

SETTLEMENT AGREEMENT AND FULL AND FINAL RELEASE OF ALL CLAIMS

This **Settlement Agreement and Full and Final Release of All Claims** (“Release” or the “Agreement”) is made by and between Anthony M. Avery (“Avery”), as party of the first part, and Newton County, Georgia, (the “County”), and Newton County Recreation Commission (the “NCRC”), as parties of the second part.

“Avery” as used herein shall be defined as Anthony M. Avery and his agents, attorneys, successors, executors, administrators, beneficiaries, heirs, assigns, insurers, and any persons who could make consortium claims.

As used herein, the term “Released Parties” shall collectively mean the following persons and entities: Newton County, Georgia; the Newton County Recreation Commission, the Newton County Board of Commissioners; all current or former elected or appointed members of the Newton County Board of Commissioners; Marcello Baines, individually and in his official capacity as Chairman of the Newton County Board of Commissioners; Stanley Edwards, Jr., individually and in his official capacity as a member of the Newton County Board of Commissioners; all current or former elected or appointed members of the Newton County Recreation Commission; Charles Daniel “Danny” Stone, individually and in his former official capacity as a member of the Newton County Recreation Commission; Scheree Howard, individually and in her former official capacity as a member of the Newton County Recreation Commission; Tim Fleming, individually and in his former official capacity as a member of the Newton County Recreation Commission; Steven Rhodes, individually and in his former official capacity as a member of the Newton County Recreation Commission; Julius Hays, individually and in his former official capacity as a member of the Newton County Recreation Commission; Newton County’s directors, employees, servants, agents, officials, elected and appointed persons, constitutional officers, insurers and attorneys, in their official and individual capacities, together with their predecessors, successors and assigns, both jointly and severally; and Newton County Recreation Commission’s directors, employees, servants, agents, officials, elected and appointed persons, constitutional officers, insurers and attorneys, in their official and individual capacities, together with their predecessors, successors and assigns, both jointly and severally, with the exception of Joshua McKelvey in his individual capacity, who is specifically excluded and not included in the definition of the Released Parties.

In full and final satisfaction of all claims, suits, costs, debts, demands, actions, and causes of action against the Released Parties, and in consideration of the promises and covenants contained herein and the consideration set forth in Section II below, the adequacy and sufficiency thereof being hereby acknowledged, Avery, the County, and the NCRC (collectively, the “Parties”) hereby agree as follows:

WHEREAS, on November 28, 2018, Avery filed a Complaint for Damages (the “Complaint”) in the United States District Court for the Northern District of Georgia, Atlanta Division, bearing Civil Action File Number 1:18-CV-05417-MHC-CCB, styled as follows:

Anthony Avery v. Newton County Recreation Commission, et al. (the "Lawsuit"). All named Defendants to the Lawsuit timely filed Motions to Dismiss the Complaint on February 1, 2019;

WHEREAS, on April 3, 2019, Avery filed his First Amended Complaint for Damages in the Lawsuit ("Amended Complaint"), which superseded and replaced the initial Complaint. All named Defendants to the Lawsuit timely filed Motions to Dismiss the Amended Complaint on April 18, 2019;

WHEREAS, the Released Parties have denied liability, and continue to deny liability arising out of or relating to the claims, allegations and contentions set forth in the Lawsuit, including all claims set forth in the Complaint and Amended Complaint;

WHEREAS, the Parties wish to settle the disputed claims, allegations and contentions that have been made or that could have been made in the Lawsuit, and any and all other known and unknown claims as of the date of this Agreement arising out of or from, or related to, Avery's employment with the Newton County Recreation Commission including his employment in the position of Recreation Director (with any such existing or potential claims being more particularly described and set forth in the general release contained in Section 3 below), without the necessity of further expense, and without admission of liability on the part of the Released Parties, which is expressly denied.

NOW THEREFORE, for and in consideration of the following covenants and obligations, and for such other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties do hereby agree as follows:

1. Recitals and Introductory Paragraph:

Each of the recitals set forth hereinabove, the introductory paragraph above, and the defined terms contained therein, are hereby incorporated into and made a part of this Agreement, and the Parties to this Agreement hereby represent and warrant to the other that such recitals are true and correct.

2. Payment And Consideration:

A. In consideration of the filing of a Motion and proposed Order of Dismissal With Prejudice of the Lawsuit against the parties identified in Paragraph 2.B. below, and agreement to the general release providing for a full and final release of the claims set forth in Section 3 below: Five Hundred Thousand Dollars and no cents (\$500,000.00) will be made payable to Anthony Avery and his attorney Stephanie R. Lindsey/The Lindsey Firm, P.C. within twenty-one (21) business days of the approval and execution of the Agreement by the County, and NCRC. The Settlement Amount shall be paid to Avery as follows: One Hundred Fifty Thousand Dollars and no cents (\$150,000.00) to be paid by the County's insurer; One Hundred Seventy Five Thousand and no cents (\$175,000.00) to be paid by the County; and One Hundred Seventy Five Thousand and no cents (\$175,000.00) to be paid by the NCRC.

B. Within five (5) business days of receiving the Settlement Amount, Avery, through his attorney, will file a Motion and proposed Order of Dismissal With Prejudice of the Lawsuit against the following named Defendants: Newton County, Georgia; Newton County Recreation Commission; Marcello Banes, Chairman of the Newton County Board of Commissioners, in his official capacity only; Stanley Edwards, Jr., in his personal and official capacities; Charles Daniel "Danny" Stone, in his personal and official capacities; Julius Hays, in his personal and official capacities; Scheree Howard, in her personal and official capacities; Tim Fleming, in his personal and official capacities; and Steven Rhodes, in his personal and official capacities, and will cause an electronically file-stamped copy of said Motion and proposed Order in the Lawsuit to be furnished to counsel for the Defendants in the Lawsuit.

C. Other Consideration: The County/NCRC will (1) purge Avery's personnel file in accordance with O.C.G.A. § 45-1-5 within fourteen (14) days of the execution of this Agreement and (2) the County/NCRC will provide Avery with a neutral employment reference.

3. General Release:

For and in consideration of the consideration specified above and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Avery does hereby knowingly and voluntarily release and forever discharge the Released Parties from any and all known and unknown past claims, present claims or claims which otherwise might be asserted or could be asserted as of the date of this Agreement that arise from or by reason of, or relate to Avery's employment with the Newton County Recreation Commission, including his employment as Recreation Director, including but not limited to all claims, allegations and contentions set forth in or that could have been set forth in the Lawsuit (the "Released Claims"). The Released Claims that are the subject of this general release include all claims, actions, causes of action, damages, judgments, debts, liabilities, compensation, expenses, attorneys' fees, grievances, demands, appeals, suits and proceedings of any kind and nature, whether based on any alleged tort (including but not limited to personal injury), statute, any contract or alleged contract, vicarious liability or other legal or equitable theory of recovery, whether for compensatory, treble, or punitive damages or other relief, whether at law or equity or otherwise, whether known or unknown, which Avery ever had, now has or could have as of the date of this Agreement which are or may be based in whole or in part on, or due or may arise out of, or are or may be related to or with:

- (i) any claims that Avery was not provided with due process, equal protection, freedom of speech, or freedom of association;
- (ii) deprivation of rights under the United States and/or Georgia Constitution, including, but not limited to, the First and/or Fourteenth Amendments possessed by Avery individually or in a representative capacity;

- (iii) deprivation of civil, constitutional or equal rights under local, state or federal law including, but not limited to, 42 U.S.C. §§ 1981, 1983, 1985, 1986 and/or 1988; Title VII of the Civil Rights Act of 1964, as amended; the Equal Pay Act, the Civil Rights Act of 1991; the Age Discrimination in Employment Act; the Older Workers Benefit Protection Act; the Americans with Disabilities Act; the Rehabilitation Act of 1973; or otherwise;
- (iv) retaliation, harassment (whether general harassment, sexual harassment or any other form or type of harassment), discrimination, failure to provide a workplace free of harassment, violence and/or retaliation, negligence, breach of policy and/or public policy, bad faith, hostile work environment, intentional or negligent infliction of emotional or mental distress, invasion of privacy, including any alleged violations or non-compliance with the Health Insurance Portability and Accountability Act ("HIPAA"), outrageous conduct, negligent hiring or retention, failure to train, failure to warn, inducement, fraud, false imprisonment, assault, assault and battery, false arrest, malicious prosecution, breach of duty, libel, slander, defamation, reputational damages, deprivation of reputational liberty interest under the United States Constitution or the Georgia Constitution, and/or tortious and/or criminal conduct of any kind;
- (v) any claims of violation of or retaliation under O.C.G.A. § 45-1-4 (i.e., the Georgia Whistleblower Statute), or any claims of violation of or retaliation under any and all whistleblower protection statutes under federal law;
- (vi) interference with and/or breach of contract (express or implied, in fact or in law), detrimental reliance, breach of duty of good faith and fair dealing (express or implied) and/or breach of contract of any kind;
- (vii) tortious or negligent interference with business relationships, contractual relations or employment relationships of any kind, including any state law or federal claims alleging a foreclosure of opportunity for future employment;
- (viii) loss of consortium or society and companionship;
- (ix) any alleged violation of, denial of rights or retaliation under the Family and Medical Leave Act of 1993, as amended ("FMLA");
- (x) any alleged violation of, denial of rights or retaliation under the Fair Labor Standards Act of 1938, as amended ("FLSA"), including any allegations of any unpaid overtime or claim of not being fully paid for hours of work performed for the County, and/or Newton County Recreation Commission (including any claim to being entitled to any overtime pay for any work performed while employed with the

County and/or Newton County Recreation Commission);

- (xi) attorneys' fees, expenses or costs pursuant to 42 U.S.C. § 1988, 42 U.S.C. § 2000e-5(k) or as otherwise may be allowed by law, including pursuant to any state or federal statute, contract or common-law claim;
- (xii) any and all other claims arising under law or equity;
- (xiii) denial of procedural or substantive due process;
- (xiv) any alleged unlawful or ultra vires acts or conduct of any kind arising under or in reliance upon any statute, rules, regulations, laws, and/or ordinances (whether federal, state or local); and
- (xv) any and all other claims asserted or which could have been asserted by Avery against the Released Parties as of the date of this Agreement arising out of, from, by reason of, or that relate to Avery's employment with the Newton County Recreation Commission, including his employment as Recreation Director.

4. **Covenant Not to Sue:** Avery acknowledges and covenants that neither Avery nor any other person, organization or other entity acting on Avery's behalf has sued or will sue or cause or permit suit against the Released Parties upon any of the Released Claims.

5. **Consultation With Attorney:** The County and NCRC hereby advise Avery in writing to consult with an attorney prior to executing this Agreement and waiver of claims under the ADEA.

6. **Twenty-One Day Review Period Provided:** Avery hereby acknowledges that, in accordance with federal law, he has been allowed up to twenty-one (21) days to consider whether to execute this Agreement and that he has had sufficient time to read and consider this Agreement before executing same. Avery acknowledges that he has received valuable and good consideration to which Avery is not otherwise entitled in exchange for his execution of this Agreement and executes this Agreement voluntarily, with a full understanding of its significance, and intending to be bound by its terms.

7. **Seven-Day Revocation Period:** Avery may revoke and cancel this Agreement at any time within seven (7) days after Avery's execution of this Agreement by providing written notice to the County and NCRC in the manner prescribed herein. If Avery does so revoke, this Agreement will be null and void, the County, NCRC and County's insurer shall have no obligation to provide any consideration to Avery including, but not limited to, that specified in Section 2 of this Agreement, and Avery will be required to return to the County, County's insurer, and the NCRC or reimburse to the County, County's insurer, and NCRC and the Settlement Amount to the extent this Agreement may be revoked and canceled after tender to

Avery of the Settlement Amount. This Agreement shall not become enforceable until after the expiration of the seven (7) day revocation period; after such time, if there has been no revocation, the Agreement shall be fully enforceable. In the event that Avery chooses to revoke the Agreement, Avery or his counsel shall notify the County and NCRC by facsimile and e-mail to its designated agent for this purpose, Kenneth P. Robin, Attorney at Law, Jarrard & Davis, LLP, 222 Webb Street, Cumming, Georgia, 30040 with the facsimile number (678) 455-7149 and the e-mail address of krobin@jarrard-davis.com, no later than 5:00 p.m. on the last day of the revocation period.

8. **Sole and Entire Agreement:** It is expressly understood and agreed that this is a full, final and complete settlement and general release of the Released Parties as to and regarding the Released Claims, that all prior discussions and negotiations, whether written or oral, have no binding or legal effect and that the terms of this Agreement may not be altered, amended, modified or otherwise changed in any respect or particular manner whatsoever except by writing duly executed by Avery and an authorized representative of the County and NCRC.

9. **Non-Admission of Liability or Wrongful Conduct:** The Agreement shall not be constituted as an admission of any liability, wrongdoing, retaliation, or discrimination, nor shall it be considered to be evidence of such liability, wrongdoing, retaliation, or discrimination by either Party to the Agreement, all of whom hereby affirmatively deny any wrongdoing.

10. **No Assignment of Claims by Avery:** Avery further represents and warrants that no claims addressed by this Agreement have been assigned or transferred, expressly or impliedly by operation of law, to any other person or party and no person or parties are subrogated to the rights of Avery in this matter and that all claims released herein are owned exclusively by Avery, who has the authority to release them.

11. **Severability:** If any Paragraph or part of this agreement is found void or unenforceable, the remainder of the Agreement shall not be affected by such a finding.

12. **Advice of Counsel:** The undersigned have read this Agreement, and acknowledge that they have had the advice of counsel or have had the opportunity to consult with counsel and that no promise or representation of any kind, other than as contained herein, has been made by the Released Parties or anyone acting for them.

13. **Governing Law:** This Agreement shall be construed in accordance with the laws of the State of Georgia. Any dispute arising out of or in any way related to this Agreement shall be submitted to the Superior Court of Newton County, Georgia.

14. **Acceptance as Complete Satisfaction of All Claims:** Avery accepts the consideration set forth in this Agreement as full payment and complete satisfaction of the Released Claims.

15. **Agreement, Construction and Interpretation:** The Parties hereto agree that, if an ambiguity or question of intent or interpretation arises, this Agreement is to be construed as if the Parties had drafted it jointly, as opposed to being construed against a party because it was responsible for drafting one or more provisions of the Agreement. As used in this Agreement, the plural includes the singular, and the singular includes the plural. Use of the plural, or the singular, as the case may be throughout this Agreement, shall be construed to give this Agreement a broader meaning and scope, rather than a narrower one.

16. **Legally Binding Agreement:** Avery understands and acknowledges that (A) this is a legally binding Agreement that includes a general release of claims; (B) that by signing this Agreement, he is hereafter barred from instituting the Released Claims against the Released Parties in the manner and to the extent set forth herein; and (C) that this Agreement is final and binding.

17. **Execution in Counterparts:** This agreement may be executed simultaneously in counterparts each of which shall be deemed an original, but which collectively shall constitute one and the same instrument.

(SIGNATURES BEGIN ON FOLLOWING PAGE)


IN WITNESS WHEREOF, having carefully read this *Settlement Agreement and Full and Final Release of All Claims* in its entirety and having fully informed himself of and understanding its contents, Avery indicates his agreement and executes this Agreement of his own free will and accord and under seal by his signature as of this 1 day of May, 2019.

RELEASOR:



Anthony M. Avery L.S. (Seal)

Sworn to and subscribed before me
this 1 day of May, 2019




Notary Public

My Commission Expires: 7/19/20

JENA LEANN PARKE
NOTARY PUBLIC
FORSYTH COUNTY, GEORGIA
MY COMMISSION EXPIRES
JULY 19, 2020

I HAVE READ AND APPROVED THIS SETTLEMENT AGREEMENT AND FULL AND FINAL RELEASE OF ALL CLAIMS. FURTHER, I HEREBY RELEASE THE RELEASED PARTIES FROM ALL CLAIMS THAT I HAVE OR MAY HAVE FOR ATTORNEY'S FEES, COSTS, AND EXPENSES IN CONNECTION WITH THE PROSECUTION OF THE RELEASED CLAIMS.



Stephanie R. Lindsey
Attorney for Anthony M. Avery

(SIGNATURES CONTINUE ON FOLLOWING PAGE)

IN WITNESS WHEREOF, the County approves, agrees to, and executes this *Settlement Agreement and Full and Final Release of All Claims* under seal as of this ____ day of May, 2019.

NEWTON COUNTY, GEORGIA

By: _____
Print: Marcello Banes
Title: Chairman, Newton County Board of Commissioners

Attest:

By: _____
Print: Jackie Smith
Title: County Clerk

[Insert County Seal]

(SIGNATURES CONTINUE ON FOLLOWING PAGE)

IN WITNESS WHEREOF, the NCRC approves, agrees to, and executes this *Settlement Agreement and Full and Final Release of All Claims* under seal as of this ____ day of May, 2019.

**NEWTON COUNTY RECREATION
COMMISSION**

By: _____
Its: Chairman

Attest:

By: _____
Print: _____
Its: Recreation Commission Secretary

[Insert Seal]