

**Conciliation Agreement  
Between the U.S. Department of Labor  
Office of Federal Contract Compliance Programs**

**and**

**San Diego State University Research Foundation  
5250 Campanile Drive  
San Diego, CA 92182**

**PART I: General Provisions**

This Agreement is between the Office of Federal Contract Compliance Programs (hereinafter "OFCCP") and San Diego State University Research Foundation, located at 5250 Campanile Drive, San Diego, California (hereinafter "SDSU Research Foundation").

1. The violation identified in this Agreement was found during a compliance evaluation of SDSU Research Foundation which began on February 11, 2009, and it was specified in a Notice of Violations issued May 10, 2011. OFCCP alleges that SDSU Research Foundation has violated Executive Order 11246, as amended, and implementing regulations at 41 CFR Chapter 60 due to the specific violation cited in Part II below.
2. This Agreement does not constitute an admission by SDSU Research Foundation of any violation of Executive Order 11246, as amended, and implementing regulations.
3. The provisions of this Agreement will become part of SDSU Research Foundation's Affirmative Action Program (hereinafter "AAP"). Subject to the performance by SDSU Research Foundation of all promises and representations contained herein and in its AAP, the named violation in regard to the compliance of SDSU Research Foundation with all OFCCP programs will be deemed resolved. However, SDSU Research Foundation is advised that the commitments contained in this Agreement do not preclude future determinations of noncompliance based on a finding that the commitments are not sufficient to achieve compliance.
4. SDSU Research Foundation agrees that OFCCP may review compliance with this Agreement. As part of such review, OFCCP may require written reports, inspect the premises, interview witnesses, and examine and copy documents, as may be relevant to the matter under investigation and pertinent to SDSU Research Foundation's compliance. SDSU Research Foundation shall permit access to its premises during normal business hours for these purposes.
5. Nothing herein is intended to relieve SDSU Research Foundation from the obligation to comply with the requirements of Executive Order 11246, as amended, and/or Section 503 of the Rehabilitation Act of 1973, as amended, and/or the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (38 U.S.C. 4212), and implementing regulations, or any other equal employment statute or executive order, or its implementing regulations.
6. SDSU Research Foundation agrees that there will be no retaliation of any kind against any beneficiary of this Agreement or against any person who has provided information or assistance, or

who files a complaint, or who participates in any manner in any proceedings under Executive Order 11246, as amended, and/or Section 503 of the Rehabilitation Act of 1973, as amended, and/or the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (38 U.S.C. 4212).

7. This Agreement will be deemed to have been accepted by the Government on the date of signature by the District Director, unless the Regional Director or the Director of OFCCP indicates otherwise within 45 days of the District Director's signature on this Agreement.
8. If at any time in the future, OFCCP believes that SDSU Research Foundation has violated any portion of this Agreement during the term of this Agreement, SDSU Research Foundation will be promptly notified of that fact in writing. This notification will include a statement of the facts and circumstances relied upon in forming that belief. In addition, the notification will provide SDSU Research Foundation with 15 days from receipt of the notification to respond in writing except where OFCCP alleges that such a delay would result in irreparable injury.

Enforcement proceeding for violations of this Agreement may be initiated at any time after the 15-day period has elapsed (or sooner, if irreparable injury is alleged) without issuing a Show Cause Notice.

Where OFCCP believes that SDSU Research Foundation has violated this Agreement, OFCCP may seek enforcement of this Agreement itself and shall not be required to present proof of the underlying violation resolved by this Agreement.

Liability for violation of this Agreement may subject SDSU Research Foundation to sanctions set forth in Section 209 of Executive Order 11246, and/or other appropriate relief.

## **PART II: Specific Provisions**

1. **VIOLATION:** SDSU Research Foundation failed to comply with the requirements of 41 CFR 60-1.12, which requires federal contractors to preserve any personnel or employment record made or kept for a period of not less than two (2) years from the date of the making of the record or the personnel actions involved, whichever occurs later. Specifically, SDSU Research Foundation failed to maintain complete and accurate personnel action documents and performance records of all employees during the period of July 1, 2008 through June 30, 2010.

**REMEDY:** SDSU Research Foundation will immediately ensure that all personnel action and performance records including salary and position change notices, performance evaluations, job descriptions and other supporting documents in its organization for all employees are collected, maintained, and made available for inspection. SDSU Research Foundation will maintain employment records for two years from the date of receipt, or from the date of the record or the personnel action involved, whichever occurs later.

2. **VIOLATION:** SDSU Research Foundation failed to ensure that its employees were compensated without regard to gender or race as required by 41 CFR 60-1.4(a) and 41 CFR 60-20.5 (a). Specifically, OFCCP's review of two (2) positions revealed that one minority employee in the (b) (7) (c) position with a significantly longer period of employment was receiving less salary as compared to a similarly situated non-minority and

one male employee in the (b) (7) (c) position with a comparable period of employment was receiving less salary as compared to a similarly situated female as of June 30, 2009.

**REMEDY:** SDSU Research Foundation must agree to implement measures to ensure that its compensation system is applied equally to all employees, regardless of gender or race. This consists of all aspects of compensation, including but not limited to, initial salary at the time of hire and progression into higher paying categories. In order to resolve this violation, SDSU Research Foundation must agree to the following:

A. Provide back pay plus compound interest for the two employees listed in Attachment A as follows:

Within sixty (60) days after the effective date of this Agreement, but no earlier than forty-five (45) days, SDSU Research Foundation agrees to provide back pay plus compound interest to the two employees listed in Attachment A. SDSU Research Foundation will distribute back pay and compounded interest in the amounts indicated below as set forth in Attachment A

1. One (b) (7) (c)	\$16,149.32
2. One	\$ 9,368.34
Total Back Pay and Interest	\$25,517.66

SDSU Research Foundation will submit documentation to OFCCP of payment(s) made within 10 working days of the issuance of the check(s) to the class member(s). This amount will be distributed to the two employees listed on Attachment A within the time limits described below. SDSU Research Foundation will send a one-time full back pay (remedy) payment in order to satisfy the financial remedy to each of the class victims. The payments will be calculated to show and report appropriate withholding deductions. The funds of checks not cashed within 60 days of the issue date will revert back to SDSU Research Foundation. Individuals named in Attachment A will have within 45 days of postmark of the Notification Letter, or within 45 days from receipt of the Notification Letter if received personally, to sign and return the Release of Claims.

B. Provide salary adjustments for all current employees listed in Attachment A.

C. Conduct an audit and analysis of its compensation practices to determine its impact on all employees as outlined under "PART III: Reporting," second progress report for the period covering January 31, 2012 through June 30, 2012.

D. Develop and implement policies and procedures for all employees to ensure that SDSU Research Foundation's compensation system will not differentiate on the basis of gender or race.

SDSU Research Foundation commits that this violation will not be repeated.

**PART III: Reporting**

SDSU Research Foundation agrees to furnish the U.S. Department of Labor, Office of Federal Contract Compliance Programs, San Diego District Office, 550 West C Street, Suite 900, San Diego, CA 92101 with the following progress reports:

1. The first progress report due January 31, 2012 for the period June 1, 2011 through December 31, 2011 shall contain the following:

- (a) Copies of cancelled checks for the back pay and compound interest disbursed to the one minority and one male employee.
- (b) Copies of the personnel action issued to the employees identified herein and reflecting the new salary adjustments.
- (c) Copies of the revised compensation procedures designed to eliminate compensation disparities for minorities within the (b) (7) (c) position and males in the (b) (7) (c) position.

2. The second progress report due July 31, 2012 shall contain the following:

- (a) Results of an audit and analysis of SDSU Research Foundation's compensation practices of all employees for the period January 31, 2012 through June 30, 2012.

SDSU Research Foundation agrees to retain all personnel records pertinent to the violation resolved by this Agreement as well as the reports submitted pursuant to the Agreement (including the underlying data/information on which the reports are based) until the expiration date of the Agreement and maintained as consistent with regulatory requirements.

**Termination Date:**

This Agreement will remain in full force and effect until two years from the effective date of the Agreement or until the written acceptance by OFCCP of the final progress report and written advisement to SDSU Research Foundation that it has performed and fulfilled the commitments expressed herein.

**PART IV: Signatures**

This Agreement is hereby executed by and between the Office of Federal Contract Compliance Programs and San Diego State University Research Foundation, 5250 Campanile Drive, San Diego, CA 92182.

Date: 6-14-11

(b) (7) (c)  
[Redacted Signature]

DAN GILBREATH  
Executive Director  
San Diego State University  
Research Foundation  
5250 Campanile Drive  
San Diego, CA 92182

Date: 6/15/11

(b) (7) (e)  
[Redacted Signature]

Compliance Officer  
Office of Federal Contract  
Compliance Programs  
San Diego District Office

Date: 6/15/11

(b) (7) (c)  
[Redacted Signature]

PATRICK S. MCGLYNN  
Assistant District Director  
Office of Federal Contract  
Compliance Programs  
San Diego District Office

Date: 6/15/2011

(b) (7) (c)  
[Redacted Signature]

SUZANNE JONES  
District Director  
Office of Federal Contract  
Compliance Programs  
San Diego District Office

**Attachment A**

**SAN DIEGO STATE UNIVERSITY RESEARCH FOUNDATION  
MINORITY & MALE CLASS MEMBERS, EFFECTIVE DATES, BACK PAY AND  
COMPOUNDED INTEREST**

(1) Minority non-exempt employee working as (b) (7)(C) as of 07/31/2007

NAME	FIRST DATE OF BACK PAY PERIOD (Date of receipt of OFCCP scheduling letter)	LAST DATE	AMOUNT OF PAY INCREASE (hourly rate)	BACK PAY	COMPOUND INTEREST	BACK PAY AND INTEREST
(b) (7)(C)			(b) (7)(C)	\$14,769.60	\$1,379.72	\$16,149.32
<b>TOTAL</b>	--	--		\$14,769.60	\$1,379.72	\$16,149.32

(2) Male non-exempt employee working as (b) (7)(C) as of 07/31/2007

NAME	FIRST DATE OF BACK PAY PERIOD (Date of receipt of OFCCP scheduling letter)	LAST DATE	AMOUNT OF PAY INCREASE (hourly rate)	BACK PAY	COMPOUND INTEREST	BACK PAY AND INTEREST
(b) (7)(C)			(b) (7)(C)	\$8,568.00	\$800.34	\$9,368.34
<b>TOTAL</b>	--	--		\$8,568.00	\$800.34	\$9,368.34

**GRAND TOTALS:**

BACK PAY	COMPOUND INTEREST	BACK PAY AND INTEREST
\$23,337.60	\$2,180.06	\$25,517.66

**Attachment B**

**NOTIFICATION LETTER**

Certified Mail  
Return Receipt Requested

[Name]  
[Street]  
[City, State, Zip Code]

Dated: \_\_\_\_\_

Dear \_\_\_\_\_:

San Diego State University Research Foundation, located at 5250 Campanile Drive, San Diego, California, 92182 (hereinafter "SDSU Research Foundation") and the U.S. Department of Labor's Office of Federal Contract Compliance Programs (hereinafter "OFCCP") have entered into a Conciliation Agreement (hereinafter "CA") to resolve alleged disparities in compensation for employees working in \_\_\_\_\_ positions between July 1, 2008 and June 30, 2010. You have been identified as one of the individuals who worked in such a position during that time period.

As part of this CA, you are eligible to receive a monetary distribution of \$ \_\_\_\_\_ subject to lawful payroll deductions. In order to be eligible for this distribution, you must execute and return the enclosed Release of Claims **within forty-five (45) days of the postmark of this letter (or "within forty-five (45) days from your receipt of this letter" if received personally) to:**

**(TO BE DETERMINED)**

**If you fail to return the required documentation within the specified timeframe, you will be ineligible for monetary relief provided by this CA.**

By entering into this CA, SDSU Research Foundation has not admitted nor has there been any adjudicated finding that SDSU Research Foundation violated any laws regarding compensation. SDSU Research Foundation has entered into this CA for its convenience and to resolve the matter without further legal proceeding.

If you have any questions, please feel free to call me at (xxx) xxxxxx during normal business hours.

Sincerely,

**TO BE DETERMINED**

Enclosure: Release of Claims

cc: (b) (7) (c) \_\_\_\_\_ Compliance Officer, U.S. Department of Labor, OFCCP

**Attachment C**

**RELEASE OF CLAIMS**

In consideration of the monetary payment (less deductions required by law) by San Diego State University Research Foundation (hereinafter "SDSU Research Foundation") of \$ \_\_\_\_\_ to me, which I agree is acceptable, and also in consideration of the Conciliation Agreement between SDSU Research Foundation and the Office of Federal Contract Compliance Programs (hereinafter "OFCCP"), I agree to the following:

**I.**

I hereby waive, release and forever discharge SDSU Research Foundation, its predecessors, related entities, subsidiaries, and organizations, and its and their directors, officers, employees, agents, successors, and assigns, of and from any and all actions, causes of action, damages, liabilities, and claims arising out of or actionable under Executive Order 11246, as amended, the Rehabilitation Act of 1973, as amended, and/or the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (U.S.C. 4212), and all other applicable laws governing nondiscrimination in employment, which I or my representatives (heirs, executors, administrators, or assigns) have or may have which relate in any way to my not being selected for employment at any time prior to the effective date of this Release.

**II.**

I understand that if I am concerned about how the process described in this Release applies to me, I may contact OFCCP Compliance Officer (b) (7)(C) \_\_\_\_\_ for assistance at U.S. Department of Labor/OFCCP, 550 West C Street, Suite 900, San Diego, CA 92101-3531, phone number (619) 557-7400.

**III.**

I understand that SDSU Research Foundation denies that it treated me unlawfully or unfairly in any way and that SDSU Research Foundation entered into the above-referenced Conciliation Agreement with OFCCP in the spirit of conciliation and to bring closure to the compliance evaluation initiated by OFCCP on February 11, 2009. I further agree that the payment of the aforesaid sum by SDSU Research Foundation to me is not to be construed as an admission of any liability by SDSU Research Foundation.

**IV.**

I declare that I have read this Release and that I have had a full opportunity to consider and understand its terms and to consult with my advisors. I further declare that I have decided of my own free will to sign this Release.

**V.**

I understand that if I do not sign this Release and return it to SDSU Research Foundation's EEO Representative, (TO BE DETERMINED, ADDRESS) postmarked **within forty-five (45) calendar days from the date my Notification Letter was postmarked or hand delivered**, I will not be entitled to receive the payment (less deductions required by law) from SDSU Research Foundation.

IN WITNESS WHEREOF, I am signing this document of my own free will.

\_\_\_\_\_  
Name (please print)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date