



November 22, 2023

Stephen L. Madkour
County Counsel

Board of County Commissioners

Scott C. Ciecko
Amanda Keller
Shawn Lillegren
Jeffrey D. Munns
Andrew R. Naylor
Andrew Narus
Sarah Foreman
Hong Huynh
Caleb Huegel
Assistants

Clackamas County

Approval of a Settlement Agreement with Robert Escudero and Clackamas County Employees' Association to Resolve Litigation Related to Employment at Clackamas County Juvenile Department. Total value is \$325,000. Funding through Clackamas County Juvenile Department, County Administration and County Risk Funds, which includes \$162,500 of County General Funds.

Previous Board Action/Review	This Board has been briefed on this case during previous executive sessions.		
Performance Clackamas	Build public trust through good government.		
Counsel Review	Yes	Procurement Review	N/A
Contact Person	Shawn Lillegren	Contact Phone	503-742-5393

EXECUTIVE SUMMARY: The Office of County Counsel requests the approval of a settlement agreement with Robert Escudero and Clackamas County Employees' Association, which concerns litigation arising from his employment at the Clackamas County Juvenile Department.

RECOMMENDATION: Staff recommends the Board of County Commissioners approve and authorize Chair Tootie Smith to sign the attached Settlement Agreement.

Respectfully submitted,

Shawn Lillegren
Senior Assistant County Counsel

For Filing Use Only

GENERAL RELEASE OF ALL CLAIMS

This Settlement Agreement and General Release of All Claims ("Agreement") is made and entered into by and between Robert Escudero ("Escudero"), the Clackamas County Employees' Association ("the Association") and Clackamas County ("the County") and Kathryn Anderson ("Anderson"), collectively referred to herein as the "Parties."

RECITALS

A. WHEREAS, currently pending in the United States District Court for the District of Oregon is the case entitled *Roberto Escudero v. Clackamas County*, Case No. 3:22-cv-01159-HZ, wherein Escudero asserts employment-related claims against the County and Anderson; and the implementation of the award issued by Arbitrator Barbara J. Diamond on the labor grievance entitled *Clackamas County Employees' Association and Clackamas County, Escudero Termination Grievance* (collectively, "the Litigation");

B. WHEREAS, the County and Anderson deny all allegations made by Escudero and deny that Escudero has been harmed or damaged as a result of any act or omission by the County, Anderson, or by any of the County's current or former employees; and

C. WHEREAS, the Parties desire to settle fully and finally the Litigation and all of the differences between them on the terms and conditions set forth in this Agreement, which the Parties acknowledge and represent to be fair, reasonable, adequate, and in their mutual best interests.

THEREFORE, in consideration of the foregoing and mutual promises contained herein, the Parties agree as follows:

DS 1. **Settlement Amount.** Provided that the Parties execute this Agreement, subject to the approval of the Clackamas County Board of County Commissioners at a business meeting on or before November 22, 2023, the County agrees to pay to Escudero the gross sum of Three Hundred and Twenty-Five Thousand Dollars and Zero Cents (\$325,000) in full and final settlement of all matters between the Parties (the "Settlement Amount"). The Settlement Amount will be paid to Escudero 30 days from the date this Agreement is fully executed by all parties and will be paid as follows: (a) One Hundred and Thirty-Five Thousand Dollars (\$135,000) in a paycheck for back wages; and (b) One Hundred and Ninety Thousand Dollars (\$190,000) in a Form 1099, ^{for} emotional distress, attorneys' fees, and costs, made payable to Daniel Snyder Client Trust Account, upon receipt of a W-9 from the Law Offices of Daniel Snyder for payment of Escudero's noneconomic damages and attorneys' fees. The Parties acknowledge that the labor arbitration award from Arbitrator Barbara J. Diamond included an order of reinstatement and back wages and benefits, less a 60-day suspension. County agrees to pay the required State of Oregon PERS contribution for any wages paid as specified above, consistent with the arbitration award.

2. **Dismissal with Prejudice.** Within three (3) business days of the County's return of the fully executed Agreement to counsel, Escudero shall cause to be prepared and shall file in the Litigation a Notice of Settlement and Stipulation and Proposed Order of Dismissal of the Action with Prejudice, without an award of attorneys' fees or costs to either party.

3. **Release of Claims.** In consideration of the benefits provided in this Agreement, Escudero, on behalf of himself and his representatives, heirs, and assigns, and the Association releases County and its past and present directors, officers, members, managers, agents, employees, attorneys, insurers, related entities and affiliates, successors, and assigns, and Anderson (collectively, "Released Parties") from any and all liability, damages or causes of action, whether known or unknown, whether in tort, contract, or under local, state, or federal statute, except any claim the release of which is expressly barred by law. Escudero and the Association understands and acknowledges that this release includes, but is not limited to, any claim for reinstatement, reemployment, attorney fees, or additional compensation in any form, and any claim, including, but not limited to, those arising under the Rehabilitation Act of 1973, Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1991, the Post Civil War Civil Rights Act (42 U.S.C. 1981-88), the Equal Pay Act, the Age Discrimination in Employment Act, the Older Workers Benefit Protection Act, the Americans with Disabilities Act, the Vietnam Era Veterans Readjustment Assistance Act, the Fair Labor Standards Act, the Family Medical Leave Act of 1993, the Uniformed Services Employment and Reemployment Rights Act, the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), the Employee Retirement Income Security Act of 1974 (ERISA), Executive Order 11246, the National Labor Relations Act, the Sarbanes-Oxley Act, all as amended, and any and all other civil rights, employment, and labor laws of any state and any regulation under such authorities relating to Escudero's employment or association with the County or the resignation/termination of that employment and association.

The County and Anderson hereby release Escudero and the Association from any and all claims, liability, demands, rights, damages, costs, attorney fees, and expenses of whatever nature that exist as of the date of execution of this Agreement, whether known or unknown, foreseen or unforeseen, asserted or unasserted.

4. **Acknowledgement of Plaintiff Tax Obligations.** Escudero acknowledges any tax obligations, payments, penalties, debts or claims of any kind that may arise from Escudero's failure to comply with any tax reporting or payment obligations as a result from the receipt by Escudero and counsel of the Settlement Amount shall be the full responsibility of Escudero. Escudero and the Association further acknowledges and agrees that Escudero has been properly paid for all hours worked for the County, that all salary, wages, commissions, bonuses, and other compensation due to him have been paid, and that he is not owed anything else from the County and Anderson other than as provided in this Agreement.

5. **Compliance with Older Workers Benefit Protection Act.** This Agreement is subject to the terms of the Older Workers Benefit Protection Act of 1990 ("OWBPA"), which provides that an individual cannot waive a right or claim under the Age Discrimination in Employment Act ("ADEA") unless the waiver is knowing and voluntary. Pursuant to the terms of the OWBPA, Escudero acknowledges that he has executed this Agreement voluntarily and with full knowledge of its consequences. Escudero is hereby advised to seek counsel regarding whether to sign this Agreement. Escudero further acknowledges that this Agreement is written in a manner that is calculated to be understood, that he does understand it, that it applies to any rights he may have under ADEA, that it releases claims up to the date it is signed but not claims or rights that he may have under the ADEA that arise after it is signed, that he is receiving consideration or benefits in addition to those to which he is already entitled, and that he has a period of up to 21 (twenty-one) calendar days to consider this Agreement, but knowingly and voluntarily waives that right by

signing it on an earlier date if he does so. Escudero further acknowledges, understands, and agrees that this Agreement shall not become effective or enforceable as a waiver of his ADEA claims until seven (7) calendar days after it is executed by him and that until seven (7) days have passed, he may revoke this Agreement as to the ADEA claims. Escudero will provide written notice of any such revocation to Shawn Lillegren, Senior Assistant Clackamas County Counsel, by email at slillegren@clackamas.us.

6. Resignation. In further consideration of the benefits provided in this Agreement, Escudero agrees to voluntarily resign his employment with the County effective November 8, 2023. If Escudero makes a claim for unemployment benefits arising out of his departure from the County, the County will not contest said claim. Escudero requests and the parties agree that Escudero shall not apply for employment at Clackamas County, specifically including but not limited to the North Clackamas Parks and Recreation District, Clackamas Water Environment Services, the Clackamas County Sheriff's Office, the Clackamas County District Attorney's Office, or any other related County entity. Escudero further requests and the parties agree that Escudero will have no reinstatement or reemployment rights. Escudero further acknowledges, understands, and agrees that this Agreement shall not become effective or enforceable until after seven (7) calendar days after it is executed by him and that until seven (7) calendar days have passed, he may revoke this Agreement as to the no rehire provision. Escudero will provide written notice of any such revocation to Shawn Lillegren, Senior Assistant Clackamas County Counsel, by email at slillegren@clackamas.us.

7. Neutral Employment Reference. Escudero will agree to refer all future reference requests from prospective employers to the County's Director of the Department of Human Resources, who will only provide Escudero's dates of employment, last position held, and job duties.

8. Covenant Not to Sue. Escudero and the Association agrees and covenants not to sue any of the Released Parties for any claims released herein, whether in court, arbitration, or any other proceeding.

9. No Admission of Liability. Escudero and the Association agrees that nothing in this Agreement, its contents, and any payments made under it, will be construed as an admission of liability on the part of the Released Parties.

10. Drafting and Construction. The Parties acknowledge and agree that each has participated in the drafting and negotiation of this Agreement, and that each provision shall be deemed to have been jointly drafted by the Parties. The Parties intend for this Agreement to be construed and interpreted neutrally, in accordance with the plain meaning of its language, and not presumptively construed against any purported drafter of specific language contained in it.

11. Governing Law, Forum, and Attorney Fees. This Agreement shall be interpreted and enforced in accordance with the laws of the State of Oregon without regard to conflict of law principles.

12. **Attorney Fees and Costs.** With the exception of the compensation described in Section 1 in this Agreement, the Parties shall bear its own attorney fees and costs incurred before and through the date of this Agreement.

13. **Successors and Assigns.** This Agreement shall be binding upon Escudero's heirs, executors, administrators, and other legal representatives and may be assigned and enforced by the Released Parties and their successors and assigns.

14. **Severability.** The provisions of this Agreement are severable. If any provision of this Agreement or its application is held invalid, the invalidity shall not affect other obligations, provisions, or applications of this Agreement, which can be given effect without the invalid obligations, provisions, or applications.

15. **Modification and Waiver.** No modification or amendment of this Agreement shall be valid unless it is in writing and signed by both Parties. The failure of either party to demand strict performance of any provision of this Agreement shall not constitute a waiver of any provision, term, covenant, or condition of this Agreement or of the right to demand strict performance in the future.

16. **Section Headings.** The section headings contained herein are for reference purposes only and will not in any way affect the meaning or interpretation of this Agreement.

17. **Counterparts.** This Agreement may be executed in any number of counterparts, all of which together shall comprise a single Agreement. An electronic signature by the Parties is sufficient to execute the Agreement. Copies, scans, or facsimiles of original signature pages shall be as effective as originals.

18. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties and supersedes all prior or contemporaneous oral or written understandings, statements, representations or promises with respect to its subject matter. This Agreement was the subject of negotiation between the Parties and, therefore, the Parties agree that the rule of construction requiring that the agreement be construed against the drafter shall not apply to the interpretation of this Agreement.

19. **Return of Signed Agreement:** You are required to return your signed Agreement and any written revocation notice to Shawn Lillegren at Clackamas County via email (slillegren@clackamas.us), mail, or personal delivery (Clackamas County Office of County Counsel, 2051 Kaen Road, Suite 254, Oregon City, OR 97045.)

///

///

///

///

///

ESCUADERO ACKNOWLEDGES AND AGREES THAT HE HAS HAD A REASONABLE AMOUNT OF TIME TO REFLECT ON AND CONSIDER SIGNING THIS AGREEMENT, THAT HE HAS CAREFULLY READ AND CONSIDERED THIS AGREEMENT, THAT HE FULLY UNDERSTANDS ITS FINAL AND BINDING EFFECT, THAT THE ONLY PROMISES MADE TO HIM TO SIGN THIS AGREEMENT ARE THOSE STATED AND CONTAINED IN THIS AGREEMENT, AND THAT ESCUDERO IS SIGNING THIS AGREEMENT KNOWINGLY AND VOLUNTARILY, AFTER HAVING HAD THE OPPORTUNITY FOR CONSULTATION WITH INDEPENDENT LEGAL COUNSEL, WITH THE INTENT TO BE LEGALLY BOUND BY ITS TERMS.

Robert Escudero


Clackamas County

Date 11/1/2003, 2023

By: _____

Name: _____

Its: _____

Date: _____, 2023

Clackamas County Employees' Association

Kathryn Anderson

Don Miller
Don Miller (Nov 2, 2023 11:36 PDT)



Name: Don Miller

Date: November 14, 2023

Its: President

Date November 2, 2023

APPROVED AS TO FORM:

APPROVED AS TO FORM:

By: 
Daniel Snyder
Attorney for Robert Escudero


By: _____
Shawn A. Lillegren
Senior Assistant County Counsel

Date: 11/1, 2023

Date: Nov. 14, 2023

APPROVED AS TO FORM:

By: Katelyn Oldham
Katelyn S. Oldham
Attorney for Clackamas County Employees' Association

Date: November 2, 2023