IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

IN RE: MOTOR FUEL TEMPERATURE SALES PRACTICES LITIGATION	)	
	)	
	)	**MDL No: 1840**
(This Document Relates to All Cases)	)	
	)	**No: 07-md-1840-KHV-JPO**

MOTION OF PLAINTIFFS FOR ORDER CONDITIONALLY CERTIFYING SETTLEMENT CLASSES, PRELIMINARILY APPROVING EIGHTEEN (18) CLASS ACTION SETTLEMENTS, DIRECTING AND APPROVING DISTRIBUTION OF CLASS NOTICE, SETTING HEARING FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENTS AND APPOINTING CLASS COUNSEL

Exhibit B16

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

IN RE: MOTOR FUEL TEMPERATURE SALES PRACTICES LITIGATION **This Document Relates To** ***Lerner v. Costco Wholesale Corp., et al.,*** **No. 07-CV-01216-GHK-FMO (C.D. Cal.)**	**MDL No. 1840** **Case No. 07-MD-1840-KHV**

SETTLEMENT AGREEMENT

Subject to the preliminary and final approval of the Court, and as further set forth below, this Settlement Agreement is made by and between certain Plaintiffs, individually and on behalf of the Settlement Class, and Defendant United El Segundo, Inc. ("United").

This Settlement Agreement shall apply to all Settlement Class Members, and is entered into in order to effect a full and final settlement and dismissal with prejudice of all claims against United in the above-captioned multidistrict litigation, *In re Motor Fuel Temperature Sales Practices Litigation*, Case No. 07-MD-1840-KHV, MDL No. 1840, including all claims against United in the *Lerner* Action, and in order to fully and finally compromise, resolve, discharge and settle the Released Claims on the terms set forth below, and to the full extent reflected herein, subject to the approval of the Court. Capitalized terms shall have the meaning ascribed to them in the Definitions Section of this Agreement.

RECITALS

WHEREAS, on February 22, 2007 Plaintiffs filed the *Lerner* Action against United in the United States District Court for the Central District of California;

WHEREAS, on June 18, 2007, the Judicial Panel on Multidistrict Litigation ("MDL Panel") granted a motion for coordinated, consolidated pretrial proceedings under 28 U.S.C. § 1407, and subsequently transferred the cases identified in the motion, as well as all tag-along cases, to the United States District Court for the District of Kansas;

WHEREAS, the *Lerner* Action was coordinated with other actions in accordance with the MDL Panel's transfer orders, and were consolidated for pretrial purposes in the United States District Court for the District of Kansas;

WHEREAS, Plaintiffs filed their Second Consolidated Amended Complaint on December 1, 2008;

WHEREAS, during the Relevant Time Period, United or its subsidiaries or affiliates owned and/or operated retail gasoline service stations in California;

WHEREAS, in the Second Consolidated Amended Complaint and/or the operative complaint filed in the *Lerner* Action, Plaintiffs allege that United engaged in conduct that violated California Business and Professions Code §17200, et seq. and Section 43(a) of the Lanham Act (15 U.S.C. § 1125(a)) and gave rise to common law causes of action for negligent and fraudulent misrepresentation, breach of the duty of good faith and fair dealing, unjust enrichment and civil conspiracy, including but not limited to claims based on (a) United's alleged marketing and sale of motor fuel that did not have a uniform energy content, without disclosing or adjusting for the effect of temperature on energy content, and (b) United's purported over-collection of state and federal excise taxes from consumers based on the number of volumetric gallons dispensed;

WHEREAS, Plaintiffs have sought relief, including but not limited to damages, restitution, disgorgement, penalties, injunctive relief, declaratory relief, attorneys' fees and costs, and pre- and post-judgment interest, for United's alleged conduct;

WHEREAS, the Court designated Robert A. Horn, Thomas V. Girardi, and George A. Zelcs to serve as Plaintiffs' lead counsel in the Action, and appointed Thomas V. Bender to serve as Plaintiffs' liaison counsel;

WHEREAS, the Defendants in the Action, including United, filed an answer to the Second Consolidated Amended Complaint on January 12, 2009, and United filed an answer to the complaint in the *Lerner* Action; these answers asserted a number of defenses to Plaintiffs' claims, denied that United violated any law or other duty, and denied each of the Plaintiffs' claims of liability, wrongdoing, injuries, damages, and entitlement to any relief;

WHEREAS, the Parties have conducted a thorough examination and investigation of the facts and law relating to the matters set forth in Plaintiffs' Second Amended Complaint, which included, among other things: (a) United's production of thousands of pages of documents; (b) responses by the Parties to interrogatories and requests for admission; (c) depositions of Plaintiffs, United, other defendants, and certain third parties; and (d) comprehensive expert discovery, including the production of multiple expert reports by the Parties, as well as the depositions of the Parties' experts;

WHEREAS, on April 9, 2013, the MDL Court granted, in part, Plaintiffs' motion for class certification as to United in the *Lerner* Action;

WHEREAS, on August 14, 2013, after the Parties had a full and fair opportunity to litigate all factual and legal issues raised in the *Lerner* Action, the Court granted summary judgment in favor of United and certain other defendants on all claims in the *Lerner* Action;

WHEREAS, the MDL Panel remanded the *Lerner* Action to the transferor court on or about August 30, 2013;

WHEREAS, by agreement the *Lerner* Action was transferred to the District Court for the District of Kansas solely of the purpose of effectuating a settlement on January 26, 2014;

WHEREAS, the Parties have engaged in extensive settlement discussions and, as a result of these arm's length negotiations, Plaintiffs and United have reached an agreement in principle to settle and resolve the claims asserted in the Action on the terms and conditions set forth below and subject to the approval of the Court;

WHEREAS, Plaintiffs and other Defendants—BP Products North America Inc. and BP West Coast Products LLC, Casey's General Stores, Inc., CITGO Petroleum Corporation, ConocoPhillips Company, Dansk Investment Group, Inc., Exxon Mobil Corporation, Motiva Enterprises LLC and Equilon Enterprises LLC d/b/a Shell Oil Products US, Sam's East, Inc., Sam's West, Inc., and Wal-Mart Stores, LP, Sinclair Oil Corporation, Valero Marketing and Supply Company, B-B Oil Company, Inc., Coulson Oil Company, Inc., Diamond State Oil, LLC, Flash Market, Inc., J&P Flash, Inc., Magness Oil Company, Port Cities Oil, LLC, EZ Mart, Inc., Love's Travel Stops & Country Stores, Inc., M.M. Fowler, Inc., Sunoco, Inc. (R&M), Tesoro Refining & Marketing Company, LLC, Thornton's, Inc., and W.R. Hess (collectively, the "Other Settling Defendants")—have reached agreements, subject to the final approval of the Court, to settle and resolve the claims asserted against them in the Action;

WHEREAS, Class Counsel have investigated the facts relating to the claims in the Action, as well as the underlying events and transactions forming the subject matter of the Action, analyzed the applicable legal principles and the Court's application of those principles, and concluded—based upon their investigation, and taking into account the sharply contested

issues involved, the unsettled state of the applicable law, the inherent problems of proof and legal defenses that may be an impediment to prevailing in whole or in part on the claims asserted, the risks, uncertainties, burdens, and costs of further prosecution of the Action, and the substantial benefits to be received pursuant to this Settlement Agreement—that a resolution and compromise on the terms set forth herein is fair, reasonable, adequate, and in the best interests of Plaintiffs and the Settlement Class;

WHEREAS, Class Counsel represent and warrant that they are fully authorized to enter into this Settlement Agreement by all counsel for all Plaintiffs in the Action; and

WHEREAS, United, solely for the purpose of avoiding the burden, expense, risk, and uncertainty of continuing to litigate the Action—and to put to rest all controversies engendered by the Action—without any admission of liability or wrongdoing whatsoever, and without any admission that Plaintiffs' claims (or any other similar claims) would be suitable for class treatment if this Action proceeded through litigation and trial, desires to settle the Action and all claims asserted in or subsumed by the Action, including unasserted claims related to the subject matter of the Action that Plaintiffs could have been asserted in the Action, on the terms and conditions set forth in this Settlement Agreement.

NOW, THEREFORE, without any admission or concession by Plaintiffs of any lack of merit to their allegations and claims, and without any admission or concession by United of any liability or wrongdoing or lack of merit to its defenses, in consideration of the mutual covenants and terms contained herein, and subject to the final approval of the Court, Plaintiffs and United agree that this Action shall be settled, compromised, and dismissed, on the merits and with prejudice, and that the Released Claims shall be finally and fully settled, compromised, and

dismissed as to the Released Parties, in the manner and on the terms and conditions set forth herein.

DEFINITIONS

1. As used in this Settlement Agreement, the terms set forth in this section will have the following meanings:

(a) "Action" means the multidistrict litigation captioned *In re Motor Fuel Temperature Sales Practices Litigation*, Case No. 07-MD-1840-KHV, MDL No. 1840.

(b) "Automatic Temperature Compensation Equipment" or "ATC Equipment" means equipment capable of producing "Automatic Temperature or Density Compensation" as defined in Appendix D to NIST Handbook 44, Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices (2012 edition), in the context of the retail sale of motor fuel.

(c) "*Lerner* Action" means *Lerner v. Costco Wholesale Corp., et al.*, No. 07-CV-01216-GHK-FMO (C.D. Cal.).

(d) "Class Counsel" means Robert A. Horn, Thomas V. Girardi, George A. Zelcs, and Thomas V. Bender, as described in paragraph 5 of this Settlement Agreement.

(e) "Class Representative" means Phyllis Lerner.

(f) "Class Notice" means the Court approved form of notice to the Settlement Class, in substantially the same form and manner as approved by the Court in the Joint Settlement Notice Plan, and as further described in the long form notice attached to Plaintiffs' Motion for Preliminary Approval, which will notify the Settlement Class—among other things—of the Settlement Agreement, Preliminary Approval Order, and the scheduling for the Final Approval Hearing.

(g) "Court" means the United States District Court for the District of Kansas.

(h) "Days" means calendar days—except that when computing any period of time prescribed or allowed by this Settlement Agreement, the day of the act, event, or default from which the designated period of time begins to run shall not be included. Furthermore, when computing any period of time prescribed or allowed by this Settlement Agreement, the last day of the period so computed shall be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday.

(i) "Effective Date" means the date on which this Settlement Agreement shall become final and enter into full force and effect, as described in paragraph 10 of this Settlement Agreement.

(j) "Escrow Account" means the interest-bearing escrow account, to be administered by the Escrow Agent in accordance with the provisions of paragraphs 19-26 of this Settlement Agreement, into which United shall pay the Settlement Amount.

(k) "Escrow Agent" means the bank or such other financial institution agreed upon by the Parties to serve as the escrow agent, subject to escrow instructions mutually acceptable to Class Counsel and counsel for United.

(l) "Final Approval Hearing" means the hearing at which the Court orders final approval of the Settlement as described in paragraph 48.

(m) "Final Approval Order" means the order granting final approval to this Settlement pursuant to Federal Rule of Civil Procedure 23(e) and paragraph 48.

(n) "Joint Settlement Notice Plan" means the notice plan approved by the Court on September 20, 2013 (Doc. No. 4648), and described in Plaintiffs' Proposed Notice Plan

for Class Action Settlements and California Trial Classes, Apr. 15, 2013 (Doc. No. 4549), Plaintiffs' Notice of Submission of Revised Notice Plan for Class Action Settlements and California Trial Cases, June 21, 2013 (Doc. No. 4593), and Plaintiffs' Notice of Further Submissions of Information in Support of Motion for Approval of Revised Settlement Notice Plan July 26, 2013 (Doc. No. 4606).

(o) "Judgment" means the judgment to be entered in the Action pursuant to paragraph 48.

(p) "Net Settlement Fund" means the net proceeds of the Settlement Fund, after deducting attorneys' fees, litigation costs, notice expenses, and costs of settlement or claims administration, as provided in paragraphs 15-16.

(q) "Notice Administrator" means Dahl Administration, LLC, or whomever else the Court may appoint to administer the Class Notice, and any third parties from whom the Notice Administrator may, at its discretion, seek assistance from to administer Class Notice.

(r) "Notice Plan" means the method of Class Notice and the exclusion procedures to be provided to the Settlement Class that will be submitted by Class Counsel to the Court, and that is described in paragraphs 36-47.

(s) "Opt-Out List" means the list compiled by the Notice Administrator, pursuant to paragraph 43, identifying those members of the Settlement Class who properly opt-out of this Settlement Agreement.

(t) "Opt-Out and Objection Date" means a period of no more than thirty (30) Days—or whatever period set by the Court—after completion of the Class Notice described in the Notice Plan for any member of the Settlement Class who does not wish to participate in this Settlement Agreement to object or opt-out and be excluded from the Settlement Class.

(u) "Parties" refers to Plaintiffs and United collectively, and "Party" refers to either individually.

(v) "Person" means an individual, corporation, partnership, limited partnership, limited liability company, association, member, joint stock company, estate, legal representative, trust, unincorporated association, and any business or legal entity.

(w) "Plaintiffs" means Ronald Bartley, Rollie Berry, Max Candiotty, Barbara Cumbo, Herb Glaser, Robert Hicks, Phyllis Lerner, Ronna Posen, Steven Rubin and Alex Zalkin. Individually, each of the above-listed Plaintiffs is considered a "Plaintiff."

(x) "Preliminary Approval Order" or "Preliminary Approval Orders" means the order(s) granting preliminary approval to this Settlement pursuant to paragraph 35 of this Settlement Agreement.

(y) "United Stations" means retail stations owned and/or operated by United or any of its subsidiaries or affiliates.

(z) "Release" means the release and discharge, as of the Effective Date, by Plaintiffs and all Settlement Class Members (and their respective successors, assigns, and insurers) of the Released Parties of and from all Released Claims, and shall include the agreement and commitment by Plaintiffs and all Settlement Class Members to not now or hereafter initiate, maintain or assert against the Released Persons or any of them any and all causes of action, claims, rights, demands, actions, claims for damages, equitable, legal or administrative relief, interest, demands or rights, including without limitation, claims for damages of any kind, including those in excess of actual damages, whether based on federal, state or local law, statute, ordinance, regulation, contract, common law or any other sources that have been, could have been, may be or could be alleged or asserted now or in the future by

Plaintiffs or any Settlement Class Members against the Released Parties or any of them in this Action or in any other court action or before any administrative body (including any regulatory entity or organization), tribunal, arbitration panel or other adjudicating body arising out of or related to the Released Claims.

(aa) "Released Claims" means any and all manner of claims, demands, judgments, actions, suits, obligations, promises, and causes of action, whether individual, class, or otherwise in nature, for damages whenever incurred, and for liabilities of any nature whatsoever, including for penalties, fines, charges, costs, expenses, injunctive relief, declaratory relief, attorneys' fees, claims for contribution or indemnification, or the like, whether known or unknown, suspected or unsuspected, in law or equity, that any Releasing Party ever had, now has, or hereafter can, shall, or may have, against the Released Parties arising out of or relating in any way to: (i) any conduct or failure to act of any Released Party alleged, and any cause of action asserted, in the Action or Underlying Actions, or that could have been alleged or asserted in the Action or Underlying Actions—including, without limitation, in any supplemental complaint alleging additional purchases of motor fuel post-dating the filing date of the Action or Underlying Actions—and that relates to the temperature or energy content of motor fuel sold at retail; (ii) any act, representation, or omission of any Released Party concerning the temperature or energy content of motor fuel; (iii) any conduct or failure to act of any Person, other than the Released Parties, selling motor fuel at any United Station, which was alleged or could have been alleged or asserted in the Action or Underlying Actions, and that relates to the temperature or energy content of motor fuel sold at retail; (iv) the purported over-collection of state or federal motor fuel excise taxes from consumers based on the number of gallons dispensed without adjustment for the effect of temperature; and/or (v) the alleged participation in an alleged

conspiracy to preclude the use of ATC Equipment. The Releasing Parties acknowledge that—absent a material change in future business practices—the Released Parties shall continue to sell motor fuel in the same manner which was alleged to be wrongful in the Action and the *Lerner* Action, and that this release is intended to reach all claims involving, arising out of, or in any way relating to the temperature or energy content of motor fuel sold at retail, including identical transactions that post-date this Settlement Agreement.

(bb) "Released Parties" means United, and each of its respective past, present, and future officers, directors, stockholders, agents, employees, legal representatives, trustees, parents, associates, affiliates, joint ventures, subsidiaries, divisions, partners, heirs, executors, administrators, purchasers, predecessors, successors, and assigns.

(cc) "Releasing Parties" means all of the members of the Settlement Class and their respective heirs, executors, administrators, trustees, successors, assigns, and representatives, who have not timely opted-out and excluded themselves from this Action and this Settlement Agreement as provided in this Settlement Agreement.

(dd) "Relevant Time Period" means January 1, 2004 through the date on which the Court grants preliminary approval of this Settlement Agreement.

(ee) "Settlement" means the settlement of the Action between and among the Parties as set forth in this Settlement Agreement.

(ff) "Settlement Administrator" means Horn, Aylward & Bandy, LLC, or whomever else the Court may appoint to administer this settlement.

(gg) "Settlement Agreement" means this Settlement Agreement.

(hh) "Settlement Amount" means Forty-Thousand Dollars ($40,000).

(ii) "Settlement Class" means all Persons who fall within the definition of the statewide class defined in paragraph 3 of this Settlement Agreement. Excluded from the Settlement Class is Class Counsel, United, United's officers, directors, and employees, the officers, directors, and employees of United's affiliated companies, and any judicial officer who has presided over this Action and the members of his/her immediate family.

(jj) "Settlement Class Members" means all Persons in the Settlement Class who did not exclude themselves pursuant to paragraphs 37-44

(kk) "Settlement Fund" means, with respect to United, the Settlement Amount, plus any accrued interest or income on said deposits once in escrow as set forth in paragraph 7 of this Settlement Agreement.

(ll) "Taxes" means all 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 United 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.

(mm) "Tax Expenses" means expenses and costs incurred in connection with the operation and implementation of paragraphs 19-26 of this Settlement Agreement—including, without limitation, expenses of tax attorneys and/or accountants and mailing and distribution costs and expenses relating to filing (or failing to file) returns for any Taxes.

(nn) The use of the singular includes the plural (and vice-versa), and the use of the masculine includes the feminine (and vice-versa).

SETTLEMENT CLASS

2. For the purposes of this Settlement only, Plaintiffs will seek, and United will not oppose, certification of the Settlement Class (a) described in paragraph 3 below and (b) represented by the Class Representative. United will provide settlement consideration to, and will obtain a Release of the Released Claims from, the Releasing Parties, subject to (a) the Court's preliminary approval of this Settlement Agreement, (b) the provision of notice to members of the Settlement Class, and (c) the Court's final approval of the notice provided and this Settlement Agreement, under the terms and conditions stated below.

3. For the purposes of this Settlement only, Plaintiffs will seek, and United will not oppose, the Court's certification of the Settlement Class, including all claims and all forms of relief asserted in the Underlying Actions, pursuant to Federal Rule of Civil Procedure 23(b)(3). The Settlement Class is defined as follows:

> All Persons who, at any time during the Relevant Time Period, purchased motor fuel at retail in the State of California from a gas station that United owns or operates or has owned or operated. The class representative is Phyllis Lerner.

4. The Parties stipulate and agree, with respect to United only, that the definitions of the proposed class in the *Lerner* Action is amended to be the same as the Settlement Class (defined above) and, to the extent necessary, that the Court's Preliminary Approval Order and Final Approval Order shall so amend the operative complaints in the *Lerner* Action.

5. Plaintiffs will seek, and United will not oppose, the Court's appointment of Robert A. Horn, Thomas V. Girardi, George A. Zelcs, and Thomas V. Bender as Class Counsel for the Settlement Class, and the appointment of the Class Representative of the Settlement Class.

SETTLEMENT CONSIDERATION

6. Subject to the provisions herein, United will pay (or cause to be paid) the Settlement Amount for the benefit of Settlement Class Members, the payment of which shall fully satisfy any and all of United's payment obligations pursuant to this Settlement Agreement.

7. United shall pay the Settlement Amount into the Escrow Account within thirty (30) business Days after the date of preliminary approval of this Settlement Agreement. The Parties will cooperate to execute an appropriate escrow agreement within fifteen (15) Days after execution of this Settlement Agreement.

8. The payment of United described in paragraphs 6-7 shall exhaust and fully satisfy any and all of its payment obligations under this Settlement Agreement, and shall extinguish entirely any further obligation, responsibility, or liability to pay any settlement sums, attorneys' fees, litigation costs, or expenses incurred in administering this Settlement Agreement, including the cost of any class notice, taxes, or sums of any kind to Plaintiffs, the Settlement Class Members, Class Counsel, and their other counsel, experts, advisors, agents, and representatives. Under no circumstances shall this Settlement Agreement be construed to require United to pay more than the Settlement Amount.

9. Except in accordance with the provisions of paragraphs 15-16 of this Settlement Agreement, United shall not be liable for: (a) any of the Plaintiffs' costs or expenses of the litigation of the Action or the *Lerner* Action, including attorneys' fees, fees and expenses of expert witnesses and consultants, or costs and expenses associated with discovery, motion practice, hearings before the Court or other judicial officers, trials, appeals, or negotiation of other settlements; or (b) any expenses incurred in administering this Settlement Agreement, including the cost of Class Notice. This term is contingent on the Court: (a) allowing this

Settlement to be included in the pending Joint Settlement Notice Plan, and (b) not requiring direct notice to members of the Settlement Class. If the Court does not allow this Settlement to be included in the Joint Settlement Notice Plan, or requires direct notice to any members of the Settlement Class, the Parties agree to revisit the issue of notice costs. If the Parties are unable to resolve the issue of direct notice costs after revisiting the issue, this Settlement Agreement shall be voidable at Plaintiffs' sole discretion, shall thereafter have no legal effect, and the Parties will revert to their positions existing on the date immediately prior to the date of execution of this Agreement.

10. The Effective Date of this Settlement Agreement shall be ten (10) Days after the last to occur of the following conditions has occurred and been satisfied:

(a) The Court has entered both a Final Approval Order and Judgment granting the relief described in this Settlement Agreement;

(b) The time for appeal (or to seek permission to appeal) from the Final Approval Order and Judgment, described in subsection (a) of this paragraph, has expired or, if appealed, the Final Approval Order and Judgment as to United have been affirmed by the court of last resort to which such appeal was taken, and such affirmance is no longer subject to further appeal or review;

(c) Final judgment is entered in the *Lerner* Action in favor of United, and the time for appeal (or to seek permission to appeal) from that final judgment has expired;

(d) United has not exercised its rights to void the Settlement Agreement under paragraphs 51-53.

11. The Settlement Fund shall remain in the Escrow Account and accrue interest until this Settlement Agreement becomes final within the meaning of the preceding paragraph. After

the Settlement Agreement becomes final, Class Counsel will apply and distribute the Settlement Fund in the manner provided herein, subject to the approval of the Court.

12. The Settlement Fund shall be distributed as follows:

(a) *Contribution for Implementing State Weights and Measures Programs*.

(i) The Settlement Fund may be used for contributions to the California Department of Food and Agriculture's Division of Measurement Standards ("Cal DMS") for the purpose of defraying some of the state's costs of rulemaking, regulation, inspection, or oversight related to implementing ATC.

(ii) To receive a payment from the Settlement Fund under subparagraph (a)(i) above, Cal DMS must provide to the Settlement Administrator a written statement that: (1) explains that California has adopted, or is considering adopting, rules regarding the use of ATC for retail sales of motor fuel; and (2) describes how Cal DMS would use the Settlement Fund to assist in that implementation.

(iii) Upon receipt of a written statement containing the information set forth in subparagraph (ii) above, and provided that the Settlement Fund has not been exhausted, the Settlement Administrator will pay the amount (or at its discretion, a portion of the amount) requested by Cal DMS.

(b) *Unused Amounts*.

(i) If, six (6) years from the date on which this Settlement Agreement becomes final (as described in paragraph 10, above), and after the payments described in this paragraph 12 have been made, any portion of the amount of the Settlement Fund remains, such remaining portion shall be contributed the State of California's general fund, irrespective of

whether California has adopted, or is considering adopting, rules regarding the use of ATC for retail sales of motor fuel.

(ii) Semi-annually after the Settlement Amount is paid into the Escrow Account, Class Counsel shall file with the Court and serve on United a report accounting for: (1) each deposit into the Escrow Account, (2) any interest accrued on the Settlement Amount, and (3) each payment from the Settlement Fund, including the date on which each such payment was made and to whom. This report shall also confirm that amounts in the Settlement Fund were distributed in the manner provided in this Settlement Agreement and approved by the Court. Class Counsel will continue to file and serve such reports until such time as the Settlement Fund is exhausted and no sums remain in the Settlement Fund. The report described in this paragraph shall be in addition to United's right to audit the Escrow Account, described in paragraph 22.

13. All administration of the Settlement Fund shall be concluded within six years from the Effective Date.

14. In no event shall United have any obligation, responsibility, or liability, including liability for costs and expenses, arising from or relating to the administration, maintenance, distribution, or disposition of payments from the Escrow Account or the Settlement Fund.

15. Class Counsel shall be awarded such fees and reimbursed such costs and expenses from the Settlement Fund as are approved by the Court. United shall not be liable for any costs, fees, or expenses of any of the Plaintiffs' respective attorneys, experts, advisors, agents, or representatives, or any other costs, fees or expenses of any kind. Class Counsel may submit an application to the Court for distributions from the Settlement Fund, for: (i) an award of attorneys' fees and litigation costs not in excess of thirty percent (30%) of the Settlement Fund, or Twelve Thousand Dollars ($12,000); plus (ii) reimbursement of expenses incurred in development and

implementation of the Notice Plan and administering this Settlement Agreement after Final Approval (provided that, if the Court approves Horn, Aylward & Bandy to act as Settlement Administrator, such administration expenses will exclude fees and will be limited to costs that Horn, Aylward & Bandy incurs in order to administer the Settlement efficiently to preserve the Net Settlement Fund for the uses set out in paragraph 12); plus (iii) any accrued interest on such attorneys' fees, litigation costs, and settlement administration expenses at the time of payment. With respect to this Settlement Agreement, Plaintiffs, Settlement Class Members, and their attorneys, experts, advisors, agents, and representatives agree to waive any claim for, and will not seek, any attorneys' fees and litigation costs in an amount in excess of $12,000. United agrees not to oppose any application to the Court for payment of attorneys' fees and litigation costs in an amount not to exceed $12,000. For purposes of this paragraph, the term "litigation costs" includes, but is not limited to, fees and expenses of expert witnesses and consultants, and costs and expenses associated with discovery, motion practice, hearings before the Court or other judicial officer, trials, appeals, and negotiation of other settlements.

16. Class Counsel may request that the Court authorize payment of an incentive fee for the Class Representatives in an amount not to exceed One Thousand Dollars ($1,000); provided that, if a Class Representative is also a class representative in other settlements that (i) arise out of the Action or (ii) are addressed in the Motion for Preliminary Approval described in paragraph 35, such Class Representative shall not receive incentive fees totaling more than Four Thousand Dollars ($4,000) from such settlements. Any and all such incentive fees shall be included within and deducted from the 30% (i.e., $12,000) cap on attorneys' fees and costs set out in paragraph 15. United does not concede that that such incentive fees are appropriate, but agrees not to oppose any application to the Court for payment of such incentive fees.

17. United shall not have any responsibility for, interest in, or liability whatsoever with respect to the allocation among counsel for the Settlement Class, 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 or the *Lerner* Action.

18. The Parties agree that the Court's approval or denial of any request for attorneys' fees, litigation costs, and settlement administration expenses are not conditions to this Agreement, and are to be considered by the Court separately from the fairness, reasonableness and adequacy of the Settlement. Any order or proceeding relating to the application by Class Counsel of an award for attorneys' fees, litigation costs, and settlement administration expenses shall not operate to terminate or cancel this Agreement.

ESCROW ACCOUNT

19. The Escrow Account shall be administered under the Court's continuing supervision and control. Any fees for services rendered by the Escrow Agent in connection with the Escrow Account, and any expenses incurred in the creation, administration, and disbursement of the Escrow Account, shall be paid from the Settlement Fund.

20. The Escrow Agent shall cause the funds deposited in the Escrow Account to be invested in instruments backed by the full faith and credit of the United States Government, and shall reinvest any income from these instruments and from the proceeds from these instruments as they mature in similar instruments at their then current market rates. Any accrued interest shall remain with the balance of the Settlement Fund.

21. All funds held in the Escrow Account 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 Settlement Agreement and further order(s) of the Court.

22. The Escrow Agent and Settlement Administrator shall maintain a reasonable accounting system for the Escrow Account that enables United to readily identify, for example, each deposit into the Escrow Account, any interest accrued on the Settlement Amount, and each payment from the Settlement Fund, including the date on which each such payment was made and to whom. United shall have the right to audit all financial and related records for the Escrow Account.

23. The Parties 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, including the "relation-back election" (as defined in Treas. Reg. § 1.468B-1) back to the earliest permitted 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.

24. For the purpose of § 468B of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, the "administrator" shall be the Escrow Agent. The Escrow Agent shall timely and properly file all informational 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)(l)). Such returns (as well as the election described in paragraph 23) shall be consistent with paragraph 26, and in all events shall reflect that all Taxes, as defined

below (including any estimated Taxes, interest or penalties), on the income earned by the Settlement Fund shall be paid out of the Settlement Fund as provided in paragraph 25.

25. All Taxes and Tax Expenses shall be paid out of the Settlement Fund.

26. Neither United nor its counsel shall have any liability or responsibility for the Taxes or Tax Expenses, or for maintaining or securing any desired tax status for the Settlement Fund, nor for any negligence, fraud, or malfeasance regarding the Settlement Fund. 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 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(1)(2). United is not responsible, nor shall it have any liability for, any Taxes. The Parties 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 19-26.

RELEASE OF CLAIMS

27. In addition to the effect of any Final Approval Order and Judgment entered in accordance with this Settlement Agreement, including but not limited to any preclusive effect, in consideration of payment of the Settlement Amount, and for other good and valuable consideration, the Releasing Parties hereby expressly and irrevocably waive and fully, finally, and forever settle, discharge, and Release the Released Parties from the Released Claims.

28. For the avoidance of doubt, the types of claims released in the preceding paragraph are released regardless of the type of cause of action, common law principle, or statute

under which they are asserted; for example, such claims are released, without limitation, irrespective of whether they are asserted under any federal, state, or local unfair competition, unfair practices, deceptive practices, false advertising, antitrust, common law breach of contract, breach of warranty, breach of the duty of good faith and fair dealing, common law fraud, unjust enrichment, or civil conspiracy law, or similar law or regulation of any jurisdiction within the United States.

29. Each Releasing Party further expressly and irrevocably waives and fully, finally, and forever settles and releases, upon the Court's final approval of this Settlement Agreement, any and all defenses, rights, and benefits that the Releasing Party may have, or that may be derived from the provisions of applicable law that, absent such waiver, may limit the extent or effect of the releases contained in paragraphs 27-31. Without limiting the generality of the foregoing, each Releasing Party expressly and irrevocably waives and releases any and all defenses, rights, and benefits that the Releasing Party might otherwise have in relation to the release by virtue of the provisions of California Civil Code § 1542 or similar laws of any other state or jurisdiction. Section 1542 provides: "**A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.**"

30. The Releasing Parties hereby covenant and agree that they shall not, hereafter, seek to establish liability against any of the Released Parties based, in whole or in part, upon any of the Released Claims.

31. United hereby releases the Releasing Parties and Class Counsel from payment of any costs in the California Cases.

32. Nothing in the releases described in paragraphs 27-31 shall preclude any action to enforce the terms of this Settlement Agreement.

PRELIMINARY COURT APPROVAL

33. Plaintiffs and United shall recommend approval of this Settlement Agreement by the Court and all reviewing courts. Plaintiffs and United shall use their best efforts to effectuate this Settlement Agreement.

34. The following are conditions precedent to this Settlement Agreement:

(a) Plaintiffs, after the Court issues the Final Approval Order, shall fully comply with the terms of the applicable protective order for return and/or destruction of United materials, as defined in the governing protective order.

(b) Plaintiffs agree not to seek the attendance of officers and/or employees of United to testify at any trial arising out of the Action. United agrees that its officers and/or employees will not testify at any such trials unless pursuant to subpoena or other process validly served (for avoidance of doubt, a subpoena is not validly served under this provision if United, its officers and/or employees agree to accept service of a subpoena that would not be validly served without their consent).

(c) Plaintiffs agree that they will not seek to obtain discovery, documents, or testimony from United, via discovery requests, subpoenas, or otherwise, in connection with the Action.

35. As soon as practicable, Plaintiffs shall submit to the Court, and United shall not oppose, a Motion for Preliminary Approval of this Settlement Agreement. Plaintiffs shall seek, and United shall not oppose, the Court's entry of a Preliminary Approval Order which:

(a) Preliminarily approves this Settlement Agreement;

(b) Approves the provisional certification of the Settlement Class for settlement purposes only, as described in paragraphs 2-3, and declares that, in the event of termination of this Settlement Agreement as provided below, certification of the Settlement Class shall automatically be vacated and United may fully contest certification of class as if no Settlement Class had been certified;

(c) Schedules a Final Approval Hearing to consider the fairness, reasonableness and adequacy of the proposed Settlement, and whether it should be finally approved by the Court;

(d) Appoints Robert A. Horn, Thomas V. Girardi, George A. Zelcs, and Thomas V. Bender as Class Counsel;

(e) Appoints Dahl Administration, LLC as the Notice Administrator to assist Class Counsel in effectuating the Class Notice and exclusion procedures defined below and perform such related duties as may be necessary;

(f) Appoints Horn, Aylward & Bandy, LLC as Settlement Administrator to process any requests for payment from the Net Settlement Fund, and to perform such related duties as may be necessary;

(g) Finds that the proposed Settlement is sufficiently fair, reasonable, and adequate to warrant providing notice to the Settlement Class;

(h) Determines that notice and exclusion rights should be provided to members of the Settlement Class;

(i) Approves the Notice Plan, and find that the Class Notice, which is attached to Plaintiffs' Motion for Preliminary Approval, complies with the requirements of Federal Rule of Civil Procedure 23;

(j) Approves the procedures described in the Notice Plan (detailed in paragraphs 36-47, below) for Settlement Class Members to object to the Settlement Agreement, or to opt-out and exclude themselves from the Settlement Class, the Action, the *Lerner* Action, and this Settlement Agreement;

(k) Finds that the Class Notice: (i) is reasonable and constitutes due, adequate and sufficient notice to all Persons entitled to receive notice; (ii) is reasonably calculated, under the circumstances, to apprise the Settlement Class of the pendency of this Action and of their right to object to or exclude themselves from (as applicable) the proposed Settlement; and (iii) meets all applicable requirements of applicable law;

(l) Preliminarily enjoins all Settlement Class Members from: (i) filing, commencing, prosecuting, intervening in or participating as a plaintiff, claimant, or class member in any other lawsuit or administrative, regulatory, arbitration or other proceeding against the Release Parties in any jurisdiction based on, relating to or arising out of the claims and causes of action or the facts and circumstances giving rise to this Action or the Released Claims; (ii) appealing any final judgment entered in the *Lerner* Action; (iii) filing, commencing or prosecuting a lawsuit or administrative, regulatory, arbitration or other proceeding against the Released Parties as a class action on behalf of any Settlement Class Members who have not timely excluded themselves (including by seeking to amend a pending Complaint to include class allegations or seeking class certification in a pending action), based on, relating to or arising out of the claims and causes of action or the facts and circumstances giving rise to this Action or the Released Claims; and (iv) attempting to effect opt-outs of individuals or a class of individuals in any lawsuit or administrative, regulatory, arbitration or other proceeding against the Released Parties based on, relating to or arising out of the claims and causes of action or the

facts and circumstances giving rise to this Action or the Released Claims; provided that this Settlement Agreement is not intended to prevent Settlement Class Members from participating in any action or investigation initiated by a state or federal agency; and

(m) Stays all proceedings in the *Lerner* Action as between Plaintiffs and United, except those related to effectuating and complying with the Settlement Agreement, pending the Court's determination of whether the Settlement Agreement should be finally approved.

NOTICE AND EXCLUSION PROCEDURES

36. Pursuant to the Notice Plan, Class Counsel and the Notice Administrator shall provide Class Notice to the Settlement Class in the same form and manner approved by the Court in the Joint Settlement Notice Plan, and shall perform such related duties as may be necessary to administer the Class Notice and exclusion procedures. United will not object to the Notice Plan, provided that the Court finds that it complies with the requirements of Federal Rule of Civil Procedure 23, and that it also includes the following statements applicable to United:

(a) The Court granted summary judgment to United in the *Lerner* Action on August 14, 2013;

(b) The Settlement contemplates that judgment shall be entered for United in the *Lerner* Action consistent with the Court's summary judgment order;

(c) The Court issued the summary judgment order after the Parties had a full and fair opportunity to litigate all factual and legal issues raised in the *Lerner* Action, and the Court's summary judgment order sets forth the legal resolution of those issues as to United;

(d) Upon the Effective Date of the Settlement Agreement, the judgment in the *Lerner* Action will bind all members of the Rule 23(b)(2) class certified by the Court, as well as the class representatives to the certified Rule 23(b)(3) liability class;

(e) The Settlement Agreement will cause all class members of the liability classes certified under Rules 23(b)(3) and (c)(4) in the *Lerner* Action to be bound by the judgment in those same cases; and

(f) If the Settlement receives final approval in the form presented in paragraph 48, no appeal of any of the summary judgment orders will be taken by Plaintiffs' counsel on behalf of the class.

37. The Parties will request that the Preliminary Approval Order provide for an Opt-Out and Objection Date of no more than thirty (30) Days after completion of the Class Notice described in the Notice Plan for any member of the Settlement Class who does not wish to participate in this Settlement Agreement to object or opt-out and be excluded from the Settlement Class—in the form and manner approved by the Court in the Joint Settlement Notice Plan.

38. Any Settlement Class Member who fails to timely file and serve a written objection as detailed in the Class Notice shall not be permitted to object to the approval of the Settlement at the Final Approval Hearing, and shall be foreclosed from seeking any review of the Settlement or the terms of the Settlement Agreement by appeal or other means. Unless otherwise ordered by the Court, Settlement Class Members who do not timely make their objections in this manner will be deemed to have waived all objections, and shall not be heard or have the right to appeal approval of the Settlement.

39. Any objector electing to be represented by counsel shall be solely responsible for any fees and costs incurred or charged by such counsel, and in no event shall the Parties be responsible for such fees or costs.

40. Opt-outs may be done on an individual basis only; so-called "mass" or "class" opt-outs shall not be allowed.

41. Except for those who timely and properly file a request for opt-out and exclusion, all other members of the Settlement Class will be deemed to be Settlement Class Members for all purposes under the Settlement Agreement, and, upon the Effective Date, will be bound by its terms.

42. Any Person who properly opts out of the Settlement Class shall not: (a) be bound by any orders or judgments entered in this Action after the Opt-Out and Objection Date; (b) be entitled to any relief under, or be affected by, the Settlement Agreement; (c) gain any rights by virtue of the Settlement Agreement; or (d) be entitled to object to any aspect of the Settlement.

43. Within ten (10) Days after the conclusion of the period for exclusion, Class Counsel shall provide counsel for United with: (a) a list of each member of the Settlement Class that sought to opt-out and be excluded from this Settlement Agreement, state whether the request for exclusion was properly and timely made, and attach a copy of all documentation concerning each request for exclusion submitted, and (b) an Opt-Out List identifying only those members of the Settlement Class who have properly opted out and excluded themselves from this Settlement and Settlement Agreement.

44. The Parties will request that the Preliminary Approval Order provide for a period of no more than thirty (30) Days after completion of the Class Notice described in the Notice Plan for any member of the Settlement Class that does not submit a request for exclusion to

object to this Settlement Agreement. Such objection may be effected in the form and manner approved by the Court.

45. The Notice Administrator's expenses for the foregoing activities, including those of any third-party vendors it uses to perform tasks necessary for the implementation or effectuation of its duties, shall be paid from the Settlement Fund. Should the Notice Administrator perform the foregoing activities for settlement agreements for Other Settling Defendants, expenses incurred for such activities will be paid from the settlement funds of the Other Settling Defendants in proportion to a respective settlement fund's percentage of the total amount of all settlement funds combined (by way of illustration only, if the combined total of settlement funds for all settling defendants is $20 Million and the Settlement Fund is $5 Million, 25% of the Notice Administrator's expenses will be paid by the Settlement Fund), and taking also into account the amounts agreed to be used to cover or reimburse expenses incurred in administering those settlement agreements that do not provide for monetary payments for the benefit of the members of the settlement class. In no event shall United or any of the Released Parties have any obligation, responsibility, or liability with respect to the Notice Administrator, the Class Notice, the Notice Plan, or the exclusion procedures, including with respect to the costs, administration expenses, or any other charges for any notice and exclusion procedures, except as provided in paragraphs 9 and 15-16 of this Settlement Agreement.

46. Within ten (10) Days of the Preliminary Approval Order, United shall serve a notice of proposed settlement, which complies with the requirements of the Class Action Fairness Act, 28 U.S.C. § 1715, on the appropriate State official in all states and territories, and the appropriate federal official, in the United States.

47. If the Settlement Agreement does not obtain Final Approval for any reason, the Parties agree that the notice to the Settlement Class set forth in paragraphs 36-47 above is moot and of no valid, binding legal effect, and cannot serve as a basis for asserting that any claim against United is extinguished by *res judicata* or otherwise.

FINAL COURT APPROVAL

48. As soon as practicable after the Opt-Out and Objection Date, Class Counsel will make a motion for the Court to enter a Final Approval Order and Judgment which will:

(a) Determine that the Court has personal jurisdiction over United and all Settlement Class Members, and subject matter jurisdiction to finally approve this Settlement Agreement;

(b) Grant final approval to this Settlement Agreement as being fair, reasonable, and adequate to the Settlement Class Members within the meaning of Federal Rule of Civil Procedure 23 and any other applicable rules, and as being in the best interests of the Parties, and direct the Parties and their counsel to consummate this Settlement Agreement according to its terms;

(c) Approve the Release set forth in paragraphs 27-31 of this Settlement Agreement, and declare this Settlement Agreement and the Final Approval Order and Judgment to be binding on—and to have *res judicata* and preclusive effect in—all pending and future lawsuits or other proceedings encompassed by the Release that are maintained by (or on behalf of) Plaintiffs and all other Settlement Class Members, including their agents, heirs, executors or administrators, successors and assigns;

(d) Define the Settlement Class and finally certify it under Federal Rule of Civil Procedure 23(b)(3) for settlement purposes only, and declare that, in the event of

termination of this Settlement Agreement, certification of the Settlement Class shall automatically be vacated, and United may fully contest certification of any class—including, without limitation, the class previously certified by the Court on or about April 9, 2013—as if no Settlement Class had been certified;

(e) Approve the Class Notice attached to Plaintiffs' Motion for Preliminary Approval, and find that it: (i) was reasonable and constituted due, adequate and sufficient notice to all Persons entitled to receive notice; (ii) was reasonably calculated, under the circumstances, to apprise the Settlement Class of the pendency of this Action and of their right to object to or exclude themselves from (as applicable) the proposed Settlement; and (iii) met all applicable requirements of applicable law;

(f) Find that United has served a notice of proposed settlement, which complies with the requirements of the Class Action Fairness Act, 28 U.S.C. § 1715, on the appropriate State official in all states and territories, and the appropriate federal official, in the United States;

(g) Find that Class Counsel and Plaintiffs adequately represented the Settlement Class for purposes of entering into and implementing the Settlement and the Settlement Agreement;

(h) Adjudge that Plaintiffs and the Settlement Class Members have conclusively compromised, settled, dismissed and released any and all Released Claims against United and the Released Parties;

(i) Approve payment of the attorneys' fees and litigation costs in a manner consistent with paragraph 15;

(j) Approve the Opt-Out List and determine that the Opt-Out List is a complete list of all Persons who have timely requested exclusion from the Settlement Class;

(k) Provide that the Court retains continuing jurisdiction (as described in paragraphs 59-61, below) over the Settlement Class and United to implement, administer, consummate, and enforce this Settlement Agreement, the Judgment, and the Final Approval Order;

(l) Determine that the Settlement and Settlement Agreement—and any proceedings taken pursuant thereto—are not and, in any event, should not be offered or received as evidence, a presumption, a concession, an acknowledgment, or an admission of: (i) any liability, (ii) any alleged misrepresentation or omission in any statement or written document approved or made by United or any Released Parties, or (iii) the suitability of these or similar claims to class treatment in active litigation and trial; provided, however, that reference may be made to this Settlement and Settlement Agreement in such proceedings as may be necessary to effectuate the Settlement Agreement;

(m) Permanently enjoin all Settlement Class Members from: (i) filing, commencing, prosecuting, intervening in or participating as a plaintiff, claimant, or class member in any other lawsuit or administrative, regulatory, arbitration or other proceeding against the Released Parties in any jurisdiction based on, relating to or arising out of the claims and causes of action or the facts and circumstances giving rise to this Action or the Released Claims; (ii) appealing any final judgment entered in any of the *Lerner* Action; (iii) filing, commencing, or prosecuting a lawsuit or administrative, regulatory, arbitration or other proceeding against the Released Parties as a class action on behalf of any Settlement Class Members who have not timely excluded themselves (including by seeking to amend a pending Complaint to include

class allegations or seeking class certification in a pending action), based on, relating to or arising out of the claims and causes of action or the facts and circumstances giving rise to this Action or the Released Claims; and (iv) attempting to effect opt-outs of individuals or a class of individuals in any lawsuit or administrative, regulatory, arbitration or other proceeding against the Released Parties based on, relating to or arising out of the claims and causes of action or the facts and circumstances giving rise to this Action or the Released Claims; provided that this Settlement Agreement is not intended to prevent Settlement Class Members from participating in any action or investigation initiated by a state or federal agency; and

(n) Determine under Federal Rule of Civil Procedure 54(b) that there is no just reason for delay, and direct that the judgment of dismissal with prejudice as to United be final and appealable.

49. Following entry of the Final Approval Order, and once the time for appeal (or to seek permission to appeal) from the Final Approval Order has expired or, if appealed, the Final Approval Order has been affirmed by the court of last resort to which such appeal was taken, and such affirmance is no longer subject to further appeal or review:

(a) Class Counsel shall fully comply with the terms of the Protective Order entered on April 21, 2008 in the Action, and shall return to the Released Parties or destroy all documents, materials, and deposition transcripts produced by the Released Parties, and all copies of the same;

(b) Class Counsel shall consent to entry of judgment for United in the *Lerner* Action consistent with the Court's August 14, 2013 ruling on summary judgment, and Plaintiffs will not appeal any judgment(s) and, further, will agree that (i) all named Plaintiffs and all absent class members of the (b)(2) injunctive relief class certified by the Court in the *Lerner* Action had

a full and fair opportunity to litigate all of the legal and factual issues and causes of action raised in the three cases, and (ii) the Court's August 14, 2013 ruling on summary judgment sets forth the Court's resolution of the legal and factual issues and causes of action asserted in those three cases as to United;

(c) Class Counsel shall not contest that all named Plaintiffs and the (b)(3) and (c)(4) liability classes certified by the Court in the *Lerner* Action had a full and fair opportunity to litigate all of the legal and factual issues and causes of action raised in the *Lerner* Action, and that the Court's August 14, 2013 order on Defendants' summary judgment motions sets forth the Court's resolution of the legal and factual issues and causes of action asserted in that case.

REPRESENTATIONS AND WARRANTIES

50. Plaintiffs and Class Counsel represent and warrant that there are no pending personal injury claims in the Action or in the *Lerner* Action, and that they are unaware of any such claims. Plaintiffs and Class Counsel further represent that they are unaware of any insurance, hospital, medical, Medicaid, Medicare, ERISA, Social Security, SSI, attorney liens, or any other type of lien of any kind whatsoever for any claims alleged in the Action or in the *Lerner* Action, and that no parties other than those named in this Settlement Agreement have any interest in or right to the settlement proceeds being paid.

TERMINATION

51. Plaintiffs and United each may terminate this Settlement Agreement (thereafter having absolutely no legal effect) by providing written notice to counsel for the other Parties and the Court within twenty (20) business Days after any of the following occurrences:

(a) The Court (i) does not enter a Preliminary Approval Order containing the provisions set forth in paragraph 35 of this Settlement Agreement, or, at any point, (ii) subsequently seeks to significantly modify any of its terms;

(b) The Court (i) does not enter a Final Approval Order and Judgment containing the provisions in paragraph 48 of this Settlement Agreement, or (ii) vacates a Judgment and Final Approval Order containing the provisions in paragraph 48;

(c) The Court (i) does not provisionally or finally certify for settlement purposes the Settlement Class as to all Released Claims, as defined in paragraphs 2-3 above, or (ii) significantly limits or changes the composition of that Class;

(d) Any terms of this Settlement Agreement, the Preliminary Approval Order, the Judgment, or the Final Approval Order are not substantially affirmed, or are significantly modified, on any appeal or otherwise. A modification or reversal on appeal of any amount of attorneys' fees and expenses awarded by the Court from the Settlement Fund, or of an order approving a plan of distribution from the Settlement Fund, shall not be deemed a basis for termination of this Settlement Agreement; or

(e) The Court issues an order affecting in whole or in part (i) the settlement class definitions in paragraphs 2-3 above, (ii) the settlement consideration in paragraphs 6-18 above, (iii) the release of claims in paragraphs 27-31 above, or (iv) any other material terms or conditions of this Settlement Agreement.

52. This Settlement Agreement shall be voidable (and thereafter have absolutely no legal effect) at United's sole discretion, by providing written notice to Class Counsel, in the event that any of the following conditions occur for any reason:

(a) Final judgment is not entered (or is vacated) in the *Lerner* Action with respect to the Court's August 14, 2013 Summary Judgment order in favor of United, or any court subsequently seeks to significantly modify any of the terms of such judgments;

(b) An appeal is taken by any Person from any of the final judgments as to any party entered in the *Lerner* Action, provided, however, that once the Settlement Agreement becomes final, and all appeals from the order approving the Settlement Agreement are exhausted, United shall waive the right to invoke this provision unless the Person seeking to appeal is or was a named plaintiff in the *Lerner* Action or similar person with legal standing to appeal such final judgment.

(c) The Court issues: (i) any order that purports to impose additional financial obligations or other material obligations on United, or (ii) any order on review or appeal that would have the foregoing effect;

(d) A Class Representative: (i) submits an opposition to the settlement notice proposed by United for the Settlement Class, or (ii) supports an objection to the settlement notice filed by any objector;

(e) The Court for any reason rejects inclusion in the Class Notice of statements consistent with, or having the same legal effect as, the statements set forth in paragraph 36.

53. If United elects to terminate the Settlement Agreement for any reason pursuant to paragraph 52, United will provide written notice to Class Counsel five (5) Days notice prior to termination. Plaintiffs covenant and agree that if, at any time after the Final Approval Order is granted, United moves to terminate the Settlement Agreement for any of the reasons set forth in

paragraph 52—and if any such reason still exists after the five (5) Day notice period required by this paragraph—Plaintiffs shall not oppose such a request of relief.

54. In the event that the number of members of the Settlement Class who timely and validly request exclusion from such classes exceeds one percent (1%) of the total number of members of the Settlement Class, United may terminate this Settlement Agreement by providing written notice to Class Counsel and the Court within ten (10) business Days after Class Counsel provides to counsel for United the list of requests for exclusion described in paragraph 43 of this Settlement Agreement. In order to establish the 1% threshold contemplated by this paragraph, the size of the Settlement Class will be determined using the total estimated number of adult drivers (population 18 years and over) in California, as reported in the most recent data available from the U.S. Census Bureau at the time Class Counsel serves the above-mentioned list of requests for exclusion.

55. In the event this Settlement Agreement is not finally approved or is otherwise terminated, United reserves the right to challenge the Court's April 9, 2013 class certification order in any subsequent proceedings, including on appeal.

56. In the event of termination of this Settlement Agreement:

(a) This Settlement Agreement shall be null and void, and of no force and effect, except as provided in subparagraphs (b)-(f) below.

(b) United shall not be required to make any further payments to the Settlement Fund or the Escrow Account, and all sums that United paid that are in the Escrow Account plus any accrued interest less taxes and administrative costs with respect to those sums, shall be immediately paid to an account designated by United within ten (10) Days following termination.

(c) Any certification of the Settlement Class by the Court, without prejudice to any Party's position on the issue of class certification and the amenability of the claims asserted in this Action to class treatment. United will retain all defenses to class certification; its non-opposition to the Settlement Class is for settlement purposes only, shall not be used as evidence, and shall not be admissible as such, in support of class certification in the Action, any of the *Lerner* Action, or any other civil action or proceeding.

(d) The Parties shall revert to their positions prior to the execution of this Settlement Agreement, including with respect to the appropriateness of class certification, as if the Settlement Agreement had not been reached or executed.

(e) Plaintiffs and United will propose a reasonable schedule by which United would rejoin the Action and the *Lerner* Action.

(f) The terms and conditions of this Settlement Agreement, the facts and circumstances surrounding this settlement, any publicly disseminated information regarding the Settlement Agreement, and any orders or motion filings or objections concerning the Settlement Agreement (including without limitation the Court's Preliminary Approval Order, the Final Approval Order, the Judgment, and all motion papers concerning those Orders), may not thereafter be used as evidence, and shall not be admissible as such, in the Action, any of the Underlying Actions, or any other civil action or proceeding.

COMMUNICATIONS

57. Plaintiffs, United, and their respective counsel, including Class Counsel, shall not engage in any conduct or make any statements, directly or indirectly, to encourage, promote, or solicit members of the Settlement Class or their counsel to request exclusion from the Settlement Class or to object to this Settlement Agreement, or to facilitate, induce, or cause the non-

fulfillment of a condition or the occurrence of an event giving rise to a right to terminate this Settlement Agreement.

58. Nothing in this Settlement Agreement constitutes United's endorsement or encouragement of ATC, or impairs any Party's right to advocate its respective position related to ATC.

CONTINUING JURISDICTION

59. The Court will retain continuing jurisdiction over Plaintiffs, the Settlement Class, and United to implement, administer, consummate, and enforce the Settlement Agreement, the Judgment, the Final Approval Order, and those rights provided for in this Settlement Agreement, including (without limitation) those rights provided for in this Settlement Agreement that may be invoked later than the date of Final Approval Order, as described in paragraphs 51-53.

60. Plaintiffs, the Settlement Class, and United hereby irrevocably submit to the exclusive jurisdiction of the United States District Court for the District of Kansas for any suit, action, proceeding, or dispute arising out of or relating to this Settlement Agreement or the Judgment and the Final Approval Order, or to the applicability of this Settlement Agreement or the Judgment and Final Approval Order, which cannot be resolved by negotiation and agreement by Plaintiffs and United—provided, however, that in the event that judgment is entered for United in the *Lerner* Action in the transferor court, nothing in this Agreement shall strip that court of jurisdiction over all matters touching upon said judgments. Without limiting the generality of the foregoing, it is hereby agreed that any dispute, including but not limited to any suit, action, or proceeding by a Plaintiff or member of the Settlement Class, in which the provisions of this Settlement Agreement or the Judgment and the Final Approval Order are asserted as a defense in whole or in part to any claim or cause of action, or otherwise raised as an

objection, constitutes a suit, action, or proceeding arising out of or relating to this Settlement Agreement or the Judgment and the Final Approval Order.

61. In the event that the provisions of this Settlement Agreement or the Judgment and the Final Approval Order are asserted by United as a defense in whole or in part to any claim or cause of action or otherwise raised as an objection in any other suit, action, or proceeding by a Plaintiff or member of the Settlement Class, it is hereby agreed that United may seek, and that Plaintiffs and Settlement Class members will not oppose, a stay of that suit, action, or proceeding until the Court has entered an order or judgment determining any issues relating to the defense or objections based on such provisions.

ADDITIONAL TERMS AND CONDITIONS

62. Plaintiffs and United, their respective counsel, and Class Counsel shall execute all documents and perform any additional acts reasonably necessary and proper to effectuate the terms of this Settlement Agreement, and to obtain the benefit of this Settlement Agreement for Plaintiffs, the Settlement Class, and United.

63. United specifically denies any and all liability in the Action and the *Lerner* Action. By entering into this Settlement, it is expressly understood and agreed that United is not admitting any liability or wrongdoing whatsoever to Plaintiffs, any member of the Settlement Class, or any other Person, and is not admitting the truth of any allegations or circumstances, nor is United waiving any defense or affirmative defense.

64. This Settlement Agreement, and all negotiations, documents, and discussions associated with it, shall not be construed as or deemed to be evidence of (a) any admission of any liability or wrongdoing on the part of United or any of the Released Parties, (b) the truth or merit of any allegations or claims in the Action or the *Lerner* Action, (c) any admission on the part of

Plaintiffs and the Settlement Class that their potential claims lack merit, or (d) the propriety of the certification of a damages or liability class in the Action or the *Lerner* Action. Furthermore, this Settlement Agreement shall not be offered or accepted as evidence of such in any litigation, arbitration, or other proceeding between or among Plaintiffs or members of the Settlement Class and United or any Released Party, and shall have no precedential value; provided, however, that nothing contained herein shall preclude use of this Settlement Agreement in any proceeding to enforce this Settlement Agreement.

65. This Settlement Agreement constitutes the entire, complete, and integrated agreement between and among Plaintiffs, on behalf of themselves and the Settlement Class, and United with respect to the settlement of the Action and the *Lerner* Action, and is not subject to any condition not provided for in this Settlement Agreement. All of the appendices to this Settlement Agreement are material and integral parts of it and are incorporated by reference as if fully set forth herein. This Settlement Agreement supersedes all prior and contemporaneous negotiations and agreements and may not be modified or amended except by a writing signed by Plaintiffs and United or their respective counsel.

66. This Settlement Agreement shall not be construed more strictly against any Party to it merely because it may have been prepared by counsel for one of them, it being recognized that, because of the arm's-length negotiations resulting in this Settlement Agreement, all Parties to this Settlement Agreement have contributed substantially and materially to the preparation of it. All headings used in this Settlement Agreement are for reference and convenience only and shall not affect the meaning or interpretation of this Settlement Agreement.

67. The waiver by Plaintiffs, the Settlement Class, or United of any breach of this Settlement Agreement shall not be deemed or construed as a waiver of any other breach of this Settlement Agreement, whether prior, subsequent, or contemporaneous.

68. This Settlement Agreement shall be construed, enforced, and administered in accordance with the substantive laws of the State of Kansas, without reference to its conflict of laws principles.

69. This Settlement Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of Plaintiffs and the Released Parties. Without limiting the generality of the foregoing, each and every covenant and agreement made herein by Plaintiffs shall be binding upon all members of the Settlement Class and the Releasing Parties.

70. This Settlement Agreement does not settle or compromise any claim by Plaintiffs or any member of the Settlement Class asserted in the Action against any defendant other than the Released Parties. All rights against such other defendants are specifically reserved by Plaintiffs and the Settlement Class.

71. Any notice or materials to be provided to Plaintiffs or the Settlement Class pursuant to this Settlement Agreement shall be sent by e-mail and overnight delivery to:

Robert A. Horn
Horn Aylward & Bandy, LLC
2600 Grand Blvd., Suite 1100
Kansas City, MO 64108
Telephone: (816) 421-0700
Facsimile: (816) 421-0899
rhorn@hab-law.com

or such other Persons or addresses as Class Counsel may designate by giving notice to the other Parties.

72. Any notice or materials to be provided to United pursuant to this Settlement Agreement shall be sent by e-mail and overnight delivery to:

Mark B. Gilmartin
Law Offices of Mark B. Gilmartin
1534 17th Street, Suite 103
Santa Monica, CA 90404
Telephone: (310) 310-2644
Facsimile: (310) 496-1402
Email: mbgilmartin@earthlink.net

or such other Persons or addresses as United may designate by giving notice to the other Parties.

73. In entering into and executing this Settlement Agreement, Plaintiffs and United warrant that they are acting upon their respective independent judgments and upon the advice of their respective counsel, and not in reliance upon any warranty or representation, express or implied, of any nature or kind by any other Person, other than the warranties and representations expressly made in this Settlement Agreement.

74. Each signatory to this Settlement Agreement represents and warrants that he or she is fully authorized to enter into the terms and conditions of, and to execute and be bound by, this Settlement Agreement.

75. If a dispute arises between the Parties to this Settlement Agreement, and the Parties cannot resolve the dispute, it will be referred to the Court in accordance with its continuing jurisdiction, as described in paragraphs 59-61.

76. The provisions of this Settlement Agreement are severable. If any provision is held to be invalid or unenforceable, it shall not affect the validity or enforceability of any other provision.

77. This Settlement Agreement may be executed in counterparts, each of which shall be deemed to be an original, and all of which together shall constitute one and the same instrument. A signature by facsimile or in PDF format will constitute sufficient execution of this Settlement Agreement.

IN WITNESS WHEREOF, the signatories have read and understood this Settlement Agreement, have executed it, and have agreed to be bound by its terms.

FOR ALL PLAINTIFFS AND ON BEHALF OF THE SETTLEMENT CLASS

Dated: March 14, 2014

By: _____

Robert A. Horn
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Dated: March ____, 2014

By: _____

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Dated: March ____, 2014

By: _____

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Dated: March ____, 2014

By: _____

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Class Counsel

DEFENDANT UNITED EL SEGUNDO, INC.

Dated: March 14, 2014

By: _____

Jeffrey G. Appel, Secretary/Treasurer

Dated March ___, 2014

By: _____

Phyllis Lerner, Class Representative