

SETTLEMENT AGREEMENT AND RELEASE

WHEREAS, an Action is pending in the United States District Court for the Western District of Arkansas, styled *John Doe v. University of Arkansas-Fayetteville, et al.*, 5:18-cv-05182-PKH (hereinafter referred to as the “Action”), and

WHEREAS, the Defendants in the Action, the University of Arkansas-Fayetteville; the Board of Trustees of the University of Arkansas; Tyler R. Farrar, individually and in his official capacity; Jon Comstock, individually and in his official capacity; Eric Specking, individually and in his official capacity; Dina Wood, individually and in her official capacity; and Kristin Barnett, individually and in her official capacity (collectively referred to as “Defendants” unless the context requires otherwise) deny that they, or any officer, employee, or agent, have engaged in any wrongful, tortious, or unlawful conduct of any kind, and

WHEREAS, the Plaintiff in the Action, [REDACTED] (who filed the Action under the pseudonym “John Doe” and who is referred to as “the Plaintiff” or [REDACTED] unless the context requires otherwise) and the Defendants desire to compromise and settle the Action to avoid the costs and uncertainties of continued litigation.

NOW, THEREFORE, the Plaintiff and the Defendants agree to the following terms as full and final satisfaction of any and all claims, including any and all claims for costs and attorneys’ fees, which were raised by Plaintiff in the Action or could have been raised by Plaintiff in the Action.

1. ACTION TO BE TAKEN BY DEFENDANTS. Within 10 business days following entry of an order dismissing the Action with prejudice, the Defendants will pay Plaintiff a total sum of \$20,000.00 (inclusive of fees and costs), to be paid as follows:

(a) A check for \$20,000.00 will be issued and made payable to “to [REDACTED] and Denton & Zachary, PLLC” for non-wage claims, including damages and attorneys’ fees. Defendants will not make withholdings on this payment and will issue to Plaintiff and his attorneys a 1099 form for said amount; and

(b) Defendants will send the check to Plaintiff’s counsel at the following address:
Denton & Zachary, PLLC, 2100 Riverdale Road, Suite 200A, Little Rock, AR 72202.

In addition, the University of Arkansas will provide the Plaintiff with a letter describing circumstances pertaining to the Action, an unexecuted draft of which is included in this Settlement Agreement and Release as Exhibit A.

2. ACTION TO BE TAKEN BY PLAINTIFF. Within 10 business days following the effective date of this Settlement Agreement and Release (as defined in Paragraph 13 herein), the Plaintiff will move to dismiss the Action with prejudice.

3. COMPLETE RELEASE AND WAIVER. The Plaintiff waives, releases, relinquishes, and forever discharges all claims, liens, and causes of action, known or unknown, for damages, attorneys’ fees, costs, and recovery of any type against the Defendants, the University of Arkansas, and the University of Arkansas’s current and former Trustees, officers, representatives, agents, and employees, both in their individual and official capacities, which were raised by Plaintiff in the Action or could have been raised by Plaintiff in the Action.

4. ENTIRE AGREEMENT. This Settlement Agreement and Release constitutes the entire agreement between the Plaintiff and the Defendants. The Plaintiff and the Defendants have not relied on any promise or statement, oral or written, that is not set forth in this Settlement Agreement and Release.

5. **MODIFICATION.** The Plaintiff and the Defendants agree that this Settlement Agreement and Release may not be modified, amended, or altered except by a written agreement executed by authorized representatives of all parties.

6. **VOLUNTARY AGREEMENT.** The Plaintiff and the Defendants acknowledge that each has read this Settlement Agreement and Release, that each has had the opportunity to consult with legal counsel of their choosing concerning the advisability, meaning, and effect of this Settlement Agreement and Release, and that each has signed this Settlement Agreement and Release voluntarily and without duress.

7. **NO RESCISSION FOR MISTAKE.** The Plaintiff and the Defendants acknowledge that each has had the opportunity to investigate the facts and law relating to any claims that may be asserted by the Plaintiff to the extent each deems necessary and appropriate. The Plaintiff and the Defendants assume the risk of any mistake of fact or law and agree that any mistake of fact or law shall not be grounds for rescission or modification of any part of this Settlement Agreement and Release.

8. **ACKNOWLEDGEMENT.** The Plaintiff and the Defendants acknowledge that this document was agreed upon by both sides; the terms of which will not be construed against either side as the drafter.

9. **NO ADMISSION OF LIABILITY.** The Plaintiff and the Defendants acknowledge that this Settlement Agreement and Release is a compromise and is not an admission of liability or wrongdoing on the part of any Defendant, the University of Arkansas, or the University of Arkansas's current and former Trustees, officers, representatives, agents, and employees, both in their individual and official capacities. The Plaintiff agrees that the Settlement Agreement and

Release is not admissible in any court or administrative body except as necessary to enforce its terms or as otherwise required by law.

10. CHOICE OF LAW. This Settlement Agreement and Release shall be governed by and construed in accordance with the substantive law of the State of Arkansas.

11. SUCCESSORS AND ASSIGNS. This Settlement Agreement and Release shall be binding upon the Plaintiff and the Defendants and each of their respective heirs, descendants, successors, and assigns.

12. DISCLOSURE. This Settlement Agreement and Release may be disclosed as necessary to comply with the Arkansas Freedom of Information Act or any other law. The Plaintiff and the Defendants acknowledge that paragraph 10(a) of the Protective Order entered in the Action states: "Unless otherwise agreed or ordered, all provisions of this Order will remain in effect and continue to be binding after conclusion of the litigation." The Plaintiff and the Defendants further acknowledge that the Plaintiff designates all entries of his name in this Settlement Agreement and Release and in the letter to be provided to him under the Agreement as Confidential Information under the terms of the Protective Order. Accordingly, the Plaintiff and the Defendants agree that the Plaintiff's name shall be redacted from all copies of this Settlement Agreement and Release, including the Exhibit A, and from all copies of the letter that are produced in response to a Freedom of Information Act request until either the Plaintiff notifies the University of Arkansas that he no longer considers his name to be Confidential Information or the Court withdraws the Protective Order.

13. EFFECTIVE DATE. This Settlement Agreement and Release will not become effective or enforceable until it has been executed by the Plaintiff and the Defendants.

14. **EXECUTION.** The persons executing this Settlement Agreement and Release assert that they are authorized to do so by the party or parties on whose behalf they purport to act.

15. **COUNTERPARTS.** This Settlement Agreement and Release may be executed in counterparts, and the counterparts taken together will have binding effect. To facilitate the execution of this agreement, the parties may exchange signatures via facsimile or email attachment.

[REDACTED]
By: [REDACTED] _____

Date: April 9, 2021

THE DEFENDANTS

By: [REDACTED]
Joseph E. Steinmetz
Chancellor

Date: 4/12/2021

EXHIBIT A

DATE

Mr. _____
c/o Heather Zachary
Attorney at Law
One Information Way, Suite 105
Little Rock, AR 72202

Dear Mr. _____ :

This letter is to acknowledge that the United States Court of Appeals for the Eighth Circuit in *Doe v. University of Arkansas-Fayetteville*, 974 F.3d 858 (8th Cir. 2020), determined that there was a triable issue regarding whether the University Title IX Hearing Panel acted contrary to the requirements of Title IX when reaching its two-to-one decision dated April 27, 2018, to hold you responsible for violating Fayetteville Policies and Procedures 418.1 (Jan. 9, 2017). The Hearing Panel's decision reversed the decision of the University's Title IX Coordinator, who found you not responsible by a preponderance of the evidence. (I have succeeded the individual who held that position at the time.) A Fayetteville Police Department investigation into this same matter resulted in no charges being brought against you. The University's Title IX Coordinator reviewed the Fayetteville Police Department's report and the University's Final Investigative Report before finding you not responsible.

In sum, two decision makers (the Title IX Coordinator at the time and one member of the Hearing Panel) concluded that you were not responsible for the alleged policy violation, and two decisions makers (the two remaining members of the Hearing Panel) concluded that you were. This fact suggests that different fact finders might have reached different conclusions regarding your responsibility.

Further, since the Hearing Panel's decision and in accordance with federal regulations that took effect on August 14, 2020, the University has updated its disciplinary procedures for students accused of similar policy violations. Given the closeness of the evidence presented to the Hearing Panel, it is possible that the revised procedures could have led to a different outcome.

Finally, you remain eligible to apply for admission and employment with the University of Arkansas.

Sincerely,

Title IX Coordinator