

AGREEMENT TO SETTLE ALL NON-EQUITABLE CLAIMS

COME NOW the undersigned parties by and through their respective legal counsel and, for good and valuable consideration, enter into this Agreement to settle all non-equitable claims in Case No. 4:15-cv-840-RWS, Kellen Powell v. City of St. Ann, now pending in the U.S. District Court, Eastern District of Missouri (the "Lawsuit").

WHEREAS the named Plaintiff Kellen Powell filed the Lawsuit related to time spent in the custody of the City of St. Ann, Missouri, after an arrest for traffic offenses, alleging that the City had a policy which unlawfully kept him in the custody of the City because he could not afford to post a cash bond pursuant to an established schedule; and

WHEREAS the City of St. Ann denies such allegations and any liability for the claims raised herein; and

WHEREAS, the parties enter into this Agreement and a separate agreement concerning the equitable claims for declaratory and injunctive relief to resolve this case efficiently,

NOW, THEREFORE, the parties agree to the following:

1. The parties have addressed all claims for declaratory and injunctive relief as set out in their separate agreement. The City of St. Ann agrees to pay named Plaintiff Kellen Powell the sum of \$10,000.00 as a "Class Representative Fee." The City will make the foregoing payment to Kellen Powell within 30 days after the date on which this Agreement has been signed by all parties. Plaintiff Kellen Powell and his undersigned attorneys, ArchCity Defenders and Equal Justice Under Law, hereby waive claims for attorney's fees to the extent described in the aforesaid separate agreement regarding equitable claims.

2. The City of St. Ann does not, in making or performing this Agreement, concede or admit liability for any claim or allegation made in the Lawsuit.

3. The named Plaintiff agrees to the dismissal of all non-equitable claims with prejudice subject only to the continuing jurisdiction of the Court to enforce this Agreement and to resolve the equitable claims. The named Plaintiff agrees that his heirs, personal representatives, successors, and assigns shall be bound by this Agreement and have the same obligations and rights with respect to the terms of this Agreement. The named Plaintiff further agrees not to amend the Complaint in the Lawsuit with regard to non-equitable claims or to bring any other non-equitable action against the City of St. Ann for any relief which was or could have been sought in the Lawsuit.

/s/ Steven W. Garrett
Steven W. Garrett MBE 27756

/s/ Carl J. Lumley
Carl J. Lumley MBE 32869

Counsel for the City of St. Ann

/s/ Thomas B. Harvey
Thomas B. Harvey (MBE #61734)

/s/ Alec Karakatsanis
Alec Karakatsanis (E.D.Mo. Bar No. 999294DC)

Counsel for Kellen Powell

AGREEMENT TO SETTLE ALL EQUITABLE CLAIMS

COME NOW the undersigned parties and, for good and valuable consideration, enter into this Agreement regarding Case No. 4:15-cv-00840-RWS, Kellen Powell v. City of St. Ann, now pending in the U.S. District Court, Eastern District of Missouri (the "Lawsuit").

WHEREAS the named Plaintiff Kellen Powell filed the Lawsuit while he was in the custody of the City of St. Ann after an arrest for traffic offenses, alleging that the City had a policy which unlawfully kept him in the custody of the City because he could not afford to post a cash bond pursuant to an established schedule for each alleged offense; and

WHEREAS the City of St. Ann denies such allegations and any liability for the claims raised herein; and

WHEREAS, the Lawsuit is currently stayed to allow for settlement discussions; and

WHEREAS, the parties enter into this Agreement in an effort to resolve this case efficiently,

NOW, THEREFORE, the parties agree to the following:

1. The parties agree to seek, when and as needed, the continued stay of the Lawsuit for up to a period of one year as provided herein. The parties have entered into a separate agreement to resolve the non-equitable claims brought in the Lawsuit and agree to comply with that agreement. Plaintiff and the undersigned counsel, ArchCity Defenders and Equal Justice Under Law have agreed to waive all claims for attorney's fees incurred through the date of the signing of this Agreement unless the parties are forced to litigate the equitable claims raised in this lawsuit. Plaintiff and Plaintiff's counsel reserve the right seek recovery for any and all fees incurred prior to the signing of this agreement and for any and all work associated with further

negotiation or litigation of Plaintiff's claims in the Lawsuit should Defendant breach the agreement or should further adversarial litigation of this case become necessary.

2. The parties agree to the following Declaration of the law, and shall request its inclusion in the final judgment in the Lawsuit:

The use of a secured bail schedule to set the conditions for release of a person in custody after arrest for an offense that may be prosecuted by St. Ann implicates the protections of the Equal Protection Clause when such a schedule is applied to the indigent. No person may, consistent with the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, be held in custody after an arrest because the person is too poor to post a monetary bond. If the government generally offers prompt release from custody after arrest upon posting a bond pursuant to a schedule, it cannot deny prompt release from custody to a person because the person is financially incapable of posting such a bond. *See Pierce v. Velda City*, 4:15-cv-570-HEA (Doc. 16).

3. The named Plaintiff and his undersigned counsel agree to notify counsel for the City of St. Ann upon the discovery of any perceived breach of this agreement, or any future judgment which incorporates this agreement, to give the City of St. Ann a reasonable amount of time to cure such alleged breach. Defendant agrees that on a weekly basis its police chief shall certify to its city attorney as to compliance with the provisions of this Agreement regarding pretrial detentions. Defendant further agrees to report any breach of the agreement to Counsel for Plaintiffs and to take related corrective action as soon as practicable but such time shall not exceed four hours after the police chief, city administrator or city attorney of the City learns of the breach. Plaintiff agrees to seek relief from the Court for such alleged breach only after Defendant's failure to cure within a reasonable time. Upon such breach, the Plaintiff reserves the right to move to dissolve the stay and to seek the entry of the equitable relief sought in the Complaint.

4. The City of St. Ann agrees to abide by the following procedures for an initial period of one year, subject to provisions herein for early termination and subsequent incorporation into judgment unless and until otherwise ordered by the Court:

- a. Except as provided herein, the City of St. Ann and all of its officers, employees, and agents will not utilize secured money bail for persons in the custody of the City on arrest, either without a warrant or on the initial warrant issued, for any violation that may be prosecuted by the City.
- b. The City of St. Ann and all of its officers, employees, and agents will offer every person in the custody of the City on arrest, either without a warrant or on the initial warrant issued, for any violation that may be prosecuted by the City, release from the custody of the City on recognizance or on an unsecured bond as soon as practicable after booking, subject to the application of Section 67.315 RSMo regarding custody of intoxicated persons. The only exception to this provision is such persons as are brought before the court within 24 hours of arrest for potential imposition of conditions for release including the posting of secured money bond in cases involving intentionally assaultive or threatening conduct or for a determination that release must be denied to prevent danger to a victim, the community or any other person under applicable constitutional standards, provided that no person will be denied pretrial release because of their individual inability to make a monetary payment.¹ Persons who violate conditions of release shall be subject to such actions as determined by the court pursuant to applicable law without regard to any additional procedures set forth herein.
- c. The City of St. Ann will notify all arrestees in writing upon release of the time, date, and place at which they are required to appear in court, if any.
- d. The City of St. Ann will request the most recent address and contact information for any arrestees, and will update that information in any court file or record.
- e. The City will comply with the following principles for subsequent proceedings after the release of a person arrested without a warrant or on an initial warrant or after the issuance of a summons or citation for an offense that does not involve a custodial arrest:
 - i. If the person does not appear for a court hearing as required, the City will send a letter by first class mail notifying the person that they missed their court date and providing a new court date. The City may also attempt to contact the person by telephone or text message to inform or remind the person about their court date.

¹ For the purposes of this agreement, the term “secured” bond means a monetary sum that must be paid or posted as a precondition of release from custody. The term “recognizance” means a person’s release upon their promise to appear in court at a later date. The term “unsecured” bond does not require any up-front payment and is defined as a monetary sum that a person agrees to pay later if the person fails to appear as required without good cause.

- ii. If the person does not appear at the subsequent court date discussed in (i), the City's municipal court shall repeat the process set forth in (i) at least once and may, in its discretion, include in such communications a warning that a warrant may be issued for the person's arrest. The City will notify the person of the potential issuance of a warrant by first class mail and, in its discretion, by phone or text message. With such notification, the City will inform the person that they can avoid issuance of the warrant by appearing at the new court date as directed in the letter.
- iii. If after actions described in (ii) the person fails to appear at a subsequent proceeding, and the court has provided the warning regarding potential issuance of an arrest warrant, the City's municipal court may, in its discretion, issue a warrant and the City may arrest the person. Upon arrest, the City will release the person on unsecured bond with notice of a court date.
- iv. If after actions described in (i), (ii), and (iii) the person fails to appear at a subsequent proceeding, the City's municipal court may, in its discretion, issue a warrant and the City may arrest the person. Upon arrest, the City may detain the person in custody without bond for up to 24 hours so that the person may be brought before a judge for the consideration of their underlying case and, if further proceedings are necessary, for individualized consideration of detention or conditions of release, including secured money bond, provided that no person will be denied pretrial release because of their individual inability to make a monetary payment.
- v. At any time after any non-appearance, the City may take appropriate and lawful steps under state law to convert any unsecured bond into a money judgment.
- f. The City of St. Ann will not hold an arrestee in its custody for another municipality on charges prosecuted in a municipal court for more than 10 hours.
- g. St. Ann police will not impound a car owned by a person arrested on charges of violations of an ordinance so long as the arrestee designates a licensed driver who will immediately take possession of the car and remove it from the scene of arrest, unless such car is to be held for investigation or evidence.

5. The parties agree that, shortly after the claims and issues in this case were brought to the attention of the City of St. Ann, the City and its counsel acted quickly and responsibly with the Plaintiffs' counsel, without admitting any fault or liability, to put in place a system of post-arrest release that complies with the foregoing requirements, which Plaintiff agrees complies with the United States Constitution.

6. As indicated above, the parties currently agree that the foregoing procedures shall apply for a period of one year, to enable the parties to evaluate efficacy and fairness. However, each party reserves the right to provide notice to the other party that it believes modifications should be made to the foregoing procedures. If the parties cannot reach agreement upon such modifications within 60 days of such notice, then either party may provide notice of termination of this agreement, whereupon the named Plaintiff may seek to lift the stay in the Lawsuit and an immediate ruling on his Motion for Temporary Restraining Order and Preliminary Injunction and the City shall not oppose such request to lift the stay although it may proceed to fully litigate the merits of Plaintiff's claims. Unless a party provides such notice of termination on or before the completion of the one-year period (as it may be extended to complete any pending 60-day negotiation period), the parties agree to move the Court to issue an injunction requiring compliance with paragraphs 2, 3 and 4 (as modified if applicable) and in connection with such finalization of this settlement Plaintiff and the undersigned counsel ArchCity Defenders and Equal Justice Under Law will waive any and all claims for recovery of attorney's fees in the Lawsuit.

7. The parties agree to jointly support a continuing stay of the Lawsuit consistent with the foregoing provisions, and to work together in good faith to meet any concerns identified by the Court. If applicable under paragraph 6, the parties agree to submit a proposed judgment consistent herewith to the Court, on condition that if the Court is not willing to issue such judgment consistent herewith, then such proposal shall be void and they shall thereupon confer in good faith to attempt to address the Court's concerns while still effectuating the intent and approach of this Agreement. If the Court does not issue orders and judgment with the consent of

the parties after such additional efforts, then upon notice from either party to the other, this Agreement shall be void and the parties shall resume litigation of all claims and defenses herein.

<p><u>/s/ Steven Garrett.</u> Steven W. Garrett MBE 27756</p> <p><u>/s/ Carl Lumley</u> Carl J. Lumley MBE 32869</p> <p><i>Counsel for the City of St. Ann</i></p>	<p><u>/s/ Thomas B. Harvey</u> Thomas B. Harvey (MBE #61734)</p> <p><u>/s/ Alec Karakatsanis</u> Alec Karakatsanis (E.D.Mo. Bar No. 999294DC)</p> <p><i>Counsel for Kellen Powell</i></p>
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