

SETTLEMENT AGREEMENT AND MUTUAL GENERAL RELEASE

This Settlement Agreement and Mutual General Release (“Agreement”) is made and entered into by and between Eastern Plumas Rural Fire Protection District and Eastern Plumas Rural Fire Protection District Board of Directors (collectively, the “District”), on the one hand, and John Fatheree (“Fatheree”), on the other hand. Each of the District and Fatheree are referred to herein as a “Party” and jointly as the “Parties.”

RECITALS

A. On or about November 20, 2020, Fatheree, through his counsel, sent the District a demand letter, identifying claimed violations of the Ralph M. Brown Act, and demanding that the District cure its purported violations and provide written notice of its intent to cure.

B. On or about November 20, 2020, Fatheree, through his counsel, made a Public Records Act (“PRA”) request seeking ten categories of documents.

C. On or about December 10, 2020, the District made its written response to Fatheree’s PRA request, including producing documents.

D. On or about December 13, 2020, Fatheree, through his counsel, sent the District a second demand letter, identifying additional claimed violations of the Ralph M. Brown Act, and reserving the right to further demand that the District cure its purported violations.

E. On or about December 19, 2020, the District made its response to Fatheree’s November 20, 2020 and December 13, 2020 demand letters. Among other things, the District took action to cure and correct the alleged Brown Act violations, including (1) approving mandatory comprehensive Brown Act training for all Board members, including making it part of mandatory training for all Board officials; (2) conducting a December 19, 2020 Special Meeting in compliance with the Brown Act, in which all items from the Board’s November 2, 2020 and November 16, 2020 meetings were properly agendaized, and all actions from those meetings were re-considered and re-approved pursuant to the Brown Act; (3) affirming that the position of District Assistant Chief remains a position of the District and was not eliminated from the District’s organizational structure; (4) holding a closed session that complied with the Brown Act and that cured the alleged closed session violation of October 26, 2020, as well as additional errors the District identified on its own after review of its November 2, 2020, November 6, 2020 and November 16, 2020 agendas; and (5) reporting in open session the reportable actions from its closed session.

F. On or about December 29, 2020, Fatheree filed a Petition for Writ of Mandamus and Complaint for Declaratory and Injunctive Relief For Violation of the Ralph M. Brown Act Open Meeting Law And the California Public Records Act, as Plumas County Superior Court Case No. CV20-00176 (the “Petition”).

G. On or about March 9, 2021, the District demurred to the Petition.

H. On or about March 24, 2021, Fatheree filed a First Amended Verified Petition for Writ of Mandamus and Complaint for Declaratory and Injunctive Relief For Violation of the Ralph M. Brown Act Open Meeting Law And the California Public Records Act (the "Action").

I. On or about May 20, 2021, Fatheree presented a claim to the District relating to claims arising from his position as Assistant Fire Chief of the District (the "Claim").

J. On or about July 7, 2021, the District rejected the Claim.

K. On or about January 13, 2022, the Parties participated in a Settlement Conference in the Action with the Honorable Ray Giordano (Ret.).

L. On March 20, 2024, the Parties participated in a Settlement Conference in the Action with the Honorable James D. Garbolino (Ret.).

M. The District intends to annex with the Beckwourth Peak Fire Protection District in or about July 2024.

N. After considering the substantial expense and uncertainty associated with continued litigation of these matters, the District and Fatheree desire to settle all claims and disputes between and amongst them, arising out of, or related to, the Action, except as set forth herein.

SETTLEMENT TERMS

Section 1. *Effective Date.*

The Effective Date of this Agreement is the date it is executed by the last of the Parties to execute it.

Section 2. *Settlement Amount*

The District will pay Fatheree thirty-five thousand dollars (\$35,000) for attorneys' fees incurred in the Action (the "Settlement Amount"), pursuant to Section 3, below. Other than the Settlement Amount, each party shall bear its own costs and fees incurred in the Action.

Section 3. *Payment*

Within twenty (20) days of the Effective Date, the District shall cause a warrant to be submitted to the County of Plumas for payment of thirty-five thousand dollars (\$35,000) to be paid to Fatheree's counsel as set forth below (the "First Installment Payment"). Concurrently, the District will provide Fatheree's counsel with a copy of the warrant submitted to the County.

The warrant shall be payable to the Doyle Law Firm Client Trust Account. Payment shall be directed to Fatheree's counsel of record as follows:

The Doyle Law Firm Client Trust Account
The Doyle Law Firm
11310 Prospect Drive, Suite 10
Jackson, CA 95642

The County of Plumas typically pays its warrants submitted by the District within thirty to forty-five days. If the payment is not paid to The Doyle Law Firm within sixty (60) days after the District submits the warrant, however, the Parties shall meet and confer in good faith and the District shall make all reasonable efforts to ensure payment is promptly made.

Section 4. *Terms Expire With District Dissolution or Annexation*

With the exception of the terms under Section 3 for the payment of attorney's fees, the remaining obligations under the terms of this Settlement Agreement shall terminate upon the District's dissolution or annexation.

Section 5. *Audio Recording of Closed Sessions*

Beginning within ten (10) days of the Effective Date of the Agreement, the District will audio record its closed sessions for fifteen (15) months and will preserve the audio recordings in confidence for six (6) months after the conclusion of the fifteen-month period, subject to discovery only pursuant to the provisions of Government Code section 54960, subdivision (c). If, prior to the end of the six (6) month preservation period, Fatheree files an action pursuant to Government Code sections 54949, 54960, or 54960.1 alleging that a violation of the Brown Act has occurred in a closed session that has been recorded pursuant to this section of the Agreement, the District shall retain those audio recordings until termination of that lawsuit or until otherwise required by the Court.

Section 6. *Brown Act Training*

The District shall provide or obtain mandatory comprehensive Brown Act training for all Board members, as part of the mandatory ethics and transparency laws training for all Board officials. Each Board member that is newly elected to the Board shall undertake the training within forty-five (45) days of taking the oath of office. This requirement shall remain in effect for three years after the Effective Date. The Brown Act training will be conducted by an attorney licensed by the State Bar of California of the Board's choosing.

Section 7. *Public Records Act Policy*

The District shall adopt a policy regarding its responses to any requests made pursuant to the Public Records Act. This policy shall among other things address the District's response to Public Records Act requests that seek public records contained on personal devices or accounts. The District shall adopt such a policy within six (6) months after the Effective Date of this Agreement and in its discretion may amend the policy from time to time.

Section 8. *Statement Regarding Prior Brown Act Violations*

No later than the second regular meeting held after the Effective Date of the Agreement, the District shall make a statement regarding prior Brown Act violations. The statement shall say substantially the language below,

The Board acknowledges that between 2020 and 2023, it committed violations of California's Open Meeting Law known as the Brown Act. These violations include holding closed sessions when it was not authorized by law to do so, holding emergency meetings when no emergencies existed, and not properly **agendizing matters on the Board's meeting agendas.** In committing these violations, the Board violated the public's right to publicly participate in all phases of the Board's decision making and democratic process.

The Board's violations of the Brown Act and the Public Records Act resulted in litigation that sought to compel the Board to cease future violations of the Brown Act and to turn over all records responsive to the Public Records Act request. The Board has entered into a Settlement Agreement to resolve the litigation. The terms of the settlement agreement require (1) that the Board record its closed sessions for a period of 15 months; (2) that each new member receive Brown Act training within 45 days of being appointed or elected to the Board; (3) that the Board develop policies and procedures for responding to Public Records Act requests that seek public records contained on personal devices or **email accounts of the Board members or the District's employees;** (4) that the Board post a link to copy of this Settlement Agreement together with the First Amended Verified Petition in a conspicuous place on its website homepage for a period of no less than three years, and (5) pay \$35,000 to **Mr. Fatheree's attorney for attorney's fees** incurred by Mr. Fatheree in bringing the litigation against the Board.

The District shall provide Fatheree and his counsel at least seven (7) days' notice in advance of the regular meeting at which the District shall make the above statement. Such notice may be made informally, such as by email to Fatheree's counsel.

Section 9. *Agreement is a Public Document*

The Parties acknowledge that this Agreement is a public document and is not confidential. The Agreement is subject to disclosure under the California Public Records Act or as otherwise required by state or federal law, a lawful subpoena, or court order. Moreover, beginning within thirty (30) days of the Effective Date and for at least three (3) years thereafter, the District shall conspicuously publish a link on its homepage to a landing page on its website with links to the Agreement and the First Amended Verified Petition. The link shall have a title

that identifies the litigation and the Brown Act violations (e.g., Brown Act Violations & Litigation Settlement).

Section 10. *Notice of Settlement And Request for Dismissal*

The Board will convene within 30 days of March 20, 2024, to act on this Settlement Agreement. If the Settlement Agreement is approved by the Board, it will execute it at the same time as it convened to act on it. Within five (5) court days of the Effective Date of the Agreement, Fatheree shall cause to be filed in the Action a Notice of Settlement of Entire Case (Judicial Council Form No. CM-200). Within five (5) court days after The Doyle Law Firm's receipt of the payment issued by the County of Plumas as set forth in Section 3 above, Fatheree shall cause to be filed a Request for Dismissal of the Action, with prejudice, and provide the District with a conformed copy of the dismissal within five (5) court days from date of filing.

Section 11. *Brown Act Compliance*

The Board agrees that it will comply with its obligations under the Ralph M. Brown Act.

Section 12. *Continuing Jurisdiction And Enforcement of the Agreement Pursuant to Code of Civil Procedure § 664.6*

The Parties agree that the Court will retain jurisdiction over the Parties to enforce the full terms of the Agreement pursuant to California Code of Civil Procedure section 664.6 in the Superior Court of California, County of Plumas (the "Court"), where the Action is now pending. Any action brought to enforce the provisions of this Agreement shall be brought in the Superior Court for the State of California, County of Plumas. Any Party filing such an action shall also file a Notice of Related Case, indicating that the new case is related to the Action.

Section 13. *Mutual Release*

In consideration of the mutual promises and releases granted herein, the Parties hereby release and discharge each other and each of their respective successors, assigns, agents, attorneys, employees, representatives, trustees, affiliates, related persons, predecessors, and successors, from any and all claims, demands, damages, debts, liabilities, obligations, contracts, **agreements, causes of action, suits, attorneys' fees, and costs, of whatever nature, character, form or description, whether known or unknown, anticipated or unanticipated, which the releasing Parties have or may hereafter have or claim to have against each other by reason of any matter, act or omission arising from or related to any contract, liability, matter, cause, fact, or thing arising out of the facts and issues in the Action, having any connection with the events alleged in the Action, or which could have been alleged in the Action, excepting only the Claim, which the Parties agree is specifically exempt from this mutual release.**

Section 14. *Civil Code Section 1542 Waiver*

Except as otherwise provided in this Agreement, including in particular with regard to the Claim, the Parties hereby release and discharge each other from any and all past, present and future claims, demands, obligations, and causes of action relating in any way to the matters released herein, which any of them is unaware of or does not suspect to exist in their favor,

whether through ignorance, oversight, error, negligence or otherwise, and which, if known, would materially affect the decision to enter into this Agreement, and to this end, waive all rights under Section 1542 of the Civil Code of California, which states in full:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.”

The Parties understand and acknowledge the significance and consequences of their specific waiver of Section 1542, and assume full responsibility for any injuries, damages, or losses that they may incur as a result of the execution of this waiver. Except as otherwise provided in this Agreement, the Parties intend that such waiver shall extend to waive, relinquish, and release all rights and benefits they have or may have had under any state or federal law which is similar to Section 1542. The Parties understand, intend, and agree that this Agreement is a complete compromise and release of any such claims.

Section 15. *Governing Law*

This Agreement is made under and shall be construed and enforced in accordance with the laws of the State of California.

Section 16. *Notices.*

Any notice to be given under this Agreement (other than the informal notice set forth in Section 7 above) shall be in writing and delivered by United States Certified Mail, return receipt requested, or by Federal Express (or other overnight carrier) with recipient signature required. Notice shall be effective three (3) days after delivery. Notice shall be delivered as follows:

To Fatheree:

John Fatheree
251 Espinal Drive
Portola, CA 96122

with a copy to (which shall constitute sufficient notice):

The Doyle Law Firm
11310 Prospect Drive, Suite 10
Jackson, CA 95642
Attention: Aaron E. Doyle, Esq.

And

To the District:

Eastern Plumas Rural Fire Protection District
141 Delleker Drive
Portola, CA 96122

with a copy to (which shall constitute sufficient notice):

Meyers Nave
555 Capitol Mall, Suite 1200
Sacramento, CA 95814
Attention: Jenny L. Riggs, Esq.

Section 17. *Voluntary Agreement.*

The Parties each represent to and in favor of the other that they are fully capable of executing this Agreement, understand its contents, and that they have consulted legal counsel of their choosing concerning this Agreement before signing it.

Section 18. *Reliance on Advice of Counsel*

Each of the Parties represents and warrants that, in connection with the negotiation and execution of this Agreement, they have been represented by counsel, that they have executed this Agreement after receiving the advice of such counsel, that they have read and understand the provisions and terms of this Agreement, and that they have had an adequate opportunity to conduct an independent investigation of all facts and circumstances with respect to all matters that are the subject of this Agreement.

Section 19. *Attorneys' Fees and Costs.*

The District will bear its own costs and attorneys' fees incurred in connection with all matters resolved by this Agreement. **Fatheree will bear his own costs and attorneys' fees** incurred in connection with all matters resolved by this Agreement to the extent they exceed the thirty-five thousand dollars (\$35,000) paid by the District.

Section 20. *Entire Agreement.*

This Agreement constitutes a single integrated contract expressing the entire agreement of the Parties hereto. This Agreement shall supersede, and render null and void any and all prior agreements between the Parties, concerning the subject matter of this Agreement. The Parties agree that there are no representations, agreements, arrangements, or understandings, either written or oral, between or among the Parties relating to the subject matter of this Agreement which are not fully expressed herein.

Section 21. *Applicable Law.*

This Agreement is executed and delivered in the State of California and the rights and obligations of the parties hereunder shall be construed and enforced in accordance with the laws of the State of California.

Section 22. *Construction.*

This Agreement is deemed to have been drafted jointly by the Parties. Any uncertainty or ambiguity shall not be construed for or against any Party based upon attribution of drafting to any party.

Section 23. *Interpretation.*

Wherever required by the context of this Agreement, the singular shall include the plural, and the plural shall include the singular. Masculine forms include feminine and neuter forms as well. The captions of the various sections of this Agreement are solely for the convenience of the Parties, are not part of this Agreement, and shall not be used to interpret or construe any of its provisions.

Section 24. *Signing in Counterparts.*

This Agreement may be signed in Counterparts, each of which shall be deemed an original, but all of which together constitute one and the same Agreement. Facsimiled and scanned pdf signatures shall be deemed originals.

Section 25. *Validity of Agreement.*

Should any clause, sentence, paragraph or other part of this Agreement be finally adjudged by any court of competent jurisdiction to be unconstitutional, invalid, or in any way unenforceable, such adjudication shall not affect, impair, invalidate or nullify the remainder of the Agreement, but shall affect only the clause, sentence, paragraph or other parts so adjudged.

THE UNDERSIGNED ACKNOWLEDGE THAT THEY HAVE CAREFULLY READ THE ENTIRE CONTENTS OF THIS AGREEMENT AND THAT IT HAS BEEN FULLY EXPLAINED TO THEM. THE UNDERSIGNED UNDERSTAND THAT THIS AGREEMENT IS A FULL AND FINAL COMPROMISE, RELEASE, AND SETTLEMENT OF THE CLAIMS, ACTIONS, AND CAUSES OF ACTION, PAST, PRESENT AND FUTURE, THAT ARE SET FORTH ABOVE. THE UNDERSIGNED FURTHER ACKNOWLEDGE THAT IN EXECUTING THIS AGREEMENT THEY WERE NOT INFLUENCED NOR DID THEY RELY UPON ANY DECLARATIONS, REPRESENTATIONS, OR PROMISES OF THE OTHER OR THE OTHER'S ATTORNEYS WHICH ARE NOT CONTAINED IN THIS AGREEMENT.

IN WITNESS WHEREOF, the Parties hereto evidence their agreement and have executed this AGREEMENT as of the date last written below.

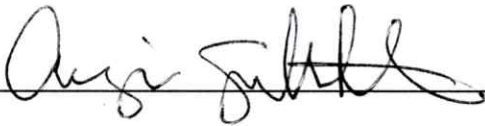
Dated: March 20, 2024

JOHN FATHEREE

By: 
JOHN FATHEREE

Dated: March 25, 2024

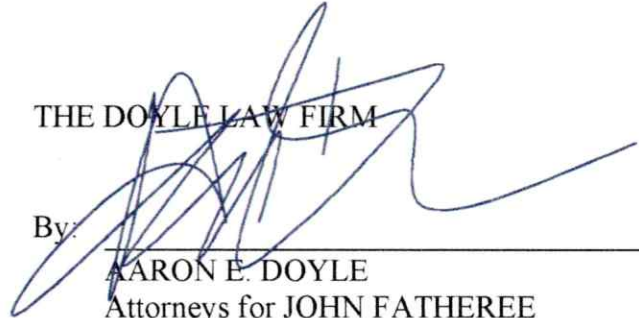
EASTERN PLUMAS RURAL FIRE PROTECTION DISTRICT, EASTERN PLUMAS RURAL FIRE PROTECTION DISTRICT BOARD OF DIRECTORS

By: 

APPROVED AS TO FORM:


Dated: March 20, 2024

THE DOYLE LAW FIRM

By: 
KARON E. DOYLE
Attorneys for JOHN FATHEREE

Dated: March 21, 2024

MEYERS NAVE

By: 
MARGARET ROSEQUIST
Attorneys for EASTERN PLUMAS RURAL FIRE PROTECTION DISTRICT, EASTERN PLUMAS RURAL FIRE PROTECTION DISTRICT BOARD OF DIRECTORS

5049578.8