

**NORTH CAROLINA DEPARTMENT OF INSURANCE
RALEIGH, NORTH CAROLINA**

**STATE OF NORTH CAROLINA
COUNTY OF WAKE**

**BEFORE THE COMMISSIONER
OF INSURANCE**

**IN THE MATTER OF THE LICENSURE OF
ANTHONY MCFADDEN,
(NPN 8392466)**

**VOLUNTARY SETTLEMENT
AGREEMENT**

NOW COME Anthony McFadden ("Bail Bondsman") and the North Carolina Department of Insurance ("Department") and voluntarily and knowingly enter into the following Voluntary Settlement Agreement ("Agreement"):

WHEREAS, the Department has the authority and responsibility for enforcement of the insurance laws of this State and for regulating and licensing professional and surety bail bondsmen; and

WHEREAS, Bail Bondsman holds licenses as a professional and surety bail bondsman ("Licenses") issued by the Department; and

WHEREAS, N.C. Gen. Stat. §§ 58-71-65(1) and (2), respectively, make a professional bail bondsman responsible for the conduct of any bail bond runners he employs and for supervising the runners' activities; and

WHEREAS, North Carolina law on agency additionally makes Bail Bondsman responsible for the conduct of any of his bail bond runners and other employees or independent contractors whom Bail Bondsman uses to perform his professional and surety bail bond business;

WHEREAS, pursuant to N.C. Gen. Stat. §§ 58-71-65(1) and (2) and/or North Carolina law on agency, any statutory violations by Bail Bondsman's bail bond runners, employees or independent contractors addressed in this Agreement are attributable to Bail Bondsman, any requirements of Bail Bondsman in this Agreement are equally applicable to Bail Bondsman's bail bond runners, employees or independent contractors and any violations of this Agreement by Bail Bondsman's bail bond runners, employees or independent contractors are attributable to Bail Bondsman; and

WHEREAS, N.C. Gen. Stat. § 58-71-140(d) requires that bail bondsmen file an Affidavit of Surety with the court for every bail bond they execute and N.C. Gen. Stat. §§ 58-71-140(d)(2) through (d)(3) require, respectively, that this Affidavit of Surety identify the amount of the premium promised and the due date and the amount of premium received; and

WHEREAS, pursuant to N.C. Gen. Stat. § 58-71-145:

Each professional bondsman acting as surety on bail bonds in this State shall maintain a deposit of securities with and satisfactory to the [North Carolina] Commissioner [of Insurance ('Commissioner')] of a fair market value of at least one-eighth the amount of all bonds or undertakings written in this State on which he is absolutely or conditionally liable as of the first day of the current month. The amount of the deposit must be reconciled with the bondsman's liabilities as of the first day of the month on or before the fifteenth day of said month and the value of said deposit shall in no event be less than fifteen thousand dollars (\$15,000.00); and]

WHEREAS, N.C. Gen. Stat. § 58-71-165(a) requires that professional bail bondsmen file with the Commissioner a written report in a form prescribed by the Commissioner regarding all professional bail bonds on which the bondsman is liable as of the first day of each month showing (i) each individual bonded, (ii) the date the bond was given, (iii) the principal sum of the bond, (iv) the State or local official to whom given, and (v) the fee charged for the bonding service; and

WHEREAS, as a condition of this Agreement, Bail Bondsman specifically represents that the monthly reports of professional bonds that he has submitted to the Commissioner pursuant to N.C. Gen. Stat. § 58-71-165(a) from January 1, 2017 to the date of this Agreement completely and accurately reflect all professional bail bonds required to be reported on which Bail Bondsman was liable as of the first day of each month, including complete and accurate details regarding each individual bonded, the date the bonds were given, the principal sums of the bond, the State or local official to whom the bonds given, and the fee charged for each bond; and

WHEREAS, N.C. Gen. Stat. § 58-71-167 requires that a bail bondsman create a memorandum of agreement ("MOA") signed by the bail bondsman and the individual bonded for any bail bond that involves deferred premium payments; and

WHEREAS, N.C. Gen. Stat. § 58-71-175 prohibits professional bail bondsmen from becoming liable on any bond or bonds for any one individual that totals more than one-fourth of the value of the securities deposited with the Commissioner at that time, until final termination of liability on such bond or multiple of bonds; and

WHEREAS, 11 NCAC 13 .0505, entitled "Bail Bond Certification Seal," states:

No professional bail bondsman or his duly appointed runner shall sign a bail bond unless he affixes thereto a 'certification seal.' The certification seal shall be affixed to the bail bond in the space provided for it on the bail bond form supplied by the Administrative Office of the Courts. Certification seals will be supplied to the professional bondsman by the Commissioner of Insurance upon request. Each certification seal shall bear the wording 'North Carolina Department of Insurance' and an identifying number[; and]

WHEREAS, 11 NCAC 13 .0506, entitled "Bail Bond Register," states:

Each professional bail bondsman shall keep at his place of business a bail bond register which shall be a numerically ordered listing of each certification seal used by the

professional bail bondsman or his duly appointed runner. The bail bond register shall contain the certification seal number, the name of the principal for whom the bond was signed, the county in which the bond was signed, the amount of the bond, the amount of the fee charged by the professional bail bondsman or his duly appointed runner and the number of the receipt given for amount of the fee charged by the bail bondsman. The bail bond register shall be kept up to date daily by the professional bondsman[; and]

WHEREAS, 11 NCAC 13 .0515 requires in pertinent part that, whenever a fee is received by a bail bondsman, a receipt shall be furnished to the individual bonded and copies of all receipts issued shall be kept by the bail bondsman; and

WHEREAS, N.C. Gen. Stat. § 58-71-168 requires that all records related to executing bail bonds, including bail bond registers, monthly reports, receipts, collateral security agreements and memoranda of agreements, shall be kept separate from records of any other business and must be maintained for not less than three years after the final entry has been made; and

WHEREAS, between 2011 and 2015, Bail Bondsman committed certain violations of N.C. Gen. Stat. §§ 58-71-65(1) and (2), 58-71-140(d), 58-71-145, 58-71-165(a), 58-71-167, 58-71-168, 58-71-175, 11 NCAC 13 .0506 and 11 NCAC 13 .0515; and

WHEREAS, N.C. Gen. Stat. § 58-71-80(a)(7) authorizes the Commissioner to place on probation, suspend, revoke or refuse to renew Bail Bondsman's License for failing to comply with or violating the provisions of Article 71 of N.C. Gen. Stat. Ch. 58 and Title 11 of the North Carolina Administrative Code, including N.C. Gen. Stat. §§ 58-71-65(1) and (2), 58-71-140(d), 58-71-145, 58-71-165(a), 58-71-167, 58-71-168, 58-71-175, 11 NCAC 13 .0506 and 11 NCAC 13 .0515; and

WHEREAS, pursuant to N.C. Gen. Stat. § 58-2-70(g), the Commissioner and the Department have the express authority to negotiate a mutually acceptable agreement with any person as to the status of the person's license issued by the Department, or as to any civil penalty or restitution; and

WHEREAS, the Parties mutually wish to resolve this matter by consent before the Department initiates an administrative hearing concerning this matter; and

WHEREAS, the Parties have reached a mutually agreeable resolution of this matter as set out in this Agreement.

NOW THEREFORE, in exchange for, and in consideration of the promises and agreements set out herein, the Department and Bail Bondsman hereby agree to the following:

1. Immediately upon signing this Agreement, Bail Bondsman shall pay a civil penalty of **THIRTY SEVEN THOUSAND FIVE HUNDRED DOLLARS and No Cents (\$37,500.00)** to the Department. Bail Bondsman shall make this payment by executing the Security Release Form attached as Exhibit A to this Agreement, which authorizes U.S. Bank, NA ("U.S. Bank") to withdraw this sum from the custodial account Bail

Bondsman maintains pursuant to N.C. Gen. Stat. § 58-71-145 and issue a check to the Department. The civil penalty shall be subject to disbursement in accordance with the provisions of Article IX, Section 7 of the North Carolina Constitution for the benefit of public schools.

2. Immediately upon signing this Agreement, Bail Bondsman shall reimburse the Department for a portion of its costs of investigation in the amount of **TEN THOUSAND DOLLARS and No Cents (\$10,000.00)**. Bail Bondsman shall make this payment by executing the Security Release Form attached as Exhibit B to this Agreement, which authorizes U.S. Bank to withdraw this sum from the custodial account Bail Bondsman maintains pursuant to N.C. Gen. Stat. § 58-71-145 and issue a check to the Department.
3. Bail Bondsman shall comply with all provisions of Chapter 58 of the North Carolina General Statutes and Title 11 of the North Carolina Administrative Code that are applicable to professional and surety bail bondsmen. In doing so, without limitation:
 - a. Bail Bondsman shall ensure that all professional and surety bonds, including the Affidavits of Surety for such bonds, which Bondsman executes are complete and accurate pursuant to N.C. Gen. Stat. § 58-71-140(d), including by identifying the amount of premium received as of the moment the bond is executed and the due date of any remaining premium; and
 - b. Bail Bondsman shall ensure that he maintains a sufficient amount of securities on deposit with the Commissioner to comply with N.C. Gen. Stat. § 58-71-145 and, if he discovers he has failed to do so, that he promptly supplements the amount of his securities on deposit; and
 - c. Bail Bondsman shall ensure that he files accurate monthly reports for his professional bail bonds which include all details required by N.C. Gen. Stat. § 58-71-165(a) and that the applicable details in these reports correspond with the bonds (including the Affidavits of Surety) on file with the relevant courts and with Bail Bondsman's daily bond register maintained pursuant to 11 NCAC 13 .0506; and
 - d. Bail Bondsman shall ensure that, if he discovers an inaccuracy in any of his monthly reports pursuant to N.C. Gen. Stat. § 58-71-165(a), he promptly files an amended monthly report with the Department; and
 - e. Bail Bondsman shall ensure that he maintains a daily bond register for his professional bonds which includes all details required by 11 NCAC 13 .0506 and that the applicable details of this register correspond with the bonds (including the Affidavits of Surety) on file with the relevant courts and with the Bail Bondsman's monthly reports maintained pursuant to N.C. Gen. Stat. § 58-71-165(a); and

- f. Bail Bondsman shall ensure that, for any premium due that has not been received as of the moment a professional or surety bond has been executed, he executes a complete and accurate MOA pursuant to N.C. Gen. Stat. § 58-71-167, and that he executes an amended MOA if there are any changes to the terms of the original MOA; and
 - g. Bail Bondsman shall ensure that he maintains a sufficient amount of securities on deposit with the Commissioner to comply with N.C. Gen. Stat. § 58-71-175 and, if he discovers he has failed to do so, that he promptly supplements the amount of his securities on deposit; and
 - h. Bail Bondsman shall ensure that he can account to the Department in his monthly reports, daily bond register or otherwise, for every bail bond certification seal issued by the Department to Bail Bondsman pursuant to 11 NCAC 13 .0505, including any seals used to execute a bail bond or which have been lost or destroyed, and that Bail Bondsman does not utilize or include in his monthly reports or daily register any bail bond certification seal not issued to him by the Department; and
 - i. Bail Bondsman shall ensure that he issues a receipt to the individual bonded by a professional or surety bail bond whenever Bail Bondsman receives a fee; and
 - j. Bail Bondsman shall ensure that he maintains complete records relating to executing bail bonds pursuant to N.C. Gen. Stat. § 58-71-168.
4. In addition to the provisions of Chapter 58 of the North Carolina General Statutes and Title 11 of the North Carolina Administrative Code that are applicable to professional and surety bail bondsmen, Bail Bondsman shall comply with the following special reporting requirements for a period of 18 months from the date this Agreement is executed:
- a. Along with each of his monthly professional bail bond reports submitted pursuant to N.C. Gen. Stat. § 58-71-165(a), Bail Bondsman shall submit to the Department complete copies of all professional bail bonds he executed during the month of the report, an updated version of his bail bond register (including the professional bonds executed during the month of the report), copies of any premium receipts or MOAs from the month of the report and copies of any documentation (such as a notice of surrender or dismissal) demonstrating the date when his liability ended on any previously reported bonds.
 - b. Bail Bondsman shall comply with all e-mailed requests by the Department for documentation regarding his professional and surety bail bond business within five business days after the date of each request for documentation.
 - c. Bail Bondsman shall submit in writing, each month, a written report of the surety bail bonds written or executed by him during the preceding calendar month on

behalf of any surety insurer. Each such report shall include all surety bail bonds written or executed during the preceding calendar month, whether or not such bail bond is still outstanding at the end of the preceding calendar month. A written report shall be due each month even if no bail bonds are written in the preceding calendar month.

- d. Bail Bondsman's surety bail bond reports shall be received monthly by the Department on or before 15 days after the last day of the preceding month.
 - e. Bail Bondsman's first written report of the surety bail bonds written or executed by him during the preceding calendar month is due on or before August 15, 2018 for the month of July 2018 and Bail Bondsman's last written report will be due on or before January 15, 2020 for the month of December 2019.
 - f. Bail Bondsman's monthly surety bail bond report shall include, for each bail bond, the date the bond was written or executed, the full name of the individual bonded as shown on each bail bond, the amount of each bail bond, the amount of premium promised for each bail bond, the premium actually received for each bail bond, the name of the surety insurer for each bail bond, the receipt number(s), the serial numbers of all powers of attorney used for each surety bail bond, a full description of any collateral obtained from any person related to each bail bond and the relevant court file information, including County and court file number, for each bail bond.
 - g. Bail Bondsman shall expressly certify, by signing, under oath, the accuracy of each monthly surety bail bond report as follows: "I, Anthony McFadden, hereby certify under oath that this Monthly Surety Bail bond report is complete and accurate." Bail Bondsman shall sign and certify each monthly surety bail bond report personally and may not delegate this signing and certification obligation to any other person. Bail Bondsman's signature on each monthly report shall be notarized.
5. The Parties agree that this Agreement shall have the full force and effect of an Order of the Commissioner. Bail Bondsman understands that N.C. Gen. Stat. § 58-71-80(a)(7) provides that Bail Bondsman's license may be revoked for violating an Order of the Commissioner.
6. Bail Bondsman enters into this Agreement freely and voluntarily and with knowledge of Bail Bondsman's right to have an administrative hearing regarding this matter. Bail Bondsman understands that he may consult with an attorney prior to entering into this Agreement.
7. This Agreement constitutes a complete settlement of all administrative penalties against Bail Bondsman for the acts, policies or practices expressly addressed in this Agreement. Except as to the acts, policies or practices expressly addressed herein, this Agreement does not in any way affect the Department's disciplinary power in any other or future examination of Bail Bondsman, including specifically with regard to Bail Bondsman's

relationship with Cannon Surety, LLC, or in any other complaints involving Bail Bondsman. In the event that Bail Bondsman fails to comply with this Agreement or otherwise fails to comply with the laws and rules applicable to Bail Bondsman, the Department may take any administrative or legal action it is authorized to take.


8. This Agreement, when finalized, will be a public record and is not confidential. The Department is free to disclose the contents of this Agreement with third parties upon request or pursuant to any law or policy providing for such disclosure. Following the execution of this Agreement, any and all licenses issued by the Department to Bail Bondsman shall reflect that Regulatory Action has been taken against Bail Bondsman. The Department routinely provides copies of voluntary settlement agreements to all companies that have appointed the licensee.
9. Bail Bondsman understands and agrees that, if a state or federal regulator other than the Department has issued a permit or license to Bail Bondsman, that regulator may require Bail Bondsman to report this administrative action to it. Bail Bondsman understands and agrees that the Department cannot give Bail Bondsman legal advice as to the specific reporting requirements of other state or federal regulators.
10. This Agreement shall become effective when signed by Bail Bondsman and the Department.



Anthony McEadden

Date: 06-27-2018

NORTH CAROLINA DEPARTMENT OF INSURANCE

By: 
Sr. Deputy Commissioner

Date: 8/17/2018