

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (this "Agreement") is made this *10th* day of October 2008, by and between Jaye Flood and Holly Vaughn ("Plaintiffs") and the Board of Trustees of Florida Gulf Coast University and Does 1 through 13 (the members of the Board of Trustees in their individual capacities) (collectively, "FGCU" or "Defendants").

WHEREAS, on May 12, 2008, the Plaintiffs filed their First Amended Complaint in the United States District Court for the Middle District of Florida, *Flood and Vaughn v. Board of Trustees of the Florida Gulf Coast University and Does 1 through 13*, 2:08-cv-30-FtM-34;

WHEREAS, the Plaintiffs and FGCU desire to fully resolve and settle the First Amended Complaint and any other claims between the parties on the terms set forth herein; and

WHEREAS, the Plaintiffs and FGCU have negotiated and reached this Agreement in good faith.

NOW, THEREFORE, it is hereby agreed as follows by the Plaintiffs and FGCU (collectively, the "Parties"), in consideration of the mutual releases and other terms set forth herein, and the payment of certain sums provided herein by FGCU to the Plaintiffs, which the Parties agree is good and valuable consideration for the various covenants and understandings set forth in this Agreement:

1. **Settlement Payment:** FGCU shall pay the total sum of Three Million Four Hundred Thousand Dollars (\$3,400,000.00) (the "Payment") in full satisfaction of the First Amended Complaint and any claims between the parties. The Payment shall be made as follows:

- (a) **First Installment:** The first installment in the amount of \$2,400,000.00 (Two Million Four Hundred Thousand Dollars) shall be paid no later than October 3, 2008, provided that the essential documents to request a check are received by Risk Management. The first installment shall be made and allocated as follows:
 - (i) \$1,965,000.00 (One Million Nine Hundred Sixty-Five Thousand Dollars) shall be made payable to Webster, Fredrickson, Correia & Puth ("WFCP") in trust for Jaye Flood. Defendants shall issue an IRS Form 1099 to Flood, reflecting the payment of "other income" for this amount. Defendants also shall issue an IRS Form 1099 to WFCP, reflecting the payment of "other income" for the amount paid to Flood.
 - (ii) \$435,000.00 (Four Hundred Thirty-Five Thousand Dollars) shall be made payable to WFCP in trust for Holly Vaughn. Defendants shall issue an IRS Form 1099 to Vaughn for this amount, reflecting the payment of "other income" for this amount. Defendants also shall issue an IRS Form 1099 to WFCP, reflecting the payment of "other income" for the amount paid to Vaughn.

- (iii) The payments set forth in paragraphs (i) and (ii) above shall be made in immediately available funds and delivered by overnight delivery to Linda M. Correia, counsel for the Plaintiffs, at Webster, Fredrickson, Correia & Puth, PLLC, 1775 K Street, N.W., Suite 600, Washington, D.C. 20006.
- (b) Second Installment: The second installment shall be paid no later than October 1, 2009. The second installment, in the amount of \$1,000,000.00 (One Million Dollars) shall be paid as follows:
- (i) \$480,000.00 (Four Hundred Eighty Thousand Dollars) shall be made payable to WFCP in trust for Jaye Flood. Defendants shall issue an IRS Form 1099 to Flood, reflecting the payment of "other income" for this amount. Defendants also shall issue an IRS Form 1099 to WFCP, reflecting the payment of "other income" for the amount paid to Flood.
- (ii) \$20,000.00 (Twenty Thousand Dollars) shall be made payable directly to Jaye Flood, less applicable withholding and payroll taxes. The Parties agree, based on record evidence, that \$20,000.00 represents an appropriate compromise of compensation in lieu of lost wages for the period March 14 to September 3, 2008, and Defendants will issue a W-2 for the gross amount of \$20,000.00, less applicable withholdings.
- (iii) The payments set forth in paragraphs (i) and (ii) above shall be made in immediately available funds and delivered by overnight delivery to Linda M. Correia, counsel for the Plaintiffs, at Webster, Fredrickson, Correia & Puth, PLLC, 1775 K Street, N.W., Suite 600, Washington, D.C. 20006.
- (iv) \$500,000.00 (Five Hundred Thousand Dollars) shall be made payable to Allstate International Assignments, Ltd. ("AIA"), through JMW Settlements, Inc. fbo Jaye Flood structured settlement, 1828 L Street, N.W. Suite 800, Washington, D.C. 20036, to fund Defendants' Periodic Payment obligation set forth below. This reflects an agreement to pay compensation in lieu of damages for loss of career potential and emotional distress. The Parties' understanding is that Plaintiff Flood will receive, through the structured settlement arranged on behalf of FGCU for the benefit of Jaye Flood by JMW Settlements, Inc., Periodic Payments, to Jaye Flood ("Payee") according to the schedule as follows (the "Periodic Payments"):
- \$4,859.44 per month for the life of Jaye Flood, commencing October 1, 2018, with the first 20 years (240 months payments) certain.
- (c) Flood's Rights to Payments: Jaye Flood acknowledges that the Periodic Payments cannot be accelerated, deferred, increased or decreased by Flood; nor shall Flood have the power to sell, mortgage, encumber, or anticipate the Periodic Payments, or any part thereof, by assignment or otherwise.

- (d) Recipient of Any Guaranteed Payments Remaining After the Death of Flood: Any payments to be made after the death of any payee pursuant to the terms of this Settlement Agreement shall be made to such person or entity as shall be designated in writing by Flood to Defendants or their assignee, as appropriate. If no person or entity is so designated by Flood, or if the person designated is not living at the time of Flood's death, such payments shall be made to the estate of Jaye Flood. No such designation, nor any revocation thereof, shall be effective unless it is in writing and delivered to the Defendants or their assignee as appropriate. The designation must be in a form acceptable to the Defendants or AIA before such payments are made.
- (e) Consent to Non-Qualified Assignment:
- (i) Plaintiff Flood acknowledges and agrees that the Defendants shall enter into a Non-Qualified Assignment with Allstate International Assignments Ltd. ("AIA"). AIA's obligation for payment of the Periodic Payments shall be no greater than that of the Defendants (whether by judgment or agreement) immediately preceding the transfer of the Periodic Payments obligation.
 - (ii) Any such transfer shall be accepted by Plaintiff Flood without right of rejection and shall completely release and discharge the FGCU from the Periodic Payments obligation assigned to AIA. Plaintiff Flood recognizes that, in the event of such an assignment, AIA shall be the sole obligor with respect to the Periodic Payments obligation, and that all other releases with respect to the Periodic Payments obligation that pertain to the liability of the Defendants shall thereupon become final, irrevocable and absolute.
 - (iii) Right to Purchase an Annuity: The Defendants, themselves or through their Assignee reserve the right to fund the liability to make the Periodic Payments through the purchase of an annuity policy from Allstate Life Insurance Company. The Defendants or the Assignee shall be the sole owner of the annuity policy and shall have all rights of ownership. The Defendants or the Assignee may have Allstate Life Insurance Company mail payments directly to Plaintiff Flood. Plaintiff Flood shall be responsible for maintaining a current mailing address with Allstate Life Insurance Company.
- (f) Right to Enter Into A Non-Qualified Assignment: The Defendants reserve the right to fund the liability to make the Periodic Payments by entering into a Non-Qualified Assignment with AIA. The Defendants may have AIA remit payments directly to Plaintiff Flood. Plaintiff Flood shall be responsible for maintaining a current mailing address with AIA.
- (g) Discharge of Obligation: The obligation of the Defendants and/or AIA with respect to any particular installment of the Periodic Payments shall be discharged upon the mailing or other transmission on the due date or earlier of a valid check or its electronic equivalent in the specific amount of such payment to the designated address of Plaintiff Flood.

2. Title IX Compliance Review: FGCU agrees to conduct a Title IX Compliance Review in or before 2009, to be completed by an independent expert mutually agreed upon by the Parties, to assess whether the FGCU athletic program is in compliance with Title IX of the Education Amendments of 1972, as amended (hereinafter "Title IX"). In that regard, Plaintiffs' counsel will provide FGCU's counsel with a list of experts in Title IX Compliance Review from which the Parties shall make their selection. After the Compliance Review is complete, FGCU shall take all steps necessary and appropriate to ensure that its athletic program complies with Title IX. FGCU further agrees to conduct and cooperate fully in annual Title IX compliance monitoring performed by a mutually agreed upon expert to ensure compliance for four years thereafter. Unless exigent circumstances occur that prevent the same expert from completing the annual monitoring, the Parties contemplate that the same expert will complete the Compliance Review and the annual monitoring. The Compliance Review described above shall include review of the specific issues raised in the letter from Merrily Dean Baker to then President Richard Pegnetter, dated May 24, 2007. Defendants agree to make a good faith effort to comply with the expert's recommendations as to the issues raised in the letter.

3. News Embargo: The Parties agree to maintain a news embargo regarding the terms of this Settlement until the Parties reach a finalized agreement with releases, but in any event, no earlier than the joint press conference to be held on October 15, 2008.

4. Joint Press Conference: The Parties agree to hold a joint press conference to announce this Settlement to the public.

5. Inquiries About Plaintiffs: Defendants agree (and so they shall instruct their staff) that any inquiry about Jaye Flood or Holly Vaughn to any employee in the Athletic Department shall be directed to the FGCU Office of Human Resources.

6. USA South Volleyball Club: Defendants agree to direct the FGCU volleyball staff to urge the principals of USA South Volleyball Club to refrain from any references to Jaye Flood on their website.

7. No Admissions: By entering into this Settlement Agreement, Defendants do not admit to any wrongdoing. As well, Jaye Flood and Holly Vaughn maintain that Defendants' actions constitute retaliation in violation of Title IX of the Education Amendments of 1972 and defamation.

8. Mediation Expenses: Defendants have paid for all mediation expenses incurred by the Parties on September 3, 2008.

9. Releases by the Plaintiffs: The Plaintiffs hereby release and forever discharge the Defendants (including Defendants' affiliates, direct support organizations, agents, officers, consultants, employees, legal counsel, accountants, financial advisors, and representatives of any kind, and the Board of Trustees and the Trustees in their official capacity and individually), from each and every right, claim, debt, cause of action, demand, suit for damages, liability, legal fee, act or right of action of any nature whatsoever, whether asserted or unasserted, known or unknown, that the Plaintiffs made or could have made against Defendants from the beginning of time until the date

of this Agreement.

10. Releases by Defendants: The Defendants (including Defendants' affiliates, direct support organizations, agents, officers, consultants, employees, legal counsel, accountants, financial advisors, and representatives of any kind, and the Board of Trustees and the Trustees in their official capacity and individually), release and forever discharge Plaintiff Jaye Flood and Plaintiff Holly Vaughn and their respective heirs, administrators, representatives, executors, successors, assigns, and legal counsel from each and every right, claim, debt, cause of action, demand, suit for damages, liability, legal fee, act or right of action of any nature whatsoever, whether asserted or unasserted, known or unknown, that the Defendants made or could have made against the Plaintiffs from the beginning of time until the date of this Agreement.

11. Dismissal: Promptly after this Agreement has been executed by the Parties and after receipt by the Plaintiffs of the First Payment, the Parties shall execute and the Plaintiffs shall file a stipulation dismissing the First Amended Complaint with prejudice.

12. Understanding and Counsel: The Parties represent and warrant that (i) they have read and understand the terms of this Agreement, (ii) they have been represented by counsel with respect to this Agreement and all matters covered by and relating to it, and (iii) they have entered into this Agreement for reasons of their own and not based upon representations of any other party hereto.

13. Legal Fees and Costs: Each of the Parties shall pay its own respective costs and attorneys' fees incurred with respect to the Litigation and this Agreement.

14. Entire Agreement: This Agreement constitutes the entire agreement with respect to the subject matter addressed herein and supersedes any prior written and/or oral agreements between the Parties.

15. Amendments: This Agreement may not be orally modified. This Agreement may only be modified in a writing signed by all of the Parties.

16. Headings: All headings and captions in this Agreement are for convenience only and shall not be interpreted to enlarge or restrict the provisions of the Agreement.

17. Jurisdiction: By this Agreement, each of the Parties submits to the jurisdiction of the United States District Court for the Middle District of Florida for any action to enforce or interpret this Agreement.

18. Counterparts and Facsimile Signatures: This Agreement may be executed in counterparts and all such counterparts when so executed shall together constitute the final Agreement as if one document had been signed by all of the Parties. This Agreement may be executed by facsimile copy and each signature thereto shall be and constitute an original signature, again as if all Parties had executed a single original document.

19. Further Necessary Actions: To the extent that any document is required to be executed by any Party to effectuate the purposes of this Agreement, the Party will execute and deliver such document or documents to the requesting Party.

20. Actions to Enforce: Should any action be brought by one of the Parties to enforce any provision of this Agreement, the non-prevailing party to such action shall reimburse the prevailing party for all reasonable attorneys' fees and court costs and other expenses incurred by the prevailing party in said action to enforce. Plaintiffs expressly reserve their right to assert any claims for interest for any defaulted payment and for any monetary or non-monetary damages incurred or caused by Defendants' non-compliance with this Settlement Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement under seal on the day and year set forth above.

**AGREED AND ACCEPTED:
FOR PLAINTIFFS JAYE FLOOD AND HOLLY VAUGHN:**

By: J. E. Flood
Jaye Flood

Date: 10-11-08

By: _____
Holly Vaughn

Date: _____

By: _____
Linda M. Correia
Webster, Fredrickson, Correia & Puth, PLLC
1775 K Street, N.W., Suite 600
Washington, D.C. 20006

Date: _____

By: _____
Adele P. Kimmel
Amy Radon
Public Justice, P.C.
1825 K Street, N.W., Suite 200
Washington, D.C. 20006

Date: _____

By: _____
Jason L. Gunter
Jason L. Gunter, P.A.
1625 Hendry Street, Suite 103
Fort Myers, FL 33901

Date: _____

19. Further Necessary Actions: To the extent that any document is required to be executed by any Party to effectuate the purposes of this Agreement, the Party will execute and deliver such document or documents to the requesting Party.

20. Actions to Enforce: Should any action be brought by one of the Parties to enforce any provision of this Agreement, the non-prevailing party to such action shall reimburse the prevailing party for all reasonable attorneys' fees and court costs and other expenses incurred by the prevailing party in said action to enforce. Plaintiffs expressly reserve their right to assert any claims for interest for any defaulted payment and for any monetary or non-monetary damages incurred or caused by Defendants' non-compliance with this Settlement Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement under seal on the day and year set forth above.

**AGREED AND ACCEPTED:
FOR PLAINTIFFS JAYE FLOOD AND HOLLY VAUGHN:**

By: _____ Date: _____
Jaye Flood

By: Holly Vaughn Date: 10-12-2008
Holly Vaughn

By: _____ Date: _____
Linda M. Correia
Webster, Fredrickson, Correia & Puth, PLLC
1775 K Street, N.W., Suite 600
Washington, D.C. 20006

By: _____ Date: _____
Adele P. Kimmel
Amy Radon
Public Justice, P.C.
1825 K Street, N.W., Suite 200
Washington, D.C. 20006

By: _____ Date: _____
Jason L. Gunter
Jason L. Gunter, P.A.
1625 Hendry Street, Suite 103
Fort Myers, FL 33901

19. Further Necessary Actions: To the extent that any document is required to be executed by any Party to effectuate the purposes of this Agreement, the Party will execute and deliver such document or documents to the requesting Party.

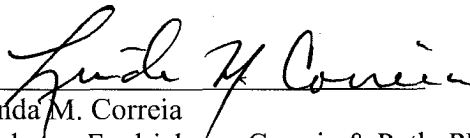
20. Actions to Enforce: Should any action be brought by one of the Parties to enforce any provision of this Agreement, the non-prevailing party to such action shall reimburse the prevailing party for all reasonable attorneys' fees and court costs and other expenses incurred by the prevailing party in said action to enforce. Plaintiffs expressly reserve their right to assert any claims for interest for any defaulted payment and for any monetary or non-monetary damages incurred or caused by Defendants' non-compliance with this Settlement Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement under seal on the day and year set forth above.

**AGREED AND ACCEPTED:
FOR PLAINTIFFS JAYE FLOOD AND HOLLY VAUGHN:**

By: _____ Date: _____
Jaye Flood

By: _____ Date: _____
Holly Vaughn

By:  _____ Date: 10/10/08
Linda M. Correia
Webster, Fredrickson, Correia & Puth, PLLC
1775 K Street, N.W., Suite 600
Washington, D.C. 20006

By: _____ Date: _____
Adele P. Kimmel
Amy Radon
Public Justice, P.C.
1825 K Street, N.W., Suite 200
Washington, D.C. 20006

By: _____ Date: _____
Jason L. Gunter
Jason L. Gunter, P.A.
1625 Hendry Street, Suite 103
Fort Myers, FL 33901

19. Further Necessary Actions: To the extent that any document is required to be executed by any Party to effectuate the purposes of this Agreement, the Party will execute and deliver such document or documents to the requesting Party.

20. Actions to Enforce: Should any action be brought by one of the Parties to enforce any provision of this Agreement, the non-prevailing party to such action shall reimburse the prevailing party for all reasonable attorneys' fees and court costs and other expenses incurred by the prevailing party in said action to enforce. Plaintiffs expressly reserve their right to assert any claims for interest for any defaulted payment and for any monetary or non-monetary damages incurred or caused by Defendants' non-compliance with this Settlement Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement under seal on the day and year set forth above.

**AGREED AND ACCEPTED:
FOR PLAINTIFFS JAYE FLOOD AND HOLLY VAUGHN:**

By: _____ Date: _____
Jaye Flood

By: _____ Date: _____
Holly Vaughn

By: _____ Date: _____
Linda M. Correia
Webster, Fredrickson, Correia & Puth, PLLC
1775 K Street, N.W., Suite 600
Washington, D.C. 20006

By: Adele P. Kimmel Date: 10/10/08
Adele P. Kimmel
Amy Radon
Public Justice, P.C.
1825 K Street, N.W., Suite 200
Washington, D.C. 20006

By: _____ Date: _____
Jason L. Gunter
Jason L. Gunter, P.A.
1625 Hendry Street, Suite 103
Fort Myers, FL 33901

19. Further Necessary Actions: To the extent that any document is required to be executed by any Party to effectuate the purposes of this Agreement, the Party will execute and deliver such document or documents to the requesting Party.

20. Actions to Enforce: Should any action be brought by one of the Parties to enforce any provision of this Agreement, the non-prevailing party to such action shall reimburse the prevailing party for all reasonable attorneys' fees and court costs and other expenses incurred by the prevailing party in said action to enforce. Plaintiffs expressly reserve their right to assert any claims for interest for any defaulted payment and for any monetary or non-monetary damages incurred or caused by Defendants' non-compliance with this Settlement Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement under seal on the day and year set forth above.

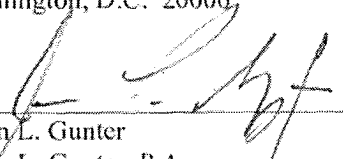
**AGREED AND ACCEPTED:
FOR PLAINTIFFS JAYE FLOOD AND HOLLY VAUGHN:**

By: _____ Date: _____
Jaye Flood

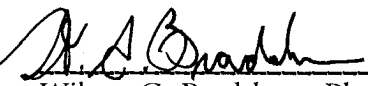
By: _____ Date: _____
Holly Vaughn

By: _____ Date: _____
Linda M. Correia
Webster, Fredrickson, Correia & Puth, PLLC
1775 K Street, N.W., Suite 600
Washington, D.C. 20006

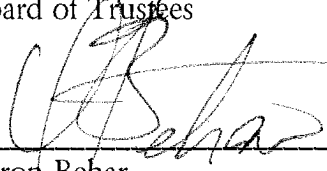
By: _____ Date: _____
Adele P. Kimmel
Amy Radon
Public Justice, P.C.
1825 K Street, N.W., Suite 200
Washington, D.C. 20006

By: _____ Date: 10/11/08

Jason L. Gunter
Jason L. Gunter, P.A.
1625 Hendry Street, Suite 103
Fort Myers, FL 33901

*AGREED AND ACCEPTED:
FOR DEFENDANTS FLORIDA GULF COAST UNIVERSITY
BOARD OF TRUSTEES AND THE TRUSTEES INDIVIDUALLY
AND IN THEIR OFFICIAL CAPACITY:*

By: 
Wilson G. Bradshaw, Ph.D., President
Florida Gulf Coast University
Board of Trustees

Date: 10/14/08

By: 
Aaron Behar
Lydecker, Lee, Behar, Berga & de Zayas, LLC
1201 Brickell Avenue, Fifth Floor
Miami, FL 33131

Date: 10/15/08