

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

JUDY HUNTER, et al., Plaintiffs, v. BERKSHIRE HATHAWAY INC., Defendant.	Case No: 4:14-CV-663-Y
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CLASS ACTION SETTLEMENT AGREEMENT

This CLASS ACTION SETTLEMENT AGREEMENT (“Settlement Agreement”) is entered into by and between Plaintiffs, as defined in § 1.23 below, and Defendant, as defined in § 1.13 below. Plaintiffs and Defendant are referred to collectively in this Settlement Agreement as the “Parties.” Capitalized terms and phrases have the meanings provided in § 1 below or where otherwise defined elsewhere in this Settlement Agreement.

1. DEFINITIONS. Unless otherwise required by the context, italicized terms used herein shall have the meanings provided for in this Section 1.
 - 1.1. “*Accrued Benefit*” shall mean: the benefit payable to a Participant under the *Acme Pension Plan*.
 - 1.2. “*Acme*” shall mean: Acme Building Brands, Inc.
 - 1.3. *Acme 401(k) Plan* or the “*401(k) Plan*” shall mean: The Acme Brick Company 401(k) Retirement and Savings Plan.
 - 1.4. “*Action*” shall mean: *Hunter v. Berkshire Hathaway Inc.*, Case No. 4:14-CV-663-Y, pending in the United States District Court for the Northern District of Texas.
 - 1.5. “*Acme Pension Plan*” or the “*Pension Plan*” shall mean: The Acme Brick Company Pension Plan as Amended and Restated January 1, 2014 and all amendments thereto.
 - 1.6. “*Additional Benefit Accruals for Pension Plan Settlement Class Members*” shall have the meaning set forth in §6.1.1.

- 1.7. “Beneficiary” shall mean: a beneficiary of the Plan as more fully described in § 8.5 of the Plan.
- 1.8. “Class Counsel” shall mean: Keller Rohrback L.L.P.
- 1.9. “Class Notice” shall have the meaning provided in the form of *Preliminary Approval Order* attached hereto as Exhibit A.
- 1.10. “Class Settlement Amount” shall have the meaning set forth in §6.1.1.
- 1.11. “Complaint” shall mean: the Amended Complaint filed in the Action on October 5, 2016.
- 1.12. “Court” shall mean: The United States District Court for the Northern District of Texas.
- 1.13. “Defendant” shall mean: Berkshire Hathaway Inc.
- 1.14. “Defendant’s Counsel” shall mean Munger, Tolles & Olson LLP.
- 1.15. “Effective Date of Settlement” shall mean: the date on which all of the conditions to settlement set forth in § 2 of this Settlement Agreement have been fully satisfied or waived and the Settlement shall have become Final.
- 1.16. “ERISA” shall mean: the Employee Retirement Income Security Act of 1974, as amended, including all regulations promulgated thereunder.
- 1.17. “Final” shall mean: with respect to any judicial ruling the period for any appeals, petitions, motions for reconsideration, rehearing or certiorari, or any other proceedings for review (“Review Proceeding”) has expired without the initiation of a Review Proceeding, or, if a Review Proceeding has been timely initiated, that there has occurred a full and completed disposition of any such Review Proceeding, including the exhaustion of proceedings in any remand and/or subsequent appeal on remand.
- 1.18. “Final Approval Order” shall have the meaning set forth in § 2.2.4, below.
- 1.19. “401(k) Settlement Class” and/or “401(k) Settlement Class Members” shall mean:

All participants and former participants in the Acme Brick Company 401(k) Retirement and Savings Plan who contributed to an account with the 401(k) Plan at any time between January 1, 2010 and December 31, 2013, together with their respective beneficiaries. Excluded from the 401(k) Settlement Class are participants and former participants for whom the employer’s matching contribution between January 1, 2010 and December 31, 2013, was established by a collective bargaining agreement.
- 1.20. “Participant” shall mean: a participant in the Pension Plan as more fully described in § 1.32 of the Pension Plan.

1.21. “Pension Plan Settlement Class” and/or “Pension Plan Settlement Class Members” shall mean:

All participants and former participants in the Acme Brick Company Pension Plan who were employed by Acme on October 4, 2014, together with their respective beneficiaries.

1.22. “Person” shall mean: an individual, partnership, corporation, or any other form of organization.

1.23. “Plaintiffs” and “Named Plaintiffs” shall mean: Judy Hunter, Anita Gray and Bobby Lynn Allen.

1.24. “Plaintiffs’ Counsel” shall mean Class Counsel, local counsel Matthew Bobo, and former local counsel Mark C. Hill.

1.25. “Plan of Allocation” shall have the meaning provided in § 6.1.3.

1.26. “Plans” means collectively the 401(k) Plan and the Pension Plan.

1.27. “Preliminary Approval Order” shall have the meaning provided in § 2.2.1.

1.28. “Preliminary Motion ” shall have the meaning provided in § 2.2.1.

1.29. “Released Claims” shall have the meaning provided in § 3.1, below.

1.30. “Releasees” shall mean: Berkshire Hathaway Inc. and each of its current or former subsidiaries and affiliates, and their respective employees, agents, directors, officers, members, insurers, legal representatives and successors.

1.31. “Settlement” shall mean: the settlement to be consummated under this Settlement Agreement pursuant to the Final Approval Order.

1.32. “Settlement Administrator” shall mean: Bank of America or such other administrator as Defendant may propose and to which Plaintiffs consent (with such consent not to be unreasonably withheld).

1.33. “Settlement Cash Payment” shall mean \$750,000.

1.34. “Settlement Classes” shall mean: the 401(k) Settlement Class and the Pension Plan Settlement Class.

1.35. “Settlement Conditions” shall have the meaning provided for in Section 2.1.

1.36. “Settlement Fund” shall mean a non-interest bearing trust account established at a federally-insured bank by Plaintiffs’ Counsel.

1.37. “*Successor-In-Interest*” or “*Successor*” shall mean: a Person’s estate, legal representatives, heirs, successors (including but not limited to by operation of law) or assigns, and any other person who can make a legal claim by or through such Person.

2. CONDITIONS PRECEDENT TO EFFECTIVENESS OF THE SETTLEMENT

2.1. *Effectiveness of This Settlement Agreement.* This Settlement Agreement shall not become binding unless and until each and every one of the following conditions (the “*Settlement Conditions*”) in §§ 2.2 through 2.5 shall have been satisfied.

2.2. *Court Approval.* The *Settlement* contemplated under this *Settlement Agreement* shall have been approved by the *Court*, as provided for in this § 2.2:

2.2.1 *Motion for Preliminary Approval of Settlement and of Notices.*

The *Court* shall have granted the motion for preliminary approval of the *Settlement*, to be filed by Plaintiffs within fourteen days of the execution of this *Settlement Agreement* (“*Preliminary Motion*”), by issuing an order (the “*Preliminary Approval Order*”) substantially in the form of Exhibit A hereto.

2.2.2 *Class Certification.*

- (a) The *Court* shall have permitted the filing of an amended complaint re-asserting the class action allegations in the *Action*.
- (b) The *Court* shall have certified the *Action* as a non-opt out class action for settlement purposes only, pursuant to Federal Rules of Civil Procedure 23(b)(1) and/or (b)(2), with *Named Plaintiffs* as the named *Settlement Class* representatives, Keller Rohrback, L.L.P. as *Class Counsel*, and with the “*Settlement Classes*” as defined above.
- (c) The *Parties* hereby stipulate to certification of the *Action* as a non-opt out class action, and the *Settlement Classes* as non-opt-out classes, for settlement purposes only, pursuant to Federal Rules of Civil Procedure 23(b)(1) and/or (b)(2), on the *Settlement* terms provided for in this *Settlement Agreement*. If the *Settlement* does not become *Final*, then no *Settlement Classes* shall be deemed to have been certified by or as a result of this *Settlement Agreement*, the *Defendant* shall not be deemed to have made any admission or waived any defense with respect to the propriety of class certification under any provision of Rule 23, and the *Action* shall for all purposes revert to its status as of October 9, 2019.

2.2.3 *Issuance of Class Notice.* On the date and in the manner set by the *Court* in its *Preliminary Approval Order*, *Defendant* shall cause notice of the *Preliminary Approval Order* to be delivered to the *Settlement Classes* in the form and manner approved by the *Court*, which may include email notice. The *Parties* shall confer in good faith with regard to the form of the *Class Notice* in an effort to utilize

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cost effective forms of notice, including email. The last known physical and email addresses for participants in the Plans and, for any deceased participants, their designated beneficiaries, in the possession of the Plans' current record-keeper (and email addresses to the extent the record-keeper has them) shall suffice for all purposes in connection with this Settlement, including, without limitation, the mailing of the Class Notice; provided, however, that for any notices that are returned as undeliverable, the Settlement Administrator shall utilize resources available through the U.S. Postal Service to identify updated addresses for such class members and re-mail the notices to them. Defendant shall bear all costs of notice contemplated by this Section 2.2.3.

2.2.4 *The Fairness Hearing and Final Approval Order.* On the date set by the Court in its Preliminary Approval Order, or any adjournment thereof the Parties shall participate in the hearing (the "Fairness Hearing"), during which the Court shall: consider whether this Settlement Agreement is fair, reasonable, and adequate and should be approved by the Court. At or after the Fairness Hearing, the Court shall enter an order in substantially the form attached hereto as Exhibit B granting final approval to the Settlement (the "Final Approval Order").

2.3. *Finality of Final Approval Order.* The Final Approval Order shall have become Final, as defined in § 1.17 of this Settlement Agreement.

2.4. *Dismissal of Action.* The Action shall have been dismissed with prejudice.

2.5. *No Termination.* The Settlement shall not have terminated pursuant to § 7, below.

2.6. *Establishment of Effective Date of Settlement.* If Plaintiffs and Defendant disagree as to whether the Settlement Conditions have been satisfied, they shall promptly confer in good faith and, if unable to resolve their differences within five (5) business days thereafter, shall present their disputes for determination to Robert Meyer, who shall make a final, binding determination regarding the Effective Date of Settlement and whether the Settlement Conditions have been satisfied. No portion of the Class Settlement Amount shall be accrued or disbursed in the event of such a dispute, pending determination by Mr. Meyer. Accrual and disbursement shall thereafter be made pursuant to the Final Approval Order.

2.7. *Compliance with the Class Action Fairness Act.* Defendant covenants and agrees to give all required notice under the Class Action Fairness Act of 2005 ("CAFA") by timely providing the appropriate federal and state officials with information about the Settlement in the manner required by CAFA.

2.8. The Parties shall undertake their best efforts, including all steps and efforts contemplated by this Settlement Agreement, and any other steps or efforts which may become necessary by order of the Court (unless such order results in the termination of this Agreement under Section 7.1.2) or otherwise, to carry out this Settlement Agreement, including but not limited to, satisfying the Settlement Conditions.

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3. RELEASES AND COVENANT NOT TO SUE

3.1. Released Claims. *Released Claims* shall mean: any and all actual or potential claims, actions, causes of action, demands, obligations, liabilities, attorneys' fees, expenses and costs, whether asserted or unasserted, whether known or unknown, that arise out of or are related to the allegations of the *Complaint* (including without limitation any contention that *Defendant* or *Acme* was prohibited from reducing, ceasing or freezing, or from causing the reduction, cessation or freeze of, the accrual of benefits under the *Pension Plan* or the employer matching of contributions under the *401(k) Plan*) that were brought or that could have been brought as of the date of the *Settlement Agreement* by any member of the *Settlement Classes*, except that *Released Claims* are not intended to include the release of any of the following:

- i. Any rights or duties expressly arising out of the *Settlement Agreement*, including any express warranties and covenants in the *Settlement Agreement*;
- ii. Any claims made under the *Plans* for individual benefits.

3.2. Release by Named Plaintiffs and Settlement Classes. Subject to § 7 below, upon the *Effective Date of Settlement*, *Named Plaintiffs* on behalf of themselves and on behalf of each of the *Settlement Classes* and their respective heirs, successors, assigns and beneficiaries (A) absolutely and unconditionally release and forever discharge the *Releasees* and each of them from any and all *Released Claims* that *Plaintiffs* or the *Settlement Classes* have or may have and (B) covenant and agree: (i) not to file against any of the *Releasees* any claim based on, related to, or arising from any *Released Claim*; and (ii) that the foregoing covenants and agreements shall be a complete defense to any such claim against any *Releasee*.

3.3. Defendant's Releases of Named Plaintiffs, the Settlement Classes, and Plaintiffs' Counsel. Subject to § 7 below, upon the *Effective Date of Settlement*, *Defendant*, for itself and on behalf of the *Released Parties* and their respective heirs, successors, assigns and beneficiaries, absolutely and unconditionally releases and forever discharges the *Named Plaintiffs*, each of the *Settlement Classes* and *Plaintiffs' Counsel* from any and all actual or potential claims, actions, causes of action, demands, obligations, liabilities, attorneys' fees, expenses and costs, whether asserted or unasserted, whether known or unknown, that arise out of or are related to the allegations of the *Complaint* (including without limitation claims relating in any way to the institution or prosecution of the *Action*) that were brought or that could have been brought as of the date of the *Settlement Agreement* by any of the *Released Parties*.

4. REPRESENTATIONS AND WARRANTIES

4.1. *Parties' Representations and Warranties.*

4.1.1 *Named Plaintiffs* represent and warrant that they have not pledged, assigned or otherwise transferred any interest in any *Released Claims* against any *Releasee*, and further covenant that they shall not assign or otherwise transfer any interest in any *Released Claims*.

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4.1.2 *Named Plaintiffs* represent and warrant, on behalf of themselves and each of the *Settlement Classes*, that from and after the *Effective Date of Settlement* they will have no surviving claim or cause of action against any of the *Releasees* for any of the *Released Claims*.

4.1.3 The *Parties*, and each of them, represent and warrant that they are voluntarily entering into this *Settlement Agreement* as a result of arm's-length negotiations among their counsel, after consultation with their respective counsel; and that in executing this *Settlement Agreement* they are relying solely upon their own judgment, belief and knowledge, and the advice and recommendations of their counsel concerning the nature, extent and duration of their rights and claims hereunder and regarding all matters that relate in any way to the subject matter hereof.

4.1.4 The *Parties*, and each of them, represent and warrant that they have carefully read the contents of this *Settlement Agreement*; they have made such investigation of the facts and law pertaining to this *Settlement Agreement* and all of the matters pertaining thereto as they deem necessary; and this *Settlement Agreement* is executed freely by each *Person* executing it on behalf of a *Party*.

4.2. *Signatories' Representations and Warranties*. Each individual executing this *Settlement Agreement* on behalf of any other *Person* hereby personally represents and warrants to the other *Parties* that he or she has the authority to execute this *Settlement Agreement* on behalf of, and fully bind, each principal that such individual represents or purports to represent.

5. NO ADMISSION OR DISPARAGEMENT

Nothing in this *Agreement* shall constitute an admission by *Defendant* of liability for any conduct alleged in the *Complaint*, or an admission by any *Plaintiff* that any of its allegations set forth in the *Complaint* was untrue or lacked legal basis. Each of *Defendant* (for itself and its subsidiaries and affiliates) on the one hand and *Plaintiffs* on the other hand, covenant and agree to refrain from making any disparaging comments about each other (or their agents, employees and representatives) in the future, including, without limitation (i) comments inconsistent with the first sentence of this Section 5; (ii) comments asserting or implying that any *Plaintiff's* termination of employment was for a reason other than the *Plaintiff's* voluntary retirement; or (iii) comments impugning the honesty of *Defendant* or any *Plaintiff* or any of *Defendant's* (and its current or former subsidiaries' and affiliates') or *Plaintiff's* respective agents, employees and representatives.

6. SETTLEMENT CONSIDERATION

6.1. *The Class Settlement Amount*

6.1.1 The "*Class Settlement Amount*" shall consist of the *Additional Benefit Accruals for Pension Plan Settlement Class Members* as defined in § 6.1.2, and the *Settlement Cash Payment*.

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6.1.2 Additional Benefit Accruals for Pension Plan Settlement Class Members. As of the *Effective Date of Settlement*, the accrued benefit of each member of the *Pension Plan Settlement Class* shall be adjusted pursuant to an amendment to the *Pension Plan* as provided for in this Section 6.1.2. *Defendant* will cause Acme to adopt such amendment, which shall become effective immediately upon the *Final Approval Order* becoming *Final*. The amendment will have the effect of extending the last date for benefit accruals from October 4, 2014 to July 15, 2017, provided that such extension shall not reduce the benefit of any member of the *Pension Plan Settlement Class* from the level that would exist if the last date for benefit accruals had been October 4, 2014. The form of such amendment shall be provided to *Plaintiffs* no later than ten (10) days after execution of this *Agreement*, and shall be in form reasonably acceptable to *Plaintiffs*. The amendment shall be adopted by Acme within thirty (30) days of the entry of the *Preliminary Approval Order*, and *Defendant* shall promptly provide to *Plaintiffs* evidence of such adoption. Members of the *Pension Plan Settlement Class* who have begun or will begin receiving benefits after October 4, 2014, shall have their benefits adjusted accordingly. For avoidance of doubt, additional benefits shall not be accrued for any period after a *Pension Plan Participant* retired or otherwise terminated his or her employment. For *Pension Plan Participants* who retired after October 4, 2014 and began receiving benefits before the date the *Pension Plan* is amended, *Defendant* shall cause Acme to cause the *Pension Plan* to pay the *Participant* the difference (if any) between the sum of the payments the *Participant* has received as of the date the *Pension Plan* is amended, and the sum of such *Participant's* adjusted benefit to the date the *Pension Plan* is amended; all payments made under the immediately preceding sentence shall be reported on Form 1099-R. Berkshire shall, within thirty (30) days of the date on which the *Final Approval Order* becomes *Final*, cause notice to be given to each member of the *Pension Plan Settlement Class* of the modification of such member's benefit, including a calculation of the change to their benefit.

6.1.3 Allocation of Settlement Cash Payment. Within ten (10) days of the *Effective Date of Settlement*, *Defendant* will cause Acme to deposit the *Settlement Cash Payment* into the 401(k) Plan and allocated among the 401(k) Plan account balances of the 401(k) Settlement Class Members in accordance with the following plan of allocation (the "Plan of Allocation"): for each 401(k) Settlement Class Member, the *Settlement Cash Payment* shall be multiplied by a fraction, the numerator of which shall be the aggregate matching contributions made by Acme and allocated to the 401(k) Plan account of such Person for the years 2010 through 2013, and the denominator of which shall be the aggregate matching contributions made by Acme and allocated to the 401(k) Plan accounts of all 401(k) Settlement Class Members for the years 2010 through 2013; provided, however, that neither the numerator nor the denominator shall include matching contributions that did not vest, nor shall the numerator or denominator include matching contributions made pursuant to a collective bargaining agreement. The amount resulting from such multiplication is referred to as each 401(k) Settlement Class Member's "401(k) Settlement Share" and shall be allocated to the 401(k) Plan account of the 401(k) Settlement Class Members.

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As to any 401(k) Settlement Class Member who no longer has an account in the 401(k) Plan (referred to as a "Former 401(k) Participant"), Defendant will cause Acme to take reasonable steps to cause the 401(k) Settlement Share of such Former 401(k) Participant to be paid to or as directed by such Person; provided that if the 401(k) Settlement Share of such Person is under \$25, such 401(k) Settlement Share shall be deemed de minimis and shall not be paid but instead shall be reallocated as provided in the following sentence; and provided further that if any Former 401(k) Participant, after good faith attempts, cannot be located or fails to claim his or her 401(k) Settlement Share within one (1) year of the deposit of the Settlement Cash Payment to the 401(k) Plan, such Person's 401(k) Settlement Share shall be deemed reallocable. All de minimis or reallocable 401(k) Settlement Shares shall be reallocated among the 401(k) Plan accounts of the 401(k) Settlement Class Members other than Former 401(k) Plan Participants in a manner deemed reasonable by the fiduciaries of the 401(k) Plan. Defendant will cause Acme to implement such Plan of Allocation.

6.1.4 *Application for Fee Award and Payment to Plaintiffs' Counsel.* Plaintiffs' Counsel shall apply to the Court for an award of reasonable attorney fees and out of pocket expenses (together, the "Fee Award"). Defendant shall cause all attorney fees and out of pocket expenses awarded by the Court to be paid within ten (10) days of the Court's entry of the Fee Award, provided that if at such time the Fee Award or the Final Approval Order is not Final, Class Counsel shall be obligated to make appropriate refunds or repayments to Defendant, plus accrued interest (based on the one year Treasury constant maturity rate) within ten (10) calendar days, if and when, as a result of any appeal and/or further proceedings on remand, or successful collateral attack, the Fee Award is reduced or reversed or the Final Approval Order is reversed.

7. TERMINATION OF THE SETTLEMENT AGREEMENT

7.1. *Automatic Termination.* This Settlement Agreement shall automatically terminate, and thereupon become null and void, in the following circumstances:

7.1.1 If the Court declines to approve the Settlement, and if such order declining approval has become Final, then this Settlement Agreement shall automatically terminate, and thereupon become null and void, on the date that any such order becomes Final; provided, however, that if the Court declines to approve the Settlement for any reason, the Parties shall negotiate in good faith to cure any deficiency identified by the Court. For avoidance of doubt, the obligation to negotiate in good faith referenced in the preceding sentence shall not be deemed to require either the Named Plaintiffs or the Defendant to agree to any modification of the Settlement Agreement.

7.1.2 If the Court issues an order in the Action conditioning its approval of the Settlement on a modification of the Settlement Agreement, and, if within thirty-

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one (31) days after the date of any such ruling the *Parties* have not agreed in writing to proceed with all or part of the *Settlement Agreement* as modified, then, provided that no *Review Proceeding* is then pending from such ruling, this *Settlement Agreement* shall automatically terminate, and thereupon become null and void, on the thirty-first day after issuance of the order referenced in this § 7.1.2.

7.1.3 If the *Court's* order approving the *Settlement* is reversed on appeal, and if within ninety-one (91) days after the date of any such ruling the *Parties* have not agreed in writing to proceed with all or part of the *Settlement Agreement* as modified on appeal or by the *Parties*, then, provided that no *Review Proceeding* is then pending from such ruling, this *Settlement Agreement* shall automatically terminate, and thereupon become null and void, on the ninety-first day after issuance of the ruling on appeal referenced in this § 7.1.3.

7.1.4 If a *Review Proceeding* is pending of an order declining to approve the *Settlement Agreement* or modifying this *Settlement Agreement*, this *Settlement Agreement* shall not be terminated until *Final* resolution or dismissal of any such *Review Proceeding*, except by written agreement of all of the *Parties*.

7.2. *Consequences of Termination of the Settlement Agreement.* If the *Settlement Agreement* is terminated and rendered null and void for any reason, the following shall occur:

7.2.1 The *Action* shall for all purposes with respect to the *Parties* revert to its status as of October 10, 2019.

7.2.2 All *Releases* given or executed pursuant to the *Settlement Agreement* shall be null and void; none of the terms of the *Settlement Agreement* shall be effective or enforceable; neither the fact nor the terms of the *Settlement Agreement* shall be offered or received in evidence in the *Action* or in any other action or proceeding for any purpose, except in an action or proceeding arising under this *Settlement Agreement*.

8. MISCELLANEOUS PROVISIONS

8.1. *Jurisdiction.* The *Court* shall retain jurisdiction over all *Parties*, the *Settlement Classes*, the *Action*, and this *Settlement Agreement* to resolve any dispute that may arise regarding this *Settlement Agreement* or the orders and notice referenced in § 2 above, including any dispute regarding validity, performance, interpretation, administration, enforcement, enforceability, or termination of the *Settlement Agreement*, and no *Party* shall oppose the reopening and reinstatement of the *Action* on the *Court's* active docket for the purposes of effecting this § 8.1.

8.2. *Governing Law.* This *Settlement Agreement* shall be governed by the laws of the United States, including federal common law, except to the extent that, as a matter of federal law, state law controls, in which case Texas law shall apply without regard to conflict of law principles.

8.3. *Severability.* The provisions of this *Settlement Agreement* are not severable.

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8.4. *Amendment.* Before entry of the *Final Approval Order*, any common law to the contrary notwithstanding, this *Settlement Agreement* may be modified or amended only by written agreement signed by or on behalf of all *Parties*. Following entry of the *Final Approval Order*, any common law to the contrary notwithstanding, the *Settlement Agreement* may be modified or amended only by written agreement signed on behalf of all *Parties* and approved by the *Court*.

8.5. *Waiver.* The provisions of this *Settlement Agreement* may be waived only by an instrument in writing executed by the waiving *Party*. The waiver by any *Party* of any breach of this *Settlement Agreement* shall not be deemed to be or construed as a waiver of any other prior, subsequent, or contemporaneous breach of this *Settlement Agreement*.

8.6. *Construction.* None of the *Parties* hereto shall be considered to be the drafter of this *Settlement Agreement* or any provision hereof for the purpose of any statute, case law or rule of interpretation or construction that would or might cause any provision to be construed against a drafter.

8.7. *Principles of Interpretation.* The following principles of interpretation apply to this *Settlement Agreement*:

8.7.1 *Headings.* The headings of this *Settlement Agreement* are for reference purposes only and do not affect in any way the meaning or interpretation of this *Settlement Agreement*.

8.7.2 *Singular and Plural.* Definitions apply to the singular and plural forms of each term defined.

8.7.3 *Gender.* Definitions apply to the masculine, feminine, and neuter genders of each term defined.

8.7.4 *References to a Person.* References to a *Person* are also to the *Person's* successors and assigns.

8.7.5 *Terms of Inclusion.* Whenever the words "include," "includes," or "including" are used in this *Settlement Agreement*, they shall not be limiting but rather shall be deemed to be followed by the words "without limitation."

8.8. *Further Assurances.* Each of the *Parties* agrees, without further consideration, and as part of finalizing the *Settlement* hereunder, to in good faith execute and deliver such other documents and take such other actions as may be necessary to consummate and effectuate the subject matter and purpose of this *Settlement Agreement*.

8.9. *Survival.* All representations, warranties and covenants set forth in this *Settlement Agreement* shall be deemed continuing and shall survive the *Effective Date of Settlement*.

8.10. *Notices.* Any notice, demand, or other communication under this *Settlement Agreement* (other than notices to members of the *Settlement Classes*) shall be in writing and shall be deemed

duly given if it is addressed to each of the intended recipients as set forth below and personally delivered, sent by registered or certified mail (postage prepaid), sent by facsimile, delivered by reputable express overnight courier, or sent by email; provided, however, that notices, demands or other communications given by facsimile or email shall be deemed effective only if delivery is confirmed by the receiving party by email, facsimile or other means specified in this section:

A. IF TO NAMED PLAINTIFFS:

Gary A. Gotto
Christopher Graver
KELLER ROHRBACK L.L.P.
3101 North Central Ave., Suite 1400
Phoenix, AZ 85012
Fax: (602) 248-2822
ggotto@kellerrohrback.com
cgraver@kellerrohrback.com

B. IF TO DEFENDANTS:

George M. Garvey
Gregory D. Phillips
Munger Tolles & Olson LLP
350 S. Grand Avenue, 50th Floor
Los Angeles, CA 90071
Fax: (213) 687-3702
George.Garvey@mto.com
Gregory.phillips@mto.com

Any *Party* may change the address at which it is to receive notice by written notice delivered to the other *Parties* in the manner described above. Notices given by facsimile or email shall be deemed given on the date sent. Notices given by other means provided above shall be deemed given on the date delivered.

8.11. *Entire Agreement.* This *Settlement Agreement* contains the entire agreement among the *Parties* relating to the settlement of the *Action*. It specifically supersedes any settlement terms or settlement agreements relating to *Defendant* that were previously agreed upon orally or in writing by any of the *Parties*, including the terms of any term sheets and any and all discussions, representations, warranties, or the like prior to the *Effective Date of Settlement*.

8.12. *Counterparts.* This *Settlement Agreement* may be executed by exchange of faxed or emailed executed signature pages, and any signature transmitted by facsimile for the purpose of executing this *Settlement Agreement* shall be deemed an original signature for purposes of this *Settlement Agreement*. This *Settlement Agreement* may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same instrument.

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8.13. *Binding Effect.* This *Settlement Agreement* binds and inures to the benefit of the parties hereto, their Successors, assigns, heirs, administrators, insurers, and executor.

8.14. *Conformity.* The phrase “substantially in the form” as used in this *Settlement Agreement* to refer to the conformity of an order or other document to any Exhibit hereto, shall mean that such order or other document contains no material change from such Exhibit, except as may be approved by *Class Counsel* and *Defendant’s Counsel* in the discretion of each of them.

IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement on the dates set forth below.

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FOR NAMED PLAINTIFFS AND THE SETTLEMENT CLASSES

Dated this the 27 day of November, 2019.

By: 

Gary A. Gotto
Christopher Graver
KELLER ROHRBACK L.L.P.
3101 North Central Ave., Suite 1400
Phoenix, AZ 85012
Fax: (602) 248-2822

Class Counsel

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FOR DEFENDANT

Dated this the 27TH day of November, 2019.

By: Gregory D. Phillips
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