

CONSENT DECREE
AND
SETTLEMENT AGREEMENT AND RELEASE

This SETTLEMENT AGREEMENT AND RELEASE (the “Agreement”) is made and entered into this 6TH day of September, 2016, by and among WILLIAM BUKER, NICOLE GOULD, CARL LYNCH, PATRICK MOE, MELVIN THOMPSON, and CODY USNER (collectively, the “Plaintiffs”), whose address for purposes of this agreement is c/o Rebecca J. Sremack, Sremack Law Firm LLC, 2745 South Arlington Road, Akron, Ohio 44312, and CITY OF AKRON (the “Defendant” or “City”), whose address is 161 South High Street #202, Akron, Ohio 44308 (collectively, the “Parties”).

I. **Background.**

A. The Plaintiffs, current and former homeless individuals, filed their Complaint as a proposed class action alleging that the Defendants, the City of Akron, Mayor Donald Plusquellic, Police Chief James Nice, John Moore, Douglas Sandor, and John Eaton had violated the Plaintiffs’ federal and state constitutional rights protecting against unlawful seizure, as well as violations of substantive and procedural due process and Ohio Rev. Code § 737.29, by executing homeless campsite cleanups that entailed seizing and immediately destroying their personal belongings or items (the “Claims” or “Incident”).

B. The Complaint, which sought declaratory, economic, and injunctive relief, was filed in the United States District Court of Ohio as case No. 5:14-02197 and captioned as *Moe et al. v. City of Akron et al.* (the “Lawsuit” or “Complaint”).

C. The Parties agree that all homeless individuals in Akron are intended beneficiaries of this Agreement.

D. The Parties agree that, notwithstanding the Agreement, the Parties are bound by applicable city, state, and federal laws or other rules as may presently exist or may be adopted in the future. The Parties have agreed to settle all remaining issues in this matter in lieu of engaging in any further litigation.

E. In consideration of the mutual covenants, promises and conditions contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties mutually agree to the following terms.

II. **Payment, Fees, and Costs.**

The City agrees to pay to the Plaintiffs a sum that has been agreed upon, but which is not disclosed herein, in the form of one check, made payable to Sremack Law Firm LLC and delivered to Rebecca J. Sremack of Sremack Law Firm at 2745 South Arlington Road, Akron, Ohio 44312. The City shall deliver the above check within a reasonable period of time, but no later than 30 days after the Plaintiffs' delivery of an executed copy of this Agreement to the City's counsel. Attorney Rebecca J. Sremack shall be responsible for distributing the settlement funds to the individual Plaintiffs.

This sum is the entire amount of monetary consideration to be paid by Defendant as a result of this Agreement.

Defendant agrees to pay United States District Court costs associated with the Lawsuit. The Parties to this Agreement agree to bear their own attorneys' fees and costs, and any other expenses for all matters related to or arising from the Incident and/or the Lawsuit.

III. **Release.**

A. The Parties to this Agreement intend hereto to effect a final resolution and settlement of any and all existing disputes and claims between the Parties regardless of their nature or basis, which arose, may have arisen, or hereinafter can arise by reason of any manner, cause of action, or thing whatsoever which occurred prior to the date of this Agreement, including, but not limited to, all of those claims which are or could have been asserted in the Lawsuit, and any future claims or damages which might arise from the acts, circumstances, conduct, contractual arrangements, or occurrences which were or could have been the subject of said Lawsuit arising from the incident.

B. Plaintiffs, on behalf of themselves, their heirs, executors, administrators, successors, attorneys, agents and/or assigns, hereby settle with, release and forever discharge Defendants along with Defendants' agents, and all other officers, employees, attorneys, insurers and representatives of any of them from any, all and every claim, action, cause of action, or administrative or other proceeding of whatever kind of nature, including, but not limited to, any claims for injuries, loss of consortium, property damage, costs, expenses, attorney fees, and/or other damages, whether known or unknown, which Plaintiffs now have or may have or later discover, arising from or in any way related to the Incident which gives rise to the Lawsuit.

C. This Agreement is a full and final release applied to all known, unknown and unanticipated injuries, claims or damages arising out of or in any way connected with or resulting from the Incident and/or the Lawsuit more fully described above. All Parties understand and agree that this Agreement is intended to cover, and does cover, not only all known economic losses, non-economic losses, damages and expenses incurred, but any future losses, damages, and expenses not known or anticipated, but

which may later develop or may be discovered, including all the effects and consequences thereof. It is further expressly understood and agreed that this Agreement is intended to cover, and does cover all claims which have been set forth or which could have been set forth by the Plaintiffs against Defendant in any way related to the Incident that is the subject of Lawsuit.

IV. **No Admission of Wrongdoing.**

Liability for the Incident and the Lawsuit are disputed by the Defendant and this Agreement constitutes the compromise of disputed claims, and shall not be construed as an admission of liability whatsoever by any party to this Agreement. The Parties to this Agreement intend hereby solely to avoid further litigation and buy their peace.

V. **No Assignment.**

Plaintiffs have not heretofore assigned, transferred, or granted, or purported to assign, transfer or grant, any of the claims, demands, or causes of action disposed of by this Agreement, with the exception of Nicole Gould and Cody Usner, who have each assigned a portion of their anticipated settlement to Prime Case Funding, LLC, under a non-recourse purchase agreement. Mr. Gould and Ms. Usner represent that Defendants and their attorneys have no obligation toward Prime Case Funding, LLC, or the repayment of the purchase price.

VI. **Understanding and Acceptance of Consideration.**

The Parties acknowledge and declare that they have been represented by counsel in this matter, and that they have read this Agreement, and that they fully understand its terms and voluntarily accept the consideration set forth herein for purposes of making a full and complete compromise, adjustment and settlement of all claims and potential damages.

VII. **Applicable Law.**

This Agreement shall in all respects be governed by, construed and enforced in accordance with the laws of the State of Ohio, the Ohio Constitution, and the United States Constitution without giving effect to any choice or conflict of law provision or rule that would cause the application of laws of any jurisdiction other than those of the State of Ohio.

VIII. **Severability.**

In the event that any one provision or portion of this Agreement is later determined by a court of competent jurisdiction to be void or voidable, the Parties agree that any such language or provisions shall be severable, and that any such provisions so severed shall not affect the validity of the remainder of the Agreement subsequent to such severance.

IX. **Integrated Agreement.**

The consideration contained in the Agreement is the sole and only consideration contained in the Agreement and no other representations, promises or inducements have been made by Defendant other than as appear in this instrument. No modification shall be made to this Agreement except in a writing signed by the Parties.

X. **Drafting.**

This Agreement is deemed to have been prepared jointly by the Parties, and any uncertainty or ambiguity shall not be interpreted against either party, but shall be interpreted according to the application of rules of interpretation for arm's length agreements.

XI. **Counterparts.**

This Agreement may be executed by the Parties in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument. For evidentiary purposes, faxed or electronically mailed counterparts of this Agreement shall be deemed to be originals.

XII. **Policy.**

The City's obligations concerning notice, storage, and affording homeless individuals an opportunity to reclaim personal property vary based on whether the homeless campsite is located on real public property or real private property.

A. **Real Public Property.** The City and anyone acting on its behalf shall not immediately dispose of any personal property located on real public property. The personal property to which this provision applies includes, but is not limited to, tents, tarps, children's toys, suitcases, laundry basket, crates, backpacks, electronic equipment like phones and computers, bicycles, clothing, bedding, sleeping bags, household goods, jewelry, eyeglasses, photographs, government identification and documents, and furniture. The City shall not remove the above personal items unless it provides written notice of no less than 48 hours. Any personal property that is removed by the City will be stored for no less than 30 days.

1. **Notice.** The City shall attach written notice to all personal property or post written notice in a conspicuous location, within the general vicinity (no more than 20 feet) of the campsite for a period of no less than 48 hours before removal. The City will also provide oral and written notice to a local homeless advocacy organization ("Homeless Group") agreed upon

by the Parties, with the contact information of the organization provided to the City, at least 48 hours prior to removal.

a. **Form of notice.** The written notice shall be laminated or weather resistant and measure at least 6 in. x 9 in.

b. **Content of notice.** The written and oral notice will indicate (i) the reasons the personal property will be removed; (ii) the date and time of the removal; (iii) that any removed personal property will be stored for 30 days from the date of removal; (iv) that the personal property may be reclaimed at a specific address, and that arrangements may be made by calling a specific phone number; (v) that a person must provide a description of the items removed and of where the items were last located; and (vi) that after 30 days in storage the City may destroy or dispose of the personal items.

c. **Exceptions to notice.** The City will follow the procedures set forth above for removal of personal property, except as set forth in this section. The City will not be required to provide notice of removal if: (i) it reasonably concludes that the property is abandoned; (ii) presents an immediate threat to public health or safety; (iii) is evidence of a crime; or (iv) that exigent circumstances exist. For purposes of this Agreement, "abandoned property" means "unattended to personal property that is in a condition clearly demonstrating that the owner has no intention of returning to claim it."

d. **Exigent circumstances.** Exigent circumstances requiring the City's removal of personal property will permit the City's noncompliance with the 48-hours-notice requirement. However, the City shall provide oral notice to the Homeless Group and post written notice of the fact of removal in as close proximity to the location where the property was maintained and shall follow all other procedures concerning storage and affording an opportunity to reclaim items. The following examples of exigent circumstances are intended to be illustrative: an item is preventing access to the site of an emergency; the area is being flooded; the area's infrastructure has become unsafe; the area must be secured for a special event where it is not feasible to provide advance notice. Prior to such removal, the City will afford each homeless person who is present the opportunity to remove his or her items, to the extent that such removal is feasible and that the items are not the cause of the exigent circumstance.

2. **Removal of items.** In the event that homeless individuals do not remove their items after the 48 hours of notice, all personal property will be removed and stored with an identifying sticker. The sticker shall include the date of removal and location from which the items were removed. Tents, tent poles, and other large items may be disassembled for storage. Reasonable care shall be used to store the items in a manner that avoids damages to those items. To

the extent reasonably practicable, the City will store each homeless campsite's items together.

3. **Removal and storage notification.** Notification will be left at the place from which the property was removed. This notice will specifically identify where the removed property is stored.

a. **Documentation.** Prior to the removal of personal property, the City will document the condition of the items through such means as photographs and/or video. The City will also document the condition of any items deemed suitable for immediate disposal.

b. **Immediate disposal of items.** The City may immediately dispose of or confiscate personal property in the following categories: (i) perishable items requiring refrigeration; (ii) flammable or otherwise hazardous items, or similarly dangerous items that, if stored, could cause fire, explosion, identifiable disease, or pose a threat to life, health, or property; (iii) property that is wet, soiled, dirty, sharp or odorous only if such items are hazardous or are contaminated by mold or infested with insects, roaches, bedbugs, etc.; or (iv) property that the City reasonably concludes is abandoned, as defined in (XII)(A)(1)(c).

4. **Storage.** The City shall store all personal property removed from homeless campsites on public property in a manner that is likely to protect the items from harm, in a location that is reasonably secure, and in a location that is reasonably accessible to the location where the property was found.

5. **Reclaiming property.** The City shall develop procedures by which people may retrieve their items. The City may require that persons seeking return of personal property call in advance and make an appointment to retrieve their items. The City may require a person to identify the property and/or describe the location, approximate cleanup date, and the removed items in reasonable detail to assure ownership. The City shall document the items returned; the name of the claiming party; and the form of identification (if available) confirming the identity of the claiming party.

6. **Unclaimed property.** The City may dispose of all unclaimed property after the 30-day period elapses. At the City's option, the City may elect to release unclaimed property to the Homeless Group or a social services agency or other homeless advocate organization, if that entity releases the City from liability.

B. Real Private Property. The City and anyone acting on its behalf shall not immediately dispose of any personal property located on real private property in compliance with Ohio and Akron municipal law, including, but not limited to Ohio Rev. Code § 737.29 and Akron Code Ord. §§ 94.19; 94.31; 95.12; 95.13; 95.17; and 131.08. The personal property to which this provision applies includes, but is not limited to, tents, tarps, children's toys, suitcases, laundry basket, crates, backpacks, electronic equipment like phones and computers, bicycles, clothing, bedding, sleeping bags, household goods, jewelry, eyeglasses, photographs, government identification and documents, and furniture.

1. **Trespass**. In the event that a homeless person's campsite constitutes a trespass on real private property, the City's obligations concerning the homeless person's belongings are subject, but not limited, to Ohio Rev. Code § 737.29 and Akron Code Ord. § 131.08, and are not limited by the terms of this Agreement. To the extent practicable, the City will provide oral and written notice to the Homeless Group that it plans to remove a homeless person's belongings. In the event that a private landowner does not request that the trespasser's personal property be removed, and the personal property does not constitute litter or a nuisance, the City will not remove it.

2. **Litter and Nuisance**. In its enforcement of litter and nuisance abatement ordinances, the City's obligations concerning the personal property at a homeless encampment site are subject, but not limited, to Akron Code Ord. §§ 94.19; 94.31; 95.12; 95.13; and 95.17.

a. **Notice and Order to Comply**. Akron Code Ord. §§ 94.31 and 95.17 require that the City provide written notice via personal service, or if personal service is not accomplished, then by posting in a conspicuous location at the property affected and mailing, by regular mail to both to the real property owner and the occupant, that the litter or nuisance must be removed or corrected ("Order to Comply"). The notice will inform the recipient of the right to appeal the Order to Comply.

b. **Additional Notice**. The City will provide written and oral notice of the Order to Comply to the Homeless Group. The City

also will make reasonable efforts to notify the homeless individuals by posting a notice of the Order to Comply in a conspicuous location near the homeless encampment site. The City will provide the notice contemporaneously, or as soon as practicable, with the issuance of the Order to Comply.

- c. **Right to Appeal the Order to Comply.** Akron Code Ord. §§ 94.31 and 95.17 require that the City afford real property owners and “anyone else affected” the right to appeal the Order to Comply within seven days. The City will hear the appeal of any real property owner or personal property owner. If there is no appeal, and the items constituting litter or a nuisance remain, the City may remove the items.
- d. **Notice of Removal.** The City will post notice of the planned removal of personal property in a conspicuous location near the homeless encampment site no less than 24 hours in advance of the removal. The City also will provide oral and written notice to the Homeless Group no less than 24 hours in advance of the removal.

C. **Training and Procedure.** The City will provide instruction on all new procedures contained in this Agreement, as appropriate.

XIII. **Dispute Resolution.**

The parties agree that the Court will not be asked to supervise the implementation of this Agreement or to enforce its terms until Plaintiffs’ counsel promptly notifies counsel for Defendants, in writing, of the specific grounds on which

non-compliance is alleged. Within seven days after receipt of the notice from Plaintiffs' counsel, Defendant's counsel shall notify Plaintiffs' counsel of Defendant's position and any action it has taken or intends to taken in connection therewith. The parties shall negotiate in good faith in an effort to resolve any remaining disputes. If such negotiations fail to resolve the disputes, Plaintiffs' counsel may pursue any and all remedies available at law, including seeking to enforce this Agreement by action in Court.

XIV. Dismissal of Lawsuit Subject to Right to Enforcement of Agreement.

Upon execution of the Agreement and receipt of the Payment, the Parties shall submit to the Court a mutually agreed-upon judgment entry of dismissal of the Lawsuit, identical in form to Exhibit A. The agreed-upon judgment entry shall ask the Court to retain jurisdiction to enforce this Agreement and any disputes that may arise hereunder. This Agreement recognizes that all homeless individuals in Akron are intended beneficiaries of the Agreement and that any homeless person may seek enforcement of this Agreement. Plaintiffs may seek enforcement of this Agreement on behalf of any homeless individual in the Akron area.


The Parties acknowledge their agreement by signing this Agreement on the date first set forth above.

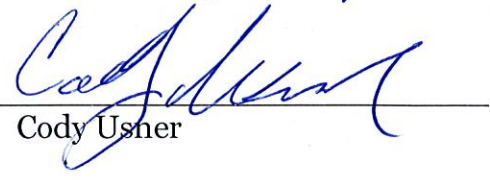
By: William Buker
William Buker

By: Nicole Gould
Nicole Gould


By: Carl Lynch
Carl Lynch

By: 
Patrick Moe

By: 
Melvin Thompson

By: 
Cody Usner

CITY OF AKRON

By:  DJS

Print: Eric Belfanu

Title: Director of Law