

RELEASE AND SETTLEMENT AGREEMENT

I. DEFINITIONS

A. "RELEASORS" shall refer to Plaintiff JANE ROE (aka [REDACTED]), and her heirs, executors, administrators, successors, assigns, children, spouse, and agents.

B. "RELEASEES" or "DEFENDANT" shall refer to Defendant SWEETWATER UNION HIGH SCHOOL DISTRICT, and its heirs, executors, insurers, administrators, successors, assigns, and agents.

C. "AGREEMENT" shall refer to this Release and Settlement Agreement.

D. "CIVIL ACTION" shall refer to San Diego County Superior Court Case No. 37-2017-00008091-CU-PO-CTL entitled JANE ROE, Individually, Plaintiff, vs. SWEETWATER UNION HIGH SCHOOL DISTRICT; CORONADO UNIFIED SCHOOL DISTRICT; and DOES 3 through 100, inclusive, Defendants, which was originally filed on March 1, 2017.

E. "INCIDENT" shall refer to any and all claims, action, causes of action, or administrative proceedings of whatever kind or nature which RELEASORS now have or may hereafter have which was or could have been brought in the CIVIL ACTION, including, but not limited to all claims that were or could have been brought against RELEASEES for damages, and attorneys' fees. "INCIDENT" will also refer to any claims, action, causes of action or administrative proceedings of whatever kind or nature which RELEASORS now have or may hereinafter have which could have been brought against Sweetwater Union High School District or any employee of the Sweetwater Union High School District.

F. Other definitions will appear throughout this AGREEMENT.

II. RECITALS

A. RELEASORS and RELEASEES desire to enter into this AGREEMENT in order to provide for full settlement and complete discharge of RELEASORS' claims against RELEASEES.

B. It is intended hereto to effect a final resolution and settlement of any and all existing disputes and claims made by RELEASORS against RELEASEES, regardless of their nature or basis, which arose, may have arisen, or hereinafter can arise by any manner, cause of action, or thing whatsoever which occurred prior to the date of the AGREEMENT, including, but not limited to all of those claims which were or could have been asserted in the CIVIL ACTION and any future claims or damages which might arise from the facts, circumstances, conduct, contractual arrangements, or occurrences which were or could have been the subject of said CIVIL ACTION.

C. It is further understood and intended that this AGREEMENT constitutes a compromise of disputed claims and is not to be construed as an admission of liability on the part of any party referred to herein. It is understood by RELEASORS that RELEASEES deny any and all liability which could have been the subject of said CIVIL ACTION.

D. This AGREEMENT shall become effective upon its execution by RELEASORS.

III. RELEASE CONSIDERATION, PROMISES AND COVENANTS

1.0 RELEASE AND DISCHARGE.

1.1 **Release.** In consideration of the promises and covenants set forth herein and other good and valuable consideration AS SET FORTH IN Section 2.0 of this AGREEMENT, RELEASORS fully and finally release, acquit, and forever discharge RELEASEES from and against any and all claims, demands, liabilities, damages, actions, costs, costs of suit, attorneys fees, causes of action of any kind and every nature whatsoever, fixed or contingent, (hereinafter referred to as "CLAIMS") at the date of this AGREEMENT, and which, if known, would materially have affected RELEASORS' decision to enter into this AGREEMENT against RELEASEES, including, but not limited to all CLAIMS resulting from, arising out of, to arise out of, or connected with, directly or indirectly:

- a. The CIVIL ACTION;
- b. The INCIDENT;
- c. The injury and damages claims by RELEASORS known or unknown, arising from or related to the CIVIL ACTION arising from the INCIDENT;
- d. All CLAIMS for defense, settlement, prosecution, failure to settle, attempt to settle, prosecution, negotiation, timing of the settlement, investigation or evaluation of RELEASORS' claim; and
- e. All statements, representations or admissions made by RELEASEES or their counsel, or any of them with respect to any of the foregoing CLAIMS.

1.2 **Unknown and future injuries.** RELEASORS understand that they may have suffered injuries or incurred damages that are unknown to them at the present time and further, that some of the injuries sustained may be permanent and possibly progressive, and that recovery from said injuries is uncertain. It is understood that the terms of this AGREEMENT were determined to be fair and adequate and takes into consideration any such future possibilities. RELEASORS agree that

they have accepted payment of the sums specified herein as a complete compromise of matters involving disputed issues of law and fact.

1.3 **Indemnification.** In exchange for the promises and covenants as set forth herein and other good and valuable consideration, RELEASORS agree to indemnify and to forever hold harmless the RELEASEES and to defend them and to assume their costs of defense, including attorneys fees, against any and all claims which may be brought by RELEASORS or any third party to this AGREEMENT by way of subrogation, a claim for indemnity, contribution, or lien pursuant to any California statutory or case law authority, arising from or in any way connected to the INCIDENT. This shall include any claims, whether adjudicated or not, by any Government entity, including, but not limited to, Medicare or MediCal. RELEASORS further agree to defend, indemnify and hold harmless RELEASEES in the event any person makes a claim or institutes any proceeding wherein it is asserted that any representation or authority by RELEASORS to compromise or settle this claim, was fraudulent, incompetent, inaccurate or otherwise improper.

1.4 **Assignment and Liens.**

- A. RELEASORS warrant that they have not assigned any of their claims to anyone.
- B. RELEASORS further warrant that they have no knowledge of any liens or encumbrances against any proceeds of this CIVIL ACTION by any person or entity. As to any and all liens and/or encumbrances that may exist or come to exist, RELEASORS agree to bear all responsibility and liability for payment in satisfaction of any and all such liens and/or encumbrances and to secure the release of RELEASEES from any and all such liens and/or encumbrances at the sole expense of RELEASORS.
- C. RELEASORS further agree to indemnify and to forever hold harmless and to defend and to assume the cost of defense, including attorneys fees, of RELEASEES from and against any and all liens and/or encumbrances in any and all suits, attorneys fees, costs and other expenses which arise from or relate to such liens and/or encumbrances.

1.5 **Acknowledgment and waiver of laws limiting the effect of a general release.** RELEASORS acknowledge and warrant that they understand that certain provisions of California state law may exclude certain claims from the scope of a general release, unless such provisions of law are acknowledged and the claims protected by those provisions are waived and released as part of a general release. With this in mind, RELEASORS acknowledge that this is a full and final release applying to all known, unknown, and unanticipated injuries or damages arising out of or in any way connected with or resulting from the INCIDENT. RELEASORS expressly and intentionally waive all rights and benefits which

RELEASORS now have or in the future may have under the terms of Section 1542 of the Civil Code of the State of California, which latter Section 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.

- 1.6 **Insurance Code Section 1871.2.** RELEASORS are hereby advised that California law requires the following to appear on this form pursuant to California Insurance Code Section 1871.2:

Any person who knowingly presents a false or fraudulent claim for the payment of a loss is guilty of a crime and may be subject to fines and confinement in state prison.

- 1.7 **Dismissal.** RELEASORS hereby authorize and direct their attorney of record to dismiss with prejudice the CIVIL ACTION. RELEASORS further understand that each party is responsible for their own expenses, costs, and attorneys fees as a result of the CIVIL ACTION.

2.0 **CONSIDERATION.**

RELEASEES agree to pay to RELEASORS a total of TWO MILLION TWO HUNDRED THOUSAND DOLLARS (\$2,200,000.00), which represents upfront cash and the cost to fund the future periodic payments described in section 2.2 below, in exchange for the release, discharge and dismissal terms set forth in this AGREEMENT. The consideration is to be paid as follows:

2.1 **Payments.**

Payments due at the time of settlement as follows:

\$1,900,000 payable to plaintiff and her attorneys.

2.2 **Periodic Payments.**

Periodic payments made according to the schedule as follows (the "Periodic Payments"):

Payable to [REDACTED]

\$1,000 per month, guaranteed 15 years, beginning at age 30 (on December 6, 2028). The last payment will be made on November 6, 2043.

\$20,000 guaranteed lump sum payable at age 25 (on December 6, 2023).

\$30,000 guaranteed lump sum payable at age 30 (on December 6, 2028).

\$50,000 guaranteed lump sum payable at age 35 (on December 6, 2033).

\$75,000 guaranteed lump sum payable at age 40 (on December 6, 2038).

\$100,000 guaranteed lump sum payable at age 45 (on December 6, 2043).

\$147,500 guaranteed lump sum payable at age 50 (on December 6, 2048).

All sums set forth herein constitute damages on account of personal injuries or sickness, within the meaning of Section 104(a)(2) of the Internal Revenue Code of 1986, as amended.

2.3 Payee's Rights to Payments.

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

2.4 Payee's Beneficiary.

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

2.5 Consent to Qualified Assignment.

Plaintiff acknowledges and agrees that the Defendant will make a "qualified assignment," within the meaning of Section 130(c) of the Internal Revenue Code of 1986, as amended, of the Defendant's liability to make the Periodic Payments set forth in Section 2.2 to BHG Structured Settlements, Inc. ("the Assignee"). The Assignee's obligation for payment of the Periodic Payments shall be no greater

than that of Defendant (whether by judgment or agreement) immediately preceding the assignment of the Periodic Payments obligation.

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

2.6 Right to Purchase an Annuity.

The Defendant, itself or through its Assignee, reserves the right to fund the liability to make the Periodic Payments in Section 2.2 through the purchase of an annuity policy from Berkshire Hathaway Life Ins. Co. of NE. The Defendant or the Assignee shall be the sole owner of the annuity policy and shall have all rights of ownership. The Defendant or the Assignee may have Berkshire Hathaway Life Ins. Co. of NE mail payments directly to the Payee(s). The Plaintiff shall be responsible for maintaining a current mailing address for Payee(s) with Berkshire Hathaway Life Ins. Co. of NE.

2.7 Discharge of Obligation.

The obligation of the Defendant or Assignee to make each Periodic Payment shall be discharged upon the mailing of a valid check in the amount of such payment to the designated address of the Payee(s) named in Section 2 of this Settlement Agreement.

3.0 PROMISES AND COVENANTS.

3.1 Settlement not an admission of liability. RELEASORS agree that the promises, covenants and releases contained herein are not, and are not to be deemed and construed as, an admission of fault of any kind whatsoever by RELEASEES; but are to be construed strictly as a compromise and settlement of all disputes between RELEASORS and RELEASEES for the purpose of avoiding further controversy, litigation, and expense. RELEASORS further agree that all CLAIMS or allegations of fault and liability have been and are denied by RELEASEES.

3.2 No representations. RELEASORS admit that no statement of fact or opinion has been made by RELEASEES or anyone acting on behalf of RELEASEES to induce execution of this AGREEMENT, other than those expressly set forth in this AGREEMENT, and that this AGREEMENT is executed freely by RELEASORS and upon advice of RELEASORS' attorneys of record. RELEASORS acknowledges that RELEASORS have been represented by legal counsel and freely consented to the terms and conditions of this AGREEMENT, which have not involved coercion, undue influence, or economic pressure.

- 3.3 **Difference in facts and opinions.** RELEASORS fully understand that the facts or opinions presently known to them may later be found to be different and more favorable to RELEASORS, and RELEASORS expressly accept and assume the risk that the facts or opinions may be found to be different. RELEASORS further agree that, notwithstanding such differences, this AGREEMENT shall be effective in all respects and shall not be subject to termination or rescission because of any differences in facts or opinions.
- 3.4 **Covenant not to sue.** RELEASORS and their attorneys covenant and agree that they will forever refrain from instituting, prosecuting, maintaining, proceeding on or advising to be commenced or maintained against RELEASORS any action or proceeding which arises out of, or is or may be, in whole or in part, based upon, related to or connected with any of the CLAIMS released herein. RELEASORS understand that the release contained in this AGREEMENT is a complete defense to any action or other proceeding asserting any of the claims released herein which may be instituted by or on behalf of RELEASORS.
- 3.5 **Legal representation.** RELEASORS acknowledge that RELEASORS have been represented by an attorney in the negotiation of this AGREEMENT, have executed this AGREEMENT with the advice and consent of RELEASORS' attorneys, and hereby authorize, direct and instruct said attorneys to perform all acts necessary to carry out the intent and purpose of this AGREEMENT in full.
- 3.6 **Attorneys fees.** RELEASORS and RELEASORS shall each bear their own attorneys fees and costs arising from the CIVIL ACTION and this AGREEMENT.
- 3.7 **Entire Agreement and Successors in Interest.** This AGREEMENT contains the entire agreement between RELEASORS and RELEASORS with regard to the matters set forth in it and shall be binding upon and enure to the benefit of the executors, administrators, personal representatives, heirs, successors and assigns of each.
- 3.8 **California Law and San Diego Forum.** This AGREEMENT is entered into in the State of California, County of San Diego, and shall be construed, interpreted and enforced according to the laws of that State. If any litigation is to arise from this AGREEMENT, said litigation shall be filed and the parties agree that the proper venue is the same venue as the CIVIL ACTION.
- 3.9 **Additional documents.** RELEASORS and RELEASORS agree to cooperate fully and execute any and all additional documents and to take all additional actions which may be necessary or appropriate to give full force and effect to the terms and extent of this AGREEMENT.

- 3.10 **Fully integrated agreement.** RELEASORS and RELEASEES agree that this AGREEMENT is a fully integrated AGREEMENT between RELEASORS and RELEASEES. This AGREEMENT may be amended only by an AGREEMENT in writing signed by RELEASORS and RELEASEES, and no provision of this AGREEMENT may be waived or modified, except by an instrument in writing signed by the party to be charged.
- 3.11 **Execution in duplicate.** This AGREEMENT may be executed in duplicate, with the original to be provided to RELEASEES' counsel.
- 3.12 **Jurisdiction of Court.** RELEASORS and RELEASEES agree that the Court retains jurisdiction to enforce this AGREEMENT after dismissal of RELEASEES from the CIVIL ACTION. RELEASORS or RELEASEES may file a motion and supporting memorandum of affidavits and request a hearing before the Court to enforce this AGREEMENT. RELEASORS and RELEASEES agree the Court may enter any order consistent with its jurisdiction and powers, including but not limited to, the recovery of damages in assessing an award of attorneys fees and costs.
- 3.13 **Captions and headlines.** The captions and headlines of the paragraphs of this AGREEMENT are for reference and convenience only. The words in the captions and headlines in no way explain, modify, amplify or interpret this AGREEMENT.
- 3.14 **No construction against drafter.** RELEASORS and RELEASEES agree that they have reviewed the terms of this AGREEMENT and that the AGREEMENT will not be construed against the drafter, including any terms which may be found ambiguous.
- 3.15 **Severability.** In the event any provision of this AGREEMENT is found to be or is deemed unenforceable, such shall not effect the enforceability of any other provision herein. If any provision or portion of this AGREEMENT is held to be illegal or invalid by a Court, said provisions shall be deemed to be severed and deleted, and the remainder of this AGREEMENT shall continue to be valid and enforceable.
- 3.16 **Counterparts.** This AGREEMENT can be signed in counterparts, such that the original signatures can be signed at different times and locations and be forwarded back to the law firm of Winet Patrick Gayer Creighton & Hanes and assimilated into one original document. Once the AGREEMENT is assimilated with all original signatures, that document shall become the original, whether or not said original signatures occurred at different times, dates, and locations.
- 3.17 **Acknowledgment of reading and understanding agreement.** RELEASORS acknowledge that RELEASORS have read and understand each and every portion of this AGREEMENT, and by placing RELEASORS' signature at the end of this AGREEMENT, represent that RELEASORS have voluntarily assumed the

obligations contained herein and intentionally waived all the rights stated herein,
of RELEASORS own free will and volition.

EXECUTION BY RELEASORS AND RELEASORS' COUNSEL

DATED: 6/19/18



Plaintiff

APPROVED AS TO FORM AND CONTENT:

THE ZALKIN LAW FIRM, P.C.

DATED: 6/19/18


IRWIN M. ZALKIN, Attorneys for Plaintiff,
