

PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS  
AGENDA ITEM SUMMARY

Meeting Date: March 12, 2019

Consent       Regular  
 Public Hearing

Department:

Submitted By:      COUNTY ATTORNEY

I. EXECUTIVE BRIEF

**Motion and Title:** Staff recommends motion to: approve a Settlement Agreement, inclusive of attorney's fees and costs, in the amount of \$80,000 payable by Palm Beach County in the lawsuit styled Richard Rosales v. Palm Beach County Board of County Commissioners, Case No. 502015CA010103XXXXMB ("Pending Lawsuit").

**Summary:** This case stems from disciplinary action issued to Plaintiff, Mr. Rosales, who claimed that the discipline issued to him was the result of retaliation under the Florida Whistleblower's Act, section 112.3187, Florida Statute. After conducting a jury trial, the Court entered a judgment for lost wages in favor of Plaintiff and against Palm Beach County. In addition to that, Plaintiff is entitled to his attorney's fees as the prevailing party pursuant to Florida Statute section 112.3187(9), as well as taxable costs. Palm Beach County has entered into a tentative settlement agreement with Mr. Rosales in the total amount of \$80,000, inclusive of attorney's fees and costs, to settle not only the Pending Lawsuit and all rights to appeal, but also any other claims Mr. Rosales may have against Palm Beach County for any type of alleged civil rights violations. Staff recommends that the Board approve the settlement agreement. Countywide (AP)

**Background and Justification:**

(Continued on Page 3)

**Attachments:**

- 1. Settlement Agreement and Release
- 2. Budget Availability Statement

Recommended by:   
\_\_\_\_\_  
County Attorney

2/21/19

\_\_\_\_\_  
Date

Approved by:

N/A

\_\_\_\_\_  
Date

**II. FISCAL IMPACT ANALYSIS**

**A. Five Year Summary of Fiscal Impact:**

Fiscal Years	2019	2020	2021	2022	2023
Capital Expenditures					
Operating Costs	\$80,000				
External Revenues					
Program Income (County)					
In-Kind Match (County)					
<b>Net Fiscal Impact</b>	<b>\$80,000</b>				
<b># ADDITIONAL FTE POSITIONS (Cumulative)</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

Is Item Included In Current Budget? Yes  No

Budget Account Exp No: Fund 4100 Department 120 Unit 1110 Object 4905

**B. Recommended Sources of Funds/Summary of Fiscal Impact:**

Palm Beach County Self Insured Fund

**C. Departmental Fiscal Review:** \_\_\_\_\_

**III. REVIEW COMMENTS**

**A. OFMB Fiscal and/or Contract Dev. and Control Comments:**

Debra Row 2/22/19  
OFMB  
2/22 9/2/21

J. S. [Signature] 2/27/19  
Contract Administration  
2/27/19 JW

**B. Legal Sufficiency:**  
[Signature] 2/21/19  
Assistant County Attorney

**C. Other Department Review:**  
\_\_\_\_\_  
Department Director

## Background and Justification (Continued from Page 1)

Mr. Rosales, a Palm Beach County employee, worked at the Department of Airports. In May of 2015 he was involved in a dispute with a co-worker. Management for the Department of Airports investigated the dispute and ultimately issued Mr. Rosales a two week suspension for his misconduct. In September of 2015 Mr. Rosales filed a lawsuit against Palm Beach County, alleging that his suspension was in violation of the Florida Public Whistleblower's Act, Florida Statute section 112.3187 ("Whistleblower Act"). Mr. Rosales alleged in his lawsuit that he engaged in various forms of activity protected by the Whistleblower Act, including having filed a previous lawsuit against the County in December of 2012 for a violation of the Public Records Act, which was amicably settled in June 6, 2014. He alleged that his two week suspension in June of 2015 was in retaliation having filed and settled the Public Records Act lawsuit. On June 5, 2018, Palm Beach County obtained partial summary judgment in the Whistleblower Act lawsuit regarding Mr. Rosales' claims for intangible damages (pain and suffering) as well as his alleged involuntary transfer from the Department of Airports to the Planning Zoning & Building Department, at a reduction in salary, in September of 2015. The Court denied the remainder of Palm Beach County's motion for summary judgment, which sought to dismiss the lawsuit with prejudice on various grounds. The Court conducted a jury trial from July 30, 2018 through August 3, 2018. The jury returned a verdict in favor of Mr. Rosales, finding that the Department of Airports suspended him because he filed or settled his December 2012 Public Records Act lawsuit, and awarded him \$2,200.00 in lost wages for the two week suspension. Post trial Palm Beach County filed motions for directed verdict, judgment notwithstanding the verdict, and new trial, which the Court denied on January 9, 2019. As the prevailing party, Mr. Rosales is entitled to recover his attorney's fees pursuant to Florida Statute section 112.3187(9). He is also entitled to recover his costs. Mr. Rosales' attorney, Isidro Garcia, filed a motion for attorney's fees, requesting up to \$100,000. He also requested a contingency fee multiplier of 2.0, which, if granted by the Court, would increase his potential attorney's fee award to between \$180,000 to \$200,000. He also requested costs in the amount of \$10,754.74, as well as \$7,500 for paralegal services. On February 7, 2019, Palm Beach County filed a Notice of Appeal. On February 12, 2019, Mr. Rosales filed his Cross Notice of Appeal with respect to the claims the Court dismissed when it granted a portion of Palm Beach County's motion for summary judgment. Palm Beach County has entered into a tentative settlement agreement with Mr. Rosales in the total amount of \$80,000, inclusive of attorney's fees and costs, to settle not only the Pending Lawsuit and all rights to appeal, but also any other claims Mr. Rosales may have against Palm Beach County for any type of alleged civil rights violations. Staff recommends that the Board approve the settlement agreement.

**SETTLEMENT AGREEMENT**

**THIS AGREEMENT** made and entered into this \_\_\_\_ day of February, 2019, by and between **PALM BEACH COUNTY** (hereinafter referred to as the "**COUNTY**"), a political subdivision of the State of Florida, and **RICHARD ROSALES** (hereinafter referred to as "**ROSALES**").

WHEREAS, **ROSALES** sued the **COUNTY** in a lawsuit presently styled Richard Rosales v. Palm Beach County Board of County Commissioners, Case No. 502015CA010103XXXXMB AA in the Circuit Court of Palm Beach County, Florida (hereinafter referred to as the "**Pending Lawsuit**"), for damages and relief arising from incidents, claims and causes of action **ROSALES** alleged in the **Pending Lawsuit**. The parties tried the **Pending Lawsuit** to a jury from July 30, 2018 to August 3, 2018 ("Jury Trial"). The jury returned a verdict for **ROSALES**. Judge Curley denied the **COUNTY**'s Motion for Directed Verdict, Judgment Notwithstanding the Verdict, and, in the Alternative, Motion for New Trial. On February 7, 2019, the **COUNTY** filed a Notice of Appeal.

WHEREAS, the **COUNTY** has denied liability, causation, and damages and raised several affirmative defenses in the **Pending Lawsuit**; and

WHEREAS, the parties hereto wish to amicably resolve the **Pending Lawsuit** as well as any all appellate rights each party has concerning the **Pending Lawsuit** without further litigation of the claims made and defenses raised therein.

WHEREAS, the parties hereto further wish to amicably resolve any other alleged claims or causes of action for damages or relief **ROSALES** may have against the **COUNTY** for any type of civil rights violations, claims, or causes of action, including without limitation discrimination; harassment; retaliation; hostile or abusive work environment; whistle-blower; deprivation of constitutional or statutory rights; EEOC, Florida Commission on Human Relations, or Equal Employment Opportunity complaints; whether arising under a federal, state, local, or administrative constitution, law, rule, or regulation ("**Other Claims**").

**NOW, THEREFORE**, in consideration of the mutual covenants hereinafter set forth, the sufficiency of which are hereby acknowledged, the parties agree as follows:

1. The foregoing recitals are true and correct and incorporated herein by reference.
2. The proposed settlement of the **Pending Lawsuit** and **Other Claims** is subject to written Administrative approval as well as written Palm Beach County Board of County Commissioners approval. After the **COUNTY** receives a fully executed original of this **Settlement Agreement**, the **COUNTY** will endeavor to present the **Settlement Agreement** to the Palm Beach County Board of County Commissioners for their consideration during their April 2019 regular board meeting.
3. Within twenty-one days of receiving written Administrative as well as Palm Beach



County Board of County Commissioners approval of this **Settlement Agreement**, the **COUNTY** shall pay to **ROSALES** the amount of **EIGHTY THOUSAND DOLLARS AND ZERO CENTS (\$80,000.00)**, by a check made payable to the **Trust Account of Garcia Law Firm, P.A., Tax I.D. No. 20-1519391, and RICHARD ROSALES.**

4. Within ten (10) days of receipt of the **COUNTY'S** payment, Isidro Garcia, Esq., shall execute and deliver to the Palm Beach County Attorney's Office (i) a **Release of All Claims** in the form of the attached hereto as **Exhibit A**, and (ii) the **Stipulation and Final Order of Dismissal with Prejudice**, in the form of the attached hereto as **Exhibit B**, which, in turn, the Palm Beach County Attorney's Office will file with the court.

5. Isidro Garcia, Esq. shall not disburse, and **ROSALES** shall not accept, any proceeds from the settlement check described in paragraph 3 above unless and until the **Release of All Claims** has been signed and delivered to the **COUNTY** and the Final Order of Dismissal with Prejudice has been signed by the Circuit Court Judge assigned to the **Pending Lawsuit.**

6. **ROSALES** acknowledges and agrees that he is responsible for the payment of any and all liens concerning, pertaining, or relating to the **Pending Lawsuit** and the **Other Claims** and that the **COUNTY** shall not be responsible for any portion of said liens. **ROSALES** further agrees to indemnify, defend, and hold the **COUNTY** and its officers, commissioners, agents, elected officials, employees, attorneys, heirs, executors, administrators and assigns, harmless from and against all suits, actions, proceedings, claims, demands, and damages, including attorney's fees, arising out of or related to any such liens or claims of lien concerning, pertaining, or relating to the **Pending Lawsuit** and **Other Claims.**

7. Each party shall bear its respective attorney's fees and costs.

8. This **Settlement Agreement** does not constitute an admission of liability by any party. Rather, the **COUNTY** expressly denies liability, causation and damages and has entered into this **Settlement Agreement** in order to buy its peace.

9. In any litigation brought to enforce the terms or remedy a violation of this **Settlement Agreement**, the prevailing party shall be entitled to an award of reasonable attorney's fees in addition to any other recovery.

10. **ROSALES** declares and acknowledges that the terms of this **Settlement Agreement** have been completely read, fully understood, discussed with counsel, and voluntarily accepted by him as a full and final compromise of any and all claims that he may have against the **COUNTY** arising out of or relating to the **Pending Lawsuit** and **Other Claims.**

11. This **Settlement Agreement** shall be binding on the parties hereto, their assigns, transferees, heirs, and other successors in interest.

12. The parties represent that no claim that has been, or could have been, raised in the **Pending Lawsuit**, and no claim to which this **Settlement Agreement** applies, has been assigned



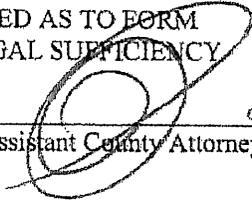
or otherwise transferred to any other person or entity not a party hereto.

IN WITNESS WHEREOF, the parties have caused this Settlement Agreement to be executed as of the date first set forth above.

  
Plaintiff, Richard Rosales

  
Laura Beebe, Palm Beach County  
Deputy Director, ~~Business Affairs~~ *airports*

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY

By:  2/15/19  
Senior Assistant County Attorney

ATTEST:  
Sharon R. Bock, Clerk & Comptroller

PALM BEACH COUNTY BOARD  
OF COUNTY COMMISSIONERS

By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
Mayor

RELEASE OF ALL CLAIMS

**KNOW ALL MEN BY THESE PRESENTS:**

That the undersigned, **RICHARD ROSALES** (hereinafter referred to as "**ROSALES**"), being of lawful age and sound mind, for the sole consideration of **EIGHTY THOUSAND DOLLARS (\$80,000.00)**, inclusive of all attorney's fees and costs, to the undersigned in hand paid, the receipt and sufficiency whereof is hereby acknowledged, does hereby release, acquit and forever discharge the **PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS**, and their officers, agents, commissioners, employees, attorneys, insurance companies, heirs, executors, administrators, successors and assigns (hereinafter referred to cumulatively as the "**COUNTY**"), none of whom admit any liability to the undersigned, but all of whom expressly deny any such liability, from any and all claims, demands, rights, damages (including but not limited to compensatory, intangible, lost wages, and punitive damages), relief (including but not limited to equitable, declaratory, and injunctive relief), costs, expenses, compensation, actions, causes of action or suits of any kind or nature whatsoever (hereinafter referred to cumulatively as "**CLAIMS**"), which the undersigned ever had, now has, or which were either asserted or could have been asserted in the lawsuit presently styled Richard Rosales v. Palm Beach County Board of County Commissioners, Case No. 502015CA010103XXXXMB AA in the Circuit Court of Palm Beach County, Florida, (hereinafter referred to as the "**Pending Lawsuit**"). This **Release of All Claims** also pertains to and covers all of the **Other Claims**<sup>1</sup> as set forth in the contemporaneously executed Settlement Agreement. This **Release of All Claims** also pertains to and covers any and all **CLAIMS** which any personal, successor, heir, or assign of **ROSALES** had, hereafter can, shall or may have against the **COUNTY** arising out of, relating, or pertaining to the **Pending Lawsuit** and **Other Claims** that have accrued up to the present day.

**FURTHERMORE**, the undersigned agrees that each party shall bear their own costs and attorney's fees, and that the undersigned shall bear sole responsibility to pay for any and all liens concerning, pertaining or relating to the **Pending Lawsuit** and **Other Claims**, including but not

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<sup>1</sup> WHEREAS, the parties hereto further wish to amicably resolve any other alleged claims or causes of action for damages or relief **ROSALES** may have against the **COUNTY** for any type of civil rights violations, claims, or causes of action, including without limitation discrimination; harassment; retaliation; hostile or abusive work environment; whistle-blower; deprivation of constitutional or statutory rights; EEOC, Florida Commission on Human Relations, or Equal Employment Opportunity complaints; whether arising under a federal, state, local, or administrative constitution, law, rule, or regulation ("**Other Claims**").

10

limited to attorney liens or medical liens which are or may be outstanding and payable on the date of execution of this agreement, or which may be incurred and payable in the future. The undersigned further agrees to indemnify and save harmless the **COUNTY** from any requests for payment or attempts for collection regarding said liens. Should legal action be instituted against the **COUNTY** for payment or collection of the aforementioned liens, the undersigned agrees to indemnify and save harmless the **COUNTY** for any attorney's fees, costs and/or judgments which may be incurred and/or entered against the **COUNTY**.

**FURTHERMORE**, the undersigned understands and agrees that this settlement is the compromise of a doubtful and disputed claim, and that the payment made shall not be construed as an admission of liability on the part of the **COUNTY**, and that the **COUNTY** denies any liability therefor and merely intends to avoid further litigation regarding the **Pending Lawsuit and Other Claims** and buy its peace.

**FURTHERMORE**, the undersigned hereby declares and represents that he has relied wholly upon his own judgment, belief and knowledge of the nature, extent, effect and duration of the claims and causes of action he either has or may have against the **COUNTY** relating to the **Pending Lawsuit and Other Claims** as well as any injuries or damages he may have suffered or sustained regarding same without reliance upon any statement or representation made by the **COUNTY**, or by its representatives. The undersigned further declares and represents that no promise, inducement or agreement not herein expressed has been made to the undersigned, and that this **Release of All Claims** contains the entire agreement between the parties hereto, and that the terms of this agreement are contractual and not merely a recital.

**THE UNDERSIGNED** hereby declares that he has completely read, fully understood and voluntarily accepted the foregoing **Release of All Claims** for the purpose of making a full and final compromise, settlement, and adjustment of any and all **CLAIMS**, disputed or otherwise, **ROSALES** may have against the **COUNTY** arising out of, relating, or pertaining to the **Pending Lawsuit and Other Claims**, or which could have and should have been alleged in the **Pending Lawsuit**, and for the express purpose of precluding forever any further or additional **CLAIMS** against the **COUNTY** arising out of or related to the **Pending Lawsuit and Other Claims up to the present day**.

**THE UNDERSIGNED** hereby accepts the tendered settlement draft as final payment of the consideration set forth above.





STATEMENT OF ATTORNEY FOR RELEASOR

I, Isidro Garcia, Esquire, state that I am the attorney for **RICHARD ROSALES** the above-signed Releasor; that I have explained to **RICHARD ROSALES** all the terms of this **Release of All Claims** and the **Settlement Agreement** upon which it is based; and that **RICHARD ROSALES** has represented to me that he understands all the terms and their significance. **RICHARD ROSALES** has signed this **Release of All Claims** knowingly, voluntarily and on my advice.

DATED this 14<sup>th</sup> day of February, 2019

  
\_\_\_\_\_  
Isidro Garcia, Esq.  
Florida Bar No. 437883

IN THE CIRCUIT COURT OF THE 15<sup>TH</sup> JUDICIAL  
CIRCUIT IN AND FOR PALM BEACH COUNTY

CASE NO.: 502015CA010103XXXXMB

RICHARD ROSALES

Plaintiff,

v.

PALM BEACH COUNTY BOARD  
OF COUNTY COMMISSIONERS

Defendant.

**STIPULATION FOR FINAL ORDER OF DISMISSAL WITH PREJUDICE PURSUANT  
TO SETTLEMENT**

COMES NOW the Plaintiff, RICHARD ROSALES, by and through his attorney, joined by the Defendant, PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS, by and through its attorney, and show unto the Court that all matters in controversy have been compromised and settled to the satisfaction of the parties. It is agreed that the action of the Plaintiff against Defendant, PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS, be dismissed with prejudice, each party to bear its own costs and attorney's fees. The Plaintiff shall hold Defendant PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS harmless from all subrogation claims and other liens that are or may be claimed by any third party as a result of the matters giving rise to the Plaintiff's claim against Defendant, PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS.

\_\_\_\_\_  
Isidro Garcia, Esquire  
Attorney for Plaintiff,  
Florida Bar No. 437883  
Date: \_\_\_\_\_

\_\_\_\_\_  
Andrew M. Pelino, Esquire  
Attorney for Defendant, Palm Beach County  
Florida Bar No. 882410  
Date: \_\_\_\_\_

IN THE CIRCUIT COURT OF THE 15<sup>TH</sup> JUDICIAL  
CIRCUIT IN AND FOR PALM BEACH COUNTY

CASE NO.: 502015CA010103XXXXMB

RICHARD ROSALES  
Plaintiff,

v.  
PALM BEACH COUNTY BOARD  
OF COUNTY COMMISSIONERS  
Defendant.

\_\_\_\_\_ /

**FINAL ORDER OF DISMISSAL WITH PREJUDICE**

**THIS CAUSE** having come before the Court upon the Stipulation for Final Order of Dismissal, etc., and the Court being otherwise fully advised in the premises, it is hereby:

**ORDERED AND ADJUDGED** that the above-styled cause is hereby **DISMISSED WITH PREJUDICE**. Each party shall bear its own costs and attorney's fees, and the Plaintiff, RICHARD ROSALES, shall hold the Defendant, PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS, harmless from all subrogation and other liens that are or may be claimed by any third party as a result of the matters giving rise to Plaintiff's claims against Defendant.

DONE AND ORDERED in Chambers, at West Palm Beach, Palm Beach County, Florida,  
this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Honorable Joseph Curley  
Circuit Court Judge

Copies Furnished:

Andrew Pelino, Esq., Palm Beach County Attorney's Office, 300 N. Dixie Highway, Suite 359, West Palm Beach, Florida 33401, ([apelino@pbcgov.org](mailto:apelino@pbcgov.org), [ldennis@pbcgov.org](mailto:ldennis@pbcgov.org))

Isidro M. Garcia, Esquire, Esq., 120 South Olive Avenue, Suite 401, West Palm Beach, Florida 33401, ([isidrogarcia@garcialaborlaw.com](mailto:isidrogarcia@garcialaborlaw.com); [eservice@garcialaborlaw.com](mailto:eservice@garcialaborlaw.com))



DATE: February 19, 2019

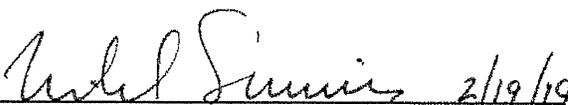
TO: County Attorney's Office

FROM: Michael Simmons  
Deputy Director of Finance and Administration

RE: Richard Rosales v. Palm Beach County Board of County  
Commissioners  
Case No. 502015CA010103XXXXMB

CC: File

Please be advised that funds are available in the amount of not to exceed \$80,000.00 in account # 4100 - 120 - 1110 - 4905 for Department of Airports' obligation in the Pending lawsuit styled Richard Rosales v. Palm Beach County Board of County Commissioners, Case No. 502015CA010103XXXXMB. (See attachment).

  
Michael Simmons 2/19/19  
(Dated)