



OFFICE OF COUNTY COUNSEL

PUBLIC SERVICES BUILDING
 2051 KAEN ROAD | OREGON CITY, OR 97045

Stephen L. Madkour
 County Counsel

Kathleen Rastetter
Scott C. Ciecko
Amanda Keller
Nathan K. Boderman
Shawn Lillegren
Jeffrey D. Munns
Andrew R. Naylor
Andrew Narus
Sarah Foreman
 Assistants

January 20, 2021

Board of County Commissioners for Clackamas County

Approval and signing of a settlement agreement in the case of *Estate of Bryan Perry v. Clackamas County et al*, U.S. District Court No. 3:18-cv-01754-HZ

Purpose/Outcome	Formal approval and execution of previously authorized litigation settlement
Dollar Amount and Fiscal Impact	\$300,000 total payment for settlement of federal lawsuit
Funding Source	Risk fund
Duration	One time payment to occur in September 2022
Previous Board Action/Review	Settlement previously presented at executive sessions during summer 2021 and January 2022
Strategic Plan Alignment	1. This item aligns with County Counsel's strategic business plan because it involves comprehensive legal advice and advocacy to the client in order to foster successful operations while minimizing risk and adverse results. 2. This item aligns with the County's Performance Clackamas goals by building public trust through good governance, and ensuring safe, healthy, and secure communities.
Counsel Review	This item has been reviewed and approved by County Counsel
Procurement Review	N/A
Contact Person	Scott Ciecko, Sr. Legal Counsel sciecko@clackamas.us
Contract No.	N/A

BACKGROUND: In 2018 Clackamas County, along with a number of other parties, was sued in federal court following the overdose death of Bryan Perry in the Clackamas County Jail. After several years of litigation, in the summer of 2021, the Board extended to County Counsel settlement authority of up to \$300,000.

A lengthy mediation between the parties ultimately resulted in successful settlement of the case for that amount, and now the attached settlement agreement is ready for final Board approval and execution, which needs to occur at a duly noticed public meeting.

RECOMMENDATION: Staff respectfully recommends that the Board formally approve and execute the settlement agreement, attached hereto as Exhibit 1, resulting in payment of \$300,000 to plaintiffs in the *Estate of Perry* lawsuit. Payment is expected to be made in or about September of 2022.

Sincerely,



Scott Ciecko, Sr. Legal Counsel

SETTLEMENT AGREEMENT AND RELEASE

1. PARTIES

This Settlement Agreement and Release ("Agreement") is made and entered into between the following parties:

Plaintiffs:

- **THE ESTATE OF BRYAN PERRY**, by and through its court-appointed personal representative Brenda Kay Nordenstrom; and
- **BRENDA KAY NORDENSTROM**, in her individual capacity;

County Defendants:

- **CLACKAMAS COUNTY** and its commissioners, directors, officers, employees, agents, attorneys, and insurers;
- **SHAWN SHULTZ**;
- **BENJAMIN LEFEVER**;
- **MATT SAVAGE**;
- **RICKY PAURUS**;
- **LACEY SANDQUIST**;
- **RICHARD TAYLOR**;
- **NICK JOHNSON**; and
- **MATRONA SHADRIN**.

Collectively, Plaintiffs and County Defendants are referred to as the "Settling Parties."

2. SCOPE OF THE SETTLEMENT: FULL AND FINAL

The Settling Parties intend this Agreement to be a full, final and complete settlement, adjustment and compromise of any and all known or unknown actions, causes of action, claims and demands, damages, costs, loss of services, expenses and compensation, on account of or in any way growing out of, or resulting from the time Bryan Perry spent in the Clackamas County jail on or about November 3, 2016 (the "Incident"), more fully described in the United States District Court Case No. 3:18-cv-01754-HZ, captioned *Brenda Kay Nordenstrom, personal representative for the Estate of Bryan Perry, Deceased, and Brenda Kay Nordenstrom, an individual v. Corizon Health, Inc., et. al.* (the "Lawsuit"), or which could have been brought under the facts alleged in or discovered during the pendency of the Lawsuit, whether known or unknown.

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3. SETTLEMENT TERMS AND PAYMENT

This settlement is contingent on Corizon Health, Inc.'s ("Corizon") payment of its separate settlement with Plaintiffs related to and arising out of the Incident ("Corizon's Settlement").

In consideration for a full and complete release of any all claims, County Defendants agree to pay, and Plaintiffs agree to accept, the settlement sum of \$300,000 (Three Hundred Thousand Dollars).

The Settling Parties agree to the following terms of this settlement:

- A. The only condition that voids or terminates this Agreement is Corizon's inability to pay the full amount of Corizon's Settlement. County Defendants understand that Corizon's Settlement includes specific dates, within a one-year period, that Corizon will make payments to Plaintiffs. If Corizon fails to make payment within five business days of the date set for the scheduled payment, Corizon will be considered in default and Plaintiffs may void the agreement upon written notice to County Defendants.
- B. Plaintiffs will inform County Defendants of the dates that Corizon's payments are due pursuant to Corizon's Settlement within a reasonable time after this Agreement is signed.
- C. Plaintiffs will inform County Defendants whether Corizon has made a payment, upon request by County Defendants.
- D. When Plaintiffs inform County Defendants that Corizon paid Corizon's Settlement in full, County Defendants will pay Plaintiffs the settlement sum in this Agreement.
- E. Upon County Defendants' payment of the settlement sum in this Agreement,
 - i. Plaintiffs will promptly dismiss all claims against County Defendants in the Lawsuit with prejudice, and
 - ii. Plaintiffs, Ricky Paurus, Lacey Sandquist, and Matrona Shadrin will promptly dismiss the appeal arising out of the Lawsuit, filed in the Ninth Circuit Court of Appeals, Case No. 21-35572 ("the Appeal").
- F. The Lawsuit and the Appeal are stayed or abated until Plaintiffs and County Defendants determine whether Corizon's Settlement is paid. If Corizon fails to pay Corizon's Settlement, except as set forth in paragraph 3.A. above, either Plaintiffs or County Defendants can reinstate the Lawsuit or the Appeal.

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4. **RELEASE**

In consideration for the payment and terms set out in paragraph 3, Plaintiffs agree to release and forever discharge County Defendants and their commissioners, directors, officers, employees, agents, insurers, attorneys, and assigns and all others who might be claimed liable for the Incident from any and all claims or liabilities that were or could have been made for damages of any and all kinds, known or unknown, made or not made, related to or arising out of the Incident. This Release extends to claims for attorney fees, costs, and legal expenses.

5. **INDEMNIFICATION FOR SUBROGATION AND LIEN CLAIMS**

In consideration for the payment set out in paragraph 3, Plaintiffs agree to defend, indemnify and hold County Defendants and their commissioners, directors, officers, employees, agents, insurers, attorneys, and assigns and all others who might be claimed liable for the Incident harmless from any and all claims, liens or subrogated interests related to the Incident, claims arising out of, related to, or in any way caused by the facts and circumstances surrounding or related to the Incident or Lawsuit, or claims that could have been alleged in the Lawsuit. This agreement to defend, indemnify and hold harmless extends to other actions arising out of or relating to the Incident, including but not limited to claims from other parties to the Lawsuit or claims brought by any and all persons or entities who are not parties to the Lawsuit. County Defendants retain the right to monitor the defense of any such claim or action.

Bryan Perry has been identified as a Medicaid recipient and, as such, the Oregon Department of Human Services ("DHS") and/or other service providers who contract with DHS (collectively referred to as "Secondary Payees") may have an interest in the proceeds of this settlement. Plaintiffs further agree their obligation to defend, indemnify and hold County Defendants harmless applies to all subrogation and lien claims arising out of contract or under state or federal law. As further consideration for this agreement, Plaintiffs release, waive, and forever discharge any and all claims of any nature and/or damages against County Defendants should Secondary Payees bring any action to enforce liens against this settlement, including but not limited to a Private Cause of Action under 42 U.S.C. § 1395y(b)(3)(A) of the MSP Act.

6. **REAL PARTY IN INTEREST**

The court appointed Brenda Kay Nordenstrom as the personal representative of Bryan Perry's estate on September 25, 2017. Plaintiffs warrant that Ms. Nordenstrom is the real party in interest and has the sole authority to pursue the estate's claims in the Lawsuit.

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7. **SETTLEMENT NOT AN ADMISSION OF LIABILITY**

County Defendants enter into this Agreement and make the settlement payment solely in compromise and settlement of disputed claims. Such payment is not to be regarded as an admission of liability or fault by anyone.

8. **DISMISSALS**

The Settling Parties agree to dismiss the Lawsuit and the Appeal with prejudice and without costs or attorney fees to any party as soon as practicable according to the terms set forth in paragraph 3.

9. **COUNTERPARTS**

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together constitute one in the same instrument, binding on the Settling Parties.

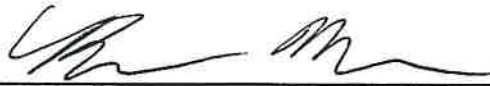
10. **MUTUALLY DRAFTED**

The wording of this Agreement has been reviewed and accepted by counsel for Plaintiffs and County Defendants. The Settling Parties agree this Agreement is to be construed and interpreted without regard to the identity of the Party drafting this Agreement.

11. **ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement among the Settling Parties. This document supersedes any prior oral or written agreements or communications on the subject matter addressed herein.

DATE: 12-15-2021



THE ESTATE OF BRYAN PERRY, by and
through its court-appointed personal
representative Brenda Kay Nordenstrom

DATE: 12-15-2021



BRENDA KAY NORDENSTROM, in her
individual capacity;

///

DATE: _____

_____ CLACKAMAS COUNTY

By: _____

DATE: _____

_____ By: _____

On behalf of:

SHAWN SHULTZ
BENJAMIN LEFEVER
MATT SAVAGE
RICKY PAURUS
LACEY SANDQUIST
RICHARD TAYLOR
NICK JOHNSON
MATRONA SHADRIN