

**FINAL SETTLEMENT AGREEMENT, WAIVER AND RELEASE**

THIS SETTLEMENT AGREEMENT, WAIVER AND RELEASE (hereinafter "Agreement") is made and entered into this \_\_\_\_\_ day of February, 2012, by and between the FLORIDA STATE UNIVERSITY BOARD OF TRUSTEES, ("FSU" or "Defendant"), and CHRISTOPHER SHANE TOTH ("Toth") and JAMIE ANN PRINCIPATO ("Principato") (collectively, "Plaintiffs").

Defendant and Plaintiffs, desiring to settle all existing or potential disputes between them, including, but not limited to, the allegations contained in the case of Christopher Shane Toth and Jamie Ann Principato v. The Florida State University Board of Trustees, Case No. 4:11-CV-00317-WS-WCS (the "Litigation") currently pending in the Northern District of Florida, Tallahassee Division, agree to the following:

**1. Obligations of Defendant:** In consideration of Plaintiffs' agreement to the terms herein, Defendant agrees:

a. To pay a single sum of ONE HUNDRED AND FIFTY THOUSAND (\$150,000.00) DOLLARS ("Total Settlement Amount"), which shall be issued within 15 days after the Effective Date of this Agreement and following the dismissal of the Litigation with prejudice in accordance with the procedures set forth below.

The Total Settlement Amount will be made payable to BROWN, GOLDSTEIN & LEVY, LLP TRUST ACCOUNT and shall be split among the Plaintiffs as follows: Seventy-Five Thousand Dollars and Zero Cents (\$75,000.00), to Christopher Shane Toth, and Seventy-Five Thousand Dollars and Zero Cents (\$75,000.00), to Jamie Ann Principato, representing compensation for any and all damages Plaintiffs may claim to have against Defendant and the State of Florida, Division of Risk Management ("Risk") and its/their current and former parent

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agencies, affiliates, boards, divisions, directors, employees, representatives, predecessors, successors, assigns, agents, insurers, and attorneys (hereinafter "Released Persons") for any reason whatsoever.

Plaintiffs' counsel, Brown, Goldstein & Levy, LLP, shall provide Defendant's counsel with an IRS W-9 form. FSU or Risk shall provide an IRS 1099 form for all such funds payable on behalf of Toth and Principato, and all such funds shall be classified as ordinary income for compensatory damages. The settlement proceeds shall not be disbursed by Plaintiffs' attorney until such time as the Parties provide the above-referenced tax forms, execute this Agreement, and an order of dismissal with prejudice in the form prescribed by this Agreement has been entered by the Court in which the Litigation is pending, and the release has been forwarded to the Defendant's attorney. Defendant further agrees that it is responsible for its own attorneys' fees and costs incurred during the Litigation, and shall bear all costs associated with the fees charged by the mediator.

b. Future procurement by FSU's Department of Mathematics of digital technology and digital instructional materials shall be accessible to the blind.

c. FSU agrees to take such steps, if any, as are necessary to remove accessibility barriers for blind students to the extent required by law so that these students can access the content of the curriculum in an equally effective and integrated manner as their non-disabled peers, as to the following courses that are required for the majors sought by Toth and Principato by the first day of the following semesters: Biological Science I Laboratory (BSC 2010L), Fall 2012; General Chemistry I (CHM 1045), Fall 2012; General Chemistry I Laboratory (CHM 1045L), Fall 2012; General Physics A with Lab (PHY 2048C), Spring 2013.

d. FSU will explore the development of a campus-wide policy for

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procurement of accessible instructional technology and content.

e. The grades received by Toth and Principato in fall 2009 for College Algebra (MAC 1105) will be removed and will be reflected as withdrawn on their transcripts.

f. FSU will waive any tuition and fees for Principato to retake MAC1105 on one occasion in the future to the extent that Florida Division of Blind Services does not pay such tuition and fees.

g. Upon either Plaintiff making the Registrar aware that his or her registration is blocked, FSU shall promptly unblock the registration to the extent that the block(s) is solely based on the failure to successfully complete a math course before January 2013.

h. If by the fall of 2013, Principato has met the math requirements for graduation and the GPA requirements for a Psychology Major, she shall not be denied entry in such major for any failure to have successfully completed a math course within two years of first matriculating at the university.

i. FSU shall post its existing Section 504 and ADA Title II grievance policy on Blackboard, the Student Disability Resource Center ("SDRC") website, the Dean of Student's website, and will have a hard copy in Braille located at the SDRC. Each of these websites will also contain such materials in text-based PDF and Word.

j. By May 2012, FSU shall make the My Student Body Alcohol Course accessible to the Blind using screen access software or, alternatively, will not offer it to any student.

**2. Obligations of Plaintiffs:** In consideration of Defendant's agreement to the terms herein, Plaintiffs agree:

  
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a. To execute a Motion for Dismissal with Prejudice in the Litigation within 3 days of their execution of this Agreement, with the Court retaining jurisdiction to determine the amount of attorney's fees and costs and to enforce the terms of all relief encompassed herein. The Order of Dismissal with Prejudice that Plaintiffs shall submit shall contain the following statement: "The Lawsuit and all claims asserted in the Lawsuit are dismissed with prejudice. Without affecting the finality of this dismissal in any way, the Court shall have continuing jurisdiction to interpret and enforce the attached Agreement as provided in section 10 of the Agreement and to resolve, to the extent necessary, the amount of Plaintiffs' attorney's fees and costs." If, for any reason, the filing does not result in the complete and full dismissal of the Litigation subject to the terms stated above, Plaintiffs and their attorneys shall cooperate with counsel for Defendant in furtherance of obtaining a dismissal of the aforesaid action with prejudice on the same terms set forth herein.

b. To waive, and do hereby waive and fully release the Released Persons of and from any and all claims, demands, damages, lawsuits, obligations, promises, reimbursements, administrative actions, charges, licensure complaints, and/or causes of action, both known and unknown, in law or in equity, of any kind whatsoever, and particularly, without limiting the generality of the foregoing, all matters relating to or arising out of the subjects of the Litigation, and any other claims, demands, damages, lawsuits, obligations, reimbursements, promises, administrative actions, charges, claims for reimbursement, computer purchase costs, licensure complaints and/or any other causes of action of whatever nature, both known and unknown, in law or in equity, of any kind whatsoever, including, without limitation, any causes of action or claims for unlawful discrimination arising under the Americans with Disabilities Act of 1990 as amended, 42 U.S.C. §§12131, et seq.; the Rehabilitation Act of 1973, as amended, 29

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U.S.C. §794, et seq.; the Florida Accessible Electronic and Information Technology Act, §282.601, et seq., Fla. Stat.; the Florida Educational Equity Act, §1005.05, et seq., Fla. Stat.; Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§2000e, et seq.; the Civil Rights Act of 1866, as amended, 42 U.S.C. §1981; 42 U.S.C. § 1983; 42 U.S.C. §1985; 42 U.S.C. §1988; The Federal False Claims Act, 31 U.S.C. § 3729-3733; the Florida False Claims Act; The Florida Whistleblower's Act, Section 112.3187, et seq., Fla. Stat.; The Civil Rights Act of 1991; Executive Order No. 11246; Family Educational Rights and Privacy Act, 20 U.S.C. §1232g; the Violence Against Women Act; the Florida Human Rights Act of 1977, as amended, §760.01, et seq., Fla. Stat., and the Florida Civil Rights Act of 1992, as amended, §§760.01, et seq., Fla. Stat.; §760.50, Fla. Stat.; the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §§621-634; Chapter 772, Fla. Stat.; Chapter 895, Fla. Stat.; the Family and Medical Leave Act of 1993; Chapter 448, Fla. Stat.; Chapters 443 and 440, Fla. Stat.; the Public Employees Relations Act, Pt. II, Chapter 447, Fla. Stat.; and any other Federal or State equal opportunity law, statute, common law doctrine, public policy, executive order, or municipal ordinance; or any other causes of action or claims arising under or based on the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended; any Federal or State law relating to disability discrimination and/or discrimination generally; or any other Federal or State law or municipal ordinance; and/or any other cause of action, including all suits in tort or contract, including those in equity for promissory estoppel or specific performance, and those at law for unpaid wages, violation of a covenant of good faith and fair dealing, a breach of an implied employment contract, breach of an oral or written contract, misrepresentation, defamation, slander, invasion of privacy, fraud, intentional or negligent infliction of emotional distress, interference with prospective economic advantage, interference with contractual relations,

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interference with advantageous business relations, assault, battery, or negligence, or any claim arising under criminal law for which civil damages are available, or any other criminal claim; and/or any other claim, wrong, complaint or cause of action, whether known or unknown, contingent or liquidated which Plaintiffs had, now have, or may claim to have against the Released Persons for which Plaintiffs or Plaintiffs' heirs, executors, or administrators hereafter can, shall or may have against Released Persons for, upon or by reason of any matter, cause or thing whatsoever, at any time up to the date of Plaintiffs signing this Agreement.

c. Plaintiffs hereby represent that, with the exception of complaints they had filed with the Department of Education prior to the institution of this lawsuit, they have not filed and will not file any administrative charges or actions or further lawsuits against the Released Persons with any Federal, State, County or Municipal Agency or court with regard to any matter preceding the execution of this Agreement, and understand that Defendant and Risk have reasonably relied on their representations in this paragraph in agreeing to perform those obligations set forth in paragraph 1 of this Agreement.

d. Plaintiffs shall agree to utilize priority registration whenever possible, provided, however, that this commitment does not compromise all of Plaintiffs' rights to drop and add classes on the same terms as sighted students.

e. Plaintiffs shall meet with mapping coordinators and/or student advisors as reasonably requested for issues relating to mapping.

**3. Non-Admission:** Neither this Agreement, nor anything contained herein or anything represented or averred by Defendant and/or Risk, is to be construed as an admission by Defendant or Risk of any liability, wrongdoing or unlawful conduct whatsoever, or as an admission that any of the allegations contained in the Complaint or any other pleading or paper



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filed by Plaintiffs in the Litigation have any merit whatsoever. Defendant expressly denies any liability for the acts complained of by Plaintiffs, and this Agreement is intended to avoid litigation and to resolve any dispute between Plaintiffs and Defendant.

**4. Severability:** This Agreement is governed by and shall be construed, interpreted, and enforced by Florida law. If any provision of the Agreement is invalidated by a court or agency of competent jurisdiction, with the exception of paragraph 1(a), then all of the remaining provisions of this Agreement shall continue unabated and in full force and effect.

**5. Entire Agreement:** This Agreement contains the entire understanding and agreement between the Parties and shall not be modified or superseded, except upon express written consent of the Parties to this Agreement. Plaintiffs represent and acknowledge that, in executing this Agreement, they do not rely and have not relied upon any representation or statement made by the Defendant, Risk or the Released Persons which is not set forth in this Agreement.

**6. Supersedes Past Agreements:** Except with respect to the Resolution Agreement between FSU and the U.S. Department of Education Office for Civil Rights concerning Complaint #04-10-2170, dated 12-22-10, this Agreement supersedes and renders null and void any previous agreements, contracts, whether written or oral, between Defendant on the one hand, and Plaintiffs on the other hand, including, without limiting the generality of the foregoing, any and all representations made by Defendant prior to or during the pendency of this Litigation.

**7. Agreement Not To Be Used As Evidence:** This Agreement shall not be admissible as evidence in any proceeding except where one of the Parties to this Agreement seeks to enforce the Agreement or alleges the Agreement has been breached, or where one of the Parties is ordered to produce the Agreement by a court or administrative agency of competent

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jurisdiction.

**8. Opportunity to Consider and Confer:** Plaintiffs acknowledge that they have had the opportunity to read, study, consider and deliberate upon the Agreement, have had the opportunity to consult with counsel, and have had the opportunity to request clarification from the Defendant and its attorneys as to any questions they may have regarding the terms and conditions, and the effect of this Agreement. Plaintiffs further acknowledge that they fully understand and agree to the terms of this Agreement and that they possess the legal capacity to enter into this Agreement.

**9. Effective Date of Agreement:** This Agreement, and the obligations set forth herein, shall become effective once it has been signed by all Parties (i.e., the “Effective Date”).

**10. Attorneys’ Fees and Costs:** The Parties shall attempt to mediate and agree to an amount of fees and costs. If the Parties cannot agree, the Parties agree to litigate the amount of fees and costs to which Plaintiffs may be entitled. Upon execution of this Agreement, the parties shall file with the Court a notice of settlement and order of dismissal requesting the Court to approve the settlement and retain jurisdiction to determine the amount of attorneys’ fees and costs and to enforce the terms of all relief encompassed therein. In the event the Court declines jurisdiction to adjudicate fees and costs (other than court costs covered by 28 U.S.C. § 1920), the parties agree to submit the issue of the amount of fees to binding arbitration, the costs to be shared equally by the parties.

**11. Notice and Opportunity to Cure:** The Parties to this Agreement shall endeavor in good faith to resolve informally any differences regarding interpretation of and compliance with this Agreement before bringing such matters to the Court for resolution or filing a new lawsuit. However, in the event that a party either fails to perform in a timely manner any act

  
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required by this Order or acts in violation of any provision of this Order, counsel may then move the Court for an order requiring performance or non-performance of certain acts.

**12. Remedy for Breach:** The parties agree that the sole remedy for any breach of any term of this agreement is an order of specific performance by the court, and any breach by either party shall not excuse the other from performance of its obligations under this Agreement.

**13. Tax Considerations:** The Released Persons are not liable for the payment of any tax on the settlement proceeds provided hereunder. Rather, Plaintiffs agree that payment of income and other taxes on the Total Settlement Amount, if any, shall be their sole responsibility and agree to pay all required taxes, if any, in accordance with all Federal, State and Local laws, rules and ordinances. Plaintiffs further acknowledge and agree that, in the event that any taxes, penalties, claims, complaints or liabilities of any kind are assessed against or incurred by the Released Persons for any reason in connection with the payments made to them under this Agreement, Plaintiffs will fully and completely indemnify and hold harmless the Released Persons for said taxes and/or for any penalties, claims, complaints or liabilities. Nothing contained herein shall be construed or relied upon as any advice or opinion by or on behalf of the Released Persons regarding the tax treatment of the settlement payment made hereunder. Plaintiffs and their attorneys also acknowledge that neither the Defendant, Risk, nor the Released Persons have advised them of the tax consequences, if any, resulting from monies paid under this Agreement.

**14. Assignment:** Plaintiffs represent and warrant to Defendant and Risk that they are the sole owners of and have not sold, pledged, assigned, granted, or otherwise transferred the claims described in the underlying litigation or which could have been pursued by Plaintiffs against Defendant in the underlying litigation.

  
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**15. Jointly Drafted:** The Parties and their respective counsel mutually contributed to the preparation of, and have had the opportunity to review and revise this Agreement. Accordingly, no provision of this Agreement shall be construed against any Party because that Party, or its counsel, drafted the provision. This Agreement and all of its terms shall be construed equally as to all Parties.

**16. Media:** Plaintiffs and Defendants will issue a mutually agreeable press release.

IN WITNESS WHEREOF, and intending to be legally bound hereby, Defendant, by its authorized representatives, and Plaintiffs, in duplicates of like tenure and effect, execute this Agreement, consisting of thirteen (13) pages (including the signature pages) and including sixteen (16) enumerated paragraphs, by signing below voluntarily and with full knowledge of the significance of all of its provisions.

**HAVING ELECTED TO SIGN THIS RELEASE, TO FULFILL THE PROMISES AND TO RECEIVE THE SUMS AND BENEFITS IN CONSIDERATION, CHRISTOPHER SHANE TOTH AND JAMIE ANN PRINCIPATO ENTER INTO THIS RELEASE INTENDING TO WAIVE, SETTLE AND RELEASE ALL CLAIMS TOTH OR PRINCIPATO HAS OR MIGHT HAVE HAD PRIOR TO THE EFFECTIVE DATE OF THIS AGREEMENT AGAINST FLORIDA STATE UNIVERSITY BOARD OF TRUSTEES.**

  
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Christopher Shane Toth

STATE OF FLORIDA )  
COUNTY OF LEON )

The foregoing instrument was acknowledged before me this 16<sup>th</sup> day of February, 2012, by Christopher S. Toth, who is:

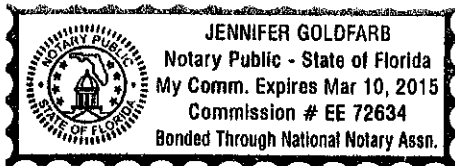
       personally known to me, OR  
 has produced FLTD T300117900500 as identification.

[Signature]

[Signature]

Notary  
Name: Jennifer Goldfarb  
Notary Public  
Serial (DOC) Number  
(if any) \_\_\_\_\_

(NOTARY STAMP)



Executed this 16<sup>th</sup> day of February, 2012.

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Jamie Ann Principato

STATE OF FLORIDA )  
COUNTY OF LEON )

The foregoing instrument was acknowledged before me this 16<sup>th</sup> day of February, 2012, by Jamie A. Principato, who is:

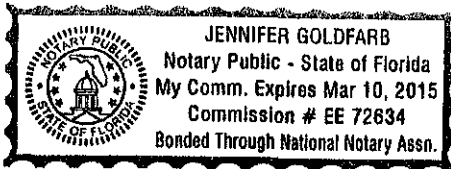
       personally known to me, OR  
 has produced FLID P652421908470 as identification.

Jamie Principato

Jennifer Goldfarb

Notary  
Name: Jennifer Goldfarb  
Notary Public  
Serial (DOC) Number  
(if any) \_\_\_\_\_

(NOTARY STAMP)



Dated this 16 day of February, 2012.

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FSU

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Toth/Principato

Dated this \_\_\_\_ day of February, 2012.

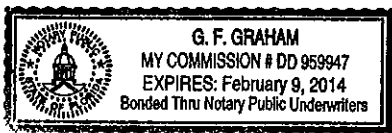
Eric J. Barron

For and on behalf of the Defendant,  
Florida State University Board of Trustees

STATE OF FLORIDA        )  
COUNTY OF LEON        )

The foregoing instrument was acknowledged before me this 1 day of ~~February~~<sup>March</sup>, 2012, by Eric J. Barron, who is:

X personally known to me, **OR**  
\_\_\_\_\_ has produced \_\_\_\_\_ as identification.



(NOTARY STAMP)

G. F. Graham

Notary

Name: G. F. Graham

Notary Public Commission # DD959947

Serial (DOC) Number Expires February 9. 2014  
(if any) \_\_\_\_\_

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FSU

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