputing that the speech was protected under the factual circumstances alleged in the pleadings. Defendants agreed to continue the demurrer, originally set for hearing January 3, 2014, to March 14, 2014 to provide an opportunity for the Parties to resolve this dispute without incurring further litigation costs. Upon execution of this Settlement Agreement, the demurrer will be withdrawn.
- C. The Parties have agreed to resolve this dispute by developing a mutually agreed upon approach for Mendocino County sheriff's deputies related to First Amendment rights in shopping centers based on certain underlying principles as follows:
- 1) The Mendocino County Sheriff's Office agrees to generate a policy regarding how to handle complaints related to the public's exercise of their First Amendment rights of free speech and petitioning at shopping centers located in the County's unincorporated area.
  - 2) The policy/training materials will be based on the presumption that there is a constitutional right of free speech and petitioning at shopping centers open to the public in the County's unincorporated area and that a store owner/manager

can challenge that presumption by using the available judicial process including, but not limited to, restraining orders, civil injunctions and citizen's arrests.

3) The Parties acknowledge that this area of law is evolving and that the use of the foregoing presumption in the Sheriff's training materials in no way reflects the County's legal opinion on whether or not any given incident is, in fact, a constitutionally protected activity.

4) The policy/training materials will be considered Public Records and available to the public and shop owners for their review upon request.

5) The foregoing presumption will not apply to stand-alone stores.

6) The policy/training materials will not apply to interference with labor disputes.

7) If a store owner/manager initiates a citizen's arrest, the Sheriff's Office will use existing protocols for responding officers. The arrest itself may be challenged by any arrestee(s) in a judicial action.

D. The Parties agree that, upon Plaintiff's approval of the policy/ training materials, and execution of this Settlement Agreement, Plaintiff will dismiss his lawsuit with prejudice within one week. The Parties have negotiated costs and attorneys' fees as follows: each side is to bear their own costs and fees. The Parties, therefore, desire to enter into this Settlement Agreement, contingent upon approval of the Mendocino County Sheriff's Office policy and training materials. The Parties understand and agree that this Settlement Agreement must be approved by the Board of Supervisors.

#### AGREEMENT

The Parties hereby agree as follows:

1.0 Release and Discharge

1.1 In consideration for approval of the foregoing proposed policy and training Mendocino County sheriff's deputies, Plaintiff hereby agrees to dismiss his Complaint within one week of execution of this Settlement Agreement. Accordingly, Plaintiff completely releases and forever discharges the Defendants from any and all past, present, or future claims, rights, damages, costs, loss of services, expenses and compensation of any nature whatsoever, whether based on a tort, contract, or other theory of recovery,

which the Plaintiff, now has, or may hereafter accrue or otherwise be acquired, on account of, or in any way grow out of the incident described in Recital A above.

1.2 This release and discharge shall also apply to Defendants' past, present and future officers, directors, stockholders attorneys, 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.

1.3 This release on the part of the Plaintiff shall be a fully binding and complete settlement between the Plaintiff, the Defendants, their assigns and successors, regarding the incident described in Recital A above.

1.4 The Plaintiff acknowledges and agrees that the release set forth above is a general release. Plaintiff expressly waives and assumes the risk of any and all claims for damages which exist as of this date, but of which the Plaintiff does not know or suspect to exist whether through ignorance, oversight, error, negligence, or otherwise, and which, if known, would materially affect Plaintiff's decision to enter into this Settlement Agreement. The Plaintiff further agrees that Plaintiff has accepted the proposed policy and training module as a complete compromise of matters involving disputed issues of law and fact. Plaintiff assumes the risk that the facts or law may be otherwise than Plaintiff believes. It is understood and agreed by the Parties that this settlement is a compromise of a doubtful and disputed claim, and that this agreement is not to be construed as an admission of liability on the part of the Defendants, by whom liability is expressly denied.

1.5 The Plaintiff agrees to indemnify and hold harmless the Released Parties from and against all claims, obligations, actions, causes of action, liens, demands for payments, or proceedings which may hereafter be asserted, brought by or on behalf of the Plaintiff or Plaintiff's heirs, executors, administrators, assigns or 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, regarding the incident described in Recital A above.

2.0 Payment of Costs and Fees

2.1 In consideration of the foregoing, each party has agreed to bear their own costs and attorneys' fees.

3.0 Dismissal of Superior Court Action No. SCUk CVG 13-61758

3.1 In consideration for the agreement and release proposed above, Plaintiff will dismiss with prejudice his Complaint in Superior Court Action No. SCUk-CVG-13-61758, within one week of approval of the training module and execution of this Settlement Agreement.

4.0 Representation of Comprehension of Document

4.1 In entering into this Settlement Agreement, the Plaintiff acknowledges he is an attorney representing himself *in propria persona* and that he understands the legal consequences of this Settlement Agreement and that he has contacted counsel of his own choosing to advise him regarding same; that the terms of this Settlement Agreement have been completely read and explained to Plaintiff; and that the terms of this Settlement Agreement are fully understood and voluntarily accepted by Plaintiff.

5.0 Warranty of Capacity to Execute Agreement

5.1 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 Settlement Agreement except as otherwise set forth herein and that Plaintiff has the sole right and exclusive authority to execute this Settlement Agreement 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 Settlement Agreement.

6.0 Governing Law

6.1 This Settlement Agreement shall be construed and interpreted in accordance with the laws of the State of California.

6.2 The undersigned Plaintiff does hereby waive any and all rights based upon the provisions of Section 1542 of the Civil Code of the State of California, which reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH, IF

KNOWN TO HIM OR HER, MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

For your protection, California law requires the following to appear on this form:

ANY PERSON WHO KNOWINGLY PRESENTS A FALSE OR FRAUDULENT CLAIM FOR THE PAYMENT OF A LOSS IS GUILTY OF A CRIME AND MAY BE SUBJECT TO FINES AND CONFINEMENT IN STATE PRISON. (Cal. Ins. Code, § 1871.2)

7.0 Additional Documents

7.1 All Parties agree to cooperate fully and execute any and all supplementary documents and to take all additional actions which may be necessary or appropriate to give full force and effect to the basic terms and intent of this Settlement Agreement.

8.0 Entire Agreement and Successors-In-Interest

8.1 This Settlement Agreement contains the entire agreement between the Plaintiff and the Defendants 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.

9.0 Effectiveness

9.1 This Settlement Agreement shall become effective immediately following execution by each of the Parties.

Date: Feb. 20, 2014

Plaintiff Dennis O' Brien, *in propria persona*

Dennis O'Brien

Date: 28 Feb. 2014

Defendants:

Mendocino County Sheriff's Office and  
County of Mendocino

By

Thomas Allman  
Thomas Allman, Sheriff

APPROVED AS TO FORM AND CONTENT:

Date: 2/20/14

Defendants' Attorney:

By

Terry N. Gross  
Terry N. Gross, Deputy County Counsel