



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 7<sup>th</sup> DAY OF February 2013.

\_\_\_\_\_  
LUIS R. BAZA  
Chairman

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MANUEL R. PINAUN  
Vice-Chairman

\_\_\_\_\_  
PRISCILLA T. TUNCAP  
Commissioner

\_\_\_\_\_  
JOHN SMITH  
Commissioner

\_\_\_\_\_  
LOURDES HONGYEE  
Commissioner

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DANIEL D. LEON GUERRERO  
Commissioner

\_\_\_\_\_  
EDITH C. PANGELINAN  
Commissioner

**ORIGINAL**



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**BEFORE THE CIVIL SERVICE COMMISSION  
 GOVERNMENT OF GUAM**

In The Matter Of:

**BRIAN KELLEY,**

Employee,

vs.

**DEPARTMENT OF LAW,**

Employer.

) **ADVERSE ACTION APPEAL**  
 ) **No: 10-AA07T**

) **STIPULATION FOR SETTLEMENT**

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

1 agree to waive all rights to set aside the terms of this Agreement and to appeal  
2 this matter once it is signed by both parties and adopted as part of the CSC  
3 Judgment as set forth herein.

4 **1. Employee's Obligation.**

5 1.1 Employee shall dismiss his adverse action appeal forthwith with prejudice  
6 and request all currently scheduled hearing dates be vacated forthwith;

7 1.2 Employee shall tender his voluntary resignation to the Department of Law  
8 with an effective date of June 10, 2010. Management shall accept this  
9 retroactive voluntary resignation upon receipt and prepare all documents  
10 necessary to effectuate the change of status in his personnel records.

11 1.3 Employee agrees that Management shall remove and expunge the Notice of  
12 Proposed and Final Adverse Action from the employee's personnel jacket  
13 once the Judgment based on this Agreement is issued from the Civil  
14 Service Commission.

15 1.4 Employee agrees that he shall not be entitled to receive any monies,  
16 benefits, or compensation as a result of this Agreement or the adverse  
17 action taken against him. Employee waives any and all claims of  
18 retroactive back pay, accrual of benefits, and all other claims, known or  
19 unknown, from June 10, 2010, to the date of his signature on this  
20 Agreement.

21 1.5 Employee shall pay his own attorney's fees and costs associated with this  
22 matter, if any.

23 1.6 Employee waives any and all claims, known and unknown, against the  
24 Department of Law as of the date of his signature on this Agreement.  
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1                   **2. Management's Obligation.**

2                   2.1 Management shall accept the employee's voluntary resignation with an  
3                   effective date of June 10, 2010.

4                   2.2 Management shall expunge the Notice of Proposed and Final Adverse  
5                   Action in this case in exchange for the employee's Agreement on all terms  
6                   specified in this Agreement. Management will expunge these two  
7                   documents from its personnel files and request that the Department of  
8                   Administration also expunge such documents after Management receives  
9                   the Judgment from the Civil Service Commission based on the parties'  
10                  Agreement and after Management receives the conformed Agreement  
11                  signed by both parties.

12                 2.3 The Judgment to be issued upon this Agreement shall replace and  
13                 supersede the adverse action documents which will be expunged as stated  
14                 herein. The Judgment and Agreement shall remain in the employee's  
15                 personnel file.

16                 2.4 Management and the Employee agree that the employee shall not be  
17                 entitled to receive any monies, benefits and/or attorney's fees and costs  
18                 under this Agreement. Employee shall bear his own attorney's fees and  
19                 costs.

20                 2.5 Management agrees to submit all documents changing Mr. Kelley's prior  
21                 termination to indicate a voluntary resignation under this Agreement.

22                 **3. Performance Accepted.** The parties each agree and acknowledges: (a) that  
23                 the party accepts performance of his/her obligations specified in this  
24                 Agreement as a full and complete compromise of matters involving disputed  
25                 issues before the Civil Service Commission; and (b) that the negotiations for

1 this settlement (including all statements, admissions or communications) by the  
2 parties or their attorneys or representatives shall not be considered admissions  
3 by any of said parties.

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

8 5. **Independent Advice of Counsel.** Each party represents and declares that that  
9 party has received independent advice from its respective attorneys or  
10 representative with respect to the advisability of making the settlement  
11 provided for herein and with respect to the advisability of executing this  
12 Agreement, and/or has been advised to seek such representation and advice and  
13 has declined. Each party further represents and declares that that party has not  
14 relied upon any statement or representation by the other party or of any of its  
15 partners, agents, employees, or attorneys in executing this Agreement or in  
16 making the settlement provided for herein, except as expressly provided for  
17 herein.

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1           **6. Voluntary Agreement.** Each party represents and declares that that party has  
2           carefully read this Agreement, knows the contents of this Agreement, and that  
3           each party has signed the same freely and voluntarily.  
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7 **IN WITNESS WHEREOF**, the parties have executed this Agreement as of the date written  
8 by their respective names.

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11 BRIAN KELLEY,  
12 EMPLOYEE

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11 LEONARDO RAPADAS,  
12 ATTORNEY GENERAL, Chief Deputy

13 Date: 01/15/13

13 Date: Jan. 15, 2013

14  
15 Approved as to form and content:

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17 DONNA E. LAWRENCE,  
18 Assistant Attorney General  
19 DEPARTMENT OF LAW

16 Date: 1/15/13