

## COMPROMISE AND SETTLEMENT AGREEMENT

**THIS COMPROMISE AND SETTLEMENT AGREEMENT** (“Agreement”) is entered into by and between Paul Isom (Isom), and East Carolina University (ECU), a state-supported institution of higher education and constituent institution of the University of North Carolina, acting by and through its authorized officials;

**WHEREAS**, Isom was employed beginning July 14, 2008 as the Director of Student Media, responsible for managing, advising and supervising all components of the Department of Student Media, including direct responsibility for advising the student newspaper, *The East Carolinian* (TEC);

**WHEREAS**, on January 4, 2012, ECU discontinued Isom’s position, providing Isom with severance pay for 90 days as mandated by ECU Policy for Employees Exempt from the State Personnel Act;

**WHEREAS**, on January 31, 2012, Isom requested a Review of Discontinuation of Employment and an Extension of Time to Amend Request for Review, which extension was granted until March 1, 2012;

**WHEREAS**, on March 1, 2012, Isom filed his Amended Request for Review of Discontinuation of Employment, in which he alleged that his termination was linked with an unconstitutional punishment related to the editorial content of TEC and requested reinstatement. ECU provided its response to John Chinn, Chair of the Committee on March 30, 2012;

**WHEREAS**, ECU and its employees and agents deny that they have engaged in any unlawful unconstitutional, discriminatory or retaliatory conduct or any breach of contract as alleged by Isom in his Request for Review of Discontinuation of Employment and has explained the basis of its decision;

**WHEREAS**, ECU and its employees and agents and Isom desire to resolve their disputes on mutually agreeable terms;

**NOW, THEREFORE**, for and in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, Isom and ECU agree to the following terms of settlement in full satisfaction of all claims or potential claims which have been, or could be, asserted by Isom against ECU, its officers, agents or employees related to his employment with ECU to the present date:

### I. WARRANTIES

A. Each party warrants and represents to the other that it has been fully informed and has full knowledge of the terms, conditions and effects of this Agreement and that they are of sound mind, memory, and understanding, and further are, in all respects, competent to understand and enter into this Agreement.

B. Each party warrants and represents to the other that no promise or inducement has

been offered or made except as herein set forth, and that they are not under any duress, and that this Agreement is a contractual resolution of disputed claims executed without reliance upon any statement or representation by any other party or its agent and not a mere recital.

C. Each party warrants and represents to the other that they have been advised to consult with legal counsel prior to executing this Agreement.

## **II. OBLIGATIONS**

A. Isom hereby:

1. Withdraws his Request for Review of the Discontinuation of Employment contemporaneously with the execution of this Agreement and will submit promptly such documentation as necessary to communicate that withdrawal to appropriate officials;
2. Tenders his resignation to ECU contemporaneously with the execution of this Agreement;
3. Joins in and agrees to immediate issuance of a joint statement with ECU regarding the matters that are the subject of the Agreement, which statement is attached here as Attachment A; and
4. Agrees to direct requests for employment references to ECU's Vice Chancellor for Student Affairs or the Associate Vice Chancellor for Human Resources.
5. Agrees to the terms of the release and assurances in paragraph III of this Agreement.

B. ECU hereby:

1. Agrees that within thirty (30) days after the next ECU pay date immediately following the date of this Agreement, it will pay Isom \$31,200.00, which is the cost of health insurance and six months additional salary, as a settlement of the disputed claims. This payment is in exchange for his withdrawal of his request for review and agreement to the release and assurances as referenced in II.A and V and the other terms of this Agreement. Isom will be responsible for any and all federal, state, and/or local tax liability or consequences that could arise as a result of said payment;
2. Agrees to and will join in issuing a joint statement with Isom regarding the matters that are the subject of this Agreement, which is Attachment A;
3. Agrees to accept Isom's resignation from the position Director of Student Media and provide him with a reference letter with the content stated in Attachment B in response to any employment related inquiry; and
4. Agrees to the terms of the release specified in paragraph III of this Agreement.

### III. RELEASES AND ASSURANCES

A. Except for Isom's specific contractual rights and benefits under this Agreement and except as prohibited by law, Isom, his heirs, assigns and agents hereby release, acquit and forever discharge The State of North Carolina, The University of North Carolina, the Board of Governors of the University of North Carolina, ECU, and all current and former trustees, officers, agents and employees of the above-named entities (in both their official and individual capacities), and all successors of the above-named entities from all claims, actions, causes of action, demands, rights, damages, costs, sums of money, accounts, covenants, contracts, promises, attorney fees and all liabilities of any kind or nature whatsoever at law, in equity, or otherwise, known or unknown, including but not limited to those under Title VII of the Civil Rights act of 1964, as amended; the Age Discrimination in Employment Act of 1967 (ADEA) as amended; and Uniformed Services Employment and Re-Employment Rights Act (USERRA) as amended from the date of his initial employment at ECU to the date of this Agreement.

As part of the consideration for this Agreement, Isom agrees that, to the extent permitted by law and except as otherwise required by law, neither he nor any of his heirs, legal representatives, or assigns will make or file any claim, charge, lawsuit, or application or benefits, or cooperate voluntarily in any investigation, lawsuit, or legal or administrative proceeding by any individual, entity, or agency, against or involving The State of North Carolina, The University of North Carolina, the Board of Governors of the University of North Carolina, ECU, and all current and former trustees, officers, agents and employees of the above-named entities (in both their official and individual capacities), and all successors of the above-named entities, for or on account of any claim he may have or may have had against The State of North Carolina, The University of North Carolina, the Board of Governors of the University of North Carolina, ECU, and all current and former trustees, officers, agents and employees of the above-named entities (in both their official and individual capacities), and all successors of the above-named entities in connection with his employment or any other relationship with ECU, the matters referenced above, the amount of his salary, and/or the cessation of his employment with ECU. Isom further agrees that, except as prohibited by law, Isom here waives and releases any and all claims for personal damages (including but not limited to damages relating to pain and suffering, back pay, and compensatory and/or punitive damages) resulting from any charge filed with or investigation conducted by any administrative agency in connection with Isom's employment as Director of Student Media or any other employment relationship with ECU from the date of his initial employment at ECU to the date of this Agreement. Provided, however, that nothing within this section applies to Isom's claim for compensation as a Teaching Instructor in the School of Communication from January 6, 2012 until May 4, 2012.

B. Release of Age Discrimination Claims: In compliance with the Age Discrimination in Employment Act (ADEA) as amended by the Older Worker's Benefit Protection Act of 1990 (OWBPA), Isom acknowledges by his signature below that consistent with the releases described in this Agreement he is knowingly and voluntarily waiving his rights under those Acts and releasing the entities listed in Part III.A., from liability for any violations of those Acts. More specifically, Isom acknowledges with respect to the rights and claims waived and released in this Agreement under the ADEA and OWBPA that:

1. He has read and understands this Agreement;

2. He was given at least 21 days from the date this Agreement was initially presented to him to accept the terms of the Agreement and that any decision to sign the Agreement before the end of that period was knowing and voluntarily made and was not induced by ECU through fraud, misrepresentation, or threat to withdraw or alter the Agreement prior to the expiration of the 21 day period;

3. He was advised in writing, via this Agreement, to consult with an attorney prior to executing this Agreement and has, in fact, consulted with an attorney before signing this Agreement;

4. He is releasing all the entities and persons noted in paragraph III.A. of this Agreement from, among other things, any claims of age discrimination under the ADEA or OWBPA;

5. He understands that the release of age discrimination claims contained in this Agreement does not cover any rights or claims that may arise after the date of this Agreement;

6. He understands that this Agreement shall not become effective or enforceable until seven (7) calendar days after he has signed the Agreement and that he may revoke this Agreement within seven (7) calendar days after signing it by delivering to the Office of the Chancellor of ECU a notice of his decision to revoke and by returning to ECU any sums paid him under the terms of this Agreement; and

7. In exchange for his waiving his rights under this Agreement, he has or will receive from ECU good and valuable consideration, including money, beyond that to which he might otherwise have been entitled in the absence of his agreement to waive his rights.

#### **IV. COMPROMISE OF DISPUTED CLAIMS**

Each party understands and agrees that this settlement is in compromise of doubtful and disputed claims; that no covenant herein is to be construed as an admission of liability on the part of any party hereby released; that each party hereby released denies any liability for such claims; and that each party intends merely to resolve the disputed claims between them without further litigation.

#### **V. CONFIDENTIALITY**

The parties agree and acknowledge that Attachments A and B reflect the parties' respective positions regarding the matters resolved by this Agreement. Given that the parties desire to fully resolve this dispute and put the matter behind them, the parties and their respective attorneys agree, jointly and individually, that, in the event the parties or their attorneys are contacted by any news or other media representative regarding this matter or its resolution, including the discontinuation of Isom's employment as ECU's Director of Student Media in January 2012, they will respond by stating that the matter has been amicably resolved on terms agreeable to both sides and provide the

information stated in Attachments A and B, which are incorporated herein by reference. The parties acknowledge that this is a personnel matter, and that Isom's personnel documents other than this Agreement are subject to the confidentiality requirements of the State Personnel Act, N.C. Gen. Stat. 126-22 *et seq.*, in particular N.C. Gen. Stat. § 126-23 and § 126-24.

## **VI. EFFECT OF AGREEMENT**

A. This Agreement shall be binding upon and inure to the benefit of the parties, of their agents, officers, employees, successors, assigns, heirs, executors, and administrators.

B. This Agreement constitutes the entire Agreement between the parties and supersedes previous discussions or agreements that the parties may have had or made regarding the settlement of their disputes.

## **VII. SEVERABILITY**

If any of the provisions of the Agreement are determined to be invalid or unenforceable, that provision so determined shall be severable from the other provisions of the Agreement, and the Agreement shall be construed and enforced as if such invalid or unenforceable provision had not been included herein.

## **VIII. GOVERNING LAW AND FORUM SELECTION**

It is agreed, between the parties, that this Agreement shall be governed by, construed and enforced in accordance with laws of the State of North Carolina and that the place of this contract, its situs and forum shall be Pitt County, North Carolina, where all matters relating to the validity, construction, interpretation, and enforcement shall be determined.

## **IX. TAX ISSUES**

Consistent with federal and state tax law and ECU policy, ECU will take deductions for customary withholdings for federal and state income taxes and social security taxes from the payment of \$31,200.00, which payment will be reported on a 2012 W-2 Form issued by ECU. In the event that any agency of the United States or other taxing authority should determine that any sum paid under this Agreement was subject to any additional withholding of taxes, Isom agrees to indemnify and hold ECU harmless for any amount of taxes or penalties that may be found to be due and owing.

## **X. PUBLIC RECORD**

Isom and ECU agree that this Agreement constitutes a public record which is subject to the public disclosure requirements specified in Chapter 132 of the North Carolina General Statutes.

## **XI. NO PRESUMPTION AGAINST THE DRAFTER.**

No legal or other presumptions against any Party drafting this Agreement concerning its construction, interpretation, or otherwise shall accrue to the benefit of any other Party, and each

Party expressly waives the right to assert such a presumption in any proceedings or disputes connected with, arising out of, or involving this Agreement.

IN TESTIMONY WHEREOF, the ECU has caused this instrument to be executed in such form as to be binding, and Isom has hereunto set his hand and adopted as his seal the typewritten word "SEAL" appearing beside his name, as of the day and year indicated below, and effective as the date signed by the last party to do so.

\_\_\_\_\_  
Paul Christopher Isom (Date)

East Carolina University by:

\_\_\_\_\_  
Steve Ballard (Date)  
Chancellor

**Approved as to form only:**

\_\_\_\_\_  
Donna Gooden Payne (Date)  
University Attorney

## ATTACHMENT A

East Carolina University's former director of student media has agreed to drop efforts to get his job back. The university has stated Paul Isom's separation from his role was because of a difference in philosophy, not for cause and has agreed to accept his resignation, according to ECU's attorney and attorneys representing Isom.

Isom's departure on Jan. 4, 2012, came two months after the student-run newspaper, the East Carolinian, published photos of a streaker at an ECU football game that showed full frontal nudity. While the timing drew some criticism from First Amendment advocates, Isom has acknowledged that it resulted from a difference in his professional philosophy and the expectations of the university.

While Isom said he disagrees with his termination, he believes this resolution is best for both parties. "This allows us all to get on with our lives, without having to drag this out indefinitely," Isom said. "I truly enjoyed my time at ECU. The students were eager to learn, and were always very professional." Isom noted that under his guidance, the East Carolinian newspaper, and the Rebel, a literary magazine, each received national awards from student media organizations.

"While I am proud of the fact that these awards occurred during my tenure, it was the hard work of the students that garnered the well-deserved recognition," Isom said. "While I regret that I will no longer be directing the student media, I am encouraged by the University's statement that it will remain focused on providing students with a quality environment to learn journalism and exercise their First Amendment rights," Isom said.

"This separation reflected a difference in philosophy and a desire to take student journalism at the East Carolinian in a new direction," said Dr. Virginia Hardy, ECU's Vice Chancellor of Student Affairs. "East Carolina University acts in ways that demonstrate strong support for the First Amendment rights of its student journalists and has shown it is respectful and protective of those rights," said Hardy. "The interim advisor appointed for the East Carolinian is an impressive newspaper editor with a national reputation for journalistic integrity and accomplishment," she added.

Isom will receive \$31,200, which is the cost of health insurance and salary for six months at Isom's former rate of pay. According to Donna Gooden Payne, university attorney for ECU, and Isom's attorneys, John Hoomani and Amanda Martin, Isom and the university agreed to issue this joint statement.

**ATTACHMENT B**

East Carolina University Letterhead

Date

To Whom It May Concern:

In response to your request for information or a reference regarding Paul Christopher Isom, please know that from July 14, 2008 until the effective date of his resignation, January 4, 2012, Mr. Isom served as the Director of Student Media at East Carolina University.

We wish Mr. Isom the best in the future. We hope this information is helpful.

Respectfully,

(to be signed by appropriate administrator, e.g., Christopher Stansbury)