

SETTLEMENT AGREEMENT

This SETTLEMENT AGREEMENT (“Agreement”) is made and entered into on the date indicated below by and between FRANK J. SAN NICOLAS (“Employee”) whose address is PO Box 22152 GMF Barrigada, Guam 96932 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 August 24, 2020, Management served Employee with a Final Notice of Adverse Action terminating employment for alleged violations of the Port’s Personnel Rules and Regulations, Chapter 11, Rules 11.303(B), (J), (M), (Q), and (R), in connection with the Employee’s Indictments in Superior Court of Guam Criminal Case No. CF0564-20, People of Guam v. Frank J. San Nicolas; and

WHEREAS, Management maintains that the Final Notice of Adverse Action terminating Employee was issued in accordance with the law and pursuant to the Port’s Personnel Rules and Regulations, specifically Chapter 11, Rules 11.310(A) and (B) and therefore, was proper at the time of issuance; and

WHEREAS, on September 11, 2020, Employee appealed the Final Adverse Action terminating his employment at the Port Authority of Guam with the Civil Service Commission (“CSC”) in Adverse Action Appeal Case No. 20-AA10T, Frank San Nicolas v. Port Authority of Guam (the “Adverse Action Appeal”). On January 27, 2021, the Adverse Action Appeal was stayed pending disposition of Criminal Case Nos. CF0306-20 and CF0564-20 (hereinafter the “Criminal Cases”);

WHEREAS, the Criminal Cases proceeded to jury trial, first CF0306-20 in December 2021 and then CF0564-20 in July 2022. Defendant was acquitted of all charges in both Criminal Cases;

WHEREAS, based on the acquittals rendered by the Superior Court of Guam in the Criminal Cases, Employee and Management desire to resolve the Adverse Action Appeal through this Agreement, without further expense of litigation time or financial resources, and any and all claims related thereto, whether filed or unfiled, asserted or unasserted, threatened or not, known or unknown to exist without any admission of wrongdoing or violation by any Party; 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 furtherance of this Agreement, which shall be presented in simple form of incorporation of this Agreement by reference, but 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. Notwithstanding this Agreement, Employee and Management agree that the CSC shall retain jurisdiction to enforce the terms of this Agreement. 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 reinstate Employee to the position of Port Police Officer II, at Pay Grade 13 Step B, with all benefits, rights privileges, obligations, duties and responsibilities related to such employment within the Government of Guam, according to the laws of Guam and the personnel rules and regulations of the Port Authority of Guam. Employee shall be reinstated no later than September 29, 2022 (the “date of reinstatement”).
3. Management agrees to pay Employee:
 - a. Back Pay. One Hundred Fifty-Six Thousand, Seven Hundred Sixty-Four Dollars and 65/100 (\$156,764.65), in back wages owing from the date of termination to his reinstatement, less applicable income taxes for the period from August 24, 2020 through the date of reinstatement, 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

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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. Management shall restore to Employee credit of 320 hours in annual leave and 364 hours of sick leave, which represents the amount that Employee would have accrued had Employee remained in employment at the Port Authority of Guam;
4. 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 CSC Adverse Action Appeal, in the amount of Forty Thousand Dollars (\$40,000.00), to be paid directly to the Arriola Law Firm;
5. Management agrees to make all payments in paragraphs 3 and 4, within thirty (30) days of full execution of this Agreement by Management and the Employee;
6. 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.
7. Management and Employee agree that this Agreement is meant to be a full and final release of all claims by the Parties;
8. 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.

9. 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.
10. 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.
11. 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.

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.

18. 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.
19. Preparation and Construction of Agreement. This Agreement was drafted by the Parties' respective attorneys. This Agreement shall not be deemed prepared or drafted by one Party or another, or its attorneys, and will be construed accordingly.
20. 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: September 28, 2022



Frank J. San Nicolas

Management

Dated: September 29, 2022




Rory J. Respicio
General Manager,
Port Authority of Guam
Authorized Representative

Approved as to form:

Approved as to form:



By: Christine Claveria Arriola, Esq.



By: Joaquin C. Arriola, Jr., Esq.
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Initial: CA

Staff Attorney
Port Authority of Guam
Date: 9/28/2022

Counsel to Mr. San Nicolas
Arriola Law Firm
Date: 9/29/2022

APPROVED:



HON. Francisco G. Santos
Chairman, Board of Directors
Port Authority of Guam

Date: 10/3/2022

Initial: FS
Initial: AW

**Port Authority of Guam
Retroactive Salary for Frank J. San Nicolas
8/25/2020 - 9/29/2022**



Breakdown of Payment:

Gross Pay	\$	121,448.24
(Estimated) Retirement Employer Share	\$	33,555.41
Medicare Employer Share @ 1.45%	\$	1,761.00
TOTAL	\$	156,764.65
Add Interest:	\$	-
	\$	-
Estimated Total	\$	156,764.65

Frank J. San Nicolas
E# 1654
Leave Balance

Annual Leave Accrual (HR/PPE) 8
 Sick Leave Accrual (HR/PPE) 4

To	From	# OF PPE	Annual Leave	Rollover Balance	Total Annual leave	Total excess of 320 hours	Annual Leave transferred to Sick Leave	Annual Leave not able to transfer	Annual Leave Balance	Sick Leave Balance upon Termination 8/24/2020	Sick Leave Accrual	Sick Leave (transferred from Annual Leave)	Sick Leave Balance
8/29/2020	9/26/2020	3	24	0	24	0	0	0	24	44	12	0	56
9/27/2020	9/25/2021	26	208	24	232	0	0	0	232	232	104	0	104
9/26/2021	9/24/2022	26	208	232	440	120	100	20	320	320	104	100	204
TOTAL					20	320	44	220	364				

* Annual Leave is maxed at 320 hours. Balance as of September 24, 2022 is 320 hours. Any excess of 320 hours but no more than 100 hours is transferred to sick leave.

**Balances are calculated up to PPE 9/24/2022.




JOAQUIN C. ARRIOLA, JR., ESQ.
WILLIAM B. BRENNAN, ESQ.
ARRIOLA LAW FIRM
259 MARTYR STREET, SUITE 201
HAGATÑA, GUAM 96910
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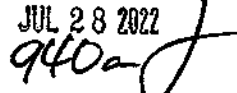
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OF GUAM

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CLERK OF COURT

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JUL 28 2022


Counsel for Defendant
Frank James San Nicolas
CLERK'S OFFICE
SUPERIOR COURT OF GUAM

IN THE SUPERIOR COURT OF GUAM
TERRITORY OF GUAM

THE PEOPLE OF GUAM,

Plaintiff,

vs.

FRANK SAN NICOLAS,

Defendant.

CRIMINAL CASE NO.: CF0564-20

JUDGMENT OF ACQUITTAL

ARRIOLA LAW FIRM HAGATÑA, GUAM 96910

This matter last came before the Honorable Arthur R. Barcinas, Judge of the Superior Court of Guam, on July 27, 2022, whereafter a Jury Trial in this matter, instruction and deliberation, the Jury returned verdicts of NOT GUILTY on all charges of Third-Degree Criminal Sexual Conduct (One Count - as a Second-Degree Felony) and Fourth Degree Criminal Sexual Conduct (Two Counts - as Misdemeanors);

THEREFORE, the Defendant FRANK J. SAN NICOLAS is hereby adjudged ACQUITTED of all of said charges in this matter and the COURT hereby **ORDERS, ADJUDGES** and **DECREES:**

I. That the Defendant FRANK J. SAN NICOLAS is NOT GUILTY and ACQUITTED of all Charges of Third-Degree Criminal Sexual Conduct (One Count - as a Second-Degree Felony) and Fourth Degree Criminal Sexual Conduct (Two Counts - as Misdemeanors).

2. That any and all non-contraband evidence or property belonging to Defendant FRANK J. SAN NICOLAS in possession of the Superior Court of Guam (Clerk's Office, Marshals, or Probation Office), the Office of the Attorney General, the Guam Police Department, or any other entity of the Government of Guam by reason of the charges brought in this case, specifically including Defendant's firearms, identification or passport held by the Probation Office, are to be returned to the Defendant's possession after the expiration of thirty (30) days from the date of execution of this Judgment, unless the People show good cause in accordance with 8 G.C.A. Section 150.50.

3. That any bail, bond, or undertaking in this matter is exonerated and such shall be promptly restored to the possession of the person posting such bail, bond, or other undertaking by the Superior Court of Guam and all conditions of release are vacated pursuant to 8 G.C.A. § 120.18, including Defendant's firearms and firearms identification or passport held by Probation as a prior condition of release, which shall be returned to Defendant forthwith.

IT IS SO ORDERED, JUL 28 2022, *munc pro tunc*, July 27, 2022.


HONORABLE ARTHUR R. BARCINAS
JUDGE, SUPERIOR COURT OF GUAM

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OF GUAM

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CLERK OF COURT

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Counsel for Defendant
Frank James San Nicolas

CLERK'S OFFICE
SUPERIOR COURT OF GUAM

IN THE SUPERIOR COURT OF GUAM
TERRITORY OF GUAM

PEOPLE OF GUAM,

vs.

FRANK JAMES SAN NICOLAS,
DOB: 06/21/1970

Defendant.

) CRIMINAL CASE NO.: CF0306-20

)
)
) JUDGMENT OF ACQUITTAL

ARRIOLA LAW FIRM HAGÁTÑA, GUAM 96910

This matter last came before the Honorable Arthur R. Barcinas, Judge of the Superior Court of Guam, on December 30, 2021, whereafter a Jury Trial in this matter, instruction and deliberation, the Jury returned verdicts of NOT GUILTY on all charges of Third Degree Criminal Sexual Conduct (Two Counts - as a Second Degree Felony) and Fourth Degree Criminal Sexual Conduct (Two Counts - as a Misdemeanor);

THEREFORE, the Defendant FRANK J. SAN NICOLAS is therefore ACQUITTED of all of said charges in this matter and the COURT hereby **ORDERS, ADJUDGES** and **DECREES:**

1. That the Defendant FRANK J. SAN NICOLAS is NOT GUILTY and ACQUITTED of all Charges of Third Degree Criminal Sexual Conduct (Two Counts - as a

Second Degree Felony) and Fourth Degree Criminal Sexual Conduct (Two Counts - as a Misdemeanor).

2. That any and all non-contraband evidence or property belonging to Defendant FRANK J. SAN NICOLAS in possession of the Superior Court of Guam (Clerk's Office, Marshals, or Probation Office), the Office of the Attorney General, the Guam Police Department, or any other entity of the Government of Guam by reason of the charges brought in this case, specifically including Defendant's firearms, identification or passport held by the Probation Office, are to be returned to the Defendant's possession after the expiration of thirty (30) days from the date of execution of this Judgment, unless the People show good cause in accordance with 8 G.C.A. Section 150.50.

3. That any bail, bond, or undertaking in this matter is exonerated and such shall be promptly restored to the possession of the person posting such bail, bond, or other undertaking by the Superior Court of Guam and all conditions of release are vacated pursuant to 8 G.C.A. § 120.18, including Defendant's firearms identification or passport held by Probation as a prior condition of release which shall be returned to Defendant.

IT IS SO ORDERED, JAN 06 2022, *nunc pro tunc*, December 30, 2021.



HONORABLE ARTHUR R. BARCINAS
Judge, Superior Court of Guam