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January 16, 2018

CR# 34-18-1402
Speaker Benjamin J.F. Cruz

The Honorable Benjamin J.F. Cruz
Speaker
34th Guam Legislature
Guam Congress Building
163 Chalan Santo Papa
Hagatna, Guam 96910

JAN 16 2018
Time: 12:08 AM PM File No. 34-1404
Received By

Re: *Jon Fernandez vs. Guam Education Board*, District Court of Guam Civil Case No. 16-00080

Dear Speaker Cruz:

Hafa Adai! Pursuant to Section 1820 of Title 1 of the Guam Code Annotated, our Office hereby submits the enclosed Settlement Agreement that requires Legislative statutory approval. Your action on this matter within the next forty-five (45) days is appreciated.

If you have any further questions please feel free to contact me at 475-3324 ext. 3075.

KENNETH ORCUTT
Deputy Attorney General

Enclosure

cc: Guam Education Board
Lujan & Wolff
Senator San Agustin

2018 JAN 16 PM 12:11

1400

SETTLEMENT AND RELEASE AGREEMENT
FERNANDEZ V. GUAM EDUCATION BOARD ET AL
DISTRICT COURT CIVIL CASE NO. CV-16-00080

THIS SETTLEMENT AND RELEASE AGREEMENT (hereinafter referred to as "the Agreement") is between JON FERNANDEZ (hereinafter referred to as "PLAINTIFF"), and the GUAM EDUCATION BOARD, and the former and current members of the Guam Education Board sued in their official capacities (hereinafter referred to as "DEFENDANTS").

On November 18, 2016, PLAINTIFF through his authorized representative, Attorney DAVID J. LUJAN, filed a complaint and summons under 42 U.S.C. § 1983 with the United States District Court of Guam, Civil Case No. 16-00080, against the DEFENDANTS for injunctive and declaratory relief and damages for economic harm including loss of future prospects of income, expenses and costs, for future expenses and costs, emotional harm, injury, mental anguish, professional embarrassment, public humiliation, and loss of enjoyment. The PLAINTIFF AND DEFENDANTS have come to an agreement to settle all the issues arising out of Civil Case No. 16-00080.

The GUAM EDUCATION BOARD voted and approved the terms of this Agreement on the 27th day of October, 2017, as a part of the GUAM EDUCATION BOARD MEETING. This Agreement is contingent upon the subsequent approval of the Governor and Attorney General of Guam. This Agreement is also contingent upon the approval of the Guam Legislature or a specific appropriation for this Agreement pursuant to 1 GCA § 1820. If the Attorney General and Governor of Guam approve this Agreement, it may, pursuant to 1 GCA § 1820, be transmitted to the Guam Legislature for approval. If the Guam Legislature fails to approve the Agreement or make a specific appropriation for said settlement pursuant to 1 GCA § 1820 within forty-five (45) days of transmittal, or fails to amend or repeal 1 GCA § 1820 within forty-five (45) days of transmittal

Doc. No. 34GL-18-1400.

eliminating the need for legislative approval, this Agreement is void *ab initio* and is of no force and effect. If the Guam Legislature approves the Agreement or makes a specific appropriation within forty-five (45) days of transmittal, or amends or repeals 1 GCA § 1820 within forty-five (45) days of transmittal such that the Agreement is valid without legislative approval, then the parties agree to the following settlement of Civil Case No.16-00080:

1) Upon fulfillment of the below conditions, plaintiff shall dismiss with prejudice all claims against Defendants in their official capacity and the Guam Education Board.

a) As a condition for the above dismissal of the claims against the Guam Board of Education and the individual defendants sued in their official capacity, the Government of Guam through the Guam Board of Education shall pay Plaintiff **SIXTY THOUSAND DOLLARS** ($60,000.00) as costs and attorney fees incurred by Plaintiff in this litigation under 42 U.S.C. § 1988.

2) As further consideration for this settlement, prior to dismissal of the claims against the Guam Board of Education and the individual defendants sued in their official capacity, DEFENDANTS shall cooperate in seeking the entry of an order expunging the Title IX investigative report submitted to the Guam District Court from the Court record. Such cooperation shall include stipulating and/or moving jointly with PLAINTIFF for such order.

3) **Purpose of Agreement.** The Parties acknowledge and agree that this Agreement is a settlement and compromise of Civil Case No.16-00080 and the incident that is the subject of Plaintiff's complaint. The parties intend by the execution of this Agreement to fully, finally and completely resolve all disputes between them regarding said incident and court case as set forth in this Agreement.

4) **Additional Documents.** All parties shall cooperate fully and execute all supplementary documents and take all additional actions that may be necessary or appropriate to give full force and effect to this Agreement.

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

6) **Voluntary Agreement.** 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.

7) The Parties acknowledge and agree that this Agreement is a settlement and compromise of disputed claims. This Agreement is the result of a good faith compromise of disputed claims. This Agreement and any action taken by the Parties, is not and shall never be used or considered to be an admission of the truthfulness or correctness of the claims advanced by any Party, or of any liability, fault or responsibility by any Party. Each Party continues to deny all liability, disclaim all responsibility, and dispute all factual allegations claimed by the other Party. In entering into this Agreement, the Parties simply intend to avoid further litigation. Further, this Agreement is not and shall not be used as evidence of any admission of liability or wrongdoing for any purpose.

8) **Release.** Except for the rights and obligations created by this Agreement, the parties hereby fully release and forever and irrevocably discharge all Claims against each other or any

heir, assign, or successor in interest thereto, of every kind and of any nature, including, but not limited to, all Claims of any nature related to or arising out of the incident described in Plaintiff's complaint in Civil Case No.16-00080, whether known or unknown, asserted or unasserted, whenever and howsoever arising, that have been or could have been or may in the future be asserted, against any party, including that parties' employees, agents and similar persons.

9) **Integration**. This Agreement is the complete and final expression of the entire and only understanding between the parties relating to its subject matter and supersedes any prior written and oral representations between the parties. There are no other agreements or understandings between the parties relating to the matters and releases referred to herein. Each Party relies upon the finality of this Agreement as a material factor inducing that Party's execution hereof. This Agreement may not be altered or amended except by a writing signed by all of the parties hereto expressly stating that such modification is intended.

10) **Settlement Agreement.** All Parties have investigated the facts pertaining to the releases contained herein as they deem necessary. No Party has been unduly influenced to any extent whatsoever by any other Party. Except as expressly stated herein, no Party has made any representation regarding any fact, which representation is relied upon by any other Party in entering into this Agreement.

11) **Use of This Agreement in Court.** In the event that the Guam Legislature approves the Agreement or makes a specific appropriation within forty-five (45) days of transmittal, or amends or repeals 1 GCA § 1820 within forty-five (45) days of transmittal such that the Agreement is valid without legislative approval, this Agreement may be pleaded as a full and complete defense to any causes of action that may be instituted, prosecuted or attempted for, upon, or in respect of any of the incident described in Plaintiff's complaint.

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12) **Preparation of Agreement.** This Agreement was produced by negotiation and review by and among the Parties and their respective attorneys. This Agreement shall not be deemed prepared or drafted by one Party or another, or its attorneys, and will be construed accordingly.

IT IS SO AGREED:

IN WITNESS WHEREOF, the parties have entered into this Settlement and Release Agreement on the dates indicated by their respective names.

GUAM EDUCATION BOARD:

MARIA A. GUTIERREZ
Chairwoman of Guam Education Board

Date: Oct. 27, 2017

ELIZABETH BARRETT-ANDERSON
Attorney General
Attorney for Guam Education Board
And the Individually Named Defendants
In their Official Capacity

Date: 11/13/17

EDDIE BAZA CALVO
Governor of Guam

Date: 11/21/17

PLAINTIFF:

JON P. FERNANDEZ

Date: 11/7/17

DELIA LUJAN WOLFF
Attorney for Plaintiff

Date: 11/7/17

Doc. No. 34GL-18-1400.