

**DRAFT FOR INTERNAL DEPARTMENT OF JUSTICE REVIEW ONLY.
SUBJECT TO FRE 408 AND APPROVAL BY ALL PARTIES.**

United States of America v. University of Baltimore (District of Maryland, Northern
Division),

Case No. _____

**SETTLEMENT AGREEMENT
BETWEEN THE UNITED STATES OF AMERICA AND UNIVERSITY OF
BALTIMORE**

I. INTRODUCTION

1. This Settlement Agreement ("Agreement") is entered between Plaintiff, the United States of America ("the United States" or "Plaintiff"), through the Department of Justice, and Defendant University of Baltimore ("University" or "Defendant"), a constituent institution of the University System of Maryland ("USM"), which is an agency of the State of Maryland ("Maryland") (*see generally* Md. Code Ann., Education §12-101), through their authorized representatives. Plaintiff and Defendant are referred to herein as the "Parties."

2. This Agreement resolves the issues raised in an EEOC charge (Charge No. 531-2014-00831) and a Complaint, which will be filed by the United States against Defendant in the United States District Court for the District of Maryland (Northern Division). Such action shall be referred to herein as the "Underlying Case."

3. In its Complaint, the United States alleged that Defendant violated Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq. ("Title VII"), by discriminating against Ms. Dechowitz, based on her sex, by terminating her employment and refusing to hire her for a second position both because of her pregnancy.

II. RECITALS

4. The allegations of the United States against Defendant are set forth in detail in the Complaint.

5. Defendant denies that it discriminated against Ms. Dechowitz in violation of Title VII.

6. Nevertheless, the Parties agree that the controversy should be resolved without further proceedings or an evidentiary hearing.

7. To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the United States' claims, and in consideration of the mutual promises and obligations set forth below and the execution of the "Dechowitz Release," which is the release agreement to be executed by Ms. Dechowitz in consideration of the payment to her referenced in Paragraphs 31-34 herein, the Parties agree and covenant to the following material terms and conditions:

III. TERMS AND CONDITIONS

A. DEFINITIONS

8. "Days" refers to calendar days, unless business days are clearly specified in the context of a specific provision of this Agreement. If any deadline referenced in this Agreement should fall on a weekend or federal holiday, the deadline shall be moved to the next business day.

9. "Effective Date" refers to the date of the signature of the last signatory to the Agreement. The Parties acknowledge that UB's execution of this Agreement is subject to its approval and the approval of the Dechowitz Release by the Maryland Board of Public Works and that UB will sign the Agreement after such approval.

10. "Policies" refers to all employment, personnel, and labor policies or manuals that relate to the relationship between the Defendant and its employees or job applicants, including,

but not limited to, UB's policies, any non-discrimination or non-retaliation policies, and any policies or manuals applicable to the investigation of complaints of discrimination or retaliation:

11. For purposes of this Settlement, the Parties agree that the term "Supervisor" refers to (1) any employee who has the authority to hire, fire, promote, transfer, discipline, or take any other tangible employment action against another employee; and/or (2) any employee who possesses the authority to direct the work activities of at least one other employee.

12. "Underlying Case" refers to the Complaint to be filed concurrently with a notice of dismissal.

B. PROHIBITED CONDUCT AND AFFIRMATIVE OBLIGATIONS

i. Non-Discrimination and Non-Retaliation

13. Defendant will not discriminate in violation of Title VII, on the basis of sex, including pregnancy, against its employees or applicants for employment.

14. Defendant will not retaliate against any individuals in violation of Title VII, including, but not limited to, Ms. Dechowitz, because they opposed any practice that they believed in good faith violates Title VII; filed a charge in good faith with the United States Equal Employment Opportunity Commission ("EEOC") or any other state or local agency charged with enforcing anti-discrimination laws; or testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under Title VII and/or in connection with this case.

ii. Designation of EEO Officer at the University of Baltimore

15. Within thirty (30) days of the Effective Date, Defendant must designate an individual at the University to serve as an Equal Employment Opportunity Officer ("EEO Officer"). The EEO Officer shall be an employee of the University and may be an employee

already serving in a similar capacity. The Parties acknowledge that the University's Assistant Vice President/Chief Human Resources is the University's current EEO Officer.

16. The EEO Officer will be responsible for (a) investigating potential Title VII violations or directing the work of other employees who are called upon to investigate potential Title VII violations; (b) personally (or through delegation) conducting the training of employees on their Title VII rights or implementing policies for the completion of that training by other employees; (c) implementing the policy changes discussed in this Agreement and training both incumbent employees as well as new hires on those changes; and (d) performing other tasks as described below. Defendants will create a written job description, or amend a previous job description, for the EEO Officer that incorporates the job requirements described in this Agreement and they will provide it to the United States for review within sixty (60) days of the Effective Date. The United States' review of the job description will take place under the same timeframes and procedures set forth below in Paragraph 18(a)-(b).

17. The Parties also acknowledge that the University's current EEO Officer has received training in equal employment opportunity matters, including specifically civil rights investigator training, from the State of Maryland and the National Association of Title IX Administrators. The University agrees, during the term of this Agreement, to continue to maintain an EEO Officer with comparable training and responsibilities. In the event that the Assistant Vice President/Chief Human Resources resigns, retires, or is no longer fulfilling the duties of the EEO Officer, the University will designate or hire a new person under the conditions outlined in Paragraph 15 and 16 above.

iii. Policy Changes

18. Defendant will review and revise, if necessary, its Policies, as defined in Paragraph 10 above, as they pertain to employment practices and protected classes under Title VII, *i.e.*, race, color, sex (including pregnancy), religion, national origin, and retaliation for protected conduct.

- a. No later than one hundred twenty (120) days after the Effective Date, Defendant shall provide copies of any existing Policies it contends comply with this Agreement or that were created or revised pursuant to this Agreement to the United States for review.
- b. The United States will notify Defendant in writing within thirty (30) days of receipt of the proposed Policies pursuant to Paragraph 18(a) whether it has any objections to the proposed Policies. The notification shall specify the nature of the objection and the Parties shall make a good faith effort to confer regarding any disagreements concerning the proposed Policies prior to instigating breach proceedings pursuant to Paragraph 39.
- c. Within ten (10) days of the United States' notification that it has no objections to the Policies or, in the event the United States asserts an objection, within ten (10) days of the United States' objections to the revised Policies being resolved, Defendant shall implement and shall adhere to the modified Policies.

19. The Policies will explicitly detail the manner by which individuals may make discrimination and retaliation complaints, including:

- a. That employees or applicants may make discrimination or retaliation complaints either orally or in writing to any supervisor at the University of Baltimore and/or the EEO Officer.

- b. That employees and applicants may make discrimination and/or retaliation complaints to an appropriate agency external to the University, such as the U.S. Equal Employment Opportunity Commission (“EEOC”) and/or Maryland Commission on Civil Rights (“MCCR”).
- c. The provision of the name and contact information (phone number, email, etc.) of the EEO Officer, the EEOC, the U.S. Department of Justice Civil Rights Division, MCCR, and any other state or local government agency that could investigate Title VII complaints against the University. The Policies will be timely updated when there are changes in any of these names and/or contact information.

20. The Policies will detail the process by which complaints of discrimination will be handled by the Defendant:

- a. All complaints, whether written or oral, will be promptly investigated.
- b. The EEO Officer or an investigator under the EEO Officer’s oversight will conduct all investigations in a fair and impartial manner.
- c. Retaliation for filing a complaint or participating in a discrimination and/or retaliation investigation will be strictly prohibited.

21. The Policies will contain provisions that detail the reporting responsibilities of Supervisors:

- a. All Supervisors must promptly report all complaints of discrimination or retaliation (both written and oral) to the EEO Officer so that the EEO Officer can ensure that complaints are promptly investigated.

- b. Any Supervisor who witnesses or becomes aware of conduct that she or he reasonably believes may be discriminatory or retaliatory must promptly report the conduct to the EEO Officer, even if the Supervisor has not received a complaint.
- c. All Supervisors shall report complaints and/or information about discrimination or retaliation immediately and no more than five (5) calendar days after receiving the complaint or learning of the information.

22. The Policies will state that, within five (5) business days of receiving a complaint, the EEO Officer will provide written notice to the respondent(s) and complainant(s) that he or she will be initiating an investigation. The Policies will also state that within fifteen (15) days of completing an investigation, the EEO Officer will provide written notice of the completed investigation to the complainant and respondent.

23. The Policies will describe the investigative training requirements for the EEO Officer described in Paragraph 17 and will require any individual whom the University charges with conducting discrimination and retaliation investigations to satisfy those same investigative training requirements.

iv. Training

24. Within one hundred eighty (180) days after the Effective Date of this Agreement, and annually thereafter through the expiration of the term of this Agreement, the University shall, via its Office of Human Resources, provide Title VII training (which training shall be live when reasonably feasible), including training covering Title VII's prohibition on sex discrimination (including pregnancy discrimination) and training on the University's non-discrimination and non-retaliation policies (including any revisions to the policies), to all non-managerial employees (collectively, the "Trainees"). The University may, at its election, have

duplicate video-recorded sessions to accommodate staffing needs. The University shall be responsible for any additional costs to provide such duplicate sessions.

- a. No later than one hundred twenty days (120) days after the Effective Date, Defendant shall provide to the United States a description of the proposed mandatory training program as well as copies of the training materials along with a description of the person(s) who will provide such training and his or her (or their) credentials.
- b. If the United States has objections to Defendant's proposed training program or materials or the proposed trainer, the United States will notify Defendant in writing within thirty (30) days of receipt of the proposed training program and materials pursuant to Paragraph 24(a). The notification shall specify the nature of the objection. The Parties shall make a good faith effort to confer regarding any disagreements concerning the training program, materials, or trainer prior to instigating any proceedings pursuant to Paragraph 39.
- c. Within fifteen (15) days of completion of the training described in this Paragraph, Defendant shall provide, upon request from the United States, written confirmation to the United States that the training has been completed and which Trainees attended and completed the training.

25. All new University employees must receive training on the University's non-discrimination and non-retaliation policies and Title VII within fourteen (14) days of their first day of employment by the University. This requirement may be satisfied by the annual training pursuant to Paragraph 24, provided it occurs within fourteen (14) days of their first day of employment by the University.

26. Within one hundred eighty (180) days of the Effective Date and annually thereafter through the expiration of the term of this Agreement, the University shall train all Supervisors, managers, HR personnel, and any other personnel providing oversight of the enforcement of the policies and procedures (collectively "Managerial Trainees"), as described herein. The training shall address, at a minimum, the handling of employee complaints of discrimination and/or retaliation that fall under one or more of the protected categories in Title VII (race, color, sex (including pregnancy), religion, national origin, and retaliation for protected conduct). The University shall also inform Supervisors that they could be subject to discipline if they do not, under the Policies described above, promptly inform the EEO Officer of discrimination and/or retaliation complaints. The supervisor training discussed in this paragraph shall be subject to all procedures and requirements outlined in Paragraph 24(a) – (c).

v. Other Obligations

27. If a prospective employer seeks a reference for Ms. Dechowitz, that reference check shall be referred to a central person in Defendants' Human Resources department, which shall only state Ms. Dechowitz's dates of employment, her title as of the date of her separation, that Ms. Dechowitz's last performance evaluation was positive, and that Ms. Dechowitz is eligible for rehire. No other information will be provided to prospective employers. Defendant will offer no explanation for why it will not provide additional employment information to prospective employers, or any other entities that inquire about the employment history of Ms. Dechowitz, other than to state that University policy prohibits additional disclosures regarding former employees.

28. Within ninety (90) days of the Effective Date of this Agreement, Defendant shall expunge from the personnel file of Ms. Dechowitz all references, if any, to the charges of

discrimination filed against Defendant or participation in the investigation of Ms. Dechowitz's charge. Ms. Dechowitz's personnel file may contain a copy of the letter notifying Ms. Dechowitz of her separation from employment. Nothing contained in this Paragraph shall be deemed to prohibit the University or its counsel from maintaining a file, separate from Ms. Dechowitz's official personnel file, containing all documents relating to this matter.

30. The Parties acknowledge that Defendant has posted, and Defendant agrees to keep posted, an EEO notice in a prominent place or places frequented by its employees regarding its intent to comply with Title VII; advising its employees of their right to complain about or oppose sex discrimination (including pregnancy discrimination) and to be free from retaliation; and advising its employees of their right to contact federal and state anti-discrimination agencies. The notice shall be posted in locations throughout the University's workspace in the same manner as other mandatory EEO notices.

vi. Monetary Relief

31. Within sixty (60) days of the later of the Effective Date or approval of this Agreement and the Dechowitz Release by the Maryland Board of Public Works, Defendant will pay Ms. Dechowitz \$115,000.00 in monetary relief. Of this total amount, \$25,750 will be designated as back pay (including lost wages and interest) and the other \$89,250 will be designated as compensatory damages, of which \$14,133.52 is compensation for lost retirement plan contributions and \$6,080 is compensation for lost health insurance benefits.

- a. Defendant shall pay all federal, state, and local taxes and make all contributions that are normally made by employers and that are due on the portion of Ms. Dechowitz's monetary relief designated as back pay, exclusive of interest. No employer-funded taxes or contributions shall be deducted from Ms. Dechowitz's monetary relief.

- b. Defendant shall, to the extent required by law, withhold from the portion of Ms. Dechowitz's monetary relief designated as back pay all appropriate federal, state, and local taxes and any other required employee withholdings or deductions.

32. Defendant shall report the back pay portion of Ms. Dechowitz's monetary relief to the Internal Revenue Service ("IRS") using a Form W-2 and shall issue an IRS Form W-2 to Ms. Dechowitz based on that amount. As to the remaining \$89,250 designated as compensatory damages, Defendants shall report this portion of the monetary relief to the IRS using a Form 1099 and shall issue an IRS Form 1099 to Ms. Dechowitz based on that amount.

33. Defendant shall not be liable for any additional payment to Ms. Dechowitz. Specifically, Defendant shall not be liable for any retirement, pension, or insurance contributions associated with the back pay award or for any additional payment for attorney's fees. The United States and Defendant agree that each Party shall be solely responsible for its own respective costs and the attorneys' fees it has incurred in connection with this matter, and neither Party shall have any other financial responsibility except as expressly set forth herein.

34. Upon transmittal of the check(s) to Ms. Dechowitz using the contact information for her counsel provided by Plaintiff, Defendant will send a copy of the check(s) by e-mail to counsel for the United States using the contact information in the signature block below.

III. DOCUMENT RETENTION, COMPLIANCE MONITORING, AND TERM OF THE AGREEMENT

35. While this Agreement remains in effect, Defendant will retain documents relevant to implementation of the Agreement, such as documents showing which employees attended mandatory trainings, and documents related to sex discrimination or retaliation complaints. The United States may request documents and information for purposes of monitoring Defendant's

compliance with the Agreement and Defendant shall make those documents available to the United States within thirty (30) days of such a request.

36. While this Agreement remains in effect, Defendant will notify the United States, within thirty (30) days of a request for such information by the United States, of the number and nature of any ongoing investigations of alleged sex discrimination (including discrimination based on pregnancy) and/or retaliation at the University of Baltimore. Defendant will produce any non-privileged documents related to sex discrimination (including pregnancy discrimination) and/or retaliation investigations that the United States requests.

37. All of Defendant's obligations under the Agreement will expire two (2) years from the Effective Date. This deadline applies to all obligations contained herein, including training and reporting obligations, whether the specific obligation set forth herein has a specific deadline or not.

V. DISPUTE RESOLUTION

38. The Parties shall endeavor in good faith to resolve informally any differences regarding interpretation of or compliance with this Agreement prior to initiating any court action.

39. If either Party believes that there has been a failure by the other Party to perform in a timely manner any act required by this Agreement, or otherwise to act in conformance with any provision thereof, whether intentionally or not, the first Party will notify the other Party in writing of the concerns about breach and the Parties will attempt to resolve those concerns in good faith. Unless otherwise expressly agreed in writing, the responding Party shall have thirty (30) days from the date the first Party provides notification of any breach of this Agreement to cure the breach, unless such breach cannot be cured using reasonable efforts in such period, in which case the responding Party will begin undertaking the curing of such breach within such

period and will diligently pursue such cure. But in all cases, any breach of this Agreement shall be cured no later than ninety (90) days from the date of the breach. If the parties are unable to resolve a dispute over whether Defendant has breached the Agreement, either Party may file a civil action to enforce the Agreement. The Parties agree that the United States District Court for the District of Maryland (Northern Division) is the proper venue to enforce this Agreement and that they may, in any action to enforce this Agreement, seek to have the court impose any remedy authorized at law or equity including, but not limited to, remedies available under Title VII.

VI. TERMINATION OF LITIGATION HOLD

40. The Parties agree that, as of the date of the dismissal of the Underlying Case, litigation is not “reasonably foreseeable” concerning the matters alleged in the United States’ Complaint. To the extent that any Party previously implemented a litigation hold to preserve documents, electronically stored information (ESI), or things related to the matters described above, the Party is no longer required to maintain such litigation hold. Nothing in this Paragraph relieves any Party of any other obligations imposed by this Agreement.

VII. EXECUTION AND OTHER TERMS

41. The Agreement may be executed in multiple counterparts, each of which together shall be considered an original but all of which shall constitute one agreement. Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

42. Within ten (10) business days after Ms. Dechowitz receives payment from the Defendants pursuant to Paragraph 31 (i.e., ten (10) business days after the check to Ms. Dechowitz clears) the Parties will sign and file a Joint Stipulation of Dismissal of the Underlying Case pursuant to Rule 41(a)(1), to be filed concurrently with the United States’ Complaint.

43. Each Party and signatory to this Agreement represents that it freely and voluntarily enters into this Agreement without any degree of duress or compulsion.

44. This Agreement is governed by the laws of the United States. The exclusive jurisdiction and venue for any dispute relating to this Agreement is the United States District Court for the District of Maryland (Northern Division). This provision does not constitute and should not be construed as a waiver by the United States or by the University of sovereign immunity, or any other jurisdictional or legal defense available to the United States or the University. For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute. This Agreement constitutes the complete agreement among the Parties and supersedes all prior agreements, representations, negotiations, and undertakings not set forth or incorporated herein. This Agreement may not be amended except by written consent of all of the Parties.

45. The undersigned representatives of Plaintiff and Defendant and their counsel represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.

46. This Agreement is binding on all Parties, successors, transferees, heirs, and assigns.

47. The Parties may disclose or comment on this Agreement, and information about this Agreement, to the public.

48. Should any provision of this Agreement be declared or determined by any court to

be illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected thereby, and said illegal or invalid part, term or provision shall be deemed not to be a part of this Agreement.

49. The Parties agree that they will not, individually or in combination with another, seek to have any court declare or determine that any provision of this Agreement is illegal or invalid.

50. This Agreement resolves all claims and disputes between the Parties related to the employment of Ms. Dechowicz by the University. The obligations created by this Agreement survive this release. The Parties agree that the United States' dismissal of the Complaint shall be with prejudice.

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FOR PLAINTIFF UNITED STATES:

DATED: 12/15/2017

JOHN M. GORE
Acting Assistant Attorney General
Civil Rights Division

DELORA L. KENNEBREW
Chief
Employment Litigation Section

Clare F. Geller
CLARE F. GELLER (NY Reg. No. 4087037)
Deputy Chief
Employment Litigation Section

Richard I. Sexton
RICHARD I. SEXTON (PA Bar No. 202584)
Senior Trial Attorney
Employment Litigation Section
Civil Rights Division
United States Department of Justice
950 Pennsylvania Avenue, NW
Patrick Henry Building, Fourth Floor
Washington, DC 20530
Telephone: (202) 616-9100
Facsimile: (202) 514-1005
Email: richard.sexton@usdoj.gov

Attorneys for Plaintiff, United States of America

FOR DEFENDANT UNIVERSITY OF BALTIMORE

Kurt L. Schmoke

Print Name: KURT L. SCHMOKE

Its: President

Date: 2/22/18