

SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

This Settlement Agreement and Release of Claims (“Agreement”) is made and entered into by and between Ohio University (“University”) on behalf of Roderick J. McDavis, Jenny Hall-Jones, and Martha Compton (together with University, the “University Parties”), and Isaac Smith (“Smith” as defined below), collectively, the “Parties”.

WHEREAS, on or about July 1, 2014, Smith filed a lawsuit in the United State District Court for the Southern District of Ohio, Eastern Division, Case No. 2:14-cv-670, against Roderick J. McDavis in his official capacity, Jenny Hall-Jones in her individual and official capacities, and Martha Compton in her individual and official capacities (the “Lawsuit”);

WHEREAS, the Parties desire a complete, final and irreversible end to any and all claims and/or disputes which Smith may have against University, Roderick J. McDavis, Jenny Hall-Jones, Martha Compton and the State of Ohio arising from the allegations included in the Lawsuit;

NOW THEREFORE, in consideration of the mutual agreements set forth herein, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Parties.** This Agreement is entered into on behalf of and shall extend to Smith, his immediate family, heirs, assigns, personal representatives, executors, agents and administrators; to University and Roderick J. McDavis, Jenny Hall-Jones and Martha Compton, including their successors, assigns, trustees, officers, directors, employees and agents, both past and present, and the State of Ohio.
2. **Consideration.** In consideration of the mutual promises and agreements set forth herein, the Parties agree as follows:
 - A. **Policy Revisions.** The University shall adopt and enforce a revised Student Code of Conduct policy which includes the language appearing in Exhibit A, to be effective on August 19, 2015. Within ten business days after the signing of this Agreement, the University further agrees to revise the Student Code of Conduct currently in effect by making the revisions appearing in Exhibit B and to enforce that language as revised until the new Student Code of Conduct policy, which will include the language in Exhibit A, goes into effect on August 19, 2015. In response to the Lawsuit, the University agrees not to enforce the Community Expectations provision of the current Student Code of Conduct against Smith or any other University student at any point in the future. The University agrees to announce the changes in policy and post the new version on the Student Affairs website.
 - B. **Payment.** Within thirty days after approval of the revised policy referenced in section 2.A. above, the University shall remit to Smith a lump sum in the amount of six thousand dollars (\$6,000) as alleged compensatory damages and other non-wage damages. Payment shall be made by check payable to Isaac Smith and sent to 47 West Washington Street, Apt. 7, Athens, Ohio 45701. No further interest, costs or fees are payable by the University to Smith. The parties understand and agree that no Internal Revenue Service (“IRS”) Form W-2 shall issue from the University with respect to the payment described in this paragraph. The parties

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expressly understand and acknowledge that the University shall issue an appropriate IRS Form 1099. The parties understand that Smith shall be responsible for any payment of personal income taxes due thereon as required by applicable federal, state and local tax laws, and that Smith shall indemnify and hold the University, Roderick J. McDavis, Jenny Hall-Jones, Martha Compton and the State of Ohio harmless against any and all income tax liability, interest and/or penalties as due thereon.

- C. **Attorney Fees.** Within thirty days after approval of the revised policy referenced in section 2.A. above, and in satisfaction of Smith's claim for attorneys' fees and costs under 42 U.S.C. § 1988, the University agrees to pay Smith's counsel twenty-six thousand dollars (\$26,000). The parties understand that Smith's counsel shall be responsible for any payment of personal income taxes due thereon as required by applicable federal, state and local tax laws, and that Smith's counsel shall indemnify and hold the University, Roderick J. McDavis, Jenny Hall-Jones, Martha Compton and the State of Ohio harmless against any and all income tax liability, interest and/or penalties as due thereon.
- D. **Dismissal of Lawsuit.** Within ten days after receipt of the payments described in sections 2.B. and 2.C., Smith shall dismiss with prejudice this Lawsuit as well as any and all civil actions against the University, Roderick J. McDavis, Jenny Hall-Jones, Martha Compton and/or the State of Ohio that arise from or relate to the allegations and claims contained in the Lawsuit.
- E. **Release of All Claims.** Upon the dismissal referred to in section 2.D., and for good and valuable consideration, Smith, on behalf of himself, his past, present and future agents, representatives, assigns, heirs, administrators, executors, attorneys, predecessors, successors in interest, subrogees and insurers, and any other parties who may claim under or through him, or otherwise assert claims for themselves or on their behalves, jointly or separately, fully, finally and forever releases, waives and irrevocably discharges the University, Roderick J. McDavis, Jenny Hall-Jones, Martha Compton and the State of Ohio, as well as their past, present, and future trustees, officers, directors, employees, agents, representatives, attorneys, agencies, assigns, heirs, administrators, executors, predecessors, successors in interest, subrogees and insurers, and any other parties who may claim under or through them, or otherwise assert claims for them or on their behalf, jointly or separately (collectively, the "Released Parties") of or from any and all claims, actions and causes of action, suits, debts, liability, and any demands whatsoever, in law or in equity, whether known or unknown, vested or contingent, which Smith ever had, may now have, or may hereafter have, that arise from or relate to the allegations and claims raised in the Lawsuit. Smith states that he has and maintains full and absolute control of the disposition of all claims, actions and causes of actions, suits, debts, liability, and any demands released in this Agreement. Smith fully understands and agrees that this Agreement may be used by any of the Released Parties as a complete defense to any and all claims asserted against them with respect to any claims, actions and causes of actions, suits, debts, liability, and any demands released in this Agreement.
- F. **Non-Admission.** The terms set out in the Agreement are a compromise settlement of disputed claims, the validity, existence or occurrence of which is expressly denied by the University Parties. Neither the terms nor the Agreement shall be deemed or construed as an

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admission by the University Parties of any wrongful acts whatsoever, nor does it act as an acknowledgement of the validity of any claim, charge, liability or cause of action asserted, it being expressly understood that the University Parties deny all such claims in all respects.

3. **General Terms.** The Parties to this Agreement represent and affirm that the only consideration for their agreement and execution are the terms stated herein, that no other promise or agreement of any kind has been made to or with any of them by any persons or entity to cause either to execute this Agreement, and that no other compensation, benefits, or perquisites other than those specified in the foregoing Agreement shall be involved or claimed. This Agreement shall not be interpreted to render Smith a prevailing party for any purpose, including, but not limited to, an award of attorney fees under any applicable statute or otherwise. Each Party fully understands the meaning and intent of this Agreement, including, but not limited, to its final and binding effect. Each Party further acknowledges that before executing this Agreement that they have had the opportunity to consult with counsel and that each Party has carefully read and fully understands all of the provisions of this Agreement, and that the execution of this Agreement is a knowing and voluntary act.
4. **Entire Agreement.** The Parties to this Agreement represent and affirm that this is a fully integrated agreement, that this Agreement sets forth the entire agreement between the Parties hereto, that no other conditions previously discussed either during or outside of settlement discussions may be interpreted as being a part of this Agreement, and that this Agreement fully supersedes any and all prior discussions, agreements, transmissions or understandings between the Parties or their representatives regarding the subject matter of this Agreement.
5. **Effective Date.** The Effective Date of this Agreement shall be the earliest date upon which all the Parties to this Agreement have executed this Agreement. The Agreement may be executed by the parties within one original or in counterparts.
6. **Construction and Severability.** This Agreement shall be construed according to its fair meaning, and not strictly for or against any of the Parties. Should any provision of this Agreement be declared or determined by any court to be illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected thereby and the illegal or invalid part, term or provision shall be deemed not to be part of this Agreement.

(Signature page follows immediately)

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IN WITNESS WHEREOF, the Parties have executed this Agreement on the day and date indicated with their respective signatures.

Isaac Smith
ISAAC SMITH
2/2/2015
(Date)

Sworn to and subscribed before me, a Notary Public, this 2 day of FEBRUARY, 2015.

Matthew Scott
Notary Public
COMMISSION EXPIRES: MAR '18

Roderick J. McDavis
RODERICK J. McDAVIS
President, Ohio University
1-28-15
(Date)

Sworn to and subscribed before me, a Notary Public, this 28 day of JANUARY, 2015.

Clayton H. Harkness
Notary Public
CLAYTON H. HARKNESS
NOTARY PUBLIC
STATE OF OHIO
Comm. Expires
February 06, 2017

Jenny Hall Jones
JENNY HALL JONES
1/28/15
(Date)

Sworn to and subscribed before me, a Notary Public, this 28 day of January, 2015.

Pamela J. Dailey
Notary Public
Pamela J. Dailey
Notary Public, State of Ohio
My Commission Expires on 6/27/2018

Martha Compton
MARTHA COMPTON
1/28/15
(Date)

Sworn to and subscribed before me, a Notary Public, this 28 day of January, 2015.

Pamela J. Dailey
Notary Public
Pamela J. Dailey
Notary Public, State of Ohio
My Commission Expires on 6/27/2018

Exhibit A

1. This language will be included within the Prohibited Conduct section of the Student Code of Conduct –

Harassment: Unwelcome conduct (including written or electronic communication) that is so severe, pervasive, and objectively offensive that it substantially interferes with the ability of a person to work, learn, live or participate in, or benefit from the services, activities, or privileges provided by the University. In no event shall this provision be used to discipline a student for speech protected by the First Amendment of the United States.

Discrimination: Unwelcome conduct (including written or electronic communication) against another individual that is based upon an individual protected category (as defined by Ohio University Policy 40.001) that is so severe, pervasive, and objectively offensive that it substantially interferes with the ability of a person to work, learn, live or participate in, or benefit from services, activities, or privileges provided by the University. In no event shall this provision be used to discipline a student for speech protected by the First Amendment of the United States.

2. This language will be included within the mission statement section of the Student Code of Conduct –

Section A: Mission

Ohio University, including its regional campuses and online programs, holds as its central purpose the intellectual and personal development of its students. Distinguished by its rich history, diverse campus, international community, and beautiful Appalachian setting, Ohio University is also known as well for its outstanding faculty of accomplished teachers whose research and creative activity advance knowledge across many disciplines. It is this purpose that provides the aspirational basis for the *Student Code of Conduct*.

As we like to remind students, they are Bobcats no matter where they are. This means that each member of the OHIO community is responsible for their behavior, both on and off campus. When occasions arise where members of the community engage in behavior that violates the prohibited conduct listed in Section D below, the Community Standards Process will be initiated. This process exists to protect the interest of the community and to challenge those whose behavior is not in accordance with our expectations of members of the Ohio University community. The University fully recognizes the right of all students to seek knowledge, debate and freely express their ideas. Discourse and disagreement are fundamental components of any academic endeavor, and students will not be subject to disciplinary action for their lawful expression of ideas.

Sanctions implemented through the process are designed to give students the opportunity to reflect on their choices, challenge their ethical decision-making, and aid them in adjusting their behavior to become congruent with our community expectations. Being a member of the Ohio University community is a privilege, and the Community Standards Process will determine if a student's conduct warrants that they should no longer share in that privilege.

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Exhibit B

Code A Offenses

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4. ~~Mental or~~ Bodily Harm to Others – Conduct that causes bodily harm or has the potential to physically harm another. Conduct covered by this offense includes but is not limited to:

- a. intentionally inflicting ~~mental or~~ bodily harm upon any person;
- b. attempting to inflict ~~mental or~~ bodily harm upon another person;
- c. taking any reckless, but not accidental, action from which ~~mental or~~ bodily harm could result to another person;
- d. causing any person to believe that the offender may cause ~~mental or~~ bodily harm or engage in violence;
- e. sexual misconduct; Please see Ohio University Policy 03.004 & Sexual Misconduct Statement
- f. any act of discrimination or harassment that violates Ohio University Policy 40.001 which ~~demeans, degrades, disgraces~~ any person;
- g. coercing another to engage in an act of membership in a student organization that causes or creates a substantial risk of mental or ~~bodily~~ physical harm to any person (e.g., hazing).

Code B Offenses

...

3. Failure to Comply – Conduct covered by this offense includes but is not limited to:

- a. failure to comply with ~~lawful~~ legitimate directives of university officials (including residence life staff), law enforcement, or emergency personnel in the performance of their duties (e.g. failure to identify one's self when so requested);
- b. violation of the terms of a disciplinary reprimand.