



# Department of Justice

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## Review of Personnel Settlement Agreement for the State Appeal Board

Please sign/date where indicated below noting the approval or denial of the attached proposed Personnel Settlement Agreement. After signing, please return to the attention of Jeffrey Thompson, Solicitor General, Hoover Building, 2<sup>nd</sup> Floor for routing and final distribution.

In the matter of: *Delaney Howell v. Iowa PBS* (U.S. District Court for the Southern District of Iowa, Case No. 4:20-cv-00140-SMR-CFB, removed from the Iowa District Court for Polk County, Case No. LACL147733) and *Delaney Howell v. Iowa PBS, David Miller, and Molly Phillips*, Case No. LACL148466 (Iowa District Court for Polk County)

Agency/Department: Iowa PBS

Executive Director and General Manager's Printed Name: Molly Phillips

Director's Signature: *Molly M. Phillips*

Date: 4-19-21 Approve:  Deny:

Agency/Department: Iowa Department of Administrative Services

Director's Printed Name: Adam Steen

Director's Signature: *AS*

Date: 4-20-21 Approve:  Deny:

Agency/Department: Iowa Department of Management

Director's Printed Name: Michael Boussetot

Director's Signature: *Michael Boussetot*

Date: 4/21/21 Approve:  Deny:

### Office of the Attorney General

Reviewed by (Print Name): Jeffrey Thompson

Reviewer's Signature: *Jeffrey Thompson*

Date: 4/22/21 Approve:  Deny:

## SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Agreement") is made and entered into on the last date written below by and between Delaney Howell ("Howell") and Iowa PBS, David Miller, and Molly Phillips, Individually and in their Official Capacities, on behalf of themselves and the State of Iowa, and their current and former predecessors, successors, agencies, assigns, subsidiaries, departments, divisions, affiliates, officers, directors, employees, agents, advisors, attorneys, and representatives (Iowa PBS, David Miller, and Molly Phillips collectively referred to herein as "the Released Parties" and all parties collectively referred to herein as "the Parties").

### RECITALS

**WHEREAS**, Delaney Howell is the Plaintiff and Iowa PBS is the Defendant in an action pending in the United States District Court for the Southern District of Iowa, Case No. 4:20-cv-00140-SMR-CFB, removed from the Iowa District Court for Polk County, Case Number LACL147733 (the "Federal Lawsuit"); and Delaney Howell is the Plaintiff and Iowa PBS, David Miller, and Molly Phillips, Individually and in their Official Capacities, are the Defendants in an action pending in the Iowa District Court for Polk County, Case Number LACL148466 (the "State Lawsuit");

**WHEREAS**, the Parties have a mutual interest in amicably resolving any and all disputes between them;

**WHEREAS**, the Parties have negotiated this Agreement in good faith to fully compromise and settle all differences between them including, but not limited to, those differences embodied in the Federal Lawsuit and the State Lawsuit;

**WHEREAS**, the Parties acknowledge and agree that this Agreement does not constitute any admission of wrongdoing or any admission of violations of applicable law, rule, or policy by either Party; and

**WHEREAS**, the Parties agree that the terms and conditions contained herein are fair, reasonable, and equitable and are the result of an arm's length negotiation between the Parties.

### AGREEMENT

**NOW, THEREFORE**, in consideration of the above recitals, which are expressly incorporated by reference as if fully restated herein, and in exchange for their mutual promises and covenants and for other good and valuable consideration, the adequacy and receipt of which are acknowledged, and intending to be legally bound herein, the Parties agree as follows:

1. **Payment.** In exchange for satisfaction by Howell of the terms identified in Paragraphs 3, 4, and 5 of this Agreement, Iowa PBS, David Miller, and Molly Phillips agree that the State of Iowa, on behalf of all Released Parties, will pay Howell a total gross settlement amount of Ninety Thousand Dollars (\$90,000) ("Settlement Amount"). The Settlement Amount shall be delivered to the Sherinian and Hasso Law Firm, 111 E. Grand Ave., Suite 212, Des Moines, Iowa

50309, by Federal Express or UPS delivery. Payment of the Settlement Amount is more fully described as follows:

- (A) The State of Iowa, on behalf of all Released Parties, shall pay Delaney Howell the amount of Twenty-Two Thousand and Two Hundred and Twenty-Nine Dollars and Two Cents (\$22,229.02) less all applicable deductions, IPERS deductions, and withholdings, in settlement and compromise of Howell's claims for unpaid and lost wages and liquidated damages. The State of Iowa shall cause an IRS Form W-2 to be issued to Howell for this amount.
- (B) The State of Iowa, on behalf of all Released Parties, shall pay Delaney Howell the amount of Thirty-Three Thousand and Three Hundred Forty-Three Dollars and Fifty-Four Cents (\$33,343.54), with no deductions or withholdings, in settlement and compromise of Howell's claims for emotional distress damages. The State of Iowa shall cause an IRS Form 1099-MISC to be issued to Howell for this amount, designating it as "other income" in Box 3.
- (C) The State of Iowa, on behalf of all Released Parties, shall pay to the Sherinian and Hasso Law Firm [REDACTED] the amount of Thirty-Four Thousand, Four Hundred and Twenty-Seven Dollars and Forty-Four Cents (\$34,427.44), with no deductions or withholdings, for attorneys' fees and costs. The State of Iowa shall cause an IRS Form 1099-MISC to be issued to Sherinian and Hasso and Howell, reporting this payment.

Howell acknowledges that these payments are in compromise of a dispute and that such payments are not to be construed as the State of Iowa or any of the Released Parties conceding the reasonableness of any attorneys' fees or costs, and are not to be construed as an admission of liability or wrongdoing on the part of the State of Iowa or any of the Released Parties, and that the State of Iowa and all Released Parties expressly deny any such liability or wrongdoing. Any payment made under this Agreement is subject to Iowa Code section 8A.504.

2. **Tax Liability.** Howell agrees to provide counsel for Defendants with a completed IRS Form W-4 and a completed IRS Form W-9 for her counsel. Howell and Sherinian and Hasso shall be solely responsible for any and all taxes that may be due by them on the payments in Paragraph 1 and shall hold the State of Iowa and the Released Parties harmless and indemnify them from any liability thereon with the exception of the employer's portion of any payroll taxes deemed due.

3. **Dismissals with Prejudice.** The Parties stipulate that within five (5) business days of the latter of (a) receipt by Howell of the checks identified in Paragraph 1(A)-(B) above or (b) receipt by Plaintiff's counsel of the payment identified in Paragraph 1(C) above, Howell will file with each court a Notice of Dismissal dismissing with prejudice all claims in these matters. Each party will bear its own costs.

4. **Howell's Covenant Not to Sue.** In consideration of the terms and conditions set forth in this Agreement, the sufficiency of which the Parties acknowledge, Howell agrees, promises, and covenants that neither she, nor any person, organization, or any other entity acting

on her behalf will file, charge, claim, sue, cause, or permit to be filed, charged, or claimed, any action for damages or other relief (including injunctive, declaratory, monetary relief, or other) against the State of Iowa and the Released Parties, including their respective current and former predecessors, successors, agencies, assigns, subsidiaries, departments, divisions, affiliates, officers, directors, employees, agents, advisors, attorneys, and representatives, whether in their individual capacity or official capacity, involving any matter which occurred in the past up to the date of this Agreement, including any continuing effects thereof, or otherwise involving any claims, demands, causes of action, obligations, damages, or liabilities which are the subject of this Agreement.

5. **Howell's Full and Comprehensive Release of Claims.** Howell agrees, on behalf of herself and on behalf of all persons and entities claiming by, through, or under her or through which she makes her claims, including, but not limited to, her spouse (if any), heirs, executors, representatives, administrators, attorneys, and assigns, to hereby irrevocably and unconditionally release, waive, acquit, and forever discharge the Released Parties and hold them harmless from any cost, liability, or expense, including their respective current and former predecessors, successors, agencies, assigns, subsidiaries, departments, divisions, affiliates, officers, directors, employees, agents, advisors, attorneys, and representatives, from any and all known or unknown actions, causes of action, claims, demands, and/or liabilities of any kind that have or could be asserted against the Released Parties, individually and/or jointly, involving any matter which occurred in the past up to the date of this Agreement arising out of or related to her employment with Iowa PBS, including but not limited to:

- (A) Any claims arising from any alleged violation by the Released Parties of any federal, state, or local statutes, ordinances, or common laws, including, but not limited to, the Rehabilitation Act of 1973, 29 U.S.C. §§ 701 et seq.; Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e et seq.; the Age Discrimination in Employment Act ("ADEA"), 29 U.S.C. §§ 621 et seq.; the Americans with Disabilities Act, 42 U.S.C. §§ 12101 et seq.; the Equal Pay Act, 29 U.S.C. §§ 206(d) et seq.; and the Iowa Civil Rights Act, Iowa Code Chapter 216. Howell further waives her right to monetary or other recovery should any federal, state, or local administrative agency pursue any claims on her behalf arising out of or related to her employment with Iowa PBS. Howell further agrees to waive all rights to use any internal grievance or appeal procedure offered by the State of Iowa with respect to any matter arising out of or related to her employment with Iowa PBS;
- (B) Claims, actions, causes of action or liabilities arising under any other federal, state, municipal, or local statutes, law, ordinance, or regulation; and/or
- (C) Any other claim whatsoever including, but not limited to: claims for severance pay, sick pay, unpaid wages, front pay, unpaid bonuses, unpaid time off, claims based upon breach of contract, breach of the covenant of good faith and fair dealing, wrongful termination, defamation, interference with contract, intentional, and/or negligent infliction of emotional distress, fraud, tort, personal injury, invasion of privacy, violation of public policy, negligence, loss of earning capacity, injunctive or equitable relief, all claims for attorneys' fees, costs, and expenses, and/or any

other common law, statutory, or other claim whatsoever arising out of or relating to her employment with Iowa PBS.

Notwithstanding the above, it is agreed and understood that the releases contained in this paragraph do not cover any claims which by law Howell cannot waive and any claims to enforce the terms of this Agreement.

6. **Full and Comprehensive Release of Potential Claims against Howell: Covenant Not to Sue.** Iowa PBS, David Miller, and Molly Phillips hereby covenant and agree that in consideration of the terms of this Agreement, they waive, fully release, and forever discharge Howell of and from any and every claim, demand, and cause of action of whatsoever nature which they now have, or may in the past have had, including, but not limited to, any and every claim, demand, and cause of action arising out of Howell's duties and obligations related to her employment with Iowa PBS and promise and covenant not to file, charge, claim, sue, cause or permit to be filed, charged, or claimed, any action for damages or other relief (including injunctive, declaratory, monetary relief, or other) against Howell. Notwithstanding the above, it is agreed and understood that the releases contained in this paragraph do not cover any claims which by law Iowa PBS, David Miller, and Molly Phillips cannot waive and any claims to enforce the terms of this Agreement.

7. **No Admission of Liability.** This Agreement is not, and shall not in any way be, construed as an admission of any of the Parties that any of the Parties violated any federal, state or local laws, or State of Iowa or Iowa PBS rules or policies. The Parties have entered into this Agreement for the sole purpose of avoiding the burden, expense, delay, and uncertainties of proceeding through a formal legal process.

8. **Neutral Employment Reference.** In the event Iowa PBS receives an employment reference inquiry regarding Howell, Iowa PBS agrees to respond by providing only Howell's dates of employment and position(s) held.

9. **Representation of Howell.** Howell hereby represents and warrants that she (a) has authority to enter into this Agreement; (b) holds any and all claims free and clear of any liens and has not pledged or assigned those claims to any third party; (c) has not commenced or been subject to any bankruptcy or insolvency proceeding that affects or could affect her rights to accept payment and release claims under this Agreement; (d) has not received any promise of further consideration; and (e) does not know of any other person who holds any rights to sue for the causes of action or the claims subject to the releases made hereunder. Howell further agrees to indemnify and hold harmless each of the Released Parties from and against any and all claims, actions, causes of actions, demands, rights, damages, costs, losses of services, expenses, compensation, taxes, or property damages (including attorneys' fees, expenses, and costs of defense) which any person, partnership, corporation, entity, association, agency, or other organization may bring against it alleging facts and circumstances that are contrary to, inconsistent with, or arising from the breach of the representations and warranties of this paragraph.

10. **Howell Review.** Howell acknowledges that she was given at least twenty-one (21) days to review and consider this Agreement in its entirety. Howell understands that she may voluntarily waive this review period by signing and returning the Agreement prior to the expiration

of twenty-one (21) days. The Agreement waives no rights or claims that may arise after its execution.

11. **Voluntary Agreement.** Howell represents and certifies that she has carefully read and fully understands all of the provisions and effects of this Agreement; that she has been advised to and had the opportunity for consultation with legal counsel; that she is voluntarily entering into this Agreement; and that the Released Parties have not made any representations concerning the terms or effects of this Agreement other than those contained in it.

12. **Counterparts.** This Agreement may be signed in counterparts. Faxed or emailed signatures will be deemed originals.

13. **Governing Law and Venue.** This Agreement is made and entered into in Polk County in the State of Iowa, and in all respects shall be interpreted, enforced, and governed by Iowa law. Any disputes arising out of this Agreement shall be subject to the jurisdiction of the federal or state courts of Iowa. The venue for cases brought in state court will be Polk County, Iowa. The venue for cases brought in federal court will be the Southern District of Iowa.

14. **Severability.** Should a court of competent jurisdiction declare or determine any provision of this Agreement to be illegal or invalid, the validity of the remaining parts, terms, or provisions shall not be affected thereby. It is the Parties' intent that the part, term, or provision declared or determined to be illegal or invalid shall be deemed not to be a part of this Agreement.

15. **Public Record and Required Approvals.** The Parties agree that this Agreement is a public record under Iowa Code Chapter 22. The Parties acknowledge that this Agreement is subject to Executive Order 85 and, as such, must be approved by the Executive Director and General Manager of Iowa PBS, the Director of the Iowa Department of Administrative Services, and the Director of the Iowa Department of Management, and be reviewed by the Iowa Attorney General, or his designee. The parties further acknowledge that the State Appeal Board must approve the payment of state funds pursuant to this Agreement, and that payment of the funds is contingent on such approval. This Agreement is not effective until it has received all necessary reviews and approvals. This Agreement will be posted on the Iowa Department of Administrative Services's web page.

16. **Amendments.** None of the terms or conditions contained herein shall be altered, amended, waived, or abandoned, except by prior written agreement of the Parties.

17. **Entire Agreement.** This Agreement sets forth the entire agreement between the Parties hereto, and fully supersedes any and all prior agreements, discussions, or understanding between the Parties pertaining to the subject matter hereof. The terms of this Agreement are contractual and not merely recital. Headings are for convenience only and do not alter the express terms of this Agreement. All representations, warranties, and indemnities under this Agreement shall survive the termination, expiration, and performance thereof.

**CAREFULLY READ THIS AGREEMENT; BY SIGNING BELOW YOU ARE  
RELEASING ALL KNOWN CLAIMS. YOU HAVE A PERIOD OF TWENTY-ONE (21)  
CALENDAR DAYS TO CONSIDER THIS RELEASE. IF YOU SIGN THIS  
AGREEMENT, YOU WILL HAVE UP TO SEVEN (7) CALENDAR DAYS  
FOLLOWING THE DATE YOU SIGN IT TO REVOKE YOUR SIGNATURE. THE  
RELEASE SHALL NOT BECOME EFFECTIVE OR ENFORCEABLE UNTIL THIS  
SEVEN (7) CALENDAR DAY PERIOD HAS EXPIRED.**

IN WITNESS WHEREOF, and intending to be legally bound hereby, Howell and Iowa PBS, David Miller, and Molly Phillips, on their own behalf and on behalf of the State of Iowa, have executed the foregoing Settlement Agreement and Release.

*Delaney L Howell*  
\_\_\_\_\_  
Delaney Howell  
Agreed to on this 19th day of April, 2021.

\_\_\_\_\_  
Molly M. Phillips  
Executive Director and General Manager  
(for Iowa PBS)  
Agreed to on this \_\_\_\_ day of April, 2021.

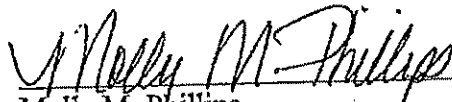
\_\_\_\_\_  
Molly M. Phillips  
Agreed to on this \_\_\_\_ day of April, 2021.

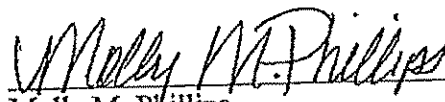
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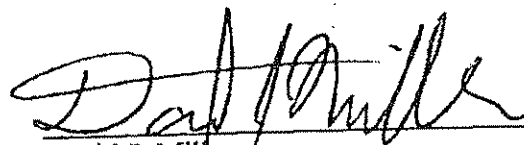
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Molly M. Phillips  
Agreed to on this \_\_\_\_ day of April, 2021.

  
\_\_\_\_\_  
David J. Miller  
Agreed to on this 20<sup>th</sup> day of April, 2021.