

## SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Agreement") is made this \_\_\_\_ day of March, 2022, by and between Plaintiff Nicholas K. Meriwether ("Plaintiff") and Defendants Trustees of Shawnee State University (Francesca Hartop, Joseph Watson, Scott Williams, David Furbee, Sondra Hash, Robert Howarth, George White and Wallace Edwards), Jeffrey A. Bauer, Roberta Milliken, Jennifer Pauley, Tena Pierce, Douglas Shoemaker and Malonda Johnson, all in their official capacities only (the "Defendants").

A. Plaintiff filed suit against the Defendants in the United States District Court for the Southern District of Ohio, Case No. 1:18-cv-00753, (the "Lawsuit") alleging claims under the United States Constitution and applicable law.

B. The parties' decision to enter into this Agreement represents a compromise of disputed claims and creates the framework for the parties to move forward without the disruption and cost of litigation. Defendants deny all liability and deny that their actions deprived Plaintiff of any rights guaranteed by the free speech or free exercise clauses of the United States Constitution or any other law. Plaintiff denies that the United States Constitution and applicable law compels the agreements reached here or that these agreements represent all the protection that the United States Constitution and applicable law affords him.

C. The parties to this Agreement wish to resolve all claims the Plaintiff has or could allege against the Defendants related to these events.

NOW THEREFORE, in consideration of the foregoing and the terms and conditions contained in this Agreement, the parties agree as follows:

1. Upon execution of this Agreement by both parties, and without admitting any liability or agreeing that the Court would have resolved the Lawsuit in favor of Plaintiff, Defendants agree as follows:

- a. Plaintiff shall not be required to address or refer to any person, including students identifying as transgender, using pronouns or titles corresponding to their gender identity and that conflict with their biological sex.
- b. Plaintiff has the right to not use pronouns or titles when addressing or referring to any person, including students, who request pronouns or titles that conflict with the person's biological sex, even if he uses pronouns or titles for other persons, including students.
- c. Plaintiff will never be required to use a title or pronoun at all.
- d. Within ten (10) days of execution of this Agreement, the University will remove the written warning issued on June 22, 2018, from Plaintiff's employment personnel file.
- e. Within ten (10) days of execution of this Agreement, the University shall create a separate personnel file for Plaintiff in the Provost's office, which

will include the written warning issued on June 22, 2018, from Plaintiff's employment personnel file and the memorandum attached hereto as *Exhibit A*.

- f. Within ten (10) days of execution of this Agreement, Defendants shall pay Plaintiff five thousand dollars (\$5,000) in damages for personal injury via a check or draft payable to Plaintiff and delivered to Plaintiff's counsel and shall pay three hundred ninety-five thousand dollars (\$395,000) in attorneys' fees and costs via a check or draft payable to Plaintiff's counsel and delivered to the same.
2. In consideration of the items in paragraph 1 above, the Parties agree to the following:

- a. *Release and Waiver.* Plaintiff hereby fully releases, acquits, and forever discharges Defendants, their agents, assigns, and employees, of and from any and all claims, liabilities, causes of action, damages, costs, attorneys' fees, expenses, and compensation whatsoever, of whatever kind or nature, in law, equity or otherwise, whether known or unknown, vested or contingent, suspected or unsuspected, that Plaintiff may now have, have ever had, or hereafter may have (i) relating directly or indirectly to the allegations in the Lawsuit, and (ii) which arise from actions taken by the Defendants prior to the date of this Agreement. This release and waiver covers all claims and demands for relief, damages, costs, expenses, and causes of action of any kind or character (whether known or unknown or foreseeable or unforeseeable) under federal and state law, as of the date of this Agreement that relate to the allegations in the Lawsuit. Nothing in this Agreement, however, shall be interpreted or applied to prevent Plaintiff from filing a lawsuit in an appropriate federal or state court to obtain equitable, declaratory, and legal relief, including attorneys' fees, for any future violation of his constitutional or statutory rights by Shawnee State University or any of the Defendants.
- b. *Dismissal of Lawsuit with Prejudice.* Upon expiration of the seven-day rescission period referenced in section 8 below and receipt of the payments detailed in ¶ 1(f) of this Agreement, Plaintiff will file with the Court a Stipulation of Voluntary Dismissal with Prejudice, in the form attached hereto as *Exhibit B*.

3. *Entire Agreement.* This Agreement contains the entire understanding of the parties and supersedes all previous oral and written agreements; there are no other agreements, representations, or understandings not set forth herein. Plaintiff acknowledges that neither Shawnee State University nor any of its agents, representatives, employees, or attorneys, have made any representations to him concerning the terms or effects of this Agreement other than those contained in it. Further, this Agreement can be modified only by a written agreement signed by Plaintiff and Defendants.

4. *Savings Clause and Waiver.* If any portion of this Agreement is found to be invalid or unenforceable for any reason, any court or other tribunal adjudicating the rights and duties of the parties under this Agreement shall alter, modify and/or strike portions of the Agreement so that it shall be enforceable to the fullest extent permitted by law. If any provision of this Agreement (or any portion thereof) is found invalid

or unenforceable, the remainder of that provision and the remainder of this Agreement shall be valid, binding, and enforceable. The waiver of a breach of any term or provision of this Agreement shall not operate or be construed to be a waiver of any other or subsequent breach of this Agreement.

5. *Governing Law.* This Agreement shall be governed by and interpreted in accordance with the laws of the State of Ohio.

6. *Voluntary Execution.* Plaintiff acknowledges that he has read this Agreement, understands its terms, and has entered into it voluntarily. Plaintiff acknowledges that he has been given a reasonable period of time within which to consider this Agreement and its waiver and release of claims. Plaintiff further acknowledges that he has consulted with his attorney before signing this and entering into this Agreement.

7. *Counterparts/Signatures.* The Parties agree that this Agreement may be executed in counterparts, all of which shall constitute one agreement. The Parties agree that copies of signatures shall be sufficient to bind the parties to this Agreement, and that the counterparts may be electronic copies of physical documents, including, but not limited to, PDF images, .tiff images, facsimiles and other, similar electronic formats. The Parties further agree that, insofar as all of Plaintiff's claims in the Lawsuit were asserted against the named Defendants in their official capacities only, the signature below of David Furbee (Chair of the Board of Trustees of Shawnee State University) and Dr. Jeffrey A. Bauer (President of Shawnee State University) shall be sufficient to release all of the named Defendants, and that all provisions of this Agreement shall be final and binding with respect to all such Defendants.

8. *Embargo on Release Until Rescission Period Expires.* None of the parties shall publicly discuss or disclose the existence of or the terms of this Agreement unless and until both of the following events have occurred: 1) the seven-day rescission period discussed in the Age Discrimination in Employment Act waiver below has elapsed; and 2) Plaintiff has not exercised his right to rescind under the Age Discrimination in Employment Act waiver provision.

**Notice: Please read carefully before signing:**

**Pursuant to the Age Discrimination in Employment Act, 29 U.S.C § 621, et seq., you may have certain specific rights. A waiver of those rights cannot apply to age discrimination claims arising in the future. Your signature below signifies your acknowledgement of the accuracy of the following statements:**


**I have read the foregoing agreement and release, and I understand that by signing this settlement agreement and release of all claims I am releasing any claims I may have against Defendants and their employees, agents, officers, and trustees under the Federal Age Discrimination in Employment Act. I acknowledge that I was given up to 21 days in which to consider this settlement agreement and release of all claims, but that I may sign it before the end of the 21-day period. I also acknowledge that I was advised to consult with an attorney before signing this settlement agreement and release of all claims, that I have been represented by counsel in this case and in the negotiations leading to this settlement agreement, and that I have the right for up to 7**

days after I sign this settlement agreement and release of all claims to revoke the settlement agreement and release of all claims if I do so in writing and deliver that revocation to Michael McPhillips, General Counsel, Shawnee State University, Office of General Counsel, 940 Second Street, Portsmouth, Ohio 45662-4344.

FOR PLAINTIFF:

  
Nicholas K. Meriwether \_\_\_\_\_ Date 3/28/2022

HAVE SEEN BY COUNSEL FOR PARTIES, BUT UNDERSIGNED COUNSEL ARE NOT UNDERTAKING ANY PERFORMANCE OBLIGATIONS:

  
TRAVIS C. BARHAM \_\_\_\_\_ Date 29 March 2022  
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*Attorney for Plaintiff*

FOR DEFENDANTS:

\_\_\_\_\_  
David Furbee  
Board Chair  
Board of Trustees of Shawnee State University

\_\_\_\_\_  
Date

\_\_\_\_\_  
Jeffrey A. Bauer  
President of Shawnee State University

\_\_\_\_\_  
Date

HAVE SEEN BY COUNSEL FOR PARTIES, BUT UNDERSIGNED COUNSEL ARE NOT UNDERTAKING ANY PERFORMANCE OBLIGATIONS:

\_\_\_\_\_  
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bgstewart@kmklaw.com

\_\_\_\_\_  
Date

*Attorney for Defendants*

EXHIBIT A

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MEMORANDUM

**Date:**

**To:** File

**From:** Dr. Jeffrey A. Bauer, President of Shawnee State University

**Re:** Rescinding the Written Warning Issued to Dr. Meriwether on  
June 22, 2018

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On June 22, 2018, Dr. Roberta Milliken, acting at my direction, issued a written warning to Dr. Nicholas K. Meriwether based on his decision not to refer to a student using terminology that referred to the student's gender identity. In light of the ruling of the U.S. Court of Appeals for the Sixth Circuit and the subsequent settlement concluding that litigation, this written warning is hereby rescinded. *See Meriwether v. Hartop*, 992 F.3d 492 (6th Cir. 2021). Had similar precedent existed in 2018, the warning would not have been issued. All Shawnee State University personnel are strictly forbidden (1) from distributing the June 2018 warning unless accompanied by this memorandum and (2) from considering this warning in any future personnel, academic, disciplinary, or other decisions regarding Dr. Meriwether.

[signed]

Dr. Jeffery A. Bauer  
President, Shawnee State University

EXHIBIT B

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO

NICHOLAS K. MERIWETHER,

*Plaintiff,*

*v.*

THE TRUSTEES OF SHAWNEE STATE UNIVERSITY, *et al.*,

*Defendants.*

Case No: 1:18-cv-00753-SJD-KLL

THE HONORABLE SUSAN J. DLOTT

THE HONORABLE KAREN L. LITKOVITZ

STIPULATION OF VOLUNTARY DISMISSAL WITH PREJUDICE

Pursuant to the terms of a settlement agreement and FED. R. CIV. P. 41(a)(1)(A)(ii), Plaintiff and Defendants stipulate to the voluntary dismissal with prejudice of all claims brought in Plaintiff's First Amended Verified Complaint. See Pl.'s 1st Am. V. Compl., Doc. 34, Feb. 5, 2019, PageID.1457-1508.

Respectfully submitted this \_\_ day of \_\_\_\_\_, 2022.

*/s/ Travis C. Barham*

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*/s/ Benjamin G. Stewart*

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