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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

LARRY CRAFT, an individual; on behalf of
himself and all others similarly situated,

Plaintiffs,

v.

RWI TRANSPORTATION, LLC,

Defendants.

Case No.: 2:17-cv-05289-SVW

Assigned for all purposes to Hon. Stephen V.
Wilson

**STIPULATION OF CLASS ACTION
SETTLEMENT AND RELEASE OF CLAIMS**

Complaint Filed: June 19, 2017

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1 become final. This Settlement Agreement reflects a compromise reached to end litigation.
2 Defendant's signing of this Agreement will not be deemed to be an admission of any wrongdoing or
3 unlawful action in the pending Class Action or in any other matter.

4 F. The Parties participated in a mediation before reaching the settlement described
5 herein. The Parties and counsel participated in an arms'-length mediation session on December 14,
6 2017 with the well-respected and experienced mediator Joel Grossman of JAMS. The mediation
7 ended without settlement. The Parties, however, continued to negotiate thereafter for several
8 months. Upon reaching the material terms of this Settlement on or about March 6, 2018, the Parties
9 memorialized their agreement in a Memorandum of Understanding ("MOU"), executed through their
10 respective counsel.

11 G. Plaintiff's Counsel has conducted a thorough investigation into the facts of the *Craft*
12 Action, including formal and informal exchange of information and review of comprehensive files,
13 data, and records and through several depositions. Class Counsel are knowledgeable about and have
14 done extensive research with respect to the applicable law and potential defenses to the claims in the
15 *Craft* Action. Class Counsel have diligently pursued an investigation of the Class Members' claims
16 against Defendant. Based on the documents and information provided by Defendant, and their own
17 independent investigation and evaluation, Class Counsel are of the opinion that the settlement with
18 Defendant for the consideration and on the terms set forth in this Stipulation of Class Action
19 Settlement is fair, reasonable, and adequate, and is in the best interest of the Class Members in light
20 of all known facts and circumstances, including the risk of significant delay and uncertainty
21 associated with litigation, various defenses asserted by the Defendant, and numerous potential
22 appellate issues. Defendant and Defendant's counsel agree that the settlement is fair, reasonable,
23 and adequate.

24 H. The Parties stipulate and agree to the following terms of this Settlement Agreement
25 with the intent that this Agreement fully and finally dispose of the Class Action and the Released
26 Claims as defined herein:
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STIPULATION AND AGREEMENT

I. DEFINITIONS

A. The terms “**Agreement**,” “**Settlement Agreement**,” and “**Settlement**” mean the final, operative version of this fully executed Stipulation of Class Action Settlement, which the Parties acknowledge sets forth all material terms and conditions of the Settlement between them, and which is subject to Court approval.

B. “**Class Action**” means and refers to the Class Action lawsuit cited herein.

C. “**Class Counsel**” means Brian S. Kabateck and Cheryl A. Kenner of KABATECK BROWN KELLNER LLP.

D. “**Class Definition**” means all individuals who Defendant classified as independent contractors who drove under load for RWI and/or whose tractor was driven under load from RWI to or from California under RWI’s DOT authority at any time from June 19, 2013 through the date preliminary approval of the settlement is granted or March 31, 2018, whichever is sooner.

E. “**Class List**” means the list of names, last known addresses, last known phone number, and social security numbers of Class Members. The Class List will indicate, for each Class Member, the number of Qualifying Work Weeks in the Class Position during the Class Period for purposes of the Settlement Administrator calculating the Individual Settlement Payments.

F. “**Class Member(s)**” and “**Class**” mean all individuals who meet the Class Definition.

G. “**Class Period**” means June 19, 2013 through the date preliminary approval of the settlement is granted or March 31, 2018, whichever is sooner.

H. “**Class Position**” means classification as an independent contractor who drove under load from RWI or whose tractor was driven under load from RWI to or from California under RWI’s authority at any time during the Class Period.

I. “**Class Representative**” and “**Named Plaintiff**” mean and refer to LARRY CRAFT.

J. “**Gross Settlement Amount**” and “**GSA**” mean Nine Hundred and Fifteen Thousand Dollars (\$915,000.00), which will be all-inclusive, including Individual Settlement Payments to all Participating Class Members, Enhancement Payment to the Named Plaintiff, Settlement Administrator Costs, Class Counsel’s attorneys’ fees and costs related to the *Craft* Action as

1 awarded by the Court, payment to the California Labor and Workforce Development Agency
2 (“LWDA”) in connection with civil penalties recoverable under the California Labor Code Private
3 Attorneys General Act (“PAGA”), and Defendant’s share of payroll taxes. This Settlement is a non-
4 claims made and non-reversionary settlement. The GSA is subject to increase under the set of
5 circumstances defined in this Agreement.

6 K. **“Court”** means the United States District Court, Central District of California (Los
7 Angeles).

8 L. **“Defense Counsel”** means Richard H. Rahm, Angela J. Rafoth, and Julie A. Stockton
9 of LITTLER MENDELSON PC and Gary E. Becker and Susan H. Jackson of DINSMORE &
10 SHOHL LLP.

11 M. **“Effective Settlement Date”** shall be the date when all of the following events have
12 occurred: (a) this Stipulation has been executed by the Parties, Class Counsel and Defendant’s
13 Counsel; (b) the Court has issued an order granting preliminary approval of the Settlement; (c)
14 notice has been given to the Class Members providing them with an opportunity to participate,
15 object, or opt out of the Settlement; (d) the Court has held a Final Fairness and Approval hearing to
16 determine the fairness, adequacy, and reasonableness of the settlement and has entered a final order
17 and judgment approving this Stipulation; and (e) in the event there are written objections filed prior
18 to the Final Fairness and Approval Hearing that are not later withdrawn, the later of the following
19 events: (i) when the thirty-day (30) period for filing any appeal, writ, or other appellate proceeding
20 opposing the Settlement has elapsed without any appeal, writ, or other appellate proceeding having
21 been filed; or any appeal, writ, or other appellate proceeding opposing the Settlement has been
22 dismissed finally and conclusively with no right to pursue further remedies or relief or (ii) any
23 appeal, writ, or other appellate proceeding has upheld the Court’s final order with no right to pursue
24 further remedies or relief. In this regard, it is the intention of the Parties that the Settlement shall not
25 become effective until the Court’s order approving the Settlement is completely final and there is no
26 further recourse by an appellant or objector who seeks to contest the Settlement. In the event that no
27 written objections are filed prior to the Final Fairness and Approval hearing, the Effective Date shall
28 be upon the completion of all steps (a) through (d) above.

1 N. **“Enhancement”** and **“Enhancement Payment”** mean the portion of the Gross
2 Settlement Amount paid to the Named Plaintiff for his service in connection with being a Class
3 Representative and as consideration for the general release of claims provided herein. The
4 Enhancement Payment shall be in addition to the Individual Settlement Amount that the Named
5 Plaintiff shall receive as a Participating Class Member.

6 O. **“Final Fairness and Approval Hearing”** means a hearing set by the Court, pursuant
7 to class action procedures and requirements, for the purpose of determining the fairness, adequacy,
8 and reasonableness of this Settlement.

9 P. **“FLSA Settlement Class Members”** means all Participating Class Members who
10 timely negotiate their Individual Settlement Payment checks, and thereby will be deemed to have
11 given their consent to “opt in” as a party plaintiff in the *Craft* Action pursuant to the Fair Labor
12 Standards Act of 1938, 29 U.S.C. section 216(b) (“FLSA”) and to have waived and released any
13 claims they may have under the FLSA as related to the claims that were or arise out of the facts
14 asserted in the *Craft* Action.

15 Q. **“Individual Settlement Amount”** and **“Individual Settlement Payment”** mean the
16 gross amount to be paid to each Class Member who does not timely opt out of this Settlement.

17 R. **“Non-Reversionary Settlement Fund”** and **“Net Settlement Amount”** mean the
18 portion of the Gross Settlement Amount remaining after deduction of Court-awarded attorneys’ fees
19 and costs, the Class Representative Enhancement Payment, Settlement Administrator’s costs,
20 payment to the LWDA in connection with civil penalties under PAGA, and employer-side payroll
21 taxes. The Net Settlement Amount shall be used to determine the Individual Settlement Payments to
22 Participating Class Members.

23 S. **“Notice of Class Action”** and **“Class Notice”** mean a notice entitled “Notice of Class
24 Action Settlement” in the form substantially similar to that attached hereto as **Exhibit A** and
25 approved by the Court.

26 T. **“Notice Packet(s)”** mean and refer to the Notice of Class Action and Notice of
27 Estimated Individual Settlement Payment, collectively.

28 U. **“Objection/Exclusion Deadline Date”** or **“Response Deadline”** means and refers to

1 the final date upon which Class Members may mail Requests for Exclusion to the Settlement
2 Administrator; mail Objections to the Settlement to the Settlement Administrator; and mail Disputes
3 to the number of Qualifying Work Weeks to the Settlement Administrator. The Objection/Exclusion
4 Deadline Date shall be no later than forty-five (45) calendar days after the date the Settlement
5 Administrator mails the Notice Packets, unless the forty-fifth (45th) calendar day falls on a Sunday
6 or Federal holiday, in which case the Response Deadline will be extended to the next day on which
7 the U.S. Postal Service is open. However, in the event the Settlement Administrator re-mails a
8 Notice Packet to a Class Member, that Class Member's Objection/Exclusion Deadline Date shall be
9 extended by fifteen (15) calendar days from the date the Settlement Administrator initially mails the
10 Notice Packets, unless the fifteenth (15th) calendar day falls on a Sunday or Federal holiday, in
11 which case the Response Deadline will be extended to the next day on which the U.S. Postal Service
12 is open.

13 V. **"Order Granting Final Approval"** and **"Judgment"** mean an order and judgment
14 executed, filed, and entered by the Court granting final approval to the Settlement.

15 W. **"Order Granting Preliminary Approval"** means an order executed, filed, and
16 entered by the Court granting preliminary approval to the Settlement.

17 X. **"Participating Class Member(s)"** means any Class Member who does not opt out of
18 the Settlement by submitting a valid and timely Request for Exclusion, as provided in Section IV.F
19 below.

20 Y. **"Payment Date"** Within ten (10) calendar days of the Effective Date of Settlement,
21 as defined in Paragraph 5 above, Defendant shall deposit the Gross Settlement Amount into a
22 Qualified Settlement Fund (QSF) to be established by the Settlement Administrator. The Settlement
23 Administrator shall distribute the Gross Settlement Amount in the manner approved by the Court
24 within five (5) calendar days of funding.

25 Z. **"Preliminary Approval Date"** means the date upon which the Court executes, files,
26 and enters the Order Granting Preliminary Approval.

27 AA. **"Qualifying Work Weeks"** and **"Qualifying Weeks Worked"** means the total
28 number of work weeks during which a Class Member was engaged by Defendant in the Class

1 Position at any time during the Class Period and during which a Class Member either drove under
2 load from RWI or a tractor owned by the Class Member was driven under load from RWI to or from
3 California under RWI's authority. Any work week during which a Class Member drove at least one
4 day in California or a tractor owned by the Class Member was driven at least one day in California
5 shall be counted as a Qualifying Work Week.

6 BB. **"Released Claims"** means all known and unknown claims, losses, damages,
7 liquidated damages, demands, penalties, interest, liabilities, causes of action, complaints or suits, at
8 law or in equity, that were alleged or could have been alleged based on the facts in the Operative
9 Class Action Complaint, including but not limited to, claims for unreimbursed business expenses
10 and unlawful deduction, unpaid wages or overtime, "off-the-clock" work and premium wages for
11 alleged meal and/or rest period violations, failure to timely pay wages upon termination, claims
12 made under California Labor Code sections 201, 202, 203, 221, 226, 226.3, 226.7, 226.8, 510, 512,
13 1194, 1194.2, 1197, 2802, all similar provisions or requirements of the California Industrial Welfare
14 Commission Wage Order 9-2001 and California Business and Professions Code sections 17200, *et*
15 *seq.*, or any other federal, state, or local law, which the Class and/or any Class Member has ever had,
16 or hereafter may claim to have, for the Class Period, except for claims brought under the Fair Labor
17 Standards Act, 29 U.S.C. section 201, *et seq.* (to be released only by FLSA Settlement Class
18 Members as defined in Paragraph I(P) and as set forth in Paragraph II(A)(3), *infra*) and for claims for
19 workman's compensation.

20 CC. **"Released Parties"** means Defendant and Defendant's respective parents,
21 subsidiaries and affiliates, assigns, officers, directors, agents, employees, shareholders, insurance
22 companies, attorneys, partners, divisions, joint venturers, predecessors, successors, franchises,
23 beneficiaries, grantees, transferees, or representatives.

24 DD. **"Request for Exclusion"** means a Class Member's signed, written request to be
25 excluded or to "opt-out" of the Settlement, as provided in Section IV.F below.

26 EE. **"Settlement Administrator"** means CPT Group., Inc.

27 FF. **"Settlement Administrator Costs"** the Settlement Administrator's costs shall
28 include all costs of administration, tax reporting, providing notice of entry of judgment, and the

1 escheat of funds. The Settlement Administrator's costs shall be based upon the number of putative
2 class members, the form of Notice approved by the Court, and the terms of this Settlement
3 Agreement. The Settlement Administrator Costs are estimated not to exceed Ten Thousand Five
4 Hundred Dollars (\$10,500.00).

5 GG. **"Unclaimed Portion"** means any check issued to Participating Class Members or
6 other recipient that remains uncashed after one hundred and eighty (180) days of disbursement.

7 **II. SETTLEMENT AMOUNTS**

8 **A. Gross Settlement Amount**

9 The Gross Settlement Amount of Nine Hundred and Fifteen Thousand Dollars (\$915,000.00)
10 shall be allocated to payment of: (1) Individual Settlement Payments to Participating Class
11 Members; (2) Class Representative Enhancement Payment of up to Fifteen Thousand Dollars
12 (\$15,000.00) for the Named Plaintiff; (3) payment of Class Counsel's attorney fees totaling one-third
13 (1/3) of the Gross Settlement Amount, equal to Three Hundred and Five Thousand Dollars
14 (\$305,000.00), and costs up to a total of Thirty-Five Thousand Dollars (\$35,000.00); (4) the
15 reasonable fees and expenses of the Settlement Administrator of up to Ten Thousand Five Hundred
16 Dollars (\$10,500.00); withholding of employee-side payroll taxes, if any; employer-side payroll
17 taxes; and civil penalties recoverable under California Private Attorneys General Act (PAGA) in the
18 amount of Twenty-Five Thousand Dollars (\$25,000.00), of which 75 percent (75%) or Eighteen
19 Thousand, Seven Hundred and Fifty Dollars (\$18,750.00) will be paid to the California Labor and
20 Workforce Development Agency and 25 percent (25%) equal to Six Thousand, Two Hundred and
21 Fifty Dollars (\$6,250.00) shall remain in the Net Settlement Amount for the Class. The Net
22 Settlement Amount shall be paid to Individual Settlement Payments to Participating Class Members
23 on a non-claims made basis.

24 Defendant estimates that there are 584 Class Members and approximately 22,037 Qualifying
25 Work Weeks at the time the MOU was executed. Additionally, if after Notice Packets are
26 distributed to Class Members and additional persons not originally included on the Class List are
27 revealed, then those persons shall be included as Participating Class Members and their number of
28 Qualifying Work Weeks shall be included for purposes of calculating Individual Settlement

1 Payments.

2 1. The Individual Settlement Payments paid from the Net Settlement Amount to
3 Participating Class Members will be determined as follows: Each Class Member who does not opt
4 out shall receive a pro rata share of the net settlement amount. Pro rata shares shall be determined
5 by, first, determining the value of a single Qualifying Work Week by dividing the Net Settlement
6 Amount by the total number of Qualifying Work Weeks for all Participating Class Members. Then,
7 Individual Settlement Payments will be determined by multiplying the value of a single Qualifying
8 Work Week by the number of Qualifying Work Weeks worked by each Participating Class Member.

9 2. The Individual Settlement Payments are payments for all Released Claims. One-third
10 (1/3) of the Individual Settlement Payments paid to each participating Class Member will be
11 allocated to non-wage damages, which will not be subject to withholding. One-third (1/3) of the
12 Individual Settlement Payments paid to each participating Class Member will be allocated to
13 penalties, which will not be subject to withholding. One-third (1/3) of the Individual Settlement
14 Payments paid to each participating Class Member will be allocated to interest, which will not be
15 subject to withholding. The Settlement Administrator shall be responsible for issuing and providing
16 Form 1099s to Participating Class Members for their Individual Settlement Payments. Unless
17 otherwise set forth herein, each Participating Class Member, Class Counsel, and Class
18 Representative payment recipient will be responsible for payment of their own tax obligations, if
19 any. Class Members who may have questions about their tax liability, if any, should consult
20 independent tax counsel.

21 3. Each Individual Settlement Payment check issued to a Participating Class Member
22 for his or her share of the Settlement shall contain the following notification on the back: "I
23 understand and agree that I am releasing any and all claims described in the Notice of Class Action
24 Settlement, which I received and read. I further agree that by cashing this check, I elect to opt into a
25 settlement under the Fair Labor Standards Act, 29 U.S.C. § 201 et. seq., and hereby release all
26 losses, damages, liquidated damages, demands, penalties, interest, liabilities, causes of action,
27 complaints or suits, at law or in equity against the Released Parties arising under that federal Fair
28 Labor Standards Act and its associated regulations.

1 4. The Individual Settlement Payments are the sole payments to be made by Defendant
2 to or on behalf of the Settlement Class as the result of this litigation. The Settlement Class will not
3 be entitled to any additional compensation or benefits as a result of having receiving amounts under
4 this Settlement. For example, receipt of Individual Settlement Payments will not entitle any
5 Settlement Class Member to additional compensation or benefits under any company bonus, contest
6 or other compensation or benefit plan or agreement in place during the Settlement Class Period
7 covered by the Settlement. Payments under the Settlement will not entitle a Settlement Class
8 Member to any retirement, 401(k) benefits or matching benefits, or other compensation benefits.
9 This provision will apply notwithstanding any contrary language or agreement in any benefit or
10 compensation plan document that might have been in effect during the period covered by this
11 Settlement.

12 5. The settlement is a non-reversionary cash settlement. Any Individual Settlement
13 Payment checks and/or any Unclaimed Portion of the amount of the Non-Reversionary Settlement
14 Fund allocated to pay Participating Class Members shall be paid to the State of California, State
15 Controller's Office's, Unclaimed Property Division, in the name(s) of the corresponding Class
16 Member(s), which shall remain available for those Participating Class Members to claim thereafter.

17 **B. Class Representative's Enhancement Payment**

18 1. Class Counsel will submit an application to the Court for an award of an Individual
19 Enhancement to the Named Plaintiff in an amount not to exceed Fifteen Thousand Dollars
20 (\$15,000.00).

21 2. Said application will be set for hearing concurrently with the Parties' Motion for
22 Final Approval. The Enhancement Payment is for the purpose of compensating the Named Plaintiff
23 for his service to the Class, the risks taken in connection with being a Class Representative and
24 Named Plaintiff, and as consideration for his agreement to enter into a complete release of all claims.

25 3. Defendant and Defendant's counsel will not object to a request for approval of the
26 Enhancement Payment, provided the request does not exceed \$15,000 for Named Plaintiff. Any
27 portion of the Enhancement not approved by the Court will remain in the Non-Reversionary
28 Settlement Fund to be distributed to Participating Class Members.

1 4. The Court-awarded Enhancement Payment is in addition to the Individual Settlement
2 Payments allocated to the Class Representative as a Participating Class Member under this
3 Settlement.

4 5. The Class Representative will receive an individual Form 1099 relating to such
5 payment. The Class Representative will be solely liable for and pay any and all taxes, costs, interest,
6 assessments, penalties, or damages by reason of payment of his enhancement.

7 6. Provided the Court awards any Enhancement to the Class Representative, the
8 Settlement Administrator will mail a check for the full amount the Court awards to the Class
9 Representative out of the Gross Settlement Amount within five (5) calendar days after Defendant
10 funds the Gross Settlement Amount.

11 **C. PAGA – California Labor Code Private Attorneys General Act**

12 The Parties agree that Twenty-Five Thousand Dollars (\$25,000.00) of the Gross Settlement
13 Amount be allocated to civil penalties recoverable under PAGA, of which 75 percent (75%)—
14 Eighteen Thousand, Seven Hundred and Fifty Dollars (\$18,750.00)—will be paid to the Labor
15 Workforce and Development Agency and 25 percent (25%)—Six Thousand, Two Hundred and Fifty
16 Dollars (\$6,250.00)—will be included in the Net Settlement Amount to be distributed among
17 Participating Class Members.

18 **D. Class Counsel’s Attorneys’ Fees and Costs**

19 Concurrent with filing the final approval motion, Class Counsel will file a motion requesting
20 that the Court award attorneys’ fees in an amount not to exceed one-third (1/3) of the Gross
21 Settlement Amount or Three Hundred and Five Thousand Dollars (\$305,000), the total amount of
22 which is subject to increase upon an increase in Gross Settlement Amount, while the one-third
23 percentage shall remain fixed even upon an increase in the Gross Settlement Amount. The
24 attorneys’ fees awarded by the Court shall be paid to Class Counsel. In addition to an award of
25 attorneys’ fees, Class Counsel will request that the Court award reasonable costs incurred, as proven,
26 not to exceed Thirty-Five Thousand Dollars (\$35,000.00). Such application will be set for hearing
27 concurrently with Plaintiff’s Motion for Final Approval.

28 1. Defendant and Defendant’s counsel will not object to Class Counsel’s application or

1 applications for an award of attorneys' fees of up to one-third of the Gross Settlement Amount and
2 actual costs incurred up to \$35,000 from the Gross Settlement Amount. Any amount for attorneys'
3 fees and/or costs not approved by the Court will be included in the Net Settlement Amount and
4 distributed to Participating Class Members.

5 2. As a condition of this Settlement Agreement, Class Counsel agree to pursue their
6 attorneys' fees and costs only in the manner reflected herein.

7 3. Provided the Court awards attorneys' fees and costs to Class Counsel, the Settlement
8 Administrator will pay to Class Counsel the full amounts of their Court-awarded attorneys' fees and
9 costs out of the Gross Settlement Amount within five (5) calendar days after Defendant funds the
10 Gross Settlement Amount.

11 **E. Costs of Settlement Administration**

12 The Settlement Administrator Costs for the full administration of this Settlement are
13 estimated to not exceed Ten Thousand Five Hundred Dollars (\$10,500.00). The Settlement
14 Administrator Costs shall not exceed Ten Thousand Five Hundred Dollars (\$10,500.00) without
15 court approval. Any Settlement Administrator Costs not approved by the Court will remain part of
16 the Net Settlement Amount to be distributed among Participating Class Members. The parties have
17 agreed to and request that the Court appoint CPT Group, Inc. as Settlement Administrator for this
18 Settlement.

19 **III. RELEASES BY PARTICIPATING CLASS MEMBERS AND NAMED PLAINTIFF**

20 **A. Terms of Release of Participating Class Members**

21 In exchange for the consideration recited in this Settlement Agreement, all Participating
22 Class Members, on behalf of themselves and on behalf of their current, former, and future heirs,
23 executors, administrators, attorneys, agents, and assigns, do hereby and forever release, waive,
24 acquit and discharge the Released Parties from the Released Claims.

25 **B. Promise Not to Sue for Released Claims**

26 The Participating Class Members are deemed by operation of the Order Granting Final
27 Approval to have agreed not to institute any action, nor accept back liquidated damages, punitive
28 damages, penalties of any nature, attorneys' fees and costs, or any other relief from any other suit,

1 class or collective action, administrative claim or other claim of any sort or nature whatsoever
2 against Defendant, for the Settlement Class Period for any Released Claims.

3 **C. Terms of General Release by Named Plaintiff**

4 As a material inducement to Defendant to enter into this Agreement, the Named Plaintiff
5 does hereby, for himself and his spouses, heirs, successors, and assigns, forever release the Released
6 Parties from any and all charges, complaints, claims, liabilities, obligations, promises, agreements,
7 controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts, and
8 expenses (including back wages, penalties, liquidated damages, and attorneys' fees and costs
9 actually incurred) of any nature whatsoever, from the beginning of time through the Effective
10 Settlement Date, known or unknown, suspected or unsuspected, including but not limited to all
11 claims arising out of, based upon, or relating to his relationship with Defendant or the remuneration
12 for, or, as applicable, termination of, such relationship. Without limiting the generality of the
13 foregoing, Named Plaintiff expressly releases all claims or rights arising out of alleged violations of
14 any contracts, express or implied (including but not limited to any contract of employment); any
15 contract or covenant of good faith or fair dealing (express or implied); any tort, including
16 negligence, fraud, misrepresentation under California Labor Code section 970, negligent infliction of
17 emotional distress, intentional infliction of emotional distress, and defamation; any "wrongful
18 discharge," "constructive discharge," and "retaliation" claims; any claims relating to any breach of
19 public policy; any legal restrictions on Defendant's right to discharge employees or refuse to hire
20 applicants; and any federal, state, or other governmental statute, regulation, or ordinance, including,
21 without limitation: (1) Title VII of the Civil Rights Act of 1964 (race, color, religion, sex, and
22 national origin discrimination or harassment, including retaliation for reporting discrimination or
23 harassment); (2) 42 U.S.C. § 1981 (discrimination); (3) sections 503 and 504 of the Rehabilitation
24 Act of 1973 (handicap discrimination); (4) California Family Rights Act, Cal. Gov't Code § 12945.1
25 *et seq.* (family/medical leave); (5) Americans with Disabilities Act, 42 U.S.C. § 12100 *et seq.*
26 (disability discrimination); (6) Family and Medical Leave Act, 29 U.S.C. § 2601 *et seq.*
27 (family/medical leave); (7) California Fair Employment and Housing Act, Cal. Gov't Code § 12900
28 *et seq.* (discrimination or harassment in employment and/or housing, including discrimination or

1 harassment based on race, religious creed, color, national origin, ancestry, disability, medical
2 condition, genetic information, marital status, sex (including pregnancy and related conditions),
3 sexual orientation, gender, gender identity, gender expression, military and veteran status, or age,
4 including retaliation for reporting discrimination or harassment); (8) California Labor Code or any
5 Industrial Welfare Commission Wage Order; (9) Executive Orders 11246 and 11141 (race, color,
6 religion, sex, age, and national origin discrimination or harassment); (10) the Fair Labor Standards
7 Act, including its associated regulations, and (11) Executive Order 11141 (age discrimination); but
8 excluding all claims for workman's compensation. The Parties intend this release to be full and
9 complete to the full extent allowed by law.

10 **D. Section 1542 Waiver by Named Plaintiff**

11 The Named Plaintiff hereby expressly waives all rights and benefits afforded by Section
12 1542 of the California Civil Code as to any claims he does not know or suspect to exist in his favor
13 against any of the Released Parties and does so understanding the significance of that waiver.
14 Section 1542 provides:

15 "A general release does not extend to claims which the
16 creditor does not know or suspect to exist in his or her favor
17 at the time of executing the release, which if known by him or
18 her must have materially affected his or her settlement with
19 the debtor."

20 **E. Claims by Participating Class Members Based on Stipulation and Agreement**

21 In addition to the terms of the Releases outlined above, no Participating Class Member,
22 including the Class Representative, will have any claim against any of the Released Parties,
23 Defendant's attorneys of record, the Named Plaintiff, any other Class Member, or Class Counsel
24 based on errors in administering claims or performing the mailing and skip-tracing requirements of
25 the Settlement Administrator under this Agreement.

26 **IV. SETTLEMENT APPROVAL, CLAIMS, AND PAYMENT PROCEDURES**

27 **A. Request for Preliminary and Final Approval**

28 The Parties will cooperate fully in requesting preliminary and final approval of this

1 Settlement Agreement by the Court, including determination by the Court that this Settlement is fair,
2 reasonable, and adequate. The Parties will also cooperate fully in promptly requesting that, as
3 provided for in this Settlement Agreement, the Court approve the proposed forms of notices, orders,
4 and other documents necessary to implement this Settlement.

5 **B. Class Certification for Purposes of the Settlement**

6 The Parties stipulate that a class may be certified as to all causes of action pled in the Named
7 Plaintiff's operative Complaint, for purposes of effectuating this Settlement only. The Parties agree
8 that certification for settlement purposes as set forth herein is in no way an admission that class
9 certification is proper for litigation purposes. If the Settlement does not become Final, the Parties'
10 stipulation to class certification as to all causes of action as part of the Settlement shall become null
11 and void and shall have no bearing on, and shall not be admissible in connection with, the issue of
12 whether or not certification would be appropriate in a non-settlement context.

13 **C. Class List to Be Provided by Defendant to the Settlement Administrator**

14 Defendant shall provide a Class List to the Settlement Administrator and Class Counsel
15 within seven business (7) days after entry and service of an Order Granting Preliminary Approval
16 regarding this Settlement. The Class List shall be marked "Confidential – Attorney's and Settlement
17 Administrator's Eyes Only." Class Counsel represents, warrants, covenants and agrees that (a) Class
18 Counsel shall hold the Class List, including any copies thereof, in strictest confidence and shall not
19 disclose or divulge its contents to any Class Member, including Named Plaintiff, or to any third
20 party; (b) the Class List shall be kept in secure facilities; and (c) the contents of the Class List shall
21 be used exclusively for administration of the Settlement pursuant to this Stipulation and for no other
22 purpose, including, but not limited to, fact-gathering, or discovery. This provision does not preclude
23 Class Counsel from speaking with class members about the terms of this settlement once Plaintiff's
24 Motion for Preliminary Approval is filed with the Court; or earlier with those Class Members with
25 whom they have contact.

26 **D. Notice of Class Action**

27 1. The Notice of Class Action and the Notice of Estimated Individual Settlement
28 Payment are attached hereto as **Exhibits A** and **B**, respectively (collectively, the "Notice Packet").

2. The Notice Packets will be provided to all Class Members in both English and Spanish.

3. Within ten (10) days after the Settlement Administrator receives the Class List from Defendant, the Settlement Administrator will update all addresses using the National Change of Address System (NCOA) and mail to all Class Members, via first-class United States Mail, the following documents: (a) Notice of Class Action, **Exhibit A**; and (b) Notice of Estimated Individual Settlement Payment, **Exhibit B**. The envelope in which the Notice Packet is mailed will clearly state that it concerns a class action and the recipient could be entitled to a cash payment.

4. In the event of returned or non-deliverable Notice Packets, the Settlement Administrator will make reasonable efforts to locate Class Members and re-send the Notice Packet. In the event that Notice Packets are returned to sender or returned as not deliverable, the Settlement Administrator will make reasonable efforts to locate the respective Class Members through skip-tracing services offered by publicly available databases, and will re-send the Notice Packets to the best available addresses of these Class Members after performing the skip-tracing. It will be conclusively presumed that a Class Member's Notice Packet was received if the Notice Packet has not been returned within twenty (20) days of the original mailing of the Notice Packet to the Class Member.

5. In order to object to the Settlement, a Class Member must not have excluded himself or herself from the Settlement, and his or her objection to the Settlement Administrator must be postmarked no later than forty-five (45) calendar days after the date of the mailing or, if applicable, the extended date upon a re-mailing of the Notice Packet. If a Class Member submits both an objection and a Request for Exclusion, the earlier-postmarked mailing will be invalid and the later-postmarked mailing will be accepted and control as if it were the only mailing sent by the Class Member.

6. In the event the procedures set forth herein are followed and the intended recipient of a Notice Packet still does not receive the Notice Packet, the intended recipient will be a Participating Class Member and will be bound by all terms of the Settlement and the Order Granting Final Approval entered by the Court.

7. The Individual Settlement Payment will be mailed to that Class Member's last known address. If the envelope containing the Individual Settlement Payment is returned to sender or returned as not deliverable, then the Settlement Administrator will run an updated NCOA search and re-mail the check. In the instance that the Class Member's Notice Packet is re-mailed, that Class Member's Objection/Exclusion Deadline Date shall be recalculated so that Class Member shall have an additional fifteen (15) calendar days from the original Response Deadline to opt out or object.

E. Dispute Resolution Regarding Qualifying Weeks Worked

1. Each Class Member will receive a Notice of Estimated Individual Settlement Payment, **Exhibit B**, which will specify the Qualifying Work Weeks for that Class Member in the Class Position for which he or she is credited.

2. Class Members will be entitled to dispute the number of Qualifying Work Weeks reported on the Notice of Estimated Individual Settlement Payment Form by sending written notice of their dispute to the Settlement Administrator by the Response Deadline. To be considered, such written dispute must be: (1) signed by the Class Member; (2) timely; and (3) accompanied with satisfactory evidence of the actual weeks worked during the Class Period in the Class Position.

3. Class Members will have no more than forty-five (45) days after the date when the Notice Packet was mailed to Class Members by the Settlement Administrator to postmark to the Settlement Administrator his or her dispute concerning the weeks worked in the Class Position during the Class Period with satisfactory evidence to support his or her dispute. Evidence of the dates of engagement with Defendant alone will not constitute satisfactory evidence.

4. If any Class Member disagrees with Defendant's records as to number of Qualifying Weeks Worked as reflected on the Notice, the Class Member shall set forth the dates he or she claims to have worked in the Class Position during the Class Period and submit to the Settlement Administrator along with any supporting documentation. Within five (5) days of receiving a dispute concerning a Class Member's Qualifying Work Weeks, the Settlement Administrator shall review all documents received from the Class Member in support of the Class Member's dispute, and shall contact Defendant regarding the dispute and Defendant shall work in good faith to resolve it. Within seven (7) days of contacting Defendant regarding the dispute, the Settlement Administrator shall

1 inform Defendant's counsel of its decision as to whether it accepts or rejects the dispute or whether
2 it needs additional information from Defendant prior to rendering a decision. The Parties agree that
3 the Settlement Administrator's determination shall be binding for all purposes related to this
4 Settlement.

5 5. The Settlement Administrator shall notify Class Counsel within five (5) days as to the
6 existence of a dispute and within five (5) days of resolution of a dispute.

7 6. The Settlement Administrator shall be the final arbiter of the number of Qualifying
8 Weeks Worked by the Class Member in the Class Position during the Class Period. The Settlement
9 Administrator shall resolve all disputes prior to the date upon which the Settlement Administrator
10 must submit its Declaration to Counsel for Final Approval.

11 7. Any changes to a Class Member's Qualifying Weeks Worked will be reflected in the
12 total weeks worked for the entire Class on the updated Class List. For example, if Class Member A
13 disputes his Qualifying Weeks Worked and provides satisfactory evidence that his Qualifying Weeks
14 Worked should be increased by two (2) weeks, and the Settlement Administrator, in consultation
15 with Defendant and the records provided, agrees, the total Qualifying Weeks Worked for the entire
16 Class will also be increased by two (2) weeks for purposes of calculating Individual Settlement
17 Payments.

18 **F. Requests for Exclusion ("Opt Out")**

19 The Notice of Class Action will notify all Class Members of their right to opt out of the
20 Settlement.

21 1. Any Class Member who wishes to be excluded from (opt out of) the Settlement must
22 submit a signed written Request for Exclusion to the Settlement Administrator, which must be
23 postmarked on or before the Objection/Exclusion Deadline Date. To be valid, the Request for
24 Exclusion must be both timely and complete. To be complete, the Request for Exclusion must: (a)
25 include a written statement requesting exclusion from the Settlement as further detailed in the Class
26 Notice; (b) reference the name, current address and telephone number of the person requesting
27 exclusion; (c) be signed by the person requesting exclusion or by his or her authorized
28 representative; and (d) include the last four (4) digits of his or her social security number. To be

1 timely, the Request for Exclusion must (a) be mailed to the Settlement Administrator and (b)
2 postmarked no later than the Objection/Exclusion Deadline. The date of the postmark on the return
3 mailing envelope shall be the exclusive means used to determine whether a Request for Exclusion
4 has been timely submitted. The Objection/Exclusion Deadline Date shall be forty-five (45) days
5 after the date the Notice Packet is mailed (or, if re-mailed, no later than fifteen (15) days after the
6 original Response Deadline) by the Settlement Administrator to the Class Member.

7 2. Any Class Member who mails a timely and valid Request for Exclusion will, upon
8 receipt thereof by the Settlement Administrator, no longer be a Participating Class Member, and will
9 receive no benefit from this Settlement, and none of his or her claims, causes of action or rights will
10 be released by virtue of this Settlement Agreement. Any Individual Settlement Payment that would
11 have been paid to a Class Member but for that Class Member opting out of the Settlement will be
12 included in the Non-Reversionary Settlement Fund and distributed to Participating Class Members.

13 3. Failure to submit a valid Request for Exclusion will result in a Class Member being
14 conclusively deemed a Participating Class Member fully bound by the terms of the Settlement.

15 4. If a Class Member submits a valid Request for Exclusion and thereafter wishes to
16 participate in the Settlement, the Class Member may rescind his or her Request for Exclusion if and
17 only if the Class Member submits a valid Rescission of Opt-Out Request. To be valid, the
18 Rescission of Opt-Out Request must be both timely and complete. To be complete, the Rescission
19 of Opt-Out Request must include all of the following: the Class Member's (a) full name, (b) current
20 address, (c) current telephone number, (d) Social Security Number's last four digits, and (e)
21 statement that he or she wishes to rescind his or her Request for Exclusion from the Settlement. To
22 be timely, the Rescission of Opt-Out Request must be mailed to the Settlement Administrator by
23 First-Class U.S. Mail and postmarked no later than forty-five (45) days after the date the Notice
24 Packet is mailed (or if applicable, fifteen (15) days thereafter in the instance the Notice Packet was
25 re-mailed to the Class Member) by the Settlement Administrator to the Class Member, as
26 conclusively evidenced by the date of the postmark.

27 5. If the Settlement Administrator receives a Class Member's valid Request for
28 Exclusion, the Class Member's failure to submit a valid Rescission of Opt-Out Request will result in

1 the Class Member being conclusively deemed no longer a Participating Class Member, and will
2 receive no benefit from this Settlement, and none of his or her claims, causes of action or rights will
3 be released by virtue of this Settlement Agreement.

4 If a Class Member submits a timely dispute concerning his or her Qualifying Work Weeks as
5 reflected on his or her Notice of Estimated Individual Settlement Payment, **Exhibit B**, and submits a
6 timely Request for Exclusion, the Request for Exclusion will be invalid and such Class Member will
7 be considered a Participating Class Member unless the Request for Exclusion is postmarked after the
8 date the Class Member is notified of the determination of the disputed Qualifying Weeks Worked by
9 the Settlement Administrator.

10 **G. Objections to This Settlement**

11 The Notice of Class Action Settlement will provide that any Class Member who wishes to
12 object to the Settlement must mail a written objection to the Settlement Administrator by First-Class
13 U.S. Mail, which must be postmarked no later than forty-five (45) days after the date the Notice
14 Packet is mailed to Class Members by the Settlement Administrator or, if re-mailed, no later than
15 fifteen (15) days after the original Response Deadline. The date of delivery of the written objection
16 is deemed to be the date the objection is deposited in the U.S. mail, postage prepaid, as evidenced by
17 the postmark. Upon receipt of a Class Member's written objection, valid or otherwise, the
18 Settlement Administrator shall promptly email and U.S. mail a copy of the Class Member's written
19 objection (including the envelope evidencing the postmark) to Class Counsel and to Defense
20 Counsel no later than the next business day. To be valid, the objection must do all of the following:
21 (1) include the case name and number; (2) set forth, in clear and concise terms a statement of the
22 reasons why the objector believes that the Court should find that the proposed Settlement is not in
23 the best interest of the Class and the reasons why the Settlement should not be approved, including
24 the legal and factual arguments supporting the objection; and (3) if an objector also wishes to appear
25 at the Final Approval Hearing, in person or through an attorney, he or she must state his or her
26 intention to appear. Unless otherwise ordered by the Court, Class Members shall not be entitled to
27 speak at the Final Approval Hearing unless they have submitted a timely written objection. Class
28 Members who have properly and timely submitted objections may appear at the Final Approval

Hearing, either in person or through a lawyer retained at their own expense. Any Class Member who participates in the settlement but who fails to submit timely written objections in the manner specified above will be deemed to have waived any objection and will be foreclosed from making any objection (whether by appeal or otherwise) to the Settlement.

H. Verification of Dissemination of Notice of Class Action

The Settlement Administrator will verify, in writing, that the Notice Packets have been disseminated in accordance with the Court's Order Granting Preliminary Approval, and will provide such verification to Class Counsel and Defendant's counsel no later than twenty (20) days prior to the date of the Final Fairness and Approval Hearing.

I. Reporting

The Settlement Administrator will provide written notice to Class Counsel and Defendant's counsel of all Objections to Settlement it receives, within one (1) business day of receiving such items. Upon receipt of a Class Member's written objection, valid or otherwise, the Settlement Administrator shall promptly email and U.S. mail a copy of the Class Member's written objection (including the envelope evidencing the postmark) to both Class Counsel and to each Defense Counsel no later than the next business day. Class Counsel must file each Objection to Settlement, timely or not, that it receives from the Settlement Administrator within two (2) business days from receipt from the Settlement Administrator, but no later than the day prior to the Final Approval Hearing. Ten (10) days prior to the deadline Class Counsel must file its Motion for Final Approval, the Settlement Administrator will provide Class Counsel and Defendant's Counsel a Declaration of Compliance reporting on its compliance with the settlement administration procedures and an itemization of costs incurred and itemization of expected future costs.

J. No Encouraging Class Members Not to Participate

No Party, including counsel for the Parties, will directly or indirectly, through any person or entity, encourage any Class Member to object or request exclusion from this Settlement.

K. Final Fairness and Approval Hearing

On the date set forth in the Notice of Class Action, which will be approximately one hundred and fifty (150) days after the Court grants Preliminary Approval of the Settlement, a Final Fairness

1 and Approval Hearing will be held before the Court in order to: (1) review this Settlement
2 Agreement and determine whether the Court should give it final approval; and (2) consider any
3 timely objections to the Settlement and all responses by the Parties to such objections. At the Final
4 Fairness and Approval Hearing, the Parties will ask the Court to approve the Settlement Agreement
5 and to enter judgment.

6 **L. Dates and Methods of Payment of the Gross Settlement Amount**

7 1. Defendant shall provide full payment of the Gross Settlement Amount to the
8 Settlement Administrator no later than the Payment Date, which is within ten (10) calendar days of
9 the Effective Date. The payment by the Defendant shall be made by wire transfer to the Settlement
10 Administrator.

11 Within one business day of receiving payment, the Settlement Administrator shall provide
12 written confirmation to Class Counsel of the exact amount Defendant wired to the Settlement
13 Administrator.

14 2. Five (5) calendar days after the Payment Date, the Settlement Administrator will
15 prepare and mail settlement checks to each Participating Class Member in the amount of his or her
16 Individual Settlement Payment out of the funds paid by Defendant. The checks will indicate on their
17 face that they are void if not negotiated within one hundred and eighty (180) days of their issuance.
18 In the event a settlement check is returned to the Settlement Administrator with a forwarding address,
19 the settlement check will be forwarded to the forwarding address. In the event a settlement check is
20 returned to the Settlement Administrator without a forwarding address or is otherwise undeliverable,
21 the Settlement Administrator will conduct an in-depth search, including without limitation, enhanced
22 skip tracing methods, and then re-mail the returned check. If the standard or “in-depth” search and
23 skip tracing do not provide a better address, or the settlement check is ultimately returned without a
24 forwarding address, neither Defendant, Class Counsel, nor the Settlement Administrator shall be
25 required to take further action to achieve delivery of the check to the Class Member. The Settlement
26 Administrator may at its choosing call Participating Class Members who have not cashed their checks
27 to obtain current addresses for re-mailing new checks. If within that one-hundred-and-eighty-day-
28 period (180) the Participating Class Member contacts the Settlement Administrator, or if Class

1 Counsel does so on the Participating Class Member's behalf, the settlement check will be reissued and
2 mailed to the address the Participating Class Member or Class Counsel provide. Any such reissued
3 settlement checks will indicate on their face that they are void if not negotiated within one hundred
4 and eighty (180) days of their issuance.

5 3. Any settlement checks issued to Participating Class Members that remain uncashed
6 after one hundred and eighty (180) days of disbursement shall be paid to the State of California,
7 State Controller's Office's, Unclaimed Property Division in the name of the Class Member, which
8 shall remain available for those Participating Class Members to claim thereafter. Upon the closing
9 of the Settlement Administrator's bank account regarding this Settlement, any interest on funds
10 deposited by Defendant with the Settlement Administrator that is associated with uncashed checks
11 shall be paid to the State of California, State Controller's Office's, Unclaimed Property Division in
12 the name of the Class Member, which shall remain available for those Participating Class Members
13 to claim thereafter. Participating Class Members who do not timely negotiate their Individual
14 Settlement Payment checks shall be bound by all of the terms of the Settlement, including without
15 limitation, the Released Claims set forth in the Settlement.

16 **M. Dates and Methods of Enhancement Payments and Attorneys' Fees and Costs**

17 1. Within five calendar (5) days of the Payment Date, the Settlement Administrator will
18 pay from the Gross Settlement Amount paid by Defendant the Enhancement Payment as awarded by
19 the Court to the Named Plaintiff. The payment will be made by sending the Named Plaintiff a
20 separate check in the amount of the Court-approved Enhancement.

21 2. Within five (5) calendar days of the Payment Date, the Settlement Administrator will
22 pay from the Gross Settlement Amount Class Counsel's Court-approved attorneys' fees and costs.
23 Class Counsel shall provide to the Settlement Administrator all information necessary to make such
24 payments, including W-9 forms, tax ID numbers, and wiring instructions.

25 3. The Settlement Administrator shall make arrangements to remit to the LWDA any amounts
26 allocated as penalties paid to the LWDA and shall also make arrangements to remit any taxes withheld
27 to the appropriate tax authorities.
28

1 **N. No Additional Contribution by Defendant**

2 Defendant's monetary obligations under this Agreement are limited to the Gross Settlement
3 Amount. Thus, all costs and expenses arising out of or in connection with the performance of this
4 Agreement, including all costs incurred by CPT Group, Inc. in connection with its administration of
5 the Settlement Agreement, shall be paid from the Gross Settlement Amount.

6 **O. Deadlines**

7 If any deadline specified in this Agreement falls on a Saturday, Sunday, or Federal Court
8 holiday, the deadline will be automatically extended to the next regular business day. Unless
9 specified otherwise, all references to "days" shall mean calendar days.

10 **V. ENFORCEMENT, JUDGMENT, AND CONTINUING JURISDICTION OF THE**
11 **COURT**

12 Pursuant to Federal Rule of Civil Procedure; Rule 23, this Settlement Agreement will be
13 approved by the Court and will be enforceable by the Court. Even after the Order Granting Final
14 Approval and the accompanying Final Judgment are entered and notwithstanding it, this Court will
15 have and retain continuing jurisdiction over the Class Action and over all Parties and Class
16 Members, to the fullest extent necessary or convenient to enforce and effectuate the terms and intent
17 of this Settlement Agreement and all matters provided for in it, and to interpret it.

18 **VI. MUTUAL FULL COOPERATION**

19 The Parties will fully cooperate with each other to accomplish the terms of this Settlement
20 Agreement, including, but not limited to, execution of such documents and taking such other action
21 as may be reasonably necessary or convenient to implement it.

22 **VII. NO ADMISSIONS**

23 Nothing in this Settlement Agreement will constitute or be considered an admission by or on
24 behalf of either Defendant or any Released Party, of any wrongdoing or liability or of the accuracy
25 of any allegation made in connection with these Class Actions or in any other matter.

26 **VIII. WITHDRAWAL, NULLIFICATION, INVALIDATION**

27 **A. Effective Date of Defendant's Obligations Under this Agreement**

28 Defendant's obligations under this Settlement Agreement will become final and effective

only upon occurrence of all of the following events:

1. Execution and filing by the Court of an Order Granting Preliminary Approval;
2. Certification of the Class for settlement purposes only;
3. The Court conducting a Final Fairness and Approval Hearing;
4. Execution and filing by the Court of the Order Granting Final Approval;
5. Entry of a Final Judgment; and
6. Occurrence of the Effective Settlement Date.

In the event that any of the conditions specified in this Settlement Agreement are not satisfied, or in the event that this Settlement does not obtain approval of the Court for any reason, all matters covered by this Agreement will be null and void. In such event, neither this Agreement nor any negotiations leading to this Settlement will be used or construed by or against any Party as a determination, admission, or concession of any issue of law or fact in the litigation; and the Parties hereto do not waive, and instead expressly reserve, their respective rights regarding the prosecution and defense of the litigation, including all available defenses and affirmative defenses, and challenging any claim that the Class Actions could be certified as class actions, as if this Settlement Agreement never existed.

B. Nullification

If: (1) the Court should for any reason fail to enter the Order of Final Judgment; or (2) the Court's Order of Final Judgment is reversed or modified as to any material term as defined above, or declared or rendered void as to any material term as defined above, then: (a) this Settlement Agreement will be considered null and void; and (b) neither this Settlement Agreement nor any of the related negotiations or proceedings will have any force or effect. If, for whatever reason and however it may occur, this Agreement is canceled, rescinded, terminated, voided, or nullified or the Settlement of the Action is barred by operation of law, invalidated, or ordered not to be carried out by a court of competent jurisdiction, Defendant shall cease to have any obligation to pay any portion of the Gross Settlement Amount to anyone under the terms of this Agreement, except the Settlement Administration Costs, if any, that have been incurred by CPT Group as a result of the settlement efforts, which shall be borne equally by Defendant and Class Counsel, and the balance of all

1 previous disbursements from the Gross Settlement Amount will immediately be paid back to
2 Defendant by the person or entity who received such disbursement. However, if: (a) the Court
3 should, for any reason, fail to approve this Settlement in the form agreed to by Named Plaintiff,
4 Defendant, Class Counsel, and Defense Counsel; (b) the Court should, for any reason, fail to enter
5 the Final Order; or (c) the Final Order is reversed, then the Settlement Administration Costs, if any,
6 that have been incurred by CPT Group as a result of the settlement efforts, shall be borne equally by
7 Defendant and Class Counsel.

8 **C. Invalidation**

9 Invalidation of any material term of this Settlement Agreement will invalidate this
10 Agreement in its entirety unless the Parties subsequently agree in writing that the remaining
11 provisions will remain in full force and effect.

12 **D. Appeal from Order of Final Judgment**

13 In the event of a timely appeal from the Order of Final Judgment, the Order of Final
14 Judgment will be stayed and the Individual Settlement Payments and any other payments required
15 hereunder by Defendant will be stayed pending the completion and final resolution of the appeal,
16 and any payment thereafter will: (1) occur only if the Order of Final Judgment is upheld after all
17 appeals; and (2) be in a manner that is provided for in this Settlement Agreement and in the Order of
18 Final Judgment. Class Counsel may appeal any order that denies, entirely or in part, their motion for
19 award of attorneys' fees, costs, and enhancement payment.

20 **IX. PUBLIC STATEMENTS**

21 Named Plaintiff and Class Counsel will not initiate any contact with the press, other media,
22 or any third party, however, Class Counsel may reply to press inquiries to state that the Parties have
23 mutually resolved their differences.

24 **X. GENERAL PROVISIONS**

25 **A. Entire Agreement**

26 This Settlement Agreement constitutes the entire integrated agreement between the Parties
27 relating to the *Craft* Action, and no oral representations, warranties or inducements have been made
28 to any party concerning this Settlement Agreement other than the representations, warranties and

covenants contained and memorialized in this Settlement Agreement.

B. Authorization to Act

Class Counsel warrant and represents that they are authorized by the Class Representative, and counsel of record for Defendant warrant that they are authorized to take all appropriate action required or permitted to be taken by such Parties pursuant to this Settlement Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Settlement Agreement, including this Settlement Agreement.

C. Modification Only in Writing

This Settlement Agreement may be amended or modified only by a written instrument signed by Counsel for the Parties or all Parties or their successors in interest.

D. Binding on Successors

This Settlement Agreement is binding upon and will inure to the benefit of the Parties to this Agreement, as well as their respective attorneys, past, present, and future predecessors, successors, shareholders, officers, directors, employees, agents, trustees, representatives, administrators, fiduciaries, assigns, insurers, executors, partners, parent corporations, subsidiaries, and related or affiliated entities.

E. No Prior Assignments

The Participating Class Members will be deemed by operation of the Order Granting Final Approval to represent, covenant, and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, cause of action or rights herein released and discharged.

F. Governing Law

All terms of this Settlement Agreement will be governed by and interpreted according to the laws of the State of California, without giving effect to conflicts of laws principles.

G. Counterparts

This Settlement Agreement may be executed in one or more counterparts. All executed counterparts and each of them will be deemed to be one and the same instrument. Counsel for the Parties will exchange among themselves signed counterparts.

1 **H. Headings for Convenience Only**

2 The descriptive headings of any paragraphs or sections of this Settlement Agreement are
3 inserted for convenience of reference only and do not constitute a part of this Agreement.

4 **I. Construction of This Agreement**

5 The Parties hereto agree that the terms and conditions of this Settlement Agreement are the
6 result of arms-length negotiations between the Parties and that this Settlement Agreement will not be
7 construed in favor of or against any Party by reason of the extent to which any Party, or their
8 counsel, participated in the drafting of this Agreement. This Settlement Agreement constitutes the
9 entire agreement between the Parties hereto. Except as expressly provided herein, this Settlement
10 Agreement has not been executed in reliance upon any other oral or written representations or terms
11 and no such extrinsic oral or written representations or terms will modify, vary or contradict the
12 terms of this Settlement Agreement. In entering this Settlement Agreement, the Parties hereto
13 explicitly recognize California Civil Code section 1625 and California Code of Civil Procedure
14 section 1856(a), which provide that a written agreement is to be construed according to its terms and
15 may not be varied or contradicted by extrinsic evidence. The Named Plaintiff and Defendant
16 participated in the negotiation and drafting of this Settlement Agreement and had available to them
17 the advice and assistance of independent legal counsel. As such, no Participating Class Member or
18 Defendant may claim that any ambiguity in this Settlement Agreement should be construed against
19 the other.

20 **J. Corporate Signatories**

21 Any person executing this Settlement Agreement or any related document on behalf of a
22 corporate signatory hereby warrants and promises for the benefit of all Parties hereto that such
23 person has been duly authorized by such corporation to execute this Settlement Agreement or any
24 related document.

25 **K. Representation by Counsel**

26 The Parties hereto acknowledge that they have been represented by counsel throughout all
27 negotiations which preceded the execution of this Settlement Agreement and that this Agreement has
28 been executed with the consent and advice of counsel.

L. Attorneys' Fees and Costs

Except as otherwise provided herein, the Parties hereto will bear responsibility for their own attorneys' fees and costs, taxable or otherwise, incurred by them or arising out of this Class Action and will not seek reimbursement thereof from any Party to this Settlement Agreement.

IT IS SO AGREED:

EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel hereby execute this Agreement.

[SIGNATURE PAGE TO FOLLOW]