

## **SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS**

WHEREAS, VICTORIA HEWLETT (“Hewlett”) filed *Hewlett v. Utah State University, et al.*, 16-CV-01141-DN, in the United States District Court for the District of Utah, Central Division (“Lawsuit”), alleging violations of, *inter alia*, Title IX of the Education Amendments of 1972;

WHEREAS, Hewlett and Defendant UTAH STATE UNIVERSITY (“USU”) participated in mediation on May 9, 2018;

WHEREAS, USU denies any liability arising from Hewlett’s allegations;

WHEREAS, the Parties wish to resolve matters relating to Hewlett’s claims without the need for protracted and expensive litigation over the claims or defenses to those claims;

WHEREAS, this Settlement Agreement and Release of All Claims (“Agreement”) is made and entered into between Hewlett and USU effective as of June 29, 2018;

In consideration of the mutual promises contained herein, fully intending to be legally bound hereby, Hewlett and USU (collectively, the “Parties”) agree as follows:

1. No later than 10 days after this Agreement is fully executed, USU will deliver a check to Jeffrey Eisenberg, Esq., Eisenberg Gilchrist & Cutt, 215 South State Street, #900, Salt Lake City, Utah 84111, payable to “Eisenberg, Gilchrist & Cutt, as attorneys for Victoria Hewlett,” in the amount of TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000.00) (the “Settlement Amount”) in complete and final settlement of any and all claims Hewlett has against USU, including, but not limited to, any action arising out of the allegations raised by Hewlett against USU and its employees in her Second Amended Complaint filed in the Lawsuit.

2. In addition, USU will take the actions identified in Exhibit A (“Changes”), attached hereto and incorporated by reference to this Agreement. USU will implement the Changes as soon as reasonably possible but shall have up to one year from the date of the Agreement to implement all Changes. USU shall

have discretion to modify the Changes as recommended by the U.S. Department of Justice. USU may also add policies it deems advisable to carry out the intent of this Agreement. If USU modifies the Changes or adds new policies, USU shall give notice in writing via email to Hewlett (c/o Eisenberg Gilchrist & Cutt and Public Justice) within 2 business days of the modifications or additions. The Changes will continue in full force and effect until at least July 1, 2021.

3. The Parties will work together to prepare a joint Op-Ed. This will not prevent either party from making other non-defamatory statements about the case and the settlement.

4. In consideration of the Settlement Amount paid to Hewlett and the Changes USU has agreed to make, as identified in Exhibit A, Hewlett hereby releases, acquits, and forever discharges USU, former defendants Eric Olsen, Kevin Webb, and Krystin Deschamps, the Utah Risk Management Fund, and their respective successors, insurers, attorneys, assigns, agencies, divisions, departments, facilities, directors, officers, employees, agents, representatives, servants, all administrators, hereinafter referred to as RELEASEES, of and from any and all claims, demands, damages, actions, causes of action or suits of whatever kind or nature, which now exist or which may hereafter accrue, whether actual, pending or threatened.

Such claims, causes of action, injuries, or damages released hereby include, but are not limited to, those related to the sexual assault of Hewlett by Defendant Jason Relopez in July 2015, that have or could have been asserted in the Lawsuit.

5. Hewlett understands and agrees that the occurrence described in the Lawsuit may have caused injuries or damages or given rise to claims for damages the existence of which and the consequences of which are now unknown, but which may become known in the future. Hewlett also understands that USU denies any liability or wrongdoing in connection with the occurrence. Hewlett nevertheless intends to and does release all claims for all damages or claims of whatever type or nature against RELEASEES, whether now known or unknown and whether now in existence or hereafter to arise. Hewlett understands that the damages sustained may be permanent and progressive and that the recovery therefrom is uncertain and indefinite, and in making this release and agreement, it is agreed that Hewlett relies wholly upon her own judgment, belief, and knowledge of the nature, extent and duration of said damages and that no representations,

opinions, or statements regarding said damages or regarding any other matters made by the RELEASEES or any other person or persons representing RELEASEES has influenced her.

6. Hewlett agree to dismiss the Lawsuit against USU with prejudice and on the merits, with each party bearing its respective costs and attorney fees. Hewlett expressly reserves, does not release, and will continue to pursue any and all claims she has against the other defendants named in the Lawsuit, including, but not limited to, Sigma Chi, Gamma Kappa, Gamma Kappa House Corporation, individual Gamma Kappa and Sigma Chi officers employees and agents, Lloyds of London, Sigma Chi Risk Management Foundation, James R. Favors Co. and affiliates of the above entities, or any other parties who may be liable for her injuries.

7. Hewlett represents and agrees that there are no outstanding unresolved subrogation claims or liens: (a) for reimbursement of any attorney, healthcare provider, or other expenses incurred by Hewlett or on Hewlett's behalf in any way connected with any released claim; or (b) for reimbursement of amounts paid on Hewlett's behalf by any third party, including, but not limited to, any insurer and any government program or agency, in any way connected with any released claim. In the event that any such claim for reimbursement is subsequently made against any of the RELEASEES, Hewlett agrees to defend, indemnify and hold them harmless from and against all such claims. Hewlett shall not be required to defend or indemnify USU for any claims made against USU by other defendants in the Lawsuit or in *Hewlett v. Renner, et al.*, filed in Second Judicial District Court, Weber County, State of Utah, Case No. 180901248.

8. As further consideration for the terms of this Agreement, and as a condition precedent thereto, Hewlett represents that there are no known liens or claims relating to any professional services arising from the Lawsuit. To the extent such liens or claims exist, Hewlett agrees to pay, hold harmless, indemnify and defend RELEASEES, and their insurers and attorneys, from any such claim, lien, or action to recover such conditional payment amounts or penalties affixed, and all costs and fees incurred, including reasonable attorney fees.

9. Hewlett declares that this Agreement, including Exhibit A, contains the entire agreement between Hewlett and RELEASEES, and that the terms of this Agreement are contractual and not a mere recital.

10. Hewlett further declares that this Agreement was mutually drafted and shall not be construed against RELEASEES.

11. Hewlett understands and agrees that this Agreement has been and shall for all purposes be deemed to have been, executed and delivered within the State of Utah, and the rights and obligations of the parties hereto shall be construed and enforced in accordance with the laws of the State of Utah. Any dispute relating to this Agreement shall be adjudicated in the United States District Court, District of Utah.

12. Hewlett further understands and agrees that this Agreement supersedes all prior and contemporaneous oral and written agreements and discussions and shall be binding upon Hewlett's respective heirs, executors, administrators, and assigns.

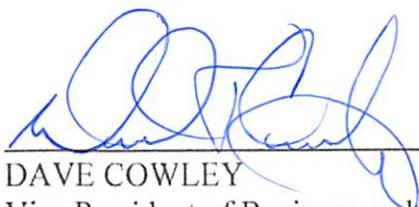
13. This Agreement may be signed by the Parties in counterparts. Emailed or faxed signatures shall be considered the equivalent of an original signature.

14. If any clause of this Agreement is found to be in violation of law, or ineffective or barred for any reason, the remainder of the Agreement shall remain in full force and effect.

15. The Parties agree that the Court will retain jurisdiction during the duration of the Settlement Agreement to address any material breach in the implementation of the terms of this Agreement. The Parties agree that the United States District Court, District of Utah, shall be the sole and exclusive forum to enforce this Agreement.

Pursuant to Utah Code § 78B-5-70.5, the Parties declare that they have read the foregoing, fully understand it, and fully intend to be legally bound by it.

DATED this 29th day of June, 2018



DAVE COWLEY  
Vice President of Business and Finance  
Utah State University

  
VICTORIA HEWLETT  
Plaintiff

## **Exhibit A to Settlement Agreement and Release of All Claims**

### **1. Recognition of Greek Organizations as Official Student Organizations**

USU will require that all Greek organizations (i.e., fraternities and sororities) desiring to be active at USU be recognized and approved as official student organizations. This enhanced relationship structure between USU and the Greek organizations will include the following elements: Annually, each Greek chapter will be required to apply and be approved for recognition as a student organization subject to the university's policies and procedures. Annual recognition will require each Greek chapter to meet the following conditions:

- a. Once a semester, including summer semester, submit a report to USU and the chapter's respective national organization identifying:
  - i. All known allegations or reports of "misconduct", including sexual or other misconduct, as defined in this paragraph, by a fraternity or sorority member. Misconduct is defined as: (1) any actual or threatened sexual harassment, including, but not limited to, unwelcome sexual attention, unwelcome touching, coerced sexual activity, dating violence, stalking, sexual assault, and any form of sexual violence (hereinafter "sexual harassment"); (2) physical violence; or (3) other conduct that a reasonable person would believe endangers the safety of persons, whether immediately or in the foreseeable future.
  - ii. All known allegations or reports of alcohol or controlled substance infractions (e.g. DUI or Minor in Possession) of 1) chapter members and 2) any non-members that resulted from participation in a chapter-organized event, whether on or off campus.
  - iii. Actions taken by the chapter to internally address reported misconduct and infractions;
  - iv. Description of actions taken by the chapter to prevent sexual harassment, underage drinking, and alcohol and substance abuse; and
  - v. Chapter GPA.
- b. Each chapter must report any known or observed misconduct or infractions, whether reported to the chapter by a member or an outside party.
- c. Each chapter must agree to periodic, random, unannounced inspections by a representative of USU, which shall occur at least twice during each semester, including summer semester, during times when formal or informal social gatherings are expected to be occurring, to determine whether appropriate measures are being taken to prevent misconduct and infractions, and to verify

that the chapter is taking reasonable steps to ensure a safe environment. If a USU representative observes illegal or unsafe conditions, the chapter will be required to report these conditions to the National organization, and USU will impose appropriate sanctions and require appropriate remedial action.

## **2. Hiring of New Full-Time Greek Life Coordinator**

USU will create a professional full-time Greek Life Coordinator position within the Student Involvement and Leadership Center to coordinate the relationship between USU and Greek organizations. USU will hire a qualified person to fill this new Greek Life Coordinator position before or shortly after the start of the fall semester of 2018.

- a. The Greek Life Coordinator will meet with each Greek chapter at least twice a semester to discuss the report referenced in Paragraph 1 above and discuss any concerns related to the chapter and its members.
- b. The Greek Life Coordinator will oversee each chapter's compliance with university policies and procedures and will have authority to enforce the university's policies and procedures.
- c. As part of the full-time Greek Life Coordinator position, USU will earmark funds for expenses related to ongoing training and education of Chapter leaders and members to include training and education to prevent sexual harassment. This will help ensure that students are properly informed and equipped for all aspects of their membership.

## **3. Trauma-Informed Training for Employees**

USU will provide trauma-informed training to all employees likely to receive disclosures of sexual harassment. USU will provide a copy of the proposed training to Plaintiff's counsel for review and comment. Training will be provided to employees on an annual basis.

## **4. Campus Climate Surveys**

USU will continue to perform annual campus climate surveys and will add questions to assess barriers to reporting sexual harassment.

## **5. Mandatory Training for Students on Sexual Harassment**

USU will require primary prevention training on sexual harassment for all students and will require annual training on sexual harassment for all high-risk groups, including, but not limited to, all members of fraternities and sororities, and student members and staff of athletic programs. USU shall have up to one year to implement training for existing students.

**6. Revisions to USU's Sexual Harassment Policies and Training**

USU will revise its policies and training materials on sexual harassment regarding "good faith" reporting and "amnesty" to make the policies more understandable to students. Plaintiff's counsel will provide suggestions for such revisions, which USU will consider in good faith. USU will inform Plaintiff of the policy changes.

**7. Revisions to USU's Sexual Harassment Reporting Form**

USU will revise its sexual harassment reporting form to include a question to identify whether the reporting party believes the accused poses a threat to others.

**8. Plaintiff's Appointment to Assist USU with Sexual Harassment Prevention and Response**

At her request, Hewlett may participate in USU committees, groups or programs to help USU improve its prevention of and response to sexual harassment.

**9. Hiring of Consultant to Develop Training on Sexual Harassment Prevention and Response**

USU will retain and pay an independent consultant to assist in developing training designed to prevent sexual harassment on campus. The consultant will also help develop assessments to determine the effectiveness of the training. Provided that the consultant is agreeable to Hewlett, Mr. Eisenberg or his firm will pay up to a total of \$10,000 toward the consultant's fees.

**10. Assignment of Advocate to Reporters of Sexual Harassment**

USU will continue to provide support services to students and employees who report sexual harassment, including advocacy services. USU will promptly notify students and employees of their options for working with an advocate.

**11. Reporting to Plaintiff**

In June 2019, June 2020, and June 2021, USU will report in writing to Plaintiff (c/o Eisenberg Gilchrist & Cutt and Public Justice) setting forth the steps it has taken to comply with this Exhibit A to the Settlement Agreement.