

5/18/23 kb

## SETTLEMENT AGREEMENT

This SETTLEMENT AGREEMENT ("Agreement") is made and entered into on the date indicated below by and between JEFFREY Q. CRUZ ("Employee") whose address is PO Box 758 Agat, Guam 96928 and the PORT AUTHORITY OF GUAM ("Management") whose address is 1026 Cabras Highway, Ste. 201 Piti, Guam 96915, whereby both parties release and discharge all rights, claims, and demands upon the terms and conditions provided herein. Employee and Management are each a "Party" to this Agreement, and are collectively referred to herein as "Parties."

### RECITALS

WHEREAS, on October 31, 2011, Employee was hired as a Cargo Checker despite not meeting the minimum qualifications described in Job Announcement No. 32-11, and subsequently began employment on November 14, 2011; and

WHEREAS, on October 16, 2012, as a result of a post-audit investigation conducted by the Guam Civil Service Commission ("CSC") of Employee's personnel action, the CSC unanimously found that Employee's appointment was in violation of the merit system and rendered his employment null and void; and

WHEREAS, the CSC then provided Management ninety (90) days to determine how to proceed with Employee's employment action; and

WHEREAS, on January 15, 2013, after the ninety (90) days had lapsed, Management appeared at a hearing before the CSC and deferred to the CSC's earlier determination that Employee's personnel action, Employee's initial appointment as a Cargo Checker, was null and void as a violation of the merit system; and

WHEREAS, on January 17, 2013, Management informed Employee that, as a result of the CSC's determination, Management was cancelling Employee's personnel action appointing him to the position of Cargo Checker; and

WHEREAS, on January 24, 2013, Employee filed a Letter of Appeal of Final Adverse Action with the CSC, asserting that the action taken against him by Management was wrongful and untimely; and

WHEREAS, on January 14, 2016, the CSC issued a Decision and Judgment granting Management's Motion to Dismiss the Employee's Adverse Action Appeal, finding that Employee lacked standing to appeal before the CSC and that it could not reinstate Employee via its adverse action appeal authority in light of its previous ruling that Employee's appointment was null and void; and

Initial: J.C.  
Initial: MA

**ORIGINAL**

WHEREAS, on February 12, 2016, Employee filed a Petition for Judicial Review in Superior Court Case No. SP0014-16, requesting the Court reverse and remand the CSC's January 14, 2016, Decision and Judgment. Employee also requested that the Court determine that the CSC had jurisdiction over that matter, namely that he was a classified employee subjected to a final adverse action; and

WHEREAS, the grounds for the CSC's dismissal of Employee's appeal were substantially similar to the grounds for another CSC dismissal filed in an earlier matter involving Management in *Port Auth. of Guam v. Civil Serv. Comm'n (Susuico)*, 2015 Guam 14 (Susuico I), and *Port Auth. of Guam v. Civil Serv. Comm'n (Susuico)*, 2019 Guam 15 (Susuico II); and

WHEREAS, Employee and Management agreed that the Guam Supreme Court's ruling on the Susuico appeal would establish binding precedent that would control the resolution of Employee's appeal and consequently, agreed to stay the Petition for Judicial Review pending the outcome of the Susuico appeal; and

WHEREAS, the Guam Supreme Court rendered an Opinion in *Susuico I* holding that the CSC did have jurisdiction to over to proceed over the adverse action appeal finding that when Susuico became a permanent, classified employee when he completed his probationary period and received a satisfactory rating on his performance evaluation report; and

WHEREAS, the Guam Supreme Court rendered an Opinion in *Susuico II* holding that Management violated the sixty (60) day rule when Management failed to act when the post-audit hearing was held and Management did not contest the CSC's factual findings. Instead, Management terminated Susuico's employment well after the sixty (60) day period in violation of Title 4 GCA § 4406; and

WHEREAS, in conformance with the holdings of *Susuico I* and *Susuico II*, the Superior Court of Guam remanded Employee's Petition for Judicial Review in SP0014-16 back to the CSC for proceedings not inconsistent with *Susuico I* and *Susuico II*; and

WHEREAS, the parties agree that the facts of *Susuico I* and *Susuico II* are substantially similar to the facts presented in Employee's appeal and therefore, the Opinion rendered by the Guam Supreme Court are dispositive of this matter; and

WHEREAS, the PAG Board of Directors ("BOD") by this Agreement states the BOD's intentions of terminating the CSC Adverse Action Appeal in an effort to avoid additional costs resulting therefrom; and

NOW, THEREFORE, in consideration of the mutual promises and obligations herein stated, the sufficiency of which both Employee and Management acknowledge, Employee and Management agree to dismiss with prejudice, end and terminate the CSC Adverse Action Appeal upon the following terms and conditions:

## TERMS AND CONDITIONS OF AGREEMENT

1. Employee and Management shall enter into a Stipulated Dismissal of the Adverse Action Appeal (in CSC Case No. Case No. 13-AA06T SP) with Prejudice in furtherance of this Agreement, which shall reference this Agreement but shall not result in disclosure or attachment of this Agreement, to be entered by the CSC, and by which Employee's appeal of the adverse action taken against Employee by Management shall be fully resolved. The stipulation shall be in substantially the form of the stipulation attached hereto as Exhibit A, and adopted by this reference.
2. Management agrees to pay Employee:
  - a. Back pay in the amount of One Hundred Thirteen Thousand Seven Hundred Twenty-Eight Dollars and Thirty-Seven Cents (\$113,728.37) in back wages owing from the date of termination to March 15, 2023, excepting those periods not covered by the "Employment dates" listed at the bottom of Exhibit B [per *Haeuser v. Dep't of Law*, 2005 Guam 14 ¶¶ 21-27], less applicable income taxes and withholding amounts, pursuant to the back pay calculation attached hereto as Exhibit B and adopted by this reference.
  - b. From the back wages, Management shall deduct and make payment to the Government of Guam Retirement Fund for Employee's share of retirement fund contributions in amounts that would restore Employee to what Employee would have contributed or paid had Employee remained in employment at the Port Authority of Guam (along with Management's matching contribution). Management shall also pay appropriate Medicare contributions. Within sixty (60) days Management will provide assurance to Employee that such withheld amounts have been timely paid to the appropriate entity.
  - c. Liquidated annual leave hours in the amount of Four Thousand Seven Hundred Sixty-Nine Dollars and Fifty-Four Cents (\$4,769.54), less applicable income taxes and withholding amounts.
  - d. Management agrees to pay Employee's attorney fees and costs related to the adverse action bases, and defenses, proceedings, and subsequent resolution and dismissal of the Adverse Action Appeal, in the amount of Seven Thousand One Hundred Five Dollars and twenty-eight cents (\$7,105.28), to be paid directly to Guam Federation of Teachers.
3. Management agrees to make all payments in paragraph 2 within sixty (60) days of approval of this Agreement by the Port of Guam Board of Directors, providing that the Agreement is first fully executed by all other parties to the Agreement.

4. Employee agrees that any post-judgment interest is waived if payment of back wages, liquidated annual leave hours, and attorney fees are made within ninety (90) days of the approval of this Agreement by the Port of Guam Board of Directors (provided that the Agreement is first fully executed by all other parties to the Agreement), otherwise Management will owe to Employee simple interest from the ninety-first (91st) day at the rate of 6% annum on the awarded back wages in paragraph 2.a.
5. No Admission of Liability. This Agreement is the result of a good faith compromise of disputed claims. This Agreement and any action taken by the Employee and Management, 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 every other Party. In entering into this Agreement, the Parties simply intend to avoid all administrative or civil actions or litigation or other proceedings of whatsoever nature. Further, this Agreement is not and shall not be used as evidence of any admission of liability or wrongdoing for any purpose in any proceeding.
6. Management and Employee agree that this Agreement is meant to be a full and final release of all claims by the Parties.
7. It is stipulated and acknowledged that each Party hereto has read and understands the meaning of each term of this Agreement, that this Agreement is made without duress or undue influence of any kind, and that Employee and Management are aware of their respective rights, and have had a full and fair opportunity, to consult with independent legal counsel or seek legal advice in negotiating, executing, and understanding the legal effect of this Release and this Agreement.
8. It is intended by the Parties that this Agreement is complete and shall not be subject to any claim of mistake of fact or law. This Agreement has been carefully reviewed by all Parties, each of whom has had an opportunity to participate in its drafting by making changes, additions, or deletions. This Agreement expresses a full and complete settlement of all liabilities and all claims between the Parties. Other than what is specifically stated in this Agreement, no other promises of any kind have been made by any Party to this Agreement, and regardless of the adequacy or inadequacy of the consideration exchanged, this Agreement is intended to avoid further litigation and to be final and complete in full.
9. Upon execution of this Agreement, Management and Employee, on behalf of themselves and of any and all natural and non-natural persons or governmental instrumentality who may succeed in respective interest of the Port or of Employee (all such parties are hereinafter collectively referred to as "Releasers") hereby

mutually release any and all claims and forever discharge one another, together with each of their respective employees, agents, spouses, heirs, executors, administrators, directors, officers, insurers, successors and assigns as well as all other persons or entities (collectively "Releasees") of and from any and all legal liabilities, claims, obligations, demands, damages, actions and causes of action of every kind, arising out of or in any way connected with their employment relationship to date, including without limitation, those claims which were raised or might have been raised in the litigation of this matter, whether currently known or unknown, and whether knowable or unknowable.

10. Each Party expressly understands and acknowledges that it is possible that unknown losses or claims exist or that present losses may have been underestimated in amount or severity concerning this Settlement Agreement, and each Party explicitly took that into account in determining the amount of consideration to be given in the making of this Agreement, and a portion of said consideration and the mutual covenants contained in it have been bargained for between the Parties with the knowledge of the possibility of such unknown claims, and were given in exchange for a full accord and satisfaction and discharge of all such claims. Consequently, with respect to such unknown claims or losses, Employee and Management knowingly and voluntarily waive any and all rights, under principles of common law, or any comparable or similar law of any state or territory of the United States or any other applicable jurisdiction, and also under 18 G.C.A. § 82602, which provides that:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

11. The RECITALS stated herein are part and parcel of this Release and Agreement; and they accurately express the claims and intentions of the Parties.
12. It is agreed and stipulated by the Parties that the consideration for this Release and Agreement is a fair and reasonable settlement, and that this Release and Agreement are made in good faith.
13. Any Party who has to enforce this Agreement may disclose only such parts of this Agreement as are necessary to enforce its terms.
14. If any term or provision of this Agreement is found by a court of competent jurisdiction to be invalid, illegal, or otherwise unenforceable, the same shall not affect the other terms or provisions hereof or the whole of this Agreement, but such term or provision shall be deemed modified to the extent necessary in the court's

opinion to render such term or provision enforceable, and the rights and obligations of the parties shall be construed and enforced accordingly, preserving to the fullest permissible extent the intent and agreements of the parties herein set forth.

15. Notices. All notices required under this Agreement shall be made in writing and shall be sent by first class or registered mail, or personal delivery to the following persons or positions at the following addresses:

For Management:                      Attn: Mr. Rory Respicio, General Manager  
Port Authority of Guam  
1026 Cabras Highway, Suite 201 Piti,  
Guam 96915

For Mr. Cruz:                              Attn: Robert Koss  
Guam Federation of Teachers  
PO BOX 2301  
Hagatna, GU 96932

and

Mr. Jeffrey Q. Cruz  
PO Box 758  
Agat, Guam 96928

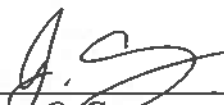
Notice given under this Agreement will be effective upon the other Party's receipt of the notice or if mailed, on the earlier of the other Party's receipt of it, or the third business day after the date of mailing.

16. Reasonable Cooperation. The Parties agree to cooperate in good faith to effectuate all the terms and conditions of this Agreement, including doing, or causing their agents and attorneys to do, whatever is reasonably necessary to take all necessary steps and to effectuate the signing, delivery, execution, filing, recording, and entry, of any documents necessary to conclude the matters arising from and to otherwise perform the terms of this Agreement, including but not limited to Employee signing a stipulated dismissal as described in Paragraph 1. above.
17. Preparation and Construction of Agreement. This Agreement was drafted by the Parties' respective representatives. This Agreement shall not be deemed prepared or drafted by one Party or another, or its attorneys, and will be construed accordingly.
18. Governing Law and Venue. This Agreement has been entered into in Guam, and shall be governed by, construed, and enforced in accordance with the laws of Guam. The Parties hereby expressly consent to the jurisdiction and venue of Guam courts with respect to any and all claims which may arise under this Agreement.

The undersigned are hereinafter bound to this Releases and this Agreement under the terms and conditions stated herein:


**Employee**

Dated: 5/17, 2023

  
\_\_\_\_\_  
**Jeffrey Q. Cruz**

**Management**

Dated: 7/6/23, 2023

  
\_\_\_\_\_  
**Rory J. Respicio**  
General Manager  
Port Authority of Guam  
Authorized Representative

Approved as to form:


Approved as to form:

  
\_\_\_\_\_  
By: **James L. Canto II**  
Staff Attorney  
Port Authority of Guam

Date: 6/27/23  
APPROVED:

  
\_\_\_\_\_  
**Robert Koss**  
Lay Representative  
Guam Federation of Teachers

Date: 5/17/23

  
\_\_\_\_\_  
HON. Dorothy P. Harris  
Acting Chairperson, Board of Directors  
Port Authority of Guam

Date: 7/6/23

Initial: J.C  
Initial: RM

Cruz, Jeffrey O.  
1/18/2013

EB1851

(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)	(I)	(J)	(K)	(L)	(M)	(N)
From	To	Network Days	Hours	Per Hour	Gross Pay	Ret EE Share 6.2%	Medicare BE Share 1.45%	Net Pay (Excluding Ret and Medicare Employee Share)	Retirement Rate (Unfunded Employer Share)	Unfunded Employer Share	Medicare Employer Share 1.45%	Retirement Employer Share 6.2%	Total Pay (including Benefits)
10/13/2012	1/18/2013	70	560	\$ 0.25	\$ 140.27	\$ 8.70	\$ 2.03	\$ 129.54	23.89%	\$ 33.51	\$ 2.03	\$ 8.70	\$ 184.51
7/25/2013	8/22/2013	21	168	\$ 13.44	\$ 2,257.82	\$ 139.99	\$ 32.74	\$ 2,085.10	23.89%	\$ 539.39	\$ 32.74	\$ 139.99	\$ 2,969.94
1/31/2014	5/1/2014	65	520	\$ 13.72	\$ 7,136.75	\$ 442.48	\$ 103.48	\$ 6,590.79	21.96%	\$ 1,567.23	\$ 103.48	\$ 442.48	\$ 9,249.94
1/13/2015	3/25/2015	52	416	\$ 14.00	\$ 5,824.20	\$ 361.10	\$ 84.45	\$ 5,378.65	21.96%	\$ 1,278.99	\$ 84.45	\$ 361.10	\$ 7,548.75
2/14/2016	9/30/2016	165	1320	\$ 14.28	\$ 18,951.88	\$ 1,168.82	\$ 273.35	\$ 17,409.72	21.96%	\$ 4,139.87	\$ 273.35	\$ 1,168.82	\$ 24,433.99
6/14/2018	9/15/2018	67	536	\$ 14.61	\$ 7,831.59	\$ 485.35	\$ 113.56	\$ 7,232.42	21.21%	\$ 1,661.07	\$ 113.56	\$ 485.35	\$ 10,091.71
9/16/2018	9/14/2019	260	2080	\$ 14.90	\$ 31,002.00	\$ 1,922.12	\$ 469.33	\$ 28,610.35	21.63%	\$ 6,705.73	\$ 469.33	\$ 1,922.12	\$ 40,079.39
9/15/2019	9/14/2020	261	2088	\$ 17.48	\$ 36,491.82	\$ 2,262.49	\$ 529.13	\$ 33,700.19	20.36%	\$ 7,429.73	\$ 529.13	\$ 2,262.49	\$ 46,713.17
9/15/2020	9/14/2021	261	2088	\$ 17.83	\$ 37,225.63	\$ 2,307.99	\$ 539.77	\$ 34,377.87	20.05%	\$ 7,474.91	\$ 539.77	\$ 2,307.99	\$ 47,548.29
9/15/2021	9/14/2022	261	2088	\$ 18.19	\$ 37,973.49	\$ 2,354.36	\$ 550.62	\$ 35,068.52	20.77%	\$ 7,887.09	\$ 550.62	\$ 2,354.36	\$ 48,765.56
9/15/2022	3/15/2023	130	1040	\$ 18.55	\$ 19,294.50	\$ 1,196.26	\$ 279.77	\$ 17,818.47	22.17%	\$ 4,267.94	\$ 279.77	\$ 1,196.26	\$ 25,038.47
		0	0	\$ 18.93	\$ -	\$ -	\$ -	\$ -	22.23%	\$ -	\$ -	\$ -	\$ -

Estimated salary \$ 204,029.89 \$ 12,649.85 \$ 2,958.43 \$ 188,421.60

\$ 42,985.48 \$ 2,958.43 \$ 12,649.85 \$ 262,623.65

PAG calculation based on VCE	2013 wages	\$ (1,218.00)
PAG calculation based on VCE	2014 wages	\$ (4,100.00)
PAG calculation based on VCE	2015 wages	\$ (3,432.00)
Per 2016 W-2GU	2016 wages	\$ (2,327.12)
Per 2018 Form 1040 Tax transcripts	2018 wages	\$ (10,193.79)
Per 2019 Form 1040 Tax transcripts	2019 wages	\$ (21,222.00)
Per 2020 Form 1040 Tax transcripts	2020 wages	\$ (32,192.00)
Per 2021 Form 1040 Tax transcripts	2021 wages	\$ (47,023.29)
Per 2022 Form 1040	2022 wages	\$ (90,301.52)

\$ 113,728.37 \$ 7,051.16 \$ 1,649.06 \$ 105,028.15

NOTE: The above gross pay for years 2013-2015 were based on the assumption that Mr. Cruz worked for 8 hours/day. The employment dates and hourly rates were indicated in the VCE.

Employment dates:	From	To	Network Days	Hours	Hourly Rate	Hours	Total Gross Pay
Denanche Security - 07/25/2013 to 08/22/2013	7/25/2013	8/22/2013	21	168		7.25	1,216.00 PAG calculation based on VCE
Cabrera Marine - 01/31/2014 to 05/01/2014	1/31/2014	5/1/2014	65	520		8.00	4,160.00 PAG calculation based on VCE
Triple J - 01/13/2015 to 03/25/2015	1/13/2015	3/25/2015	52	416		8.15	3,432.00 PAG calculation based on VCE
Unlimited Services Group - 02/14/2016 to 09/30/2016							2,327.12 Per 2016 W-2GU
Agat Office - 6/14/2018 to 12/20/2019							
Department of Labor - 7/27/20 to 8/10/21							
Department of Education - 1/31/2022 to 5/24/2022; 6/13/2022 to 7/29/22; 8/23/2022 to 9/30/22; and 10/1/2022 to 9/30/2022							