

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT AND RELEASE ("Agreement"), is voluntarily entered into by and between the undersigned individuals, **Julianne Taaffe and Kathryn Moon**, respectively, on behalf of themselves, their past and future heirs, executors, guardians, administrators, successors in interest, subrogees, insurers, agents, representatives, assigns and any other parties who may claim under or through them, or otherwise assert claims on their behalf, jointly and severally (herein singularly "**Taaffe**" or "**Moon**" and collectively "**Plaintiffs**"), and **The Ohio State University**, on behalf of itself and its past, present and future officers, directors, trustees, employees, including each defendant in the pending lawsuit referenced herein, agents, attorneys, insurers, administrators, any and all employee benefit plans (and any fiduciary of such plans) sponsored by such entities, divisions, foundations, subsidiaries, predecessors, successors, and assigns, and all other entities, persons, firms, or corporations liable or who might be claimed to be liable, jointly and severally (herein singularly and collectively called the "**OSU**"), who agree to be bound by all of the terms and conditions hereof.

WHEREAS, until December 2014, Plaintiffs were employed by OSU;

WHEREAS, on or about May 8, 2014, Taaffe filed a charge with the U.S. Equal Employment Opportunity Commission against OSU, EEOC Charge Number 532-2014-01486 ("**Taaffe's First Charge**");

WHEREAS, on or about January 23, 2015, Moon filed a charge with the U.S. Equal Employment Opportunity Commission against OSU, EEOC Charge Number 532-2015-00844 ("**Moon's Charge**");

WHEREAS, on or about January 26, 2015, Taaffe filed a second charge with the U.S. Equal Employment Opportunity Commission against OSU, EEOC Charge Number 532-2015-00862 ("**Taaffe's Second Charge**") (collectively Taaffe's First Charge, Moon's Charge and Taaffe's Second Charge shall be "**Charges**");

WHEREAS, on or about September 29, 2015, Plaintiffs filed a lawsuit against Michael V. Drake, Joseph E. Steinmetz, Cheryl A. Achterberg, Sandra Stroot and Robert Eckhart (herein "**Defendant**" or "**Defendants**") (collectively Plaintiffs, OSU, and each individually named Defendant called the "**Parties**"), styled Taaffe, et al. v. Drake, et al., Case No. 2:15-cv-02870, in the United States District Court for the Southern District of Ohio, Eastern Division ("**the Lawsuit**");

WHEREAS, through their Charges, Plaintiffs sought monetary relief under the Age Discrimination in Employment Act, 29 U.S.C. §621, *et seq.* ("**ADEA**"), in the form of lost wages and benefits as well as non-wage damages, including liquidated damages equal to or exceeding their claimed lost wages; and through their Charges and the Lawsuit, Plaintiffs sought additional, non-monetary injunctive relief, attorneys' fees, and expenses pursuant to the ADEA and *Ex parte Young*, 209 U.S. 123 (1908);

WHEREAS, OSU and Defendants deny that they acted unlawfully in any way;

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WHEREAS, the Parties desire to fully and completely resolve, settle and dispose of any and all disputes or claims of whatever kind or nature that Plaintiffs ever had or may now have against OSU and Defendants, whether known or unknown, with respect to any and all matters between the Parties, except as otherwise expressly provided herein.

NOW, THEREFORE, in consideration of the mutual understandings, covenants, and release contained in this Agreement, the Parties hereby acknowledge and voluntarily agree as follows:

1. **SETTLEMENT.** As a result of this settlement, OSU agrees to pay Plaintiffs a full and complete settlement in the amount of Seven Hundred and Sixty-Five Thousand Dollars (\$765,000) ("Settlement Payment"), which shall be inclusive of any and all damages, interest, costs and/or attorneys' fees. Plaintiffs and OSU agree that, for purposes of this settlement, Taaffe was reinstated to the position of ESL Academic Program Specialist for the period of December 1, 2014 through October 8, 2017, and Moon was reinstated to a position of ESL Academic Program Specialist for the period of December 1, 2014 through October 8, 2017. OSU agrees to pay the Settlement Payment as follows:

A. One Hundred Fifty-One Thousand, Eight Hundred Seventy-Eight Dollars (\$151,878), less all applicable tax and retirement withholdings, payable to Taaffe as back pay within 30 days from execution of this Agreement in full. Plaintiffs and OSU recognize that this is a compromise of a disputed claim, and this amount is a compromise calculation, based on Taaffe's last rate of pay. For purposes of the Ohio Public Employees Retirement System ("OPERS"), retirement withholdings shall be based on a calculation of the earnable salary Taaffe would have been entitled to for the period of December 1, 2014 through October 8, 2017;

B. Fifty Thousand, Nine Hundred Sixty-Two Dollars (\$50,962) payable to Taaffe as a lump sum award as a 1099 payment relating to Taaffe's First Charge and Taaffe's Second Charge within 30 days from execution of this Agreement in full.

C. One Hundred Seventy-Seven Thousand, Six Hundred Eighty-Nine Dollars (\$177,689), less all applicable tax and retirement withholdings, payable to Moon as back pay within 30 days from execution of this Agreement in full. Plaintiffs and OSU recognize that this is a compromise of the disputed claim, and this amount is a compromise calculation, based on Moon's last rate of pay. For purposes of OPERS, retirement withholdings shall be based on a calculation of the earnable salary Moon would have been entitled to for the period of December 1, 2014 through October 8, 2017;

D. Fifty-Nine Thousand, Four Hundred Seventy-One Dollars (\$59,471) payable to Moon as a lump sum award as a 1099 payment relating to Moon's Charge within 30 days from execution of this Agreement in full; and

E. Three Hundred Twenty-Five Thousand Dollars (\$325,000) payable to The Gittes Law Group and to be delivered to The Gittes Law Group within 30 days from execution of this Agreement in full.

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2. **TRAINING.** OSU will conduct two training sessions to be designed, prepared, and conducted by D. Jan Duffy, of Management Practices Group. Ms. Duffy's fees for these training sessions will be paid by OSU. The first training will be a one half-day training (three hours of instruction plus scheduled breaks) focused on recognizing/preventing age discrimination in the workplace, for OSU central human resources discrimination investigators, EHE managers and EHE human resources staff, on or before August 31, 2018. The second training will be a full day focused on critical thinking in workplace investigations and decision-making, for EHE human resources and OSU central human resources discrimination investigators, on or before March 31, 2019.

3. **SECOND-LOOK PROCESS.** OSU will agree to create a second-look process for age-based complaints made in the College of Education and Human Ecology ("EHE"). Specifically, OSU will permit any EHE employee complainant alleging age discrimination or age-related retaliation one opportunity to request a review of an investigator's findings by an administrator not involved in the underlying allegations, the investigation of the allegations, or the written report of the investigations for the following reasons: to raise factual errors, omission of relevant evidence, failure to apply or misapplication of pertinent rules, OSU policy or law, or investigative misconduct. In response to such a request, the reviewing administrator shall conduct a review and issue a written response to the issues raised in the complainant's request for review. The second-look process will commence for investigations which are pending as of the 60th date from the last signature on the settlement agreement or the Court's approval, whichever is later. OSU shall have discretion to implement the exact language so long as it meets the criteria described above. The second-look process will remain in effect for two years or until OSU makes any discretionary changes to its policies and guidelines as part of the review set forth below, whichever occurs first. In the event that the review set forth below does not result in adoption of a university-wide second look or appeal process that would supersede and substantially satisfy the criteria of the EHE process described above in Paragraph 3, the EHE second-look process will remain in effect for the full two years and be available to any complaints pending on the last date of the two years.

Within one year of final settlement, OSU will initiate a review of its policies and guidelines for preventing and investigating discrimination to determine whether changes are required to better serve OSU's employees. OSU shall have discretion whether or not to implement any changes to its policies based on this review. OSU will inform Plaintiffs' counsel, The Gittes Law Group and AARP Foundation Legal, in writing, of a) the commencement of the university-wide review process; and b) the outcome of the process upon its completion.

Nothing in this Paragraph 3 shall provide Plaintiffs a cause of action or opportunity to reopen the Lawsuit, except (1) OSU's failure to implement a second-look process or (2) OSU's failure to conduct a review of its policies and guidelines for preventing and investigating discrimination.

4. **WEBSITE.** Within 180 days of final settlement, OSU will include "age" among the categories of prohibited discrimination on the following web addresses:

<https://hr.osu.edu/careers/>

<https://www.jobsatosu.com/> [and the footer for all job postings on the jobsatosu.com website]

<https://www.jobsatosu.com/postings/search>

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<https://hrs.osu.edu/faculty-and-staff/employment-opportunities>
<https://hr.osu.edu/wp-content/uploads/policy110.pdf>
<https://hr.osu.edu/wp-content/uploads/form-equal-employment-id.pdf>
<https://wexnermedical.osu.edu/careers>
<https://wexnermedical.osu.edu/departments/family-medicine/careers>
<https://hrs.osu.edu/academics/graduate-programs/clinical-doctorate-in-occupational-therapy/neurologic-occupational-therapy-fellowship>
<https://cancer.osu.edu/sitecore/content/wexnermedical/home/careers>
<https://cancer.osu.edu/sitecore/content/wexnermedical/home/departments/family-medicine/careers>

5. **NON-DISCRIMINATION AND RETALIATION.** OSU agrees to refrain from discrimination and retaliation against Plaintiffs.

6. **RELEASE OF CLAIMS.** In consideration of the Settlement Payment and the other agreements and covenants set forth herein, the sufficiency of which is hereby acknowledged, Plaintiffs, including their heirs, executors, guardians, administrators, successors and assigns claiming by or through them, agree to completely and irrevocably waive, discharge and release OSU and Defendants of and from any and all claims, actions, charges, demands, suits, debts, complaints, grievances, causes of action and/or liability whatsoever, whether known or unknown, suspected or unsuspected, vested or contingent, in law, equity, or otherwise, including by not limited to, those arising or which might arise under or out of the Plaintiffs' employment with OSU, their compensation from OSU and/or the termination of their employment from OSU, or with respect to any other transaction, event or occurrence pre-dating the date of this Agreement, whether now known or unknown, including, but not limited to, any claim of breach of contract, wrongful discharge, intentional infliction of emotional distress, retaliation and/or employment discrimination, whether in tort or in contract, any other employment intentional tort, any statutory or common law claim for attorneys' fees, any claim for interest on any amounts due, or any other claim under present or future law, including, but not limited to, the Worker Adjustment and Retraining Notification Act, 29 U.S.C. §2101, *et seq.*; Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e, *et seq.*; the Age Discrimination in Employment Act, 29 U.S.C. §621, *et seq.* ("ADEA"); the Civil Rights Act of 1866, 42 U.S.C. §1981; the Civil Rights Act of 1991, P.L. 102-166; the Americans With Disabilities Act, 42 U.S.C. §12101, *et seq.*; the Fair Labor Standards Act of 1938, 29 U.S.C. §201, *et seq.*; the Equal Pay Act, 29 U.S.C. §206(d); the Family and Medical Leave Act of 1993, 29 U.S.C. §2601, *et seq.*; the Occupational Safety and Health Act of 1970, 29 U.S.C. §553, *et seq.*; the Employee Retirement Income Security Act of 1974, 29 U.S.C. §1001, *et seq.*; the Consolidated Omnibus Budget Reconciliation Act of 1986, 29 U.S.C. §1161, *et seq.*; the National Labor Relations Act, 29 U.S.C. §151, *et seq.*, and any statutory amendments thereto, and any constitutional, statutory or common law of the State of Ohio ("Claims"). However, nothing in this Agreement is intended or shall be interpreted to release or waive any claim by the Plaintiffs with respect to earned and/or vested retirement and/or pension benefits, with respect to any claim or cause of action arising after the Plaintiffs have executed this Agreement, or with respect to any other claim that cannot be released or waived pursuant to state or federal law.

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7. **COVENANT NOT TO SUE.** Plaintiffs represent that they will not commence, maintain or file any claim against OSU, including, but not limited to, a claim with an administrative agency or a lawsuit in any federal, state or local court, with respect to any matter arising out of or in any way related to their employment with OSU, their compensation and/or the termination thereof, or with respect to any other transaction, event or occurrence pre-dating the date of this Agreement, whether now known or unknown to OSU, with the exception of any claim that OSU breached its commitments under this Agreement. Plaintiffs further agree that if they do file such a claim with any administrative agency or court, they will not oppose any motion to dismiss filed by OSU based upon the release contained in this Agreement. With respect to those state and/or federal agencies as to which this Agreement may not legally estop the Plaintiffs from filing a charge or complaint, the Plaintiffs agree that they will waive and will not accept any monetary remedy that may be obtained as a result of filing such charge or complaint.

8. **EEOC CHARGES.** Plaintiffs waive and agree not to accept any monetary remedy that may be obtained through their above-listed pending charges with the Equal Employment Opportunity Commission. In addition, within ten days of the receipt by Plaintiffs of the payment described above, Plaintiffs agree to notify the Equal Employment Opportunity Commission of this Agreement and their agreement not to accept such monetary remedy. The parties acknowledge and agree that they are without authority to control the actions of the Equal Employment Opportunity Commission, and that no part of this Agreement is contingent upon the Equal Employment Opportunity Commission's action or failure to act in response to this notification of settlement.

9. **DISMISSAL OF LAWSUIT.** Within ten days of the receipt by Plaintiffs of the payment described above, Plaintiffs agree to submit the attached joint proposed entry dismissing the Lawsuit, subject to the Court's reservation of jurisdiction to enforce the terms of this Agreement, which shall be filed as an exhibit to the proposed dismissal entry for that purpose. Each Party therein shall bear its own costs and attorneys' fees, except as otherwise stated herein. A copy of the Dismissal of Lawsuit is attached as Exhibit One.

10. **UNKNOWN CLAIMS.** Plaintiffs intend that this Agreement is final and complete and therefore shall bar each and every claim specified herein, whether known or unknown to them at the time of execution of this Agreement. As a result, Plaintiffs acknowledge that they might later discover pre-existing claims or facts in addition to or different from those which they now know or believe to exist with respect to the subject matters of this Agreement and which, if known or suspected at the time of executing this Agreement, may have materially affected this Agreement. Nevertheless, Plaintiffs hereby waive any claim that might arise as a result of such different or additional claims or facts.

11. **KNOWN FACTS.** It is understood by Plaintiffs and OSU that the facts upon which this Agreement is made may prove to be other than or different from the facts now known by either of them or believed by either of them to be true. The Plaintiffs and OSU expressly accept and assume the risk of the facts proving to be different than they had believed, and they agree that all the terms of this Agreement will be effective and not subject to termination or rescission if the facts prove to be different from what either of them believed.

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12. **NO VIOLATION OF LAW OR CONTRACT.** The terms set out in the Agreement are a compromise settlement of disputed claims, the validity, existence or occurrence of which is expressly denied by OSU and Defendants. Neither the terms nor the Agreement shall be deemed or construed as an admission by OSU and Defendants of any wrongful acts whatsoever against Plaintiffs or other person, nor does any arrangement(s) made with Plaintiffs constitute an acknowledgement of the validity of any claim, charge, liability or cause of action asserted, it being expressly understood that all such claims are in all respects denied by OSU and Defendants.

13. **FINAL SETTLEMENT.** As used herein, "final settlement" shall be the date of dismissal filing.

14. **TAXES.** Plaintiffs acknowledge that to the extent they incur any tax liability as a result of the amounts paid hereunder, such liability is their sole responsibility, and they shall pay taxes, interest or penalties due and payable, so long as OSU makes all legally required withholdings from the payments described in paragraph 1, above. Therefore, Plaintiffs are hereby advised to seek independent advice from a qualified tax professional regarding the completion of tax returns, communications with taxing authorities and tax liability, if any, that they may accrue as a result of the payments hereunder.

15. **MULTIPLE COUNTERPARTS.** This Agreement may be executed in multiple counterparts, with each such counterpart treated as an original document. An electronic copy or facsimile of this Agreement shall be given the same force and effect as a paper original.

16. **SEVERABILITY AND SAVINGS.** In the event that any provision of this Agreement is found, by any court or governmental agency, to be unlawful or unenforceable, each Party has the right to require both Parties to continue complying with the remaining provisions of this Agreement or to declare the Agreement void.

17. **ENTIRE AGREEMENT/MERGER OF AGREEMENTS.** The Parties agree that the foregoing constitutes the entire agreement among them, and that there exist no other agreements, oral or written, express or implied, relating to any matters covered by this Agreement, or any other agreement in effect and relating to any other matter whatsoever, whether or not within the knowledge or contemplation of either of the Parties at the time of execution of this Agreement. To the extent that there are any other agreements between the Parties, they are hereby mutually declared null and void. This Agreement may only be changed in writing signed by both Parties hereto.

18. **HEADINGS.** The headings herein are inserted only as a matter of convenience and reference, and in no way define or describe the scope of the Agreement or the intent of any provisions hereof.

19. **GOVERNING LAW.** This Agreement shall be governed and conformed in accordance with the laws of the State of Ohio without regard to its conflict of laws provision.

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20. **NOTIFICATION OF RIGHTS UNDER THE AGE DISCRIMINATION IN EMPLOYMENT ACT.** Plaintiffs have been advised that they have up to twenty-one (21) calendar days from the date this Agreement was presented to them for Plaintiffs' consideration to consider the terms of this Agreement. Plaintiffs agree that any modifications, material or otherwise, made to this Agreement do not restart or affect in any manner the twenty-one (21) day consideration period. Plaintiffs have been advised that they should consult with an attorney prior to signing this Agreement. Plaintiffs understand that they may revoke their acceptance of this Agreement for a period of seven (7) calendar days following the date Plaintiffs sign this Agreement. Any revocation within this seven (7) day period must be submitted in writing to OSU, and must state "[Name of Plaintiff] hereby revokes acceptance of our Agreement and General Release."

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READ CAREFULLY BEFORE SIGNING

WHEREFORE, I acknowledge that I have read and understand the Agreement.

JULIANNE TAAFFE

Julianne Taaffe
Signature

16 May, 2018
Date

KATHRYN MOON

Kathryn Moon
Signature

May 16, 2018
Date

THE OHIO STATE UNIVERSITY

Christopher M. Culley
Signature of Duly Authorized Agent

Christopher M. Culley
Printed Name

Senior Vice President and General Counsel

Title

5.23.18
Date

EXHIBIT ONE

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

Julianne Taaffe, et al.,

Plaintiffs,

v.

Michael V. Drake, et al.,

Defendants.

Civil Action No. 2:15-cv-2870

Magistrate Judge Vascura

ENTRY OF DISMISSAL

Pursuant to the terms of the Settlement and Release Agreement reached by the parties in this matter, this case is hereby dismissed with prejudice, subject to this Court's reservation of jurisdiction to enforce the terms of their Agreement. The parties' Settlement and Release Agreement is attached to this Order as Exhibit A.

IT IS SO ORDERED.

Chelsey M. Vascura
United States Magistrate Judge

Frederick M. Gittes (0031444)
Counsel for Plaintiffs

Catherine Strauss (0072980)
Counsel for Defendants