

**IB DOCKET NO. 02-111**

**ATTACHMENT 3 (12/06/02)**

**TO PACIFIC TELECOM INC.'S RESPONSE TO**

**INTERNATIONAL BUREAU'S TELEPHONIC**

**INFORMATION REQUEST**

## SETTLEMENT AGREEMENT

1 This Stipulation and Settlement Agreement (hereinafter "Settlement" or "Agreement") is entered into as of September 24, 2002 by and among:

2 Does I through XXV (the "Federal Class Action Doe Plaintiffs") who are plaintiffs in *Doe I, et al. v. The Gap, Inc., et al.*, No. CV-01-0031 (D.N.M.I.) ("the first Federal Class Action"), *Does I et al. v. Erylane L.P., et al.* No. CV-01-0036 (D.N.M.I.), and *Does I, et al. v. The Dress Barn, Inc.*, No. CV-01-0037 (D.N.M.I.) (collectively, the "Federal Class Actions");

3 All Opt-In Plaintiffs as defined in paragraph 2.e below, including Does I through XXIII ("the FLSA Doe Plaintiffs"), who are or will be plaintiffs in *Docs I, et al. v. Advanced Textile Cop., et al.*, Case No. CV-99-0002 (D.N.M.I.) (the "PLSA Action");

4 Union of Needletrades Industrial and Textile Employees ("UNITE"), Asian Law Caucus, Sweatshop Watch, and Global Exchange (hereinafter "State Court Plaintiffs"), which are or were plaintiffs in *Union of Needletrades Industrial and Textile Employees, et al. v. The Gap, Inc., et al.*, No. 300474 (San Francisco Superior Court) ("the first State Court Action") and *Union of Needletrades Industrial and Textile Employees, et al. v. Brylane, L.P., et al.*, Case No. 311075 (San Francisco Superior Court) (collectively, the "State Court Actions");

5 Abercrombie & Fitch Co., The Associated Merchandising Corporation, The Gap, Inc., Lane Bryant, Inc., The Limited, Inc., J.C. Penney Company, Inc., The Talbots, Inc., and Target Corporation ("Defendant Retailers"), which are defendants in one or more of the Federal Class Actions or the State Court Actions; and

6 Advance Textile Corp., American Pacific Textile, Inc., Commonwealth Garment Manufacturing, Inc., Concorde Garment Manufacturing Corp., Express Manufacturing, Inc., Global Manufacturing, Inc., Grace International, Inc., Hansae (Saipan) Inc. a/k/a/ New Sear Corp. a/k/a Kyung Suh Co Ltd., Joo Ang Apparel, Inc., L&T Group of Companies, Ltd. f/d/b/a L&T International Corp., Mariana Fashions, Inc., Marianas Garment Manufacturing, Inc., Michigan, Inc., Micronesia Garment Manufacturing, Inc. n/d/b/a Rifu Apparel Corp., Mirage (Saipan), Inc., Neo Fashion, Inc., Net Apparel Co. a/k/a Net Apparel Co., N.E.T. Corp. f/d/b/a Suntex Manufacturing n/d/b/a Pacific Coast, Onwel Manufacturing, Inc., Pang Jin Sang Sa Corp., Sako Corp., Top Fashion Corp., Trans-Asia Garment Forte Corp., United International Corp., Uno Moda Corp., US-CNMI Development Corp., and Winners Corp. ("Defendant Manufacturers"), which are defendants in the first Federal Class Action and/or the PLSA Action.

7. The following are additional defined terms under this Agreement:

8 "Court Actions" shall refer to the Federal Class Actions, the FLSA Action, and the State Court Actions.

b. "Companies" shall refer to all Defendant Retailers and all Defendant Manufacturers.

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d. "Provisional Class  
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3. NOW, THEREFORE,  
subject to all terms and  
and subject further to any  
limited to *Doe I, et al. v. The*

4. The Parties agree to the following facts and representations:

a. On January  
the first Federal Class Action  
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Act,  
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Third Amended Complaint was filed on or about July 25, 2002, each following court orders granting in part and denying in part various defendants' motions to dismiss. An order granting plaintiffs' motion for class certification was entered on May 10, 2002 by the D.N.M.I. Court.

- b. On January 13, 1999, the State Court Plaintiffs filed the first State Court Action (*Union of Needletrades Industrial and Textile Employees, et al. v. The Gap, Inc., et al.*, No. 300474 (San Francisco Superior Court)) against certain Defendant Retailers and Previously-Settling Retailers, alleging, *inter alia*, violations of California's Unfair Business Practices Law. An Amended Complaint was filed on or about September 23, 1999. Certain defendants' motions for summary judgment or summary adjudication are now pending before the State Court.
- c. On January 14, 1999, certain FLSA Doe Plaintiffs and others filed the first PLSA Action (*Does I, et al. v. Advanced Textile Corp., et al.*, Case No. CV-99-0002 (D.N.M.I.)) against certain Defendant Manufacturers, alleging violations of the Fair Labor Standards Act ("FLSA") and Commonwealth of Northern Mariana Islands ("CNMI") local law, which CNMI law claims were dismissed without prejudice by the D.N.M.I. Court on August 6, 1999. A First Amended Complaint was filed on or about March 25, 1999, a Second Amended Complaint was filed on or about February 10, 2000, a Third Amended Complaint was filed on or about May 24, 2000, a Fourth Amended Complaint was filed on or about October 2, 2000, and a Fifth Amended Complaint was filed on or about January 23, 2001. On or about October 16, 2001, the D.N.M.I. Court ordered notice of the pendency of the PLSA Action to be disseminated to approximately 23,000 potential plaintiffs in that action.
- d. The Parties and their counsel have conducted significant investigation of the facts and law by, among *other* things, interviewing prospective witnesses and conducting meetings and conferences among representatives of the Parties. Counsel have further investigated the applicable law as applied to the facts *that* Plaintiffs allege and to potential defenses thereto, and have conducted focused discovery in the first State Court Action and the first Federal Class Action.
- e. Plaintiffs and their counsel recognize the expense and length of continued proceedings necessary to continue the Court Actions against the Companies through trial and through any possible appeals. Plaintiffs and their counsel have taken into account the benefits to Plaintiffs from the Settlement and the uncertainty, difficulties and delays inherent in further litigation. Plaintiffs and their counsel have also taken into account the settlement negotiations conducted by the Parties in the Court Actions. Based on the foregoing, Plaintiffs and their counsel have determined that the settlement set forth in this Agreement is fair, reasonable and adequate, and in Plaintiffs' best interests.
- f. The Companies have concluded that the defense of the Court Actions may be protracted and expensive for all Parties, and that, unless this Settlement is made, substantial amounts of time, energy and resources would have to be devoted to the defense of the

claimant by Plaintiffs. The Companies and their subsidiaries have also agreed into account the settlement negotiations conducted by the Parties in the Court Actions. The Court before, has agreed to settle the Court Actions in the manner and upon the terms set forth in this Agreement to put to rest all Court Actions and claims that

5. The Plaintiffs and the Companies agree that this Agreement (including any court orders related thereto) is not a concession or admission of any fact and that this Agreement shall not be used against the Companies or any of their past or present parents, subsidiaries, principals, officers, shareholders, directors, employees or business partners as an admission or indication of any fault or omission by any party or as a basis for a rule, or approval process that can or should be applied anywhere except in the context of this Agreement. Whether or not the Settlement is finally approved with the Settlement, nor any document, statement, report, or expense related to this Agreement nor any reports or accounts thereof, shall be:

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The Parties' agreement to and willingness to be bound by this Settlement is expressly conditioned upon all Parties' execution of this Agreement on or before September 23, 2002, and upon the Companies fully funding the Cash Settlement Amount in the amount and in the manner set forth in paragraph 10 within 10 (ten) days after execution of this Agreement. This Agreement shall be null and void with respect to any Company that

does not timely execute this Agreement and timely and fully fund its contribution to the Cash Settlement Amount in the manner set forth in paragraph 10.a-10.c. The date of execution of this Agreement shall be deemed to be the latest date prior to September 24, 2002 on which any Party executes this Agreement ("Settlement Agreement Execution Date")

- b. The Parties' agreement to and willingness to be bound by this Settlement is expressly further conditioned upon a) Previously-Settling Retailers' execution no later than October 7, 2002 of a separate settlement agreement, in the form of the agreement attached hereto as Exhibit B, by which those Previously-Settling Retailers: a) replace without amendment, alteration, or modification the Monitoring Program attached hereto as Exhibit A in place of the Monitoring Program set forth as Exhibit A to their previously-executed settlement agreements with plaintiffs, and b) substitute provisions consistent with those set forth in paragraphs 20 and 52 of this Agreement regarding the notice and approval process and scope and manner of arbitration, for the provisions regarding the notice and approval process and scope and manner of arbitration contained in the Previously-Settling Retailers' previously-executed settlement agreements with Plaintiffs.
- c. Plaintiffs and the Companies shall have the right, without any penalty, obligation, or adverse inference whatsoever, to revoke their execution of this Agreement if any of the conditions in paragraph 7.a or 7.b are not timely satisfied by communicating their exercise of that right in writing to the other Parties no later than October 11, 2002.
- d. Each Defendant Manufacturer shall identify to all other Parties the Previously-Settling Retailers for which such Defendant Manufacturer manufactured garments in the CNMI at any time between January 13, 1989 and the date of execution of this Agreement. Each Previously-Settling Retailer will be requested to release in writing, no later than October 7, 2002 all potential indemnification obligations of the Defendant Manufacturers to such Previously-Settling Retailer that arose between January 13, 1989 and the date of execution of this Agreement ("Indemnification Obligations") by executing an agreement in the form attached hereto as Exhibit C. If any Previously-Settling Retailer does not timely release Defendant Manufacturers' Indemnification Obligations in accordance with this subparagraph, any Defendant Manufacturer whose potential Indemnification Obligation is not released shall have the right, without any penalty, obligation, or adverse inference whatsoever, to revoke its execution of this Agreement if it communicates such revocation in writing to all other Parties no later than October 11, 2002.
- e. If any Defendant Manufacturer revokes its execution of this Agreement pursuant to paragraph 7.d, Plaintiffs at their sole and exclusive option shall have the right to withdraw from and terminate this Agreement in its entirety, without any penalty, obligation, or adverse inference whatsoever, if Plaintiffs do so by communicating such withdrawal in writing to the other Parties no later than October 16, 2002.

- f. To take effect upon the Effective Date, by this Agreement, the Companies, and each of them, and their past and present officers, directors, shareholders (and the shareholders' past and present shareholders), employees, agents (including without limitation related companies that entered into any agreement for production of garments when the garments were manufactured by a Defendant Manufacturer), buying agents, principals, heirs, representatives, accountants, auditors, consultants, insurers and reinsurers, and their respective successors and predecessors in interest, subsidiaries, affiliates, parents, sister corporations, insurers and reinsurers, and attorneys, hereby fully and forever release and discharge the Companies and each of them, and their past and present officers, directors, shareholders (and the shareholders' past and present shareholders), employees, agents (including without limitation related companies that entered into any agreement for production of garments when the garments were manufactured by a Defendant Manufacturer), buying agents, principals, heirs, representatives, accountants, auditors, consultants, insurers and reinsurers, and their respective successors and predecessors in interest, subsidiaries, affiliates, parents, sister corporations, insurers and reinsurers, and attorneys, from any and all claims, obligations, and liabilities for indemnification and any and all claims, obligations, and liabilities for contribution that may be owed by any of them arising out of or in any way related to the Court Actions or the Released Claims. The Companies, and each of them, stipulate and agree that the provisions of paragraphs 34 and 35 herein apply with equal force to their releases contained in this paragraph. This release does not preclude or affect the Companies' ability to pursue claims against their insurers. Each person who signs this Agreement on behalf of a Defendant Retailer or Defendant Manufacturer ("Defendant") warrants and represents to every other Defendant that he or she has the authority to make this agreement set forth in this paragraph on behalf of the Defendant for which he or she signs. Each Defendant represents and warrants to each other Defendant that it is the sole and exclusive owner of the rights, claims and causes of action herein released in this paragraph and that it has not heretofore assigned or transferred or purported to assign or transfer to any other person or entity any obligations, rights, claims, or causes of action herein released. Each Defendant shall defend and hold each other Defendant harmless from and against any rights, claims, or causes of action asserted by any person that, if established, would be a breach of said Defendant's above representations and warranties, and any and all loss, expense, attorneys' fees, and liability arising directly or indirectly out of said breaches. If any action is brought which, if established, would be a breach of any of the above representations and warranties, the Defendant making the representation or warranty shall appear in and defend the action on behalf of the affected beneficiary or beneficiaries of the representation or warranty, at the maker's own sole cost and expense.
- g. For purposes of this paragraph 7, all dates shall refer to the date in the Pacific Time Zone (California) time that a written communication is received, and communications sent by facsimile shall be deemed received at the time they are sent.

- h. To the extent that Plaintiffs have the right to withdraw from this Agreement upon the occurrence of any contingency, Plaintiffs agree that any such withdrawal, if exercised, will be exercised collectively on behalf of all Plaintiffs (excluding Provisional Class Members who have opted out).
8. For settlement purposes only, Plaintiffs shall file an amended *complaint* pursuant to paragraph 7.0.a in the first Federal Class Action in the D.N.M.I. Court adding new claims for relief under CNMI law only against the Defendant Manufacturers and seeking equitable tolling of the statute of limitations for those claims back to January 13, 1989 ("Settlement Action"). The Parties shall stipulate to, and shall seek the D.N.M.I. Court's certification in the Settlement Action of, a Provisional Settlement Class under CNMI law defined as all persons other than CNMI Resident Workers who, at any time between January 13, 1989 and May 10, 2002, were employed in the CNMI as a garment factory worker for any Defendant Manufacturer or any other garment manufacturer or subcontractor that manufactures or has manufactured garments for any Defendant Retailer or Previously-Settling Retailer, and who had claims under CNMI law arising after January 13, 1989. The "Settlement Class" shall consist of all members of the Provisional Class who do not opt out of this Settlement pursuant to paragraph 20.b.viii below. Members of the Settlement Class shall hereinafter be referred to as the "Settlement Class Members." If for any reason the Effective Date of this Settlement does not occur with respect to one or more Companies, the new CNMI law allegations of the amended Complaint against such Company or Companies shall be deemed withdrawn and of no effect.
9. The "Effective Date" of this Settlement shall be the first business day following the last of the following to occur:
- The date the State Court Actions have been dismissed with prejudice by the State Court as provided in paragraph 27 herein with respect to the Defendant Retailers and Previously-Settling Retailers;
  - The date the Federal Class Actions have been dismissed with prejudice as provided in paragraph 24 herein with respect to the Companies and the Previously-Settling Retailers;
  - The date the FLSA Action has been dismissed with prejudice as provided in paragraph 2.5 herein with respect to the claims of the Opt-In Plaintiffs against the Defendant Manufacturers;
  - The date the Settlement has been granted final approval in the Settlement Action if no objections or interventions have been timely filed with the D.N.M.I. Court; or if any objections or interventions have been timely filed-

The last day to appeal, seek permission to appeal, or otherwise seek review of, the entry of a final order approving the Settlement in the Settlement Action; or

- ii If an appeal or other judicial review of the Settlement Action has been taken or sought from the entry of a final order approving the Settlement, the date the final order is finally affirmed by an appellate court with no possibility of subsequent appeal or other judicial review thereof, or the date the appeal(s) or other judicial review thereof are finally dismissed with no possibility of subsequent appeal or other judicial review thereof.

10. The following provisions shall govern the Companies' funding of this Settlement:

- a. Subject to all of the terms and conditions of this Agreement, the Companies shall pay full and final settlement of any and all claims asserted against them or any of them in the Court Actions and in the Settlement Action the aggregate global sum of \$11,250,000.00 (Eleven Million Two Hundred Fifty Thousand Dollars) ("Cash Settlement Amount"). The Companies have reached agreement among themselves as to the amount that each of them will contribute to fund the Cash Settlement Amount. No Company shall be liable for any other Company's contribution to the Cash Settlement Amount. The amount which each Company has agreed to contribute toward the Cash Settlement Amount is confidential, and no Company shall disclose, or be required to disclose, the amount of its or any other Company's contribution to the Cash Settlement Amount; except that each Retailer Defendant shall be deemed to have allocated \$12,500 of its contribution to its share of Administrative Costs pursuant to paragraph 12.a, and except further as provided below in paragraph 10.h with respect to Advance Textile Corp. and N.E.T. Corp.
- b. Except as provided below in paragraph 10.h with respect to Advance Textile Corp. and N.E.T. Corp., each Company shall pay the full amount of its contribution to the Cash Settlement Amount within 10 (ten) days after execution of this Agreement into the escrow account identified in the Escrow Agreement attached hereto as Exhibit D ("VSSP Escrow"). Each Company shall be liable for its *pro rata* share of the administrative costs, if any, associated with such VSSP Escrow. The earnings on such account shall be used to defray any such administrative costs, and any excess earnings shall be retained with the principal, to be used for Administrative Costs (including costs of notice) as set forth herein in paragraph 12.a.
- c. Upon entry of the Preliminary Order pursuant to paragraph 20.a, all funds in the VSSP Escrow shall be transferred to Milberg Weiss Bershad Hynes & Lerach (the "Milberg Escrow Agent"). The Milberg Escrow Agent shall invest such transferred funds in instruments backed by the full faith and credit of the United States government or fully insured by the United States government or an agency thereof, and shall reinvest the proceeds of these instruments as they mature in similar instruments at then-current market rates. After transfer of the funds to the Milberg Escrow Agent, the Companies shall bear no risk of loss relating to those funds except as specifically designated herein. The Milberg Escrow Agent shall not disburse escrowed funds except as provided in this Agreement, by an order of the Court, or with the written agreement of the Liaison

Counsel who were designated in *Doe I, et al. v. The Gap, Inc., et al.*, No. CV-01-0031 (D.N.M.I.), acting as representatives of the Parties. If the Cash Settlement Amount is not timely paid or if the payment by any Company into the Cash Settlement Amount is rescinded or made ineffective by reason of a Company's bankruptcy or for any other reason, Plaintiffs shall have the option to rescind and void this Agreement.

- d. Under no circumstances shall any Company be required to make any payment other than to the Cash Settlement Amount; whether for the Monitoring Program or otherwise, including, without limitation, if there are insufficient funds to sustain the Monitoring Program; for additional payments to any Plaintiffs in the Court Actions or the Settlement Action; or to pay any additional fees or costs of any kind, including but not limited to Administrative Costs and/or Plaintiffs' counsels' attorneys' fees or costs.
- e. No funds from the Cash Settlement Amount shall be used or disbursed prior to the Effective Date for anything other than Administrative Costs.
- f. The payments and allocations set forth in this paragraph 10 are made in consideration of the additional aggregate sum of \$8,764,575.15 (eight million, seven hundred sixty four thousand, five hundred seventy five dollars and fifteen cents) being paid into settlement by the Previously-Settling Retailers pursuant to settlement agreements reached between the Previously-Settling Retailers and certain Plaintiffs in the Court Actions, subject to any reductions in those amounts caused by the bankruptcy of a Previously-Settling Retailer or the unavoidable application of a Previously-Settling Retailer's Most Favored Nation rights. Those aggregate sums have previously been allocated by Plaintiffs and the Previously-Settling Retailers as follows: \$5,087,293.30 for monitoring and payments to Settlement Class members; \$565,254.80 for *cy pres* payments in the State Court Action; \$285,753.00 for notice and settlement administration costs; and \$2,826,274.05 for attorneys' fees and costs to Plaintiffs' counsel. The Cash Settlement Amount plus the aggregate settlement funds paid by the Previously-Settling Retailers shall be deemed the Combined Cash Settlement Amount.
- g. The Combined Cash Settlement Amount shall be allocated as follows: \$500,000.00 for Administrative Costs (including costs of notice) as set forth herein in paragraph 12.a, \$565,254.80 for *cy pres* payments in the State Court Action; \$3,150,000.00 for Plaintiffs' counsels' attorneys' fees; \$5,600,000.00 for Plaintiffs' counsels' costs; and \$10,199,320.35 for the Net Settlement Fund as described in paragraph 12.c. If the amount of the Previously-Settling Retailers' aggregate payment is reduced because of a Previously-Settling Retailer's bankruptcy, the unavoidable application of a Previously-Settling Retailer's Most Favored Nation rights, or any failure of payment or delay of payment by a Company that does not result in the nullification of this Agreement, the Parties shall re-allocate the sums allocated from the Combined Cash Settlement Amount for *cy pres* payments and items described in paragraph 12.c to reflect those modifications or reductions.

- h. Neither Advance Textile Corp. nor N.E.T. Corp. is able to make its contribution to the Cash Settlement Amount within the time period provided by paragraph 10.b above. In lieu of making such contribution, Advance Textile Corp. will deliver to the VSSP Escrow Agent within the time period provided by paragraph 10.b above a promissory note payable to the Marianas Settlement Fund in the principal amount of \$255,555.00 and N.E.T. will deliver to the VSSP Escrow Agent within the time period provided by paragraph 10.b above a promissory note payable to the Marianas Settlement Fund in the principal amount of \$202,803.00. Both notes will carry an interest rate of 5% per annum beginning 10 (ten) days after execution of this Agreement. Both notes will be amortized and paid at the rate of \$6,000.00 per month for each note, beginning on the first day of the month following the date of the execution of this Agreement. Installments shall be due and payable on the first of each following month. The failure of either maker to pay an installment when due shall result in the remaining balance and accrued interest under that maker's note becoming immediately due and payable, and that maker being immediately placed on Probation without regard to the prerequisites of Probation otherwise found in the Monitoring Program attached hereto as Exhibit A.
11. Gilardi & Co. LLC, of Larkspur, California ("Gilardi"), or such other entity upon whom the Parties mutually agree, shall be retained to serve as Claims Administrator. The Claims Administrator shall be responsible for mailings to Provisional Class Members, payment of settlement checks to Settlement Class Members and Opt-In Plaintiffs, coordination of notice, and for such other tasks as the Parties mutually agree or a court orders Gilardi to perform. The Parties each represent they do not have any direct or indirect financial interest in Gilardi or otherwise have a relationship with Gilardi that could create a conflict of interest.
12. The Combined Cash Settlement Amount shall be disbursed from the escrow account held by the Milberg Escrow Agent (the "Milberg Escrow") and applied for the following purposes, in the following order, and as provided below:
- a. After entry of the Preliminary Order pursuant to paragraph 20.a, to pay the Administrative Costs of the Settlement, which shall include but not be limited to, the costs incurred by the Claims Administrator, the fees paid to the Claims Administrator, the cost of printing and publishing court-approved notices of settlement, and the costs of mailings to the Provisional Class Members, Opt-In Plaintiffs, and Settlement Class Members (including the cost of mailing settlement checks to Settlement Class Members), provided that all such notices and mailings shall be, if practicable, made jointly with the notices and mailings to be made in any settlements Plaintiffs have entered into or do enter into prior to such notices or mailings, in the Court Actions and Settlement Action.
- b. After the Effective Date, to pay the attorneys representing Plaintiffs attorneys' fees in the amount of \$3,150,000.00 and costs in the amount of \$5,600,000.00 plus interest accrued on those amounts pursuant to paragraph 10, subject to Court approval, and

c. After the Effective Date, of the Combined Cash Settlement Amount monies remaining after the disbursements provided for in paragraphs 12.a-b above (the "Net Settlement Fund"):

i. \$4,000,000.00 is to be paid in trust to the OB to fund the Monitoring Program as defined in Exhibit A, which sum shall include the amounts set forth in the note and payments thereon to be made by Advance Textile Corp. and N.E.T. Corp. pursuant to paragraph 10.h;

ii. \$400,000.00 is to be paid in trust to the OB to fund the Repatriation Fund, as defined in Exhibit A;

iii. \$5,799,320.35 is to be paid in trust to the Claims Administrator to make payments as further described below to Settlement Class Members and Opt-In Plaintiffs (the "Distribution Fund"), such payments to be made as soon as practicable after the

(1) 20% of the Distribution Fund shall be allocated among all Settlement Class Members, regardless of their post-January 13, 1989 dates or duration of employment with any CNMI garment manufacturer, on a per capita basis (i.e., each eligible Settlement Class Member employed in the CNMI at any time between January 13, 1989 and May 10, 2002 shall receive the same payment as each other eligible Settlement Class Member employed in the CNMI at any time during that period);

2) 20% of the Distribution Fund shall supplementally be allocated on a per capita basis among all Settlement Class Members who were employed by any CNMI garment manufacturer on or after January 13, 1995, regardless of the post-January 13, 1995 duration of such employment;

(3) 10% of the Distribution Fund shall supplementally be allocated on a per capita basis among all Settlement Class Members who were employed by any CNMI garment manufacturer on or after January 13, 1997, regardless of the post-January 13, 1997 duration of their employment with such Manufacturer;

(4) For purposes of calculating distributions to Settlement Class Members pursuant to paragraph 12.c.ii.(1)-(3), a Settlement Class Member who worked two or more periods of employment for a CNMI garment manufacturer separated by at least a six-month period of non-employment shall be deemed to have a separate eligibility period for each such separate employment period.

(5) 50% of the Distribution Fund shall supplementally be allocated on a percentage basis among all Opt-In Plaintiffs, based upon the number of Pay Periods worked by each Opt-In Plaintiff between January 14, 1996 and May 10, 2002 for any Defendant Manufacturer that is a defendant in the FLSA Action or for Diorva

(Saipan) Ltd. (collectively "FLSA Manufacturers"), as a percentage of the total number of Pay Periods worked by all Opt-In Plaintiffs between January 14, 1996 and May 10, 2002 for any FLSA Manufacturer. Attached as Exhibit E is a list of each FLSA Manufacturer's Pay Periods from January 14, 1996 through May 10, 2002. For purposes of this provision, an Opt-In Plaintiff shall be deemed to have worked during a Pay Period for an FLSA Manufacturer if he or she was on the payroll of that FLSA Manufacturer for at least one day during that Pay Period; except that

- (a) No Pay Periods worked by any Opt-In Plaintiff employed by Top Fashion, Corp. between May 1, 1997 and December 31, 1998 or by U.S. CNMI Development Corp. between June 1, 1997 and July 31, 1998 ("DOL Settlement Months") shall be included in the calculations conducted pursuant to paragraph 12.c.iii.(5), either for purposes of calculating any Opt-In Plaintiffs' allocation of FLSA Settlement funds or for calculating the total number of Pay Periods worked by all Opt-In Plaintiffs, if for such Pay Period the Opt-In Plaintiff received or is eligible to receive an FLSA overtime payment that resolved the DOL's FLSA overtime claims asserted against Top Fashion, Corp. or U.S. CNMI Development Corp.; and
- (b) All Pay Periods worked by any Opt-In Plaintiff between February 1, 1997 and April 30, 1999 shall be double-counted for all purposes in calculating the distributions due and owing in paragraph 12.c.iii.(5).

d. The portion of the Combined Cash Settlement Fund allocated to the Net Settlement Fund shall be pooled with any other monies designated for similar purposes from any other sources, including, but not limited to Application Fees from Non-Settling Manufacturers pursuant to paragraph V.B of the attached Monitoring Program (the "Pooled Settlement Fund"). If at any time after the Effective Date additional Pooled Settlement Fund money becomes available for the Monitoring Program, the Repatriation Fund, or payment to Settlement Class Members, or if the amount of Repatriation Funds or monitoring required by this Agreement is reduced consistent with the terms of this Agreement (for example, if there is a significant reduction in the amount of garment production in the CNMI or the number of garment factories covered by the Monitoring Program), the OB shall, in its reasonable discretion, re-allocate the sums set forth in paragraph 12.c.(i)-(iii) above: as between the Monitoring Program, Repatriation Fund, and payments to the Settlement Class Members, subject to the conditions that:

- i. The OB shall first endeavor to ensure that sufficient monies remain available to the OB to fund the implementation of an effective ongoing Monitoring Program and Repatriation Fund as set forth in Exhibit A hereto;
- ii. In determining what amount of the Net Settlement Fund to allocate to the Monitoring Program, the OB shall take into account other Pooled Settlement Fund money that is or has been made available for monitoring, and shall also take into

account the number, size, employment practices, and workforce of any other manufacturers whose facilities are required to be monitored in the future,

ii) If the OB determines, in its reasonable discretion not to be exercised more than once annually, that more money has been allocated to the Repatriation Fund than is reasonably necessary to pay the existing and anticipated obligations from that Repatriation Fund, the OB shall re-allocate the excess Repatriation Funds to the Monitoring Program;

iv. If the OB determines based upon reasonable projections of Monitoring Program costs and expenses that more money has been allocated to the Monitoring Program than is reasonably necessary to pay the existing and anticipated obligations of operating the Monitoring Program, the OB shall distribute such excess funds to Settlement Class Member, in a manner that the OB deems fair and equitable; and

v. If the OB determines that it is unlikely that further monitoring under the Monitoring Program (as defined in Exhibit A hereto) will be required due to the cessation of the CNMI garment industry or for good cause, the Monitoring Program and any of the Parties' obligations related thereto shall be deemed ended and any remaining Settlement Funds shall be distributed by the OB to Settlement Class Members in a manner that the OB deems fair and equitable.

vi. Prior to re-allocating any settlement funds pursuant to this paragraph, the OB shall give the Parties at least one week advance Written notice. If any Party hereto disagrees with any re-allocation of the Net Settlement Fund by the OB as inconsistent with the goals and purposes of this Agreement, that Party shall retain the right to submit the issue to arbitration pursuant to paragraph 52 herein on the sole ground that the OB abused its discretion in its re-allocation decision. The OB may in its discretion stay any re-allocation decision pending the resolution of any such arbitration.

13. The Parties agree that the sums allocated in paragraph 10 and 12.b to be paid from the Combined Cash Settlement Amount and costs to attorneys' Plaintiffs' Companies the fees and shall preclude efforts in litigation against any defendant Agreement on the Effective Date.

Class

valid address of such eligible Settlement Class Member and Opt-In Plaintiff and shall be based upon the payment allocation formulas set forth in paragraph 12.c.iii herein. Should any Settlement payment to a Settlement Class Member or Opt-In Plaintiff be returned as undeliverable with no forwarding address provided or remain uncollected for 120 (one hundred twenty) days, the payment shall be retained as part of the Net Settlement Fund, to be distributed in the OB's discretion to Settlement Class Members and/or Opt-In Plaintiffs or used to fund the Monitoring Program, subject to the following provisions:

- a. Any Settlement Class Member whose Settlement Payment is returned as undeliverable with no forwarding address provided or whose Settlement Payment remains uncollected for 120 (one hundred twenty) days shall nonetheless remain a Settlement Class Member.
  - b. Any Opt-In Plaintiff whose Settlement Payment is returned as undeliverable with no forwarding address provided, or whose Settlement Payment remains uncollected for 120 (one hundred twenty) days, shall nonetheless remain an Opt-In Plaintiff except that pursuant to paragraph 20.b.vi, any such Opt-In Plaintiff whose Settlement Payment remains uncollected for 120 (one hundred twenty) days will be deemed to have rejected the settlement of his or her FLSA claims and shall be entitled to pursue his or her FLSA claims individually if he or she Wed an FLSA Consent to Sue in the FLSA Action on or before August 7, 2002.
15. The Claims Administrator shall keep the Companies, the Companies' counsel, and Plaintiffs' counsel apprised of the distribution of all Net Settlement Fund monies, including the distributions to Settlement Class Members and Opt-In Plaintiffs. Upon completion of administration of that portion of the Settlement, the Claims Administrator shall provide written certification of such completion to counsel for all Parties. Upon the request of an FLSA Manufacturer, the Claims Administrator shall inform such FLSA Manufacturer and Plaintiffs' counsel of the identity and covered Pay Period dates of any Opt-In Plaintiff who received an FLSA distribution pursuant to paragraph 12.c.iii.5 for Pay Periods during which the Opt-In Plaintiff was employed by such FLSA Manufacturer.
16. The Net Settlement Fund shall be released by the Milberg Escrow Agent to the Claims Administrator and the OB pursuant to paragraph 10 of this Agreement upon the Effective Date. The attorneys' fees and costs reimbursement (plus any interest accrued on those amounts) shall be released to Plaintiffs' counsel upon the Effective Date. Any interest earned on the Cash Settlement Amount in the VSSP Escrow and/or the Milberg Escrow established pursuant to paragraph 10 shall be added to the Cash Settlement Amount. Should the Settlement not become final for any reason, the entire Cash Settlement Amount and all accrued interest, less any such money used to pay Administrative Costs already incurred (which amount shall not exceed \$250,000.00), shall be distributed as jointly directed in writing by Michael J. Carter, Esq. and Robert J. O'Connor, Esq. to the Companies in proportion to the amount of their individual shares paid with a full accounting of all Administrative Costs disbursed therefrom. In such event, each Company shall receive back the amount of its contribution less its *pro rata* share of Administrative Costs expended.

Should one or more but not all of the Companies timely withdraw from this Settlement in accordance with provisions of this Settlement permitting such withdrawal, the portion of the Cash Settlement Amount paid by such Company or Companies shall be disclosed by the Companies to the Milberg Escrow Agent, and that portion of the Cash Settlement Amount and ... accrued interest, less that Company's or those Companies' *pro rata* share of the Administrative Costs already incurred, shall be distributed as jointly directed in writing by Michael J. Canter, Esq. and Robert J. O'Connor, Esq. to such Company or Companies with a full accounting of all Administrative Costs disbursed thereon.

17. The Parties agree that the settlement fund established pursuant to this Agreement (the "Fund") is intended to be a Qualified Settlement Fund within the meaning of Treasury Regulation §1.468B-1 and that the Claims Administrator, as administrator of the Fund within the meaning of Treasury Regulation §1.468B-2(k)(3), shall be responsible for filing tax returns for the Fund and paying from the Fund any taxes owed with respect to the Fund. The Companies agree to provide to the Claims Administrator a statement as described in Treasury Regulation §1.468B-3(e) promptly after this Settlement is preliminarily approved by the Court pursuant to paragraph 20.
18. Plaintiffs' counsel and the Claims Administrator shall have the sole responsibility for calculating and withholding all required taxes from any distribution from the Settlement Fund to Settlement Class Members and Opt-In Plaintiffs. Upon request, Defendant Manufacturers shall provide Plaintiffs' counsel and/or the Claims Administrator with such information as is reasonably required to make such calculations. Plaintiffs' counsel shall hold the Companies harmless and indemnify them with respect to any claim by any governmental agency with respect to such taxes or the penalties or interest which may accrue by reason of the failure to properly calculate or withhold such taxes, unless such claim arises by reason of a Company's failure to provide requested information reasonably necessary to make the tax calculation(s). The Parties also agree that the Claims Administrator, as administrator of the Fund within the meaning of Treasury Regulation §1.468B-2(k)(3)(i), shall be deemed to be the "employer" as defined in Internal Revenue Code §3401(d)(1), and shall have the sole power, responsibility and liability as the withholding agent to withhold and pay all taxes due on payments to Settlement Class Members and Opt-In Plaintiffs as mandated by Treasury Regulation §1.468B-2(1) and Internal Revenue Code §§3102, 3402 and 3403. The Claims Administrator shall pay, solely from the Fund, all amounts deemed due as a result of payments to Settlement Class Members and Opt-In Plaintiffs under Subchapter B of Chapter 21 of Subtitle C of the Northern Marianas Territorial Income Tax Code and/or the Internal Revenue Code. It is agreed that the Claims Administrator will maintain a sufficient reserve to pay all taxes required to be withheld and paid as a result of this Settlement Agreement. It is further agreed that neither the Claims Administrator nor Plaintiffs' counsel shall have any liability for taxes or other withheld amounts if such amounts are calculated in reliance upon information provided to them or either of them by a Company or in reliance upon any Defendant Manufacturer's established procedures for calculating such taxes or other amounts required to be withheld.

19. The Parties agree to the provisions of the Monitoring Program attached hereto as Exhibit A, such program to be funded from the money in the Pooled Settlement Fund and to take effect on the Monitoring Program Effective Date, which shall be 60 (sixty) days after the Effective Date of this Agreement.
20. The Parties agree to the following procedures for obtaining preliminary court approval of the Settlement, for filing and accepting service of an amended Complaint in the Settlement Action, for certifying a provisional settlement class in the Settlement Action, for providing notice to Provisional Class Members and Opt-In Plaintiffs, and for obtaining final Court approval of the Settlement and implementing the Settlement payment provisions:
- a. Simultaneous with the filing of the motion for preliminary settlement approval and solely for purposes of the Settlement, Plaintiff shall lodge an amended Complaint in the Settlement Action and the Parties shall stipulate that such amended Complaint shall be deemed filed and served upon all Companies upon entry of the Preliminary Order. The Parties shall thereafter promptly request a hearing before the Court for the purpose of obtaining provisional class certification for the settlement class and to request preliminary approval of the Settlement as set forth herein. In conjunction with this request for a hearing the Parties shall submit this Agreement and proposed forms of all notices and other documents necessary to implement the Settlement. The Parties shall request the Court to enter an order at the preliminary settlement hearing (the "Preliminary Order") certifying the Provisional Class for settlement purposes, approving notice of the Settlement and related matters to be sent to Provisional Class Members specified herein, and setting a date for a Fairness Hearing to determine final approval of the Settlement.
  - b. Upon preliminary Court approval, notice of the Settlement shall be provided to Provisional Class Members, who shall each have the right to submit objections to the settlement and/or requests for exclusion from the Settlement Class ("opt outs"), and who shall have the right if otherwise eligible to submit FLSA Consents to Sue in the FLSA Action at any time prior to the Effective Date, pursuant to the following procedures:
    - i. Within 30 days after the execution of this Settlement, Plaintiffs' counsel and each of the Defendant Manufacturers, acting in good faith and after conducting a reasonable meet and confer, shall jointly provide to the Claims Administrator from information in their possession, custody, or control, in hard copy and on computer disk if reasonably practicable, one or more lists containing the names, addresses, dates of CNMI employment, passport or Chinese Identification Card or U.S. social security numbers, and CNMI employee identification numbers, of all Provisional Class Members who were employed by each Defendant Manufacturer at any time between January 13, 1989 and May 10, 2002. Such lists shall separately identify as potential Opt-In Plaintiffs each Provisional Class Member employed by a Defendant Manufacturer at any time between January 14, 1996 and the date the lists

are submitted to the Claims Administrator. Such lists shall be based upon the lists previously prepared for the sending of notice in the first Federal Class Action and the FLSA Action, as amended to include new, updated, or more accurate information in the possession of the Defendant Manufacturers. Defendant Manufacturers shall supplement such list in no later than 14 (fourteen) days after the Preliminary Order to correct or update any information known to be inaccurate and to include any additional information available for potential Opt-In Plaintiffs hired on or before May 10, 2002 who were not identified previously. If Plaintiffs and Defendant Manufacturers after reasonable efforts cannot obtain data establishing a Provisional Class Member's or a potential Opt-In Plaintiff's years of employment prior to January 1996 or employment Pay Periods after January 1996, the Parties shall meet and confer in a good faith effort to provide the best estimate reasonably practicable of such dates. If for whatever reason the information necessary for

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- v. The Original Notice shall describe the nature and proposed resolution of the Court Actions and Settlement Action; the scope of the Provisional Class certified by the Court; the positions of the Parties; the substance of the Settlement; the status of claims pending against any non-settling defendants, the formula for calculating Settlement payments; the attorneys' fees and costs to be paid to Plaintiffs' counsel; a description of the claim:: to be released; the procedure for exclusion from the Settlement Class; the procedure for objecting to the Settlement; the date, time, location and procedure for participation in the Fairness Hearing; and the method for submitting inquiries concerning the Settlement or related matters.
- vi. Any Original Notice sent to provisional Class Members and potential Opt-In Plaintiffs who were employed by any Defendant Manufacturer on or after January 14, 1996 shall in addition separately explain those individuals' rights under the FLSA; shall explain that additional settlement funds may be available to eligible Provisional Class Members who have already filed FLSA Consents to Sue in the FLSA Action or who, after receiving the Original Notice but prior to the Effective Date, execute and deliver to the Claims Administrator an FLSA Consent to Sue in the FLSA Action; shall set forth the formula for calculating settlement payments for Opt-In Plaintiffs; shall attach a Consent to Sue form with instructions for its execution and delivery to the Claims Administrator for those who have not already filed a Consent to Sue; shall state that potential Opt-In Plaintiffs must file a Consent to Sue prior to the Effective Date to be eligible to participate in the distribution of funds to Opt-In Plaintiffs; shall inform potential Opt-In Plaintiffs of the terms of the releases applicable to Opt-In Plaintiffs; shall state that any potential Opt-In Plaintiff shall have the right either to file his or her own independent claim under the FLSA or to join and participate in the settlement of the FLSA Action by executing a Consent to Sue before the Effective Date and thereby participating in the settlement in the FLSA Action and releasing as of the Effective Date the claims identified in paragraphs 30-31; and shall state that those Opt-In Plaintiffs who executed a Consent to Sue on or before August 7, 2002 who do not execute their FLSA Settlement Payment checks within 120 (one hundred twenty) days after the date those checks are distributed will be deemed to have rejected the FLSA settlement and to have chosen to continue to pursue their FLSA claims individually; except that notwithstanding the foregoing clause, the Claims Administrator shall have discretion to re-issue an FLSA Settlement Payment check to any Opt-In Plaintiff who demonstrates good cause for having failed timely to execute a Settlement Payment check.
- vii. Any Original Notice returned to the Claims Administrator as non-delivered before the Objection/Exclusion Deadline Date specified below, which has a forwarding address affixed thereto, shall be mailed by the Claims Administrator to the new address. The Claims Administrator shall make reasonable efforts to locate an alternative valid address for any Provisional Class Member or potential Opt-In Plaintiff whose Original Notice is returned as undeliverable. If the Claims

**Administrator obtains an alternative address for any Provisional Class Member or potential Opt-In Plaintiff more than 15 (fifteen) calendar days before the Objection/Exclusion Deadline Date, the Claims Administrator shall send an Original Notice to the alternative address. If the procedures in this paragraph are followed and the intended recipient of an Original Notice still does not receive an Original Notice, the intended recipient shall remain a Settlement Class Member and shall be bound by all terms of the Settlement and any Final Judgment entered in the Settlement Action if the Settlement is approved by the Court.**

viii. **The Original Notice shall further provide that Provisional Class Members who object to the Settlement in the Settlement Action must file with the Court and serve on counsel for the Parties a written statement objecting to the Settlement. Such written statement must be filed with the Court and served on counsel for the Parties on or before the date 60 (sixty) days after the date the Original Notice is first mailed (the "Objection/Exclusion Deadline Date"). The Original Notice shall also provide that Provisional Class Members who wish to exclude themselves from the Settlement Class must submit a Written statement requesting exclusion from the Settlement Class on or before the Objection/Exclusion Deadline Date. Such written request for exclusion must contain the name, address telephone number and Social Security number, passport number, Chinese Identification Number (if applicable), CNMI employee identification number, or comparable identifying information of the person requesting exclusion and the dates of his or her employment by any Manufacturer, must be returned by mail to the Claims Administrator, and must be received on or before the Objection/Exclusion Deadline Date. No Provisional Class Member shall be entitled to be heard at the Fairness Hearing (whether individually or through separate counsel) and no written objections or briefs submitted by any Provisional Class Member shall be received or considered by the Court at the Fairness Hearing, unless written notice of the Provisional Class Member's intention to appear at the Fairness Hearing, and copies of any written objections or briefs, shall have been filed with the Court and served on counsel for the Parties on or before the Objection/Exclusion Deadline Date. Provisional Class Members who fail to file and serve timely written objections in the manner specified above shall be deemed to have waived any objections and shall be foreclosed from making any objection (whether by appeal or otherwise) to the Settlement. Provisional Class Members who fail to submit a valid and timely request for exclusion on or before the Objection/Exclusion Deadline Date shall be bound by all terms of the Settlement and any Final Judgment entered in the Settlement Action if the Settlement is approved by the Court, regardless whether they have objected to the Settlement.**

ix. **The Claims Administrator shall provide Liaison Counsel, 20 (twenty) days before the Objection/Exclusion Deadline Date set forth in paragraph 20.b.viii and again 10 (ten) days before the Objection/Exclusion Deadline Date set forth in paragraph 20.b.viii, Bates-stamp & copies of all written requests for exclusion pursuant to**

paragraph 20.b.viii that the Claims Administrator has received from Provisional Class Members by that date; and shall provide counsel for the Parties Bates-

Date.

- 21. Counsel for Plaintiffs, with the support of the Companies, shall apply to the Court, as soon as practically possible after the conditions set forth in paragraphs 7.a and 7.b have been satisfied, for a Preliminary Order:
  - a. Preliminarily approving the Settlement as embodied in this Agreement, for the purpose of notifying Provisional Class Members of a Fairness Hearing that shall be for the purpose of receiving evidence and considering objections and arguments on whether to approve the Settlement of the CNMI claims in the Settlement Action as reflected in this Agreement and the dismissal with prejudice of the remaining claims against the Companies in the Court Actions, and of any individual Provisional Class Member's right to opt out of the Settlement;
  - b. Deeming the amended Complaint to have been filed and served as of the date of the Preliminary Order;
  - c. Approving the mailed, distributed, posted and published notices required for the Settlement;
  - d. Setting forth procedures and timing for the filing of objections and opt outs regarding the Settlement;
  - e. Setting forth other schedules and procedures necessary for the implementation of the terms and conditions of the Settlement;
  - f. Attaching a proposed Final Order Certifying the Provisional Class for Settlement Purposes Only and Approving Settlement; and
  - g. Staying and enjoining any other litigation of the Settled Claims against the Companies in the Court Actions and Settlement Action pending the Fairness Hearing in the Settlement Action
  - h. The Parties shall negotiate in good faith to agree on the terms and provisions of all of the Court submissions referred to in this paragraph. Should the Parties disagree after such good-faith negotiations, the Parties shall submit the disagreement for resolution by the Court.
- 22. The Parties and their counsel shall use their best efforts to obtain the Court's approval of this Settlement. No Party or its counsel shall encourage, either directly or indirectly, any individual or entity to object to the fairness or reasonableness of the Settlement, or resist or

delay in any manner the Court's approval of this Settlement Agreement, or encourage any Provisional Class Member to "opt out" of the Settlement, or discourage any potentially-eligible Opt-In Plaintiff from opting in to the FLSA Action. Plaintiffs are informed and believe that, during the pendency of the Court Actions, certain Defendant Manufacturers obtained individual waivers and releases of claims that were or could have been asserted in the Federal Court Actions or the FLSA Action from an unknown number of Provisional Class Members, Opt-In Plaintiffs, and potential Opt-In Plaintiffs. Except as otherwise provided herein, no such waivers or releases shall bar or limit any Plaintiffs right or ability to participate in and benefit from this Settlement, except that the enforceability of any waiver or release obtained in exchange for valuable consideration as part of a settlement with the U.S. Department of Labor, Equal Employment Opportunity Commission, CNMI Department of Labor and Immigration ("DOLI") or any other federal or CNMI government agency shall not be affected by the provisions of this paragraph.

23. Counsel for the Parties agree that the notices required by this Settlement and the procedures for distributing such notices are consistent with due process requirements and constitute the best practicable form of notice in that they provide reasonable certainty of informing all eligible participants about the Settlement.
24. Upon final approval of the Settlement by the Court at or after the Fairness Hearing, the Parties shall present a mutually-agreed upon Final Judgment and Order Approving Settlement and Dismissing the Federal Class Action With Prejudice As To Settling Defendants and a Final Judgment and Order Approving Settlement and Dismissing the Federal Court Settlement Action With Prejudice As To Settlement Class Members and Settling Defendants (collectively "Final Judgments") to the Court for its approval and entry. The Final Judgments shall provide, among other things, for the following: the dismissal with prejudice of the Federal Class Actions and Settlement Actions with respect to the Settlement Class and those Companies that are or were defendants in those Actions; a release of all non-FLSA claims as set forth in this Agreement; approval of the Settlement Class; a determination that the Notice given to Provisional Class Members constituted the best notice practicable under the circumstances; a determination that the Class Representatives are adequate representatives of the Settlement Class in the Settlement Action; a determination that the settlement is fair, reasonable, and adequate as to the Settlement Class Members in the Settlement Action; and that the Settlement and the Agreement shall constitute a bar of any claims (to the extent, if any, that such claims could otherwise exist) against the Released Parties (as hereinafter defined) for equitable indemnification and/or contribution by any other defendant or alleged joint tortfeasor; and shall provide for a proportionate share set-off consistent with the principles set forth in *Franklin v. Kaypro Corp.*, 884 F.2d 1222 (9th Cir. 1989). After entry of the Final Judgments, the Court shall have continuing jurisdiction for all purposes not covered by the arbitration provisions set forth in paragraph 52 hereof.
25. Upon final approval of the Settlement by the Court at or after the Fairness Hearing, the Parties shall present a mutually-agreed upon Final Judgment and Order Approving Settlement and Dismissing the FLSA Action With Prejudice As To Opt-In Plaintiffs and

Settling Defendants ("FLSA Final Judgment") to the Court for its approval and entry, which FLSA Final Judgment shall be effective as of the Effective Date. The FLSA Final Judgment shall provide for, among other things, the dismissal with prejudice of the FLSA Action on behalf of 1) all Opt-In Plaintiffs who execute their Settlement Payment checks within 120 (one hundred twenty) days after the distribution of such checks and 2) all Opt-In Plaintiffs who filed Consents to Sue in the FLSA Action on or after August 8, 2002, and a release of those Opt-In Plaintiffs' FLSA claims as set forth in this Agreement. After entry of the FLSA Final Judgment, the Court shall have continuing jurisdiction for all purposes not covered by the arbitration provisions set forth in paragraph 52 hereof.

26. At the Fairness Hearing, counsel for Plaintiffs in the Court Actions and Settlement Action shall apply to the Court for the attorneys' fees and costs set forth in this Agreement, plus interest accrued thereon, to be paid upon the Effective Date. The attorneys' fees, costs, and interest reimbursement shall be paid for out of the Combined Cash Settlement Amount, as provided in paragraph 10 and 123 above. Except as specified in paragraph 13, the Parties agree that the sums allocated in paragraph 10 for attorneys' fees and costs include all attorneys' fees and costs from the Companies to which plaintiffs and plaintiffs' counsel are entitled with respect to their claims against the companies in the Federal Class Actions, FLSA Action, State Court Action, and Settlement Action, including statutory attorneys' fees and costs; and in consideration of that agreement neither Plaintiffs nor Plaintiffs' counsel will apply to any court other than the Court for any award of such attorneys' fees or costs for their efforts in litigation against the Companies. Any funds designated in this Agreement for attorneys' fees and costs that are not awarded to plaintiffs' counsel by the Court shall be returned to the Companies.
27. No later than 30 (thirty) days after the Effective Date, the Parties shall file in the State Court Actions a Stipulation of Dismissal with Prejudice Pursuant to Settlement ("Dismissal") substantially in the form attached as Exhibit F and shall use their best efforts to secure entry of a Judgment Pursuant to Settlement substantially in the form attached as Exhibit G. The Dismissal shall provide that the State Court shall retain jurisdiction to enforce the Settlement Agreement consistent with the provisions of this paragraph and to enter orders in furtherance thereof in accordance with its terms. Entry of dismissal with prejudice of the State Court Actions by the State Court pursuant to the Settlement shall, among other things:
- a. Constitute a full and final adjudication of all claims brought against the Defendant Retailers, including but not limited to any claims based upon alleged violations of the "hot goods laws" (29 U.S.C. §215 *et seq.*), Business and Professions Code §17200 *et seq.*, Business and Professions Code §17500 *et seq.*, or any other statute or provision of common law or any theory or issue that arose from or related to the matters alleged in the Court Actions and Settlement Action; and
  - b. Bar any and all other persons or entities from prosecuting against the Defendant Retailers any claim, including but not limited to any claim based upon alleged violations of the hot goods laws (29 U.S.C. §215, *et seq.*), Business and Professions Code §17200

*et seq.*, Business and Professions Code §17500 *et seq.*, or any other statute or provision of common law, that arises from or relates to the matters alleged in the Court Actions and Settlement Action.

28. The Parties shall negotiate in good faith to agree on the terms and provisions of all of the State Court or Federal Court submissions referred to in this Agreement
29. As of the Effective Date, and subject to the provisions of paragraph 7, the Companies and their past or present partners, officers, directors, shareholders, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, insurers, reinsurers, and their respective successors and predecessors in interest, subsidiaries, affiliates, parents, and attorneys and all other Released Parties (as defined below) shall be deemed to have fully, finally, and forever released, relinquished and discharged the Plaintiffs and their counsel and each of their spouses, heirs, predecessors, successors and assigns, and their past or present partners, officers, directors, shareholders, employees, agents, principals, representatives, accountants, auditors, consultants, insurers, reinsurers, and their respective successors and predecessors in interest, subsidiaries, parents, and affiliates from all claims, including unknown claims, arising out of, relating to, or in connection with the institution, prosecution, assertion, settlement or resolution of the Court Actions and Settlement Action. This release does not preclude or affect the Companies' ability or right to pursue claims against their insurers.
30. As of the Effective Date, and subject to the provisions of paragraph 7, this Agreement shall constitute a full and final settlement and general release of all claims arising on or after January 13, 1989 and prior to May 10, 2002 that were or could have been asserted by the Settlement Class Members in the Federal Class Actions or in the Settlement Action and all FLSA claims arising on or before May 10, 2002 that any Opt-In Plaintiff (except those Opt-In Plaintiffs who executed a Consent to Sue on or before August 7, 2002 and who & not execute an FLSA Settlement Payment check within 120 days after distribution) asserted or could have asserted in the FLSA Action against the Companies or any other of the Released Parties (as defined below) based on or related to any or all causes of action asserted in the Federal Class Action, Settlement Action or the FLSA Action, and/or any facts asserted in those causes of action (collectively, the "Settled Claims"); except that nothing herein or in this Agreement shall constitute a release of any FLSA claim by any Settlement Class Member who is not an Opt-In Plaintiff or who, after executing and filing a Consent to Sue on or before August 7, 2002, did not execute an FLSA Settlement Payment check within 120 days after distribution.
31. As of the Effective Date, and subject to the provisions of paragraph 7, the Settlement Class Members and each of them, for himself or herself and his or her spouse, heirs, predecessors, successors and assigns (collectively "Releasing Settlement Class Members" release the Companies, their past and present officers, directors, shareholders, employees, agents, buying agents through which Defendant Manufacturers perform contracts to manufacturer garments in the CNMI for Defendant Retailers and for Previously-Settling Retailers,

principals, heirs, partners, assigns, representatives, accountants, auditors, consultants, insurers, reinsurers, any corporate shareholder's parent company that owns 100% of the shares of stock of that shareholder, and their respective successors and predecessors in interest, subsidiaries, affiliates, parents and attorneys (collectively the "Released Parties"), from all Settled Claims arising before May 10, 2002 and all claims, demands, damages, rights, liabilities, penalties, liquidated damages and causes of action of every nature and description whatsoever, known or unknown, asserted or that might have been asserted prior to May 10, 2002, including without limitation whether in tort or contract, whether for violation of any state, CNMI or federal constitutional provision, statute, rule or regulation, including state, CNMI and federal securities and wage and hour laws (including claims pending before DOLI), whether for bodily injury, false imprisonment, wage loss or otherwise, arising out of, relating to, or in connection with the facts, transactions, events, occurrences, acts, disclosures, statements, omissions or failures to act which were or could have been alleged in the Settled Claims; except that only opt-in Plaintiffs who execute their FLSA Settlement Payment checks within 120 days after distribution and opt-In Plaintiffs who executed Consents to Sue after August 7, 2002 release FLSA claims that were or could have been asserted in the FLSA Action. This release includes any unknown claims which any Releasing Settlement Class Member does not know or suspect to exist in his or her favor at the time of the release that arose prior to May 10, 2002, which, if known by him or her might have affected his or her settlement with, and release of, the Released Parties, or might have affected his or her decision not to object to this Agreement. This release does not preclude or affect the Companies' ability or right to pursue claims against their insurers. Plaintiffs' counsel after the Effective Date will inform any CNMI attorneys known to Plaintiffs' counsel to be prosecuting any DOLI claims on behalf of Provisional Class Members of the general terms of this release.

32. As of the Effective Date, and subject to the provisions of paragraph 7, in consideration of the execution and delivery of this Agreement and the other consideration referred to herein, the State Court Plaintiffs each release and discharge each of the Released Parties from all Claims that were or could have been asserted in the State court Actions prior to May 10, 2002 arising out of, relating to, or in connection with any act or omission by or on the part of the Released Parties, or any of them, and all Claims arising prior to May 10, 2002 that were or could have been asserted in the State Court Actions in any way relating to, arising out of, or in connection with the working or living conditions of garment workers in the CNMI or their recruitment to work in the CNMI. This release includes any unknown Claims which any State Court Plaintiff does not know or suspect to exist in its favor at the time of the release, which, if known by it, might have affected its settlement with and release of the Released Parties. This release does not preclude or affect the ability or right of the Companies to pursue claims against its insurers.
33. The Claims released in paragraphs 29-32 above are hereinafter referred to as the "Released Claims" and the State Court Plaintiffs and Provisional Class Members who do not opt out of the Settlement, the Opt-In Plaintiffs who execute FLSA Settlement Payment checks within 120 days after distribution, the Opt-In Plaintiffs who execute Consents to Sue in the FLSA

Action on or after August 8, 2002, and the Companies, are hereinafter referred to as the "Releasing Parties."

34. With respect to the Released Claims, the Releasing Parties stipulate and agree that, upon the Effective Date, the Releasing Parties shall be deemed to have, and by operation of the Final Judgments shall have, expressly waived and relinquished, to the West extent permitted by law, the provisions, rights and benefits of §1542 of the California Civil Code and any other similar provision under federal, CNMI or state law, which provides:

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

35. The Releasing Parties may hereafter discover facts in addition to or different from those which any of them now knows or believes to be true with respect to the Released Claims, but the Releasing Parties shall be deemed to have, and by operation of the Final Judgments shall have, fully, finally, and forever settled and released any and all Released Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or bidden, which now exist, or heretofore have existed upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct which is negligent, intentional, with or without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery or existence of such different or additional facts.

36. Each of the Parties and each of the Releasing Parties represents, warrants and covenants to the other not to sue the other to enforce any charge, claim or cause of action released pursuant to this Agreement. This covenant not to bring or maintain any action in law or equity shall be specifically enforced and each Party and their assignees shall have standing to bring any such action for specific enforcement and shall be a real party as defined in California Code of Civil Procedure §367. If a Party breaches the covenant not to sue as set forth in this paragraph, the breaching Party shall be liable for all damages incurred by the other party, including without limitation, compensatory damages as well as attorneys' fees and costs.

37. The State Court Plaintiffs waive any right existing as of the Effective Date or arising prior to the expiration of the Monitoring Program to:

- a. Submit measures or proposals directly or knowingly through surrogates, to the shareholders' meeting of any of the Companies, that are in any way related to apparel factory conditions in, or purchase of apparel made in, Saipan.
- b. File any proceeding arising out of or related to the failure or refusal of any of the Companies to place any item, proposal or issue on the agenda of any Board of Directors' or shareholders' meeting where such item, proposal or issue is in any way related to

working or living conditions of garment workers in the CNMI or to the recruitment of such workers to work in the CNMI, or to the purchase of apparel made in Saipan.

38. The Companies and the State Court Plaintiffs agree to act in good faith toward one another in implementing this Settlement to be supportive of the Monitoring Program, and to avoid unwarranted criticism of monitoring, the OB, or each others' conduct in the CNMI. The State Court Plaintiff further agree that Defendant Retailers can rely on the existence of the Monitoring Program in choosing to purchase garments from Certified Manufacturers which are not on Probation pursuant to that Monitoring Program, and that as long as the Monitoring Program remains in effect, any public statements by the State court Plaintiffs concerning Defendant Retailers' sourcing and compliance practices in Saipan during the time periods at issue in the Court Actions will reflect the Parties' mutual agreement to resolve their disputes over those practices through the remedies and procedures established through this Settlement.

39. In addition to the releases and covenants not to sue contained elsewhere in this Agreement

The State Court Plaintiff shall within three years of the Effective Date file an action against any of the Defendant Retailers based in whole or in part, on working conditions at (i) such Defendant's factories (to the extent they have stores or other premises) or (ii) the factory or premises located in the CNMI of or for such Defendant Retailer (where the action also names such Defendant Retailer).

The State Court Plaintiff has contacted the Defendant Retailer in writing by communication to such Defendant Retailer's General Counsel or Chief Executive Officer at its principal place of business, before filing such action and giving the Defendant Retailer a chance to resolve the alleged problem; and

If a resolution is not reached under paragraph 39.a.i, and if the Defendant Retailer fails to give its sole attention toquire mediation pursuant to this paragraph by providing written notice to the State Court Plaintiff within 5 (five) business days after being notified pursuant to paragraph 39.a.i the State Court Plaintiff and the Defendant Retailer shall mediate the issue as soon as reasonably practicable (but in no case later than 30 days from the time the Defendant Retailer was first contacted). The mediation shall not exceed one day in length, except by mutual agreement of the State Court Plaintiff and the Defendant Retailer. The Defendant Retailer shall pay the first \$1,500 cost of any such mediation, with all costs above that amount to be divided equally.

A statute of limitations applicable to the issue in question shall not apply to the time between the date the State Court Plaintiff contacts the Defendant Retailer and the date any mediation has been completed.

- The procedures under this paragraph 39 shall not apply to actions brought under the National Labor Relations Act, any dispute arising out of the collective bargaining relationship between UNITE and/or its affiliates and any of the Defendant Retailers, including disputes concerning grievances, arbitrations, or the terms or existence of any collective bargaining agreement, or in cases involving factories in the United States where there would be immediate and irreparable harm caused by the delay necessitated by this paragraph.
- d. There shall be no public statements or other publicity issued by any of the Defendant Retailers or the State Court Plaintiffs relating to any issue that is the subject of the mediation pursuant to this paragraph until after the completion of the mediation. The foregoing shall be subject to the Defendant Retailers' obligations under the federal securities law and applicable regulations.
40. The Parties agree upon execution of this Settlement to hold in abeyance until the Effective Date all proceedings against the Companies in the Federal Class Action, State Court Action and Settlement Action, except such proceedings necessary to implement and complete the Settlement. The Parties further agree upon execution of this Settlement to hold in abeyance until the Effective Date all proceedings in the FLSA Action except with respect to those Opt-In Plaintiffs who, after receiving an Original Notice pursuant to paragraph 20.b.vi, choose to reject the settlement and pursue their FLSA claims.
41. Plaintiffs agree to limit third-party discovery, if any, against the Companies that may be taken in *Doe I, et al. v. The Gap, Inc., et al.*, No. CV-01-0031 (D.N.M.I.) to narrow and focused requests for information that plaintiffs' counsel believe in good faith is both necessary and relevant to the continued prosecution of that litigation. Plaintiffs will endeavor to obtain such information voluntarily from the Companies before resorting to formal discovery.
42. The Parties, with the exception of Target Corporation and The Associated Merchandising Corporation (collectively the "Non-Target Entities"), have agreed upon and have exchanged the form of press releases and talking points pertaining to those releases. Except as specified in this paragraph 42, the Non-Target Entities shall hold no press conferences relating to the subject matter of this Agreement, but may respond to any press inquiries by reiterating the statements made in the agreed-upon press releases and talking points. Upon any breach of this provision, a party about whom statements are made prior to the Fairness Hearing reserves the right to withdraw from this Agreement without any penalty, obligation, or adverse inference. The foregoing shall be subject to the Companies' obligations under the federal securities law and applicable regulations. Target Corporation and The Associated Merchandising Corporation (collectively the "Target Entities") shall not be bound by any of the restrictions of this paragraph 42. Plaintiffs may make any statements that are specific to the Target Entities, and may respond to any statements made by the Target Entities, without regard to the provisions of this paragraph 42, except that in the course of responding to any statements made by the Target Entities Plaintiffs may not make

any comments about any Defendant Non-Target Entity without the express written permission of such Defendant.

43. This Agreement constitutes the entire agreement among the Parties and may not be modified, amended or waived except (a) in a writing duly executed by all the Parties hereto, except as otherwise provided in paragraph 53 below, or (b) by an order of a court having jurisdiction, upon good cause shown. The exhibits attached hereto are hereby incorporated by reference as though fully set forth herein.
44. This Agreement supersedes all prior negotiations and agreements on its subject matter. These terms are intended as the final, complete and exclusive statement of the terms and cannot be changed or terminated orally. There are no express or implied representations, warranties or inducements, except as expressly set forth herein. This Agreement may not be contradicted, modified or invalidated by evidence of any prior agreement or contemporaneous oral agreement or representation. No extrinsic or parol evidence may be introduced in any proceeding to interpret or explain this Agreement. If any provision hereof is held invalid or unenforceable in any jurisdiction, the invalidity or unenforceability shall affect only that provision in that jurisdiction and, if permissible, an alternative provision that reflects the original intent of the Parties shall be substituted for that provision.
45. This Agreement (including the Exhibits hereto) has been drafted jointly and is not to be construed against any party. Neither this Agreement nor the negotiations nor proceedings leading up to this Agreement, nor any document prepared with respect to the negotiations, nor the receipt of any consideration pursuant to this Agreement, shall be taken to be an admission of any kind by any party.
46. This Agreement is entered into for purposes of settlement only. If the Agreement does not become final, or does not become effective for any reason other than the failure of any Party to perform such Party's obligations hereunder, this Agreement and the Settlement and anything said or done pursuant to this Agreement, or as part of the negotiations leading thereto, shall be null and void and of no further force and effect (other than paragraphs 5, 7, 10, 16, and 18), and shall not be used, discoverable, or admissible in this or any other proceeding for any purpose, except as required by law, and all negotiations, proceedings, and statements relating thereto shall be without prejudice as to the rights of any and all Parties hereto and their respective predecessors and successors, and all Parties and their respective predecessors and successors shall be restored to their respective positions existing at the date of the Agreement.
47. Plaintiffs and their counsel represent and acknowledge that, as of the date they execute this Agreement, they are not preparing or contemplating any other lawsuits or other legal actions of any kind related in any way to the claims or allegations in the Court Actions or relating in any way to claims or allegations regarding how the Companies conduct business anywhere.
48. This Agreement may be executed in one or more counterparts, including by facsimile, each of which shall be deemed to be an original but all of which together shall constitute one and

the same instrument. Counsel for the Parties to this Agreement shall exchange among themselves original signed counterparts and a complete set of original executed counterparts shall be filed with the State Court and the D.N.M.I. court.

49. This Agreement and all of its terms and conditions shall be binding upon, and inure to the benefit of, the successors and assigns of the Parties hereto. Should the Court decline to approve the Settlement, the Parties agree to move to vacate the State Court's judgment in the State Court Actions and the dismissal of the Federal Class Action and FLSA Action
50. This Agreement shall be governed by and construed in accordance with California law.
51. Subject to the provisions of paragraph 22:
- a. If more than 1,000 Provisional Class Members submit to the Federal Court timely requests for exclusion from the Settlement Class in accordance with the provisions of the Preliminary Order and the Original Notice, Posted Notice, or Publication Notice given pursuant thereto, any Defendant Manufacturer or Defendant Retailer may withdraw from this Agreement if it provides written notice to Liaison Counsel within 20 (twenty) days after the Objection/Exclusion Deadline Date set forth in paragraph 20.b.viii;
  - b. If the greater of 50 Provisional Class Members currently or formerly employed by a Defendant Manufacturer or 5% of the Provisional Class Members whose names were provided by such Defendant Manufacturer pursuant to paragraph 20.b.i submit to the Federal Court timely requests for exclusion from the Settlement Class in accordance with the provisions of the Preliminary Order and the Original Notice, Posted Notice, or Publication Notice given pursuant thereto, such Defendant Manufacturer may withdraw from this Agreement if it provides written notice to Liaison Counsel within 20 (twenty) days after the Objection/Exclusion Deadline Date set forth in paragraph 20.b.viii;
  - c. If any Defendant Manufacturer timely withdraws from this Agreement pursuant to paragraph 51.b, any Defendant Retailer that purchased garments from such withdrawing Defendant Manufacturer between January 13, 1989 and May 10, 2002 and any Defendant Manufacturer that is co-owned with the withdrawing Defendant Manufacturer may also withdraw from this Agreement if it provides written notice to Liaison Counsel within 5 (five) days after receiving notice of the withdrawing Defendant Manufacturer's withdrawal from this Agreement;
  - d. If two or more Companies (other than co-owned Defendant Manufacturers, which shall collectively be considered a single Company for purpose of this subparagraph only) withdraw from this Agreement pursuant to paragraph 51.b or 51.c, and if in addition more than 500 Provisional Class Members submit to the Federal Court timely requests for exclusion from the Settlement Class in accordance with the provisions of the Preliminary Order and the Original Notice, Posted Notice, or Publication Notice given pursuant thereto, any Defendant Manufacturer or Defendant Retailer may withdraw from

this Agreement if it provides written notice to Liaison Counsel within 30 (thirty) days after the Objection/Exclusion Deadline Date set forth in paragraph 20.b.viii; and

- e. If any Defendant Manufacturer or Retailer withdraws from this Agreement pursuant to paragraph 51.a-d, Plaintiffs shall have the right to rescind and void the Agreement in its entirety if they provide written notice to Liaison Counsel within 37 (thirty-seven) days after the Objection/Exclusion Deadline Date set forth in paragraph 20.b.viii.
- f. Any Party that exercises any right to withdraw from the Agreement pursuant to this paragraph 51 shall be entitled to exercise that right without any penalty, obligation, or adverse inference.
52. The Parties agree that should any of the Companies, any Previously-Settling Retailer, a Monitoring Body, the OB, any Plaintiff, any of the Settlement Class Members, or any other present or future employee of the Companies claiming rights under this Agreement, allege a violation of the terms of this Agreement or allege any other disagreement or dispute concerning the intended construction of this Agreement, any such allegation, disagreement, dispute or challenge shall be settled exclusively by arbitration, in accordance with the National Rules for the Resolution of Employment Disputes of the American Arbitration Association, and the parties thereto shall request expedited arbitration of their dispute; except that nothing in this Agreement or the Monitoring Program attached as Exhibit A hereto shall preclude any Settlement Class Member or Opt-In Plaintiff from pursuing in any appropriate judicial, administrative, or other forum any claim that may arise on or after May 10, 2002 under the common law, statutory law, or the constitution of the United States, any state, or the CNMI that such individual might have against any of the Companies or against any other CNMI manufacturer or subcontractor or against any other entity that is not a party to this Agreement or to any other substantially equivalent settlement agreement in the Court Actions and Settlement Action that has otherwise not been knowingly and voluntarily waived pursuant to Section VIII.F of the Monitoring Program. Nothing in this paragraph shall require or permit arbitration of any dispute within the scope of the OB's discretionary authority or challenging a decision of the OB or concerning the implementation, interpretation, or application of any provision of the Monitoring Program attached as Exhibit A hereto except as provided in paragraph 12.d.vi; and the Court shall retain jurisdiction to decide the arbitrability of any dispute that is submitted to arbitration pursuant to this paragraph 52.
- a. At the discretion of the party seeking arbitration, the list of potential Arbitrators in an arbitration pursuant to this paragraph may be supplied by JAMS, the CPR Institute for Dispute Resolution, or the American Arbitration Association.
- b. The parties to such an arbitration shall negotiate in good faith as to the venue for the arbitration, and if the parties cannot agree, the arbitration shall be held telephonically before a mainland- or Hawaii-based Arbitrator.

- c. The Arbitrator, in his or her discretion, may accept testimony by videotape or other reasonable means if a witness is unable to travel to the arbitration because of immigration law restrictions or other compelling reasons. The Arbitrator shall not have the power to modify any of the provisions of this Agreement. The Arbitrator's decision shall be final and binding upon the parties to such arbitration and judgment upon the award rendered by the Arbitrator may be entered in any court having jurisdiction over any of the parties to such arbitration.
- d. The parties to such an arbitration shall split evenly the cost of the arbitration, except in the case of arbitration relating to the Monitoring Program. In arbitrations relating to the Monitoring Program or the final Implementing Standards promulgated by the OB, the cost of the Arbitrator shall be paid for by the Settlement Fund as that term is defined in the Monitoring Program, unless the Arbitrator determines that a Party or entity has sought or pursued arbitration frivolously, in bad faith, or solely for purposes of delay, in which case the Arbitrator may shift all or part of the cost of the Arbitrator to such Party or entity. In the event of any arbitration under this paragraph, the prevailing party shall be entitled to its attorneys' fees and costs from the losing party. Should any party subject to this Agreement hereafter pursue any dispute arising in connection with this Agreement (including Exhibit A hereto) by any method other than as set forth herein, the responding party shall be entitled to recover from the initiating party all damages, costs, expenses and attorneys' fees incurred as a result of appearing in, dismissing, staying or litigating such action or of petitioning to compel arbitration.
- e. The documents by which the Claims Administrator, the OB and the Monitors shall be retained shall include provisions binding them to this paragraph 52.
53. Neither the Federal Class Action Doe Plaintiffs nor the FLSA Doe Plaintiffs shall be required to sign this Agreement or any modification, amendment, or waiver thereof in order for such to be binding upon such Doe Plaintiffs. Instead, by signing below, counsel for Plaintiffs affirm and warrant they are authorized to sign on behalf of and bind the Doe Plaintiffs and the Doe Plaintiffs shall be bound to the same extent as if they did personally sign.