

SETTLEMENT AGREEMENT AND RELEASE

WHEREAS, an action is pending in the United States District Court for the Eastern District of Arkansas styled *William R. Downing, Jr. v. Arkansas Department of Finance and Administration, et al.*, Case No. 4:15-CV-00570-DPM (hereinafter referred to as the "Action"); and

WHEREAS, the defendants in the Action, the Arkansas Department of Finance and Administration and David Justice, in his official capacity as an employee of the Arkansas Department of Finance and Administration (collectively referred to as "defendants" unless the context requires otherwise), deny that they, or any officer, employee, or agent, have engaged in any wrongful, unconstitutional, or unlawful conduct of any kind; and

WHEREAS, the plaintiff in the Action, William R. Downing, Jr., and the defendants desire to compromise and settle the Action to avoid the costs and uncertainties of continued litigation;

NOW, THEREFORE, the plaintiff and the defendants agree to the following terms as full and final satisfaction of any and all claims, including any and all claims for costs and attorneys' fees, which were raised by plaintiff in the Action or could have been raised by plaintiff in the Action.

1. ACTION TO BE TAKEN BY DEFENDANT ARKANSAS DEPARTMENT OF FINANCE AND ADMINISTRATION. As soon as practicable following full execution of this Agreement, the Department will remit the following to plaintiff via his attorneys, Sutter & Gillham, P.L.L.C.:

- a. A check payable to Sutter & Gillham, P.L.L.C. in the amount of \$35,000 for attorneys' fees and costs;
- b. A check payable to William R. Downing, Jr. in the amount of \$20,000 for back wages; and
- c. A check payable to William R. Downing, Jr. in the amount of \$20,000 for noneconomic damages.

Plaintiff understands and agrees that such payments may be subject to legislative approval.

2. **ACTION TO BE TAKEN BY PLAINTIFF.** Plaintiff agrees to accept the payments identified in Paragraph 1 as full and final payment of any and all claims that were or could have been brought in the Action. Plaintiff also agrees that he will never apply for any employment position with the Arkansas Department of Finance and Administration, whether as an employee or contractor.

3. **COMPLETE RELEASE AND WAIVER.** Plaintiff waives, releases, relinquishes, and forever discharges the defendants from all claims, liens, or causes of action, known or unknown, arising out of the matters described in the complaint for damages, attorneys' fees, declaratory or injunctive relief, costs, or recovery of any other type against the defendants including any officers, officials, employees, and agents of any defendant, in their official and individual capacities.

4. **ENTIRE AGREEMENT.** This Agreement contains the entire agreement between the parties. The plaintiff and defendants have not relied upon any promise or statement, oral or written, that is not set forth in this Agreement.

5. **MODIFICATION.** The plaintiff and defendants agree that this Agreement may not be modified, amended, or altered except by a written agreement executed by all parties.

6. **VOLUNTARY AGREEMENT.** The plaintiff and defendants acknowledge that each has read this Agreement, that each has had the opportunity to consult with legal counsel of their choosing concerning the advisability, meaning, and effect of this Agreement, and that each has signed this Agreement voluntarily and without duress.

7. **NO RESCISSION FOR MISTAKE.** The plaintiff and defendants acknowledge that each has had the opportunity to investigate the facts and the law relating to the claims raised in the Action and any additionally waived and released claims to the extent each deems necessary and appropriate. The plaintiff and defendants assume the risk of any mistake of fact or law and agree that any mistake of fact or law shall not be grounds for rescission or modification of any part of this Agreement.

8. **ACKNOWLEDGEMENT.** Plaintiff and defendants acknowledge that this Agreement was negotiated and agreed upon by both sides, the terms of which will not be construed against either side as the drafter.

9. **NO ADMISSION OF LIABILITY.** Plaintiff and defendants acknowledge that this Agreement is a compromise and is not an admission of liability or wrongdoing on the part of the defendants or any officer, employee, or official of any defendant. Plaintiff agrees that the Agreement is not admissible in any court or

administrative body except as necessary to enforce its terms or as otherwise required by law.

10. **CHOICE OF LAW.** This Agreement shall be governed by and construed in accordance with the substantive law of the State of Arkansas.

11. **SUCCESSORS AND ASSIGNS.** This Agreement shall be binding upon the plaintiff and defendants and each of their respective heirs, descendants, successors, and assigns.

12. **EFFECTIVE DATE.** This Agreement shall become effective upon the date it is executed by all parties.

13. **EXECUTION.** The persons executing this document assert that they are authorized to do so by the party or parties on whose behalf they purport to act.

14. **COUNTERPARTS.** This Agreement may be executed in counterparts and the counterparts, taken together, will have binding effect.

PLAINTIFF WILLIAM R. DOWNING, JR.

By: 

Date: 4-26-2018

DEFENDANT DEPARTMENT OF FINANCE AND ADMINISTRATION

By: 

Date: APR 25 2018