GC#34-17-873

CIVIL SERVICE COMMISSION
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GOVERNMENT OF GUAM

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BEFORE THE CIVIL SERVICE COMMISSION

GOVERNMENT OF GUAM

IN THE MATTER OF: **ROBERT E. KOSS,** Employee, vs. **DEPARTMENT OF EDUCATION,** Management.	ADVERSE ACTION APPEAL CASE NO. 16-AA25T WHISTLEBLOWER CASE NO. **16-WB01** **STIPULATION AND SETTLEMENT AGREEMENT**

2017 AUG 11 AM 9:21

This **STIPULATION AND SETTLEMENT AGREEMENT**, is by and between **ROBERT E. KOSS** (the "Employee") and **GUAM DEPARTMENT OF EDUCATION** ("GDOE" or "Management") (hereinafter collectively referred to as the "Parties") as follows:

RECITALS

A. Employee commenced Adverse Action Appeal Case No. 16-AA25T against Management in the Guam Civil Service Commission (the "Commission") on or about August 3, 2016.

B. Employee commenced Whistleblower Case No. 16-WB01 against Management on or about August 24, 2016.

C. The Parties desire to enter into this Settlement Agreement (the "Agreement") for Adverse Action Appeal Case No. 16-AA25T and Whistleblower Case No. 16-WB01 and for any pending matters related to these above-captioned matters (hereinafter collectively referred to as the "CSC Actions") in order to provide for certain arrangements in full settlement and discharge of these matters in fair and equitable means and upon the terms and conditions set forth herein.

Office of the Speaker
Senator Régine Biscoe Lee
Legislative Secretary
Date/Time: 8/11/17 09:46am
Initials:

Speaker Benjamin J.F. Cruz

AUG 11 2017
Time: 9:21 AM
Received By

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D. The terms and conditions of said Agreement shall become effective upon execution of this Agreement.

NOW THEREFORE, for and in consideration of the mutual promises set forth herein, the Parties agree as follows:

1. **Purpose of Agreement.**

1.1 Employee and Management acknowledge and agree that this Agreement is a settlement and compromise of the CSC Actions and all pending matters related to the CSC Actions.

1.2 It is the intention of the Parties by execution of this Agreement to fully, finally, and completely resolve all disputes between them regarding the CSC Actions in the manner more specifically set forth in the terms of this Agreement that follow.

2. **Contingent upon Confirmation of Approval of Stipulated Motions to Dismiss with Prejudice by Guam Civil Service Commission.**

2.1 This Agreement is expressly contingent upon the following occurring in the CSC Actions:

a) Employee's filing of a Stipulated Motion to Dismiss with Prejudice in Adverse Action Appeal Case No. 16-AA25T pursuant to Rule 9.5 of the Commission's Rules of Procedure for Adverse Action Appeals (the "Commission's Adverse Action Rules").

b) Employee's filing of a Stipulated Motion to Dismiss with Prejudice in Whistleblower Case No. 16-WB01 pursuant to Rule 33.2 of the Commission's Rules for Public Employee Protection Act Complaints (the "Commission's Whistleblower Rules").

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c) The Commission's approval of the Stipulated Motion to Dismiss with Prejudice in Adverse Action Appeal Case No. 16-AA25T pursuant to Rule 9.5 of the Commission's Adverse Action Rules.

d) The Commission's approval of the Stipulated Motion to Dismiss with Prejudice in Whistleblower Case No. 16-WB01 pursuant to Rule 33.2 of the Commission's Whistleblower Rules.

e) If and when such approval of both Stipulated Motions to Dismiss with Prejudice in the CSC Actions (described above) is obtained by Employee from the Commission, GDOE's payment of the consideration contemplated in this Agreement shall be made within ninety (90) days after GDOE receives the Commission's Order(s) approving both Stipulated Motions to Dismiss with Prejudice in the CSC Actions.

3. **Employee's Obligations.**

3.1 Upon execution of this Agreement, Employee shall file a Stipulated Motion to Dismiss Adverse Action Appeal Case No. 16-AA25T with the Commission and shall request that the Commission dismiss Adverse Action Appeal Case No. 16-AA25T with prejudice, pursuant to Rule 9.5 of the Commission's Adverse Action Rules.

3.2 Upon execution of this Agreement, Employee shall file a Stipulated Motion to Dismiss Whistleblower Case No. 16-WB01 with the Commission and shall request that the Commission dismiss Whistleblower Case No. 16-WB01 with prejudice, pursuant to Rule 33.2 of the Commission's Whistleblower Rules.

3.3 Employee hereby fully and forever releases, acquits and discharges GDOE and its respective employees, former employees, officers, directors, insurers, assigns, attorneys, agents, representatives, predecessors and successors in interest, and related entities from and

against any and all claims, actions, causes of action (direct or derivative), losses, injuries, damages, liabilities, costs, expenses, liens, demands, and fees (including attorneys' fees, except as set forth herein), of any kind or description whatsoever in law or in equity, now known or hereafter discovered, in any way related to or connected with any and all claims for personal injuries, property or economic damages or otherwise, known or unknown, realized or unrealized, both compensatory and punitive, expenses, and interest, whether direct or indirect, arising in tort, contract, statute or otherwise, which Employee has, had, or might have asserted against GDOE in connection with, arising from, or related to the CSC Actions.

3.4 Employee covenants and agrees that he will forever refrain from instituting, assisting, prosecuting, maintaining, proceeding on or advising to be commenced or maintained against GDOE any action or proceeding which arises out of, or is or may be, in whole or in part, based upon, related to or connected with any of the CSC Actions. Employee understands that the release contained in this agreement is a complete defense to any action or other proceeding asserting any of the claims in the CSC Actions which may be instituted by or on behalf of Employee.

3.5 Employee acknowledges that any tax consequences of the Agreement are solely his own responsibility and that GDOE has no liability or responsibility for any tax consequences arising out of this settlement.

3.6 Employee shall not disclose any information which by law is not available for the public and which he acquired in the course of his official duties as Employee Management Relations Officer ("EMRO") for GDOE or use such information for personal gain or the benefit of anyone, pursuant to 4 Guam Code Annotated ("GCA") § 15210 unless required by subpoena.

3.7 Employee shall not represent the Guam Federation of Teachers ("GFT"), shall not participate in, and shall not otherwise be involved with any case or complaint before the Guam Civil Service Commission, the federal Equal Employment Opportunity Commission, the Superior Court of Guam, the Supreme Court of Guam, or the United States District Court of Guam where:

a) Employee acquired any information related to such case or complaint in the course of his official duties as EMRO for GDOE; or

b) Employee represented GDOE as EMRO in such case or complaint or in any case or complaint related thereto.

4. **Management's Obligations.**

4.1 In consideration of Employee's agreement to release all claims against GDOE arising out of the CSC Actions, GDOE shall pay Employee backpay, annual leave, and attorney's fees in the total amount of Fifty-Six Thousand Nine Hundred Eighty-One Dollars and Ninety-One Cents ($56,981.91) within ninety (90) days after GDOE receives the Commission's Order(s) approving both Stipulated Motions to Dismiss with Prejudice in the CSC Actions (described above), as set forth herein as follows:

a) Management agrees to pay backpay to Employee from July 29, 2016 through December 16, 2016, including Management's costs for Employee's benefits and retirement, in the amount of Thirty-Seven Thousand Three Hundred Fifty-Nine Dollars and Eleven Cents ($37,359.11).

b) Management agrees to pay Employee 88 hours of unpaid annual leave in addition to 72 hours of annual leave that he would have accrued from July 29, 2016

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through December 16, 2016, in the amount of Four Thousand One Hundred Seventy-Two Dollars and Eighty Cents ($4,172.80).

c) Management agrees to pay Employee's Attorney Daniel S. Somerfleck for reasonable attorney's fees in the amount of Fifteen Thousand Four Hundred Fifty Dollars ($15,450.00).

4.2 The release and payment obligations set forth herein shall become effective upon GDOE's receiving of an Order(s) by the Commission approving both Stipulated Motions to Dismiss with Prejudice in the CSC Actions (described above) pursuant to Rule 9.5 of the Commission's Adverse Action Rules and Rule 33.2 of the Commission's Whistleblower Rules.

4.3 All documents related to or reflecting Adverse Action Appeal Case No. 16-AA25T shall be expunged from Employee's personnel file and a filed copy of this Settlement Agreement will be the only document reflecting Adverse Action Appeal Case No. 16-AA25T as part of Employee's personnel jacket.

5. **No Admission of Liability.**

5.1 Employee understands and agrees that the promises, covenants, and terms contained herein, and the payment made pursuant to this Agreement, are not, and are not to be deemed or construed as, an admission of liability or fault of any kind whatsoever, which is expressly disclaimed by GDOE, but are instead to be construed strictly as a compromise and settlement of all disputes between Employee and GDOE for the purpose of avoiding further controversy, litigation, and expense.

6. **Performance Accepted.**

6.1 The Parties agree and acknowledge:

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a) That they accept performance of their obligations specified in this Agreement as a full and complete compromise of all matters involving the disputed issues in Adverse Action Appeal Case No. 16-AA25T and Whistleblower Case No. 16-WB01.

b) That the negotiations for this Settlement Agreement (including all statements, admissions, or communications by the Parties or their attorneys) shall not be considered by any of the said Parties.

c) That no past or present wrongdoing on the part of the Parties shall be implied by such negotiations.

7. **Additional Documents.**

7.1 The Parties agree to cooperate fully and execute any and all supplementary documents and take all additional actions that may be necessary as appropriate to give full force and effect to the basic terms and intent of this Agreement.

8. **Independent Advice of Counsel.**

8.1 Each party represents and declares that it has received independent advice from its respective attorney with respect to the advisability of making the settlement provided for herein. Each party further represents and declares that it has not relied upon any statement or representation by the other party or any of its partners, agents, employees, or attorneys in executing this Agreement or in making the settlement provided for herein, except as expressly provided for herein.

9. **Voluntary Agreement.**

9.1 Each party represents and declares that it has carefully read this Agreement, that it knows the contents of this Agreement, and that it has signed the same freely and voluntarily.

10. **Merger and Entire Agreement.**

10.1 The Parties acknowledge and understand that this is the entire agreement between the Parties with regard to the matters set forth herein. There are no other understandings or agreements, verbal or otherwise, related thereto, between the Parties.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date written by their respective names.

EMPLOYEE

ROBERT E. KOSS

DATE: 7/13/17

MANAGEMENT,
GUAM DEPARTMENT OF EDUCATION

By: _____
JON J.P. PERNANDEZ, Superintendent of Education

DATE: 7/10/17

APPROVED AS TO FORM & LEGALITY:

SOMERFLECK & ASSOCIATES PLLC
Attorney for Employee

DANIEL S. SOMERFLECK, ESQ.

DATE: 7/13/17

LEGAL COUNSEL,
GUAM DEPARTMENT OF EDUCATION

By: _____
JESSE N. NASIS, ESQ.

DATE: 7/10/17

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BEFORE THE CIVIL SERVICE COMMISSION

GOVERNMENT OF GUAM

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C. The Parties desire to enter into this Settlement Agreement (the "Agreement") for Adverse Action Appeal Case No. 16-AA25T and Whistleblower Case No. 16-WB01 and for any pending matters related to these above-captioned matters (hereinafter collectively referred to as the "CSC Actions") in order to provide for certain arrangements in full settlement and discharge of these matters in fair and equitable means and upon the terms and conditions set forth herein.

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against any and all claims, actions, causes of action (direct or derivative), losses, injuries, damages, liabilities, costs, expenses, liens, demands, and fees (including attorneys' fees, except as set forth herein), of any kind or description whatsoever in law or in equity, now known or hereafter discovered, in any way related to or connected with any and all claims for personal injuries, property or economic damages or otherwise, known or unknown, realized or unrealized, both compensatory and punitive, expenses, and interest, whether direct or indirect, arising in tort, contract, statute or otherwise, which Employee has, had, or might have asserted against GDOE in connection with, arising from, or related to the CSC Actions.

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EMPLOYEE

ROBERT E. KOSS

DATE: 7/13/17

MANAGEMENT,
GUAM DEPARTMENT OF EDUCATION

By: _____
JON J.P. FERNANDEZ, Superintendent of Education

DATE: 7/10/17

APPROVED AS TO FORM & LEGALITY:

SOMERFLECK & ASSOCIATES PLLC
Attorney for Employee

DANIEL S. SOMERFLECK, ESQ.

DATE: 7/13/17

LEGAL COUNSEL,
GUAM DEPARTMENT OF EDUCATION

By: _____
for **JESSE N. NASIS, ESQ.**

DATE: 7/10/17

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