

SETTLEMENT AND GENERAL RELEASE AGREEMENT

Cochise County, as defined in section I(7) below, and David Welch (hereinafter “Welch,” “Petitioner,” or “Petitioners”), as defined in section I(6) below, hereby enter into this Settlement and General Release Agreement (“the Agreement”), as evidenced by their signatures on page 7 of this Agreement. Cochise County and Welch, collectively, are referred to as the Parties.

I. RECITALS

The following recitals are agreed upon by the Parties and are material to the terms and conditions of this Agreement:

1. On or about February 14, 2019, Welch filed his Special Action and Petition for Writ of Mandamus, Petition for Injunctive and Declaratory Relief (the “Petition”) in the Superior Court of Cochise County Case No. CV20190060 against the Cochise County Board of Supervisors, Patrick G. Call, Ann English, and Peggy Judd. The Petition alleges, generally, open meeting law and conflict of interest violations, and seeks several forms of relief in the nature of declaratory, injunctive, and mandamus relief arising from the Board’s appointment on February 12, 2019 of Patrick G. Call to temporarily fill the Justice of the Peace Precinct Five position. The position was to be vacated by incumbent Tim Dickerson who had been appointed to the position of Judge of the Arizona Superior Court;
2. On or about February 26, 2019, the Cochise County Board of Supervisors met again for the purpose of ratifying the February 12, 2019 decision to appoint Patrick G. Call to temporarily fill the Justice of the Peace Precinct Five position. Patrick G. Call did not participate in that process;
3. On or about March 4, 2019, Welch filed his First Amended Special Action and Petition for Writ of Mandamus, Petition for Injunctive and Declaratory Relief, Petition for Removal of Board of Supervisors from Office (the “Amended Petition”) in the Superior Court of Cochise County Case No. CV20190060 against the Cochise County Board of Supervisors, Patrick G. Call, Ann English, and Peggy Judd.
4. Respondents filed a motion to dismiss the action, which was granted. Judgment was entered in favor of Respondents, reviewed on appeal by the Arizona Court of Appeals and the Arizona Supreme Court. After several decisions reflected in the opinions of those Courts, granting in part and denying in part relief to Petitioner(s), the matter was remanded to the Arizona Superior Court for Cochise County and the case currently is under a schedule adopted and filed by Superior Court Judge Monica Stauffer.
5. To effect a complete, full, and final resolution of any and all claims that Welch (as defined in paragraph I(6) below) has or may have against Cochise County (as defined in paragraph I(7) below), the Parties hereby voluntarily, knowingly, and intentionally enter into this Settlement and General Release Agreement;

6. Welch, as referred to in, and for purposes of, this entire Agreement, means Petitioner David Welch, individually, for any marital community in which is a member, and on behalf of all other Petitioners Welch has purported to act on behalf of.

7. Cochise County as referred to in, and for purposes of, this entire Agreement, means the municipality known as Cochise County, a political subdivision of the State of Arizona, Patrick G. Call, Ann English, Peggy Judd, and all Cochise County past, current and future officials, council members, supervisors, administrators, trustees, officers, agents, spouses, representatives, employees, attorneys, insurers, assigns, successors, departments, agencies, and all other persons acting by, or through, any of the above, under or in concert with any of the other persons or entities listed herein (herein and collectively, referred to in each and every paragraph contained in this Agreement as “Cochise County,” “Respondent,” or “Respondents”).

8. Cochise County and Welch are entering into this Agreement in consideration of the promises made and the releases contained in this Agreement, and other good, valuable and sufficient consideration described in this Agreement. Therefore, in consideration of the promises and covenants contained in this Agreement, and in consideration of the amounts to be paid by Cochise County to Welch under this Agreement (the “Settlement Payment”), amounts he is not otherwise entitled to receive, Cochise County and Welch agree as follows:

II. CONSIDERATION

A. In exchange for this General Release of Claims and the other promises the Parties make in this Agreement as defined in Section III, all of which are evidenced by their signature on this Agreement, Cochise County, promises to make a lump sum Settlement Payment in the amount of \$52,500.00 (fifty-two thousand and five hundred dollars and zero cents) via check made payable to “The Russell’s Law Firm, PLC trust account” as and for reimbursement of any and all attorney fees and costs incurred by David Welch in this case.

B. Welch understands and agrees that the Settlement Payment is *not* otherwise required to be paid by Cochise County. Welch further understands and agrees the payment described above is all he, or his attorneys acting on his behalf, will ever receive from Cochise County arising from Cochise County’s alleged acts, omissions, or any other things Welch claims has caused harm to him or others, or gives rise to any claim by Welch, from the beginning of time to the date this Agreement is fully signed by the Parties.

III. GENERAL RELEASE AND WAIVER OF CLAIMS

A. **Welch’s Complete Release of Claims.** Welch acknowledges the Settlement Payment is given in exchange for his signing this Agreement. As a free and voluntary act, Welch agrees that the payments and consideration are in full satisfaction of any and all Claims or actions against Cochise County, *whether known or unknown*, as defined in Paragraphs III.A and III.B herein. Welch hereby forever releases and discharges Cochise County from, and agrees not to sue, for any such Claims that he might have against Cochise County (1) by reason of any decision or discussion arising from the February 12, 2019 or February 26, 2019 meetings; 2) the appointment of Patrick Call to the position of Justice of

the Peace for Precinct Five; or (3) the Petition, Amended Petition, or resulting appellate proceedings, or any of the allegations contained in the Petition or Amended Petition.

B. “Claims” Defined. Welch understands and agrees that “Claims” as referred to in this Agreement, include (but are not limited to) any debt, obligation, demand, promise, cause of action, judgment, controversy, or claim of any kind whatsoever between Cochise County and Welch, *whether currently known or unknown*, whether based in contract, statute, tort, fraud, misrepresentation, discrimination or any other legal theory. Welch understands that the claims Welch is releasing might arise under many different laws (including statutes, regulations, other administrative changes or guidelines, and common law doctrines), and include but are not limited to the following:

1. Without limiting the general scope of the release of claims in Paragraph III.A and III.B of this Agreement, Welch understands and agrees that he is hereby releasing any and all claims contained in the Petition and Amended Petition, as well as any other claims for alleged strict liability, tortious conduct, discrimination, retaliation, or other alleged unlawful or wrongful activity under federal, state and local law. This release of claims shall include, but not be limited to: Claims under Title VII of the Civil Rights Act of 1964, as amended; Sections 1981 and 1983 of the Civil Rights Act of 1866; 42 U.S.C. § 1985; the Arizona Civil Rights Act; the U.S. and Arizona Constitutions; and any other federal, state, or local laws, claims, or causes of action that provide recourse for alleged negligent supervision or hiring, breach of contract, breach of express or implied covenant of good faith and fair dealing, tort, physical or personal injury, intentional or negligent infliction of emotional distress, negligence, negligence per se, gross negligence, fraud, whistleblower liability, negligent misrepresentation, libel, slander, defamation, negligent or intentional infliction of emotional distress, malicious prosecution, false arrest, unlawful retaliation, false imprisonment, unjustified use of force, assault, battery, abuse of process, aiding and abetting, conspiracy, invasion of privacy, false light invasion of privacy, tortious interference with contract, retaliation, open meeting law, conflict of interest, other claims based on state statute, and other similar or related claims; as well as any claims, demands, requests, or applications for attorneys’ fees and costs; and any other claim(s) that could be raised by Welch against Cochise County based on any act, any omission, or any other thing that may have occurred between, or involving, Cochise County and Welch prior to the effective date of this Agreement

2. *Claims or Charges Filed:* If a claim or charge has been filed by Welch with a federal, state or local government agency arising from the incident or incidents which are the subject of his Petitions, Welch will request withdrawal of those pending claim(s) or charge(s), and will refrain from instituting any future administrative claim or charge for relief, or future lawsuit arising from the incident which is the subject of his lawsuit.

3. *This Agreement Bars Additional Remedies.* Welch understands that this Agreement is in full satisfaction of, and may be pled as a total and complete bar to, any charge, complaint, or claim made, filed, or not withdrawn by Welch against Cochise County.

4. *Unknown Claims.* Welch understands that he is releasing Claims and Damages he may not know about at this time. This Release of Unknown Claims and/or Damages is by knowing and voluntary intent, even though Welch recognizes that someday he might discover new facts that he is unaware of now, or might learn that some or all of the facts he currently believes to be true are untrue. Nevertheless, Welch assumes this risk and agrees that this Release shall remain effective in all respects in any such case. Welch expressly waives all rights he might have under any law intended to protect him from waiving unknown claims. Welch fully understands the significance of waiving the claims described in this Paragraph.

C. **Dismissal of Released Claims.** Welch agrees to withdraw or dismiss, with prejudice, all pending petitions, complaints, charges or appeals, if any, he has filed against Cochise County with any agency or court. Welch promises that he will not in the future file any lawsuit, claim, or complaint against Cochise County based on the Claims he has released in this Agreement. Further, Welch promises never to seek any damages, remedies, or other relief for himself by filing or prosecuting a charge with any administrative agency with respect to any Claim he has released in this Agreement. Welch promises to request any administrative agency or other body or court assuming jurisdiction of any such lawsuit, complaint, charge or appeal to withdraw from the matter or dismiss the matter with prejudice, with each side to bear their own attorneys' fees and costs.

D. **Ownership of Claims.** Welch warrants that he has not assigned or transferred any Claim or rights to damages or other compensation that he is releasing in this Agreement.

IV. DISPOSITION OF PENDING LAWSUIT

Dismissal of Case No. CV20190060. Upon all Parties' acceptance and execution of this Agreement, the Parties agree to stipulate to the dismissal of Case No. CV20190060, with prejudice and with the Parties to bear their own attorneys' fees and costs, and to instruct their attorneys to do and sign all things required to effect such dismissal.

V. OTHER PROMISES AND ACKNOWLEDGEMENTS

A. **Welch's Execution of Agreement is Voluntary.** Welch acknowledges that he has voluntarily signed this Settlement and General Release Agreement in exchange for the Settlement Payment, and that the Settlement Payment is sufficient consideration for Welch's release of claims and promises he has made herein. Welch understands that he will receive the Settlement Payment *because* he signed this Settlement and General Release Agreement. Welch further acknowledges that no one coerced or pressured him into signing this Settlement and General Release Agreement, and that he did so upon the advice and consultation of an attorney of his own choosing.

B. **Payment, Withholding of Taxes and Indemnification.** Welch agrees that Cochise County will not withhold taxes or other items from the Settlement Payment and will issue a form 1099, or like form reflecting all payments addressed in Section II of this Agreement. Welch acknowledges and understands that he will be solely responsible for determining the tax consequences of such payments, if any, reporting the same to the appropriate governmental authorities, if required, and the payment of any taxes due thereon. The parties

acknowledge that the payments made herein are payable for the attorney fees and costs Welch incurred in bringing the claims released herein. Welch shall defend and hold Cochise County harmless from and against any and all losses, including but not limited to, attorneys' fees, costs, back taxes, interest and penalties, which Welch or Cochise County may suffer as a result of a determination by any taxing authority, or by a court or tribunal of competent jurisdiction regarding the reporting or non-reporting of such payments, or the payment or failure to pay any tax thereon. Welch shall deliver a proper Form W-9 or equivalent tax identification form to Cochise County, through its counsel, for the payee in this Agreement.

C. Implementation of Agreement. The Parties agree to sign any documents and do anything else that is necessary in the future to implement this Settlement and General Release Agreement.

D. No Discrimination. Welch acknowledges and agrees that he has not suffered any discrimination on account of age, sex, race, national origin, disability or any other federally protected status, and that none of these ever has been an adverse factor used against him by Cochise County in connection with this Agreement.

E. No Admission by Cochise County. Welch understands and acknowledges that this Agreement resolves all issues between Cochise County and him as alleged in the Petition and Amended Petition and as defined in this Agreement. Further, he understands that Cochise County's entering into this Agreement does not constitute an admission of any breach of contract, or violation of any state, federal or local law, ordinance or regulation, or admission of any violation of Cochise County policies or procedures, or of any liability or wrongdoing whatsoever. Welch understands further that the named Respondents – Cochise County Board of Supervisors, former Supervisor Call, Supervisor English, and Supervisor Judd - expressly deny any and all liability. Welch agrees that nothing in this Agreement, including the Settlement Payment, shall be construed to be, or shall be admissible in any proceeding as evidence of liability or wrongdoing by the named Respondents. This Agreement may, however, be introduced in any proceeding to enforce this Agreement.

F. Breach of Agreement. The Parties understand and agree that, except as limited by federal or state law, they will be obligated to pay the reasonable attorneys' fees, costs, and any damages the other Party may incur as a result of a breach of any promise made in this Agreement and Release (such as by suing over a released Claim), or if any representation made in this Agreement and Release is false.

G. Satisfaction of Liens: Welch is responsible for the satisfaction of all liens, and shall ensure that all liens are satisfied out of the settlement proceeds, and that Welch shall indemnify, hold harmless, and defend Cochise County as to, and against, all lien claims.

VI. ADDITIONAL PROVISIONS

A. Severability. In case any one or more of the provisions of this Agreement shall be found to be invalid, illegal, or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired, and they shall remain in full force and effect.

B. Integration Clause. The Parties agree that this Agreement constitutes and contains their entire Agreement and understanding concerning Welch’s allegations and claims against Cochise County. This Agreement supersedes and replaces all prior negotiations and agreements, whether written or oral, concerning the subject matters addressed in this Agreement. This Agreement may not be modified or canceled in any manner except in writing, signed by both the Parties.

C. Governing Law; Jurisdiction; Venue. This Agreement shall be construed in accordance with and governed by the laws of the State of Arizona, and any action relating to this Agreement shall be instituted and prosecuted in the federal court located in Tucson, Arizona, or state courts located in Cochise County, Arizona. The Parties each waive their respective right to file an action in any other jurisdiction or venue.

D. Assignment and Successors. The Parties agree that they will not assign any right or delegate any obligation hereunder without the other Party’s written consent, and any attempted assignment or delegation by either Party without the other party’s written consent shall be void. This Agreement shall be binding upon and inure to the benefit of the Parties, and their successors, heirs, executors, administrators, assigns, and legal representatives.

E. Headings in Agreement. The headings of the paragraphs and clauses of this Agreement are for reference and convenience only and shall not be considered in interpreting this Agreement.

F. Effective Date of Agreement. This Agreement shall be effective on the date it is signed by all the Parties.

G. Voluntary and Knowing Release of Claims. Welch acknowledges that he has been advised and has had the opportunity to consult legal counsel prior to signing this Agreement, has read this Agreement, and understands his rights and responsibilities under the Agreement. Welch also acknowledges that he understands the legal claims he is releasing under this Agreement. Finally, Welch is entering into this Agreement voluntarily and with full knowledge of the consequences.

H. Joint Press Release. This Parties agree to publicly offer the press release attached hereto as Exhibit A.

TAKE THIS SETTLEMENT AND GENERAL RELEASE HOME, READ IT, AND CAREFULLY CONSIDER ALL OF ITS PROVISIONS BEFORE SIGNING IT. THIS RELEASE INCLUDES A RELEASE OF KNOWN AND UNKNOWN CLAIMS. YOU ARE ADVISED TO CONSULT YOUR ATTORNEY, AND TO HAVE YOUR ATTORNEY EXPLAIN THE TERMS OF THIS AGREEMENT TO YOU BEFORE SIGNING

I accept and agree to the terms and provisions in this Settlement and General Release Agreement, hereby execute the Agreement voluntarily with full understanding of the consequences and by my signature represent that I am fully authorized to enter into this Agreement on behalf of myself, or the party or parties indicated:

_____ Date: _____, 2022
Petitioners Welch

_____ Date: _____, 2022
For Cochise County, As Defined In This Agreement

_____ Date: _____, 2022
Patrick G. Call