

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made and entered into this 16th day of January 2025, by and between Plaintiffs, Scott Hovsepian, Jeanne Carroll, Donald Caisey, International Brotherhood of Police Officers (“IBPO”), New England Police Benevolent Association (“NEPBA”), and Daniel Gilbert, and Defendant, Massachusetts Peace Officer Standards and Training Commission (“POST” or “POST Commission”).

WHEREAS, Plaintiffs Hovsepian, Carroll, Caisey, and IBPO (as an Intervenor) filed a Verified Complaint and an Amended Verified Complaint in *Scott Hovsepian, et al. v. Massachusetts Peace Officer Standards and Training Commission*, Civil Action No. 2284CV00906, in Suffolk County Superior Court; and,

WHEREAS, Plaintiffs Gilbert and NEPBA filed a Verified Complaint in *New England Police Benevolent Association, et al. v. Massachusetts Peace Officer Standards and Training Commission*, Civil Action No. 2285CV00555, in Worcester County Superior Court; and,

WHEREAS, the Worcester action has been consolidated with the Suffolk action in Suffolk Superior Court, both cases being referred to herein as the “actions”; and,

WHEREAS, the claims in the filed actions involved allegations that POST had violated certain provisions of the Massachusetts Open Meeting Law (G.L. c. 30A, §§ 18-25), including those regarding the use of subcommittees, and that certain questions POST had included in a questionnaire that law enforcement officers were required to answer for purposes of recertification violated certain constitutional provisions; and,

WHEREAS, on June 28, 2022, the Suffolk Superior Court issued an order (“Order”) preliminarily enjoining POST from using two particular questions on the recertification questionnaire; and,

WHEREAS, POST has denied, and continues to deny, liability for the claims set forth in the Verified Complaints; and,

WHEREAS the parties have agreed not to further litigate or seek judicial resolution of the factual and legal claims raised in the Verified Complaints; and,

WHEREAS, in consideration of the mutual covenants contained herein, all the Plaintiffs and POST desire to settle and resolve all differences existing between them, resulting in the voluntary dismissal of the Verified Complaints.

It is THEREFORE agreed as follows:

1. This Agreement is in settlement of all claims which have been or could have been asserted in this action and shall not be considered an admission of any wrongdoing on the part of the POST Commission. None of the statements or communications of the parties made or exchanged during settlement discussions shall be offered or admissible in evidence, in this or future actions. The parties agree that this Agreement shall not be filed with the Court in this action. Documents or writings formally agreed to, and/or executed by, all parties may be utilized, if necessary, in any future action for enforcement of this Agreement.
2. Within three days of the date of execution of this Agreement (which shall be the date the last signatory executes the Agreement), Plaintiffs, by their counsel, will file a Stipulation of Dismissal with Prejudice in the form attached as Exhibit A to effectuate the dismissal of the consolidated cases captioned *Scott Hovsepian, et al. v. Massachusetts Peace Officer Standards and Training Commission*, Suffolk County Superior Court Civil Action No. 2284CV00906, and *New England Police Benevolent Association, et al. v. Massachusetts Peace Officer Standards*

and Training Commission, Worcester County Superior Court Civil Action No. 2285CV00555, with prejudice.

3. The POST Commission agrees to implement the following undertakings and agreements.
4. With regard to its use of subcommittees, the POST Commission shall follow the requirements of the Open Meeting Law (G.L. c. 30A, §§ 18-25), the case law thereunder, and the provisions of 940 Code Mass. Regs. § 29.01 *et seq.*, including those procedures for notice, public access and participation, and record-keeping. POST agrees to comply with guidelines issued by the Office of the Attorney General's Division of Open Government ("Division" or "Division of Open Government") regarding subcommittees, which guidelines, in part, recognize: that a subcommittee is a multiple-member body, comprised of members of a public body, created to advise or make recommendations to a public body; that a subcommittee is formed when the public body formally authorizes multiple members of the public body to advise or make recommendations to the public body, or otherwise act collectively to assert any authority within the charge of the public body, intending to create a multiple-member body, rather than assigning the task to one person (even if another member later volunteers to assist); that individual members deciding on their own to undertake a task or make a recommendation, without being designated to do so, do not become a subcommittee under the Law; and that bodies appointed by a public official solely for the purpose of advising the official on a decision that that individual could make alone are not public bodies subject to the Open Meeting Law. If POST

desires to depart from these guidelines in particular circumstances, it will first seek the input and approval of the Division of Open Government, absent which POST shall not depart. If the Division approves a departure, POST shall, at its earliest reasonable opportunity, disclose publicly that it has acted consistently with such an approved departure.

5. Within sixty (60) days of the execution of this Agreement, POST shall request the Division of Open Government to conduct refresher training, in a format determined by the Division, of all Commissioners of the POST Commission on the requirements of the Open Meeting Law, including, but not limited to, training on the Open Meeting Law's requirements for the activities of subcommittees. In addition, POST shall request that the Division of Open Government provide such training to any newly appointed Commissioner, who has not previously attended such a training, within thirty (30) days of appointment. POST will cooperate with the Division of Open Government in scheduling and holding such trainings, as soon as reasonably practicable and in a format to be determined by the Division, and the POST website shall reflect the completion of the refresher training within sixty (60) days of completion. Written certification that these trainings have been completed shall be provided to counsel for Plaintiffs, upon request.
6. POST agrees not to use in any future questionnaires administered as part of the process of certification or recertification of law enforcement officers, and agrees not to otherwise propound during the certification or recertification process for law enforcement officers, either of the two questions (Question Nos. 6 and 7, regarding the use of social media and organizational membership) in

the form that the Superior Court preliminarily enjoined the Commission from using in its Order, consistent with the terms of that Order. If POST uses another form of such questions as may be permitted by, and consistent with, the Order, but any Plaintiff believes that the use of such re-drafted questions otherwise violates the law, nothing in this Agreement precludes any Plaintiff from initiating a new lawsuit to challenge such use, nor does it provide enforcement mechanisms in such a case.

7. Any Plaintiff may seek enforcement of this Agreement, for a period of two (2) years from the date of the execution of this Agreement, only by (i) pursuing an action for specific performance in which a Plaintiff may request that the Court enter an order for specific performance should the Court find that the POST Commission has not substantially complied with this Agreement, or (ii) by seeking remedies as set forth in the Open Meeting Law and regulations thereunder, provided, however, that a Plaintiff shall not do either without first making reasonable efforts to resolve disagreements with POST without court intervention, in the following manner:
 - a. If a Plaintiff or Plaintiffs' counsel believe that POST is not in substantial compliance with this Settlement Agreement, counsel may notify the POST Executive Director and General Counsel in writing and request a response or a proposed resolution. The notification shall state the basis for such belief. POST may respond within forty-five (45) days, unless the notice asserts that a genuine emergency situation exists, in which case POST may

respond within seven (7) business days. Only then, if no response is provided or the response is considered inadequate, may the Plaintiff or Plaintiffs' counsel pursue an action for specific performance under this agreement or seek remedies as set forth in the Open Meeting Law and regulations thereunder, as provided below. The adequacy of the proposed response shall be a defense to such an action.

- b. If the claimed noncompliance involves a claim that POST violated the provisions of this Agreement relating to the Open Meeting Law, Plaintiff or Plaintiffs will be entitled to request, or POST will be entitled to request, within 30 days, that the Division of Open Government conduct an investigation, in a reasonably timely manner and pursuant to the governing statutory provisions and regulations, to determine whether a violation of the provisions of the Open Meeting Law has occurred and the parties agree that Plaintiff or Plaintiffs' counsel will not seek Court relief as to such noncompliance until the Division has completed its investigation and made its determination. POST will provide immediate written notice of any such request to Plaintiff and Plaintiffs' Counsel. POST agrees to be bound by the Division's determination. Any Plaintiff or Plaintiffs' counsel may initiate a lawsuit seeking a remedy for noncompliance with the provisions of this Agreement relating to the Open Meeting Law, only if (i) Plaintiff or Plaintiffs'

counsel reasonably believe that such claimed lack of compliance with the provisions of this Agreement relating to the Open Meeting Law constitutes a violation of this Agreement or applicable law and (ii)(a) the POST Chair or Executive Director has not proposed and implemented a reasonable resolution in the opinion of Plaintiff or Plaintiffs' counsel, (ii)(b) POST has not promptly sought a determination from the Division, or (ii)(c) in such event, POST has not timely complied with a determination of the Division. POST reserves the right to assert any available defenses in any Division or court proceeding.

- c. In the alternative, if a Plaintiff or Plaintiffs' counsel believe that there has been an instance of substantial noncompliance with the provisions of this Agreement relating to the Open Meeting Law, the Plaintiff or Plaintiffs' counsel may seek relief from the Court as follows: prior to seeking such relief from the Court, Plaintiff or Plaintiffs' counsel shall, consistent with the Open Meeting Law and the Attorney General's Division of Open Government regulations (940 CMR 29.00), submit a complaint, on a complaint form available from the Office of the Attorney General, to POST within thirty (30) days of the date of the alleged violation, or the date Plaintiffs could have reasonably known of the violation; and the Plaintiffs and POST shall follow the Division of Open Government's complaint and investigation procedures, as reflected

on the Attorney General's website and in the applicable regulations. POST agrees to be bound by the Division's determination. After completing this process, and after the Division has made its determination, the Plaintiff(s), if they remain unsatisfied, may pursue judicial remedies, through the remedies provided directly by the Open Meeting Law and the applicable regulations. Any ruling by the Division of Open Government may be admitted in evidence in any judicial proceeding. Nothing herein precludes POST from asserting any available defense in any Division or court proceeding.

d. The Parties agree and understand that the foregoing remedial measures and procedures apply only with respect to enforcement of the rights and obligations under this Agreement and are not intended as dispute resolution procedures applicable to disputes other than those arising out of noncompliance with the specific obligations created by this Agreement.

8. POST shall pay to Plaintiffs, in one payment payable to one counsel's office, the amount of \$30,000 to compromise and settle Plaintiffs' requests for attorneys' fees and litigation expenses and costs (including, without limitation, any expert fees and costs). The payment made by POST pursuant to this paragraph constitutes the full compromise and settlement of all requests for attorneys' fees and litigation expenses and costs related to this action that Plaintiffs have, as of the execution date of this Agreement, against POST in this action and that Plaintiffs might have against POST for activity occurring after the execution date,

including without limitation for activity to monitor or enforce implementation of this Agreement. Payments under this paragraph shall not be construed as an admission or constitute evidence that POST is liable to Plaintiffs for the payment of attorneys' fees and litigation expenses or costs in, or related to, this Action, but rather represents only the compromise and settlement of a disputed claim. The compromise and settlement of Plaintiffs' claim for attorneys' fees and litigation expenses and costs against POST shall not establish: (1) a "reasonable" hourly rate for Plaintiffs' counsel or any other counsel; (2) the "reasonableness" of any legal services or activities performed by Plaintiffs' counsel in this or any other action; or (3) the "reasonableness" of any item of litigation expenses or costs in this or any other action. The timing of payment of the agreed amount is wholly dependent on appropriation by the Legislature and payment from the Settlement and Judgments Fund, which payment POST shall diligently pursue.

9. Additional Provisions

- a. *Entire Agreement.* This Agreement contains all the agreements, conditions, promises and covenants between Plaintiffs and Defendant and their respective counsel, regarding matters set forth in this Agreement and supersedes all prior or contemporaneous agreements, drafts, representations or understandings, either written or oral, with respect to the subject matter of this Agreement.
- b. *Binding Effect.* Plaintiffs and POST represent and warrant that they have authority to enter into this Agreement and that this Agreement shall be binding upon, and inure to the benefit of, their successors and assigns. Each of the persons

executing this Agreement on behalf of a Plaintiff or POST represents and warrants that such person has the authority to do so.

- c. *Consideration.* Plaintiffs and Defendant represent and warrant that each party to this Agreement has received adequate consideration thereunder; and each party waives any available claim, defense, or argument that the consideration received under this Agreement is inadequate.
- d. *Release.* Each Plaintiff fully, finally, and forever releases, relinquishes, discharges, and waives any and all claims for relief that Plaintiffs raised or could have raised against the POST Commission, and its Commissioners, employees, contractors, consultants, attorneys, and other agents, concerning the facts alleged, and the causes of action claimed, in the Verified Complaints, from the beginning of time until the execution date, including any claim based on factual circumstances known to any plaintiff prior to the execution date, except as stated in the provisions for enforcement herein. This release also includes any and all claims for relief against POST and its Commissioners, employees, contractors, consultants, attorneys, and other agents, arising out of or relating to the precise subject matter described in the Verified Complaints, including but not limited to, subject matter concerning the authority of POST to promulgate certain regulations, the use of certain questions in certification or recertification of law enforcement officers and the constitutionality of such questions, and the compliance or not of POST with provisions of the Open Meeting Law, from the beginning of time until the execution date.

- e. *Written Modification.* Plaintiffs and Defendant may not modify any provision of this Agreement, except by written consent of Plaintiffs and Defendant.
- f. *Interpretation.* Plaintiffs and Defendant participated in the drafting of this Agreement and, accordingly, any claimed ambiguity shall not be presumptively construed for or against any Plaintiff or Defendant.
- g. *Execution.* This Agreement may be executed in counterparts (the last date of execution of any counterpart constituting the execution date), each of which shall constitute an original instrument and all of which together shall constitute one and the same Agreement.
- f. *Sovereign Immunity.* Except as specified herein, nothing in this Agreement shall constitute a waiver by the Commonwealth of its sovereign immunity under the United States Constitution and its Eleventh Amendment or under Massachusetts law.
- g. *No Consent Decree.* This Agreement shall not constitute, be construed as, or otherwise be incorporated into a consent decree or other order of the Court and shall not be filed in Court, except as part of any subsequent proceedings to enforce it.

Plaintiffs:



Scott Hovsepian

Dated: 01-07-25

Jeanne Carroll

Dated: _____

Donald Caisey

Dated: _____

**INTERNATIONAL BROTHERHOOD
OF POLICE OFFICERS**

By:

Dated: _____

**NEW ENGLAND POLICE
BENEVOLENT ASSOCIATION**

By:

Dated: _____

Daniel Gilbert

Dated: _____

On behalf of Defendant:

**MASSACHUSETTS PEACE OFFICER
STANDARDS AND TRAINING
COMMISSION**

Enrique Zuniga
Executive Director
Peace Officer Standards and Training
Commission
Dated: _____

Plaintiffs:

Scott Hovsepian

Dated: _____


Jeanne Carroll

Dated: 1-3-25

Donald Caisey

Dated: _____

**INTERNATIONAL BROTHERHOOD
OF POLICE OFFICERS**

By:

Dated: _____

**NEW ENGLAND POLICE
BENEVOLENT ASSOCIATION**

By:

Dated: _____

Daniel Gilbert

Dated: _____

On behalf of Defendant:

**MASSACHUSETTS PEACE OFFICER
STANDARDS AND TRAINING
COMMISSION**

Enrique Zuniga
Executive Director
Peace Officer Standards and Training
Commission

Dated: _____

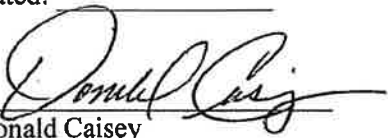
Plaintiffs:

Scott Hovsepian

Dated: _____

Jeanne Carroll

Dated: _____



Donald Caisey

Dated: 1/6/25

**INTERNATIONAL BROTHERHOOD
OF POLICE OFFICERS**

By:

Dated: _____

**NEW ENGLAND POLICE
BENEVOLENT ASSOCIATION**

By:

Dated: _____

Daniel Gilbert

Dated: _____

On behalf of Defendant:

**MASSACHUSETTS PEACE OFFICER
STANDARDS AND TRAINING
COMMISSION**

Enrique Zuniga
Executive Director
Peace Officer Standards and Training
Commission
Dated: _____

Plaintiffs:

On behalf of Defendant:

**MASSACHUSETTS PEACE OFFICER
STANDARDS AND TRAINING
COMMISSION**

Scott Hovsepian

Dated: _____

Enrique Zuniga

Executive Director
Peace Officer Standards and Training
Commission

Dated: _____

Jeanne Carroll

Dated: _____

Donald Caisey

Dated: _____

**INTERNATIONAL BROTHERHOOD
OF POLICE OFFICERS**

KT Beturnay
By: *KAREN T. BETURNAY*
ASSISTANT GENERAL COUNCIL

Dated: *1-8-25*

**NEW ENGLAND POLICE
BENEVOLENT ASSOCIATION**

By:

Dated: _____

Daniel Gilbert

Dated: _____

Plaintiffs:

Scott Hovsepian

Dated: _____

Jeanne Carroll

Dated: _____

Donald Caisey

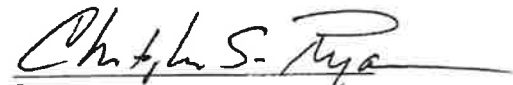
Dated: _____

**INTERNATIONAL BROTHERHOOD
OF POLICE OFFICERS**

By:

Dated: _____

**NEW ENGLAND POLICE
BENEVOLENT ASSOCIATION**


By:

Dated: 01/08/25


Daniel Gilbert

Dated: 01/06/25

On behalf of Defendant:

**MASSACHUSETTS PEACE OFFICER
STANDARDS AND TRAINING
COMMISSION**

Enrique Zuniga
Executive Director
Peace Officer Standards and Training
Commission

Dated: _____

Plaintiffs:

Scott Hovsepian

Dated: _____

Jeanne Carroll

Dated: _____

Donald Caisey

Dated: _____

**INTERNATIONAL BROTHERHOOD
OF POLICE OFFICERS**

By:

Dated: _____

**NEW ENGLAND POLICE
BENEVOLENT ASSOCIATION**

By:

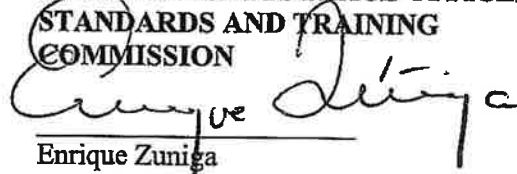
Dated: _____

Daniel Gilbert

Dated: _____

On behalf of Defendant:

**MASSACHUSETTS PEACE OFFICER
STANDARDS AND TRAINING
COMMISSION**



Enrique Zuniga
Executive Director
Peace Officer Standards and Training
Commission

Dated: Jan/3/25

EXHIBIT A

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT

SCOTT HOVSEPIAN, JEANNE CARROLL, and
DONALD CAISEY,

Plaintiffs,

v.

Case No. 2284CV00906

MASSACHUSETTS PEACE OFFICER
STANDARDS AND TRAINING COMMISSION,

Defendant.

Consolidated With

NEW ENGLAND POLICE BENEVOLENT
ASSOCIATION, et al.,

Plaintiffs,

v.

Case No. 2285CV00555

MASSACHUSETTS PEACE OFFICER
STANDARDS AND TRAINING COMMISSION,

Defendant.

STIPULATION OF DISMISSAL WITH PREJUDICE

Pursuant to Rule 41(a)(1) of the Massachusetts Rules of Civil Procedure, all parties to the above-captioned consolidated actions stipulate to the dismissal of the actions, with prejudice, without costs, and with all rights to appeal waived.

**SCOTT HOVSEPIAN, JEANNE
CARROLL, and DONALD CAISEY,**

By their attorneys,

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**MASSACHUSETTS PEACE OFFICER
STANDARDS AND TRAINING
COMMISSION,**

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**INTERNATIONAL BROTHERHOOD OF
POLICE OFFICERS (IBPO)**

By its attorney,

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**NEW ENGLAND POLICE BENEVOLENT
ASSOC., INC., AND DANIEL GILBERT**

By their attorneys,

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gary@nolanperroni.com

CERTIFICATE OF SERVICE

I certify that a true copy of the foregoing document was served by electronic mail and via the electronic filing system on all counsel of record this [] day of December, 2024.

David B. Chaffin