

SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS

This Settlement Agreement and Release of All Claims ("Agreement") is made by and between the following:

Plaintiff [REDACTED], **Individually and as Successor-In-Interest** [REDACTED] hereafter, "Plaintiff");
and

Defendants [REDACTED] **OF GREATER ORANGE COUNTY, INC., a corporation;** [REDACTED] (hereafter, collectively, "Defendants"), and parent, sister and all other related companies (including [REDACTED], Inc. and all related [REDACTED]), employees, officers, vendors, agents, insurers and all other persons and entities against whom Plaintiff may assert the claims that are the subject of the Claim described below.

Insurer [REDACTED] **Insurance Company** is the underlying liability insurer of Defendants, and there are also excess insurance policies.

Potential wrongful death claimants [REDACTED] and [REDACTED] are not parties to this Agreement.

This Agreement applies to all claims that could be made by, and that are in any way related to, Plaintiff's claims arising from an automobile accident on November 30, 2017, that is the subject of the Complaint filed by Plaintiff, in the Superior Court of and for Orange County, California, Case No. 30-2018-00994748-CU-PO-CJC, filed on or about May 23, 2018 (hereafter, the "Claim").

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties do hereby mutually agree as follows:

1.0 GENERAL RELEASE AND SETTLEMENT

- A. In exchange for payment of the consideration identified in Paragraph 2 below and the General Release and Settlement Agreement provisions contained herein, Plaintiff hereby unconditionally releases, acquits and forever discharges all Defendants and all of Defendants' insurers, and all other persons and entities from all claims, demands, damages, debts, causes of action, suits, or liability of any kind or nature whatsoever, whether known or unknown, which Plaintiff has ever had, now has, or ever will have that is in any way caused by or connected with, arises out of and/or is related to the facts, circumstances and events surrounding the Claim. This release shall apply to all entities and persons, with the exception that it does not preclude prospective wrongful death claimants, [REDACTED] from asserting timely wrongful death claims. Upon receipt of the settlement funds identified in Paragraph 2 below, Plaintiff shall within two business days either file a Request for Dismissal of her Complaint filed in the Superior Court of Orange County as Case No. 30-2018-00994748-CU-PO-CJC, with prejudice, or provide Defendants with a signed original of such Request for Dismissal with prejudice for filing with the court.
- B. Plaintiff represents and agrees that if any facts or circumstances with respect to which this Agreement is executed are at any time later found, suspected or claimed to be other than or different from the facts and circumstances now believed by Plaintiff to be true, Plaintiff expressly accepts and assumes the risk of

such possible difference of facts or circumstances and agree that this Agreement shall be and remain effective notwithstanding any such difference in such facts or circumstances. Plaintiff further understands and agrees that she is releasing all claims for future damages which may arise after the execution of this Agreement, if such damage is caused, in whole or in part, from any act, omission, contract or condition relating to, arising out of or in any way connected with the Claim.

Waiver of Section 1542 of the Civil Code:

Plaintiff expressly waives any and all rights and benefits conferred upon her by the provisions of Section 1542 of the California Civil Code, which states as follows:

“A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.”

C. Plaintiff represents and warrants by promise of defense, indemnity and holding harmless, that she has:

- (1) AUTHORITY TO SIGN: Each Claimant/Plaintiff, being competent to make his or her own decision, has authority and capacity to enter into this Agreement in order to effectuate a total and complete settlement and release of all claims;
- (2) WARRANTY AGAINST PRIOR SALE, ASSIGNMENT OR TRANSFER: Plaintiff has not sold, assigned, granted or transferred to any other person, firm, corporation, or entity, any claim, counterclaim, demand, or cause of action occurring, arising or existing prior to the date of this Agreement;
- (3) Plaintiff has no knowledge of subrogation rights, lien rights or law firms, or related services rendered to Plaintiff as a result of the Claim, held by third parties, including attorneys, firms, corporations, hospitals, doctors, medical care providers, insurance agencies, employers, governmental agencies or other persons or entities, that will survive or not be extinguished by this settlement;
- (4) Plaintiff assumes responsibility and liability for, and shall satisfy, all unpaid liens and subrogation claims arising from **the facts and circumstances giving rise to the claim and such liens arising against Plaintiff subsequent to the Claim, whether or not** asserted against the settlement proceeds. Should Defendants be sued on account of failure of Plaintiff to make such payment or should Defendants be for any reason required to pay such liens, Plaintiff and her attorneys shall immediately satisfy such liens or shall fully, completely, and immediately indemnify Defendants for such payment and Plaintiff shall be liable to Defendants for all costs and attorneys' fees incurred as a result of their failure to so pay such liens and other medical expenses.

2.0 CONSIDERATION

In full and complete satisfaction of all claims that each Plaintiff has against Defendants and all other persons and entities that arise out of the Claim, Defendants, through their insurance carrier, Ace American Insurance Company (hereafter, "ACE"), and Broadspire Insurance Services, Inc. (hereafter, "Broadspire"), agree to pay Plaintiff, collectively, the following sums, out of which Plaintiff's counsel shall deduct legal fees and legal costs as allowed by law and the applicable attorney's fee agreement between Plaintiff and her counsel. Such payment of consideration from Broadspire and ACE shall be paid within thirty (30) days of Plaintiff's counsel providing legal counsel for Defendants with a fully executed copy of this Agreement. From the settlement consideration described above, Plaintiff shall fully satisfy any and all liens or other rights of reimbursement to all other lien holders. Payments are to be made as follows:

- 2.1 From [REDACTED], the sum of One Million Dollars (\$1,000,000.00), paid by check to [REDACTED] law firm client trust account and [REDACTED]
- 2.2 From [REDACTED] Insurance Company, the sum of Two Million Two Hundred Fifty Thousand and 00/100 DOLLARS (\$2,250,000.00), paid by check to the [REDACTED] law firm client trust account and [REDACTED]
- 2.3 From Ace American Insurance Company, (the "Insurer") the sum of One Million and 00/100 DOLLARS (\$1,000,000.00), shall be paid by check to Pacific Life & Annuity Services, Inc. to fund the periodic payments in Section 2.4.
- 2.4 Periodic payments made according to the schedule as follows (the "Periodic Payments"), payable to each Payee as indicated below:
 - (i) [REDACTED] ("Payee")
 - \$2,544.16 for Payee's life, payable monthly, guaranteed for 40 years, beginning on 04/25/2019, with the last guaranteed payment on 03/25/2059;
 - \$150,000.00 paid as a lump sum on 05/22/2023 guaranteed;
 - \$100,000.00 paid as a lump sum on 05/22/2033 guaranteed;
 - \$75,000.00 paid as a lump sum on 05/22/2043 guaranteed;
 - \$60,000.00 paid as a lump sum on 05/22/2053; and
 - \$50,000.00 paid as a lump sum on 05/22/2056 guaranteed.

The cost of the Periodic Payments is disclosed herein as a condition of settlement. No part of the cost of the Periodic Payments may be paid directly to the Plaintiff or any Payee, inasmuch as the parties negotiated for a structured settlement and the Periodic Payments and all other sums set forth herein constitute damages on account of personal physical injuries or sickness, within the meaning of Section 104(a)(2) of the Internal Revenue Code of 1986, as amended.

3.0 Payees' Rights of Payments

Plaintiff Payee acknowledges that the Periodic Payments cannot be accelerated, deferred, increased or decreased by the Payee; nor shall the Payee have the power to sell, mortgage, encumber, or anticipate the Periodic Payments, or any part thereof, by assignment or otherwise.

4.0 Payees' Beneficiary

Any payments to be made after the death of any Payee pursuant to the terms of this Settlement Agreement shall be made to such person or entity as shall be designated in writing by Payee to the Insurer or the Insurer's Assignee. If no person or entity is so designated by Payee, or if the person designated is not living at the time of the Payee's death, such payments shall be made to the Estate of the Payee. No such designation, nor any revocation thereof, shall be effective unless it is in writing and delivered to the Insurer or the Insurer's Assignee. The Designation must be in a form acceptable to the Insurer or the Insurer's Assignee before such payments are made, but in no event shall the request of the Payee be unreasonably withheld or denied.

5.0 Consent to Qualified Assignment

5.1 Plaintiff Payee acknowledge and agree that ACE may make a "qualified assignment", within the meaning of Section 130 (c) of the Internal Revenue Code of 1986, as amended, of ACE's liability to make the Periodic Payments set forth in Section 2.3 (i.) above, to Pacific Life & Annuity Services, Inc. ("The Assignee"). The Assignee's obligation for payment of the Periodic Payments, each respectively, shall be no greater than that of ACE (whether by judgment or agreement) immediately preceding the assignment of the Periodic Payments obligation.

5.2 Any such assignment, if made, shall be accepted by the Payee without right of rejection and shall completely release and discharge ACE from the Periodic Payments obligation assigned to the Assignee. The Payee recognizes that, in the event of such an assignment, the Assignee shall be the sole obligor with respect to the Periodic Payments obligation, and that all other releases with respect to the Periodic Payments obligation that pertain to the liability of ACE shall thereupon become final, irrevocable and absolute.

6.0 Right to Purchase an Annuity

ACE, itself or through its Assignee reserves the right to fund the liability to make the Periodic Payments outlined in Section 2.3 (i.) (funded with a cost of \$1,000,000.00), above, through the purchase of an annuity policy from Pacific Life Insurance Company ("The Annuity Issuer"). ACE or the Assignee, each respectively, shall be the sole owner of the annuity policy and shall have all rights of ownership. ACE or the Assignee, each respectively, may have the Annuity Issuer mail payments directly to the Payee(s). Each

Payee shall be responsible for maintaining a current mailing address for the Payee with the Assignee.

7.0 Discharge of Obligation

The obligation of ACE and/or the Assignees, to make each Periodic Payment shall be discharged upon the mailing of a valid check or electronic funds transfer in the amount of such payment on or before the due date to the last address on record for Payee or Beneficiary with the Annuity Issuer, each respectively. If the Payee or Beneficiary notifies the Assignee that any check or electronic funds transfer was not received, then the Assignee shall direct the Annuity Issuer to initiate a stop payment action and, upon confirmation that such check was not previously negotiated or electronic funds transfer deposited, shall have the Annuity Issuer process a replacement payment.

8.0 NO ADMISSIONS AND RESTRICTED PUBLICATION

Plaintiff understands that liability for the matters alleged in the litigation and for each claim or cause of action released herein is disputed, and that this Agreement and release is executed in compromise of disputed claims and shall not be construed as an admission of liability. In any disclosure or publication to anyone, outside of pleadings filed with the court in this case, about the terms or nature of this settlement and the involved parties, Plaintiff and her legal counsel (including all attorneys and employees and agents of [REDACTED], and all attorneys, employees and agents of the Avrek law firm) agree not to use the names of any Defendants in such disclosures and publications, including but not limited to, the website of any counsel, but to only reference the Defendants in generic terms, such as "a transportation company." Plaintiff and her attorneys understand that this confidentiality clause is a material term in this Settlement Agreement. No settlement amount shall be disclosed by any party with reference to this specific action or with reference to any named Defendant, except for disclosures of sums received by Plaintiff or their legal counsel to tax or financial professionals. Disclosures of settlement amounts referencing the Defendants only in generic terms, as above-described, are permitted. Plaintiff and their respective legal counsel agree that Defendants may seek compensatory damages and reasonable attorneys' fees for any violation of this disclosure or publication restriction.

9.0 FEES

It is expressly understood and agreed that the parties to this Agreement will bear their own costs, expenses and attorneys' fees. Should suit be brought to enforce or interpret any part of this Agreement, the "prevailing party" shall be entitled to the recovery of reasonable costs and expenses incurred, including, without limitation, reasonable attorneys' fees.

10.0 SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS

It is expressly understood that by signing this Agreement, Plaintiff has signed a Settlement Agreement and Release of All Claims that encompasses every aspect of the Claim asserted against Defendants.

11.0 **GENERAL PROVISIONS**

- A. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute but one and the same instrument. Photocopies, facsimiles, electronic reproduction (e.g., pdf), and similar reproductions of this Agreement shall have the force and effect as though they were originals.
- B. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties pertaining to the subject matter contained in it and supersedes all prior and contemporaneous agreements, representations, and understandings of the parties. No supplement, modification, or amendment of this Agreement shall be valid unless executed in writing by all the parties. No waiver of any of the provisions of this Agreement shall be deemed to or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.
- C. **Independent Advice.** Plaintiff acknowledges that in entering into and executing this Agreement that she has utilized independent counsel and legal advice of an attorney of his or her own choice, and that she is not relying upon any representation of any other party hereto unless expressly set forth herein in writing. Such independent counsel has read and advised Plaintiff to enter into this Agreement and Plaintiff is relying upon such advice.
- D. **Construction.** Each party to this Agreement has cooperated in the drafting, preparation and review of this Agreement, and the normal rules of construction, to the effect that any ambiguities are to be resolved against the drafting party, will not be employed in any interpretation of this Agreement.
- E. **Severability.** If any provision of this Agreement or the application thereof is held invalid, the invalidity shall not affect other provisions or applications of this Agreement which can be given effect without the invalid provisions or application; and to this end, the provisions of this Agreement are declared to be severable.
- F. **Good Faith Settlement.** Plaintiff and Defendants stipulate that this settlement was reached in “good faith” pursuant to CCP §877.6 and hereby agree to fully execute any and all documents necessary to obtain a Court Order finding this Settlement to be in good faith under CCP §877.6, should pursuit of such a court order become necessary for any reason.

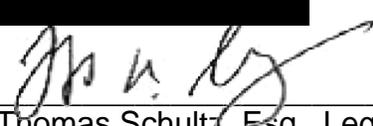
I HAVE CAREFULLY READ THE FOREGOING AGREEMENT AND KNOW THE CONTENTS THEREOF AND I AM SIGNING THIS AGREEMENT AS MY OWN FREE ACT. I VERIFY THAT I HAVE HAD THE BENEFIT OF MY OWN LEGAL COUNSEL IN REVIEWING AND UNDERSTANDING THIS AGREEMENT. I AM THEREFORE ENTERING THIS AGREEMENT IN FULL UNDERSTANDING OF ITS NATURE AND EFFECT.

Dated: _____

Plaintiff, _____
individually, and as Successor-In-Interest to _____

APPROVED AS TO FORM AND CONTENT, INCLUDING THE CONFIDENTIALITY CLAUSE APPLICABLE TO PLAINTIFF'S COUNSEL:

Dated: February 27, 2019

By: 
Thomas Schultz, Esq., Legal Counsel for
Plaintiff, _____
_____, individually and as Successor-
In-Interest to T _____

The Avrek Law Firm

Dated: _____

By: _____
Maryam Parman, Esq., Legal Counsel for
Plaintiff, _____
_____, individually and as Successor-
In-Interest to _____

Trachtman & Trachtman, LLP

Dated: _____

By: _____
Timothy M. Smith, Esq., Counsel for
Defendant _____

Greco Traficante Schulz & Brick

Dated: _____

By: _____
Peter J. Schulz, Esq., Counsel for
Defendant _____

I HAVE CAREFULLY READ THE FOREGOING AGREEMENT AND KNOW THE CONTENTS THEREOF AND I AM SIGNING THIS AGREEMENT AS MY OWN FREE ACT. I VERIFY THAT I HAVE HAD THE BENEFIT OF MY OWN LEGAL COUNSEL IN REVIEWING AND UNDERSTANDING THIS AGREEMENT. I AM THEREFORE ENTERING THIS AGREEMENT IN FULL UNDERSTANDING OF ITS NATURE AND EFFECT.

Dated: 2/27/2019



Plaintiff, [REDACTED]
individually, and as Successor-In-Interest to
[REDACTED]

APPROVED AS TO FORM AND CONTENT, INCLUDING THE CONFIDENTIALITY CLAUSE APPLICABLE TO PLAINTIFF'S COUNSEL:

[REDACTED]

Dated: _____

By: _____
Thomas Schultz, Esq., Legal Counsel for
Plaintiff, [REDACTED]
[REDACTED], individually and as Successor-
In-Interest to [REDACTED]

The Avrek Law Firm

Dated: _____

By: _____
Maryam Parman, Esq., Legal Counsel for
Plaintiff, [REDACTED]
[REDACTED], individually and as Successor-
In-Interest to [REDACTED]

Trachtman & Trachtman, LLP

Dated: _____

By: _____
Timothy M. Smith, Esq., Counsel for
Defendant [REDACTED]
[REDACTED]

Greco Traficante Schulz & Brick

Dated: _____

By: _____
Peter J. Schulz, Esq., Counsel for
Defendant [REDACTED]