



**AGENDA REPORT
May 24, 2018**

SUBJECT:

Price vs. Brevard County, Case No. 6:18-cv-428-Orl-22DCI and/or Gil v Brevard County, Case No. 6:18-cv-642-Orl-28-DCI.

FISCAL IMPACT:

Fiscal impact: unknown at this time.

DEPT/OFFICE:

County Attorney Office

REQUESTED ACTION:

Approval for the Chair to execute the necessary documents to effectuate the settlement with plaintiffs in Price vs. Brevard County, Case No. 6:18-cv-428-Orl-22DCI and/or Gil v Brevard County, Case No. 6:18-cv-642-Orl-28-DCI.

SUMMARY EXPLANATION and BACKGROUND:

Complaints were filed against Brevard County, Florida by Mr. Price and Mr. Gil regarding website accessibility under the federal Americans with Disabilities Act and Rehabilitation Act.

On May 22, 2018, Board of County Commissioners will met in an attorney-client private meeting to consider a proposed settlement/resolution of the cases. After conclusion of the executive session, this office will provide any final proposed settlement/resolution of the cases for the Board's approval at this public meeting.

Contact information: Shannon Wilson, Deputy County Attorney/Eden Bentley, County Attorney

ATTACHMENTS:

Description

No Attachments Available



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May 25, 2018

MEMORANDUM

TO: Eden Bentley, County Attorney

Attn: Shannon Wilson

RE: Item V.A., Price vs. Brevard County, Case No. 6:18-CV-428-Orl-22-DCI and Gil vs. Brevard County, Case No. 6:18-CV-642-Orl-28-DCI

The Board of County Commissioners, in regular session on May 24, 2018, approved execution of the necessary documents to effectuate the settlement with Plaintiffs in Price vs. Brevard County, Case No. 6:18-CV-428-Orl-22-DCI and Gil vs. Brevard County, Case No. 6:18-CV-642-Orl-28-DCI.

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Rowe

Tammy Rowe, Deputy Clerk

/cmw

cc: County Manager
Each Commissioner

Joel Price has filed a lawsuit against Brevard County styled *Price v. Brevard County*, United States District Court for the Middle District of Florida case number 6:18-cv-428-Orl-22DCI. Price alleges that Brevard County violated Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973 because certain content on Brevard County's website, www.brevardfl.gov, is allegedly not accessible to visually-impaired individuals who use screen reader software. The following are the essential, proposed terms for settlement of the lawsuit:

1. Payments:
 - a. On or before 30 days after the date the parties execute a settlement agreement, Brevard County will pay Price \$1,500.00 in damages.
 - b. On or before 30 days after the date the parties execute a settlement agreement, Brevard County will pay Price's attorneys, Scott Dinin and Courtney Cunningham, the total sum of \$14,900.00 to settle their claims for attorneys' fees, costs, and expenses.
2. Accessibility of PDF Content on www.brevardfl.gov:
 - a. Beginning 12 months from the date of execution of a settlement agreement, Brevard County will begin to publish any new PDF content on www.brevardfl.gov so that such new PDF content is accessible to individuals who are visually-impaired. Such new PDF content shall conform to the existing WCAG 2.0 Level A guidelines for accessibility.
 - b. Brevard County will not be obligated by the settlement agreement to remediate PDF content that existed on www.brevardfl.gov prior to 12 months after the date of execution of a settlement agreement.
 - c. After Brevard County is due under the settlement agreement to begin to publish new PDF content on www.brevardfl.gov so that it is accessible to individuals who are visually impaired, Brevard County may, for Board of County Commissioners agenda items received from outside Brevard County that are not received by Brevard County in accessible format, publish the documents in non-accessible format and, on or before 30 days after publication, provide an accessible version of the non-accessible document that conforms to the WCAG 2.0 Level A guidelines for accessibility.
 - d. Brevard County shall have no obligation under the settlement agreement to make accessible any document if it is technically infeasible or unreasonably costly to make such document accessible (including, without limitation, third-party submissions to Brevard County, site plans, development plans, and maps). However, if technology becomes available to make any such document accessible in a manner that conforms to the WCAG 2.0 Level A guidelines at reasonable cost, Brevard County shall, within a reasonable time, make such document accessible in a manner that conforms to the WCAG 2.0 Level A guidelines.
 - e. The parties' settlement agreement shall not require Brevard County to make accessible any web page or web content on any domain other than www.brevardfl.gov, regardless of whether Brevard County provides any link to any such other domain from www.brevardfl.gov.

- f. Should the United States promulgate any regulation or enact legislation requiring that state and local governments make web content accessible to visually-impaired individuals, Brevard County shall not be required, as of the effective date of such regulation or legislation, by this settlement agreement to make any content on www.brevardfl.gov accessible in any manner or to any degree greater than may be required by such regulation or legislation.
3. Release and Resolution of Lawsuit:
- a. Price will not amend the above-referenced lawsuit to seek class action status.
 - b. Price will not file a motion for summary judgment and will not seek a trial in the above-referenced lawsuit.
 - c. Immediately following execution of a settlement agreement, the parties will file a notice of settlement with the court as required by Local Rule 3.08.
 - d. On or before 30 days after the date the parties execute a settlement agreement, Price will execute, before a notary, a release of claims for damages, attorneys' fees, and costs in favor of Brevard County. Such release would not preclude Price's ability to seek enforcement of the settlement agreement including the use of future injunctive relief or declaratory relief.
 - e. Price will jointly stipulate with Brevard County to dismissal with prejudice of the above-referenced lawsuit. Such stipulation shall state that each party shall bear its own attorneys' fees and costs.

Should the Board of County Commissioners vote to resolve the *Price v. Brevard County* lawsuit on these essential, proposed settlement terms, such terms would be incorporated into a formal settlement agreement containing standard language for compromised resolution of disputed claims without admission of liability, fault, or wrongdoing by Brevard County. The Board of County Commissioners would, upon voting to settle the *Price v. Brevard County* lawsuit on these essential, proposed terms, authorize the Chair to execute such formal settlement agreement on behalf of Brevard County, following consultation with the County Attorney and retained counsel for the *Price v. Brevard County* lawsuit.

Juan Carlos Gil has filed a lawsuit against Brevard County styled *Gil v. Brevard County*, United States District Court for the Middle District of Florida case number 6:18-cv-642-Orl-22DCI. Gil alleges that Brevard County violated Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973 because Brevard County's website, www.brevardfl.gov, is allegedly not accessible to visually-impaired individuals who use screen reader software. The following are the essential, proposed terms for settlement of the lawsuit:

1. Payment:
 - a. On or before 30 days after the date the parties execute a settlement agreement, Brevard County will pay Scott R. Dinin, P.A. \$15,500.00 to settle the above-referenced lawsuit. Such amount shall resolve, without limitation, all claims for damages, attorney's fees, costs, and expenses.
2. Accessibility of Web Pages:
 - a. On or before 180 days after the date the parties execute a settlement agreement, Brevard County shall publish on www.brevardfl.gov a Notice of Accessibility that substantially conforms to the accessibility notice provided as of May 17, 2018 by Martin County, Florida at <https://www.martin.fl.us/accessibility>.
 - b. On or before 4 years after the date the parties execute a settlement agreement, Brevard County shall make web pages on www.brevardfl.gov accessible to visually-impaired individuals in a manner that need not exceed the existing WCAG 2.0 Level A guidelines for accessibility.
 - c. If, on or before 2 years following the date the parties execute a settlement agreement, Brevard County receives any letter, action, suit, or investigation from any non-party to the settlement agreement executed in connection with the above-referenced lawsuit regarding the accessibility, for individuals with disabilities, of Brevard County's website, Scott R. Dinin, P.A. shall cooperate and assist Brevard County in the prevention of the additional website accessibility claim(s) from being brought against Brevard County. Cooperation from Scott R. Dinin, P.A. includes contacting the parties involved in the additional potential website accessibility claims to discuss the existence and terms of the settlement agreement reached in connection with the above-referenced lawsuit and Brevard County's commitment to making its website accessible to individuals with disabilities.
 - d. The parties' settlement agreement shall not require Brevard County to make accessible any web page or web content on any domain other than www.brevardfl.gov, regardless of whether Brevard County provides any link to any such other domain from www.brevardfl.gov.
 - e. Should the United States promulgate regulation or enact legislation requiring that state and local governments make web pages accessible to visually-impaired individuals, Brevard County shall not be required, as of the effective date of such regulation or legislation, by this settlement agreement to make any web page on www.brevardfl.gov accessible in any manner or to any degree greater than may be required by such regulation or legislation.
3. Release and Resolution of Lawsuit:
 - a. Immediately following execution of a settlement agreement, the parties will file a notice of settlement with the court as required by Local Rule 3.08.

- b. On or before 30 days after the date the parties execute a settlement agreement, Gil will execute, before a notary, a release of claims for damages, attorneys' fees, and costs in favor of Brevard County. Such release would not preclude Price's ability to seek enforcement of the settlement agreement including the use of future injunctive relief or declaratory relief.
- c. Gil will jointly stipulate with Brevard County to dismissal with prejudice of the above-referenced lawsuit. Such stipulation shall state that each party shall bear its own attorneys' fees and costs.

Should the Board of County Commissioners vote to resolve the *Gil v. Brevard County* lawsuit on these essential, proposed settlement terms, such terms would be incorporated into a formal settlement agreement containing standard language for compromised resolution of disputed claims without admission of liability, fault, or wrongdoing by Brevard County. The Board of County Commissioners would, upon voting to settle the *Gil v. Brevard County* lawsuit on these essential, proposed terms, authorize the Chair to execute such formal settlement agreement on behalf of Brevard County, following consultation with the County Attorney and retained counsel for the *Gil v. Brevard County* lawsuit.