

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

| | | |
|----------------------------------|---|-----------------------|
| JAMES HERNDON, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | |
| |) | |
| SHERIFF BUDDY NEIL |) | |
| WARREN, in his individual and |) | Civil Action File No: |
| official capacities, LIEUTENANT |) | 1:19-cv-05039-AT |
| COLONEL ROBERT QUIGLEY |) | |
| and DEPUTY GLENN DANIEL, |) | |
| in their individual and official |) | |
| capacities, |) | |
| |) | |
| Defendants. |) | |

SETTLEMENT AGREEMENT AND GENERAL RELEASE OF ALL CLAIMS

This document sets forth the terms and conditions of the Agreement and General Release (hereinafter "Agreement") by and between **James Herndon** (hereinafter "the Releasor") and Cobb County, Georgia (the "County"), Sheriff Neil Warren ("Sheriff Warren"), Lt. Colonel Robert Quigley ("Lt. Quigley"), and Public Information Officer Glenn Daniel ("P.I.O. Daniel") in their official and individual capacities. The term "Releasees" as used herein shall be defined as the County, and all of its departments, divisions, agencies, authorities, and affiliates and their past, present, and future officers, Constitutional officers (including Sheriff Warren), directors, employees (including employees of officers and Constitutional officers such as Lt. Quigley and P.I.O. Daniel), agents, elected and appointed persons, insurers, and attorneys, in their individual and official capacities, together with their predecessors, successors, and assigns, both jointly and severally.

WHEREAS, on November 19, 2019, Releasee instituted a Civil Action against Releasees which is currently pending in the United States District Court for the Northern District of Georgia, Atlanta Division, and is styled *James Herndon v. Sheriff Buddy Neil Warren, Lt. Colonel Robert Quigley, and Deputy Glenn Daniel in their official and individual capacities*, Civil Action No. 1:19-cv-05039-AT (hereinafter referred to as the "CIVIL ACTION") in which he alleges, among others, claims under the First Amendment against Releasees; and

WHEREAS, Releasees have asserted and continue to assert that there is no factual or legal basis for the allegations and claims in the CIVIL ACTION and denies any liability to Releasor on the basis of any claim, asserted or unasserted, in the CIVIL ACTION or otherwise; and

WHEREAS, Releasor and Releasees (collectively, the "PARTIES") desire to fully, finally, and forever resolve and settle all remaining issues between them, including but not limited

to the claims set forth in the CIVIL ACTION and certain other matters; and

WHEREAS, this Agreement shall not be deemed in any manner as an admission, finding, or indication for any purposes whatsoever that Releasees or any current or former County officials, officers, employees, and/or other agents acted contrary to the law or violated the rights of Releasor or any other person at any time.

NOW, THEREFORE, in exchange for good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the PARTIES agree as follows:

CONSIDERATION

1.

(a) In compromise and settlement of all of Releasor's Claims against Releasees. Releasees will provide consideration as follows:

(i) Releasees will pay and/or cause to be paid Seven-Hundred and Fifty 00/100 Dollars (\$750) in general damages to Releasor, with an additional Twenty-Nine Thousand 0/100 Dollars (\$29,000) in attorneys' fees, for a gross sum of Twenty-Nine Thousand and Seven-Hundred and Fifty 0/100 Dollars (\$29,750). This Settlement Payment will be in the form of one check made out to Gerald R. Weber, Jr. d/b/a/ Law Offices of Gerry, Weber, LLC and shall not be subject to withholdings and shall be reported on a Form 1099;

(ii) Releasees will unblock and restore access to blocked users as to the Facebook account operated at <https://www.facebook.com/neil.warren.58> and any other Facebook account operated by the Cobb County Sheriff's Office (hereinafter "Facebook Accounts"). However, the PARTIES acknowledge that Releasees cannot restore access to users who have been banned, blocked, or otherwise precluded from interacting with the Facebook Accounts by Facebook's application of its standards of conduct or by any action outside of Releasees control;

(1) The PARTIES recognize that the comment sections of the Facebook Accounts covered by this Agreement are either a limited public forum or a designated public forum. The PARTIES therefore agree that any user interacting with the Facebook Accounts in the comment sections will not have comments deleted or be banned from commenting or viewing publicly posted content based on his or her use of protected speech. The PARTIES further agree that Releasors will not delete any existing comment posted in the comments section of the Facebook Accounts or posted after the execution of this agreement based on the viewpoint expressed therein, nor will an individual be banned from posting based upon the viewpoint of the comments they post on the Facebook Accounts covered by this agreement.

end

(2) The PARTIES expressly acknowledge that a third party, Facebook, regulates the Facebook interface and imposes its own standard of conduct. As such, neither party is responsible for the banning, blocking, or restriction on protected speech imposed by Facebook itself. The PARTIES further acknowledge that the loss of data, including comment data, because of the actions of a third party, including Facebook, is out of the control of the PARTIES to this Agreement. The PARTIES agree that Releasors cannot breach this Agreement based upon a loss of content or data caused by the actions of Facebook or any other third party who is not in Releasor's control.

(b) The PARTIES agree that the Settlement Payment will be delivered within fifteen (15) business days following:

(i) Releasee's receipt of a fully executed original copy of this Agreement;

(ii) Releasee's receipt of notice from Releasor that his withdrawal of his CIVIL ACTION has been approved or that said CIVIL ACTION has been dismissed.

(c) The PARTIES further acknowledge, understand, and agree that the Settlement Payment is inclusive of all attorneys' fees, legal costs, and expenses, including but not limited to, all attorneys' fees, legal costs, and expenses incurred on Releasor's behalf by attorneys Gerry Weber, Jennifer Hickey, Craig Goodmark and the law firms: Law Offices of Gerry Weber, LLC, Law Office of Jennifer Hickey, LLC, and Goodmark Law Firm. Releasor agrees to indemnify and hold the Releasees harmless from any claims or demands by any other attorney, law firm, or legal representative for attorneys' fees, legal costs, and/or expenses incurred on Releasor's behalf in connection with the CIVIL ACTION .

(d) Releasor acknowledges, understands, and agrees that no representation has been made to him by the Releasees regarding the appropriate tax status and treatment of the payment(s) to be made under this Agreement and represents that he is not relying in any way upon the Releasees in this regard. Releasor agrees to pay all federal, state, and local taxes (in addition to any taxes which may be withheld and remitted as provided herein) which may be due on said payment(s). Releasor further agrees to indemnify and hold the Releasees harmless for any federal, state, or local taxes, including FICA, on said payment(s) in the event that the Internal Revenue Service, the Georgia Department of Revenue, or other taxing or governmental authority seeks such sums from the Releasees.

WAIVER AND RELEASE OF ALL CLAIMS

2.

(a) Releasor, for himself, his family, executors, administrators, trustees, estate, heirs, successors, and assigns, hereby fully and finally releases and discharges from all "Claims" each of the following: Releasees; affiliated boards, authorities, commissions, and other such entities; any company, firm, contractor, or other such entity that has provided or is currently providing

personnel to perform day-to-day services for Releasees; and the respective current and former officers, officials (whether elected or appointed), directors, employees, agents, employee benefit plans, insurers, and legal representatives, successors, or assigns of Releasees (including but not limited to Sheriff Warren, Lt. Quigley, and P.I.O. Daniel in their official and individual capacities) and every other entity described in this Section or in the preamble to this Agreement.

(b) For purposes of this Section 2(a) the term "Claims" includes any and all real or perceived claims, obligations, promises, demands, rights, damages, costs, losses, suits, actions, attorneys' fees and expenses of any nature whatsoever which Releasor may have, may have had, or may later claim to have had, against any of the Releasees as of the date he executes this Agreement that are related to the current allegations set forth in the CIVIL ACTION, for any injuries, including personal injuries, contractual damages, punitive, liquidated, or compensatory damages, losses and damage to personal property, or any other damages, losses or expenses of any kind (including attorneys' fees) directly or indirectly arising out of or relating to his interactions with Releasees that are set forth in the CIVIL ACTION. The term "Claims" also includes any and all losses arising out of the same nucleus of operative facts or allegations set forth in the CIVIL ACTION.

(c) Releasor certifies that he has the intention of releasing all Claims recited herein in exchange for the consideration described in Section 2 of this Agreement, which he acknowledges as adequate and satisfactory to him. In addition, Releasor acknowledges, understands, and agrees that the consideration described in Section 2 includes consideration over and above anything of value to which he is already entitled from Releasees.

(d) The wavier and release provisions of this Section 3 do not include any claims that may accrue after the date on which Releasor executes this Agreement.

**WITHDRAWAL OR DISMISSAL OF CIVIL ACTION
AND COVENANT NOT TO SUE**

3.

(a) Releasor authorizes the dismissal, with prejudice, of his CIVIL ACTION and will not attempt (or authorize an attempt) to re-initiate the claims for the facts or allegations set forth in the CIVIL ACTION, any claims which could have been set forth therein, or any claims which could have arisen therefrom. No later than three (3) days after the Settlement Amount has been delivered to the Law Offices of Gerry Weber, LLC, Releasor will fully execute and provide to counsel for Releasees the Stipulation of Voluntary Dismissal With Prejudice in the form attached hereto as Exhibit B.

ENTIRE AGREEMENT; MODIFICATION; SEVERABILITY; WARRANTIES

4.

(a) Releasor understands and acknowledges that this Agreement contains the entire understanding of the PARTIES with regard to the subject-matter hereof, that it supersedes any and

all prior written or oral agreements or understandings between Releasor and Releasees regarding such subject matter, and that there are no other agreements, understandings, representations, or warranties regarding such subject-matter not set forth or otherwise referenced or incorporated herein.

(b) The PARTIES agree to execute any other agreement, consent, release, waiver, or other document or form determined to be necessary to enforce or give effect to the intent of this Agreement or any provision hereof.

(c) The PARTIES acknowledge, understand, and agree that this Agreement may not be modified or canceled in any manner, nor may any provision of it or any legal or equitable remedy with respect to it be waived, except in writing signed by both PARTIES.

(d) The PARTIES acknowledge, understand, and agree (i) that the terms, conditions, restrictions, limitations, and obligations set forth in the various paragraphs, sections, and provisions of this Agreement are intended to be, and shall be considered and construed as, separate and independent; (ii) that to the extent any such term, condition, restriction, limitation, obligation, paragraph, section, or provision (or any part or portion thereof) is determined to be invalid, void, or unenforceable by any court, arbitrator, or other authority having jurisdiction in the matter, it shall be considered deleted herefrom; and (iii) that any such determination shall not render invalid, void, or unenforceable any other term, condition, restriction, limitation, obligation, paragraph, section, or provision of this Agreement.

(e) Releasor represents and warrants that he alone is entitled to assert any Claims (as defined in Section 3) against Releasees, and that he has not assigned or transferred, whether voluntarily or involuntarily, or attempted to assign or transfer, any such Claims to any trustee, guardian, administrator, representative, or other person or entity. Releasor further represents and warrants that he is fully authorized to enter into this Agreement and agrees to indemnify and hold Releasees harmless in the event any other person is determined to have the right or authority to assert any Claim on Releasor's behalf against Releasees, and further agrees to indemnify and hold Releasees harmless from any costs, expenses or damages sustained by reason of any such Claim.

SUCCESSORS AND ASSIGNS

5.

This Agreement shall be binding upon the Releasor and the Releasor's heirs, executors, administrators, assigns, successors, beneficiaries, employees, and agents and shall inure to the benefit of the Releasees and their predecessors, successors, and assigns.

NON-ADMISSION

6.

The Releasor acknowledges that the payment set forth herein does not constitute any admission of liability on the part of the Releasees, by whom liability is expressly denied. This Agreement shall not be deemed an admission of liability or a violation of any law, rule, regulation,



or order of any kind.

CONSTRUCTION AND EXECUTION

7.

(a) No provision of this Agreement is inferred or shall be interpreted or applied so as to preclude the PARTIES from complying with any federal, state, or local law, rule, or regulation.


(b) The PARTIES acknowledge that it is their intent that this Agreement be interpreted, construed, and enforced according to the laws of the State of Georgia and federal law, as appropriate, and that it be interpreted and construed as if drafted by both PARTIES such that no rule of strict construction shall apply.

(c) Headings contained in this Agreement are inserted for convenience and ease of reference only, shall not be deemed to be a part of this Agreement for any purpose, and shall not in any way define or affect the meaning, construction, or scope of any of the terms or conditions hereof.

(d) The PARTIES agree that this Agreement may be executed in separate counterparts and that each counterpart shall be deemed an original with the same effect as if all PARTIES had signed the original document.

RELEASOR REPRESENTS, WARRANTS, AND REAFFIRMS THAT HE HAS CAREFULLY READ AND FULLY UNDERSTANDS THE PROVISIONS OF THIS AGREEMENT, INCLUDING THE WAIVER AND RELEASE OF CLAIMS AGAINST RELEASEES; THAT HE HAS ENTERED INTO THIS AGREEMENT KNOWINGLY AND VOLUNTARILY AS AN ACT OF HIS OWN FREE WILL AND HAS NOT RELIED UPON ANY OTHER REPRESENTATIONS OR STATEMENTS, WRITTEN OR ORAL, FROM THE CITY OR ANY OF THE OTHER RELEASEES; AND THAT HE HAS HAD SUFFICIENT TIME AND OPPORTUNITY TO CONSULT.


THE RELEASOR


James Herndon

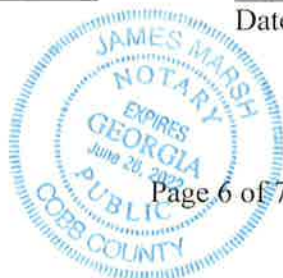
01/24/2020
Date

Sworn to and subscribed
before me this 24th day

RELEASEES


Sheriff Neil Warren or
Defendants' Authorized Agent

1/30/2020
Date



of January, 2020.

James Marsh
Notary Public

My Commission Expires:

06/26/2022



md

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

JAMES HERNDON,)
)
Plaintiff,)
)
v.)
)
SHERIFF BUDDY NEIL)
WARREN, in his individual and)
official capacities, LIEUTENANT)
COLONEL ROBERT QUIGLEY)
and DEPUTY GLENN DANIEL,)
in their individual and official)
capacities,)
)
Defendants.)

Civil Action File No:
1:19-cv-05039-AT

STIPULATION OF DISMISSAL WITH PREJUDICE

The parties to the above-entitled matter, by and through their undersigned counsel, and, pursuant to Federal Rule of Civil Procedure 41(a)(1)(ii), hereby dismiss the above-styled civil action with prejudice, each party to pay its own fees, expenses, and costs.

Respectfully submitted this ____ day of January, 2020.

/s/ Gerald R. Weber
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