



OFFICE OF COUNTY COUNSEL

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

January 9, 2025

BCC Agenda Date/Item: _____

Jane E. Vetto
County Counsel

Board of County Commissioners
Clackamas County

Scott C. Ciecko
Amanda Keller
Shawn Lillegren
Jeffrey D. Munns
Sarah Foreman
Hong Huynh
Caleb Huegel
Angela Hajihashemi
Assistants

Approval of a Settlement Agreement in the case of David Buzza v. Clackamas County, et al. Settlement Value is \$125,000. Funding is through the County Risk Fund. No County General Funds are involved.

Table with 4 columns: Previous Board Action/Review, Performance Clackamas, Counsel Review, Contact Person. Rows include Executive Session date, Building public trust, Initials: JM, Procurement Review (N/A), and Contact Person (Jeffrey D. Munns, 503-742-5984).

EXECUTIVE SUMMARY: Plaintiff was formerly employed at the Clackamas County Sheriff's Office and sought reassignment to an available and suitable position with Clackamas County due to a work-related injury that resulted in his inability to continue in his position as a Sheriff's deputy. Following reassignment Mr. Buzza filed a lawsuit against Clackamas County alleging discrimination based upon retaliation, failure to accommodate his disability, and failing to reassign him to a suitable position. The allegations were denied.

The Board of County Commissioners has exclusive settlement authority for settlements of \$100,000 or more. The proposed settlement reached by the parties in this case is \$125,000. The terms of the proposed settlement are set forth in the attached Settlement Agreement and General Release of Claims. Once settled, plaintiff will dismiss all claims alleged in the suit.

RECOMMENDATION: Staff recommends approval of the Settlement Agreement and Release of All Claims.

Respectfully submitted,

[Handwritten signature of Jeffrey D. Munns]

Jeffrey D. Munns
Assistant County Counsel

For Filing Use Only

SETTLEMENT AGREEMENT AND GENERAL RELEASE OF ALL CLAIMS

This Settlement Agreement and General Release of All Claims (“Agreement”) is made and entered into by and between David Buzza (“Buzza”) and Clackamas County (“Defendant”), collectively referred to herein as the “Parties.”

RECITALS

A. WHEREAS, currently pending in the Clackamas County Circuit Court is the case entitled *David Buzza v. Clackamas County*, Case No. 23CV17617, wherein Buzza asserts employment-related claims against the Defendant (“the Litigation”).

B. WHEREAS, Plaintiff continues to maintain that he was discriminated against by Defendant; and Defendant deny all allegations made by Buzza and deny that Buzza has been harmed or damaged as a result of any act or omission by the Defendant or by any of the Defendant’s current or former employees.

C. WHEREAS, the Parties desire to settle fully and finally the Litigation and all 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:

1. Settlement Amount. Provided that the Parties execute this Agreement, the Defendant agrees to pay to Buzza the gross sum of One Hundred Twenty-Five Thousand Dollars and Zero Cents (\$125,000.00) in full and final settlement of all matters between the Parties (the “Settlement Amount”). The Defendant provides no advice or representation about the appropriate tax treatment of the following funds. For the purposes of the settlement payments, Bennett Hartman, LLP shall provide to the Defendants a form W-9. All payments shall be mailed to 210 SW Morrison Street, Suite 500, Portland, Oregon 97204. The Settlement Amount will be paid to Buzza in three checks no later than twenty-one (21) calendar days from the date this Agreement is fully executed by the Parties and provided, with appropriate tax forms to Defendants, and will be paid as follows:

- 1.1** At Buzza’s election, \$12,187.50 shall be paid to Buzza, individually, as back wages. The Defendants will issue a W-2 for this payment, which will be subject to normal payroll withholdings and for which Defendant will make to contributions to the Public Employee Retirement System.
- 1.2** A second check in the amount of \$69,062.50 shall be paid to Buzza as noneconomic damages. This payment will not be subject to withholdings and will be reported on IRS form 1099;
- 1.3** \$43,750 shall be paid to Bennett Hartman, LLP for attorneys’ fees.

2. Dismissal with Prejudice. Within fourteen (14) business days of receipt of payment, Buzza's counsel will file a stipulation for the dismissal along with a form of judgment to dismiss Buzza's claims with prejudice and without attorney fees or costs to any party.

3. Release of Claims. In consideration of the benefits provided in this Agreement, Buzza, on behalf of himself and his representatives, heirs, and assigns, with the exception of workers' compensation claims WC21742 and 11-W-027, releases Defendant and its past and present directors, officers, members, managers, agents, employees, attorneys, insurers, related entities and affiliates, successors, and assigns, (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. Buzza understands and acknowledges that this release includes, but is not limited to, any claim for reinstatement, 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 Buzza's employment or association with the Defendants.

The Defendants hereby release Buzza from 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. 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, Buzza acknowledges that he has executed this Agreement voluntarily and with full knowledge of its consequences. Buzza is hereby advised to seek counsel regarding whether to sign this Agreement. Buzza 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 to 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. Buzza 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. Buzza will provide written notice of any such revocation to Jeffrey D. Munns, Senior Assistant Clackamas County Counsel, by email at jmunns@clackamas.us.

5. DPSST Reporting. In further consideration of the benefits provided in this Agreement, the Defendants agree work together with the Oregon Department of Public Safety Standards and Training (“DPSST”) in good faith to change Buzza’s DPSST status code from resigned to medically retired.

6. Neutral Employment Reference. Buzza will agree to refer all future reference requests from prospective employers to Clackamas County’s Director of the Department of Human Resources, who will only provide Buzza’s dates of employment, last position held, and job duties, and no other information.

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

8. No Admission of Liability. Buzza 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.

9. 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.

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

11. 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.

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

13. 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.

14. 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.

15. 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.

16. 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.

17. 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.

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

BUZZA 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 BUZZA 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.

David Buzza


Date 17 December, 2024

Clackamas County
By: _____

Name: _____

Its: _____

Date: _____, 2024