

## SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (hereinafter, the “Agreement”) is made and entered into as of October 9, 2025 (the “Effective Date”) by and between the following parties (collectively, the “Settling Parties”): KIMBERLY JOHNS, and NESTUCCA VALLEY SCHOOL DISTRICT, MISTY WHARTON, BRIAN HOOGENDIJK, DANIELA MORENO GUTIERREZ, KENNETH RICHWINE, AND CHRISTAL WINESBURGH.

### RECITALS

- A. Kimberly Johns (“Mr. Johns”) is the parent of a former student of Nestucca High School in the Nestucca Valley School District (“NVSD”).
- B. Misty Wharton, Brian Hoogendijk, Daniela Moreno-Gutierrez, Kenneth Richwine, and Christal Winesburgh are or were employees of NVSD.
- C. On January 23, 2024, a conflict arose between Mr. Johns and NVSD related to his daughter and NVSD’s eventual trespassing of Mr. Johns from NVSD property and revocation of his position as volunteer football coach (the “Conflict”).
- D. Mr. Johns claims to have been damaged as a result of NVSD’s conduct in the Conflict (the “Dispute”).
- E. As a result of the Conflict and Dispute, Mr. Johns filed suit against NVSD in the Federal District Court for Oregon, Case No. 3:25-cv-00850-JR (the “Lawsuit”).
- F. The Settling Parties now desire to fully and finally compromise and settle the disputed claims, allegations, and demands concerning the issues related to the Conflict, Dispute, and Lawsuit.

### AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated into this Agreement by this reference, and the terms, conditions, covenants and promises set forth below, constituting good and valuable consideration, the adequacy of which is hereby acknowledged, the Settling Parties agree as follows:

1. Full and Final Compromise. Mr. Johns and his Additional Released Parties release NVSD, Misty Wharton, Brian Hoogendijk, Daniela Moreno-Gutierrez, Kenneth Richwine, and Christal Winesburgh and their Additional Released Parties from any and all Claims and forever compromise and settle any issue in any way related to the Conflict, the Dispute, and the Lawsuit. NVSD, Misty Wharton, Brian Hoogendijk, Daniela Moreno-Gutierrez, Kenneth Richwine, and Christal Winesburgh and their Additional Released Parties release Mr. Johns and his Additional Released Parties from any and all Claims and forever compromise and settle any issue in any way related to the Conflict, the Dispute, and the Lawsuit.

## 1.1 Defined Terms.

1.1.1 The term “Additional Released Parties” means a Settling Party’s, past and current employees, past and current board members, past and current staff members, successors, transferees, assigns, agents, representatives, heirs, attorneys, insurers, and subrogees.

1.1.2 The term “Claims” means any and all past, present, and future claims (including without limitation, demands, legal causes of action, suits, injuries, costs, expenses, or damages of any kind or nature including, without limitation, compensatory, loss of services, punitive, statutory, exemplary, bad faith or extra-contractual damages, whether based on tort, common law, contract, statute or any other source) known or unknown, anticipated or unanticipated, existing or hereinafter arising out of, related to, or in any way caused by the Conflict and Dispute. “Claims” include, without limitation, all claims, counterclaims, cross-claims and third-party claims that were brought or could have been brought in the Lawsuit, including any claim for recovery of any attorney fees or other costs.

1.2 Effect of Releases Given. The foregoing releases extend to and inure to the benefit of the Settling Parties’ respective Additional Released Parties but do not extend to any claims that may arise out of a breach of this Agreement. The Settling Parties intend that the releases set forth in this Agreement be valid, effective, binding, and enforceable in accordance with their terms, notwithstanding the possibility that a Settling Party may hereafter discover facts that, if such facts had been known by them as of the time of execution of this Agreement, may have materially affected their decision to enter into this Agreement. Accordingly, the Settling Parties intentionally and voluntarily waive the benefit of any state or federal statute, law, order or rule that would provide to the contrary. Additionally, the Settling Parties declare and represent that they fully understand the terms of this settlement and voluntarily agree to the settlement for the purpose of making full compromise, adjustment and settlement of any Claims the undersigned may have against persons released by them hereunder.

## 2. Terms of Payment.

2.1 Payment terms and Instructions. Within seven (7) days after the Effective Date, NVSD, via its insurer, shall deliver to Mr. Johns’ attorneys payment in the amount of \$14,750.00 (the “Settlement Payment”). Settlement Payment may be made by check providing it is drawn on a law firm’s bank account, otherwise the Settlement Payment shall be made in certified funds. Mr. Johns’ counsel shall notify NVSD’s counsel upon receipt of the Settlement Payment. Time is of the essence. The Settlement Payment shall be made payable to “London & Paris LLP Trust Account” (Tax ID No. 83-1016858), and shall be delivered to the following address:

London & Paris LLP  
66 Club Rd., Ste. 200  
Eugene, OR 97401

3. Additional Terms and Conditions.

3.1 Lifting of the No Trespassing Order. Within three (3) days after the Effective Date, NVSD will rescind, in writing, the No Trespassing Order against Mr. Johns, providing the standard level of access of any other citizen of Oregon to the properties and campuses of NVSD, including, but not limited to, attending any and all NVSD events whether occurring on NVSD premises or in any other place. A copy of the Order lifting the No Trespassing Order and reinstating Mr. Johns' access will be provided to Mr. Johns and his attorneys, with another copy also provided to the Tillamook County Sheriff's Office.

3.2 Reinstatement of Volunteer Coaching Privileges. Within three (3) days after the Effective Date, NVSD will reinstate, in writing, Mr. Johns' volunteer clearances and volunteer coaching privileges with NVSD, allowing Mr. Johns to volunteer coach should his services be desired by any coach.

3.3 No Admission of Liability. It is understood and agreed that this is a settlement by compromise of disputed claims, and neither the existence of this Agreement nor any part of this Agreement shall be construed as an admission of fault or liability of any kind by any of the Settling Parties.

3.4 Dismissal of Lawsuit. Within five (5) days after the Settlement Payment is delivered to Mr. Johns' counsel and the check is deposited and has cleared, Mr. Johns and his counsel shall file a notice of dismissal and general judgment of dismissal, dismissing the Lawsuit with prejudice and without an award of attorney fees, costs, or disbursements to any party. To the extent necessary, the Settling Parties shall cooperate and jointly file any other or additional pleadings necessary to cause a dismissal of the Lawsuit with prejudice and without an award of attorney fees, costs, or disbursements to any Party.

3.5 Payment of Lien. Mr. Johns agrees to fully satisfy and hold NVSD and its Additional Released Parties harmless from any claim or lien against this settlement and the settlement funds, if any.

3.6 Full Understanding. The Settling Parties hereby warrant and represent that, except as otherwise expressly provided herein: (i) they have read this Agreement and fully understand the terms hereof; (ii) they have relied upon their own independent judgment, belief, and knowledge in entering into this Agreement; (iii) they have had an opportunity to discuss this Agreement with competent attorneys of their own choosing, and that they have obtained whatever advice and consultation she deems necessary in this matter; (iv) they have not been influenced or induced, to any extent whatsoever, to enter into this Agreement by any representations, agreements, promises or statements of any kind, except as set forth in this Agreement; and (v) the Settling Parties understand that no other consideration or payment of any kind will be made the Settling Parties or any of their respective Additional Released Parties.

3.7 Good Faith. The Settling Parties are and have at all times during this settlement process been acting in good faith.

3.8 Recitals. The terms of this Agreement are contractual and not mere recitals.

3.9 Authority. The Settling Parties represent and warrant that they have full power and actual authority to enter into this Agreement and to carry out all actions required of them by this Agreement.

3.10 Amendment. This Agreement may be amended or modified only by written agreement of the affected parties executed in the same manner as this Agreement. No portion of this Agreement may be waived except by written instrument signed on behalf of the party whom the waived provision is designed to benefit. A waiver of one provision is not a waiver of any other. Failure to enforce any provision of this Settlement Agreement shall not waive that provision or any other.

3.11 Construction. This Agreement was approved by all parties to this Agreement, and any rule that would otherwise require any ambiguities in this Agreement to be interpreted against the drafter(s) is hereby expressly waived. As used in this Agreement, the term “person” includes an individual, sole proprietorship, partnership, joint venture, trust, corporation, limited liability company, association or any other entity or agency. The captions heading the sections and subsections of this Agreement are inserted for convenience of reference only and are not to be used to define, limit, construe or describe the scope or intent of any term, provision or section of this Agreement.

3.12 Venue and Choice of Law. This Agreement shall be governed by, construed, and enforced in accordance with the laws of the state of Oregon without reference to its choice of law rules. The Parties agree to not object to jurisdiction and exclusive venue for any action arising from this Agreement which shall be in federal and state courts having jurisdiction in Oregon.

3.13 Attorney Fees Upon Interpretation. In any suit or action brought to enforce this Agreement or in which a Party raises any release provision(s) in Section III as a defense, and in any appeal therefrom, the party that prevails in such suit or action or any appeal shall be entitled to recover reasonable costs, including without limitation, costs of depositions, and attorney fees (including at trial and on appeal).

3.14 Severability. Should any provision of this Agreement at any time conflict with any law, regulation, order, or ruling, or in any way be deemed unenforceable, then such provision shall continue in effect only to the extent that it remains valid. In the event any provision of this Agreement becomes inoperative, the remaining provisions of this Agreement shall remain in full force and effect, and the inoperative provision shall be replaced with an operative provision that is as close to the parties’ intent as possible.

3.15 Counterparts. This Agreement may be executed by facsimile and .pdf and in multiple counterparts, each of which shall constitute an original and all of which together shall constitute one instrument.

3.16 Entire Agreement. This Agreement contains the entire understanding of the Settling Parties with respect to the subject matter hereof, and supersedes all prior agreements, discussions and writings with respect thereto.

IT IS SO AGREED, as of the Effective Date.

*Kimberly A. Johns*

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Kimberly Johns

APPROVED AS TO FORM ONLY:

  
\_\_\_\_\_  
Charles W. Woodward, IV, OSB # 165001  
Attorney for Plaintiff

\_\_\_\_\_  
Misty Wharton

\_\_\_\_\_  
Kenneth Richwime

\_\_\_\_\_  
Brian Hoogendijk

\_\_\_\_\_  
Christal Winesburgh

\_\_\_\_\_  
Daniela Moreno Gutierrez

\_\_\_\_\_  
Name:  
Title:  
Nestucca Valley School District

APPROVED AS TO FORM ONLY:

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Kurt C. Peterson, OSB # 980065  
Attorney for Defendants

**Signature:** *Kimberly A. Johns*

**Email:** usia@aol.com

**Title:** Parent

**Company:** Kimberly Johns

# (SDAO - Johns) Settlement Agreement and Release Agreement - 4924-1107-23641 - E.D. 9th

Final Audit Report

2025-10-10

Created:	2025-10-10
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## "(SDAO - Johns) Settlement Agreement and Release Agreement - 4924-1107-23641 - E.D. 9th" History

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 Signer Kim Johns (usia@aol.com) entered name at signing as Kimberly A. Johns  
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 Document e-signed by Kimberly A. Johns (usia@aol.com)  
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