

SETTLEMENT AGREEMENT

This SETTLEMENT AGREEMENT (“the Agreement”), is entered into as of October 18, 2017 (“Effective Date”), by and between John David Emerson (“Emerson”) and Timothy Leslie, in his official capacity as Dakota County Sheriff (the “Sheriff”) (collectively, the “Parties”).

WHEREAS, Emerson has commenced an action in Dakota County District Court captioned *John David Emerson v. Timothy Leslie, Dakota County Sheriff*, Court File No. 19HA-CV-17-1586 (the “Action”);

WHEREAS, Emerson alleges in the Action, among other things, that the Sheriff’s enforcement of Minn. Stat. § 299C.105, subs. 1(a)(1) and (3) violates Article 1, Section 10, of the Minnesota Constitution as to the collection of DNA samples from persons who have appeared in court and had a judicial probable cause determination on a qualifying charge;

WHEREAS, the Sheriff denies the material allegations made by Emerson in the Action; and

WHEREAS, the Parties now wish to resolve all disputes and claims between them related to the Action, as described in this Agreement, and avoid the costs and uncertainty of further litigation;

NOW, THEREFORE, in consideration of the foregoing premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Cease Enforcement of Minn. Stat. § 299C.105, subs. 1(a)(1), (3): The Sheriff agrees that, as of the Effective Date, he and all persons acting under his command, direction, supervision, or control, or acting or purporting to act on his behalf or in active concert or participation with him will cease taking or causing to be taken biological specimens pursuant to Minn. Stat. § 299C.105, subs., 1(a)(1) and (3) for the purpose of DNA analysis (“DNA samples”).

2. Destruction of Samples: The Sheriff agrees to destroy or cause to be destroyed all DNA samples he and all officers and other persons acting under his command, direction, supervision, or control have collected pursuant to Minn. Stat. § 299C.105, subs. 1(a)(1) and (3), and to give to Emerson’s counsel within 30 days after the Effective Date a confirming affidavit in the form attached as **Exhibit A**; provided, however, that: (1) the Sheriff need not destroy or cause to be destroyed DNA samples collected from any person who has been convicted in a final judgment of a qualifying offense under Minn. Stat. § 609.117, subd. 1; and (2) the Sheriff need not destroy or cause to be destroyed DNA samples or the data resulting from analysis collected from any person if such samples have been analyzed by the Minnesota Bureau of Criminal Apprehension as of the Effective Date, unless the person is found not guilty of a qualifying offense under Minn. Stat. § 609.117, subd. 1 or the charge(s) against the person is dismissed.

3. Permanent Injunction: The Sheriff agrees to instruct his counsel to immediately execute and file in the form attached hereto as **Exhibit B** a stipulation for the entry of a permanent injunction in the form attached hereto as **Exhibit C**.

4. Dismissal of Action: The Parties agree to instruct their respective counsel to execute and file, within 5 business days after Emerson's counsel receives the affidavit described in Paragraph 2, a stipulation for dismissal of the Action with prejudice and on the merits, in the form attached hereto as **Exhibit D**. Each of the Parties agrees to bear his own attorneys' fees, costs, and other expenses.

6. Governing Law, Jurisdiction, and Venue: This Agreement shall be interpreted and enforced under the substantive laws of Minnesota. The Parties agree that any proceedings to enforce or construe this Agreement must be brought in the Dakota County District Court, and each of the Parties consents to the personal jurisdiction of that Court for the purpose of all such proceedings.

7. Representations and Warranties:

a. Warranty of Authority: Each Party warrants and represents that he has the capacity and authority to enter into this Agreement and that he is not prohibited from undertaking the obligations in this Agreement.

b. Consents: Each Party warrants and represents that, to the extent he is required to obtain consent from any third party to enter into or perform the obligations imposed by this Agreement, he has obtained all such consents

8. Miscellaneous Provisions:

a. Amendment: This Agreement may be modified or amended only by an instrument in writing duly executed by all Parties.

b. Entire Agreement: This Agreement constitutes the complete agreement between the Parties with respect to the subject matter hereof and supersedes any and all prior communications, whether written or oral. Neither Party has entered into this Agreement in reliance on any representation made by the other Party other than as expressly provided herein.

c. No Waiver: The failure of either Party to insist upon strict performance of any obligation under this Agreement, irrespective of the length of time for which such failure continues, shall not waive that Party's rights to demand strict compliance in the future.

d. Joint Drafting: Counsel for both Parties participated in the negotiation and drafting of this Agreement. This Agreement may not be construed either for or against any Party based on the authorship of any particular term or provision.

e. Counterparts: This Agreement may be executed by facsimile or electronic signature in any number of counterparts, each of which shall be deemed an original and all of which will constitute one and the same instrument.

f. Headings: The headings used in this Agreement are for convenience only and shall not be used to interpret this Agreement.

g. Successors: This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, successors, assigns, agents, and legal representatives.

h. Non-Admission of Liability: By entering into this Agreement, no Party admits any liability to any other Party.

Date: October 18, 2017



John David Emerson

Date: October ____, 2017



Timothy Leslie, in his official capacity as
Dakota County Sheriff

EXHIBIT A

Affidavit Confirming Destruction of DNA Samples

EXHIBIT A

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF DAKOTA

FIRST JUDICIAL DISTRICT

John David Emerson,

Court File No.: 19HA-CV-17-1586

Plaintiff,

Case Type: OTHER CIVIL

vs.

Timothy Leslie,
Dakota County Sheriff,

**AFFIDAVIT CONFIRMING
DESTRUCTION OF DNA SAMPLES**

Defendant.

STATE OF MINNESOTA)

) ss.

COUNTY OF DAKOTA)

Timothy Leslie, being first duly sworn upon oath deposes and states as follows:

1. My name is Timothy Leslie and I am Sheriff of Dakota County. I submit this affidavit pursuant to Paragraph 2 of the Settlement Agreement between the parties to this action. I have personal knowledge of the facts set forth in this affidavit.

2. The Dakota County Sheriff's Office has destroyed or caused to be destroyed all DNA samples that were collected pursuant to Minn. Stat. § 299C.105, subds. 1(a)(1) and (3), except for: (1) DNA samples that were collected from a person who was convicted in a final judgment of a qualifying offense under Minn. Stat. § 609.117, subd. 1; and (2) DNA samples that were analyzed by the Minnesota Bureau of Criminal Apprehension as of October 18, 2017, unless the person from whom the sample

was collected was found not guilty of a qualifying offense under Minn. Stat. § 609.117, subd. 1 or the charges were dismissed.

FURTHER YOUR AFFIANT SAYETH NOT.

Timothy Leslie

Subscribed and sworn to before me
this _____ day of _____, 2017.

Notary Public

EXHIBIT B

Stipulation For Entry of Permanent Injunction

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF DAKOTA

FIRST JUDICIAL DISTRICT

John David Emerson,

Court File No.: 19HA-CV-17-1586

Plaintiff,

Case Type: OTHER CIVIL

vs.

**STIPULATION FOR ENTRY OF
PERMANENT INJUNCTION**

Timothy Leslie,
Dakota County Sheriff,

Defendant.

Plaintiff John David Emerson (“Emerson”) and Defendant Timothy Leslie, in his official capacity as Dakota County Sheriff (“the Sheriff”), by and through their undersigned counsel, hereby **STIPULATE AND AGREE** that:

1. On October 18, 2017, the parties entered into a Settlement Agreement to resolve this action.
2. Pursuant to the Settlement Agreement, the Sheriff consents to entry of a permanent injunction in the form attached hereto as Exhibit C.

Dated: October __, 2017

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-and-

**AMERICAN CIVIL LIBERTIES UNION
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*Attorney for Defendant Timothy Leslie, Dakota
County Sheriff*

US.114664272.01

EXHIBIT C

Proposed Order Granting Permanent Injunction

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF DAKOTA

FIRST JUDICIAL DISTRICT

John David Emerson,

Court File No.: 19HA-CV-17-1586

Plaintiff,

Case Type: OTHER CIVIL

vs.

[PROPOSED] ORDER

Timothy Leslie,
Dakota County Sheriff,

Defendant.

PERMANENT INJUNCTION

Pursuant to the Stipulation of the parties, Plaintiff John David Emerson (“Emerson”) and Defendant Timothy Leslie, in his official capacity as Dakota County Sheriff (“the Sheriff”),

IT IS HEREBY ORDERED THAT:

1. Subject only to the following paragraph of this Injunction, the Sheriff, and all persons acting under his command, direction, supervision, or control, or acting or purporting to act on his behalf or in active concert or participation with him, are hereby **PERMANENTLY ENJOINED AND RESTRAINED** from taking or causing to be taken biological specimens pursuant to Minn. Stat. § 299C.105, subds. 1(a)(1) and (3) for the purpose of DNA analysis (“DNA samples”) from persons who appeared in court and have had a judicial probable cause determination on a qualifying charge.

2. The Sheriff may resume collection of DNA samples pursuant to Minn. Stat. § 299C.105, subds. 1(a)(1) and (3) without violating this Injunction only if:

a. in litigation other than the above-captioned action, a Minnesota appellate court holds in a final judgment that Minn. Stat. § 299C.105, subds. 1(a)(1) and (3) do not violate Article 1, Section 10, of the Minnesota Constitution;

or

b. after the date of this Injunction, Minnesota enacts legislation amending or re-enacting Minn. Stat. § 299C.105, subds. 1(a)(1) and (3); provided, however, that nothing in this Injunction is intended to prevent, or determine the result of, any challenge by Emerson or others to such legislation.

3. This Court shall retain jurisdiction of this action to the extent necessary to enforce this Injunction and to enforce or interpret the parties' Settlement Agreement in this action.

Dated: October __, 2017

BY THE COURT:

EXHIBIT D

Stipulation for Dismissal With Prejudice

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF DAKOTA

FIRST JUDICIAL DISTRICT

John David Emerson,

Court File No.: 19HA-CV-17-1586

Plaintiff,

Case Type: OTHER CIVIL

vs.

**STIPULATION FOR DISMISSAL
WITH PREJUDICE**

Timothy Leslie,
Dakota County Sheriff,

Defendant.

Plaintiff John David Emerson (“Emerson”) and Defendant Timothy Leslie, in his official capacity as Dakota County Sheriff (“the Sheriff”), by and through their undersigned counsel, **HEREBY STIPULATE AND AGREE**, that the above-entitled action may be, and hereby is, dismissed with prejudice and on the merits pursuant to Minn. R. Civ. P. 41.01, and without costs or fees to any party.

Dated: October __, 2017

FAEGRE BAKER DANIELS LLP

/s/

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