

**SETTLEMENT AGREEMENT BETWEEN
THE UNITED STATES OF AMERICA AND
THE CITY OF NEW ALBANY, INDIANA
ON BEHALF OF ITS POLICE DEPARTMENT
AND MERIT COMMISSION
DJ 205-26S-25**

1. This settlement agreement ("Agreement") is entered into between the United States of America and the City of New Albany, Indiana on behalf of its Police Department and Merit Commission (collectively, "the Parties").
2. This Agreement resolves a Complaint filed by the United States against the City of New Albany and its Police Department and Merit Commission (collectively, "New Albany") under Title I of the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. §§ 12111–12117, and its implementing regulation, 29 C.F.R. Part 1630, in the United States District Court for the Southern District of Indiana, United States v. City of New Albany, No. 4:17-cv-185 (hereinafter "Civil Action").
3. The Parties agree that it is in their best interest, and the United States believes that it is in the public interest, to voluntarily enter into this Agreement, as follows:

I. Background

4. New Albany is a person within the meaning of 42 U.S.C. § 12111(7) and 42 U.S.C. § 2000e(a), an employer within the meaning of 42 U.S.C. § 12111(5), and a covered entity within the meaning of 42 U.S.C. § 12111(2) and 29 C.F.R. § 1630.2.
5. Title I of the ADA requires an employer to keep employees' medical information confidential when the employer obtained such information through employment-related medical examinations and inquiries. 42 U.S.C. § 12112(d)(4)(C), (d)(3)(B); 29 C.F.R. § 1630.14(c)(1).
6. This matter was initiated by a charge filed by Complainant with the Equal Employment Opportunity Commission ("EEOC"), alleging that his confidential medical information,

including details about his disability, medications, and treatment, had been released to the public and press in violation of 42 U.S.C. § 12112 and 29 C.F.R. § 1630.14.

7. The EEOC investigated the charge and found reasonable cause to believe that the New Albany Police Department and Merit Commission violated the ADA as alleged in the Complainant's EEOC charge. After the EEOC's attempts at conciliation failed, the EEOC referred the charge to the United States Department of Justice.
8. Based on the United States' investigation, the United States alleges in the Civil Action that New Albany, through its Police Department and Merit Commission, violated Title I of the ADA by disclosing to the public and press Complainant's confidential medical information, which New Albany had obtained through employment-related medical examinations and inquiries. The United States' investigation and findings are limited to the actions of the New Albany Police Department and Merit Commission.
9. New Albany has fully cooperated with the investigation.

II. Injunctive Relief

10. General Nondiscrimination Obligation: New Albany, by and through its Police Department and Merit Commission officials, agents, legal representatives, employees, and contractors (collectively, "applicable Police Department and Merit Commission employees"), shall not engage in any act or practice that discriminates against any employee or applicant for employment on the basis of disability in violation of Title I of the ADA and its implementing regulation.
11. Written Policies, Practices, and Procedures: The New Albany Police Department and Merit Commission shall revise their policies, practices, and procedures to ensure the confidentiality of employees' medical information, consistent with Title I of the ADA and its accompanying regulation. The New Albany Police Department and Merit Commission shall also adopt a policy that establishes an effective process for receiving and responding to employees' complaints of disability discrimination, including complaints alleging an unlawful disclosure of confidential medical information.
 - a. Within thirty (30) days of the Effective Date of this Agreement, New Albany shall send its revised policies, practices, and procedures to the United States

for approval, which shall not be unreasonably withheld. The United States shall review and provide comments on New Albany's proposed revisions, and identify any additional provisions that should be included. New Albany shall incorporate those comments.

- b. Within fifteen (15) days of the United States' final approval of revised policies, practices, and procedures, New Albany shall implement the revised policies, practices, and procedures, including by distributing copies of these policies to all applicable Police Department and Merit Commission employees whose work may be affected by such policies, practices, or procedures.
- c. For the duration of this Agreement, New Albany shall, within thirty (30) days of the appointment or retention of an applicable Police Department or Merit Commission employee whose work may be affected by such policies, practices, or procedures, provide that individual with copies of these policies.

12. Training: Within thirty (30) days of the United States' final approval of all policies, practices, and procedures revised pursuant to Paragraph 11, New Albany shall provide training on the confidentiality requirements of Title I of the ADA and its implementing regulation and New Albany's revised policies, practices, and procedures to all applicable Police Department and Merit Commission employees who are involved in personnel decisions or who have access to employees' confidential medical information; and to such applicable Police Department and Merit Commission employees who are hired or promoted during the term of this Agreement within seven (7) days of the start of their positions with New Albany. All trainings shall be conducted in person by trainers knowledgeable about Title I of the ADA that New Albany has selected and the United States has approved.

13. Reporting Requirements: Six (6) months after the Effective Date of this Agreement, and annually thereafter during the term of this Agreement, New Albany shall provide a written report ("Report") to the United States regarding its efforts to comply with this Agreement. The Report shall include, for the preceding reporting period:

- a. Any new or revised policies, practices, or procedures regarding the confidentiality requirements under Title I of the ADA or that relate to Paragraph 11 above;
- b. A list of the applicable Police Department and Merit Commission employees who received copies of the policies described in Paragraph 11;
- c. Written acknowledgment that New Albany has, for the instant reporting period, complied with the training requirements set forth in Paragraph 12 above;
- d. Attendance logs reflecting the date(s) of the training(s) and names and job titles of individuals who attended the training(s) set forth in Paragraph 12 above;
- e. Notification regarding any lawsuit, informal or formal complaint, or charge alleging that New Albany has violated the confidentiality provisions of Title I of the ADA. Such notice will include, at a minimum, a description of the nature of the allegation, the name of the individual making the allegation, and all documentation in the possession, custody, or control of New Albany relevant to the allegation. The first Report filed with the United States under this Agreement shall include all ADA Title I lawsuits involving confidentiality concerns, and all complaints, charges, or grievances of which New Albany is aware and that are pending or otherwise unresolved at the time the first Report is made. All subsequent reports shall include notice of all relevant lawsuits, complaints, and charges made subsequent to the immediately previous Report, as well as those reported in previous Reports that remain pending.

III. Individual Relief

14. Upon any application for promotion by Complainant, New Albany will consider his application without unlawful consideration of his disability, medical history, EEOC Charge, or complaint of discrimination. New Albany will keep confidential his medical information as required by Title I of the ADA and this Agreement.

15. Within seven (7) days of the Effective Date of this Agreement, New Albany shall offer Complainant a total monetary award of \$100,000 which will be designated as compensatory damages. This amount shall not be subject to withholding deductions, and New Albany shall issue an IRS Form 1099 to Complainant for this amount.
16. Within seven (7) days of the Effective Date of this Agreement, New Albany shall notify Complainant of the individual relief offered to him under this Agreement by mailing him, by certified mail, return receipt requested, a Notice Letter and Release of Claims Form (attached as Exhibits 1 and 2 respectively), and a copy of this signed Agreement. In order to accept the relief offered by New Albany, Complainant must execute the Release of Claims Form (Exhibit 2) and return the form to New Albany, by certified mail, return receipt requested, within thirty (30) days of receiving the Notice Letter (Exhibit 1).
17. New Albany shall send the United States a copy of the Notice Letter and Release of Claims Form at the same time that they are sent to Complainant.
18. Within ten (10) days of receipt of Complainant's signed Release of Claims Form, New Albany shall pay the first installment of \$50,000 of the monetary sum specified in Paragraph 15 to Complainant by certified bank check or direct deposit. By January 15, 2018, New Albany shall pay the second installment of \$50,000 of the monetary sum specified in Paragraph 15 to Complainant by certified bank check or direct deposit.
19. Within fifteen (15) days of paying each monetary sum to Complainant as outlined in Paragraph 18, New Albany shall send the United States proof of payment and a copy of Complainant's signed Release of Claims Form.

IV. Implementation

20. Delivery of Reporting Materials: All materials sent to the United States pursuant to this Agreement shall be sent by e-mail to Christine.Kim2@usdoj.gov (or to any other e-mail address that the United States designates during the term of this Agreement) or to the following address by Federal Express, delivery prepaid:

Disability Rights Section
Civil Rights Division
U.S. Department of Justice

1425 New York Avenue, N.W., Fourth Floor,
Washington, D.C. 20005.

The e-mail or cover letter shall include a subject line referencing New Albany and DJ No. 205-26S-25.

21. Consideration: In consideration for the Agreement set forth above, the Parties will move jointly for dismissal of the Civil Action, as set forth in Paragraph 22. The Parties agree and acknowledge that this consideration is adequate and sufficient.
22. Voluntary Dismissal: Within fourteen (14) days of New Albany complying with Paragraphs 15–16 and the United States receiving the notification as required by Paragraph 17, the Parties shall jointly move the Court for dismissal of the underlying Civil Action, subject to the reinstatement as set forth in Paragraph 24.
23. Enforcement: The United States may review compliance with this Agreement at any time. New Albany will cooperate fully with the United States' efforts to monitor compliance with this Agreement, including but not limited to, providing the United States with reasonably requested information. If the United States believes that New Albany has failed to comply adequately or in a timely manner with any requirement of this Agreement or that any requirement has been violated, the United States will notify New Albany in writing and the Parties will attempt to resolve the issue in good faith.
24. Breach: Should New Albany breach any provision of this Agreement, the Parties agree that the United States may move to restore the present Civil Action to the active docket of this Court for purposes of resolving any such claim of breach. If the United States makes a claim of breach, Defendant consents to and agrees not to contest the United States' motion to restore the present Civil Action to the Court's active docket. Alternatively, the United States may bring a civil action for breach of this Agreement or any provision thereof, in the United States District Court for the Southern District of Indiana. The United States may in such action seek to have the Court impose any remedy authorized at law or equity. Before taking these steps, the United States shall provide New Albany notice of any breach in writing and shall afford New Albany thirty (30) days from the date of mailing to cure the default.

25. Jurisdiction and Venue: This Court shall serve as the exclusive jurisdiction and venue for any dispute concerning this Agreement. Defendant consents to and agrees not to contest the exercise of personal jurisdiction over New Albany by this Court. The Parties further acknowledge that venue in this Court is appropriate and agree not to raise any challenge on this basis.
26. Titles and Headings: Titles and other headings contained in this Agreement are included only for ease of reference and shall have no substantive effect.
27. Severability: If any term of this Agreement is determined by any court to be unenforceable, the other terms of this Agreement shall nonetheless remain in full force and effect.
28. Non-Waiver: Failure by the United States to enforce any provisions or deadlines in this Agreement shall not be construed as a waiver of the right of the United States to enforce any deadlines or provisions of this Agreement.
29. Extensions: Any time limits for performance imposed by this Agreement may be extended only by the mutual written consent of the Parties. With regard to any of the deadlines specified in this Agreement, New Albany shall notify the United States at least ten (10) business days before any deadline of an anticipated inability to meet the deadline and the reason(s) why, and shall request an extension of time to a specific date. The United States shall not unreasonably withhold consent to a request for an extension of time made in good faith.
30. Successor Liability: This Agreement shall be binding upon New Albany, its officers, employees, contractors, successors, assigns, and any other person under the authority or control of New Albany.
31. Authority: A signatory to this document in a representative capacity for New Albany represents that he is authorized to bind New Albany to this Agreement. The legal division of the City of New Albany and the Mayor of New Albany have reviewed this Agreement and find it to be proper in all respects.
32. Entire Agreement: This Agreement constitutes the entire agreement between the United States and New Albany on the matters raised herein and no other statement, promise, or

agreement, either written or oral, made by any party or agents of any party, that is not contained in this written Agreement, including its attachments, shall be enforceable.

33. Limitation: This Agreement is limited to resolving claims under Title I of the ADA related to the facts specifically set forth in Paragraphs 1 through 9, above. Nothing in this Agreement relates to other provisions of the ADA or affects New Albany's obligations to comply with any other federal, state, or local statutory, administrative, regulatory, or common law obligation, including those relating to nondiscrimination against individuals with disabilities. This Agreement does not affect New Albany's continuing responsibility to comply with all aspects of the ADA.
34. Counterparts: This Agreement may be executed in counterparts, each of which shall be deemed an original, and the counterparts shall together constitute one and the same Agreement, notwithstanding that each Party is not a signatory to the original or the same counterpart.
35. Effective Date: The Effective Date of this Agreement ("Effective Date") is the date of the last signature below. Unless otherwise specified, all time periods designated for an action run from the Effective Date.
36. Term: The duration of this Agreement will be three (3) years from the Effective Date.
37. Publicity: This Agreement and any amendment hereto shall be public documents. A copy of this Agreement or any information contained herein may be made available to any person, and New Albany shall provide a copy of this Agreement to any person upon request.
38. Costs and Fees: The United States and New Albany will bear the cost of their own fees and expenses incurred in connection with this Agreement.
39. Preclusive Effect: The Parties do not intend for this Agreement to have any preclusive effect except as described in Paragraph 33. Should the issue of preclusive effect of this Agreement be raised, the Parties agree to certify that they intended for this Agreement to have no such preclusive effect.

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October 4, 2017

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October 4, 2017

Date

For the City of New Albany and its Police Department and Merit Commission

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/s/ Todd Bailey

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Date: October 3, 2017

Date: October 3, 2017

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