

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (the “Settlement Agreement”) is made and entered into by and among:

- “Claimants”: Kathleen Meixner,; Sean Meixner, and Brendan Meixner, collectively referred to herein as “Claimants.”
- “The State”: The State of Arizona (“State”) and the Arizona Board of Regents (“ABOR”), collectively referred to herein as the “State.”
- “The Parties”: Claimants and the State, collectively referred to herein as “the Parties.”

RECITALS

A. Claimants filed a Notice of Claim with the State on or about March 24, 2023. The claims asserted therein arose from an incident (and preceding events) that occurred on the University of Arizona main campus on October 5, 2022, (collectively “the Incident”), which Claimants allege was caused by the State’s wrongful acts or omissions.

B. Claimants and the State desire to finally and fully resolve all past, present, and potential disputes, claims, and issues relating to or arising out of the Notice of Claim and the facts and circumstances that gave rise to the claims asserted therein. As a result, the Parties have negotiated and entered into this Settlement Agreement in an effort to avoid further expense, inconvenience, and disruption caused by burdensome and protracted litigation. The Parties desire to enter into this Settlement Agreement, which provides for certain payments in full settlement and discharge of all claims that are, or might have been, the subject matter of the Claim, upon the terms and conditions set forth below. This Settlement Agreement is intended to resolve any and all disputes that may exist between the Parties.

AGREEMENT

The Parties agree as follows:

1. Release and Discharge

In consideration of the monetary amount set forth below in Paragraph 2, and the non-monetary provisions set forth below in Paragraph 3, Claimants completely release and forever discharge the State from any and all past, present, or future claims, demands, obligations, actions, causes of action, and legal theories, whether known or unknown, that have resulted or may result from the Incident. This includes but is not limited to any claims or causes of action for economic damages, noneconomic damages, injuries, attorneys' fees, costs, or other relief arising out of the Incident, whether or not alleged in the Claim. Claimants release the State from any future claims of any kind, whether known or unknown, which may have resulted or may result from the alleged acts or omissions of the State.

This release and discharge also applies to the State's past, present, and future officers, directors, stockholders, attorneys, agents, servants, representatives, employees, subsidiaries, affiliates, partners, predecessors and successors in interest, insurers, and assigns, and all other persons, firms, or corporations with whom any of the former have been, are now or may be affiliated. This release constitutes a fully binding and complete settlement between Claimants and the State, including the Claimants' heirs, beneficiaries, assigns, and successors.

Claimants acknowledge and agree that the release and discharge set forth above is a general release. Claimants expressly waive and assume the risk of any and all claims for damages that exist as of this date but of which Claimants do not know or suspect to exist, whether through oversight, error, negligence, ignorance, or otherwise and that, if known, would materially affect Claimants' decision to enter into this Settlement Agreement. It is understood and agreed that the sums set forth below, paid to Claimants, are in part to compensate them for unknown injuries and/or damages that may be discovered in the future. Claimants further agree that Claimants have accepted payment of the sums specified herein as a complete compromise of all matters involving disputed issues of law and fact. Claimants assume the risk that the facts or law may be other than what Claimants believe.

Claimants hereby instruct their attorneys to not pursue litigation in this matter as outlined above and below.

2. *Payments*

In consideration of the release set forth above, the State, on behalf of all putative State defendants, agrees to pay the following sums to Claimants:

- a. Payments to Claimants totaling Two Million Five Hundred Thousand Dollars (\$2,500,000.00).
- b. The check(s) will be made payable to: Zwilling Wulkan PLC.

3. *Non-Monetary Provisions*

In consideration of the release set forth above, the Arizona Board of Regents and University of Arizona, agree to the following provisions:

- a. The University will establish and fund an endowed professorship in the Department of Hydrology and Atmospheric Sciences (“HAS”) in the name of Professor Thomas Meixner.
- b. The University will provide necessary resources for continuing mental health treatment to HAS faculty, staff, and students most directly and immediately affected by the Incident who are currently receiving or eligible for such services.
- c. The University will provide a tuition/fee waiver to certain HAS student(s) most directly and immediately affected by the Incident, prospectively and retroactively to the semester in which the events preceding the Incident began.

4. *Indemnify and Hold Harmless*

Claimants and Claimants’ counsel expressly agree that they will satisfy from the settlement proceeds and obtain a discharge for any liens arising out of the Incident, and any other liens arising out of the Incident, to which Claimants are obligated. This includes, but is not limited to: (1) any medical, dental, or mental-health treatment Claimants obtained as a result of or arising from the events described in the Claim; (2) any liens pursuant to A.R.S. §33-931, *et seq.* that have been filed or may be filed for past medical expenses; (3) any claims for recovery for medical and health services and care that have been asserted or may be asserted by the United States of America pursuant to the Medical Care Recovery Act, 42 U.S.C. § 2651, or pursuant to any other state or federal statute, rule, or regulation; (4) any subrogation lien; or (5) any bills, claims, and liens in any manner arising in favor of any health care provider who has provided medical or health care of any kind to Claimants; it being specifically recognized that such liens and obligations are the sole responsibility of Claimants. If any valid liens, judgments, and/or financial obligations are later presented to the State, Claimants expressly agree that they are solely responsible for

ensuring that those liens, judgments, and other financial obligations are fully satisfied. To the extent any liens, judgments, and other financial obligations exist, Claimants' attorneys will hold in escrow an amount equivalent to all such liens, judgments and/or financial obligations, which will not be released from escrow until valid lien releases, satisfactions of judgment, and/or releases are obtained and provided to Claimants and Claimants' counsel.

Claimants and Claimants' attorneys agree to defend, indemnify, and hold the State harmless from any and all loss, cost, and expense arising from the assertion of any claim, demand, action, complaint, or lien that any healthcare providers or lien holders may claim.

5. *Attorneys' Fees and Costs*

Each party shall bear all of its own attorneys' fees and costs arising from the actions of its own counsel in connection with the Claim, this Settlement Agreement, and all related matters.

6. *Representation of Comprehension of Document*

In entering into this Settlement Agreement, Claimants represent that Claimants have relied upon the advice of their attorneys, who are the attorneys of their own choosing, concerning the legal and income tax consequences of this Settlement Agreement; that their attorneys have completely read and explained to Claimants the terms of this Settlement Agreement; and that Claimants fully understand and voluntarily accept the terms of this Settlement Agreement.

7. *Warranty of Capacity to Execute Agreement*

Claimants represent and warrant that no other person or entity has, or has had, any interest in the claims, demands, obligations, or causes of action referred to in this Settlement Agreement, except as otherwise set forth herein; that Claimants have the sole right and exclusive authority to execute this Settlement Agreement and receive the sums specified in it; and that Claimants have not sold, assigned, transferred, conveyed, or otherwise disposed of any of the claims, demands, obligations, or causes of action referred to in this Settlement Agreement.

8. *Governing Law*

This Settlement Agreement shall be construed and interpreted in accordance with the laws of the State of Arizona. The Parties agree that since each party is represented by counsel, any rules or presumptions requiring that any provisions of the document be construed against the drafter do not apply to the interpretation of this Settlement Agreement in any future dispute.

9. *Dispute Resolution*

The Parties agree that any dispute that may arise under the provisions of this Settlement Agreement shall be submitted to mediator David Cohen for a final, non-appealable ruling on the disputed issue or issues.

10. *Compromise*

The Parties acknowledge and agree that the settlement is made in compromise and settlement of a disputed claim and that by entering into this Settlement Agreement, the Parties do not intend to admit the correctness of any party's position, nor may this Settlement Agreement or the fact of settlement be used against the State as res judicata, collateral estoppel, or as an admission of fault or liability.

11. *Additional Documents*

The Parties agree to cooperate fully and execute any and all supplementary documents and to take all additional actions that may be necessary or appropriate to give full force and effect to the basic terms and intent of this Settlement Agreement.

12. *Entire Agreement and Successors in Interest*

This Settlement Agreement contains the entire agreement between Claimants and the State with regard to the matters set forth in it and shall be binding upon and inure to the benefit of the executors, administrators, personal representatives, heirs, successors, and assigns of each.

13. *Effectiveness*

This Settlement Agreement shall become effective immediately following execution by all Parties.

14. *Taxability*

Claimants further understand, agree, and acknowledge that neither the State nor the State's attorneys have made any representations to Claimants concerning the state or federal taxability and/or non-taxable status of the consideration Claimants are to receive under paragraph 2 of this Settlement Agreement.

15. *Modification*

No oral agreement, statement, promise, undertaking, understanding, arrangement, act, or omission of any party, occurring subsequent to the date of the Claimants' signatures may be deemed an amendment or modification of this Settlement Agreement unless reduced to writing and signed by the Parties hereto or their respective successors or assigns.

16. *Severability*

The Parties agree that if, for any reason, a provision of this Settlement Agreement is held unenforceable by any court of competent jurisdiction, this Settlement Agreement shall be automatically conformed to the law, and the remaining provisions of this Settlement Agreement shall continue in full force and effect.

17. *Counterparts*

This Settlement Agreement may be executed in multiple counterparts. The counterparts, when signed and attached to this Settlement Agreement, shall have the same force and effect as though the Parties had executed one document. Photocopies, electronic, or facsimile copies of executed copies of this Settlement Agreement may be treated as an original.

18. *Approval of Payment by the Joint Legislative Budget Committee*

The Joint Legislative Budget Committee approved this settlement on October 10, 2023.

I HAVE READ THIS SETTLEMENT AGREEMENT AND RELEASE BEFORE SIGNING IT, AND I FULLY UNDERSTAND THE TERMS, WHICH HAVE BEEN EXPLAINED TO ME BY MY ATTORNEYS.

Claimant: Kathleen Meixner

Kathleen Meixner

Date: 11 / 09 / 2023

Claimant: Sean Meixner

Sean Meixner

Date: 11 / 09 / 2023

Claimant: Brendan Meixner

Brendan Meixner

Date: 11 / 09 / 2023

Arizona Department of Administration

Keith Johnson, State Risk Manager
Risk Management Division

Date: _____

**Arizona Board of Regents/University of
Arizona**

Lisa N. Rulney
Senior Vice President for Business Affairs
and Chief Financial Officer

Date: _____

Approved as to Form for Claimants:

Larry J. Wulkan
Zwilling Wulkan PLC
Gregory J. Kuykendall
Kuykendall & Associates

By: _____
Larry J. Wulkan

Date: 11 / 07 / 2023

11580352

Arizona Department of Administration



Keith Johnson, State Risk Manager
Risk Management Division
Date: 11/15/2023

Arizona Board of Regents/University of Arizona

Lisa N. Rulney
Senior Vice President for Business Affairs
and Chief Financial Officer
Date: _____

Approved as to Form for Claimants:

Larry J. Wulkan
Zwilling Wulkan PLC
Gregory J. Kuykendall
Kuykendall & Associates

By: _____
Date: _____

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Arizona Department of Administration

Keith Johnson, State Risk Manager
Risk Management Division

Date: _____

**Arizona Board of Regents/University of
Arizona**



Lisa N. Rulney

Senior Vice President for Business Affairs
and Chief Financial Officer

Date: 11/17/2023

Approved as to Form for Claimants:

Larry J. Wulkan

Zwillinger Wulkan PLC

Gregory J. Kuykendall

Kuykendall & Associates

By: _____


Date: _____


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
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
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Sean Meixner [REDACTED] and Brendan Meixner
[REDACTED] from larry.wulkan@zwfirm.com
IP: [REDACTED]

-  **11 / 08 / 2023**
11:21:13 UTC
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IP: [REDACTED]

-  **11 / 09 / 2023**
19:13:18 UTC
Viewed by Sean Meixner [REDACTED]
IP: [REDACTED]

-  **11 / 09 / 2023**
19:13:43 UTC
Signed by Sean Meixner [REDACTED]
IP: [REDACTED]

-  **11 / 09 / 2023**
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