

## **SETTLEMENT AND RELEASE AGREEMENT**

This Settlement and Release Agreement (the "Agreement") is entered into at Sacramento, California, by and between Nancy Kathleen Finnigan, ("FINNIGAN") and the California State Assembly ("ASSEMBLY"), Steve Fox ("FOX"), Ann Turtle ("TURTLE"), and Lynda Roper ("ROPER"), collectively "DEFENDANTS."

WHEREAS, on or about September 15, 2014, FINNIGAN filed in the County of Sacramento, State of California, a complaint against DEFENDANTS, being Action No. 34-2014-00168938 (the "Action"), in which FINNIGAN asserted claims against DEFENDANTS alleging associational discrimination and harassment, retaliation, failure to prevent discrimination, harassment, and retaliation, intentional infliction of emotional distress, and asserting a Private Attorney General's Act cause of action.

WHEREAS, FINNIGAN dismissed, with prejudice, the intentional infliction of emotional distress cause of action on February 18, 2016.

WHEREAS, DEFENDANTS have denied and continue to deny FINNIGAN's allegations and claims,

WHEREAS, both DEFENDANTS and FINNIGAN now desire to settle fully and finally any and all disputes between them;

NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement, DEFENDANTS and FINNIGAN agree as follows:

1. **Consideration.** In connection with the execution of this Agreement and the release of claims provided for herein, the ASSEMBLY shall pay to FINNIGAN and her attorneys the total sum of One Hundred Thousand Dollars (\$100,000.00), paid with three separate checks, as follows:

- (a) One check to Nancy Kathleen Finnigan in the amount of Eleven Thousand Five Hundred Forty Nine Dollars and Ninety-Nine Cents (\$11,549.99), less applicable payroll withholdings, for which the ASSEMBLY will issue a wage statement and Form W-2;
- (b) One check to Nancy Kathleen Finnigan in the amount of Twenty Three Thousand Four Hundred Fifty Dollars (\$23,450.00), without any withholdings or deductions, for which the ASSEMBLY will issue a Form 1099;
- (c) One check to the Law Offices of Mary-Alice Coleman, P.C. (Tax ID No. 81-0690213) in the amount of Sixty-Five Thousand Dollars and One Cent (\$65,000.01) for which the ASSEMBLY will issue a Form 1099 to the Law Offices of Mary-Alice Coleman, P.C.

2. Timing of payment: All settlement checks, and the accompanying wage statement, shall be delivered to the Law Office of Mary-Alice Coleman, P.C., no later than twenty-one (21) days after the revocation period set forth in paragraph 3(c) expires.

3. Release. FINNIGAN herself and on behalf of her spouse, heirs, estate, executors, administrators, agents, assigns, representatives, and attorneys hereby forever releases and fully discharges DEFENDANTS and DEFENDANTS' past and present members, employees, officers, spouses, heirs, estates, executors, administrators, agents, assigns, representatives, attorneys, predecessors, and successors from:

(a) any and all claims, actions, judgments, obligations, damages, demands, debts, liabilities, and causes of action that are claimed or alleged, or that could have been claimed or alleged, arising from the matters stated in the pleadings and papers on file in the Action;

(b) any and all claims, demands, debts, and causes of action of whatsoever kind or nature, whether known or unknown, suspected or unsuspected, matured or un-matured, which FINNIGAN now owns or holds against DEFENDANTS, and each of them, or has at any time heretofore owned or held against DEFENDANTS, and each of them, based on any act or omission relating to, in connection with, or arising out of FINNIGAN's employment with and/or termination from the ASSEMBLY. The matters released include, except as otherwise provided by law, any claims arising under federal, state, or local laws including, but not limited to, any claims arising pursuant to Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1991, the Civil Rights Act of 1866, the Age Discrimination in Employment Act of 1967 ("ADEA"), the Older Workers' Benefit Protection Act ("OWBPA"), the Fair Labor Standards Act, the Americans with Disabilities Act, the California Fair Employment and Housing Act, the California Labor Code, common law and statutory tort or contract claims, and any claims for attorneys' fees or costs.

(c) Nothing in this Agreement shall release DEFENDANTS, or any other person or entity otherwise released in this Agreement, from any claims that may occur or arise after the date that this Agreement is signed by all parties.

4. FINNIGAN further understands and agrees pursuant to the ADEA and the OWBPA that:

(a) She has been given a reasonable time of up to twenty-one (21) days in which to consider this Agreement before executing it. FINNIGAN understands that she may use as much of this 21-day period as she wishes prior to signing this Agreement, but she may sign as soon as she is ready;

(b) She knowingly and voluntarily agrees to all of the terms set forth in this Agreement, including her waiver of any claim she may have under the ADEA and the OWBPA, and she intends to be bound by all of the terms of this Agreement;

(c) She has a full seven (7) days following her execution of this Agreement in which to revoke the Agreement. Any such revocation must be in writing and delivered prior to expiration of the revocation period to DEFENDANTS' attorney,

John Kennedy, at Nossaman, LLP, located at 621 Capitol Mall, Suite 2500, Sacramento, California 95814 and;

(d) She has been, and hereby is, advised that this Agreement shall not become effective or enforceable as against any party hereto until the revocation period has expired.

(e) This Agreement is entered into for valuable independent consideration.

5. Approval of PAGA Settlement. This lawsuit contains a cause of action under the Private Attorney General's Act (PAGA). FINNIGAN avers that the value of the PAGA penalty is \$100.00. DEFENDANTS specifically deny any liability for penalties under PAGA, but do not contest the penalty allocation by FINNIGAN for purposes of resolving that cause of action. FINNIGAN shall prepare and file the necessary Motion and Declaration to obtain Court approval for allocating this amount to the PAGA claim. FINNIGAN shall be responsible for making payment to the California Labor and Workforce Development Agency. Approval of the PAGA settlement is a condition of this Settlement Agreement.

6. Dismissal With Prejudice. FINNIGAN shall execute and file, or provide to DEFENDANTS' counsel to file, a Request for Dismissal with Prejudice of the entire Action no later than five (5) business days after receipt by FINNIGAN'S counsel of the settlement payments, wage statement, and a true and correct copy of this Agreement signed by all DEFENDANTS and their counsel. The parties agree to cooperate with respect to the execution and filing of any papers or pleadings necessary or appropriate to effect a dismissal with prejudice of the entire Action.

7. Waiver of Civil Code Section 1542. FINNIGAN expressly understands and acknowledges that it is possible that unknown losses or claims related to her claims may exist or that present losses may have been underestimated in amount or severity, and explicitly took that into account in determining the amount of consideration to be paid for the making of this Agreement, and a portion of said consideration and the mutual covenants contained herein have been bargained for between the parties with the knowledge of the possibility of such related but unknown claims, and were given in exchange for a full accord and satisfaction and discharge of all such claims. Consequently, with respect to such related but unknown claims or losses, FINNIGAN expressly waives all rights under California Civil Code section 1542, which provides that:

A general release does not extend to claims 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.

FINNIGAN also expressly waives all rights under any federal statute or law of similar effect.

8. No Admissions. The parties understand and acknowledge that this Agreement constitutes a compromise and settlement of disputed claims. No action taken by the parties hereto, or any of them, either previously or in connection with this Agreement shall be deemed or construed to be (a) an admission of the truth or falsity of any claims heretofore

made; (b) an acknowledgment or admission by any party of any fault or liability whatsoever to any other party or to any third party.

9. No Prior Assignment; Indemnity. FINNIGAN represents and warrants that she has not heretofore assigned or transferred, or purported to assign or transfer, to any person or entity any claim or other matter herein released. In the event that FINNIGAN has assigned or transferred, or purported to assign or transfer, any claim or other matter herein released, FINNIGAN shall indemnify DEFENDANTS, and each of them, and hold harmless DEFENDANTS, and each of them, from and against any loss, cost, claim, or expense including but not limited to all costs related to the defense of any action including reasonable attorneys' fees based upon, arising out of, or incurred as a result of any such claim, assignment, or transfer.

10. Employment Separation. The ASSEMBLY shall change FINNIGAN's separation from employment designation from termination to resignation. FINNIGAN shall first provide the ASSEMBLY with a Letter of Resignation. Said Letter of Resignation is incorporated herein by reference and attached as **Exhibit A**. This change shall be made effective no later than five (5) business days after the Request for Dismissal, with prejudice, of the entire Action set forth in Paragraph 6 is entered by the court.

11. References. Commencing on the date that FINNIGAN signs this Agreement, all inquiries to the ASSEMBLY regarding FINNIGAN's employment by the ASSEMBLY shall be directed to the then Human Resources Director, or any new title for that position, of the ASSEMBLY.

In the event of any reference or job history request made of the Assembly, the ASSEMBLY Human Resources Director will only confirm the dates during which FINNIGAN was employed by the ASSEMBLY, the position(s) she held during that time, and her final salary upon her resignation on May 1, 2013.

12. Document Retention. A Stipulated Protective Order was entered by the court in the Action on November 10, 2015. Pursuant to that Order, within 60 days after the final disposition of the Action, each Receiving Party is required to return or destroy all Protected Material. Protected Material is any document, or other material, designated "CONFIDENTIAL" by the party that produced that material. "All Protected Material" includes all copies, abstracts, compilations, summaries, and any other format of reproducing or capturing any of the Protected Material. Pursuant to the Order, a written certification from the Receiving Party to the Providing Party must be provided by the 60-day deadline. This certification must (1) identify all the Protected Material that was returned or destroyed, and (2) affirm that no copies, abstracts, compilations, summaries, or any other form of reproducing or capturing any of the Protected Material have been retained.

As part of this Agreement, FINNIGAN agrees to return or destroy, and certify in writing having done so, any and all materials pertaining to any and all deliberative and communicative functions that are part of ASSEMBLY business that she still possesses. This written certification should provide that no copies of this material have been retained by FINNIGAN, and this written certification shall be provided within sixty (60) days of the final disposition of the Action or FINNIGAN's receipt of the settlement sum set forth in paragraph 1 above, whichever is later.

Nothing in this section requires counsel for the parties to contravene California Rule of Professional Conduct Rule 4-100(B)(3).

13. Personnel File. FINNIGAN's Official Personnel File shall be purged to contain no materials or documents regarding her termination in 2013 or the Action. FINNIGAN's Termination Letter will be replaced with her Letter of Resignation, Exhibit A attached hereto. The purge and replacement shall occur no later than five (5) business days after the Request for Dismissal, with prejudice, of the entire Action is entered by the court. DEFENDANTS' counsel shall send written notice to Plaintiff's counsel confirming that the purge has occurred.

14. Costs. The parties shall each bear their own costs, expert fees, attorneys' fees and other fees incurred in connection with this Agreement and in connection with the litigation, except as provided in subparagraph 1(b) above.

15. Attorneys' Fees. If any party is required to bring a motion or legal action, after first having given written notice of any alleged non-compliance with any provision of this Agreement and five (5) business days to cure said alleged non-compliance, to enforce compliance with any provision of this Agreement, the prevailing party on such motion or legal action shall be entitled to recover the reasonable attorneys' fees and costs incurred in connection with the motion or legal action. If a separate motion for attorneys' fees and costs is filed relating to a motion or legal action to enforce compliance with any provision of this Agreement, the prevailing party on such a separate motion is entitled to recover the reasonable attorneys' fees and costs incurred in connection with the separate motion.

16. Authority. The ASSEMBLY represents and warrants that the undersigned has the authority to act on behalf of the ASSEMBLY and to bind the ASSEMBLY and all who may claim through it to the terms and conditions of this Agreement. FINNIGAN, FOX, TURTLE, and ROPER each individually represent and warrant that she or he has the capacity to act on her or his own behalf and on behalf of all whom might claim through her or him to bind her or him to the terms and conditions of this Agreement.

17. Governing Law. This Agreement shall be construed under and governed by the laws of the State of California.

This agreement shall be deemed to have been entered into in Sacramento, California, and all questions of validity, interpretation or performance of any of its terms or of any rights or obligations of the parties to this Agreement shall be governed by California law. If any legal or equitable action is necessary to enforce the terms of this Agreement, such action shall be brought in the State of California, County of Sacramento.

18. Entire Agreement. This Agreement, and the parties Stipulated Protective Order, contain the entire agreement between the parties pertaining to the subject matter contained in them and supersede any and all prior and/or contemporaneous oral or written negotiations, agreements, representations, and understandings. The parties, and each of them, understand that this Agreement is made without reliance upon any inducement, statement, promise, or representation other than those contained within this Agreement. This Agreement cannot be altered or amended except by a written agreement executed by all of the parties to this Agreement.

19. Severability. The provisions of this Agreement are severable. If any provision of this Agreement or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

20. Voluntary Execution of Agreement. This Agreement is executed voluntarily and without any duress or undue influence on the part or behalf of the parties hereto, with the full intent of releasing all claims. The parties acknowledge that:

- (a) They have read this Agreement;
- (b) They have been represented in the preparation, negotiation, and execution of this Agreement by legal counsel of their own choice or that they have voluntarily declined to seek such counsel;
- (c) They understand the terms and consequences of this Agreement and of the releases it contains;
- (d) They are fully aware of the legal and binding effect of this Agreement.

21. Counterpart. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. True and correct copies of the original signed signature pages shall be deemed as effective as the original signature pages.

DATED: <sup>April</sup> March 20, 2017

\_\_\_\_\_  
NANCY KATHLEEN FINNIGAN

DATED: March \_\_\_\_\_, 2017

CALIFORNIA STATE ASSEMBLY

By: \_\_\_\_\_  
Debra Gravert  
Chief Administrative Officer

DATED: March \_\_\_\_\_, 2017

\_\_\_\_\_  
STEVE FOX

DATED: March \_\_\_\_\_, 2017

\_\_\_\_\_  
ANN TURTLE

DATED: March \_\_\_\_\_, 2017

\_\_\_\_\_  
LYNDA ROPER

Approved as to form:

DATED: April 20  
~~March~~ \_\_\_\_\_, 2017

**LAW OFFICES OF MARY-ALICE COLEMAN, P.C.**

By: \_\_\_\_\_  
Michael S. Ahmad  
Attorneys for Nancy Kathleen Finnigan

DATED: March \_\_\_\_\_, 2017

**NOSSAMAN LLP**

By: \_\_\_\_\_  
John T. Kennedy  
Attorneys for California State Assembly,  
Steve Fox, Ann Turtle, and Lynda Roper

**EXHIBIT A**

**Nancy Kathleen Finnigan**

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**May 1, 2013**

**Tosha M. Cherry  
Human Resources Director  
California State Assembly  
1020 N Street, Suite 300  
Sacramento, CA 95814**

**Re: Letter of Resignation**

**Dear Ms. Cherry:**

**I regret to inform you that I must resign my position with the California State Assembly to pursue other opportunities. My resignation is effective 5:00 p.m., May 1, 2013.**

**Very truly yours,**

**Nancy Kathleen Finnigan**