

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (the "Agreement") is made and entered into as of the date all signatories below have executed the Agreement (the "Effective Date") by RONALD D. GALATOLO (hereinafter "Employee") and SAN MATEO COUNTY COMMUNITY COLLEGE DISTRICT (hereinafter "Employer"). Employee and Employer are collectively referred to herein as the "Parties," and each of the Employee and Employer may be referred to individually as a "Party."

RECITALS

This Agreement is entered into with reference to the following facts and recitals which are true to the best of the Parties' knowledge and belief, and are made part of this Agreement:

WHEREAS, on July 1, 2017, Employee and Employer entered into an employment agreement entitled "Employment Agreement for Chancellor," which employment agreement has been previously ratified on an annual basis since Employee's employment with Employer commenced in 1999 (the "Employment Agreement");

WHEREAS, Paragraph 1 of the Employment Agreement provides that Employee's title is "Chancellor" and further provides that the Employment Agreement terminates on June 30, 2021;

WHEREAS, Paragraph 2 of the Employment Agreement assigns a list of "duties" that Employee is obligated to undertake in connection with his employment;

WHEREAS, Paragraph 3 of the Employment Agreement provides that Employee's salary is \$35,122 per month and further provides Employer with the right to afford discretionary salary increases;

WHEREAS, Employee's current monthly salary is \$38,975.00;

WHEREAS, disputes arose between the Parties regarding their employment relationship, which disputes the Parties agreed to submit to mediation before the Honorable Richard A. Kramer (Ret.) ("Judge Kramer") on August 7, 2019;

WHEREAS, classes for the 2019-2020 academic year are scheduled to commence on August 14, 2019, and in anticipation thereof, all Employer's faculty are scheduled to meet on August 12, 2019 ("Opening Day");

WHEREAS, following the August 7, 2019, mediation, the Parties agree that it is in their mutual interests to avoid the uncertainty and expense of litigating disputes between them by reaching a settlement and accommodation of the certain matters encompassed herein, without any admission of law or fact and without any admission of wrongdoing by either Party;

NOW, THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties covenant and agree as follows:

TERMS OF AGREEMENT

Employee and Employer do hereby agree that the foregoing Recitals are incorporated herein by reference, and further agree as follows:

1. Consideration. In consideration of the mutual releases set forth below, the Parties agree as follows:

- a. Execution of Superseding Employment Agreement: The Parties agree that concurrent with their execution of the instant Agreement, the Parties will execute a First Amended Employment Agreement that will supersede and replace the current Employment Agreement (the "Superseding Employment Agreement"), attached hereto as Exhibit A. The terms of the Superseding Employment Agreement will be the same as those set forth in the current Employment Agreement, with the following exceptions:
 - i. The Superseding Employment Agreement shall provide that Employee's title is that of "Chancellor Emeritus," which position shall be added to the Executive Salary Schedule;
 - ii. The Superseding Employment Agreement shall provide for a termination date of March 31, 2022 (the "Termination Date");
 - iii. The Superseding Employment Agreement shall provide that Employee's "duties" are limited to the administration of the "2+2" program and any other such work as is reasonably and mutually agreed upon by the Employee and the Chancellor;
 - iv. The Superseding Employment Agreement shall provide that Employee, in performing his "duties" under the Superseding Employment Agreement, will work from a home office, with reasonable administrative assistance as needed and as deemed necessary by the Employer;
 - v. The Superseding Employment Agreement shall provide that Employee does not report to the Board in the performance of the Employee's "duties." Instead, Employee shall report to and be provided direction by the District's chancellor.
 - vi. The Superseding Employment Agreement shall provide for a monthly salary of \$38,975.00.
- b. Communications Regarding Agreement and Employment. The Parties agree that they will meet and confer and execute a mutually acceptable Joint Press Release and associated talking points regarding the terms of the instant Agreement and the Superseding Employment Agreement and further agree that these shall govern statements to the public at large and to individuals, including any and all future communications regarding Employee's employment, whether external or internal, including both Employee's and the Board of Trustees' remarks at Opening Day, which shall be consistent with the contents of said Joint Press Release and talking points.
- c. Employee's Participation in "Opening Day". The Parties agree that Employee will participate in Opening Day presentations.
- d. Future Disputes. The Parties agree that any and all future disputes between the Parties regarding the interpretation or enforcement of this Agreement, or the terms of the Superseding Employment Agreement, shall

be brought only before the Honorable Richard A. Kramer of JAMS ("Judge Kramer"), who will have exclusive jurisdiction and full authority to interpret, enforce and decide the same in the context of the Parties' rights and obligations pursuant to said agreements and such procedures as Judge Kramer shall determine to be appropriate under the circumstances. Said determinations shall be final and binding and may be enforced as necessary in a court of competent jurisdiction under appropriate court procedures. The parties waive any right to have a jury resolve any such disputes..

2. Release of Claims by Employee.

- a. Except for the obligations and rights expressly set forth and reserved in Paragraph 2.b. of this Agreement, in consideration of the recitals, covenants and agreements set forth in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby expressly acknowledged, Employee hereby releases and forever discharges Employer, including Employer's current and former officers, directors, commissioners, board members, trustees, agents, employees, representatives, attorneys, insurers, departments, divisions, sections, successors and assigns and all those who claim through them or could claim through them (collectively the "Released Parties"), from any and all claims, complaints, demands, causes of action, obligations, damages, costs, expenses, liens, attorneys' fees, warranties, rights and liabilities of any nature whatsoever, whether known or unknown, suspected or not suspected to exist, claimed or not claimed, which Employee may have, including but not limited to any claims that could be brought under Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Whistleblower Protection Act and any other related state or federal law protecting whistleblowers, and the California Fair Employment and Housing Act for harassment, retaliation, or discrimination on the basis of race, age, ancestry, color, religion, sex, marital status, national origin, physical or mental disability, medical condition, sexual orientation, or any other protected classification(s), which have arisen in connection with his employment by Employer, or any other matter of any nature whatsoever from the beginning of time up to the date of the execution of this Agreement. Employee represents that he has no lawsuits, claims or actions pending in Employee's name or on his behalf against Employer or any other Released Party. Employee agrees that in the event Employee brings a claim covered by this release in which Employee seeks damages against Employer or in the event Employee seeks to recover against Employer in any claim brought by a governmental agency on Employee's behalf, this Agreement shall serve as a complete defense to such claims.
- b. The Release contained in Paragraph 2.a. of this Agreement expressly excludes any claims pertaining to or arising out of the amount of Employee's pension to be determined by California's Public Employees Retirement System ("CalPERS") (the "Excluded Claims"). Said Excluded Claims are those claims pertaining to or arising out of any determination by CalPERS as to the amount of the monthly distribution to which Employee is entitled upon retirement. Further, in recognition of the possibility that any determination by CalPERS as to the amount of the monthly distribution to which Employee may be entitled upon retirement may not be made until after the Termination Date, the Parties agree that

the applicable statute of limitations for bringing any Excluded Claims is tolled from the date of this Agreement until September 30, 2022, which date is six months from the Termination Date as provided in the Superseding Employment Agreement. The resolution of any such Excluded Claim shall initially require exhaustion of CalPERS' administrative remedies. If Employee wishes after such exhaustion of CalPERS administrative remedies to bring an Excluded Claim, the Parties shall first participate in confidential non-binding mediation to be conducted by Judge Kramer. Should the matter not be resolved in mediation, the matter shall proceed to final and binding arbitration before a mutually-agreeable arbitrator. The prevailing party in such arbitration shall be entitled to recover reasonable attorneys' fees and costs.

- c. ADEA Waiver and Release. Employee hereby completely releases and forever discharges the Released Parties from any claims, known or unknown, foreseen or unforeseen, arising under the Age Discrimination in Employment Act of 1967 ("ADEA") up to the Effective Date. Employee acknowledges that he is knowingly and voluntarily waiving and releasing any rights he may have under the ADEA, as amended. Employee also acknowledges that the promise/s provided in this Agreement constitute independent consideration for said waiver and is/are in addition to any other promise/s to which Employee is entitled. Employee further acknowledges that he has been advised by this writing, as required by the ADEA, that: (a) his waiver and release with respect to ADEA claims do not apply to any rights or claims that may arise after the date he executes this Agreement; (b) he has been advised hereby that he has the right to consult with an attorney prior to executing this Agreement; (c) he has twenty-one (21) days to consider this Agreement before signing it and that, in the event he decides to sign it sooner, he voluntarily waives the 21-day period provided by said Act; (d) he has seven (7) days following his execution of this Agreement to revoke the Agreement ("Revocation Period"); and (e) this Agreement will not be effective until the date upon which the Revocation Period has expired. To revoke this Agreement, a written notice of revocation by Employee must be received by Douglas N. Freifeld, Esq., Fagen Friedman & Fulfrost LLP, 70 Washington Street, Suite 205, Oakland, California 94607, within the seven (7) day period stated.

3. Release of Claims by Employer. Employer hereby releases, acquits and forever discharges Employee, and his agents, servants, employees, attorneys, shareholders, successors, assigns and affiliates (hereinafter the "Employee Released Parties"), from any and all claims, liabilities, demands, causes of action, costs, expenses, attorneys' fees, damages, indemnities and obligations of every kind and nature, in law, equity, or otherwise, known and unknown, suspected and unsuspected, disclosed and undisclosed, arising out of or in any way related to agreements, events, acts or conduct at any time prior to and including the date the Parties sign this Agreement, including but not limited to: any and all such claims and demands, directly or indirectly, arising out of or in any way connected with Employee's employment with Employer. Employer represents that it has no lawsuits, claims or actions pending in Employer's name or on behalf of any other person or entity, against Employee or any other Employee Released Parties. Employer agrees that in the event Employer brings a claim covered by this release in which Employer seeks damages against Employee or in the event Employer seeks to recover against Employee in any claim brought by a governmental agency on Employer's behalf, this Agreement shall serve as a complete defense to such claims.

4. Waiver of Unknown Claims. The Parties understand that, with the exception of the Excluded Claims, this is a full and final release of any and all claims and causes of action which the Parties now have, or in the future may have, against the Released Parties or the Employee Released Parties, for any and all alleged actions or inactions of the persons or entities released, including any and all claims for any alleged injuries or damages of any type or description arising out of, or in any way connected with, Employee's employment with Employer. The Parties hereby acknowledge that there is a risk that subsequent to the execution of this Agreement, the Parties may incur, suffer or sustain injury, loss, damage, costs, attorneys' fees, expenses or any of these, which are in some way caused by or connected with Employee's employment with Employer and which are unknown or unanticipated at the time this Agreement is executed. The Parties further acknowledge that there is a risk that such damages as are presently known may become more serious than the Parties now expect or anticipate. Nevertheless, the Parties acknowledge that this Agreement has been negotiated and agreed upon in light of these realizations and the Parties hereby expressly waive all rights that the Parties may have in such unknown or unanticipated claims related to Employee's employment with Employer. In so doing, the Parties understand and knowingly, voluntarily and specifically waives all rights they may have under California Civil Code Section 1542, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

The Parties hereby acknowledge that while Section 1542 is phrased as a general release and the parties are not providing a general release because of the retention of the Excluded Claims, it is the intent of the parties to mutually release each other to the fullest extent possible, except for the Excluded Claims. The Parties hereby expressly waive and relinquish all rights and benefits under that section and any law of any jurisdiction of similar effect with respect to their release of any unknown or unsuspected claims the Parties may have against the Released Parties or the Employee Released Parties.

5. Non-Admission of Liability. This Agreement is not an admission of guilt or wrongdoing by the Parties, any Released Parties or Employee Released Parties.

6. Non-disparagement. For the term of this Agreement, neither Employee nor the Board of Trustees nor any individual Trustee shall make statements that purposefully disparage or cast the other's personal or professional reputation in a bad light. Additionally, Employee and the Board of Trustees and each individual Trustee will not make public comments that disparage the other directly or indirectly.

7. Entire Agreement. This Agreement constitutes the complete, final and exclusive, embodiment of the entire agreement between the Parties with regard to the Superseding Employment Agreement as set forth herein on this subject matter. It is entered into without reliance on any promise or representation, written or oral, other than those expressly contained herein, and it supersedes any other such promises, warranties or representations.

8. Modification. This Agreement may not be modified or amended except in writing signed by both Parties.

9. Successors and Assigns. This Agreement shall bind the heirs, personal representatives, successors and assigns of both Parties, and inure to the benefit of both Parties, their heirs, successors and assigns.

10. Severability. If any provision of this Agreement is determined to be invalid or unenforceable, in whole or in part, this determination will not affect any other provision of this Agreement and the provision in question shall be modified by the court so as to be rendered enforceable.

11. Choice of Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

12. Voluntary Execution. The Parties represent that each has carefully read this Agreement, that each knows and understands the content and consequences of it, and signs it of their own free act, without any mistake, duress or undue influence. In delivering this Agreement, Employee relies upon Employee's own judgment, belief and knowledge and has not been influenced in any way by any representations or statements not set forth in this Agreement regarding its contents by any party who is hereby released or by anyone representing said part(ies).

13. Attorneys' Fees. With the exception of any dispute between the Parties heard or mediated by Judge Kramer or by his replacement if any, in the event either i) a dispute is brought for resolution under paragraphs 1d or 2b, above, or ii) any action or suit is brought alleging a default under or breach of this Agreement, or for any claim, demand or cause of action found to have been discharged hereby, the prevailing party in such action, suit or arbitration shall be entitled to recover reasonable attorneys' fees and costs.

14. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original, and all of which shall constitute one instrument. It shall not be necessary in making proof of this Agreement to account for more than one counterpart.

15. Headings. The headings in this Agreement are intended solely for convenience of reference and shall be given no effect in the construction or interpretation of this Agreement.

16. Representations and Warranties. Employee and Employer each represent and warrant that:

- a. Each has read this Agreement;
- b. Each has made such investigation of the facts pertaining to this Agreement as each deems necessary;

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- c. Each understands all terms of this Agreement; and
- d. Each executes this Agreement voluntarily with full knowledge of its legal consequences.

PLEASE READ THIS AGREEMENT CAREFULLY. THIS AGREEMENT INCLUDES A GENERAL RELEASE OF ALL KNOWN AND UNKNOWN CLAIMS.

Dated: August 12, 2019

By: 

RONALD D. GALATOLO

Dated: August 12, 2019

SAN MATEO COUNTY COMMUNITY COLLEGE
DISTRICT

By: 

Maurice Goodman
President, Board of Trustees
San Mateo County Community College District