

SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS

KNOW ALL MEN BY THESE PRESENTS:

That the undersigned, JESSE KATZ, (hereinafter "Releasor") for the sole consideration of the total sum of FIFTEEN THOUSAND DOLLARS (\$15,000.00), the distribution of the attached Training Bulletin as training for officers of the Barstow Police Department, and the meeting with the Chief of the Barstow Police Department, does hereby and for his heirs, executors, administrators, successors and assigns, release, acquit and forever discharge the CITY OF BARSTOW and its officers, officials, employees, agents, representatives, predecessors, successors in interest, assigns, heirs, executors, administrators, parent and subsidiary organizations, affiliates, members, servants, directors, officers, attorneys, and employees, past, present, or future (hereinafter "Releasees"), of and from any and all claims, actions, causes of action, demands, rights, damages, costs, loss of services, expenses and compensation whatsoever, which the Releasor now has or which may hereafter accrue on account of or in any way growing out of any and all known and unknown, foreseen and unforeseen bodily and personal injuries and the consequences thereof resulting from the incident(s) which occurred between or about January 7, 2014 and November 17, 2014 that were the subject of and from which the Claim for Money or Damages (hereinafter "Claim") that was presented to the City of Barstow on November 24, 2014, on the following terms and conditions:

1. **Conditions Precedent to Payment of Consideration for Release:** Releasor expressly acknowledges that the Releasees rely upon the following representations in paying the consideration set forth above, and that all of the following must occur before the consideration will be paid, the occurrence of which is regarded as conditions precedent to the settlement:
 - a. Releasor shall sign this Release, cause to have it signed by Releasor's attorney, and deliver the original to the designated representative for the Releasees; and,
 - b. Releasor shall cause Releasor's attorney to fully execute a W-9 form, and deliver the original to the designated representative for the Releasees.
2. **Settlement Check:** The Releasor directs that the settlement check in payment of the consideration for this Release shall be drawn as payable to "ACLU Foundation of Southern California Attorney Client Trust Account" and that delivery by mail of the settlement check to the Releasor's attorney, distribution of the Training Bulletin to officers of the Barstow Police Department, and the occurrence of a meeting between Releasor and the Chief of the Barstow Police Department, satisfies all obligations of Releasees.
3. **Training Bulletin:** Releasee shall distribute the attached Training Bulletin governing "Demanding Identification" as training for officers of the Barstow Police Department. The content of the Training Bulletin is set forth at Attachment A. The Training Bulletin shall be distributed no later than 90 days from the Effective Date of this agreement and shall be distributed to all officers of the Barstow Police Department. The Training Bulletin will remain valid until revoked. If the Training Bulletin is modified or revoked within one (1) year of the Effective Date of this agreement, Releasees will notify counsel for Releasors of the modifications or the fact that the Training Bulletin has been revoked within 30 days of the change. While it is valid, the Training Bulletin will be available to Barstow Police Department officers.

4. **Meeting with Police Chief:** No later than 90 days from the effective date of this Release, Releasor shall meet with the Chief of the Barstow Police Department to discuss the incident(s) which occurred between or about January 7, 2014 and November 17, 2014 and from which the Claim was presented to the City of Barstow on November 24, 2014. If Releasor fails to meet with the Chief of the Barstow Police Department no later than 90 days from the effective date of this Release, Releasees shall have no further obligation to meet with Releasor. Should Releasor seek to expunge Releasor's record which arose out of the incident(s) which occurred between or about January 7, 2014 and November 17, 2014 and from which the Claim was presented to the City of Barstow on November 24, 2014, the Releasees shall not hamper, delay or oppose Releasor's efforts to expunge Releasor's record and, if requested by the Court, Releasees shall provide documentation stating that Releasees do not oppose expungement.
5. **Disputed Claim:** It is understood and agreed that this settlement is the compromise of a disputed claim, and that the payment made is not to be construed as an admission of liability on the part of the party or parties hereby released, and that said Releasees deny liability therefor and intend merely to avoid litigation and buy their peace.
6. **General Release Waiver:** It is further understood and agreed that all rights under Section 1542 of the *Civil Code* of California and any similar law of any state or territory of the United States are hereby expressly waived. Said section reads as follows:

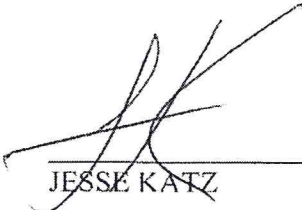
"1542. General release; extent. A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with debtor."
7. **Uncertain Possible Permanent and Progressive Injuries:** The Releasor hereby declares and represents that the injuries sustained are or may be permanent and progressive and that recovery therefrom is uncertain and indefinite and in making this Release it is understood and agreed, that the Releasor relies wholly upon the Releasor's own judgment, belief and knowledge of the nature, extent, affect and duration of said injuries and liability therefor and is made without reliance upon any statement or representation of the party or parties hereby released or their representatives or by any physician or surgeon by them employed.
8. **No Reliance on Representations of Releasees:** The Releasor acknowledges that in executing this Release, the Releasor does not rely and has not relied on any representation, statement, promise or inducement made by the Releasees or any other party or by any of the Releasees' agents, attorneys or representatives with regard to the subject matter, basis or effect of this Release or otherwise, other than those specifically stated in this Release.

9. **No Other Actions:** The Releasor represents that, except for the Claim, Releasor has not filed any complaints, claims or actions against the Releasees for the incident(s) described in the Claim which occurred between or about January 7, 2014 and November 17, 2014 and that, if any agency or court assumes jurisdiction of any complaint, claim or action against the Releasees for the incident(s) described in the Claim which occurred between or about January 7, 2014 and November 17, 2014 on behalf of the Releasor, Releasor will direct that agency or court to withdraw from or dismiss the matter with prejudice.
9. **Voluntary Arms Length Negotiations:** The Releasor acknowledges and agrees that this Release is voluntarily entered into and that, as of the date of execution of the Release, there is no confidential or fiduciary relationship existing between Releasor and Releasees as defined under the laws of the State of California. The Releasor specifically acknowledges that neither the Releasor nor the Releasees has ever offered legal advice to the other, nor has the Releasor relied on the Releasees for advice, and that their relationship as of the date of the execution of this Release is purely adversarial.
11. **Advice of Attorney:** Releasor warrants and represents that in executing this Release, he has relied upon the legal advice from the attorney of his choice; that the terms of this Release have been read and its consequences have been completely explained to him by that attorney; and that he fully understands the terms and conditions of this Release.
12. **Medical Liens to be Satisfied by Releasor/Hold Harmless Agreement:** The Releasor and Attorneys for Releasor specifically represent and warrant that there are no claims by any insurance company, including but not limited to any claim by any governmental entity, including but not limited to Medi-Cal, Medicare or Medicaid, which have paid, or may in the future pay accident, medical or health benefits for the Releasor arising out of the incident or claiming to be in any way entitled to a lien upon or interest in the proceeds of this compromise agreement. Releasor acknowledges that Releasee is relying upon the representations made in this regard. If there are any liens of any kind, Releasor agrees to extinguish such liens from the proceeds of the settlement. In consideration of the sums paid by the Releasees, the Releasor covenants and agree that he will indemnify and hold harmless the Releasees from and against any and all claims, demands, actions or causes of action asserted by any person, entity, firm or corporation arising out of the incident referred to herein, or claiming to be in any way entitled to a lien or interest in the proceeds of this compromise agreement, including any liens or claims asserted by hospitals or medical care providers. This indemnity agreement shall also include all reasonable attorney's fees, costs and expenses incurred by the Releasees in defending such a claim and in asserting a claim against the Releasor for indemnity pursuant to this paragraph.

13. **Consideration Paid on Behalf of Releasees Includes Future Medical Care Costs:** The consideration paid on behalf of Releasees as part of this settlement includes reliance on a representation by Releasor that there are no future medical care costs for the incident(s) described in the Claim which occurred between or about January 7, 2014 and November 17, 2014 that may be Medi-Cal Medicare and/or Medicaid eligible. The Releasor acknowledges that he is solely responsible for his future medical care costs, and that the consideration paid on behalf of Releasees identified above is intended to insure that Releasor has funds for future medical care for the incident(s) described in the Claim which occurred between or about January 7, 2014 and November 17, 2014 which are primary to any Medi-Cal and/or Medicare obligation consistent with applicable law.
14. **Entire Agreement:** This Release is the complete understanding between the Releasor and Releasees, and the Releasor is not relying on any statement other than the provisions of this Release. No other promises or agreements shall be binding unless in a writing signed by the Releasees. This Release cancels any prior agreement between the parties. The Releasor further declares and represents that no promise, inducement or agreement not herein expressed has been made to the Releasor, and that this Release contains the entire agreement between the parties hereto, and that the terms of this Release are contractual and not mere recital.
15. **Attorney's Fees:** The Parties agree to bear their own costs and attorneys' fees incurred in connection with all matters resolved by this Release, whether or not incurred as of the date of this Release.
16. **Counterparts:** This Release may be executed in counterparts and/or by facsimile or other electronic means, and when each party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, together with other signed counterpart(s), shall constitute one Release which shall be binding upon and effective as to all parties to this Release.

THE UNDERSIGNED HAS READ THE FOREGOING RELEASE AND FULLY UNDERSTANDS IT.

DATED: 5/14/, 2015

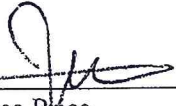


JESSE KATZ

Approved as to Form and Content:

DATED: May 20, 2015

ACLU FOUNDATION OF SOUTHERN
CALIFORNIA

By: 
Jessica Price
Attorneys for Releasor/Claimant,
ROBERT ADAM KATZ
Jesse JP

DATED: _____, 2015

Charles C. Mitchell, City Manager
CITY OF BARSTOW

DATED: _____, 2015

FERGUSON, PRAET & SHERMAN, APC

By: _____
Peter J. Ferguson
Attorneys for Releasees
CITY OF BARSTOW

Approved as to Form and Content:

DATED: _____, 2015

ACLU FOUNDATION OF SOUTHERN
CALIFORNIA

By: _____

Jessica Price
Attorneys for Releasor/Claimant,
ROBERT ADAM KATZ

DATED: 5/15, 2015

Charles C. Mitchell
Charles C. Mitchell, City Manager
CITY OF BARSTOW

DATED: _____, 2015

FERGUSON, PRAET & SHERMAN, APC

By: _____

Peter J. Ferguson
Attorneys for Releasees
CITY OF BARSTOW

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By: _____

Jessica Price
Attorneys for Releasor/Claimant,
ROBERT ADAM KATZ

DATED: _____, 2015

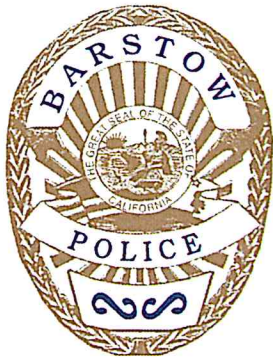
Charles C. Mitchell, City Manager
CITY OF BARSTOW

DATED: 5/15, 2015

FERGUSON, PRAET & SHERMAN, APC

By: _____

Peter J. Ferguson
Peter J. Ferguson
Attorneys for Releasees
CITY OF BARSTOW



BARSTOW POLICE DEPARTMENT

ALBERT S. RAMIREZ JR., CHIEF OF POLICE

220 E. Mountain View St., Barstow, CA 92311-2889

(760) 255-5111 * Fax (760) 256-2215

TRAINING BULLETIN

The purpose of this training bulletin is to identify when a police officer may demand a person identify himself. As discussed below: (i) a person who is subject to a police contact or lawful detention in a non-vehicular situation is **not** required to identify himself; (ii) the driver of a lawfully stopped vehicle **is** required to identify himself; and (iii) the passenger in a lawfully stopped vehicle is **not** required to identify himself.

Contrary to a not uncommonly held belief that law enforcement contacts with private citizens require some articulable reason to be lawful, it is a general rule that any peace officer may approach any person in public, or anywhere else the officer has a legal right to be, and engage that person in conversation. (*Wilson v. Superior Court* (1983) 34 Cal.3rd 777.)

No probable cause or even a reasonable suspicion is needed.

The law does not prohibit an officer from approaching any person in a public place and engaging that person in uncoerced conversation. (*People v. Divito* (1984) 152 Cal.App.3rd 11, 14; *Florida v. Royer* (1983) 460 U.S. 491 [75 L.Ed.2nd 229].)

"(L)aw enforcement officers do not violate the **Fourth Amendment** by merely approaching an individual on the street or in another public place, by asking him if he is willing to answer some questions, (or) by putting questions to him if the person is willing to listen." (*Florida v. Royer*, *supra*, at p. 497 [75 L.Ed.2nd at p. 236].)

But: The person contacted is free to leave and need not respond to an officer's inquiries.

A person need not identify himself, nor even talk to a police officer (*Kolender v. Lawson* (1983) 461 U.S. 352 [75 L.Ed.2nd 903]; *Brown v. Texas* (1979) 443 U.S. 47, 52 [61 L.Ed.2nd 357].). **Even during a lawful detention, members of the public are under no duty to answer questions, answers may not be compelled, and refusal to answer furnishes no basis for an arrest.** (*Carey v. Nev. Gaming Control Bd.*, 279 F.3d 873, 881-82 (9th Cir. 2002).)

The **Fourth Amendment** is not violated by asking a detained individual for identification, at least so long as the detention is not unnecessarily prolonged in the process. (*People v. Vibanco* (2007) 151 Cal.App.4th 1, 13-14.) The courts have held a peace officer may "demand" that a detained person properly identify himself. (*United States v. Christian* (9th Cir. 2004) 356 F.3rd 1103.) However, this does not mean that the person is required to answer.

A passenger in a lawfully stopped vehicle may be "asked" for his identification. (*United States v. Diaz-Castaneda* (9th Cir. 2007) 494 F.3rd 1146, 1152-1153.) However, this does not mean that the person is required to answer.

Under California law, a detained suspect cannot be forced to identify himself, or be subject to arrest for refusing to do so.

While the United States Supreme Court ruled in *Hiibel v. Sixth Judicial District Court of Nevada* (2004) 542 U.S. 177 [159 L.Ed.2nd 292], that a state could constitutionally make it a misdemeanor to refuse to identify oneself when lawfully detained in a non-vehicular situation (as Nevada has), **California does not have such a specific statute.**

When an officer has already made a custodial arrest on other grounds, an arrestee's refusal to identify himself can serve to resist, delay and/or obstruct a police officer in the discharge of his duties in violation of P.C. § 148. See *People v. Quiroga* (1993) 16 Cal.App.4th 961, upholding a P.C. § 148 conviction for an *arrestee* who refused to identify himself during the booking process, and *People v. Christopher* (2006) 137 Cal.App.4th 418, where giving a false name when arrested for shoplifting was held to be a violation of P.C. § 148.

To confirm: (i) a person who is subject to a police contact or lawful detention in a non-vehicular situation is **not** required to identify himself; (ii) the driver of a lawfully stopped vehicle is required to identify himself; and (iii) the passenger in a lawfully stopped vehicle is **not** required to identify himself.