

SETTLEMENT AGREEMENT AND GENERAL AND FULL RELEASE OF ALL CLAIMS

This Settlement Agreement and General and Full Release of All Claims (hereinafter "Release") is made and entered into this 4th day of March, 2013, by and between **BRIAN BECKER**, ("Plaintiff") and **DAVID SUTTON**, individually and in his official capacity as a police officer and as the Supervisor of the Criminal Investigation Division of the Poplar Bluff Police Department, **LYMAN DOUGLAS BAGBY**, individually and in his official capacity as City Manager of Poplar Bluff, Missouri, and the **CITY OF POPLAR BLUFF, MISSOURI**, (David Sutton, in his individual and official capacity, Lyman Douglas Bagby, in his individual and official capacity, and the City of Poplar Bluff, Missouri collectively referred to herein as "Defendants") (Plaintiff and Defendants collectively referred to as "Parties").

WITNESSETH:

WHEREAS, Plaintiff is making claims against the Defendants for damages for violations of his constitutional rights under the United States Constitution and the Missouri Constitution, for conspiracy to violate his constitutional rights, for retaliation against him for exercising his constitutional rights, for adopting and enforcing unconstitutional ordinances and policies relating to distribution of handbills against him, and for violations of other federal and state laws arising out of Plaintiff distributing handbills in the City of Poplar Bluff, Missouri in or about November, 2012 and a uniform citation issued to Plaintiff by Police Officer David Sutton on November 6, 2012 for placing handbills on a vehicle without a permit in violation of Poplar Bluff Code of Ordinances §605.440 (hereinafter the "Incidents"), which Plaintiff claims renders Defendants liable to him for compensatory and punitive damages, as is more specifically alleged Plaintiff's First Amended Complaint in the lawsuit styled Brian Becker, Plaintiff v. City of Poplar Bluff, David Sutton, and Lyman Douglas Bagby, Defendants, Case No. 1:12-CV-00190-

SNLJ pending in the United States District Court for the Eastern District of Missouri, Southeastern Division (the "Action").

WHEREAS, Defendants have refused and still refuse payment of said claims and deny that they are, in any capacity, in any way liable to Plaintiff for any sum whatsoever as claimed by him arising out of the Incidents and the Action so that a dispute exists between us, which dispute we have now agreed to settle, adjust and compromise under the terms in this Release as set forth herein.

WHEREAS, Defendant City of Poplar Bluff, Missouri has, since the Action was filed, repealed Poplar Bluff Code of Ordinances §605.440 ("Distribution of Handbills").

WHEREAS, the Missouri Ethic's Commission's inquiry into Plaintiff's actions surrounding the November, 2012 election "found no reasonable grounds that violations occurred pursuant to Chapter 130, R.S.Mo" and "voted to dismiss the case" against him.

NOW, THEREFORE, for and in consideration of this compromise, which includes Defendant City of Poplar Bluff's agreement not to reenact the repealed Poplar Bluff Code of Ordinances §605.440, nor a replacement ordinance for §605.440 that is inconsistent with the holding in *Krantz v. City of Fort Smith*, 160 F.3d 1214 (8th Cir. 1998), all Defendants' agreement to take no further investigatory or enforcement actions against Plaintiff for any of his actions regarding the election of November 2012, and for other good and valuable consideration, and for the sum of One and 00/100 Dollar (\$1.00) paid by Defendants to Plaintiff and Five Thousand and 00/100 Dollars (\$5,000.00) paid by Defendants to Plaintiff's Counsel for Attorney Fees and Costs (collectively the "Monetary Settlement Consideration"), the receipt and sufficiency of which is hereby acknowledged by Plaintiff in full satisfaction of all losses, damages, and claims arising out of the Incidents and the Action against the Defendants, the Plaintiff does hereby:

RELEASE AND FOREVER DISCHARGE

DAVID SUTTON, individually and in his official capacity as a police officer and as Supervisor of the Criminal Investigation Division of the Poplar Bluff Police Department, **LYMAN DOUGLAS BAGBY**, individually and in his official capacity as City Manager of Poplar Bluff, the **CITY OF POPLAR BLUFF, MISSOURI**, Savers Property & Casualty Insurance Company and each of their respective past, present, and future officers, directors, shareholders, agents, servants, employees, subsidiaries, affiliates, assigns, heirs, representatives, attorneys, mayors, chiefs of police, city administrators, members of the city council, city officials, city attorneys, police officers, city clerks, elected and appointed officials, and all other persons, firms, and corporations from any and all claims, demands, damages, losses, expenses, injuries, claims for violations of his constitutional rights, claims for conspiracy to violate his constitutional rights, claims for retaliation against him for exercising his constitutional rights, claims for violation of the U.S. Constitution, claims for violation of the Missouri Constitution, claims for adopting and enforcing unconstitutional ordinances and policies relating to the distribution of handbills, claims for false arrest and malicious prosecution, claims for compensatory and punitive damages, claims for attorney fees and costs, and all claims arising out of the Incidents and the Action which Plaintiff claims renders Defendants liable to him for compensatory and punitive damages, as is more specifically alleged Plaintiff's First Amended Complaint in the lawsuit styled Brian Becker, Plaintiff v. City of Poplar Bluff, David Sutton, and Lyman Douglas Bagby, Defendants, Case No. 1:12-CV-190-SNLJ pending in the United States District Court for the Eastern District of Missouri, Southeastern Division (the "Action").

IT IS FURTHER STIPULATED AND AGREED, as part of the consideration of this Release, that Plaintiff agrees to satisfy and pay out of the Monetary Settlement Consideration all

liens and expenses of any kind which apply, or may hereafter apply, to any and all claims arising from the Incidents and the Action, including, but not limited to, attorney liens, subrogation interests, medical service liens, Medicare and Medicaid liens, and all other expenses. The Plaintiff further agrees to satisfy and pay all liens of any kind arising out of the Incidents and the Action asserted against the Defendants and/or Savers Property & Casualty Insurance Company in the future, and to indemnify and hold harmless each Defendant and Savers Property & Casualty Insurance Company, as Defendants' insurer, from any and all attorneys' liens, medical liens, Medicare and Medicaid liens, and other liens and expenses, if any, which may be asserted, either by claim or by a lawsuit, against a Defendant or their insurer, Savers Property & Casualty Insurance Company, as a result of any damages and injuries sustained by Plaintiff arising out of the Incidents and any claim asserted in the Action. The Plaintiff further agrees to pay Defendants and their insurer Savers Property & Casualty Insurance Company all attorneys' fees and costs incurred by any Defendant and/or their insurer by reason of any claim being asserted against a Defendant and/or their insurer, for attorney liens, medical liens, Medicare and Medicaid liens, liens of any kind, and expenses arising from damages and injuries sustained by the Plaintiff arising out of the Incidents and/or from the Action. Defendants and Savers Property & Casualty Insurance Company state that they are not aware of any liens and that none have been served upon them on or before the date this Release has been executed.

IT IS FURTHER STIPULATED AND AGREED, as part of the consideration of this Release, that the Parties agree and acknowledge that nothing contained in this Release, including the offer, execution, and performance hereof, constitutes an admission by the Defendants with respect to the claims of the Plaintiff or of liability with respect to any matter referred to herein, with each Defendant expressly denying any liability for any claim described herein, for any

claim arising out of the Incidents, and for any claims asserted in the Action, and Plaintiff acknowledges that this Release is being entered into solely as a compromise to prevent further expenses and to terminate and extinguish the litigation with these Defendants.

IT IS FURTHER STIPULATED AND AGREED, as part of the consideration of this Release, that this Release is the entire Agreement between the Parties, and that in executing this Release, all Parties are relying upon their own judgment and counsel, and that no other representation, promise or agreement not herein expressed has been made to any Party by any person, Parties released, or by their agents, attorneys, servants, employees, or by any other person.

IT IS FURTHER STIPULATED AND AGREED, as part of the consideration of this Release, that this Release is binding upon and shall inure to the benefit of the Parties hereto and their respective successors, heirs, administrators, assigns, and upon all persons, firms, and corporations who claim by and through the Parties herein.

IT IS FURTHER STIPULATED AND AGREED, as part of the consideration of this Release, that the Parties acknowledge that they have read this Release, that they have been represented by counsel of their choice in this dispute, and in the settlement of this dispute, and in the preparation of this Release. The Parties further acknowledge that they understand the terms, provisions, and legal effect of this Release, which is signified by their signature to this Release. The Parties further acknowledges that the Release has been drafted by counsel for Plaintiff and Defendants, with the terms and conditions being the product of mutual agreement by all Parties, and no party shall be found to be the sole drafter of this Release.

IT IS FURTHER STIPULATED AND AGREED, as part of the consideration of this Release, that the provisions of this Release shall be severable, and the breach of one provision

shall not be construed to be a breach of any other provision of this Release. The invalidity or unenforceability of any particular provision of this Release shall not affect the other provisions hereof, and this Release shall be construed, in all respects, as if such invalid or unenforceable provisions were omitted. The terms of this Release are contractual in nature, and are not merely recitals, and will be governed by Missouri law.

IT IS FURTHER STIPULATED AND AGREED, as part of the consideration of this Release, that Plaintiff acknowledges that all claims arising out of the Incidents and the Action against the Defendants are specifically released and discharged by the terms of this Release, and Plaintiff promises and covenants not to sue any Defendant at any time after the date this Release is executed and the Monetary Settlement Consideration is paid for any claim arising out of the Incidents and the Action. Plaintiff specifically acknowledges that this Release may be pled as an absolute bar and defense to any claim arising out of the Incidents and the Action that is asserted against the Defendants in any lawsuit filed against the Defendants after the date this Release is executed and the Monetary Settlement Consideration is paid to Plaintiff as recited herein.

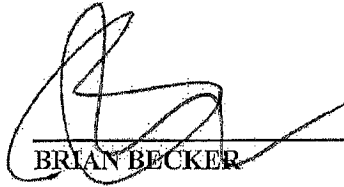
IT IS FURTHER STIPULATED AND AGREED, as part of the consideration of this Release, that Plaintiff will dismiss the Action against the Defendants with prejudice with each party to bear their own attorney fees and costs on the date the Monetary Settlement Consideration is paid.

IT IS FURTHER STIPULATED AND AGREED, as part of the consideration of this Release, that the Monetary Settlement Consideration described herein will be paid by one settlement check payable to Brian Becker in the amount of One and 00/100 Dollar (\$1.00) and one settlement check payable to the American Civil Liberties Union of Eastern Missouri Fund in the amount of Five Thousand and 00/100 Dollars (\$5,000.00).

IT IS FURTHER STIPULATED AND AGREED, as part of the consideration of this Release, that this Release may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, each of the undersigned states that each of them is of lawful age and legally competent to execute this Release, that before signing and sealing this Release that each of them has been fully informed of its content and meaning by their attorney, that each of them is signing the Release based upon the advice of their attorney, and that the Release has been executed with full knowledge thereof.

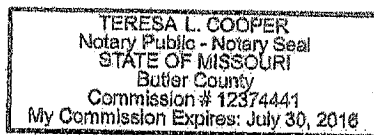
[The remainder of this page intentionally left blank.]

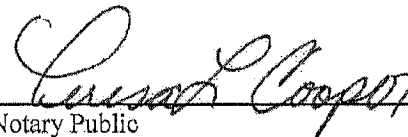

BRIAN BECKER

STATE OF MISSOURI)
) ss.
COUNTY OF Butter)

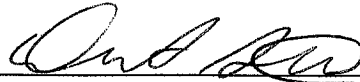
On this 4 day of March, 2013, before me personally appeared BRIAN BECKER, known to me to be the individual who executed this Settlement Agreement and General and Full Release of All Claims, and acknowledged that he fully understood the contents of this Release and freely executed the same for the sole consideration therein expressed, and upon the advice of his attorney.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.




Notary Public

My Commission Expires: July 30, 2016

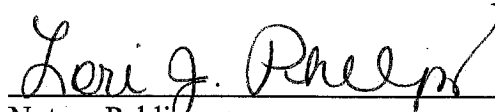


DAVID SUTTON, individually and in his official capacity as a police officer and as the Supervisor of the Criminal Investigation Division of the Poplar Bluff Police Department

STATE OF MISSOURI)
) ss.
COUNTY OF Butler)

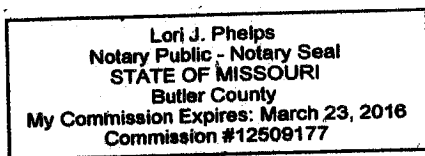
On this 16th day of March, 2013, before me personally appeared DAVID SUTTON, individually and in his official capacity as a police officer and as the Supervisor of the Criminal Investigation Division of the Poplar Bluff Police Department, Missouri known to me to be the individual who executed this Settlement Agreement and General and Full Release of All Claims, and acknowledged that he fully understood the contents of this Release and freely executed the same for the sole consideration therein expressed, and upon the advice of his attorney.


IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.



Notary Public

My Commission Expires:

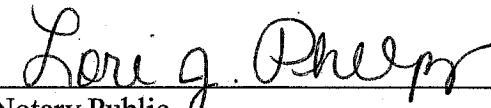



LYMAN DOUGLAS BAGBY, individually and in
his official capacity as City Manager of Poplar
Bluff

STATE OF MISSOURI)
) ss.
COUNTY OF Butler)

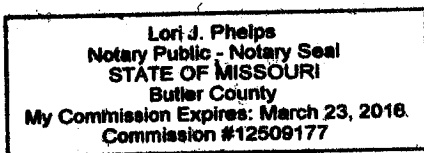
On this 6th day of March, 2013, before me personally appeared LYMAN DOUGLAS BAGBY, individually and in his official capacity as City Manager of Poplar Bluff, Missouri known to me to be the individual who executed this Settlement Agreement and General and Full Release of All Claims, and acknowledged that he fully understood the contents of this Release and freely executed the same for the sole consideration therein expressed, and upon the advice of his attorney.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

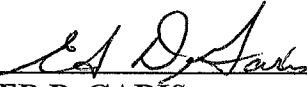


Notary Public

My Commission Expires:



POPLAR BLUFF, MISSOURI

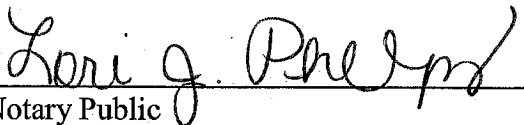
By: 
ED DeGARIS

Title: Mayor

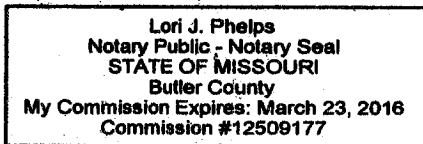
STATE OF MISSOURI)
) ss.
COUNTY OF Butler)

On this 16th day of March, 2013, before me personally appeared ED DeGARIS, known to me to be the Mayor of the City of Poplar Bluff, Missouri who executed this Settlement Agreement and General and Full Release of All Claims for and on behalf of the City of Poplar Bluff, Missouri pursuant to the authority granted to him by Missouri law, and acknowledged that he fully understood the contents of this Release and freely executed the same for the sole consideration therein expressed and upon the advice of the attorney for the City of Poplar Bluff, Missouri.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.


Notary Public

My Commission Expires:



ATTORNEY'S LIEN WAIVER AND APPROVAL OF FORM OF RELEASE

The undersigned waives any and all attorney liens and claims for attorney fees arising from the dispute described in the Release and in the Action against the Defendants and Savers Property & Casualty Insurance Company upon the payment of the Monetary Settlement Consideration, and approves the form of the Release.

AMERICAN CIVIL LIBERTIES UNION OF
EASTERN MISSOURI

By: 

Anthony E. Rothert, E.D.Mo. #44827MO

Grant R. Doty, E.D.Mo. #60788MO

454 Whittier Street

St. Louis, MO 63108

Telephone: (314) 652-3114

Facsimile: (314) 652-3112

tony@aclu-em.org

grant@aclu-em.org

Attorneys for Plaintiff

APPROVED AS TO FORM

The undersigned approves the form of the Release.

PAULE, CAMAZINE & BLUMENTHAL, P.C.
A Professional Corporation

By 

D. Keith Henson, #31988MO
165 North Meramec Ave., Suite 110
St. Louis (Clayton), MO 63105
Telephone: (314) 727-2266
Facsimile: (314) 727-2101
dhenson@pcblawfirm.com
Attorney for Defendants