

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This **SETTLEMENT AGREEMENT AND MUTUAL RELEASE** (this "Agreement") is made and entered into by and between **ERICA N. KINSMAN**, an individual who is *sui juris* ("Kinsman"), and **THE FLORIDA STATE UNIVERSITY BOARD OF TRUSTEES**, a public body corporate of the State of Florida acting for and on behalf of Florida State University ("FSU" and, together with Kinsman, collectively the "Parties" and each separately a "Party" hereto).

RECITALS

WHEREAS, the Parties have been involved in costly disputes, including, but not limited to, the disputes culminating in the litigation styled as *Erica Kinsman v. The Florida State University Board of Trustees*, Case No. 4:25-CV-00235-MW-CAS (N.D. Fla.), which currently remains pending in the Tallahassee Division of the United States District Court for the Northern District of Florida (the "Litigation");

WHEREAS, in the wake of Kinsman's case, FSU has made substantial reforms to its Title IX awareness and programs by, *inter alia*, creating a Sexual Violence Task Force, developing the 'kNOw MORE' campaign, and hiring its first full-time Title IX coordinator;

WHEREAS, while neither Party concedes any disputed issue of law or fact in the Litigation and FSU specifically denies any wrongdoing or unlawful acts, the Parties have determined that it is in their mutual best interests to fully and finally resolve, compromise and settle all existing and possible claims, defenses, disputes, disagreements, and controversies between them in the Litigation;

WHEREAS, the Parties are satisfied that the terms and conditions set forth below are fair, reasonable, and adequate; and

WHEREAS, to avoid the further significant costs, vagaries and delays of trial, and intending to be legally bound hereby, it is

NOW, THEREFORE, in consideration of the foregoing, the mutual promises and covenants set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, **AGREED** that:

1. Recitals. The recitals set forth above are true and correct to the best of the Parties' respective knowledge and belief, incorporated herein and made part of this Agreement.

2. Consideration. On or before February 12, 2016, FSU shall cause a payment to be made, payable via check to "Hutchinson Black and Cook, LLC – Trust Account" and delivered via FedEx priority overnight delivery to 921 Walnut Street, Suite 200, Boulder, CO 80302, in the amount of \$950,000 (Nine Hundred Fifty Thousand U.S. Dollars), in full settlement of any and all claims that Kinsman has or may have had against FSU and based upon its assessment that this amount represents:

\$250,000 for Kinsman's alleged damages; and
\$700,000 for Kinsman's attorneys' fees.

The Parties understand and agree that the foregoing representation does not necessarily reflect the actual allocation between Kinsman and her counsel. Accordingly, nothing in this Agreement shall be construed as allocating or in any way controlling in determining the actual amounts due and payable to either Kinsman or her counsel from the lump-sum payment under this Section 2 (whether as damages, attorneys' fees or otherwise). Such matters shall continue to be controlled exclusively by separate agreements between Kinsman and her counsel.

3. Dismissal of Litigation. Within one (1) business day of the clearance of funds to be paid into the trust account of Hutchinson Black and Cook, LLC pursuant to Section 2, the Parties shall jointly and voluntarily dismiss with prejudice any and all claims, counterclaims, causes of action and defenses that they have or may have in the Litigation by executing and causing to be electronically filed with the Court, via the CM/ECF account of Kinsman's counsel, the notice and stipulation of voluntary dismissal attached hereto as **Exhibit 1**.

4. Complete Mutual Release. Except for the specific obligations set forth in this Agreement, the Parties hereby voluntarily release, remise, waive, absolve and forever discharge each other and their respective agents and representatives – including, but not limited to, their successors, elected officials, appointed officials, past and present employees, staff, servants, heirs, appointees, insurers, contractors, officers, directors, trustees, assigns and attorneys, all in their official and individual capacities and including former members of any of the foregoing groups (collectively the “Released Parties”) – from any and all claims, demands, causes of action, losses, damages, liabilities, actual damages, compensatory damages, punitive damages, attorneys' fees, interest, costs, other special damages, general damages, claims for emotional distress, mental anguish and related claims, and/or other equitable relief, of any kind or nature, whether direct or indirect, contingent, liquidated or unliquidated, known or unknown, suspected or unsuspected, foreseen or unforeseen, or in law or in equity, which the Parties have or may have had from the beginning of time to the Effective Date against the Released Parties arising from or in any way connected to the facts or circumstances giving rise to the Litigation.

5. Covenant Not to Sue. The Parties hereby covenant not to sue or otherwise initiate against each other or any of the Released Parties any new legal or administrative proceedings, claims, or causes of action – whether now known or unknown – arising from or in any way connected to the facts or circumstances giving rise to the Litigation.

6. Scope of Release and Covenant Not to Sue. It is expressly understood and agreed that Sections 4 and 5 of this Agreement shall not operate nor in any way be construed as a release of or covenant not to assert any action, claim, cause of action, defense, liability, demand, damages, losses, fees, costs or expenses whatsoever against Jameis Winston or any other individual or entity that is not a Released Party, whether or not arising from or in any way connected to the facts or circumstances giving rise to the Litigation. Neither the existence of this Agreement nor any of the terms and provisions herein are in any way intended to benefit Jameis Winston or any other individual or entity that is not a Released Party, none of whom shall

be permitted to interpose or otherwise assert res judicata, collateral estoppel, claim or issue preclusion, claim splitting, accord and satisfaction, settlement, release or any other similar defense by reason of the Litigation or this Agreement.

7. OCR Complaint. With respect to the complaint currently pending before the United States Department of Education, Office of Civil Rights (“OCR”), Reference No. 04-14-2310:

- a. Kinsman agrees and warrants that she has not and will not seek or accept any monetary relief through OCR and, within five (5) business days of the clearance of funds to be paid into the trust account of Hutchinson Black and Cook, LLC pursuant to Section 2, Kinsman shall inform OCR of this Agreement as confirmation of same; and
- b. In the event OCR makes a finding under CPM subsection 303(b), FSU agrees to negotiate in good faith with OCR to address OCR’s concerns.

8. Ongoing Title IX Reforms. On or before March 31, 2016, FSU’s Title IX coordinator shall make herself available to Kinsman and her counsel at a mutually agreeable date and time for the purpose of receiving comments and recommendations in regard to Title IX. The Parties agree that FSU has made substantial reforms to its Title IX awareness and programs by creating its Sexual Violence Task Force, developing the ‘kNOw MORE’ campaign, and hiring its first full-time Title IX coordinator. FSU agrees that, for at least the next five (5) years, it will continue implementing its Title IX awareness, prevention and training programs for students, faculty, and staff, including in the athletics department. FSU further agrees that, for at least the next five (5) years, it will publish annually to the FSU community a report summarizing all awareness, prevention, and training programs, including training provided to FSU students, faculty, staff, and athletics department personnel.

9. No Admission of Liability. This Agreement is executed solely for the purpose of resolving the Litigation and does not constitute an admission of liability by FSU or an admission of disputed facts by either Party. The Parties further agree and stipulate that:

- a. No Party shall be deemed a “prevailing party” for any purpose whatsoever arising out of, related to or otherwise connected with the Litigation;
- b. There was no malice on the part of any Party in asserting or dismissing any claim, cause of action or defense in the Litigation; and
- c. The filing of the joint notice and stipulation of voluntary dismissal pursuant to Section 3 shall not constitute or be deemed a termination of the Litigation in favor of any Party.

10. Tax Consequences. Contemporaneous with FSU’s execution of this Agreement, Kinsman’s counsel shall provide FSU’s counsel with a completed IRS Form W-9. FSU shall

provide or cause the State of Florida's Division of Risk Management to provide Hutchinson Black and Cook, LLC with an IRS Form 1099 for all funds payable under this Agreement. Other than FSU's provision of an IRS Form 1099 to her counsel, Kinsman agrees that she is solely responsible for any tax obligations, including all reporting and payment obligations, which may arise as a consequence of this Agreement. Nothing contained in this Agreement shall be construed or relied upon as any advice or opinion by or on behalf of FSU regarding the tax treatment of the settlement payment made hereunder. Kinsman and her counsel also acknowledge that neither FSU nor any person assisting FSU in any manner with negotiation or resolution of this matter have advised Kinsman of the tax consequences, if any, resulting from monies paid under this Agreement.

11. Attorneys' Fees and Costs. The Parties shall each bear their respective attorneys' fees and costs incurred in the pursuit or defense of any claim, cause of action or defense in the Litigation, and the dismissal of the Litigation pursuant to this Agreement shall be with prejudice as to any right that a Party may have had to seek attorneys' fees or costs (irrespective of whether such a right may have been predicated upon or pursuant to any contract, statute, rule, guideline, equitable principle or otherwise). However, in the event of any legal action between the Parties for enforcement of the specific obligations set forth in Sections 2, 3, 4 or 5 of this Agreement (an "Enforcement Action"), the prevailing party shall be entitled to recover:

- a. Its reasonable attorneys' fees and costs, whether incurred before suit, during suit or at any stage of appeal in the Enforcement Action;
- b. Its reasonable attorneys' fees and costs incurred in litigating entitlement to attorneys' fees and costs as well as in determining or quantifying their amount in the Enforcement Action; and
- c. Costs that are taxable pursuant to applicable statutes, rules, or guidelines, as well as costs not taxable thereunder, including: (i) Westlaw, Lexis Nexis, or other electronic research service charges; (ii) information technology and electronic discovery support charges; (iii) consultant and expert witness fees, whether or not such fees are incurred in connection with a court-ordered report or testimony at a deposition, hearing or trial; (iv) court reporter and transcript fees, whether for deposition, trial or an evidentiary or non-evidentiary hearing; (v) mediator fees; and (vi) any other reasonable cost incurred by the prevailing party to prosecute or defend the Enforcement Action.

For the avoidance of doubt, the foregoing fee-shifting provision shall only apply in a legal action between the Parties for enforcement of the specific obligations set forth in Sections 2, 3, 4 or 5 of this Agreement and not in any other legal action involving any other provisions of this Agreement.

12. Acknowledgements and Representations. In addition to any other acknowledgments or representations set forth in this Agreement, each of the Parties hereby acknowledges and represents that she or it:

- a. Has been represented by competent counsel of her or its choosing throughout the Litigation, including up to and through the date of executing and delivering this Agreement;
- b. Has read and understands each and every provision contained in this Agreement and, in particular, understands fully the legal effect of the mutual release and covenant not to sue in Sections 4 and 5 of this Agreement;
- c. Relies fully and exclusively upon her or its own judgment and the advice of her or its counsel in making this Agreement; and
- d. Has had every opportunity to review and carefully consider each and every term of this Agreement with her or its counsel in advance of the execution of this Agreement.

13. Authority. Each person signing this Agreement warrants and represents that she or he has the authority to sign on behalf of herself or the person or entity she or he represents, and that this Agreement has been validly authorized and constitutes the legally binding and enforceable obligation of the Parties.

14. No Prior Assignment or Transfer of Claims. The Parties represent and warrant that they have not transferred, assigned, or hypothecated, nor purported to transfer, assign or hypothecate, to any person or entity not a Party hereto any claim, cause of action or defense at issue between the Parties in the Litigation or released by Section 4 of this Agreement.

15. Effective Date. This Agreement shall be effective when signed by both Parties and their respective counsel.

16. Governing Law and Forum Selection. This Agreement shall be governed by the laws of the State of Florida, without regard for its conflicts of law provisions. Any legal action between the Parties for enforcement of the specific obligations set forth in this Agreement shall be instituted and maintained in the Tallahassee Division of the United States District Court for the Northern District of Florida, whether as part of or a continuation of the existing Litigation or otherwise.

17. Binding Agreement. This Agreement is binding on the Parties and their respective agents, representatives, trustees, officers, agents, employees, successors, beneficiaries, heirs, and assigns.

18. Entire Agreement. This Agreement supersedes any and all oral or written agreements and understandings heretofore made relating to the subject matter hereof and contains the entire agreement of the Parties relating to the subject matter hereof; any prior oral or written statements concerning this matter are merged herein.

19. No Other Inducements or Representations. Neither of the Parties nor anyone acting on their behalf have made any representations, statements, or opinions to induce the execution of this Agreement other than as expressly set forth in this Agreement.

20. Arm's Length Negotiation. The Parties acknowledge that the terms of this Agreement have been negotiated at arm's length by and between themselves with the advice and assistance of experienced and competent legal counsel.

21. Severability. If any provision of this Agreement is judicially determined to be invalid, illegal or unenforceable in any respect, such provision shall still be enforced to the maximum extent possible given the intent of the Parties as expressed within the four corners of this Agreement. If such clause or provision cannot be so enforced, such provision shall be stricken from this Agreement and the remainder of this Agreement shall be enforced as if such invalid, illegal or unenforceable clause or provision had (to the extent not enforceable) never been contained in this Agreement.

22. Modification. No change, modification, or waiver of this Agreement shall be valid and binding unless it is in writing and signed by both Kinsman and FSU.

23. Joint Drafting. The Parties have cooperated in drafting and signing this Agreement. Both Kinsman and FSU have participated in the preparation of this Agreement, have enjoyed the benefits of being represented by counsel, and have had the opportunity to review the full and final Agreement. Any ambiguities in this Agreement shall therefore not be construed against either Party as the drafter of the Agreement.

24. Cooperation and Subsequent Documentation. The Parties and their respective counsel agree to cooperate, prepare, execute and file any further stipulations, agreements, releases, satisfactions or other subsequent documentation that may be necessary to effectuate the intent and purpose of this Agreement.

25. Time is of the Essence. The Parties understand and agree that time is of the essence with respect to all performance under this Agreement.

26. Construction. The singular includes the plural, and the plural includes the singular. Pronouns stated in the masculine, feminine or neuter genders shall include each of the masculine, feminine and neuter genders. Captions or headings are inserted for convenience, reference and identification purposes only, and shall not control, define, limit or otherwise materially affect the interpretation of this Agreement.

27. Remedies for Breach. If either Party believes the other is in breach, that Party shall notify the other of the alleged breach by notice in accordance with Section 28. The Party allegedly in breach shall respond within ten (10) business days, provided, however, that if the alleged breach is for failure to timely make the settlement payment pursuant to Section 2 or for failure to timely file the joint notice and stipulation of voluntary dismissal pursuant to Section 3, then the Party allegedly in breach shall respond within one (1) business day. The Parties shall

work in good faith to resolve any disputes over whether a breach has occurred and, if a breach has occurred, to promptly cure the breach. If the Parties cannot resolve their dispute, the only remedy therefor will be a legal action for specific performance in the venue set forth in Section 16.

28. Notices. All notices, demands, consents, requests, approvals, or other notifications or communications required or permitted under this Agreement shall be in writing and sent by both certified mail and email to the following:

If to Kinsman –

John C. Clune
Hutchinson Black and Cook, LLC
921 Walnut Street, Suite 200
Boulder, CO 80302
clune@hbcboulder.com

David B. King
King, Blackwell, Zehnder & Wermuth, P.A.
25 E. Pine St.
Orlando, FL 32801
dking@kbzwlaw.com and courtfilings@kbzwlaw.com

If to FSU –

Carolyn Egan
General Counsel
Florida State University
222 South Copeland Street, Suite 424, Westcott Building
Tallahassee, FL 32306
cegan@admin.fsu.edu

Either Party may change the address to which or attorney(s) to whom notices or communications are to be given by giving notice of such change in accordance with the provisions of this Section 28.

29. No Third Party Beneficiaries. There are no intended third party beneficiaries of this Agreement. To the contrary, it is expressly intended by the Parties that no third party may enforce or obtain relief under this Agreement.

30. Counterparts. To facilitate execution, this Agreement may be executed in multiple counterparts, each of which may be delivered via email attachment, facsimile or similar electronic transmission of signature, and it shall not be necessary that the signature of each signatory appear on every signature page. It shall be sufficient that a signature of each signatory appear on at least one counterpart. Each counterpart shall be deemed an original, and together shall constitute one and the same Agreement.

**THIS AGREEMENT INCLUDES A RELEASE OF
CERTAIN KNOWN AND UNKNOWN CLAIMS.**

THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK

Signed:

John C. Clune
Baine P. Kerr
Lauren E. Groth
Hutchinson Black and Cook, LLC

Erica N. Kinsman

David B. King
Thomas A. Zehnder
Taylor F. Ford
King, Blackwell, Zehnder & Wermuth, P.A.

Patricia A. Carroll
Patricia A. Carroll, P.A.

Counsel for Kinsman

Date: _____

Date: _____

County of _____

State of _____

This Settlement Agreement and Mutual Release was subscribed before me this _____ day of January, 2016, by Erica N. Kinsman, who is personally known to me or who provided _____ as identification.

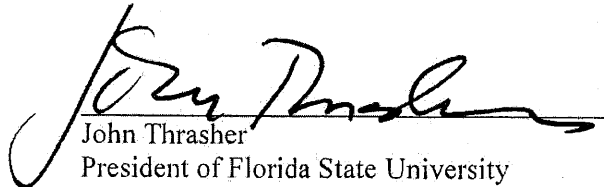
Notary Public

My commission expires:

[SEAL]

Signed:

Melissa W. Nelson
Carlos G. Muniz
Scott C. Cairns
McGuireWoods LLP


John Thrasher
President of Florida State University
For the FSU Board of Trustees

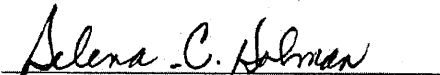
Counsel for FSU

Date: _____

Date: 1/25/16

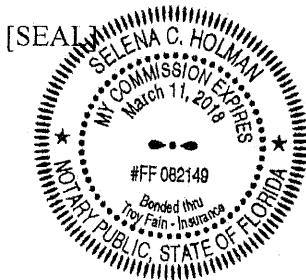
County of Leon
State of Florida

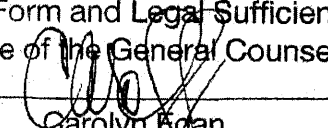
This Settlement Agreement and Mutual Release was subscribed before me this 25 day of January, 2016, by John Thrasher, who is personally known to me or who provided _____ as identification.



Notary Public

My commission expires:



APPROVED
As to Form and Legal Sufficiency
Office of the General Counsel
By: 
Carolyn Egan
General Counsel
Date: 1/22/16