BEFORE THE
GUAM CIVIL SERVICE COMMISSION

IN THE MATTER OF:

BRIAN KELLEY,
Employee,

vs.

DEPARTMENT OF LAW,
Management.

ADVERSE ACTION APPEAL
CASE NO. 10-AA07T

JUDGMENT OF DISMISSAL

The Civil Service Commission hereby dismisses the above captioned case with prejudice pursuant to Stipulation of Settlement signed by both parties, attached hereto.

SO ADJUDGED THIS ___ DAY OF ___ 2013.

LUIS R. BAZA
Chairman

MANUEL R. PINAUN
Vice-Chairman

PRISCILLA T. TUNCAP
Commissioner

JOHN SMITH
Commissioner

LOURDES HONGYEE
Commissioner

DANIEL D. LEON GUERRERO
Commissioner

EDITH C. PANGELINAN
Commissioner

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BEFORE THE CIVIL SERVICE COMMISSION
GOVERNMENT OF GUAM

In The Matter Of: )
 ) ADVERSE ACTION APPEAL
 ) No: 10-AA07T
 ) STIPULATION FOR SETTLEMENT

BRIAN KELLEY, ) Employee,
) vs.
 )
DEPARTMENT OF LAW, ) Employer.
)

THIS STIPULATION OF SETTLEMENT AND AGREEMENT, is by and between
BRIAN KELLEY ("Employee") and the DEPARTMENT OF LAW ("Management") as
follows:

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RECITALS

A. Employee was served with a Notice of Proposed Adverse Action on May 21, 2010, as a result of an incident that occurred on April 21, 2010. Employee was terminated on June 10, 2010, after receipt of a Notice of Final Adverse Action personally served to him on June 9, 2010. Employee filed a timely appeal with the Civil Service Commission.

B. The parties desire to enter into this Settlement Agreement ("Agreement") to provide for certain arrangements in full settlement of the adverse action and to avoid the necessity of any further litigation relating to this matter. This Agreement sets forth all of the terms and conditions between the parties, and no other agreements or promises exist other than as set forth herein.

C. The terms and conditions of said Agreement shall become operative upon the execution of this Agreement by the last of the parties to sign.

D. The parties request that the Civil Service Commission enter a Judgment based on all of the terms of this conformed Agreement once signed by all parties.

NOW THEREFORE, for and in consideration of the mutual promises set forth herein, the parties agree as follows:

Purpose of Agreement. Employee and Management acknowledge and agree that this Agreement is a settlement and compromise of the referenced matters. It is the intention of the parties by the execution of this Agreement to fully, finally and completely resolve the matter between themselves as to the matters referenced in the Notice of Proposed and Final Adverse Action. Both parties
agree to waive all rights to set aside the terms of this Agreement and to appeal this matter once it is signed by both parties and adopted as part of the CSC Judgment as set forth herein.

1. **Employee’s Obligation.**

   1.1 Employee shall dismiss his adverse action appeal forthwith with prejudice and request all currently scheduled hearing dates be vacated forthwith;

   1.2 Employee shall tender his voluntary resignation to the Department of Law with an effective date of June 10, 2010. Management shall accept this retroactive voluntary resignation upon receipt and prepare all documents necessary to effectuate the change of status in his personnel records.

   1.3 Employee agrees that Management shall remove and expunge the Notice of Proposed and Final Adverse Action from the employee’s personnel jacket once the Judgment based on this Agreement is issued from the Civil Service Commission.

   1.4 Employee agrees that he shall not be entitled to receive any monies, benefits, or compensation as a result of this Agreement or the adverse action taken against him. Employee waives any and all claims of retroactive back pay, accrual of benefits, and all other claims, known or unknown, from June 10, 2010, to the date of his signature on this Agreement.

   1.5 Employee shall pay his own attorney’s fees and costs associated with this matter, if any.

   1.6 Employee waives any and all claims, known and unknown, against the Department of Law as of the date of his signature on this Agreement.
2. **Management’s Obligation.**

2.1 Management shall accept the employee’s voluntary resignation with an effective date of June 10, 2010.

2.2 Management shall expunge the Notice of Proposed and Final Adverse Action in this case in exchange for the employee’s Agreement on all terms specified in this Agreement. Management will expunge these two documents from its personnel files and request that the Department of Administration also expunge such documents after Management receives the Judgment from the Civil Service Commission based on the parties’ Agreement and after Management receives the conformed Agreement signed by both parties.

2.3 The Judgment to be issued upon this Agreement shall replace and supersede the adverse action documents which will be expunged as stated herein. The Judgment and Agreement shall remain in the employee’s personnel file.

2.4 Management and the Employee agree that the employee shall not be entitled to receive any monies, benefits and/or attorney’s fees and costs under this Agreement. Employee shall bear his own attorney’s fees and costs.

2.5 Management agrees to submit all documents changing Mr. Kelley’s prior termination to indicate a voluntary resignation under this Agreement.

3. **Performance Accepted.** The parties each agree and acknowledges: (a) that the party accepts performance of his/her obligations specified in this Agreement as a full and complete compromise of matters involving disputed issues before the Civil Service Commission; and (b) that the negotiations for
this settlement (including all statements, admissions or communications) by the
parties or their attorneys or representatives shall not be considered admissions
by any of said parties.

4. **Additional Documents.** All parties agree to cooperate fully and execute any
and all supplementary documents and take all additional actions that may be
necessary as appropriate to give full force and effect to the basic terms and
intent of this Agreement.

5. **Independent Advice of Counsel.** Each party represents and declares that that
party has received independent advice from its respective attorneys or
representative with respect to the advisability of making the settlement
provided for herein and with respect to the advisability of executing this
Agreement, and/or has been advised to seek such representation and advice and
has declined. Each party further represents and declares that that party has not
relied upon any statement or representation by the other party or of any of its
partners, agents, employees, or attorneys in executing this Agreement or in
making the settlement provided for herein, except as expressly provided for
herein.
6. **Voluntary Agreement.** Each party represents and declares that that party has carefully read this Agreement, knows the contents of this Agreement, and that each party has signed the same freely and voluntarily.

**IN WITNESS WHEREOF,** the parties have executed this Agreement as of the date written by their respective names.

BRIAN KELLEY, 
EMPLOYEE

Date: 01/15/13

LEONARDO RAPADAS, 
ATTORNEY GENERAL

Date: Jan. 15, 2013

Approved as to form and content:

DONNA E. LAWRENCE, 
Assistant Attorney General 
DEPARTMENT OF LAW

Date: 1/15/13