

/EMPLOYMENT CASE/

CONFIDENTIAL SETTLEMENT, SEPARATION, AND RELEASE AGREEMENT

This Confidential Settlement, Separation, and Release Agreement ("Settlement Agreement") is entered into as of _____, _____, (the "Effective Date") by and between Jane Employee ("Plaintiff") and XYZ Corp. ("XYZ").

RECITALS

A. WHEREAS, Plaintiff filed a lawsuit against XYZ on _____, _____ which is currently pending in the _____ Court, is entitled *Employee v. XYZ Corp.*, and bears Case No. _____ ("Lawsuit"); and,

B. WHEREAS, Plaintiff and XYZ (collectively the "Parties") negotiated a settlement effective _____; and,

C. WHEREAS, the Parties desire to resolve the claims asserted in the Lawsuit on the terms set forth in this Confidential Settlement and Release Agreement ("Settlement Agreement"); and,

D. WHEREAS, the Parties have agreed that it is in their mutual interest to terminate their employment relationship such that Plaintiff shall no longer be employed by XYZ or any of its subsidiaries, related entities, or successors, as more fully set forth hereinafter;

NOW THEREFORE, in consideration of the mutual promises made herein, the Parties hereby agree as follows:

AGREEMENT

1. **XYZ's Obligations.** XYZ shall pay to the total sum of _____ (\$_____) ("Settlement Payment") within three (3) weeks of the receipt by counsel for XYZ of the executed Settlement Agreement and W-9 forms from Plaintiff and her attorneys. XYZ shall issue checks for the Settlement Payment as follows: 1) one check made out to "Jane Employee " in the amount of _____ (\$_____) less applicable withholdings, for lost wages; 2) a second check made out to "Jane Employee" in the amount of _____ (\$_____) reported via 1099 in order to compensate plaintiff for her claims of non-economic damages, including emotional distress; and 3) a third check made out to "Plaintiff's Law Firm" in the amount of _____ (\$_____) reported via 1099 in order to compensate plaintiff's counsel for a portion of its attorney's fees. All three checks shall be delivered to the law firm of "Plaintiff's Law Firm."

2. **Dismissal by Plaintiff.** Plaintiff shall, within five days of execution of this Settlement Agreement, execute and deliver to counsel for XYZ a completed Request for Dismissal with Prejudice of the Lawsuit. Upon XYZ's mailing of the Settlement Payment to

Plaintiff's counsel, counsel for XYZ shall file the executed Request for Dismissal With Prejudice, and shall serve counsel for Plaintiff with a file-stamped copy of the same.

3. **Permanent Separation of Employment.** Effective as of the Effective Date of this Settlement Agreement, Plaintiff hereby voluntarily retires from employment with XYZ, and agrees not to seek reemployment with or for XYZ, or any of its subsidiaries or successors. None of these entities have any obligation to reemploy Plaintiff, or to utilize her in a contract capacity, and no failure to reemploy Plaintiff or allow her to work in a contract capacity will give rise to any claim against any of them. Plaintiff shall make no claims for unemployment arising out of her voluntary retirement from XYZ.

4. **Release.** Plaintiff, on behalf of herself and her respective past, present and future representatives, attorneys, agents, heirs, successors and assigns hereby releases XYZ, Individual Defendants If Any, plaintiff's supervisors, managers, and co-workers, of any kind, and XYZ's past, present and future employees, directors, officers, representatives, affiliates, attorneys, agents, benefit plan administrators or representatives, heirs, successors and assigns and each of them, to and from any and all claims, demands, causes of action, obligations, damages, and liabilities, whether or not now known, suspected, or claimed, that Plaintiff may possess against XYZ, Individual Defendants If Any, plaintiff's supervisors, managers, and co-workers, of any kind, arising from any omissions, acts, or facts that have occurred up, until, and including the Effective Date of this Settlement Agreement, including without limitation: (a) any and all claims of any kind relating to or arising from Plaintiff's employment relationship with XYZ; (b) any and all claims for wrongful termination of employment, termination in violation of public policy, discrimination, sexual or other forms of harassment, sexual discrimination, racial or other forms of discrimination, retaliation of any kind, breach of contract, either express or implied, breach of a covenant of good faith and fair dealing, either express or implied, promissory estoppel, negligent or intentional infliction of emotional distress, negligent or intentional misrepresentation, negligent or intentional interference with contract or prospective economic advantage, unfair business practices, defamation, libel, slander, negligence, personal injury, assault, battery, invasion of privacy, false imprisonment, or conversion; (c) any and all claims for violation of any federal, state, or municipal statute, including without limitation Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1991, the Americans with Disabilities Act of 1990, the Age Discrimination in Employment Act, the Older Workers Benefits Protection Act, the Equal Pay Act, the Fair Labor Standards Act, the Employee Retirement Income Security Act of 1974 ("ERISA") (including without limitation any claims for benefits under any company benefit plan, any claim for non-compliance with any provision of ERISA or its regulations and/or any claim for breach of fiduciary), the California Fair Employment and Housing Act, the Family and Medical Leave Act, California Workers' Compensation statutes, and the California Labor Code; (d) any and all claims for violation of the federal or any state constitution; (e) any and all claims arising out of any other laws and regulations relating to employment or employment discrimination; and (f) any and all claims for attorneys' fees and costs. Plaintiff agrees that the release set forth in this Paragraph shall be and shall remain in effect in all respects as a complete and general release as to the matters released. This release does not extend to any obligations incurred under this Settlement Agreement.

5. **Release of Unknown Claims.** Plaintiff represents that she is not aware of any claims against XYZ, Individual Defendants If Any, or plaintiff's supervisors, managers, and co-

workers, of any kind, except for those claims that are released by this Settlement Agreement. Moreover, Plaintiff agrees and represents that it is within her contemplation that she may have claims against XYZ, Individual Defendants If Any, plaintiff's supervisors, managers, and co-workers, of any kind, which, at the time of her execution of this Settlement Agreement, she has no knowledge or suspicion, but that this Settlement Agreement extends to claims in any way based upon, connected with, or related to the matters described in Paragraph 3 above, whether or not known, claimed, or suspected by Plaintiff. Plaintiff acknowledges that she is familiar with the provisions of California Civil Code Section 1542, which provides as follows:

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.

Plaintiff, being aware of said code section, and any other similar state or federal statutes, agrees to expressly waive any rights she may have thereunder, as well as under any other statute or common law principles of similar effect.

6. **Indemnification.** Plaintiff shall protect and indemnify XYZ against any and all liens, subrogation claims, and other rights that may be asserted by any person against the Settlement Payment.

7. **Treatment of Settlement Proceeds.** XYZ makes no representations with respect to any income tax consequences which may flow from the above payment of Settlement Payment. Plaintiff is solely responsible for all tax reporting obligations and for the payment of taxes which are due as a result of their receipt of the Settlement Payment pursuant to the terms of this Agreement, including taxes which might be assessed against XYZ. Plaintiff agrees to pay all local, state and federal income taxes, penalties, interest, fines or other assessments incurred by her, if any, in connection with the payment of monies to her or her attorneys under Paragraph 1 of this Agreement.

8. **Tax Indemnification.** XYZ shall issue Plaintiff a W-2 form for that portion of the Settlement Payment constituting lost wages. XYZ shall issue Plaintiff and Plaintiff's Counsel a 1099 form for the remaining portions of the Settlement Payment. XYZ cannot issue a 1099 form (or the resulting check) until plaintiff and her counsel submit to XYZ a completed W-9 form; accordingly, Plaintiff and her counsel agree to submit a completed W-9 form as soon as practicable so that XYZ can meet the payment deadline set forth above in Paragraph 1. Plaintiff and her attorneys acknowledge that XYZ makes no representations or warranties with respect to the tax treatment of the Settlement Payment by any local, state, or federal taxing authority. Plaintiff and her attorneys agree to indemnify and hold harmless XYZ from any liability for any taxes, penalties, or interest that may be assessed by any taxing authority due to the fact that XYZ made, or failed to make, withholdings or deductions from the Settlement Payment.

9. **Confidential Settlement.** Plaintiff agrees to maintain in complete confidence the existence of this Settlement Agreement, the contents and terms of this Settlement Agreement, and the consideration for this Settlement Agreement ("Settlement Information"). Except as

required by law, Plaintiff agrees to disclose Settlement Information only to those attorneys, accountants, tribunals, and governmental entities who have a reasonable need to know of such Settlement Information, and to prevent disclosure of any Settlement Information to other third parties. Plaintiff and her attorneys agree that there will be no publicity, directly or indirectly, concerning any Settlement Information. Among other things, and without limitation, Plaintiff and her attorneys agree that they will not notify any media organizations, publishers or publications, broadcasters, civil rights groups or organizations, or any other groups or organizations of any kind whatsoever, whether directly or indirectly, personally or through friends or other individuals, concerning any Settlement Information; nor will Plaintiff or her attorneys post or distribute electronically or otherwise any Settlement Information in any manner whatsoever.

Plaintiff and her attorneys agree that the confidentiality of the Settlement Information is *of the essence*, and that XYZ would not have entered into this Settlement Agreement without the protections afforded them by this Paragraph. Plaintiff hereby agrees to be responsible for liquidated damages, as set forth below, if she breaches any of the foregoing terms or in any way divulges any of the Settlement Information to any unauthorized third party. Any such individual breach or disclosure shall not excuse Plaintiff from her obligations hereunder, nor permit her to make additional disclosures. Plaintiff warrants that she has not to date disclosed, orally or in writing, directly or indirectly, any of the Settlement Information.

10. Liquidated Damages. THE PARTIES AGREE THAT THE PRECISE AMOUNT OF DAMAGES FLOWING FROM ANY DISCLOSURE IN VIOLATION OF THE CONFIDENTIALITY PROVISION SET FORTH IN PARAGRAPH 7 ABOVE WOULD BE IMPRACTICABLE OR EXTREMELY DIFFICULT TO CALCULATE OR PROVE, AND THEREFORE PLAINTIFF AGREES THAT IF SHE BREACHES PARAGRAPH 7 ABOVE, PROXIMATELY CAUSING THE ABOVE-DESCRIBED SETTLEMENT INFORMATION TO BE RECEIVED, DIRECTLY OR INDIRECTLY, BY ANYONE IN VIOLATION OF THE ABOVE CONFIDENTIALITY PROVISION, XYZ SHALL BE ENTITLED TO RECEIVE FROM PLAINTIFF ALONE, AS LIQUIDATED DAMAGES, THE SUM OF FIVE THOUSAND DOLLARS (\$5,000) PER BREACH.

11. Neutral Reference. In the event XYZ receives a request concerning Plaintiff's employment with XYZ, XYZ will follow its standard policy as set out in its Employee Policy Manual. Under this policy, XYZ will verify only Plaintiff's employment with XYZ, job title at termination, and hire and termination dates, unless required by law to provide additional information or unless Plaintiff authorizes XYZ in writing to provide additional information.

12. Non-Disparagement. Plaintiff agrees to refrain from any defamation, libel, or slander of XYZ, or tortious interference with the contracts and relationships of XYZ. Plaintiff further agrees that she will not act in any manner or publicize statements that might damage the business or reputation of XYZ or its employees. Plaintiff further agrees not to write letters to, post, email, or otherwise communicate with, any media organizations, publishers or publications, broadcasters, civil rights groups or organizations, Internet or chat groups, blogs, or any other groups or organizations of any kind whatsoever, including those on the Internet, whether directly or indirectly, personally or through friends or other individuals, describing or discussing any issue or fact or experience that was, or could have been, raised or asserted in the Lawsuit.

13. **No Admission of Liability.** Plaintiff understands and acknowledges that this Settlement Agreement constitutes a compromise and settlement of disputed claims. No action taken by XYZ, either previously or in connection with this Settlement Agreement, shall be deemed or construed as (a) an admission of the truth or falsity of any claims heretofore made, or (b) an acknowledgment or admission by XYZ of any fault or liability whatsoever to Plaintiff or to any third party.

14. **Representations and Warranties.** The Parties represent and warrant that (a) they have the full power and authority to enter into this Settlement Agreement, and (b) they have not sold, assigned, transferred, conveyed, hypothecated, encumbered, or otherwise disposed of an interest in any of the claims or demands relating to any subject matter covered by this Settlement Agreement.

15. **Attorneys' Fees.** All Parties shall bear their own costs and attorneys' fees incurred in connection with the Lawsuit or the resolution of the Lawsuit except as provided in this Settlement Agreement. If either Plaintiff or XYZ brings an action against the other party hereto or otherwise seeks to enforce this Settlement Agreement by reason of the breach of any covenant, warranty, representation, or condition of this Settlement Agreement, or otherwise arising out of this Settlement Agreement, whether for declaratory or other relief, the prevailing party in such suit shall be entitled to its costs of suit and attorneys' fees.

16. **Counterparts.** This Settlement Agreement may be executed in several partially executed counterparts, each of which shall be deemed an original and shall bind the signatory, but all of which together shall constitute but one and the same instrument. A faxed or electronic copy of the signed Agreement shall be deemed an original or the equivalent thereof and shall be as enforceable as the original.

17. **Severability.** In the event that any provision hereof becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable, or void, this Settlement Agreement shall continue in full force and effect without said provision.

18. **Entire Agreement.** This Settlement Agreement is the entire agreement and understanding between the Parties. The Parties further agree that this Settlement Agreement may not be altered except in a writing duly executed by the Parties.

19. **Applicable Law.** Construction, performance, and enforcement of this Agreement shall be governed by the laws of the State of California, both substantive and procedural. All parties to this Agreement accede to the jurisdiction of the courts of the State of California for any actions to enforce, interpret or for breach of, any term of this Agreement. The exclusive venue for any dispute arising out of this Agreement shall be a court of competent jurisdiction in Los Angeles County, California.

20. **Ambiguity.** Each of the parties hereto has been represented by counsel in the negotiating and drafting of this Agreement. Accordingly, the rules of construction of contracts relating to the resolution of ambiguities against the drafting party shall be inapplicable to this Agreement.

21. **Admissibility/Retention of Court Jurisdiction.** The Parties intend for this Settlement Agreement to be enforceable, binding, and admissible in Court. Pursuant to California Code of Civil Procedure §664.6, the Parties agree that the Court shall retain jurisdiction over the Parties to enforce the provisions of this settlement until there has been full performance. The Parties and their attorneys each acknowledge that their respective obligations herein may be specifically enforced by the Court on noticed motion.

22. **Voluntary Execution of Settlement Agreement.** The Parties enter into this Settlement Agreement voluntarily and without any duress or undue influence on the part or behalf of the Parties hereto, with the full intent of releasing all claims. The Parties acknowledge that:

- (a) They have read this Settlement Agreement;
- (b) They have been represented in the preparation, negotiation, and execution of this Settlement Agreement by legal counsel of their own choice;
- (c) They know and understand the terms and consequences of this Settlement Agreement and of the releases it contains; and
- (d) They are fully aware of the legal and binding effect of this Agreement.

23. **OWBPA Notice.** The Parties acknowledge that, in accordance with the provisions of the Older Workers Benefit Protection Act (OWBPA), Plaintiff has twenty-one (21) days to consider the terms of this Agreement before signing. Plaintiff has also been notified that she has up to seven (7) days to revoke this Agreement after she has signed it. Plaintiff agrees that any modifications, material or otherwise, made to this Agreement do not restart or affect in any manner the original twenty-one day consideration period. If Plaintiff exercises this right of revocation, she will be ineligible for the settlement sum and other benefits described herein. To be effective, the revocation must be in writing and must be mailed, certified mail, return receipt requested to XYZ's counsel of record. *By signing this Agreement below, Plaintiff is hereby expressly waiving the twenty-one (21) day waiting period.*

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

DATED: _____

By: _____
Jane Employee

DATED: _____

By: _____
Name:
Title:
XYZ Corp.

APPROVED AS TO FORM:

DATED: _____

EMPLOYEE'S LAW FIRM

By: _____

Name

Attorneys for Plaintiff Jane Employee

DATED: _____

DEFENSE LAW FIRM

By: _____

Name

Attorneys for Defendant
XYZ CORP.