

**SETTLEMENT AGREEMENT AND RELEASE**

THIS SETTLEMENT AGREEMENT AND RELEASE (the "Agreement") memorializes the terms of the mutual settlement, agreed to on August 3, 2011 by and between (1) James Naughton ("Naughton"); and (2) the Board of Regents of the University System of Georgia ("Board of Regents") and the University of West Georgia ("University"), including their officers, directors, members, employees, and agents. The effective date of this Agreement is as indicated on the signature page of this Agreement, below.

**RECITALS**

**WHEREAS**, Naughton was the Assistant Vice President for Development and Alumni Relations at the University until he was terminated on February 18, 2011;

**WHEREAS**, on May 2, 2011, Naughton filed a lawsuit styled *James Naughton v. The Board of Regents of the University System of Georgia, as it governs, controls, and manages the University of West Georgia*, Superior Court of Fulton County, Georgia, Civil Action No. 200025 (the "Litigation"), alleging that his termination violated the Georgia Whistleblower Act and that he was fired in retaliation for reporting violations of law and Board of Regents rules and standards;

**WHEREAS**, the parties have reached an arms-length Agreement to finally resolve and conclude the Litigation and all claims, controversies, causes of actions, damages, suits, and disputes of any kind among them in a manner that avoids any continued litigation;

**NOW THEREFORE**, in consideration of the mutual covenants and promises contained in this Agreement, the adequacy and sufficiency of which are hereby acknowledged, Naughton, the Board of Regents, and the University agree as follows:

**I. Consideration and Dismissal of the Litigation.****A. Financial Consideration**

The Board of Regents and the Georgia Department of Administrative Services will pay a total sum of \$272,000 to Naughton through his counsel of record, Bondurant, Mixson & Elmore, by way of a check or checks payable to Bondurant, Mixson & Elmore LLP within thirty (30) business days after the date this Agreement is executed by the Board of Regents.

**B. Public Statement by the University**

Within one (1) business day of the execution of this Agreement by the Board of Regents, the University will publicly issue the statement attached hereto as Exhibit A. The statement will be issued officially and distributed through the normal avenues by which public statements are issued and distributed by the University.

**C. Reference Letter**

No later than five (5) business days after this Agreement is executed by the Board of Regents, the University will provide Naughton, through his attorneys at Bondurant, Mixson & Elmore, a copy of a reference letter in the form attached hereto as Exhibit B. The reference letter will be on University letterhead and signed by Dr. Beheruz N. Sethna.

**D. Dismissal of the Litigation**

No later than five (5) business days after Naughton received the payment in paragraph I.A of this Agreement, the parties agree to dismiss with prejudice all claims that were asserted or could have been asserted in the Litigation, by filing a stipulation of dismissal in the form attached hereto as Exhibit C.

E Defendant agrees to issue an IRS Form 1099 for the entire amount of the payment, and Plaintiff agrees to be responsible for and pay all federal, state, and local taxes applicable to such payment ("taxes"). Plaintiff agrees to defend, indemnify, and hold Defendant harmless from and against any and all third-party claims, together with any interest, penalties, fines or sanctions, or other remedies assessed or imposed against Defendant that arise out of or are related to Plaintiff's failure to pay any taxes applicable to the settlement proceeds.

**II. Release and Agreement Not to Sue.****A. Naughton's Release:**

In return for the consideration described in this Agreement, Naughton hereby voluntarily, knowingly, irrevocably and unconditionally releases, acquits, forever discharges and agrees not to sue the Board of Regents or the University or any of their predecessors, successors-in-interest, agents, partners, principals, employees, officers, members, attorneys, insurers and assigns for any and all claims that were asserted or could have been asserted in the Litigation, including all claims arising out of Naughton's employment with the University and termination from the University from the beginning of time through the date of this agreement.

This settlement agreement is a full and final release of claims (hereinafter "release") and it specifically includes, but not by way of limitation, all claims asserted by or on behalf of Plaintiff against Defendant or its employees or agents, together with any and all claims which might have been asserted by or on behalf of Plaintiff in any suit, claim, charge of discrimination, or grievance against Defendant for or on account of any matter or things whatsoever up to and including the date of this release. This release includes, but not by way of limitation, any claims, suits, causes of action or grievance Plaintiff may possess against Defendant or its employees or agents arising under O.C.G.A. § 45-1-4, and any other of the several state and federal statutes relating to claims, suits, causes of action or grievances for employment discrimination and/or employment-related deprivations of rights.

**B. Board of Regents/University Release:**

In return for the consideration described in this Agreement, the Board of Regents and the University, together with any of their predecessors, successors-in-interest, agents, partners, principals, employees, officers, members, attorneys, insurers and assigns, release any claim that could have been asserted in the Litigation, any claim related to or in connection with the Litigation, and any and all claims arising out of or relating to Naughton's employment with the University and termination from the University, including any and all claims arising from any statements or acts by or on behalf of Naughton from the beginning of time through the date of this Agreement.

**III. Miscellaneous Provisions.**

**A. Choice of Law:** This Agreement shall be construed and interpreted by and according to the laws of the State of Georgia, without consideration of Georgia's choice of law rules.

**B. No Implied Waivers:** A waiver or breach of any provision of this Agreement shall not be construed as a continuing waiver of other breaches of the same or any other provision of this Agreement.

**C. Entire Agreement:** This Agreement constitutes the parties' entire agreement and understanding; this Agreement merges and supersedes all prior discussions, negotiations, understandings and agreements among the parties. No party shall be bound by any condition, definition, warranty, right, duty or covenant other than as expressly stated in this Agreement or as subsequently set forth in a written document signed by the parties hereto. The provisions of this Agreement, including this paragraph, may be modified or waived only in writing signed by the party to be charged. The parties specifically agree that no party will be bound by any failure to respond or object to a written or oral communication from the other party that purports to impose or confirm any obligation not expressly set forth in this Agreement.

**D. Future Cooperation:** The parties to this Agreement agree to execute, acknowledge and deliver all further instruments and to do all further acts as may be necessary or appropriate to carry out the intent and purpose of this Agreement.

**E. Successors and Assigns:** This Agreement shall inure to the benefit of and be binding on each party's successors, assigns, heirs, administrators, representatives, and trustees.

**F. No Drafting Presumption:** This Agreement shall be construed as if each party participated equally in its negotiation and drafting.

**G. Headings:** The headings contained in this Agreement are for reference only and shall not affect the meaning or interpretation of this Agreement in any way.

H. **Severability:** If any part or provision of this Agreement is determined to be unenforceable, the parties intend and agree that the remaining provisions shall not be affected by such determination.

I. **Execution in Counterparts:** This Agreement may be executed in multiple counterparts, each of which shall be enforceable against the party who has executed it. Facsimile and e-mail signatures shall be deemed as effective as original signatures.

J. Plaintiff affirms that the only consideration for signing this release is the terms stated above; moreover, that no other promise or agreement of any kind has been made to or with him by any persons or entity whomsoever to cause him to execute this agreement, and that he fully understands the meaning and intent of this release, including but not limited to its final and binding effect.

K. This agreement may not be altered, amended, or modified in any respect or particular whatsoever, except by a writing, duly executed by all parties hereto.

L. All agreements and understandings embodied and expressed in the terms of this agreement are contractual and are not mere recitals.

M. THE UNDERSIGNED FURTHER STATE THAT THEY HAVE CAREFULLY READ THE WITHIN AND FOREGOING SETTLEMENT AGREEMENT AND FULL AND FINAL RELEASE OF CLAIMS AND KNOW AND UNDERSTAND THE CONTENTS THEREOF AND THAT THEY EXECUTE THE SAME AS THEIR OWN FREE ACT AND DEED.

(Signatures on Next Page):

IN WITNESS WHEREOF, this SETTLEMENT AGREEMENT AND RELEASE is signed effective as of the dates below:

JAMES NAUGHTON

By: *James Naughton*

Date: 19 AUGUST 2011

BOARD OF REGENTS of the  
UNIVERSITY SYSTEM OF  
THE STATE OF GEORGIA

By: *James P. New*

Date: August 21, 2011

UNIVERSITY of WEST GEORGIA

By: *Barbell*

Date: August 15, 2011

# **EXHIBIT A**



## UWG Resolves Differences with Former Assistant Vice President

August, 2011

CARROLLTON, Ga. – No institution of Higher Education, certainly no public institution, can succeed if it is not held to the highest standards of ethics. The University of West Georgia has always held itself to these high standards and will continue to do so.

In January 2011, Mr. Jim Naughton brought to the attention of members of the Executive Committee of the University of West Georgia Foundation Board what he perceived to be violations of West Georgia's standards and policies. At the time, Mr. Naughton was both Executive Director of the Foundation and the University's Assistant Vice President for Alumni and Development Relations.

We understand that when he reported these issues, Mr. Naughton rightly acted in an effort to uphold the interests of both the university and foundation. We would have preferred that he first brought the matter directly to the attention of university officials, rather than to members of the Foundation Board. Nevertheless, the University's termination of Mr. Naughton's employment on February 17, 2011 was unfortunate, and we regret that the University took this action.

Since then, the University has taken the issues Mr. Naughton raised seriously and asked the chief audit officer of the University System of Georgia to investigate the matter. That audit report identified areas for improvement, and so ultimately we have benefited from Mr. Naughton's action. Thus, we thank him for being the catalyst for improvement.

We have also concluded that Mr. Naughton's termination in February of 2011 was improper. To Mr. Naughton's credit, he has approached this matter constructively and has now joined with the University in reaching an amicable resolution of all differences.

Mr. Naughton continues in his role as the Executive Director of the University of West Georgia Foundation. We wish him well in that capacity, for the betterment of University and Foundation.

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*The University of West Georgia is the land of opportunity for more than 11,000 undergraduate and graduate students in 115 fields of study. The university is known for its innovative approach to scholarly achievement, creative expression, and service to humanity.*

*Founded in Carrollton, Ga., in 1906, UWG also offers classes at its Newnan campus and online. For more information, please visit [westga.edu](http://westga.edu).*

# **EXHIBIT B**



To Whom It May Concern:

I am writing to provide a reference for James Naughton.

The University of West Georgia employed Jim as Assistant Vice President for Development and Alumni Relations from August 18, 2010 until February 17, 2011. Mr. Naughton also acted (and as of the date of this letter, continues to act) as the Executive Director of the University of West Georgia Foundation, a non-profit that works closely with the University to advance its mission. During this period, I served and continue to serve as President of the University.

Jim has an array of skills and business management acumen that would be an asset to the development component of any non-profit organization; for example, his previous experience in the corporate sector is a significant asset while dealing with potential donors in that sector. Additionally, his family contacts provide another significant enhancement to his fundraising potential. In my capacity as President of the University of West Georgia, I must remain at "arm's length" from the details of the University of West Georgia Foundation and so would not comment on the job performance of its Executive Director. But I remain in close touch with members of the Executive Committee, and am fully aware that in their assessment, he continues to demonstrate those qualities in his ongoing work for the University of West Georgia Foundation.

Jim's employment with the University came to an end through a concatenation of circumstances that was regrettable. We now have concluded that his termination in February of 2011 was improper. To Jim's credit, he approached the task of reconciliation in a constructive manner and joined with the University in reaching an amicable resolution of all differences. I point this out to provide assurance to any potential employer that the circumstances of Jim's separation from the University cast no adverse reflection on Jim's abilities. Rather, Jim's separation in February was a mistake on the part of the University – one that I would take back if I could.

Sincerely,

Beheruz N. Sethna, Ph.D.  
Professor of Business Administration, and  
President of the University

# **EXHIBIT C**

**IN THE SUPERIOR COURT OF FULTON COUNTY  
STATE OF GEORGIA**

JAMES NAUGHTON,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CIVIL ACTION
	)	FILE NO. 2011-CV-200025
	)	
THE BOARD OF REGENTS OF THE	)	
UNIVERSITY SYSTEM OF GEORGIA,	)	
as it governs, controls, and manages	)	
THE UNIVERSITY OF WEST GEORGIA,	)	
	)	
Defendant.	)	

**STIPULATION OF DISMISSAL WITH PREJUDICE**

Plaintiff James Naughton and Defendant the Board of Regents of the University System of Georgia (collectively "the parties") have settled the above-styled action.

Pursuant to O.C.G.A. § 9-11-41, the parties further stipulate and agree that Plaintiff shall hereby dismiss its claims WITH PREJUDICE.

Respectfully submitted this \_\_\_ day of \_\_\_\_\_, 2011.

**BONDURANT, MIXSON & ELMORE, LLP**

**STATE OF GEORGIA ATTORNEY  
GENERAL'S OFFICE**

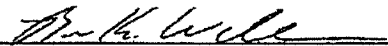
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**ATTORNEYS FOR DEFENDANT THE  
BOARD OF REGENTS OF THE  
UNIVERSITY SYSTEM OF GEORGIA**