

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CURTIS MARKSON, MARK MCGEORGE,
CLOIS MCLENDON, and ERIC CLARK, as
named plaintiffs of a putative class of all
others similarly situated,

Case No. 5:17-cv-01261-SB (SPx)

Plaintiffs,

vs.

CRST INTERNATIONAL, INC., CRST
EXPEDITED, INC.; C.R. ENGLAND, INC.,
WESTERN EXPRESS, INC., SCHNEIDER
NATIONAL CARRIERS INC., SOUTHERN
REFRIGERATED TRANSPORT, INC.,
COVENANT TRANSPORT, INC.,
PASCHALL TRUCK LINES, INC.,
STEVENS TRANSPORT, INC. and DOES 1-
10, inclusive,

Defendants.

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made and entered into this 15th day of October, 2021 (“Execution Date”) by and between Curtis Markson, Mark McGeorge, Clois McLendon, and Eric Clark (“Plaintiffs”), individually and on behalf of a Settlement Class, as defined in Paragraph 8 below, and Western Express, Inc. (“Western”).

WHEREAS, Plaintiffs are prosecuting the above-captioned class action case (the “Action”) on their own behalf and on behalf of the Settlement Class against, among others, Western Express;

WHEREAS, Plaintiffs allege that they were injured as a result of Western Express’s participation in an unlawful conspiracy to restrain competition through a “no-poach” agreement with other trucking company Defendants resulting in, among other things, suppressed compensation of their drivers, in violation of Section 1 of the Sherman Act and California antitrust laws (i.e., the Cartwright Act);

WHEREAS, Western denies Plaintiffs' allegations and has asserted defenses to Plaintiffs' claims in the Action;

WHEREAS, arm's-length settlement negotiations have taken place between Settlement Class Counsel (as defined below) and counsel for Western with the assistance of Plaintiffs' and Western's chosen mediator, Barbara Reeves (the "Mediator"), on or about August 26, 2021, and this Agreement has been reached as a result of those negotiations;

WHEREAS, Plaintiffs, through their counsel, have conducted an investigation into the facts and the law regarding the Action and have concluded that resolving the claims against Western, according to the terms set forth below, is in the best interest of Plaintiffs and the Settlement Class because of the payment of the Settlement Fund and the value of the Injunctive Relief and Cooperation (as those terms are defined below) that Western has agreed to provide pursuant to this Agreement;

WHEREAS, the Action will continue against Defendants (as defined below) that are not Releasees (as defined below);

WHEREAS, Western, despite its belief that it is not liable for the claims asserted and its belief that it has good defenses thereto, has nevertheless agreed to enter into this Agreement to avoid further expense, inconvenience, and the distraction of burdensome and protracted litigation, and to obtain the releases, orders, and judgment contemplated by this Agreement, and to put to rest with finality all claims that have been or could have been asserted against Western with respect to the allegations in the Action, as more particularly set out below;

WHEREAS, Western has agreed to provide Cooperation in the ongoing prosecution of the Action as set forth in this Agreement, and such Cooperation will reduce Plaintiffs' substantial burden and expense associated with prosecuting the Action; and

WHEREAS, Plaintiffs recognize the benefits of Western's Cooperation and recognize that because of joint and several liability, this Agreement with Western does not impair Plaintiffs' ability to collect the full amount of damages to which they and the Settlement Class may otherwise be entitled in the Action, and the Parties also recognize that consistent with *Texas Industries v.*

Radcliffe Materials, Inc., 451 U.S. 630 (1981), there is no later right to contribution or indemnity by non-settling defendants as against Western in the Action:

NOW, THEREFORE, in consideration of the covenants, agreements, and releases set forth herein and for other good and valuable consideration, it is agreed by and among the undersigned that the Action be settled, compromised, and dismissed on the merits with prejudice as to the Releasees and except as hereinafter provided, without costs as to Plaintiffs, the Settlement Class, or Western, subject to the approval of the Court, on the following terms and conditions:

A. Definitions.

1. “Cooperation” shall refer to those provisions set forth below in Paragraphs 31-32.
2. “Defendant” means any party named as a defendant in the Action at any time up to and including the date when the Court has entered a final order certifying the Settlement Class described in Paragraph 8 and approving this Agreement under Federal Rule of Civil Procedure 23(e).
3. “Document(s)” is defined to be synonymous in meaning and equal in scope to the usage of this term in Rule 34(a) of the Federal Rules of Civil Procedure, including without limitation, electronically stored information. A draft or non-identical copy is a separate document within the meaning of this term.
4. “Opt-Out Deadline” means the deadline set by the Court for the timely submission of requests by Settlement Class Members to be excluded from the Settlement Class.
5. “Plaintiff Class Representatives” means those Settlement Class Members, as defined in Paragraph 10, below, who are named plaintiffs in the Action.
6. “Releasees” shall refer to Western, its current and former parents, subsidiaries, and affiliated companies and entities, and each of the foregoing’s respective current and former officers, owners, directors, managers, employees, affiliates, subsidiaries, attorneys, insurers, agents, and representatives. “Releasees” does not include any Defendant in the Action or alleged co-conspirator other than Western and the aforementioned related parties.

7. “Releasors” shall refer to Plaintiff Class Representatives and the members of the Settlement Class, as defined in Paragraph 8 below.

8. “Settlement Class” shall refer to all current and former drivers “Under Contract” (as defined in Paragraph 12 below) as motor vehicle carrier drivers with CRST International, Inc., CRST Expedited, Inc., C.R. England, Inc., Western Express, Inc., Schneider National Carriers, Inc., Southern Refrigerated Transport, Inc., Covenant Transport, Inc., Paschall Truck Lines, Inc., Stevens Transport, Inc., at any time from May 15, 2013 through the date of preliminary approval. Excluded from the Settlement Class are officers, directors, senior executives, and personnel in human resources and recruiting departments of the Defendants in the Action.

9. “Settlement Class Counsel” shall refer to the law firms of:

Susman Godfrey, L.L.P.
1900 Avenue of the Stars, Suite 1400
Los Angeles, CA 90067

Mayall Hurley P.C.
2453 Grand Canal Boulevard
Stockton, CA 95207-8253

Ackermann & Tilajef, P.C.
1180 South Beverly Drive, Suite 610
Los Angeles, CA 90035

Melmed Law Group, P.C.
1801 Century Park E, #850
Los Angeles, CA 90067

10. “Settlement Class Member” means each member of the Settlement Class who has not timely elected to be excluded from the Settlement Class.

11. The “Settlement Fund” shall be the cash amount of US \$2,000,000.

12. “Under Contract” shall refer to individuals who executed an agreement with any Defendant in which the person agreed to work for any of the Defendants for a specified period

of time in return for training provided by, funded by, or reimbursed by that Defendant and who was employed by that Defendant between May 15, 2013 through preliminary approval.

B. Approval of this Agreement and Dismissal of Claims Against Western.

13. Plaintiffs and Western shall use their best efforts to effectuate this Agreement as quickly as practicable and in such a way as to reasonably prevent material prejudice to Western should the effectuation of this Agreement be unsuccessful, including cooperating in seeking the Court's approval for the establishment of procedures (including the giving of class notice under Federal Rules of Civil Procedure 23(c) and (e)) to secure the complete, and final dismissal with prejudice of the Action as to the Releasees only. Western agrees to provide all data reasonably necessary for Plaintiffs to effectuate Class Notice, allocation, and payments to the Settlement Class.

14. Within thirty (30) days after the date the last signature to this Agreement is delivered, or another time mutually agreed to by Plaintiffs and Western, Plaintiffs shall submit to the Court a motion seeking preliminary approval of this Agreement (the "Preliminary Approval Motion"). The Preliminary Approval Motion shall include (i) the proposed form of an order preliminarily approving this Agreement, and (ii) a proposed form of order and final judgment that shall include at least the terms set forth in Paragraph 16 below. Plaintiffs will share a draft of the Preliminary Approval Motion (and all other settlement related filings, excluding its attorneys' Fee and Expense Application) with Western no less than four business days before it is filed. The text of the proposed order shall be agreed upon by Plaintiffs and Western before submission of the Preliminary Approval Motion. To the extent the Court finds that the Agreement does not meet the standard for preliminary approval, the Parties will negotiate in good faith to modify the Agreement directly or with the assistance of the Mediator and endeavor to resolve the issue(s) to the satisfaction of the Court.

15. After notice to, and providing a draft to, Western of not less than four business days before it is filed, Plaintiffs shall, at a time to be decided in their sole discretion, submit to the Court a motion for authorization to disseminate notice of the settlement and final judgment

contemplated by this Agreement to all members of the Settlement Class (the "Notice Motion"). In order to mitigate the costs of notice and the administration of the settlement, the Plaintiffs shall endeavor, if practicable, to disseminate notice with any other settlements that have been or are reached in the Action at the time the Notice Motion is filed. The Notice Motion shall include a proposed form of, method for, and date of dissemination of notice in the Action, which shall be subject to good faith efforts to agree by the Plaintiffs and Western before submission of the Notice Motion.

16. Plaintiffs shall seek, and Western will not object unreasonably to, the entry of an order and final judgment in the Action, the text of which Plaintiffs and Western shall agree upon. The terms of that proposed order and final judgment will include, at a minimum, the substance of the following provisions:

- a) certifying the Settlement Class described in Paragraph 8, pursuant to Rule 23 of the Federal Rules of Civil Procedure, solely for the purposes of this settlement as a settlement class for the Action;
- b) as to the Action, approving finally this settlement and its terms as being a fair, reasonable and adequate settlement as to the Settlement Class Members within the meaning of Rule 23 of the Federal Rules of Civil Procedure and directing its consummation according to its terms;
- c) as to Western, directing that the Action be dismissed with prejudice and, except as provided for in this Agreement, without costs;
- d) reserving exclusive jurisdiction over the settlement and this Agreement, including the interpretation, administration and consummation of this settlement, as well as over Western, for the duration of its provision of Cooperation pursuant to this Agreement, to the United States District Court for the Central District of California;
- e) determining under Federal Rule of Civil Procedure 54(b) that there is no just reason for delay and directing that the judgment of dismissal in the Action as to Western shall be final; and

f) providing that (i) the Court's certification of the Settlement Class is without prejudice to, or waiver of, the rights of any Defendant (excluding Western) to contest certification of any other class proposed in the Action; (ii) the Court's findings in this Order shall have no effect on the Court's ruling on any motion to certify any class in the Action or on the Court's rulings concerning any Defendant's motion; and (iii) no party may cite or refer to the Court's approval of the Settlement Class as persuasive or binding authority with respect to any motion to certify any such class or any Defendant's motion.

17. This Agreement shall become final when (i) the Court has entered in the Action a final order certifying the Settlement Class described in Paragraph 8 and approving this Agreement under Federal Rule of Civil Procedure 23(e) and has entered a final judgment in the Action dismissing the Action with prejudice as to Western and without costs other than those provided for in this Agreement; and (ii) the time for appeal or to seek permission to appeal from the Court's approval of this Agreement and entry of a final judgment as to Western described in (i) hereof has expired in the Action or, if appealed, approval of this Agreement and the final judgment in the Action as to Western has been affirmed in its entirety by the court of last resort to which such appeal has been taken and such affirmance has become no longer subject to further appeal or review. It is agreed that the provisions of Rule 60 of the Federal Rules of Civil Procedure shall not be taken into account in determining the above-stated times. On the date that Plaintiffs and Western have executed this Agreement, Plaintiffs and Western shall be bound by its terms and this Agreement shall not be rescinded except in accordance with Paragraphs 22(h) or 37 of this Agreement.

18. Neither this Agreement (whether or not it should become final) nor the final judgment, nor any and all negotiations, Documents, and discussions associated with them, shall be deemed or construed to be an admission by Western, or evidence of any violation of any statute or law or of any liability or wrongdoing whatsoever by Western, or of the truth of any of the claims or allegations contained in any complaint or any other pleading filed in the

Action, and evidence thereof shall not be discoverable or used in any way, whether in the Action, or any other arbitration, action or proceeding whatsoever, against Western. Western has entered into this Agreement for the purpose of terminating litigation and specifically terminating the Action against it, and does not admit any wrongdoing or liability to the Plaintiffs or the Settlement Class, and specifically denies any wrongdoing, liability, and the allegations of the Fourth Amended Complaint. Nothing in this Paragraph shall prevent Plaintiffs from using and/or introducing into evidence Documents, deposition testimony, materials produced pursuant to Paragraphs 31-32, subject to the limitations in those paragraphs, or any other materials against any other Defendants in the Action, subject to the terms and conditions set forth in the protective orders in the Action. Neither this Agreement, nor any of its terms and provisions, nor any of the negotiations or proceedings connected with it, nor any other action taken to carry out this Agreement by Western, shall be referred to, offered as evidence or received in evidence in any pending future civil, criminal, or administrative action, arbitration, or proceedings, except in a proceeding to enforce this Agreement, or to defend against the assertion of Released Claims, or as otherwise required by law.

C. Release, Discharge, and Covenant Not to Sue.

19. In addition to the effect of any final judgment entered in accordance with this Agreement, upon this Agreement becoming final, as set out in Paragraph 17 of this Agreement, and in consideration of payment of the Settlement Fund, as specified in Paragraph 21 of this Agreement, and for other valuable consideration, the Releasees shall be completely released, acquitted, and forever discharged from any and all claims, demands, actions, suits, causes of action under any federal, state or local law of any jurisdiction in the United States, that Releasers, or each of them, ever had, now has, or hereafter can, shall, or may ever have, that now exist or may exist in the future arising out of any conduct alleged in the Fourth Amended Complaint or prior Complaints, or any act or omission of the Releasees (or any of them), concerning Western's alleged participation, from May 15, 2013 through the date of preliminary

approval, in a conspiracy among Defendants not to hire truck drivers Under Contract with another Defendant (the “Released Claims”). Notwithstanding the foregoing, this Agreement does not settle or compromise any claim by Plaintiffs or any Settlement Class Member asserted in the Action against any Defendant or alleged co-conspirator other than Western. All rights against such other Defendants or alleged co-conspirators are specifically reserved by the Plaintiffs and the Settlement Class. All rights of any Settlement Class Member against any and all former, current, and future Defendants or alleged co-conspirators or any other person other than Releasees are specifically reserved by Plaintiffs and Settlement Class Members. Western’s alleged illegal conduct shall, to the extent permitted or authorized by law, remain in the Action as a potential basis for damage claims and may be part of any joint and several liability claims against other current or future Defendants in the Action or other persons or entities other than Western.

20. In addition to the provisions of Paragraph 19 of this Agreement, Releasors hereby expressly waive and release, upon this Agreement becoming final, as set out in Paragraph 17 of this Agreement, any and all provisions, rights, and benefits, as to their claims concerning Western’s alleged participation, from May 15, 2013 through preliminary approval, in a conspiracy not to hire truck drivers Under Contract with another carrier, conferred by § 1542 of the California Civil Code, which states:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY;

or by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to § 1542 of the California Civil Code. Each Releasor may hereafter discover facts other than or different from those which he, she, or it knows or believes to be true with respect to the claims which are released pursuant to the provisions of

Paragraph 19 of this Agreement, but each Releasor hereby expressly waives and fully, finally, and forever settles and releases, upon this Agreement becoming final, any known or unknown, suspected or unsuspected, contingent or non-contingent claim that Western and Plaintiffs have agreed to release pursuant to Paragraph 19, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts.

D. Consideration to the Settlement Class.

21. Subject to the provisions hereof, and in full, complete and final settlement of the Action as provided herein, Western shall pay the Settlement Fund amount of US \$2,000,000. The Settlement Fund shall be used to pay (i) all notice and administrative fees incurred in administering the Settlement, including those fees incurred by the Settlement Administrator; (ii) any incentive awards to the Plaintiff Class Representatives awarded by the Court; (iii) any attorneys' fees and expenses awarded by the Court; and (iv) all payments to the Settlement Class. There will be no reversion of the Settlement Fund to Western. The Settlement Fund shall be paid into escrow accounts in United States Dollars to be administered in accordance with the provisions of Paragraph 22 of this Agreement (the "Escrow Accounts"). Western shall fund 5% of the Settlement Fund within seven (7) days following entry of any order preliminarily approving this Agreement, and the remaining balance of the Settlement Fund within 7 days after final approval of this Agreement by the Court.

22. Escrow Accounts.

a) The Escrow Accounts will be established at a financial institution selected by Settlement Class Counsel, with such financial institution serving as escrow agent ("Escrow Agent") subject to escrow instructions mutually acceptable to Settlement Class Counsel and Western, such escrow to be administered by the Escrow Agent under the Court's continuing supervision and control.

b) The Escrow Agent shall cause the funds deposited in the Escrow Accounts to be invested in short-term instruments backed by the full faith and credit of the United States Government or fully insured in writing by the United States Government, or

money market funds rated Aaa and AAA, respectively by Moody's Investor Services and Standard and Poor's, invested substantially in such instruments, and shall reinvest any income from these instruments and the proceeds of these instruments as they mature in similar instruments at their then current market rates.

c) All funds held in the Escrow Accounts shall be deemed and considered to be in *custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court, until such time as such funds shall be distributed pursuant to this Agreement and/or further order(s) of the Court.

d) Plaintiffs and Western agree to treat the Settlement Fund as being at all times qualified settlement funds within the meaning of Treas. Reg. § 1.468B-1. In addition, the Escrow Agent shall timely make such elections as necessary or advisable to carry out the provisions of this Paragraph 22, including the relation-back election (as defined in Treas. Reg. § 1.468B-1) back to the earliest possible date. Such elections shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the responsibility of the Escrow Agent to timely and properly prepare and deliver the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur.

e) For the purpose of § 468B of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, the administrator shall be Settlement Class Counsel. Settlement Class Counsel shall timely and properly file all information and other tax returns necessary or advisable with respect to the Settlement Fund (including without limitation the returns described in Treas. Reg. § 1.468B-2(k)(1)). Such returns (as well as the election described in Paragraph 22(d)) shall be consistent with Paragraph 22(d) and in all events shall reflect that all Taxes, as defined below (including any estimated Taxes, interest or penalties), on income earned by the Settlement Fund shall be paid out of the Settlement Fund as provided in Paragraph 22(f) hereof.

f) All (i) taxes (including any estimated taxes, interest or penalties) arising with respect to the income earned by the Settlement Fund, including any taxes or tax detriments that may be imposed upon Western or any other Releasee with respect to any income earned by the Settlement Fund for any period during which the Settlement Fund does not qualify as qualified settlement funds for federal or state income tax purposes (“Taxes”); and (ii) expenses and costs incurred in connection with the operation and implementation of Paragraphs 22(d) through 22(f) (including, without limitation, expenses of tax attorneys and/or accountants and mailing and distribution costs and expenses relating to filing (or failing to file) the returns described in Paragraph 22(e) (“Tax Expenses”)), shall be paid out of the Settlement Fund.

g) Neither Western nor any other Releasee nor their respective counsel shall have any liability or responsibility for the Taxes or the Tax Expenses. Further, Taxes and Tax Expenses shall be treated as, and considered to be, a cost of administration of the Settlement Fund and shall be timely paid by the Escrow Agent out of the Settlement Fund without prior order from the Court and the Escrow Agent shall be obligated (notwithstanding anything herein to the contrary) to withhold from distribution to any claimants authorized by the Court any funds necessary to pay such amounts including the establishment of adequate reserves for any Taxes and Tax Expenses (as well as any amounts that may be required to be withheld under Treas. Reg. § 1.468B-2(l)(2)). Western shall not be responsible or have any liability therefor. Plaintiffs and Western agree to cooperate with the Escrow Agent, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of Paragraphs 22(d) through 22(f).

h) If this Agreement does not receive final Court approval, including final approval of the Settlement Class as defined in Paragraph 8, or if the Action is not certified as a class action for settlement purposes, then all amounts paid by Western into the Settlement Fund (other than costs expended or incurred in accordance with

Paragraph 25), shall be returned to Western from the Escrow Account by the Escrow Agent along with any interest accrued thereon within thirty (30) calendar days of the Court's denial of final approval of the Agreement and/or Settlement Class.

i) If this Agreement does not receive final Court approval, including final approval of the Settlement Class as defined in Paragraph 8, or if the Action is not certified as a class action for settlement purposes, then the status of the Action with respect to Western will be deemed to return to the status at the time immediately prior to the filing of the Notice of Settlement and as if the Parties had never executed this Settlement Agreement; and

j) To the extent required by any court or otherwise necessary, Plaintiffs will take all necessary steps to give effect to subparagraph h and i above.

23. Injunctive Relief.

Subject to the provisions hereof, and in full, complete and final settlement of the Action as provided herein, Western further agrees to the following injunctive relief:

a) Western will not send "Under Contract" letters to other Defendants concerning any member of the Settlement Class who (i) were involuntarily terminated by Western, or (ii) for whom a non-compete agreement is not legally enforceable under applicable state law (e.g., California, Idaho, North Dakota, Montana, Oklahoma, Oregon, and Washington).

b) Western will not sue any of CRST International, Inc., CRST Expedited, Inc., C.R. England, Inc., Schneider National Carriers, Inc., Southern Refrigerated Transport, Inc., Covenant Transportation, Inc., Stevens Transport, Inc., or Paschall Truck Lines, Inc., including those entities' parents, subsidiaries, agents, heirs, or assigns, for hiring any member of the Settlement Class due to their Under Contract status with Western, except nothing herein prevents Western from asserting a cause of action against either (a) a member of the Settlement Class for violating a valid and enforceable non-compete obligation, or (b) a carrier for tortious interference of contract

as defined by applicable law (not merely normal advertising or the mere hiring of Western's at-will members of the Settlement Class), and nothing herein shall be construed as limiting any defenses to such a claim by either a member of the Settlement Class or a carrier.

c) Western will adopt an express policy that prohibits refusing to hire a driver involuntarily terminated by another carrier on the sole basis that the driver is Under Contract with another carrier, except in the case of a valid and enforceable non-compete obligation. Nothing in this Agreement shall preclude Western from applying its own hiring criteria or refusing to hire any driver who does not meet Western's hiring criteria on any grounds other than the driver's Under Contract status with another carrier.

d) Release of Monies as to Settlement Class.

- a. Western hereby releases entitlement to and shall not pursue (and/or shall discontinue) any collection efforts as to any member of the Settlement Class for any and all unpaid CDL trucking-school debt allegedly owed to it by any member of the Settlement Class, and Western shall instruct third-party collection agencies and any other entities that may be involved in collection efforts for Western to do the same. This includes Western taking all action to cease any collection of these monies by third-party collection agencies and/or any collection of these monies through deductions from drivers' pay (for work for Western or for any other entities) for members of the Settlement Class. The parties shall work cooperatively to determine and agree upon amounts allegedly owed by members of the Settlement Class, including working cooperatively to resolve disputes reasonably.
- b. Western shall not issue 1099 forms or other tax forms to members of the Settlement Class for the releases described in Paragraph 23(d)(a)

because no compensatory payment will issue. This provision shall be enforceable to the fullest extent allowable by law.

- c. The parties agree that these are releases and will use best efforts to characterize this relief so that the members of the Settlement Class do not suffer unwarranted negative tax consequences from the release. Western further represents that for purposes of this Agreement and the underlying claims (1) they are not “applicable entit[ies]” pursuant to 26 U.S.C. § 6050P(c) and 26 C.F.R. §§1.6050P-1(b)(2)(i)(e) and 1.6050P-2(c) because they are not financial institutions or direct or indirect subsidiaries of a financial institution and lending money is not a significant part of their business; and (2) the agreement to release members of the Settlement Class from the monies described in Paragraph 23(d)(a) is not an “identifiable event” triggering reporting requirements because the parties’ agreement in Paragraph 23(d)(a) is not a discharge of debt, but instead is an agreement not to enforce certain contractual provisions. Moreover, Plaintiffs take the position that the monies being released are not valid debts and that efforts to collect the debts are unlawful.
- d. The parties agree that notice to the Settlement Class shall advise members of the Settlement Class to seek independent legal advice about the potential tax consequences of these releases.
- e. After final approval of the settlement, Western will use its best efforts to ensure that notice is provided to the national credit reporting agencies (Experian, Equifax, and TransUnion) of the current status of the members of the Settlement Class’s accounts with Western in connection with the putative obligations released pursuant to this Paragraph 23(d)(a).

- f. If a member of the Settlement Class requests by letter to Western that records of a default to Western and/or related entities be corrected in accordance with the release of Western's alleged entitlement to monies, and the fullest extent permitted by law, Western agrees to provide a letter to such member of the Settlement Class within a reasonable time stating that any defaults owing to Western and/or related entities (as described in Paragraph 23(d)(a)) have been rescinded by mutual agreement.
- g. Western and any of its related entities shall give no new or additional negative references to any member of the Settlement Class for having allegedly defaulted on any amounts released pursuant to Paragraph 23(d)(a). Western will not affirmatively, or in response to inquiries from other companies, give negative references for any member of the Settlement Class for having allegedly defaulted on any amounts released pursuant to Paragraph 23(d)(a), or state that the member of the Settlement Class owes monies to Western, without prejudice to Western's ability lawfully to do so under applicable law or within the terms of future employment agreements with any members of the Settlement Class.

24. Exclusions.

Within ten (10) business days after the Opt-Out Deadline, Settlement Class Counsel will cause copies of timely requests for exclusion from the Settlement Class to be provided to counsel for Western. With respect to any potential Settlement Class Member who requests exclusion from the Settlement Class, Western reserves all of its legal rights and defenses, including, but not limited to, any defenses relating to whether the excluded Settlement Class Member has standing to bring any claim.

25. Payment of Expenses.

a) Western agrees to permit use of a portion of the Settlement Fund towards notice to the Settlement Class and the costs of administration of the Settlement Fund. Plaintiffs shall be responsible for selecting the third-party Settlement Administrator for administration of the settlement. The notice and administration expenses are not recoverable if this settlement does not become final or is terminated to the extent such funds have actually been expended or incurred for notice and administration costs. Other than as set forth in this Paragraph 25, Western shall not be liable for any of the costs or expenses of the litigation of the Action, including attorneys' fees, fees and expenses of expert witnesses and consultants, and costs and expenses associated with discovery, motion practice, hearings before the Court or Special Master, appeals, trials or the negotiation of other settlements, or for class administration and costs.

b) In order to mitigate the costs of notice and administration of the settlement, the Plaintiffs shall endeavor, if practicable, to disseminate notice with any other settlements reached with Western or other Defendants in the Action and to apportion the costs of notice and administration on a pro rata basis across the applicable settlements.

E. The Settlement Fund.

26. Releasers' sole recourse for settlement and satisfaction against the Releasees of all Released Claims is against the Settlement Fund, and Releasers shall have no other recovery against Western or any other Releasee.

27. The "Net Settlement Fund" shall consist of the Settlement Fund less: (i) all administrative fees incurred in administering all class notice and the settlement, including those fees incurred by the Settlement Administrator; (ii) any incentive awards to the Plaintiff Class Representatives; and (iii) any attorneys' fees and expenses. The Net Settlement Fund shall be distributed to the Settlement Class pursuant to a distribution formula to be developed by Settlement Class Counsel and approved by the Court. Western will not oppose any such proposed plan of allocation or such plan as may be approved by the Court.

28. After this Agreement becomes final within the meaning of Paragraph 17, the Settlement Fund shall be distributed in accordance with the plan to be submitted to the Court at the appropriate time by Settlement Class Counsel, subject to approval by the Court. In no event shall any Releasee have any responsibility, financial obligation, or liability whatsoever with respect to the investment, distribution, or administration of the Settlement Fund, including, but not limited to, the costs and expenses of such distribution and administration except as expressly otherwise provided in Paragraph 25 of this Agreement.

29. Plaintiffs and Settlement Class Counsel shall be reimbursed and indemnified solely out of the Settlement Fund for all fees, expenses, and costs, as provided by Court Order. Western and the other Releasees shall not be liable for any costs, fees, or expenses of any of Plaintiffs or the Settlement Class's respective attorneys, experts, advisors, agents, or representatives, but all such costs, fees, and expenses as approved by the Court shall be paid out of the Settlement Fund.

30. Settlement Class Counsel's Attorneys' Fees, Reimbursement of Expenses, and Incentive Awards for Plaintiff Class Representatives.

a) Settlement Class Counsel may submit an application or applications to the Court (the "Fee and Expense Application") for: (i) an award of attorneys' fees not in excess of one-third of the benefits created for the Settlement Class (that is, the value of the Settlement Fund plus the value of non-cash relief secured); plus (ii) reimbursement of expenses and costs incurred in connection with prosecuting the Action, Plaintiff Class Representative incentive awards, plus interest on such attorneys' fees, costs and expenses at the same rate and for the same period as earned by the Settlement Fund (until paid) as may be awarded by the Court (the "Fee and Expense Award"). Plaintiffs will move for an incentive award to be paid from the Settlement Fund not to exceed \$25,000 per Plaintiff Class Representative. Settlement Class Counsel reserve the right to make additional applications for Court approval of fees and expenses incurred and reasonable incentive awards, but in no event shall Western or any other Releasees be

responsible to pay any such additional fees and expenses except to the extent they are paid out of the Settlement Fund.

b) Subject to Court approval, Plaintiffs and Settlement Class Counsel shall be reimbursed and paid solely out of the Settlement Fund for all expenses including, but not limited to, attorneys' fees and past, current, or future litigation expenses and incentive awards. Settlement Class Counsel's Fee and Expense Award(s), as awarded by the Court, shall be payable at Plaintiffs' option immediately upon the entry of an Order approving such Fee and Expense Award(s), or such later date if required by the Court, notwithstanding the existence of any timely filed objections thereto, or potential appeal therefrom, or collateral attack on the settlement or any part thereof, subject to Settlement Class Counsel's obligation to make appropriate refunds or repayments to the Settlement Fund with interest, if and when, as a result of any appeal and/or further proceeding on remand, or successful collateral attack, the fee or award of expenses is reduced or reversed, or in the event the Agreement is rescinded or terminated pursuant to Paragraph 22(h) or Paragraph 37.

c) The procedure for and the allowance or disallowance by the Court of the application by Settlement Class Counsel for attorneys' fees, costs and expenses, and incentive awards for Plaintiff Class Representatives to be paid out of the Settlement Fund are not part of this Agreement, and are to be considered by the Court separately from the Court's consideration of the fairness, reasonableness and adequacy of the Settlement, and any order or proceeding related to the Fee and Expense Application(s), or any appeal from any such order shall not operate to terminate or cancel this Agreement, or affect or delay the finality of the judgment approving the settlement.

d) Neither Western nor any other Releasee under this Agreement shall have any responsibility for, or interest in, or liability whatsoever with respect to any payment to Settlement Class Counsel and/or Plaintiffs of any Fee and Expense Award in the Action.

e) Neither Western nor any other Releasee under this Agreement shall have any responsibility for, or interest in, or liability whatsoever with respect to the allocation among Settlement Class Counsel, Plaintiffs and/or any other person who may assert some claim thereto, of any Fee and Expense Award that the Court may make in the Action.

F. Cooperation.

31. In return for the release and discharge provided herein, Western agrees to pay the Settlement Fund and be bound by the injunctive relief described in Paragraph 23, and further agrees to use its best efforts to continue to provide satisfactory and timely Cooperation, as set forth specifically in this Paragraph 31, subsections (a)-(c), below, until the later of the entry of the final judgment or judgments with respect to all of the remaining Defendants in the Action or dismissal with prejudice of those Defendants and when such judgments or dismissals become “final” within the meaning of Paragraph 17. Western agrees to reasonably cooperate with Plaintiffs in the remainder of this Action by agreeing to:

- a) timely prepare a declaration, pursuant to Rule 902(11) of the Federal Rules of Evidence, for all Documents produced by Western in this Action;
- b) use best efforts to answer all reasonable questions posed by Settlement Class Counsel concerning the content or circumstances of the employee data or Documents produced by Western in this litigation that reasonably relate to the claims or facts asserted in the Fourth Amended Complaint; and
- c) provide no voluntary cooperation to the other Defendants in the Action, including not providing declarations in opposition to class certification or summary judgment.

32. To the extent that Plaintiffs learn new information through Western’s Cooperation pursuant to Paragraph 31 above or other sources that Plaintiffs believe in good faith requires additional interviews, depositions, Documents or data, Plaintiffs and Western agree to meet and confer in good faith regarding whether to provide those additional interviews, depositions,

Documents or data; provided, however, nothing in this paragraph shall be deemed to adjust the Federal Rules of Civil Procedure or any discovery orders in the Action. Any additional out-of-pocket expenses, excluding attorneys' fees, resulting from or related to the need for any such additional interviews, depositions, Documents, or data shall be borne exclusively by Plaintiffs.

33. Western's obligations to provide Cooperation shall not be affected by the releases set forth in this Agreement. Unless this Agreement is rescinded, disapproved, or otherwise fails to take effect, Western's obligations to provide Cooperation under this Agreement shall continue only until otherwise ordered by the Court, the later of the entry of the final judgment or judgments with respect to all of the remaining Defendants in the Action or dismissal with prejudice of those Defendants and when such judgments or dismissals become "final" within the meaning of Paragraph 17.

34. In the event that this Agreement fails to receive final approval by the Court as contemplated in Paragraphs 13-17 hereof, including final approval of the Settlement Class as defined in Paragraph 8, or in the event that it is terminated by either party under any provision herein, the parties agree that neither Plaintiffs nor Settlement Class Counsel shall be permitted to introduce into evidence against Western, at any hearing or trial, or in support of any motion, opposition or other pleading in the Action or in any other federal or state or foreign action alleging a violation of any law relating to the subject matter of the Action, any information provided by Western in connection with Cooperation. This limitation shall not apply to any discovery of Western and/or the other Releasees which Settlement Class Counsel participate in as part of the Action, and that Western provided not in connection with Cooperation. Notwithstanding anything contained herein, Plaintiffs and the Settlement Class are not relinquishing any rights to pursue discovery against Western in the event that this Agreement fails to receive final approval by the Court as contemplated in Paragraphs 13-17 hereof, including final approval of the Settlement Class as defined in Paragraph 8, or in the event that it is terminated by either party under any provision herein.

35. Both Western and Plaintiffs may disclose the fact that a settlement has been reached in this Action, but each agrees not to disclose publicly (including not to any other Defendant in the Action) the terms of this Agreement, nor the amount of the Settlement Fund, other than in a Preliminary Approval Motion or other, subsequent court filing in this Action.

36. If Settlement Class Counsel believe that Western or any current or former employee, officer or director of Western has failed to cooperate under the terms of this Agreement, Settlement Class Counsel may seek an Order from the Court compelling such Cooperation. Nothing in this provision shall limit in any way Western's ability to defend the level of Cooperation it has provided or to defend its compliance with the terms of the Cooperation provisions in this Agreement.

G. Rescission if this Agreement is Not Approved or Final Judgment is Not Entered.

37. If the Court refuses to approve this Agreement or any part hereof, including if the Court does not certify the Settlement Class in accordance with the specific Settlement Class definition set forth in this Agreement, or if such approval is modified or set aside on appeal, or if the Court does not enter the final judgments provided for in Paragraph 17 of this Agreement, or if the Court enters the final judgments and appellate review is sought, and on such review, such final judgments are not affirmed in its entirety, then Western and Plaintiffs shall each, in their sole discretion, have the option to rescind this Agreement in its entirety. Written notice of the exercise of any such right to rescind shall be made according to the terms of Paragraph 48. A modification or reversal on appeal of any amount of Settlement Class Counsel's fees and expenses or incentive awards to Plaintiffs awarded by the Court from the Settlement Fund shall not be deemed a modification of all or a part of the terms of this Agreement or such final judgment.

38. In the event that this Agreement does not become final as set forth in Paragraph 17, or this Agreement otherwise is terminated pursuant to Paragraph 37, then this Agreement shall be of no force or effect and any and all parts of the Settlement Fund caused

to be deposited in the Escrow Accounts (including interest earned thereon) shall be returned forthwith to Western less only disbursements made in accordance with Paragraph 25 of this Agreement. Western expressly reserves all rights and defenses if this Agreement does not become final.

39. Further, and in any event, Plaintiffs and Western agree that this Agreement, whether or not it shall become final, and any and all negotiations, documents, and discussions associated with it, shall not be deemed or construed to be an admission or evidence of (i) any violation of any statute or law or of any liability or wrongdoing whatsoever by Western, or the other Releasees to be used against Western, or of (ii) the truth of any of the claims or allegations contained in the Fourth Amended Complaint or any other pleading filed in the Action, to be used against Western, and evidence thereof shall not be discoverable or used in any way, in the Action, against Western. Nothing in this Paragraph shall prevent Plaintiffs from using Documents and/or materials produced by Western pursuant to Paragraphs 31-33 against any other Defendants in the Action to establish any of the above.

40. This Agreement shall be construed and interpreted to effectuate the intent of the parties, which is to provide, through this Agreement, for a complete resolution of the relevant claims with respect to each Releasee as provided in this Agreement as well as Cooperation by Western.

41. The parties to this Agreement contemplate and agree that, prior to final approval of the settlement as provided for in Paragraphs 13-17 hereof, appropriate notice (i) of the settlement; and (ii) of a hearing at which the Court will consider the approval of this Agreement, will be given to the Settlement Class.

H. Miscellaneous

42. Western shall submit all materials required to be sent to appropriate Federal and State officials pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1715.

43. The United States District Court for the Central District of California shall retain jurisdiction over the implementation, enforcement, and performance of this Agreement, and

shall have exclusive jurisdiction over any suit, action, proceeding, or dispute arising out of or relating to this Agreement or the applicability of this Agreement that cannot be resolved by negotiation and agreement by Plaintiffs and Western, including challenges to the reasonableness of any party's actions. This Agreement shall be governed by and interpreted according to the substantive laws of the state of California without regard to its choice of law or conflict of laws principles. Western will not object to complying with any of the provisions outlined in this Agreement on the basis of jurisdiction.

44. This Agreement constitutes the entire, complete and integrated agreement among Plaintiffs and Western pertaining to the settlement of the Action against Western, and supersedes all prior and contemporaneous undertakings, communications, representations, understandings, negotiations and discussions, either oral or written, between Plaintiffs and Western in connection herewith. This Agreement may not be modified or amended except in writing executed by Plaintiffs and Western, and approved by the Court.

45. This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of Plaintiffs and Western. Without limiting the generality of the foregoing, each and every covenant and agreement made herein by Plaintiffs or Settlement Class Counsel shall be binding upon all Settlement Class Members and Releasers. The Releasees (other than Western entities which are parties hereto) are third-party beneficiaries of this Agreement and are authorized to enforce its terms applicable to them.


46. This Agreement may be executed in counterparts by Plaintiffs and Western, and a facsimile or electronic signature shall be deemed an original signature for purposes of executing this Agreement.

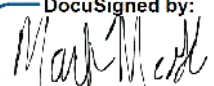
47. Neither Plaintiffs nor Western shall be considered to be the drafter of this Agreement or any of its provisions for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Agreement.

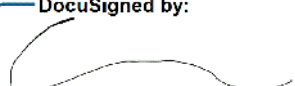
48. Where this Agreement requires either party to provide notice or any other communication or Document to the other, such notice shall be in writing, and such notice, communication or Document shall be provided by facsimile, or electronic mail (provided that the recipient acknowledges having received that email, with an automatic “read receipt” or similar notice constituting an acknowledgement of an email receipt for purposes of this Paragraph), or letter by overnight delivery to the undersigned counsel of record for the party to whom notice is being provided.

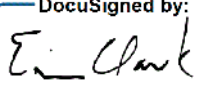
49. Each of the undersigned attorneys represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Agreement subject to Court approval.

FOR PLAINTIFFS:


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C A4FC82DFF442419...

DocuSigned by:

M 21FCD50E35494BB...

DocuSigned by:

C 14F6DC014BF042F...

DocuSigned by:

E 117A023E5BF249A...

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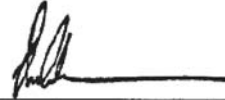
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