

SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS

AND NOW, the undersigned, in settlement of their dispute as described herein, hereby mutually covenant and agree as follows:

WHEREAS, Jeffery Pendleton of Nashua, New Hampshire (hereinafter, "Plaintiff") alleged that the Town of Hudson (hereinafter, "Defendant") violated his rights under the First, Fourth, and Fourteenth Amendments in the matter of *Pendleton v. Town of Hudson*, et al. as filed with the United States District Court for the District of New Hampshire, Docket No. 1:14-cv-00365-PB, against Defendant ("Litigation"); and

WHEREAS, Defendant denies all liability, wrongdoing, and responsibility for the Litigation allegations; and

WHEREAS, Plaintiff and Defendant desire to settle the allegations in the Litigation to avoid the time and expense of future litigation and without any admission of liability; and

WHEREAS, pursuant to the terms of this Agreement, Plaintiff agrees to release his claims against Defendant concerning (1) the October 19, 2013 incident described in Plaintiff's Complaint in the Litigation, (2) the November 14, 2013 incident described in Plaintiff's Complaint in the Litigation, (3) the Litigation, and (4) any and all claims that were, or could have been, asserted in the Litigation (collectively referred to as "Claims").

NOW THEREFORE, the parties agree as follows:

1. Consideration: Defendant will provide the following consideration:

A. No later than three (3) days after the execution of this Agreement, the Plaintiff and the Defendant are to file in the case *Pendleton v. Town of Hudson, et al.*, Docket No. 1:14-cv-00365-PB, a "Joint Motion for Entry of Permanent Consent Order" asking the United States District Court to enter a "Permanent Consent Order." The form of the "Joint

Motion for Entry of Permanent Consent Order” and proposed “Permanent Consent Order” to be filed are attached as Exhibit A and Exhibit B. In the event that, for any reason, the United States District Court fails or refuses to enter the proposed Permanent Consent Order in its entirety, the Defendant agrees with the Plaintiff that Defendant will abide by the terms of the proposed Permanent Consent Order.

B. No later than three (3) days after the parties file the proposed Permanent Consent Order, the Defendant will notify each of its law enforcement officers of the terms of the Permanent Consent Order.

C. No later than thirty (30) days after the parties file the proposed Permanent Consent Order, the Defendant will incorporate the terms of the Permanent Consent Order in any applicable officer handbook or training manual.

D. No later than sixty (60) days after the parties file the proposed Permanent Consent Order, the Defendant will conduct an in-person training session before the Defendant’s law enforcement officers concerning the terms of the Permanent Consent Order.

E. Plaintiff has executed and returned a form denying enrollment in Medicare Part A or Medicare Part B. Based on that representation, Property-Liability Trust, Inc. of Concord, New Hampshire, a duly authorized and existing pooled risk management program pursuant to NH RSA 5-B, shall pay the total sum of thirty-seven thousand five hundred Dollars and No Cents (\$37,500.00), inclusive of all attorney’s fees and costs, on behalf of Defendant as follows: (i) \$7,640 to Plaintiff Jeffery Pendleton; (ii) \$27,485 to the American Civil Liberties Union of New Hampshire; and (iii) \$2,375 to Sheehan Phinney Bass + Green PA within fourteen (14) days of the execution of this release and receipt of a W9

form from each payee. These payments will be mailed to the American Civil Liberties Union of New Hampshire, 18 Low Avenue, Concord, New Hampshire 03301. All payments will be subject to the issuance of a 1099 form to Plaintiff and his counsel.

2. General Release of All Claims by Plaintiff: Plaintiff hereby fully remises, releases, and discharges Defendant, Property-Liability Trust, Inc., and all their agents, representatives, employers, employees, servants, volunteers, independent contractors, police officers, officials, directors, attorneys, insurers, indemnitors, successors, and assigns, in their individual, business, and official capacities, as well as any other person and/or entity to the extent that such other person and/or entity could be deemed liable, by, through or under them (collectively referred to as "Releasees"), from any and all Claims whatsoever, in law or in equity, which he ever had, now has, or which he can, shall, or may have against Releasees, from the beginning of time to the date of this Release for, or by reason of, any matter, cause, or thing whatsoever, arising out of, or in any way associated with (1) the October 19, 2013 incident described in Plaintiff's Complaint in the Litigation, (2) the November 14, 2013 incident described in Plaintiff's Complaint in the Litigation, (3) the Litigation, and (4) the Claims.

Nothing contained in this Release shall affect the enforceability of this Agreement, including (i) the agreement to file a "Joint Motion for Entry of Permanent Consent Order" and proposed "Permanent Consent Order," (ii) the retention of jurisdiction by the United States District Court over this case for purposes of enforcing the Permanent Consent Order, or (iii) the agreement set forth in Paragraph 1(A) hereof.

3. Non-Admission: This Agreement is a compromise of disputed claims. Defendant expressly denies any and all liability, wrongdoing, and culpability regarding the Claims and the Litigation.

4. End of Litigation: The parties agree to end the Litigation. Accordingly, per the terms in Section 1(A) above, the Parties will file the proposed “Permanent Consent Order” with respect to the Defendant with the United States District Court, Docket No. Docket No. 1:14-cv-00365-PB, for its approval. Except for the terms of the Order, Plaintiff agrees to dismiss all other claims in the Litigation against Defendant with prejudice and without costs.

In addition, no later than three (3) days after the execution of this Agreement—but prior to the filing of the “Joint Motion for Entry of Permanent Consent Order”—the parties will file a Stipulation for Voluntary Dismissal With Prejudice Against The Individual Officers under Federal Rules of Civil Procedure 41(a)(1)(A)(ii) with the United States District Court for the District of New Hampshire, Docket No. Docket No. 1:14-cv-00365-PB. The form of the Stipulation of Dismissal to be filed is attached as Exhibit C.

5. Waiver/Purpose/Representations: Plaintiff acknowledges, agrees, and represents that (a) no party is a prevailing party in the Litigation; (b) Plaintiff is not entitled to request or be awarded attorneys’ fees, interest or costs under any Federal, State, or administrative law or regulation; (c) Plaintiff waives any such claims of attorneys’ fees, interest, and costs; (d) the purpose of this Agreement is to “buy peace” from further dispute and controversy between and among Plaintiff and Defendant; (e) the consideration herein may or may not fully compensate Plaintiff for alleged losses; (f) court approval is not required for any provision of this Agreement; (g) Plaintiff has executed this Agreement with full knowledge of its legal significance; and (h) Plaintiff has done so to end all claims and the Litigation.

6. Responsibility With Respect to Related Taxes: Plaintiff acknowledges and agrees that should the consideration set forth above, or any part thereof, be subject to any taxes, penalties, or interest, Plaintiff and/or his counsel shall be solely responsible for all such taxes,

penalties, or interest. Further, Plaintiff will indemnify, defend, and hold Releasees harmless from any claims by any taxing authority against Releasees concerning such taxes, penalties, or interest owed arising out of the Claims. Plaintiff further agrees that he will not assert, file or make any claims against Releasees for any such taxes, penalties, or interest they may be compelled to pay in connection with any disputes with the Internal Revenue Service or other taxing authority arising out of the Claims.

7. Modification: This Agreement may not be amended or supplemented, and no waiver of, or consent to, or departures from provisions hereof shall be effective, unless set forth in a writing signed by all parties.

8. Complete Agreement: It is further agreed and expressly understood that there are no other understandings or agreements, verbal or otherwise, in relation to any matter pertaining to this Agreement which are not expressly set forth herein.

9. Consultation With Counsel: This Agreement has been freely, knowingly, and voluntarily executed by Plaintiff and Defendant after consultation with legal counsel.

10. Authorizations: The parties have taken all actions and obtained all authorizations, consents and approvals as are conditions precedent to their authority to enter into this Agreement and thus warrant that they are fully authorized to act in accordance with this Agreement.

11. Governing Law: This Agreement shall be enforced in accordance with the laws of the State of New Hampshire. In the event of litigation regarding this Agreement, Plaintiff and Defendant expressly submit to the jurisdiction of New Hampshire.


IN WITNESS WHEREOF, and intending to be legally bound hereby, the undersigned
has set his hand and signature below.

Date: 2-19-15



Jeffery Pendleton

Date: March 4, 2015



Town of Hudson
Duly Authorized

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

A

JEFFERY PENDLETON,)	
)	
Plaintiff,)	
)	
v.)	Civil Case. No. 1:14-cv-00365-PB
)	
TOWN OF HUDSON,)	
)	
Defendant)	
)	

JOINT MOTION FOR ENTRY OF PERMANENT CONSENT ORDER
BY PLAINTIFF JEFFERY PENDLETON AND DEFENDANT TOWN OF HUDSON

As part of the settlement of this case, Plaintiff Jeffery Pendleton and Defendant Town of Hudson, without any acknowledgement of liability and in order to avoid the expense and time associated with further litigating this case, have agreed to the attached Permanent Consent Order. Entry of this order will be in the interest of judicial economy.

WHEREFORE, Plaintiff Jeffery Pendleton and Defendant Town of Hudson jointly move for entry of the Permanent Consent Order submitted herewith.

Dated: February ___, 2014

Respectfully submitted,

JEFFERY PENDLETON

By his Attorneys,

**NEW HAMPSHIRE CIVIL LIBERTIES
UNION FOUNDATION**

/s/ Gilles R. Bissonnette

Gilles R. Bissonnette, Esquire, NH BAR
#265393

NEW HAMPSHIRE CIVIL LIBERTIES UNION

18 Low Avenue

Concord, NH 03301

Telephone: (603) 224-5591

Gilles@nhclu.org

Christopher Cole, Esquire, NH BAR #8725

SHEEHAN PHINNEY BASS + GREEN PA.

1000 Elm Street, 17th Floor

P.O. Box 3701

Manchester, NH 03105-3701

Telephone: (603) 608-0300

Facsimile: (603) 627-8121

ccole@sheehan.com

Respectfully submitted,

TOWN OF HUDSON,

By its Attorney,

CULLENCOLLIMORE, PLLC

/s/ Brian J. S. Cullen

Brian J. S. Cullen (NH BAR #11265)

CULLENCOLLIMORE, PLLC

10 East Pearl Street

Nashua, NH 03060

Tel.: (603) 881-5500

bcullen@cullencollimore.com

CERTIFICATE OF SERVICE

I, Gilles Bissonnette, hereby certify that a copy of the foregoing document, filed through the CM/ECF system, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) on February ___, 2015.

/s/ Gilles Bissonnette _____
Gilles Bissonnette

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

B

_____)	
JEFFERY PENDLETON,)	
)	
Plaintiff,)	
)	
v.)	Civil Case. No. 1:14-cv-00365
)	
TOWN OF HUDSON,)	
)	
Defendant)	
_____)	

PERMANENT CONSENT ORDER

WHEREAS, Plaintiff Jeffery Pendleton (“Plaintiff”) brought this lawsuit alleging that the Defendant Town of Hudson (“Defendant”) violated his rights under the First, Fourth, and Fourteenth Amendments; and

WHEREAS, Plaintiff Jeffery Pendleton and Defendant Town of Hudson have reached a settlement; and

WHEREAS, a material term of the settlement is that the Defendant Town of Hudson will be permanently enjoined from engaging in certain conduct concerning individuals panhandling and/or peacefully soliciting donations in public places.

NOW THEREFORE, upon joint motion of the Plaintiff and Defendant, it is hereby AGREED, ORDERED, ADJUDGED and DECREED that Defendant, and their respective officers, employees, agents and successors, are hereby permanently enjoined and ordered to:

- a) Not preclude and/or restrict Plaintiff and/or other individuals from peacefully soliciting donations in public places—including by stopping and citing panhandlers, issuing no-trespass warnings with respect to public places, and sending panhandlers “on their way”—when such activity does not obstruct pedestrian or vehicular traffic or obstruct the entrance to any business establishment;

- b) Not cite or arrest Plaintiff and/or other individuals for peacefully soliciting donations in public places when such activity does not obstruct pedestrian or vehicular traffic or obstruct the entrance to any business establishment;
- c) Not enforce the any November 14, 2013 no-trespass order issued by the Defendant banning Plaintiff from all medians in Hudson; and
- d) Not use RSA 320:2 and Section 232 of the Hudson Town Code to prohibit or restrict the act of peacefully soliciting donations in a public place.

This Permanent Consent Order is also subject to the following terms:

a) Nothing herein shall restrict the Defendant from addressing legitimate violations of law allegedly committed by Plaintiff and/or other individuals engaged in panhandling or the peaceful solicitation of donations in public places;

b) Nothing herein shall restrict the Defendant from legislatively adopting or enacting ordinances governing the time, place, and manner of solicitation of donations in public places, provided that such ordinances are adopted in accordance with state, federal, and municipal law, and are preceded by public notice and the opportunity for a hearing. For a period to two (2) years from the date of this Order, the Defendant shall provide notice to the American Civil Liberties Union of New Hampshire if such an ordinance is to be formally considered by the Defendant in a public hearing. Nothing herein shall restrict a third-party from challenging the legality of any such ordinance under state, federal, or municipal law; and

c) This Order is intended for the benefit of existing and future individuals who panhandle and/or peacefully solicit donations in public places in the Town of Hudson. Any such individual who is harmed by a violation of its terms shall have standing to apply to the Court to enforce the terms thereof. This Order shall remain in effect unless vacated or modified by the Court. The Court will retain jurisdiction over this matter only for purposes of enforcement of this Order's terms.

Except for the terms in this Order, all other claims by Plaintiff against Defendant Town of Hudson are **DISMISSED WITH PREJUDICE AND WITHOUT COSTS.**

So Ordered.

Dated: February ___, 2015

Hon. Paul J. Barbadoro
United States District Judge

C

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

_____)
JEFFERY PENDLETON,)
)
Plaintiff,)
)
v.)
)
TOWN OF HUDSON, DEREK S. LLOYD,)
in his individual capacity, and ADAM M.)
LISCHINSKY, in his individual capacity,)
)
Defendants)
_____)

Civil Case. No. 1:14-cv-00365-PB

**STIPULATION OF VOLUNTARY DISMISSAL WITH PREJUDICE PURSUANT TO
F.R.C.P. 41(a)(1)(A)(ii) AS TO PLAINTIFFS' CLAIMS AGAINST DEFENDANTS'
DEREK S. LLOYD AND ADAM M. LISCHINSKY, IN THEIR INDIVIDUAL
CAPACITIES**

IT IS HEREBY STIPULATED AND AGREED by and between the parties that the Plaintiff's claims against Defendant Derek S. Lloyd, in his individual capacity, and Defendant Adam M. Lischinsky, in his individual capacity, are voluntarily dismissed with prejudice and without costs pursuant to the Federal Rules of Civil Procedure 41(a)(1)(A)(ii).

Dated: February __, 2014

Respectfully submitted,

JEFFERY PENDLETON

By his Attorneys,

**NEW HAMPSHIRE CIVIL LIBERTIES
UNION FOUNDATION**

/s/ Gilles R. Bissonnette

Gilles R. Bissonnette, Esquire, NH BAR
#265393

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Respectfully submitted,

TOWN OF HUDSON,

By its Attorney,

CULLENCOLLIMORE, PLLC

/s/ Brian J. S. Cullen

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I, Gilles Bissonnette, hereby certify that a copy of the foregoing document, filed through the CM/ECF system, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) on February ____, 2015.

/s/ Gilles Bissonnette _____
Gilles Bissonnette