



COUNTY OF HUMBOLDT

AGENDA ITEM NO.
C12

For the meeting of: **December 19, 2017**

Date: **December 13, 2017**

To: **Board of Supervisors**

From: **County Counsel's Office**
Jeffrey S. Blanck, County Counsel

Subject: **Resignation Agreement with Public Defender David Marcus**

RECOMMENDATION(S):

That the Board of Supervisors:

1. Approve, and ratify the execution of, the Resignation Agreement & Release of All Claims Between David Marcus and Humboldt County;
2. Direct the Clerk of the Board to return one (1) signed copy of the Resignation Agreement to County Counsel's Office.

SOURCE OF FUNDING:

General Fund.

DISCUSSION:

On November 22, 2017, Public Defender David Marcus submitted a letter of resignation from the position of Public Defender. The County and Mr. Marcus negotiated and executed the attached Resignation Agreement on December 7, 2017.

Prepared by: Jeffrey S. Blanck/Teri Gridley

CAO Approval

REVIEW:	<u>MSM</u>	County Counsel	<u>JSB</u>	Human Resources	<u>AD</u>	Other	
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TYPE OF ITEM:

Consent

Departmental

Public Hearing

Other

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT
 Upon motion of Supervisor Sundberg Seconded by Supervisor Fennell

Ayes Sundberg, Fennell, Bass, Bohn, Wilson
 Nays
 Abstain
 Absent

PREVIOUS ACTION/REFERRAL:

Board Order No. _____

Meeting of: _____

and carried by those members present, the Board hereby approves the recommended action contained in this Board report.

Dated: 12/19/17

By:

Kathy Hayes, Clerk of the Board

FINANCIAL IMPACT:

Per the Resignation Agreement, County will pay two (2) months' salary.

The recommended action supports your Board's Strategic Framework priorities for new initiatives by managing resources to ensure sustainability of services.

OTHER AGENCY INVOLVEMENT:

Human Resources

ALTERNATIVES TO STAFF RECOMMENDATIONS:

Your Board could choose to not approve the Resignation Agreement.

ATTACHMENTS:

1. Resignation Agreement & Release of All Claims Between David Marcus and Humboldt County.

RESIGNATION AGREEMENT & RELEASE OF ALL CLAIMS
BETWEEN DAVID MARCUS AND
HUMBOLDT COUNTY

This RESIGNATION AGREEMENT & RELEASE OF ALL CLAIMS ("Agreement") is made and entered into by and between David Marcus ("Employee") and Humboldt County ("County"), collectively referred to hereafter as "the Parties."

I. RECITALS

- A. **WHEREAS**, Employee was employed by the County as the Public Defender.
- B. **WHEREAS**, Employee and the County have determined that it is in the Parties' best interests to sever their employment relationship on an amicable basis and Employee has tendered a letter of resignation from the position of Public Defender, dated November 22, 2017.
- C. **WHEREAS**, the Parties intend to enter into this mutually agreeable arrangement to settle and resolve all grievances, disputes, controversies, claims, and actions between them, including any claims arising directly out of employee's separation that he has brought, or could have brought, before any court prior to the execution of this Agreement, against the County, in an amicable manner and avoid the uncertainties of any investigation, review, or litigation and the expenses and costs incident thereto.

NOW, THEREFORE, in consideration of the terms, conditions, and promises set forth herein, the Parties agree as follows:

II. TERMS AND SETTLEMENT

1. **Non-Admission of Liability.** This Agreement is entered into in compromise of any possible disputed claims. The Parties acknowledge that the execution of this Agreement hereunder is not and shall not be construed in any way as an admission of wrongdoing or liability on the part of either Party to the Agreement. The Parties further acknowledge that all Parties deny all allegations of wrongdoing. The Parties intend, by their actions pursuant to this Agreement, merely to avoid the expense, delay, uncertainty, and burden of litigation.

2. **Severance Payment.** In consideration for Employee's promises made herein, County agrees to provide Employee two (2) months' salary as full and complete consideration for his resignation, promises, waivers, and releases set forth in this Agreement. Employee's severance is payable in a gross amount as wages less all required payroll deductions. Payable within 30 days of the execution of this Agreement.

3. **Neutral Reference.** In further consideration for Employee's promises made herein, the County agrees that if a prospective employer contacts the County for an employment reference, the County will only provide the following information, unless required to disclose otherwise by law, subpoena, or court order: (1) dates of employment; (2) job title(s); and (3) salary information.

4. **Employee Resignation.** In consideration for County's promise to provide Employee two (2) months' salary as full and complete consideration, Employee hereby agrees to voluntarily and irrevocably resign from his employment with the County effective November 22, 2017, and has the right to revoke that decision until December 4, 2017. Employee has submitted his written

resignation from employment as the Public Defender. The letter of resignation will be placed in his general personnel file.

5. **No Re-Hire Rights.** In further consideration for County's promises made herein, Employee hereby waives any rights he may have or would have to be re-hired by the County at a later date. Employee further agrees that he will not seek in the future any type of employment with County and/or any of the Released Parties, Releasees defined as: the County both past and present of its board members, directors, officers, agents, employees, representatives, assigns, and successors, and each of them (collectively referred to herein as "Releasees").

6. **Mutual Non-Disparagement and Confidentiality.** In further consideration for the Parties' promises made herein, Employee and County agree that their interests are best served by a mutual commitment to non-disparagement and confidentiality, to the extent these provisions are enforceable by law, as follows:

- a. Employee agrees not to make any disparaging or defamatory comments about the County, or of its officials, representatives, or other employees, to anyone or any other organization related to the County. This includes, but is not limited to, comments about negative or perceived negative treatment of him by the County, its management, or its officials, and any of the circumstances surrounding the separation of his employment or this Agreement;
- b. Employee agrees that he will not disclose any information conveyed to him in confidence by any County employee or any confidential or privileged information gained in the course of his employment as an employee, unless required to disclose otherwise by law, subpoena, or court order. Any agreements Employee makes in this document are in addition to his professional and ethical obligations;
- c. The County, the Board of Supervisors, or its officials, representatives, or other employees, to anyone or any other organization related to the County agrees not to make any disparaging comments of Employee, to anyone or any organization related to Employee. This includes, but is not limited to, comments about the circumstances surrounding the separation of Employee's employment with the County, or the settlement of this matter. For the purposes of this Agreement, "disparaging" shall be defined by reference to its meanings in California common law.
- d. Employee and the County acknowledge that this is a confidential personnel matter and that neither party will discuss or disclose the terms of this Agreement unless required to do so by law.
- e. Both County and Employee agree not to approach the media regarding this Settlement Agreement or matters regarding Employee's employment and resignation.

7. **Release of Complaints.** In consideration for the promises and provisions provided for in this Agreement, Employee, for himself, his respective agents, his descendants, dependents, spouse, domestic partner, children, heirs, agents, attorneys, executors, administrators, assigns, and successors, and each of them hereby waives and fully releases, acquits, and discharges the

Releasees from any and all Complaints, demands, actions, suits, causes of action, obligations, damages and liabilities of whatever kind or nature, presently ongoing or future, known or unknown, suspected or unsuspected, directly arising out of his resignation of employment (collectively, "Complaints").

Employee represents that he has not previously assigned or transferred, or purported to assign or transfer, to any person or entity, any claim or any portion thereof or interest therein against the County, any and all of the County's current or former officers or owners, executives, directors, County departments or divisions, elected officials, representatives, employees, agents, attorneys, affiliates, insurers, successors and assigns, and all persons acting by, through, under or in concert with them, past or present.

In addition to the various general releases of liability and this Agreement to dismiss and/or forego any lawsuits, complaints, charges or claims against the County, Employee specifically agrees and verifies that as to him, the County has not violated any element of Title VII of the Civil Rights Act of 1964 and/or of the California Fair Employment and Housing Act, and he further agrees and acknowledges that he has not been subject to adverse or any other employment action by County based upon race, religion, creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, or any other protected class, and that he shall institute no action(s) in any forum as to any such claim(s), all of which are waived.

8. **Covenant Not to Sue:** Neither Employee nor any person, organization, or other entity acting on Employee's behalf will in the future file any lawsuit, arbitration, or other legal proceeding asserting any Complaint that is waived under Paragraph 11(6). If Employee breaks this promise and files a lawsuit, arbitration, or other legal proceeding making any Complaint waived in this Agreement, Employee will pay for all costs, including reasonable attorneys' fees, incurred by County in defending against any such Complaint. Furthermore, Employee gives up all rights to individual damages in connection with any administrative or court proceeding with respect to any Complaints waived under Paragraph 11(6). If employee is awarded money damages, Employee will assign to County all of Employee's right and interest to such money damages.

9. **Release of Unknown Complaints.** Employee acknowledges that this Agreement resolves all Complaints directly arising out of his resignation of employment that he may have against County and the Releasees through the date of execution of this Agreement, regardless of whether he actually knows about them, or suspects them to exist, despite the fact that California Civil Code Section 1542 or other applicable state law may provide otherwise. Employee expressly waives any and all rights which he may have under the provisions of Section 1542 of the California Civil Code or any similar state or federal statute with respect to all Complaints directly arising out of his resignation of employment that he may have against County and the Releasees through the date of execution of this Agreement. Section 1542 provides:

A GENERAL RELEASE DOES NOT EXTEND TO COMPLAINTS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Employee hereby expressly agrees that this Agreement shall extend and apply to all unknown, unsuspected, and unanticipated claims, injuries, losses and damages as well as those that are now

known and/or disclosed.

10. **Successors.** This Agreement shall be binding upon the Parties, and their heirs, representatives, executors, administrators, successors, insurers, and assigns, and shall inure to the benefit of each and all of the Releasees, and to their heirs, representatives, executors, administrators, successors, and assignees.

11. **No Attorney's Fees and Costs.** Except as otherwise set forth herein, the Parties will bear their own respective costs and fees, including attorneys' fees incurred in connection with any Complaint by Employee and the negotiation and execution of this Agreement.

12. **Voluntary Nature of Agreement.** Employee understands and agrees that he:

- a. Has had a reasonable time within which to consider this Agreement before executing it;
- b. Has carefully read and fully understand all of the provisions of this Agreement;
- c. Is, through this Agreement, releasing County and the other Releasees from certain Complaints he may have against County and the other Releasees;
- d. Knowingly and voluntarily agrees to all of the terms set forth in this Agreement;
- e. Knowingly and voluntarily intends to be legally bound by the same; and
- f. Was advised, and is hereby advised in writing, to consider the terms of this Agreement and consult with an attorney of his choice prior to executing this Agreement.

13. **No Representations.** Employee hereby represents and warrants that, except as expressly set forth herein, no representation of any kind or character has been made to induce the execution of this Agreement. Employee understands and agrees that he has relied wholly upon his own judgment, belief and knowledge of the nature, extent and duration of any of his claims and that he has not been influenced to any extent whatsoever in making this Agreement by any representations by or on behalf of the County not contained herein.

14. **Governing Law.** This Agreement shall be governed by and interpreted under the laws of the State of California applicable to contracts made and to be performed entirely within such state.

15. **Enforcement.** Should any party sue to enforce this Agreement, the prevailing party shall be entitled to recover their reasonable attorneys' fees and other costs. The Parties consent to the personal jurisdiction of the courts of California in any proceeding to enforce this Agreement and agree not to interpose any objection or defense based on lack of personal jurisdiction or improper venue in any such proceeding.

16. **Waiver.** The failure of either Employee or County to insist upon strict adherence to

any term of this Agreement on any occasion shall not be considered a waiver thereof or deprive either party of the right thereafter to insist upon strict adherence to that term or any other term of this Agreement.

17. Miscellaneous.

- a. The language of all parts in this Agreement shall be construed as a whole, according to its fair meaning, and not strictly for or against either party.
- b. This Agreement sets forth the entire agreement between the Parties and fully supersedes any and all prior agreements and understandings between the Parties pertaining to the subject matter of this Agreement.
- c. The headings used herein are for reference only and shall not affect the construction of this Agreement.

18. Specific Acknowledgement of Waiver of Claims Under ADEA and OWBPA.

The Age Discrimination in Employment Act of 1967 ("ADEA") makes it illegal for an employer to discharge any individual or otherwise discriminate with respect to the nature and privileges of an individual's employment on the basis that the individual is age forty or older. The Older Workers Benefit Protection Act ("OWBPA"), 29 USC sections 626, et seq., further augments the ADEA and prohibits the waiver of any right or claim under the ADEA unless the waiver is knowing and voluntary. By entering into this Agreement, Employee acknowledges that he is knowingly and voluntarily, for just compensation in addition to anything of value of which Employee was already entitled, waiving and releasing any rights he may have under the ADEA and/or OWBPA. Employee further acknowledges that he has been advised and understands, pursuant to the provisions of the ADEA and OWBPA, that:

- a. This waiver/release is written in a manner understood by Employee.
- b. Employee is aware of and has been advised by legal counsel of his own choosing of his rights under the ADEA and OWBPA, and of the legal significance of his waiver of any possible claims he currently may have under the ADEA, OWBPA, or similar age discrimination laws.
- c. Employee is entitled to a reasonable time of at least 21 days within which to review and consider this Agreement, and the waiver and release of any rights he may have under the ADEA, the OWBPA, or similar age discrimination laws, but he may, in the exercise of his own discretion, sign or reject this Agreement at any time before the expiration of the 21 day period. Employee acknowledges that he has been offered at least 21 days to consider entering this Agreement.
- d. The waivers and releases set forth in this Agreement shall not apply to any rights or claims that may arise under the ADEA and/or OWBPA after the effective date of this Agreement.
- e. Employee is hereby advised that he should consult with an attorney prior to executing this Agreement.

- f. Employee has had an opportunity to discuss this waiver and release with, and to be advised with respect thereto, by an attorney of his choice, and that he does not need any additional time within which to review and consider this Agreement.
- g. Employee has seven days following his execution of this Agreement to revoke this Agreement.
- h. This Agreement shall not be effective or enforceable until it is executed by all the Parties and after the expiration of the seven day revocation period set forth in the preceding subparagraph.

19. **Original Agreements.** This Agreement may be executed in one or more Originals.

20. **Severability.** Should any provision in this Agreement be declared or determined to be illegal, invalid, or unenforceable by any court or governmental agency of competent jurisdiction, the validity of the remaining parts, terms, or provisions shall not be affected thereby, and the illegal, invalid, or unenforceable part, term, or provision shall be deemed not to be part of this Agreement, and all remaining provisions shall remain valid and enforceable.

21. **Integration Clause.** This Agreement is a fully integrated document and contains all of the terms and conditions agreed upon by the parties hereto regarding the subject matter of this Agreement. Any prior agreements, promises, negotiations, or representations, either oral or written, relating to the subject matter of this Agreement, not expressly set forth in this Agreement, are of no force or effect.

22. **Modification and Amendment.** No modifications or amendments of any of the terms or provisions of this Agreement shall be binding unless made in writing and signed by the Parties.

23. **Date of Execution.** The date of the last signature placed hereon shall hereinafter be known as the "date of execution" of this Agreement.

24. **Jointly Negotiated.** This Agreement has been jointly negotiated by the parties. The language in this Agreement shall be construed as a whole according to its fair meaning and not strictly for or against any of the parties.

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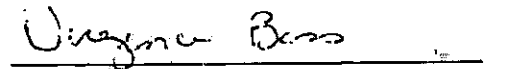
IN WITNESS WHEREOF, the parties hereto have executed the Resignation Agreement and General Release.

NOTICE: BY SIGNING THIS AGREEMENT, YOU ARE WAIVING AND RELEASING IMPORTANT AND POTENTIALLY VALUABLE LEGAL RIGHTS. PLEASE BE SURE TO READ THIS AGREEMENT COMPLETELY AND CAREFULLY AND DISCUSS IT WITH YOUR LEGAL COUNSEL BEFORE SIGNING.

Dated: 11-29-17


David Marcus, Employee

Dated: 1-27-17


Virginia Bass, Chair
Board of Supervisors, County of Humboldt