

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

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SETTLEMENT AGREEMENT AND MUTUAL GENERAL RELEASE

This Settlement Agreement and Mutual Release (“Agreement”) is entered into in the State of California, and is made effective as of _____(Date) by and between _____(“Plaintiff”) and _____(“Defendant”) (each a “Party and collectively the “Parties”), who, intending to settle all the claims and causes of action between them, including those asserted in _____ [CASE] (the “Action”), agree as follows:

RECITALS

- A. Plaintiff asserts a claim against defendant based on _____
- B. An action based on this claim is now pending in the Superior Court of _____ County, case number _____, with Plaintiff represented by attorney _____, and Defendant represented by attorney _____.
- C. Defendant denies any liability in connection with the alleged claim.
- D. The Parties desire to enter into this Agreement in order to provide for certain payments in full settlement, discharge and mutual release of all claims which are or might become the subject of a Complaint and _____. The Parties have mutually agreed to settle any and all disputes and to release each other from any claims arising from or related to the Action.

NOW THEREFORE, in consideration of the mutual conditions, covenants, and promises of the parties, each to the other, they do hereby agree as follows:

AGREEMENT

1. Not Later than _____ [DATE] Defendant shall pay to the Plaintiff the sum of _____. Payment shall be made, at Defendant's option, by ways of cashier's check made payable to _____.

2. Within ten (10) business days of the receipt of the payment Plaintiff shall file a Request for Dismissal of the Action with prejudice.

3. Plaintiff, together with _____ [HIS/HER] personal representatives, trustees, employees, partners, insurers, sureties, agents, representatives, attorneys, successors, assigns and affiliated companies, form one "Released Group." Defendant, together with _____ [HIS/HER] personal representatives, trustees, employees, partners, insurers, sureties, agents, representatives, attorneys, successors, assigns and affiliated companies form another "Released Group."

4. Effective upon the satisfactory completion of the obligations set forth in Paragraphs 1 and 2 above, each of the Parties hereby fully releases and discharges the members of the other Released Group from any and all rights, claims, demands, damages, actions, causes of action, cost expenses, and suites at law or equity that such Party or any of his successors may have or claim to have against any member of the other Released Group at this time or at any prior time. This Mutual release applies to all claims or potential claims of any kind arising out of or in any way connected with any loss, damage, or injury whatsoever, known or unknown, suspected or unsuspected, resulting from any act or omission, by or on the part of any member of a Released Group, committed or omitted prior to the date hereof.

5. This agreement is a compromise of a disputed matter and may not be construed as an admission of any party's liability.

6. This agreement was the result of a negotiated settlement and may not be construed as having been prepared by any one party.

7. With the exception of disclosure to immediate family members of the parties or to their legal or financial advisors, the parties mutually agree that the terms and contents of the terms of this agreement, the contents of the negotiations and discussions resulting in this agreement and any dispute resolved by this agreement, shall all remain privileged and confidential and shall not be disclosed except to the extent required by law or as otherwise agreed to in writing and signed by all parties. I agree that, in the event that either breaches this confidentiality provision, the breaching party shall become immediately liable to repay to the other party the full amount of the payment contemplated by this agreement.

8. Neither party will hereafter commence, maintain, or prosecute any action at law otherwise against any member of the other Released Group for damages of any kind or amount arising out of any act or omission committed or omitted prior to the date of. Neither party will hereafter assert against any member of the other Released Group any right or claim of any nature that such Party may have claim to have at this time or any time heretofore. Each of the Parties further represents and warrants that he has not commenced any action at law or otherwise, other than the Action, against any member of the Released Group.

9. Each Party represents and warrants that he/she is the sole owner of all rights, claims, damages, actions, causes of action, and suits at law or in equity he/she may have against the members of the other Released Group or arising out of the Action or any of the above mentioned facts, and that he/she has not transferred or agreed to transfer any rights, claims, damages, actions, causes of action, or suits at law or in equity that form the basis of this Agreement. East Party agrees to indemnify and hold the other Parties harmless from and against any liability, loss, judgment, settlement ,

costs, or expense (including without limitation reasonable attorney's fees) resulting from, arising out of, or occasioned by the breach of the foregoing representation and warranty.

10. The Parties do hereby further agree as follows:

(a) There is a risk that, subsequent to the execution of this Agreement, one or more parties will incur, suffer or become aware of loss, damages or injuries which are in some way caused by the acts or omissions of the Parties occurring before the time this Agreement is signed, but which are unknown and unanticipated at the time this Agreement is signed.

(b) There is a risk that the facts with respect to which this Agreement is made may hereafter prove to be other than or different from the facts now known by any of the Parties or believed by any of them to be true.

(c) All Parties do hereby assume the above-mentioned risks and understand that: **THIS MUTUAL GENERAL RELEASE SHALL APPLY TO ALL UNKNOWN OR UNANTICIPATED CLAIMS AS WELL AS THOSE KNOWN AND ANTICIPATED,**

(d) Furthermore, upon advice of legal counsel, **all Parties do hereby waive any and all rights under California Civil Code section 1542,** which section has been duly explained and reads as follows:

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

Such waiver shall also apply to any similar statutory or common law limitation on general releases that may be applicable.

(e) The advice of legal counsel has been obtained by all Parties prior to signing this Agreement. All Parties execute this Agreement voluntarily, with full

knowledge of its significance, and with the express intention of affecting the legal consequences provided by Civil Code section 1541, i.e. the extinguishment of all obligations.

11. The Parties acknowledge that in entering into this Agreement they have not relied upon any representations, warranties, promises, or conditions not specifically set forth in this Agreement.

12. Subsequent changes in California law or federal law, through legislation or judicial interpretation, which create or find additional or different rights and obligations of the Parties, shall not affect this Agreement.

13. In addition to the acts recited in this Agreement to be performed by each of the Parties, each Party agrees to perform or cause to be performed all further acts, and to execute or cause to be executed promptly all documents and instruments, necessary to give effect to each term of this Agreement. In the event either Party fails to execute any document necessary to give effect to this Agreement, the requesting party shall have the right to apply to the court of appropriate jurisdiction, upon seventy-two (72) hours prior written notice (or such shorter notice as may be necessitated by the exigencies of the circumstances), for an ex parte order that the clerk of the court may sign said document on behalf of the recalcitrant party.

14. This Agreement shall be construed and enforced under and in accordance with the laws of the State of California.

15. Should any Party hereto institute any action or proceeding to enforce any provision of the Agreement, or for damages by reason of any alleged breach of any provision of this Agreement, or for a declaration of such Party's rights or obligations hereunder, or for any other judicial or quasi-judicial remedy, or raise a defense, cross-complaint, or counterclaim to an action brought by any other Party, which defense,

cross- complaint, or counterclaim asserts the enforcement of any provision of this Agreement, the prevailing Party in such action or proceeding shall recover from the losing Party all attorney's fees, cost, and expenses incurred by the prevailing Party for the services rendered for or on behalf of such prevailing Party.

16. Except as otherwise provided herein, each of the Parties hereto shall bear his/her own costs and attorneys' fees arising out of the subject matter hereof.

17. No waiver of the breach of any of the terms or provisions of this Agreement shall be a waiver of any preceding or succeeding breach of Agreement or any other provisions of it.

18. As used herein, the masculine gender shall include feminine and neuter and the singular shall include the plural, where applicable.

19. This Agreement may be executed in counterparts, all of which, when taken together, shall constitute one agreement, with the same force and effects as if all signatures had been entered on one document. Signatures delivered by facsimile transmission or other electronic means shall be deemed originals for all purposes.

20. This Agreement contains the entire agreement between the parties hereto with respect to the subject matter hereof, supersedes all prior agreements, negotiations, and oral understandings, if any, and may not be amended, supplemented, or discharged, except by an instrument in writing signed by each parties hereto.

21. This Agreement is entered into for the settlement and compromise of disputed claims, and shall never be treated as an admission of liability by any party for any purpose.

22. This Agreement is binding and enforceable and shall be admissible in evidence.

23. This Agreement shall be enforceable pursuant to the provisions of Code of Civil Procedure section 664.6 and by this agreement the parties request that the court retain jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement.

24. Other: _____

Executed at _____, California.

Dated: _____

Dated: _____

Dated: _____

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