

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into by and between the United States of America (“United States”), acting through the United States Attorney’s Office for the Eastern District of California, on behalf of the Corporation for National and Community Service (“CNCS” or “AmeriCorps”) (collectively, the “United States”); University of San Francisco (“USF”); and Loran Simon (“Relator”) (hereinafter collectively referred to as “the Parties” and each is individually referred to as a “Party”), through their authorized representatives.

RECITALS

A. USF is a private, non-profit, public benefit corporation with its primary campus located in San Francisco, California. At all times pertinent to this agreement, USF was the fiscal agent for the San Francisco Teacher Residency (“SFTR”).

B. On or about November 23, 2016, Relator filed a *qui tam* lawsuit against USF and others in the United States District Court for the Eastern District of California captioned *United States of America Ex rel. Loran Simon v. University of San Francisco, and Community Initiatives*; Case No. 2:16-CV-2789 MCE AC (the “Civil Action”). Relator was formerly the Assistant Director of SFTR. Relator alleges and USF denies that USF knowingly presented false and fraudulent claims to CNCS in order to secure certain federal grants and federal funds for SFTR in violation of the False Claims Act 31 U.S.C. §§ 3729-3733 (the “FCA”).

C. The United States contends that it has certain civil claims against USF under the

FCA arising from USF's status as the fiscal agent which applied AmeriCorps funds to support and administer SFTR, including, the United States contends USF, along with USF's agents, contractors, and faculty, including the SFTR Director, falsified and submitted over 1,500 false and inaccurate AmeriCorps member timesheets and employee timesheets to the United States and falsely certified Education Awards, which qualified the program and students for receipt of over \$1.7 million dollars in federal grant funds administered by CNCS during the 2014, 2015, and 2016 grant years (the "Covered Conduct").

D. This Agreement is neither an admission of liability or wrongdoing by USF nor a concession by the United States that its claims are not well-founded. Indeed, USF fully denies the allegations.

E. Relator claims entitlement under 31 U.S.C. § 3730(d) to a share of the proceeds of this Settlement Agreement and to Relator's reasonable expenses, attorneys' fees and costs.

F. To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation, and in consideration of the mutual promises and obligations of this Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. USF shall pay to the United States the total sum of Two Million Five Hundred Sixty-One Thousand Seven Hundred Twenty-Seven Dollars and Fifty Cents (\$2,561,727.50) (the "Settlement Amount"). The Settlement Amount shall be paid to the United States by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney's

Office for the Eastern District of California no later than thirty (30) days after the Effective Date of this Agreement as defined in Paragraph 26 below.

2. Conditioned upon the United States receiving the Settlement Amount from USF and as soon as feasible after receipt, the United States shall pay the Relator a portion of the settlement proceeds. The United States and Relator and his heirs, successors, attorneys, agents, and assigns agree that they each retain all of their rights pursuant to the False Claims Act on the issue of share percentage that Relator should receive of the Settlement Amount, and that no agreement concerning Relator's share of the Settlement Amount has been reached to date.

3. USF agrees to pay Relator for expenses and attorneys' fees and costs arising out of this Civil Case as required by 31 U.S.C. § 3730(d). USF and Relator have agreed to the amount of Relator's expenses and attorneys' fees and costs of One Hundred Forty -One Thousand Dollars (\$141,000.00) (the "Fees and Costs Amount"). And USF shall pay Relator through his counsel the Fees and Costs Amount within 10 days of the effective date of this agreement.

4. Subject to the exceptions in Paragraph 5 (concerning excluded claims) below, and conditioned upon USF's full payment of the Settlement Amount, the United States releases USF together with its current and former direct and indirect parent corporations, current or former direct and indirect subsidiaries or affiliates (inclusive of the members/partners of SFTR) current or former brother or sister corporations, divisions, current or former direct and indirect corporate owners, and the corporate successors and assigns of any of them, and their officers, agents, employees and trustees, from any civil or administrative monetary claim the United States has

for the Covered Conduct arising under the False Claims Act, 31 U.S.C. §§ 3729, et seq.; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801, et seq.; the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, 12 U.S.C. § 1833a; the Injunctions Against Fraud Act, 18 U.S.C. § 1345; common law theories of negligence, gross negligence, payment by mistake, unjust enrichment, money had and received, breach of fiduciary duty, breach of contract, misrepresentation, deceit, fraud, civil conspiracy, and aiding and abetting any of the foregoing; or any other statutory or common law cause of action for civil damages or civil penalties that the Civil Division of the United States Department of Justice has actual and present authority to assert and compromise pursuant to 28 C.F.R. § 0.45(d) in connection with the Covered Conduct.

5. Notwithstanding the release given in Paragraph 4 of this Agreement, or any other term of this Agreement, the following claims of the United States are specifically reserved and are not released:

- a. Any civil, criminal, or administrative liability arising under Title 26, United States Code (Internal Revenue Code);
- b. Any criminal liability;
- c. Any claim by the United States (or its agencies) not arising out of or related to the Covered Conduct;
- d. Except as explicitly stated in this Agreement, any administrative liability, including the suspension and debarment rights of any federal agency; and
- e. Any liability based upon obligations created by this Agreement.

6. Relator and his heirs, successors, attorneys, agents, and assigns shall not object to this Agreement but agree and confirm that this Agreement is fair, adequate, and reasonable under all the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B). Conditioned upon Relator's receipt of the payment described in Paragraph 2, Relator and his heirs, successors, attorneys, agents, and assigns fully and finally release, waive, and forever discharge the United States, its agencies, officers, agents, employees, and servants, from any claims arising from the filing of the Civil Action or under 31 U.S.C. § 3730, and from any claims to a share of the proceeds of this Agreement and/or the Civil Action.

7. USF fully and finally releases the United States, its agencies, officers, agents, employees, and servants, from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that USF has asserted, could have asserted, or may assert in the future against the United States, its agencies, officers, agents, employees, and servants, related to the Covered Conduct and the United States' investigation and prosecution thereof. USF hereby expressly waives all rights it may have by virtue of Section 1542 of the California Civil Code, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT 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.

8. Conditioned upon USF's full payment of the Settlement Amount and Relator's receipt of his portion of the settlement proceeds (as referenced in Paragraph 2 of this agreement)

from the United States, as well as receipt of the Fees and Costs Amount (as referenced in Paragraph 3 of this agreement), USF and Relator fully and finally release each other and each other's heirs, successors, attorneys, agents, and assigns (including Relator releases Community Initiatives, SFTR and each of the partners of SFTR and current and former officers, agents, members and employees thereof), from any and all claims, rights, demands, suits, matters, issues, actions, causes of action, liabilities, damages, losses, obligations, sanctions, costs, loss of services, loss of earnings, compensation of any nature whatsoever, and judgments of any kind or nature whatsoever, from the beginning of time through the Effective Date of this Agreement, whether known or unknown, contingent or absolute, foreseeable or unforeseeable, suspected or unsuspected, disclosed or undisclosed, matured or unmatured, for damages (compensatory or punitive), injunctive relief, or any other remedy, whether for violation of any federal, state, or local law, regulation, rule or ordinance, public policy, contract (express, implied, or otherwise), duty, standard of care, tort, right, common law, or other source of obligation or theory of recovery that each has or may have, may gain, or may assert against the other and the other's heirs, successors, attorneys, agents, and assigns, including but not limited to any and all federal and state claims, whether disclosed or undisclosed, which each has asserted, could have asserted, or may assert now or in the future against the other and the other's heirs, successors, attorneys, agents, and assigns related to this Civil Action and the matters raised therein, the Covered Conduct, and investigation and prosecution thereof. USF and Relator hereby expressly waive all rights they may have by virtue of Section 1542 of the California Civil Code, set forth above. Notwithstanding the foregoing, or any other terms of this Agreement, this Agreement

expressly does not resolve or release any civil liability or settlement award arising from Relator's class membership in the Kelly Gola v. University of San Francisco Class Action, Case No. CGC-18-565018, so long as Mr. Simon remains a member of that class. Relator also agrees not to opt-out of the class. Neither USF nor Relator waive any liability for obligations created by this Agreement. For the avoidance of doubt, this paragraph has no effect on the nature or scope of any release granted by the United States.

9. USF waives and shall not assert any defenses USF may have to any criminal prosecution or administrative action relating to the Covered Conduct that is based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment to the U.S. Constitution, or under the Excessive Fines Clause of the Eighth Amendment to the U.S. Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action.

10. a. Unallowable Costs Defined: All costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47) incurred by or on behalf of USF, and its present or former officers, directors, employees, shareholders, and agents in connection with:

- (1) the matters covered by this Agreement;
- (2) the United States' investigation of the matters covered by this Agreement;
- (3) USF's investigation, defense, and corrective actions undertaken in response to the United States' investigation in connection with the matters covered by this Agreement (including attorney's fees);

- (4) the negotiation and performance of this Agreement; and
- (5) the payment USF makes to the United States pursuant to this Agreement, are unallowable costs for government contracting purposes (hereinafter referred to as “Unallowable Costs”).

b. Future Treatment of Unallowable Costs: Unallowable Costs will be separately determined and accounted for by USF, and USF shall not charge such Unallowable Costs directly or indirectly to any contract with the United States.

c. Treatment of Unallowable Costs Previously Submitted for Payment:
Within 90 days of the Effective Date of this Agreement, USF shall identify and repay by adjustment to future claims for payment or otherwise any Unallowable Costs included in payments previously sought by USF or any of its parents, subsidiaries or affiliates from the United States, if any. USF agrees that the United States, at a minimum, shall be entitled to recoup from USF any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously-submitted requests for payment. The United States, including the Department of Justice and/or the affected agencies, reserves its rights to audit, examine, or re-examine USF’s books and records and to disagree with any calculations submitted by USF or any of its subsidiaries or affiliates regarding any Unallowable Costs included in payments previously sought by USF, or the effect of any such Unallowable Costs on the amount of such payments.

11. Each of the Parties warrants and represents that it freely and voluntarily enters into this Agreement without any degree of duress or compulsion whatsoever, after having been

apprised of all relevant information and data by its legal counsel. Each of the Parties further warrants and represents that no other Party or its representative has made any promise, representation or warranty, express or implied, except as expressly set forth in this Agreement, and that no Party has relied on any inducements, promises, or representations made by any Party to this Agreement, or its representatives, or any other person, except as expressly set forth herein.

12. Except for Relator's or Relator's beneficiary's right to expenses, attorneys' fees, and costs pursuant to 31 U.S.C. § 3730(d), each Party shall bear its own legal and other costs incurred in connection with the investigation, litigation, and resolution of this matter, including the preparation and performance of this Agreement.

13. Except as expressly provided herein, this Agreement is intended for the benefit of the Parties only and does not create any third-party rights. In this Agreement, the Parties do not release any claims against any other person or entity not expressly released by this Agreement.

14. Each individual signing this Agreement on behalf of Relator and USF represents and warrants that he or she has the power, consent, and authorization of Relator and/or USF, as applicable, to execute this Agreement.

15. The individuals signing on behalf of the United States represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement.

16. Each Party represents and warrants that it has not transferred any claim being released under this Agreement, and is not aware of any such transfer, and that the Party is not

aware of any prohibition of any type that prevents the Party from performing the terms of this Agreement.

17. This Agreement is binding on USF and its successors, transferees, heirs, and assigns.

18. This Agreement is binding on Relator's successors, transferees, heirs, and assigns.

19. Each Party warrants that it has been represented by, and has sought and obtained the advice of, independent legal counsel with regard to the nature, purpose, and effect of this Agreement. The Agreement was negotiated by the Parties and their respective counsel, each of whom had the opportunity to participate in the drafting thereof. The Parties hereby declare that the terms of this Agreement have been completely read, fully understood, and voluntarily accepted following opportunity for review by legal counsel of their choice.

20. For purposes of construction, this Agreement shall be deemed to have been drafted by all Parties and shall not, therefore, be construed against any Party for that reason in any dispute.

21. The Parties consent to the public disclosure of this Agreement, and of information about this Agreement.

22. This Agreement constitutes the complete agreement between the Parties, and supersedes and replaces all prior negotiations and agreements, whether written or oral, regarding the resolution of the claims between the Parties with respect to the subject matter hereof.

23. This Agreement may be executed in counterparts, each of which constitutes an original and all of which taken together shall constitute one valid and binding Agreement between the Parties.

24. This Agreement may not be altered, amended, or modified, except by a writing duly executed by authorized representatives of all Parties.

25. This Agreement is governed by the laws of the United States. The Parties agree that the exclusive jurisdiction and venue for any dispute relating to this Agreement shall be in the United States District Court for the Eastern District of California.

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26. This Agreement is effective, final, and binding as of the date of signature of the last signatory to the Agreement ("Effective Date"). Transmittal and receipt of facsimiles or PDF versions of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

THE UNITED STATES

Dated: 5/16/2020

McGREGOR W. SCOTT
United States Attorney


By: 

GEOFFREY D. WILSON
Assistant U.S. Attorney
Attorneys for the United States

UNIVERSITY OF SAN FRANCISCO

Dated: 5/16/20

UNIVERSITY OF SAN FRANCISCO

By: 

CHARLES E. CROSS
Its: Vice President, Business and Finance

**THE CORPORATION FOR NATIONAL AND
COMMUNITY SERVICE**

Dated: _____

By: _____
Its:

LORAN SIMON - RELATOR

Dated: _____

By: _____
Loran Simon



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THE UNITED STATES

Dated: _____

McGREGOR W. SCOTT
United States Attorney

By: _____

GEOFFREY D. WILSON
Assistant U.S. Attorney
Attorneys for the United States

UNIVERSITY OF SAN FRANCISCO

Dated: 5/16/20

UNIVERSITY OF SAN FRANCISCO

By: 

CHARLES E. CROSS
Its: Vice President, Business and Finance

**THE CORPORATION FOR NATIONAL AND
COMMUNITY SERVICE**

Dated: _____

By: HELEN SERASSIO Digitally signed by HELEN SERASSIO
Date: 2020.05.17 12:10:41 -04'00'

Its: Acting General Counsel

LORAN SIMON - RELATOR

Dated: _____

By: _____
Loran Simon



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THE UNITED STATES

Dated: _____

McGREGOR W. SCOTT
United States Attorney

By: _____

GEOFFREY D. WILSON
Assistant U.S. Attorney
Attorneys for the United States

UNIVERSITY OF SAN FRANCISCO

Dated: _____

UNIVERSITY OF SAN FRANCISCO

By: _____

CHARLES E. CROSS
Its: Vice President, Business and Finance

**THE CORPORATION FOR NATIONAL AND
COMMUNITY SERVICE**

Dated: _____

By: _____

Its:

LORAN SIMON - RELATOR

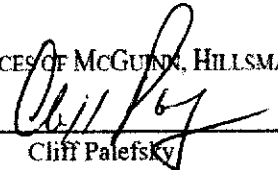
Dated: 5/15/2020

By:  _____

Loran Simon

As to Form:

Dated: 5/15/20

LAW OFFICES OF MCGUIN, HILLSMAN & PALEFSKY
By: 
Cliff Palefsky

Counsel for Relator Loran Simon

Dated:

UNIVERSITY OF SAN FRANCISCO

By: _____
DONNA DAVIS
USF General Counsel

As to Form:

Dated:

LAW OFFICES OF MCGUINN, HILLSMAN & PALEFSKY

By:

Cliff Palefsky

Counsel for Relator Loran Simon

Dated: 5/16/2020

UNIVERSITY OF SAN FRANCISCO

By:



BONNA DAVIS

USF General Counsel