

SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT AGREEMENT AND RELEASE (Agreement) is entered into between [REDACTED] (JANE DOE I), [REDACTED] (JANE DOE II), [REDACTED] (JANE DOE III), [REDACTED] (JANE DOE IV), [REDACTED] (JANE DOE V), [REDACTED] (JANE DOE VI), [REDACTED] (JANE DOE VII), [REDACTED] (JANE DOE VIII) (the Plaintiffs) and THE UNIVERSITY OF TENNESSEE (the University) (collectively, the Parties).

WHEREAS, Plaintiffs brought an action against the University in the United States District Court for the Middle District of Tennessee, No. 3:16-cv-00199 (the Pending Action); and

WHEREAS, the Parties desire to settle all claims in the Pending Action and all claims that Plaintiffs could have brought against the University or other Released Parties as defined herein;

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

1. Non-Admission of Liability. This Agreement is not an admission of liability. The University denies Plaintiffs' allegations of Title IX violations and other wrongdoing. Plaintiffs understand and agree that this Agreement is made in compromise of disputed claims and that payments made pursuant to this Agreement are not to be construed as an admission of liability on the part of the University or any other Released Party.

2. Payment by University. The University will issue a payment in the amount of Two Million Four Hundred Eighty Thousand Dollars (\$2,480,000) Dollars to the trust account of David Randolph Smith and Associates (the Law Firm) in full and final settlement of all matters in the case, including damages, attorneys' fees, costs, and discretionary costs. Payment will be made within five (5) business days following the entry of a court order dismissing the Pending Action with prejudice and the University's receipt of an IRS Form W-9 from the Law Firm. The Law Firm will then distribute payments to the Plaintiffs in accordance with separate agreements between or among the Law Firm and the Plaintiffs. Any dispute relating to the distribution of the payments by the Law Firm shall not serve as a basis for invalidating this Agreement.

3. Tax Considerations.

a. Plaintiffs are responsible for determining the taxability of payments they receive pursuant to this Agreement. The University acknowledges that all Plaintiffs, except [REDACTED], have made claims in the First Amended Complaint for alleged physical injuries including actual and emotional damages arising from physical injuries. The University makes no representations regarding the tax consequences or liability arising from any such payments, and the Plaintiffs and their parents agree that (i) nothing in this Agreement shall be construed as tax advice or a representation by the University

as to the taxability of any money that Plaintiffs or their parents receive pursuant to this Agreement, and (ii) neither the University nor any person assisting the University with the negotiation of this Agreement have advised Plaintiffs, their parents, or the Law Firm as to the tax consequences, if any, of money paid pursuant to this Agreement. The University will issue to the Law Firm an IRS Form 1099 in connection with the payments.

b. Plaintiffs and their counsel acknowledge that they remain solely responsible for their final tax liability, if any, related to payments under this Agreement. Plaintiffs further agree to hold the University harmless from and against any tax or tax withholding claims, amounts, interest, penalties, fines or assessments brought or sought by any taxing authority with regard to payments made pursuant to this Agreement.

4. Title IX Enhancements. The Parties agree that The University of Tennessee, Knoxville (UTK) has taken significant steps demonstrating its commitment to creating a safe living, learning, and working environment since issuance of the April 4, 2011 Dear Colleague Letter. These steps have included ongoing enhancements to policies and programs relating to preventing, investigating, resolving, and otherwise addressing incidents involving sexual misconduct. The Parties agree that it is important for UTK to continue to analyze and enhance its policies and programs. Therefore:

a. UTK will initiate a change to its student conduct rules to provide that current students will not be appointed to serve on student disciplinary hearing boards in cases involving allegations of sexual misconduct unless both the respondent and the complainant consent to having students appointed to serve on the board hearing their case. Plaintiffs recognize that UTK is required to promulgate certain proposed policy changes, including this change, in accordance with the rulemaking provisions of the Uniform Administrative Procedures Act (UAPA), the last step of which involves review by the Tennessee General Assembly's Joint Government Operations Committee. Provided that UTK initiates the rule change, non-implementation of the rule change will not be deemed a breach of this Agreement.

b. The University President will appoint an independent commission, within sixty (60) days following final approval of this settlement agreement, made up of independent, unaffiliated, nationally recognized individuals who have expertise on establishing or maintaining federal law compliance programs. The commission will be charged with reviewing and recommending enhancements to the University of Tennessee System's policies and programs relating to preventing, investigating, resolving, and otherwise addressing sexual misconduct incidents. Plaintiffs recognize that certain recommendations might require policy changes subject to the rulemaking provisions of the UAPA, including review by the Tennessee General Assembly's Joint Government Operations Committee. A decision not to implement one or more proposed recommendations will not be deemed a breach of this Agreement.

c. The Parties agree that UTK will enhance its current training programs by using its best efforts to enforce mandatory sexual assault training for all UTK employees

who, in UTK's good faith judgment, are reasonably likely to be the first to receive information about incidents of sexual assault, such as Student Life staff (including housing, student health, and student counseling employees), UTPD, athletics staff (including coaches), and designated faculty members. In addition, UTK will enhance its current annual published reports outlining the number of student-on-student misconduct reports received by UTK and the number and types of interim care and support measures provided to complainants, by adding summaries of UTK's efforts to prevent sexual assault, including a summary of training provided to freshmen, transfer students, student-athletes, and UTK employees, to the annual reports.

d. The Parties agree that prior to the execution of this Agreement, UTK discontinued providing a written list of potential lawyers to student-athletes even though the practice did not violate any law or NCAA rule. The Parties agree that UTK will not provide such a list in the future but may refer student-athletes to a local bar association.

5. Complete Release of Claims. Plaintiffs and their parents, for themselves, their heirs, assigns, and executors hereby release the University, its agents, servants, employees, former employees, officers, trustees, and related entities (collectively, Released Parties) of and from any and all actions, causes of action, claims, demands, damages, compensation, benefits, attorneys' fees, costs, and expenses, and all other damages, known and unknown, and all incidental or consequential damages on account of, or related to, any claim Plaintiffs and/or their parents may have against the Released Parties. This release of claims specifically includes, but is not limited to: (1) all matters alleged, or which could have been alleged, by Plaintiffs and their parents in the Pending Action; (2) all claims relating to sexual assault, domestic violence, dating violence, retaliation, or other personal injury; (3) all claims relating to the University's disciplinary processes, or the decision not to initiate disciplinary action, arising from any allegations related to the Pending Action; (4) all actions or omissions of any of the Released Parties that have occurred at any time up to the date they sign this Agreement; and (5) all claims or facts in addition to or different from those which Plaintiffs and their parents now know or believe to exist with respect to the subject matter of this Agreement and which, if known or suspected at the time of executing this Agreement, may have materially affected their decision to settle the Pending Action. The Plaintiffs and their parents acknowledge that the claims they are releasing may arise under many different laws (including statutes, regulations, other administrative guidance, and common law doctrines), including, but not limited to: Title IX of the Education Amendments Act of 1972; Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act; Section 1983 of the Civil Rights Act of 1866; any corresponding state laws; and any claims under any tort or contract theory. Plaintiffs and their parents understand that they are releasing claims they may not know about, that they intend to do so, and that is their knowing and voluntary intent, even though they recognize that someday they might learn that some or all of the facts they currently believe to be true are untrue and even though they might then regret having signed this Agreement. Nevertheless, Plaintiffs and their parents are assuming that risk, and they agree that this Agreement shall remain effective in all respects in any such case. Plaintiffs and their parents expressly waive all rights they might have under any law that is intended to protect them from waiving unknown claims, except as otherwise provided in this Agreement.

6. Covenant Not to Sue. Plaintiffs and their parents, for themselves, their heirs, assigns, and executors hereby covenant not to sue or otherwise initiate against the University or any other Released Party any new legal or administrative proceedings, claims, or causes of action – whether known or unknown – arising out of or in any way connected to the facts or circumstances giving rise to the Pending Action, including without limitation claims arising out of University disciplinary proceedings under the UAPA. This Agreement may be introduced as evidence at any legal proceeding as a complete defense to any claims existing as of the date of this Agreement ever asserted by Plaintiffs and their parents, for themselves, their heirs, assigns, and executors against the University or any other Released Party.

7. Announcement of Settlement. The Parties agree that there will be no press conference in this matter, nor will the Plaintiffs, their families, their counsel, or counsel for the University, submit to press interviews or respond to press inquiries. The Parties agree that they will announce the settlement of this matter through the press release attached as Exhibit A. The timing of the issuance of the press release, following execution and approval of the Agreement by appropriate persons, will be mutually agreed upon by counsel for the Parties. The Parties and their attorneys will use their best efforts to keep the settlement of this matter confidential until the press release is issued.

8. Dismissal of Pending Action. Simultaneously with the issuance of the press release, counsel for Plaintiffs will file the Stipulation of Dismissal with Prejudice attached as Exhibit B.

9. Non-disparagement and Confidentiality.

a. Plaintiffs and their parents agree that they will not, either directly or indirectly (for example through another family member or friend), discuss, provide information, make or issue statements, or take any action that (i) publicizes this Agreement or the amount of money they have received, or (ii) that disparages or portrays the University or any Released Party in a negative light or that would otherwise reflect unfavorably on the University or Released Party, or otherwise cause or contribute to the University or Released Party being held in disrepute. If the Plaintiffs, their Parents, or their counsel are asked to comment on this settlement, they will refer to the press release or otherwise make statements to the effect that the matter has been resolved.

b. The University will take appropriate steps to instruct senior administrators with the University System and UTK, athletics department personnel, and other University employees who have direct knowledge about facts relating to the alleged assaults of the Plaintiffs that they are not permitted to make public information, issue public statements, or take any action that personally disparages or portrays any Plaintiff in a negative light or that would otherwise reflect unfavorably on her or otherwise cause or contribute to her being held in disrepute. Provided, however, nothing in this Paragraph 9 shall be construed to prevent the University from: (i) conducting University business relating to sexual assault and Title IX matters, including, but not limited to, discussing the resolution of the Pending Action, matters pertaining to sexual assault, Title IX-related issues, or enhancements to the University's sexual assault prevention efforts, provided

that Plaintiffs are not personally disparaged; or (ii) informing football and men's basketball student-athletes about this Agreement, including instructing those student-athletes from avoiding direct or indirect contact with any Plaintiff.

c. Provided, however, nothing in this Agreement should be construed as preventing any Party (or in the case of the University, any current or former employee) from (i) participating, or in any way limiting or affecting the Party's participation, in any legal proceeding, specifically including, but not limited to, any criminal or civil litigation; University disciplinary matter (such as a contested case hearing); or in any proceeding involving a federal or state agency; or (ii) preventing the University from participating in any legislative hearings or discussions relating to sexual assault or student disciplinary matters (e.g., review by the Tennessee General Assembly's Joint Government Operations Committee as contemplated by Paragraph 4).

d. The Parties acknowledge that the University is subject to the Tennessee Public Records Act, particularly TENN. CODE ANN. §§ 10-7-503 to 10-7-506, and the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g. Nothing in this Agreement shall be construed to prevent or restrict the University from complying with its obligations under the Tennessee Public Records Act or the Family Educational Rights and Privacy Act in any way.

10. No Contact. Plaintiffs and their parents agree that they will not, either directly or indirectly, contact individuals who are currently members, or who become members over the next three (3) years, of the University's football or men's basketball teams unless required to do so in relation to a court or UAPA proceeding. The University agrees to use good faith efforts to instruct individuals who are currently members, or who become members over the next three (3) years, of the University's football and men's basketball teams that they shall not, either directly or indirectly, contact the Plaintiffs or their parents unless required to do so in relation to a court or UAPA proceeding.

11. Agency Actions. With the exception of the Pending Action and Department of Education Office for Civil Rights (OCR) Complaint No. 04-15-2364 (██████████) and No. 04-15-2368 (██████████), Plaintiffs have not filed or caused to be filed any lawsuit, complaint, or charge with respect to any claim this Agreement purports to release. Within ten (10) days of the filing of the Stipulation of Dismissal of the Pending Action, ██████████ and ██████████, through their counsel, will request that OCR dismiss the pending OCR complaints and will in good faith attempt to assure their dismissal. Plaintiffs further agree never to file or prosecute a lawsuit based on such claims and never to seek any damages, injunctive, or other relief against the Released Parties with respect to causes of action released in this Agreement. Plaintiffs waive their right to recover or receive money damages for any claim in any forum (including, but not limited to those that might result from any federal agency proceedings), but they do not waive their right to initiate or participate in any investigation by OCR or any other government agency.

12. Acknowledgements. The Plaintiffs and their parents acknowledge:

a. The Plaintiffs have been represented by legal counsel during the Pending Action and have had full opportunity and sufficient time to discuss the terms of this Agreement with legal counsel;

b. This Agreement is written in a manner calculated to be understood by the Plaintiffs and their parents;

c. The Plaintiffs and their parents fully understand the terms of this Agreement;

d. The Plaintiffs and their parents intend to be legally bound by this Agreement;

e. The consideration provided in this Agreement is in addition to any compensation already owed or to anything of value to which Plaintiffs or their parents were already entitled before executing this Agreement. The Plaintiffs' parents agree that there is sufficient consideration, including, but not limited to, the ability to use payments received by the Plaintiffs, instead of family funds, to pay for education costs, to support the parents' obligations under this Agreement, including without limitation Paragraphs 5 and 8 of this Agreement.

f. The Plaintiffs' and their parents' execution of this Agreement is knowing and voluntary, made without coercion or distress, without relying on any representation by any other person in making the decision to execute this Agreement, and that they have had a reasonable time to consider the Agreement; and

g. This Agreement does not release the Plaintiffs and their parents from any obligation (or breach thereof) undertaken in this Agreement.

13. Authority to Execute. The Parties represent and warrant that no person other than the signatories hereto had or has any financial interest in the matters referred to in this Agreement, that the Parties (and Plaintiffs' parents) have the sole right and exclusive authority to execute this Agreement, and that the Parties (and Plaintiffs' parents) have not sold, assigned, transferred, conveyed, or otherwise disposed of any claim, demand or legal right that is the subject of this Agreement.

14. Governing Law. This Agreement shall be subject to and interpreted under the laws of the State of Tennessee.

15. Severability. If any provision of this Agreement is determined to be invalid, illegal, or unenforceable in any respect, such provision shall be enforced to the maximum extent possible given the intent of the Parties as expressed in 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.

16. Additional Approvals. This Agreement is subject to written approval by the Attorney General, Comptroller, and Governor of the State of Tennessee, and it is not final and binding without such approvals. The University and its counsel will use their best efforts to obtain approval of this Agreement by these state officials. If approved, the University will promptly notify counsel for Plaintiffs and agree on a date and time for the prompt filing of the press release and Stipulation of Dismissal. If not approved, this Agreement will be null and void.

17. Miscellaneous. This Agreement contains the entire agreement and understanding between the Parties. The terms of this Agreement are contractual and not a mere recital. This Agreement may not be modified or amended except by written instrument signed by the Parties. The waiver by any Party of a breach or violation of any provision of this Agreement shall not be construed as a waiver of any other provision or of any subsequent breach or violation of the Agreement. The provisions of this Agreement are severable and independent, and the invalidity, illegality, or unenforceability of any provision herein shall not affect the validity, legality, or enforceability of the remaining provisions of this Agreement. This Agreement is deemed to have been drafted jointly by the Parties. Any uncertainty or ambiguity shall not be construed for or against any other party based on attribution of drafting to any party. This Agreement may be executed in counterparts, each of which shall be deemed an original, and of which together shall constitute one and the same instrument.

[Signature Pages to Follow]

JANE DOE I

[REDACTED]

Plaintiff

Date: [REDACTED]

[REDACTED]

Date: [REDACTED]

[REDACTED]

Date: [REDACTED]

JANE DOE II

[REDACTED]

Date: [REDACTED]

[REDACTED]

Date: [REDACTED]

[REDACTED]

Date: [REDACTED]

JANE DOE III

[REDACTED]

Plaintiff

Date: [REDACTED]

[REDACTED]

Date: [REDACTED]

[REDACTED]

Date: [REDACTED]

JANE DOE IV

[REDACTED]

Plaintiff

Date: [REDACTED]

[REDACTED]

Date: [REDACTED]

[REDACTED]

Date: [REDACTED]

JANE DOE V

[REDACTED]

Plaintiff

Date:

[REDACTED]

Date: _____

Date: _____

JANE DOE V

[REDACTED]

Plaintiff

Date:

[REDACTED]

Date:

[REDACTED]

[REDACTED]

Date:

[REDACTED]

JANE DOE VI

[REDACTED]

Plaintiff

Date: _____

[REDACTED]

[REDACTED]

Date: _____

[REDACTED]

[REDACTED]

Date: _____

[REDACTED]

JANE DOE VII

[REDACTED]

Plaintiff

[REDACTED]

Date:

[REDACTED]

[REDACTED]

Date:

[REDACTED]

[REDACTED]

Date:

JANE DOE VIII

[REDACTED]

Plaintiff

Date:

[REDACTED]

[REDACTED] _____

Date: _____

[REDACTED] _____

Date: _____

JANE DOE VIII

Plaintiff

Date: _____

Date: _____

Date: _____

JANE DOE VIII

Plaintiff

Date: _____

Date: _____

Date: _____

DAVID RANDOLPH SMITH & ASSOCIATES



David Randolph Smith
(As to Form Only)

Date: _____

THE UNIVERSITY OF TENNESSEE

James R. Maples
Interim Treasurer and Chief Financial Officer
The University of Tennessee


Date: _____

DAVID RANDOLPH SMITH & ASSOCIATES

David Randolph Smith
(As to Form Only)

Date: _____

THE UNIVERSITY OF TENNESSEE



James R. Maples
Interim Treasurer and Chief Financial Officer
The University of Tennessee

Date: 7/1/16

For Immediate Release

Tuesday, July 5, 2016

Rachel Albright
The Ingram Group
rachel@ingramgroup.com
615-345-9200

ATTORNEYS ANNOUNCE SETTLEMENT OF TITLE IX LAWSUIT AGAINST THE UNIVERSITY OF TENNESSEE

KNOXVILLE, TN – Attorneys representing both sides of a Title IX lawsuit against the University of Tennessee, announced today they are settling the case for \$2,480,000.

David Randolph Smith of Nashville, who represents the eight plaintiffs in the lawsuit he filed February 24, said, “My clients and I are dismissing the lawsuit with prejudice and signed the settlement agreement. We are satisfied that, while universities everywhere struggle with these issues, the University of Tennessee has made significant progress in the way they educate and respond to sexual assault cases. My clients and I are also convinced that the University’s leadership is truly committed to continue its exemplary efforts to create a model as it relates to sexual misconduct.

“If we all can look ahead,” Smith said, “and imagine our state’s flagship university as a leader in awareness, education, support and aggressive response to these issues, this lawsuit and the resulting outcome would have contributed in a small way to the safety, well-being and hopeful futures of many young people who from time to time call the University of Tennessee home.”

Aubrey Harwell and **Bill Ramsey** of the Nashville law firm Neal and Harwell, in a statement said, “We recommended and applaud this outcome. Now, the University can continue its aggressive efforts to deal with Title IX issues, and the plaintiffs can go about their lives without the public agony of protracted litigation and trial.”

Dr. Jimmy G. Cheek, Chancellor of UT-Knoxville, praised the agreement and said that he has approved and will announce a new round of initiatives for the campus. He described those initiatives as part of the institution’s ongoing review of its approach to improve its Title IX efforts, unrelated to the lawsuit. These initiatives will include additional support specifically in areas related to sexual assault, student conduct, educational programming and student well-being along with a significant budget increase in recurring funds for these areas.

“No university will be able to prevent every incident of students, faculty or staff making bad judgments,” Cheek said. “Like many institutions we are not perfect, but our goal is to continue to be the best we can be at creating awareness, educating, and preventing discrimination and abuse in any form, and to continue to be equally prepared when it does happen and to deal with it promptly, sensitively, fairly and effectively. We’ve come a long way in recent years, and

we are working every day to be even better. Our first priority is the safety and well-being of every member of our University community.”

Dr. Joe DiPietro, UT System President said, "We are proud of the work done in recent years by our Title IX, student conduct and student welfare professionals at UTK and across our System to create awareness of, respond to and provide support around issues related to sexual assault and sexual misconduct.

"I continue to say that one incident of sexual misconduct is one too many," said DiPietro. "But, unfortunately, on a college campus, these incidents will happen. When they do, I want the confidence of knowing that we did everything within our power to appropriately deal with the situation, and we provided the necessary support for all involved. There are no excuses for anything less.”

DiPietro said addressing the issues of sexual assault and misconduct will continue to be a priority for the UT System. He said, in the coming weeks, he will appoint an independent commission, which will review existing programs and efforts around these issues and make recommendations to further strengthen these critical activities across the UT system.

Raja Jubran, UT Board Vice Chair, said, “Settling this case was the right thing to do from a compassionate perspective for the young women involved and from a reputation perspective for the institution, regardless of the merits of the case.

“One side ultimately would have won in court several years from now, and we felt confident about our legal position,” Jubran said, “but I truly believe that both sides would have lost. The intangible costs of emotional stress to those involved and the distraction to all of our positive progress at UT, over and above actual legal costs, would have been exorbitant.”

The settlement was approved by the Vice Chair of the Board, the UT System President, UT Knoxville Chancellor, the UT Knoxville Vice Chancellor and Director of Athletics, UT General Counsel, Interim Chief Financial Officer; the State Attorney General, the State Comptroller, and the Governor. The court and leaders of both Houses of the Tennessee Legislature were informed of the settlement. Payment of the settlement will be split equally between the UT Knoxville Athletics Department and UT Knoxville central administration. No taxpayer dollars, no student tuition or fees, and no donor funds will be used to fund the settlement.

#

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

JANE DOE I, <i>et al.</i>,)	
)	
Plaintiffs,)	NO. 3:16-0199
)	JURY DEMAND
v.)	JUDGE TRAUGER
)	
THE UNIVERSITY OF TENNESSEE,)	
)	
)	
Defendant.)	

STIPULATION OF DISMISSAL WITH PREJUDICE

Pursuant to Fed. R. Civ. P. 41(a)(1)(A)(ii), the parties to the above-styled action, through their respective counsel whose signatures appear below, stipulate to the Court that this matter should be and is dismissed with prejudice, with the parties to bear their own costs.

Stipulated this ____ day of _____, 2016.

STIPULATED AND AGREED TO:

DAVID RANDOLPH SMITH & ASSOCIATES

By: s/David Randolph Smith (w/permission)

David Randolph Smith, #011905

Dominick R. Smith, #028783

W. Lyon Chadwick, #029599

Christopher W. Smith, #034450

1913 21st Avenue South

Nashville, TN 37212

(615) 742-1775 – Telephone

(615) 742-1223 – Fax

Counsel for Plaintiffs

NEAL & HARWELL, PLC

By: s/William T. Ramsey
William T. Ramsey, #009245
Kendra E. Samson, # 018976
Robert A. Peal, #025629

150 Fourth Avenue North
Suite 2000
Nashville, TN 37219
(615) 244-1713 – Telephone
(615) 726-0573 – Fax

By: s/Brian A. Lapps, Jr.
Brian A. Lapps, Jr., #016185

Deputy General Counsel
University of Tennessee
719 Andy Holt Tower
Knoxville, Tennessee 37996
(865) 974.0328 – Telephone

Counsel for Defendant