

SEPARATION AGREEMENT AND RELEASE OF ALL CLAIMS

This Separation Agreement and Release of All Claims (“Agreement”) is made between Professor Andrea Smith (“Professor Smith”) and THE REGENTS OF THE UNIVERSITY OF CALIFORNIA (“Regents”) on behalf of the UNIVERSITY OF CALIFORNIA, RIVERSIDE campus (“University”), collectively referred to as “the Parties.”

RECITALS

1. Professor Smith has been employed by the University as a Professor in the Department of Ethnic Studies;
2. On or about August 23, 2022, the University received a complaint signed by 13 UC Riverside faculty members alleging that Professor Smith has made fraudulent claims to Native American identity in violation of the Faculty Code of Conduct provisions concerning academic integrity (“the Complaint”).
3. Upon receipt of the Complaint the University engaged Professor Smith in discussions on informal resolution of this matter. No formal University investigation of the allegations has occurred, and no findings have been made as to the merit of the allegations.
4. Professor Smith denies and disputes the allegations contained in the Complaint.
5. In order to avoid the substantial expense and inconvenience of further administrative or legal proceedings, to provide certainty to the Parties for future planning purposes, and to settle fully and finally all differences that may exist between them, the Parties have reached the mutual decision to end their employment relationship on the terms and conditions outlined in this Agreement.

THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES CONTAINED HEREIN, THE PARTIES AGREE AS FOLLOWS:

1. Purpose of Agreement. The purpose of this Agreement is to resolve any and all claims arising out of Professor Smith’s employment and to settle fully and completely any and all disputes between Professor Smith and the University, its Board of Regents, officers, agents or employees (whether current or former). The parties acknowledge that this Agreement shall not in any way be construed as an admission by (a) the University, or any of its Board of Regents, officers, agents or employees (whether current or former) of any improper or unlawful treatment of Professor Smith, and (b) Professor Smith as to any improper or unlawful conduct with respect to the Faculty Code of Conduct.
2. Separation and Retirement. Professor Smith irrevocably resigns from her University appointment effective August 30, 2024 (hereafter, “Date of Resignation”). This term is self-executing and requires no further act of either party for full force or effect. The University hereby accepts Professor Smith’s resignation as of the Date of Resignation. Professor Smith

will remain on full-time faculty status consistent with her appointment through the Date of Resignation. After the Date of Resignation, Professor Smith will be eligible to retire and receive all benefits she is entitled to in accordance with the UC Retirement Program (“UCRP”). Separation from employment does not automatically result in retirement or the payment of retirement benefits. Accordingly, Professor Smith agrees to be solely responsible for arranging with the UC Retirement Administration Service Center to retire from the University and to secure UCRP retirement benefits, including submitting all necessary paperwork.

3. Emeritus Title, Status, and Privileges. Consistent with Academic Personnel Manual Policy 120-0.1. (“The title suffix Emerita/Emeritus shall be conferred, upon retirement, on every Professor ...”), should Professor Smith elect to retire, the Emeritus title and associated status and privileges will be automatically conferred upon her. Professor Smith agrees that her status as a Professor Emeritus will not be listed on the University directory information websites.

4. No Future Employment or Affiliation with the Regents. Professor Smith agrees, warrants and represents that she will not apply for, and if offered will not accept, any employment or affiliation with or by the University at any time, or at any campus, medical center, Agricultural Experiment Stations, Cooperative Extension, Organized Research Unit, Foundation affiliated with a University of California campus, DOE Laboratory operated by the University or any other entity in which Professor Smith’s wages, salary or benefits are paid, in part or in full, by the Regents/University of California. Professor Smith understands and agrees that a violation of this Agreement shall constitute good cause for the Regents to reject Professor Smith’s application for employment or terminate her employment and/or affiliation status. Professor Smith further understands and agrees that should she accept University employment, the acceptance shall constitute misconduct and Professor Smith will be terminated without cause or notice and without recourse to any University policy, complaint resolution or contractual grievance process. In consideration for the promises contained in this Agreement, Professor Smith expressly waives any right she may have to any University complaint or contractual grievance process, including any rights she might otherwise have to any notice or opportunity to be heard.

5. Additional Terms. The Parties agree to the following additional terms addressing Professor Smith’s remaining service as a University employee:

- a. Termination of Review and Investigation of the Complaint. The Parties agree that this Agreement constitutes resolution of the allegations in the Complaint. The University agrees not to initiate any investigation into the allegations contained in the complaint or pursue disciplinary action against Professor Smith concerning the allegations in the complaint or any future similar allegations related to fraudulent ethnic heritage claims that may be made against Professor Smith. Professor Smith agrees to not make any affirmative claims of Native American heritage in connection with her University work for the duration of her University employment. However, if asked about her heritage in connection with her University work, Professor Smith is permitted to disclose her opinion on her Native American heritage

- b. Outside Professional Activity. The Parties agree that, in accordance with University policies (APM 025), during her remaining University employment Professor Smith is free to engage in outside compensated activities, including, but not limited to, outside legal practice, that are unrelated to her academic expertise and qualifications for her Professor position, which do not require University approval, to the extent consistent with her full-time obligations as a Professor.
- c. Teaching. Professor Smith shall be eligible to teach all University courses for which she is qualified, including Summer Session A in 2024.
- d. Graduate Students. Professor Smith agrees to not accept any new graduate students for the remainder of her University employment. Professor Smith agrees to make good faith efforts to assist her current doctoral students with either completing their degree requirements before her separation from employment or finding them a new advisor. If the University is unable to provide Professor Smith's current doctoral students with an adequate new advisor, a determination within the sole discretion of the University, the University will permit Professor Smith to remain as an Internal Member on the Dissertation Committee of such students and to continue supervising their academic progress following her separation.
- e. Sabbatical. Professor Smith remains eligible for sabbatical consistent with her accrued sabbatical credits. The University agrees to support any sabbatical request by Professor Smith that is consistent with the purpose of sabbatical leave and University return to service policies.
- f. Communications concerning Professor Smith's retirement. The Parties agree that, following the Effective Date of this Agreement, the University may inform those University employees with a need to know of Professor Smith's retirement date in order to effectively plan for consequences of this transition (including recruitment of a new faculty member, ensuring the progress of her graduate students, and planning course teaching assignments and University service), including, but not limited to, the Chair of the Ethnic Studies Department, Jennifer Nájera; the Director of Graduate Studies in the Department of Ethnic Studies, Adrián Félix; the Dean of the School of College of Humanities, Arts, and Social Sciences ("CHASS"), Daryle Williams; the CHASS Associate Dean of Social Sciences, Gloria González-Rivera; the CHASS Director of Academic Personnel, Susan Brown.

The information concerning Professor Smith's retirement date will be treated as "personal information" subject to disclosure only in accordance with the limitations described in APM 160. Accordingly, the University agrees to refrain from making any public announcement concerning Professor Smith's retirement.

- 6. Attorney Fees. University agrees to pay Professor Smith's attorney fees incurred by her in resolving the Complaint in an amount up to \$5,000.00.

7. Mutual General Release of All Claims.

Professor Smith unconditionally, irrevocably and absolutely releases and discharges the Regents, as well as any other present or former employees, officers, agents, attorneys, affiliates, successors, assigns and all other representatives of the Regents (collectively, “Released Parties”), from any and all causes of action, judgments, liens, indebtedness, damages, losses, claims (including attorneys’ fees and costs), liabilities and demands of whatsoever kind and character that Professor Smith may now or hereafter have against the Released Parties arising from incidents or events occurring on or before the Effective Date of this Agreement (hereafter collectively, “Released Claims”). To the extent permitted by law, this release is intended to be interpreted broadly to apply to all transactions and occurrences between Professor Smith and any Released Party, including but not limited to any and all claims related to Professor Smith’s employment, employment conditions with and separation from the Regents, and all other losses, liabilities, claims, charges, demands and causes of action, known or unknown, suspected or unsuspected, arising directly or indirectly out of or in any way connected with the Action and/or these transactions or occurrences. Released Claims include, without limitation, any claim based in tort, contract, common law, the state or federal Constitution, state or federal statutes (including, without limitation, the California Fair Employment and Housing Act, the California Civil Code, the California Government Code, and Title VII of the Civil Rights Act of 1964), all claims for physical injuries, illness, damage or death, and all claims, including such claims as may arise under contract, state or federal law for attorneys’ fees, costs and expenses, grievances, claims and/or appeals under the Regents’ policies and/or collective bargaining agreements, or the University of California, San Francisco’s internal administrative review procedures, but excluding any claims that cannot lawfully be waived or released by private agreement.

The Regents unconditionally, irrevocably and absolutely releases and discharges Professor Smith from any and all causes of action, judgments, liens, indebtedness, damages, losses, claims (including attorneys’ fees and costs), liabilities and demands of whatsoever kind and character that The Regents may now or hereafter have against Professor Smith arising from incidents or events occurring on or before the Effective Date of this Agreement (hereafter collectively, “Released Claims”). To the extent permitted by law, this release is intended to be interpreted broadly to apply to all transactions and occurrences between The Regents and Professor Smith, including but not limited to any and all claims related to Professor Smith’s employment, employment conditions with and separation from the Regents, and all other losses, liabilities, claims, charges, demands and causes of action, known or unknown, suspected or unsuspected, arising directly or indirectly out of or in any way connected with the Action and/or these transactions or occurrences.

8. Unknown or Different Facts or Law. The parties acknowledge that they may discover facts or law different from, or in addition to, the facts or law they know or believe to exist with respect to a Released Claim. They agree, nonetheless, that this Agreement and the releases contained in it shall be and remain effective in all respects notwithstanding such different or additional facts or law.

9. California Civil Code Section 1542 Waiver. The parties expressly acknowledge and agree that the releases contained in this Agreement include a waiver of all rights under

Section 1542 of the California Civil Code. This statute reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OF OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

The parties acknowledge that they have read all of this Agreement, including the above Civil Code Section, and that they fully understand both the Agreement and the Civil Code section. The parties waive any benefits and rights granted to them pursuant to Civil Code section 1542.

10. No Prior Assignments or Liens. Professor Smith represents and warrants that she has not assigned to any other person or entity any Released Claim. Professor Smith agrees to defend, indemnify and hold the Regents harmless from any liability, losses, claims, damages, costs or expenses, including reasonable attorneys' fees, arising out of a breach of the representations and warranties contained in this paragraph.

11. No Admissions. By entering into this Agreement, the parties do not admit liability or the validity of the other party's claims and intend merely to avoid further litigation and expense. The parties agree that it is their mutual intention that neither this Agreement nor any terms hereof shall be admissible in any other or future proceedings against the Regents, Professor Smith, or Professor Smith's family members, except a proceeding to enforce this Agreement.

12. Covenant Not to Sue. Professor Smith agrees, to the fullest extent permitted by law, that she will not initiate or file a lawsuit or internal University proceeding to assert any Released Claim. If any such action is brought, this Agreement will constitute an Affirmative Defense thereto, and the Regents shall be entitled to recover reasonable costs and attorneys' fees incurred in defending against any Released Claim as set forth in paragraph 5.

Nothing in this Agreement shall affect the U.S. Equal Employment Opportunity Commission's ("EEOC") or the California Department of Fair Employment and Housing's ("DFEH") rights and responsibilities to enforce Title VII of the Civil Rights Act of 1964, as amended, the Fair Employment and Housing Act, or any other applicable law, nor shall anything in this Agreement be construed as a basis for interfering with Professor Smith's protected right to file a charge with, or participate in an investigation or proceeding conducted by the EEOC or any other state, federal or local government entity; except that, if the EEOC or any other state, federal or local government entity commences a lawful investigation or issues a complaint on Professor Smith's behalf, Professor Smith specifically waives and releases her right, if any, to recover any monetary or other benefits of any sort whatsoever arising from any such investigation, nor will Professor SMITH seek reinstatement to University employment.

13. Acknowledgment of Payment of Compensation/Benefits. The University agrees to pay to Professor Smith all wages, benefits and compensation to which she is entitled as of the Resignation Date.

14. Attorneys' Fees and Costs. Professor Smith and the Regents agree to bear their own attorneys' fees and expenses incurred in connection with the Action, or any Released Claim, except as otherwise set forth herein.

15. Confidentiality Provision. The parties and their attorneys agree that they will not voluntarily release this Agreement to third parties or otherwise disclose its

contents publicly except under the following circumstances: (a) The Regents receives receive a request and determines it is required by law to release the document to the person or entity submitting the request; (b) either party is required to disclose either pursuant to a subpoena issued by a competent authority or an order issued by a court or tribunal of competent jurisdiction; (c) The Regents determines that disclosure is necessary for The Regents to defend itself in a judicial action or administrative proceeding (either internal or external); or (d) pursuant to its policies, including the Policy on Sexual Violence and Sexual Harassment, the University is required to notify the complainant of the outcome of this proceeding. The Agreement will not be placed in Professor Smith's personnel file, but shall be retained in a separate file in the Office of the Vice Provost for Administrative Resolution.

Nothing in this provision shall preclude the parties from sharing a copy of this Agreement or disclosing its contents to their accountants or attorneys, and in the case of the Regents, its officers, agents or employees with a need to know in order to perform their duties, and in the case of Professor Smith, to her domestic partner or spouse. Professor Smith agrees that, in response to any inquiry regarding this Action or Settlement Agreement, he will limit her response to "The matter has been resolved to everyone's satisfaction."

The parties, including themselves and their representatives, acknowledge and agree that a material term of this agreement is that its terms and conditions are strictly confidential, subject to the limitations described above, and thereafter promise that they will not discuss, describe or in any other manner communicate the terms, conditions or contents of this Agreement, or the negotiations leading thereto, directly or indirectly, or by or through any agent, attorney, or representative, to any source, individual, or entity.

16. Condition. This Agreement is subject to approval by Chancellor Kim Wilcox or his designee. Without approval by the Chancellor or his designee, this Agreement shall have no force and effect.

17. Older Workers' Benefits Protection Act. It is the intention of the parties that the releases contained in this Agreement are consistent with the provisions of the Older Workers' Benefits Protection Act (29 U.S.C. § 626(f)) and thereby effectuate the release by Professor Smith of any potential claims under the federal Age Discrimination in Employment Act. Accordingly, Professor Smith agrees as follows: (i) she has carefully reviewed this Agreement, and understands the terms and conditions it contains; (ii) she has been advised of the right to consult any attorney or representative of her choosing to review this Agreement; (iii) Professor Smith is receiving consideration that is above and beyond anything of value to which she is already entitled; (iv) Professor Smith does not waive right or claims that may arise after the date on which she executes this Agreement; (v) Professor Smith has had twenty-one (21) days to consider whether to agree to the terms and conditions set forth in this Agreement. Professor Smith may sign this Agreement sooner, but in doing so, Professor Smith acknowledges that the decision to sign was Professor Smith's alone and, as a result, Professor Smith has voluntarily waived the balance of the 21-day review period.

18. Seven-Day Revocation Period and Effective Date. Professor Smith shall have seven (7) days after executing this Agreement to reconsider and revoke this Agreement.

Any revocation must be in writing and delivered to Susan Fellows, Director, Academic Employee Relations (sfellows@ucsc.edu), University of California, 401 Kerr Hall, Santa Cruz, CA 95064 no later than the close of business on the seventh (7th) day following Professor Smith's execution of this Agreement. This Agreement shall not become effective or enforceable until the seven-day revocation period has expired, or until the date of the last signature on this Agreement, whichever is later ("EFFECTIVE DATE"). If Professor Smith revokes this Agreement, it shall not be effective or enforceable, and she will not receive the consideration described herein.

19. California Law. This Agreement is made and entered into in the State of California and shall in all respects be interpreted and enforced in accordance with California law.

20. Severability. Should it be determined by a court that any term of this Agreement is unenforceable, that term shall be deemed to be deleted. However, the validity and enforceability of the remaining terms shall not be affected by the deletion of the unenforceable terms.

21. Modifications. This Agreement may be amended only by a written instrument executed by all parties hereto.

22. Cooperation. The parties agree to do all things necessary and to execute all further documents necessary and appropriate to carry out and effectuate the terms and purposes of this Agreement.

23. Interpretation; Construction. The headings set forth in this Agreement are for convenience only and shall not be used in interpreting this Agreement. This Agreement has been drafted by legal counsel representing the Regents, but Professor Smith acknowledges she has had an opportunity to review and discuss each term of this Agreement with legal counsel and, therefore, the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

24. Entire Agreement. The parties to this Agreement declare and represent that no promise, inducement or agreement not herein discussed has been made between the parties, and that this Agreement contains the entire expression of agreement between the parties on the subjects addressed herein.

25. Counterparts. This Agreement may be executed in counterparts. The execution of a signature page of this Agreement shall constitute the execution of the Agreement, and the Agreement shall be binding on each party upon that party's signing of such a counterpart.

26. Advice of Counsel. The parties declare and represent that they are executing this Agreement with full advice from their respective legal counsel, and that they intend that this Agreement shall be complete and shall not be subject to any claim of mistake, and that the releases herein express a full and complete release and, regardless of the adequacy or inadequacy of the consideration, each intends the releases herein to be final and complete. Each

party executes this release with the full knowledge that this release covers all possible claims, to the fullest extent permitted by law.

PLEASE READ CAREFULLY. THIS SEPARATION AGREEMENT AND GENERAL RELEASE INCLUDES A RELEASE OF ALL KNOWN AND UNKNOWN CLAIMS.


WHEREFORE, THE PARTIES HAVE VOLUNTARILY EXECUTED THIS AGREEMENT ON THE DATES SHOWN BELOW.

Dated: Dec 21, 2022

By: 

PROFESSOR SMITH

Dated: January 11, 2023

By: 

KIM WILCOX
Chancellor
UC RIVERSIDE