

SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT AGREEMENT AND RELEASE ("Agreement") is made and entered into by and between The Port Authority of Guam (hereinafter "Management"), and Josette J. Javelosa (hereinafter "Employee"). Management and Employee are referred to herein collectively as the "Party" or "Parties."

RECITALS

WHEREAS, on December 18, 2012, Employee was served a Final Notice of Adverse Action (FNAA) for her alleged involvement in processing a fraudulent Worker Compensation Claim for Bernadette S. Meno, Port Authority of Guam (PAG) Marketing Administrator who filed a claim after a slip and fall in the ladies restroom on September 22, 2011; and

WHEREAS, Employee filed an adverse action appealed of her termination with the Port Authority of Guam to Civil Service Commission (CSC) titled Josette Javelosa vs. Port Authority of Guam, Adverse Action Appeal Case NO 13-AA01T. After six days of hearing on the merits, the appeal resulted in a determination of 4-3 votes in favor of Employee; and

WHEREAS, Management disagreed with CSC decision and judgement and filed an appeal with the Superior Court of Guam; and

WHEREAS, on July 7, 2016 the Supreme Court ordered the case to be remanded back to the CSC to determine the correct standard of review. Employee filed an appeal with the Supreme Court of Guam Court Case No. CVA 15 which resulted in the decision remanding the case back to Superior Court and has resulted in the matter now being returned to the Civil Service Commission and now designated as Josette Javelosa vs. Port Authority of Guam Adverse Action Case No. 13-AA01T SP (hereinafter referred to as the "Litigation"); and

WHEREAS, on December 19, 2019, Port Authority of Guam Board of Directors executed Resolution No. 2019-22 Relative To Authority To Settle Litigation Between the Port Authority of Guam And Certain Appellants at the Civil Service Commission allowing Staff Attorney to offer settlement terms to Employee, and allowing Deputy General Manager of the Port Authority of Guam to execute this Agreement; and

Confidential Settlement Agreement between
Josette J. Javelosa and Port Authority of Guam

Employee's Initial: 

Management's Initials: 

WHEREAS, the Parties to the Litigation have agreed to amicably resolve and settle the claims and defenses in the Litigation; now

THEREFORE, the Parties have agreed to resolve this dispute and the Litigation; and, intending to be legally bound, the Parties hereby agree as follow:

TERMS AND CONDITIONS OF AGREEMENT

1. It is expressly understood that this Settlement Agreement and the settlement it represents are entered into solely for the purpose of allowing the Parties to avoid further litigation. Employee and Management shall enter into a Stipulated Judgment to be entered by Civil Service Commission of the Government of Guam, by which Employee's appeal of the adverse action taken against Employee by Management shall be fully resolved without the disclosure of the terms of this Agreement. Employee and Management agree that the Civil Service Commission shall retain jurisdiction to enforce the Stipulated Judgment.

2. In consideration of Management's agreement to the terms and conditions called for herein, the Employee completely releases and forever discharge Management, of and from any and all past, present or future claims, demands, obligations, actions, causes of action, rights, damages, costs, expenses and compensation which the Employee now has, or which may hereafter accrue or otherwise be acquired.

In consideration of the release set forth above, Management hereby agrees to:

- a. Rescind the adverse action taken against Employee and reinstate Employee to her position of Program Coordinator IV with the Marketing Division effective June 18, 2020, at the salary of \$43.16 per hour, and with all benefits, rights, privileges, obligations, duties and responsibilities related to such employment with the government of Guam according to the laws of Guam, and the Personnel Rules and Regulations of the Port Authority of Guam.
- b. Make Employee whole for all compensation, benefits, or other recompense that Employee would have earned had the adverse action not been executed against Employee (hereinafter referred to as "Back Wages"), Compensation of full back pay, to include pay increases as stipulated on Exhibit Schedule A. The Back Wages are subject to mitigated income earned by Employee during the period of her termination of which is stipulated on Exhibit Schedule A.
- c. Deduct from Back Wages and make payment to the Government of Guam Retirement Fund for Employee's share of retirement fund contributions to

Confidential Settlement Agreement between
Josette J. Javelosa and Port Authority of Guam

Employee's Initial:



Management's Initials:

restore Employee to what Employee would have contributed or paid had Employee been an active employee with the Port Authority of Guam, along with Management's matching contribution; Medicare; and all applicable taxes and withholdings at a rate of 25%; and within thirty (30) days provide assurance to Employee that such withheld amounts have been timely paid to the appropriate entity for which the deduction was made. Employee's Back Wages shall be payable in three installments as follows:

33% (\$135,087.70) within 30 days of execution of Agreement
33% (\$135,087.70) within 120 days of execution of Agreement
34% (\$139,181.27) within 240 days of execution of Agreement

- d. Restore to Employee credit for all annual leave and sick leave that Employee would have accrued had she remained in employment at the Port Authority of Guam, as stipulated on Exhibit Schedule B, to the extent permitted by Guam law and the Port's Rules and Regulations.
3. Management shall be responsible for paying the entire amount of any and all attorney's fees and costs that have incurred or did incur in connection with, representing and resolving legal matters relative to the Litigation as provided by 4 Guam Code Annotated §4406.1. Payments shall be made to John C. Terlaje in the amount of \$48,437.50 upon presentation of invoices to Management after execution of this Agreement.
4. Management agrees to expunge Employee's record of this termination and adverse action upon which it is based pertinent to the Litigation.
5. Management agrees that any payment deferred hereunder shall become immediately due and payable to Employee upon termination of Employee, or separation by Employee should such event occur before the date that any payment provided hereunder is due.
6. It is expressly understood that this Settlement Agreement and the settlement it represents are entered into solely for the purpose of allowing the Parties to avoid further litigation. This Settlement Agreement does not constitute an admission by either Party of any wrongdoing, contractual obligation, or of any duty whatsoever, whether based in statute, regulation, common law, or otherwise, and each Party expressly denies that any liability or any such violation has occurred.
7. Management agrees and represents that it has no other pending legal actions or claims against Employee, including in any court, arbitration forum, governmental

Confidential Settlement Agreement between
Josette J. Javelosa and Port Authority of Guam

Employee's Initial: 
Management's Initials: 

or administrative forum or agency, or other dispute resolution forum that are in any way related to the Litigation or dispute described herein.

8. The Parties represents and warrants that no other person or entity has or has had any interest in the claims, demands, obligations, or causes of action referred to in this Settlement Agreement, except as otherwise set forth herein, and that it has not sold, assigned, transferred, conveyed or otherwise disposed of any of the claims, demands, obligations, or causes of action referred to in this Settlement Agreement. This Settlement Agreement comprises the entire agreement between the Parties and supersedes any and all prior oral and written agreements between them. This Settlement Agreement may not be altered, amended, or modified except by a further writing signed by the Parties.

9. In entering into this Settlement Agreement, the Parties represents that it has relied upon the legal advice of its attorneys/representatives, who are the attorneys/representatives of its own choice and that the terms of this Settlement Agreement, have been negotiated and carefully reviewed by both parties, and that those terms are fully understood and voluntarily accepted by it.

10. All parties agree to cooperate fully and execute any and all supplementary documents and to take all additional actions which may be necessary or appropriate to give full force and effect to the basic terms and intent of this Settlement Agreement.

11. The Parties hereby agree that this Settlement Agreement, its terms, and all facts and information relating to this case, including but not limited to the fact and amount of settlement thereof, shall be kept in the strictest confidence and shall not hereafter be disclosed to any person, unless required by law. Notwithstanding the foregoing, the Parties may disclose information about this settlement to their attorneys, auditors, or accountants in the context of the attorney-client or accountant-client relationship.

12. Upon execution of this Agreement, Management and Employee, hereby irrevocably and unconditionally release and discharge one another, from any and all actions, claims, demands, appeals, and causes of action from the beginning of time to the date of this Settlement Agreement, known or unknown, asserted or unasserted, along with their respective agents, spouses, heirs, executors, administrators, directors, officers, insurers, successors and assigns as well as all other parties and entities.

Confidential Settlement Agreement between
Josette J. Javelosa and Port Authority of Guam

Employee's Initial: _____

Management's Initials: _____

13. Management and Employee agree that the consideration for this Release and Agreement is a fair and reasonable settlement and that this Agreement is made and entered into in good faith.


14. If any of the provisions, terms, or clauses of this Settlement Agreement are declared illegal, unenforceable, or ineffective by an authority of competent jurisdiction, those provisions, terms, and clauses shall be modified to the extent necessary to render such term or provision enforceable, and such that all other provisions, terms, and clauses of this Settlement Agreement shall remain valid and binding upon both Parties.

IN WITNESS WHEREOF, and intending to be legally bound, the Parties hereto have caused this Settlement Agreement to be executed as of the date(s) set forth below.


Dated: 6/26/2020

By: 
Josette J. Javelosa
Employee

Dated: 6/26/2020

By: 
John C. Terlaje
Attorney for Employee

Dated: June 26, 2020

By: 
Deputy General Manager for the
Port Authority of Guam
Management

Confidential Settlement Agreement between
Josette J. Javelosa and Port Authority of Guam

Employee's Initial: 

Management's Initials: 

City of Hagatna)
 (ss:
Guam, U.S.A.)

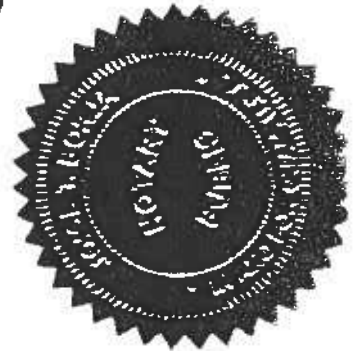
BEFORE ME, a Notary Public in and for Hagatna, Guam, U.S.A., personally appeared **JOSETTE J. JAVELOSA** and **LUIS JOSEPH RIVERA BAZA**, known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they voluntarily executed the same for the purposes stated therein.

WITNESS MY HAND and official seal this 26th day of June, 2020.



NOTARY PUBLIC

JOICE T. BORJA
NOTARY PUBLIC
In and for Guam, U.S.A.
My Commission Expires: DEC. 10, 2022
P.O. Box 24223 Berrigada, Guam 96921



PORT AUTHORITY OF GUAM
JOSETTE JAVELLOSA - PROPOSED PAYMENT PLAN

BACK WAGES (NET GROSS
PAY AFTER MITIGATION) \$ 409,356.68

PERCENTAGE	AMOUNT	PAYMENT DETAILS
33%	135,087.70	within 30 days of execution of Agreement
33%	135,087.70	within 120 days of execution of Agreement
34%	139,181.27	within 240 days of execution of Agreement

Employer agrees:

- * to reinstate the 216 sick leave hours owed to employee
- * to reinstate the 432 annual leave hours owed to employee
- * pay legal fees directly to Attorney in the amount of _____
- * back pay retirement benefits owed to employee