

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

ELLEN G. LEVINE, RUTH  
FALLENBAUM, on behalf of themselves and  
all others similarly situated,

Plaintiffs,

v.

AMERICAN PSYCHOLOGICAL  
ASSOCIATION, INC. and AMERICAN  
PSYCHOLOGICAL ASSOCIATION  
PRACTICE ORGANIZATION,

Defendants, jointly and severally.

Lead Civil Action No. 1:10-CV-01780  
(D.D.C.)

ERIC S. ENGUM, on behalf of himself and  
all others similarly situated,

Plaintiffs,

v.

AMERICAN PSYCHOLOGICAL  
ASSOCIATION, INC. and AMERICAN  
PSYCHOLOGICAL ASSOCIATION  
PRACTICE ORGANIZATION,

Defendants, jointly and severally.

Civil Action No. 1:10-CV-01898  
(D.D.C.) (consolidated with 1:10-CV-  
01780 (D.D.C.))

IRA GROSSMAN, on behalf of himself and  
all others similarly situated,

Plaintiff,

v.

AMERICAN PSYCHOLOGICAL  
ASSOCIATION, INC. and AMERICAN  
PSYCHOLOGICAL ASSOCIATION  
PRACTICE ORGANIZATION,

Defendants, jointly and severally.

Civil Action No. 13-cv-02034-JDB  
(D.D.C.) (transferred from Civil Action  
No. 13-cv-0736L-JMA (S.D. Ca.))

## **SETTLEMENT AGREEMENT AND RELEASE**

This Agreement is made this 21st day of January, 2015 by and between Plaintiffs and Defendants, as defined below.

### **I. DEFINITIONS**

These definitions apply to this Agreement.

- A. “**Agreement**” means this Settlement Agreement and Release.
- B. “**APAPO Practice Assessment**” means fees designated as “Practice Assessment” or “Special Assessment” and paid by members of the American Psychological Association (“APA”) to the American Psychological Association Practice Organization (“APAPO”).
- C. “**Claim**” means a Settlement Class Member’s request, through submission of an electronic or paper Claim Form, for a Settlement Payment.
- D. “**Claim Form**” means the tear-off form included with the mailed notice; the printable claim form available on the Settlement Website, and/or the electronic process of submitting a Claim on the Settlement Website submitted to seek a Settlement Payment.
- E. “**Claim Deadline**” means no later than 60 days after the Final Approval Hearing, or such other date as the Court sets in the Preliminary Approval Order. The Claim Form shall state the Claim Deadline as a month, day, and year.
- F. “**Claimant**” means any Settlement Class Member who submits a timely and valid Claim Form.
- G. “**Court**” means the United States District Court for the District of Columbia.
- H. “**Days,**” whether or not capitalized, means calendar days unless otherwise expressly indicated. If a deadline falls on a weekend or Court holiday, the deadline will be extended to the next Court business day.

I. **“Defendants”** means American Psychological Association (“APA”) and American Psychological Association Practice Organization (“APAPO”).

J. **“Effective Date”** means the day after the first day on which each of the following two conditions are met:

- (i) The Court has entered, without material change, the Judgment; and
- (ii) Either the time for filing an appeal, collateral attack, writ, petition, motion to modify or reconsider, or request for review or extraordinary relief has expired and no appeal, collateral attack, writ, petition, motion to modify or reconsider, or request for review or extraordinary relief has been filed; or one or more appeals, collateral attacks, writs, petitions, motions to modify or reconsider, or requests for review or extraordinary relief have been filed, and (a) all such appeals, collateral attacks, writs, petitions, motions to modify or reconsider, or requests for review or extraordinary relief have been dismissed or denied with prejudice; (b) the time for filing any further appeals, collateral attacks, writs, petitions, motions to modify or reconsider, or requests for review or extraordinary relief has expired; and (c) there is no further right to file any further appeals, collateral attacks, writs, petitions, motions to modify or reconsider, or requests for review or extraordinary relief.

K. **“Escrow Account”** means the interest bearing account to be established by the Settlement Administrator pursuant to the Escrow Agreement attached hereto as Exhibit A and whose signatories will include Lead Settlement Class Counsel, counsel for Defendants, and the Settlement Administrator.

L. “**Escrow Charges**” means any direct costs, including attorneys’ fees incurred by any of the Defendants, in connection with placing the Settlement Funds in escrow as provided for in Paragraph 25.

M. “**Final Approval Hearing**” means the hearing at which the Court will conduct an inquiry into the fairness of the Settlement, determine whether it was made in good faith, determine whether to approve the Settlement and Settlement Class Counsel’s application for attorneys’ fees, costs and expenses and for Settlement Class Representative Service Awards, to determine whether to enter the Judgment, and such other matters as are appropriate.

N. “**Judgment**” means the Court’s order approving the Settlement and dismissing the Litigation with prejudice substantially in the form of a proposed judgment agreed upon by the Parties that is submitted to the Court with the Motion for Final Approval.

O. “**Lead Settlement Class Counsel**” shall mean those attorneys appointed Lead Settlement Class Counsel by order of the Court, who are proposed to be Tycko & Zavareei LLP and Wexler Wallace LLP.

P. “**Litigation**” means *In re APA Assessment Fee Litigation*, Nos. 1:10-cv-01780-JDB (D.D.C.) and 1:10-cv-01898-JDB (D.D.C.), and *Grossman v. American Psychological Association, et al.*, No. 1:13-cv-02034-JDB (D.D.C.).

Q. “**Net Cash Settlement Fund**” means the Settlement Fund less the Settlement Class Representative Service Awards, awards of attorneys’ fees, costs, and expenses, Escrow Charges, and any Notice and Administration Expenses incurred by Defendants over and above Two Hundred Thousand Dollars (\$200,000).

R. “**Notice**” means the long form notice, email notice, and mailed Notice that are approved by the Court.

S. **“Notice and Administration Expenses”** means all costs, fees and expenses reasonably incurred in connection with the Notice and administration process set forth in this Agreement at Paragraphs 36-54, performing tax-related services for the Escrow Account, and the notification to appropriate federal and state officials required by 28 U.S.C. § 1715.

T. **“Notice Date”** means the first date on which email notice is disseminated.

U. **“Objection Deadline”** means 90 days after the Preliminary Approval Date, or such other date as the Court establishes in the Preliminary Approval Order. The Notice will state the Objection Deadline as a month, day, and year.

V. **“Opt Out Deadline”** means 90 days after the Preliminary Approval Date, or such other date as the Court establishes in the Preliminary Approval Order. The Notice shall state the Opt Out Deadline as a month, day, and year.

W. **“Participating Firms”** means Lead Settlement Class Counsel and Settlement Class Counsel.

X. **“Parties”** means Plaintiffs and Defendants.

Y. **“Plaintiffs”** means Ellen G. Levine, Ruth Fallenbaum, Eric S. Engum, and Ira Grossman.

Z. **“Preliminary Approval Date”** means the date of entry of the Preliminary Approval Order.

AA. **“Preliminary Approval Order”** means the order the Parties expect to be entered by the Court granting preliminary approval of the Settlement.

BB. **“Related Parties”** means Defendants’ respective predecessors, successors, assigns, partners, privies, shareholders, owners, officers, directors, bank partners, managers, administrators, employees, agents, attorneys, insurers, affiliates, parents, subsidiaries (including

but not limited to banking subsidiaries), related companies, and any other representatives or persons acting on their behalf.

CC. “**Released Claims**” means the claims released by the Class Members in Paragraphs 64-65 of this Agreement, except for the claims of those Settlement Class Members who submitted a timely and valid request for exclusion.

DD. “**Released Parties**” means Defendants and all Related Parties.

EE. “**Settlement**” means the settlement that the Parties are entering into by executing this Agreement, which is subject to preliminary and final approval by the Court as well as all other terms and conditions set forth herein.

FF. “**Settlement Administrator**” means Epiq Class Action & Claims Solutions, Inc., which has been retained to assist in processing, administering and distributing, among other things, the Notice and the Net Cash Settlement Fund. The Settlement Administrator will also perform all tax-related services for the Escrow Account as provided in this Agreement.

GG. “**Settlement Class**” means all persons in the United States who are current or former members of APA and paid the APAPO Practice Assessment for APA dues years 2001 through the Preliminary Approval Date. Excluded from this class are Defendants, their subsidiaries, affiliates, parents, any entity in which Defendants have a controlling interest, governmental entities, and all judges assigned to hear any aspect of this case, as well as their immediate families. Also excluded is any person who, during the Class Period, released Defendants from liability concerning the claims in the Litigation.

HH. “**Settlement Class Counsel**” shall mean those attorneys appointed Settlement Class Counsel by order of the Court, who are proposed to be:

TYCKO & ZAVAREEI LLP  
Hassan A. Zavareei  
Lorenzo B. Cellini  
Anna C. Haac  
Andrew J. Silver  
2000 L Street, N.W., Suite 808  
Washington, D.C. 20036  
Telephone: (202) 973-0900

WEXLER WALLACE LLP  
Edward A. Wallace  
Amy E. Keller  
55 West Monroe, Suite 3300  
Chicago, Illinois 60603  
Telephone: (312) 346-2222

WHITFIELD BRYSON & MASON LLP  
Gary E. Mason  
1625 Massachusetts Avenue., NW,  
Suite 605  
Washington, DC 20036  
Telephone: (202) 429-2290

THE MILLER LAW FIRM  
E. Powell Miller  
Ann L. Miller  
950 W. University Dr., Ste. 300  
Rochester, MI 48307  
Telephone: (248) 841-2200

GREG COLEMAN LAW PC  
Gregory F. Coleman  
550 Main Avenue, Suite 600  
Knoxville, Tennessee 37902  
Telephone: (865) 247-0080

II. **“Settlement Class Member(s)”** means any person who is a member of the Settlement Class.

JJ. **“Settlement Class Period”** means and refers to the time period from APA dues year 2001 through the Preliminary Approval Date.

KK. “**Settlement Class Representative Service Awards**” means the amounts, as will be determined by the Court, to be awarded to the Plaintiffs in connection with their activities as class representatives.

LL. “**Settlement Fund**” means the amount of Nine Million Twenty Thousand and No/100 Dollars in U.S. Dollars (\$9,020,000.00), to be funded by Defendants, plus any accrued interest that results from deposit of these funds into the Escrow Account.

MM. “**Settlement Payment**” means the cash payment to a Claimant calculated as described in Paragraph 49.

NN. “**Settlement Website**” means the website created by the Settlement Administrator that explains the Settlement, gives answers to frequently asked questions, allows for the electronic submission of Claims, describes the Settlement Payment distribution process, and provides links to the Notice, this Agreement, the Claim Form, and other court documents, including the complaints filed in the Litigation. The website will require prior approval from Settlement Class Counsel and counsel for Defendants as to form and content before the Settlement Administrator makes it publically available.

## II. RECITALS

This Settlement Agreement is based on the following facts:

1. The complaints in this Litigation were originally filed on October 21, 2010 (the “*Levine* action”) and on November 4, 2010 (the “*Engum* action”) in the United States District Court for the District of Columbia (collectively, the “consolidated litigation”), and in March 27, 2013 in the United States District Court for the Southern District of California (the “*Grossman* action”). Each complaint alleged that the APA and APAPO had engaged in unfair and deceptive practices regarding the APAPO Practice Assessment. Each case was pleaded as a class action



and sought monetary damages, restitution, attorneys' fees, punitive damages, and injunctive relief. Defendants deny Plaintiffs' allegations, including Plaintiffs' assertions that Defendants engaged in unfair or deceptive practices or any wrongful, unlawful, or improper conduct.

2. On December 3, 2010, Plaintiffs in the *Levine* action filed a First Amended Complaint.

3. On January 18, 2011, Plaintiffs in the *Levine* and *Engum* actions moved to consolidate these cases into a single action for consolidated pre-trial proceedings. On January 31, 2011, Judge John D. Bates granted Plaintiffs' motion and consolidated the cases.

4. On January 31, 2011, Settlement Class Counsel filed a consolidated amended complaint in the consolidated litigation.

5. On March 2, 2011, Defendants filed a Motion to Dismiss in the consolidated litigation. The Parties fully briefed these motions, and a hearing was held before the Hon. John D. Bates on August 11, 2011.

6. On May 30, 2012, Judge Bates granted Defendants' Motion to Dismiss, but gave Plaintiffs an opportunity for further briefing as to whether an amended complaint would be futile. The Parties filed supplemental briefing on Plaintiffs' proposed amendments to the complaint.

7. On February 1, 2013, Judge Bates denied Plaintiffs leave to amend and dismissed the consolidated litigation in its entirety with prejudice.

8. On February 26, 2013, Plaintiffs filed a Notice of Appeal to the United States Court of Appeals for the District of Columbia Circuit ("D.C. Circuit Court"). The Parties fully briefed the appeal, with Appellants filing their opening brief on August 8, 2013. Oral Arguments

were held on April 7, 2014 before the Hon. Judith W. Rogers, Thomas B. Griffith, and Sri Srinivasan.

9. On March 27, 2013, Settlement Class Counsel filed the related *Grossman* action in the United States District Court for the Southern District of California.

10. On July 30, 2013, Defendants moved to change venue in the *Grossman* action. The Parties fully briefed this motion.

11. On December 13, 2013, the Court granted Defendants' Motion to Change Venue and transferred the case to the United States District Court for the District of Columbia. The case was stayed on January 2, 2014 pending a decision by the D.C. Circuit Court.

12. On September 5, 2014, Judge Srinivasan issued an Opinion for the D.C. Circuit Court affirming in part and reversing in part the district court's dismissal of the consolidated litigation and remanding for proceedings consistent with the D.C. Circuit Court's opinion.

13. On October 17, 2014, Plaintiffs filed a First Amended Consolidated Class Action Complaint in the consolidated litigation.

14. In September 2014, Settlement Class Counsel spoke with counsel for Defendants and requested a substantial amount of confidential financial information regarding Defendants and the total amount of APAPO Practice Assessment fees collected in connection with the APA's annual membership for the years 2001 to the present, as well as information regarding external and internal representations and communications pertaining to the portrayal of the APAPO Practice Assessment and any changes regarding the same. Plaintiffs thereafter reviewed the discovery informally produced by Defendants for purposes of settlement analysis.

15. On November 14, 2014, the Parties held a mediation session before Jonathan Marks, an experienced and well-respected independent mediator located in Bethesda, MD. The

mediation ultimately resulted in the Parties reaching an agreement in principle on certain material terms of a settlement.

16. The Parties now agree to settle the Litigation in its entirety, without any admission of liability, with respect to the Released Claims of the Settlement Class. The Parties intend for this Agreement to bind Plaintiffs, Defendants, and all Class Members who do not file a timely request to be excluded from the Settlement.

17. Defendants deny the claims in the Litigation, deny any fault, wrongdoing, unfair or deceptive practices, or liability whatsoever arising out of or relating to their business practices, and affirmatively state that their practices have at all times been lawful and proper. Defendants are mindful, however, that defending the Litigation further would require them to expend significant time and money; distract key management personnel; and otherwise interfere with their ability to operate their nonprofit effectively and efficiently. Defendants have therefore decided that it is in their best interests to resolve the Litigation on the terms set forth in this Agreement, and thereby avoid the further expense, inconvenience, and interference with business operations that continuing the Litigation would entail.

18. Based on Settlement Class Counsel's comprehensive analysis of the law and facts at issue in the Litigation, and taking into account the risks, uncertainties, delay, and expense involved in the Litigation, Plaintiffs and Settlement Class Counsel have concluded that it is in the best interests of the Settlement Class to compromise and settle the Litigation fully and finally in the manner and upon the terms and conditions set forth in this Agreement, and that this Agreement is fair, adequate, and reasonable and thus in the best interests of the Settlement Class.

19. The Parties stipulate and will move the Court to conditionally certify the Settlement Class strictly and solely for settlement purposes only, and intend that this Agreement

will encompass and end all pending, threatened, or possible litigation by the Settlement Class, arising out of or related to claims that were brought, or could have been brought, in the Litigation.

20. The Parties specifically agree that Defendants' execution of this Agreement is not, and will not be construed as, an admission by Defendants (or any of them) or deemed to be evidence in the Litigation or elsewhere: (i) of the validity of any of Plaintiffs' claims or assertions or of any liability to any Plaintiff; (ii) that Defendants violated any state or federal law, rule, or regulation, or the common law in any respect or otherwise engaged in any wrongful or improper conduct; (iii) that Defendants engaged in unfair or deceptive practices regarding the APAPO Practice Assessment; or (iv) that, but for the Defendants' stipulation herein of the Settlement Class strictly and solely for settlement purposes, certification of the Class or other class treatment is or could be appropriate in the Litigation.

21. Defendants have indicated that they intend to implement and maintain the following practice changes regarding their representation and collection of the APAPO Practice Assessment:

- a. The APAPO Practice Assessment will be renamed "APAPO Membership Dues"; and
- b. The APA's annual membership dues statements and any electronic equivalent will make clear that (i) APA members who are licensed by a board of psychology are eligible to join APAPO by paying the APAPO Membership Dues, but doing so is optional; and (ii) the APAPO Membership Dues are not required for membership in APA.

22. The Parties now enter into this Agreement to document the Settlement.

### **III. SETTLEMENT TERMS**

23. The Parties agree to do all things necessary and appropriate to obtain Final Approval of this Agreement and of the Judgment, which will approve the terms contained in this Agreement as being fair, reasonable and adequate to all Settlement Class Members, and to obtain dismissal of the Litigation with prejudice.

#### **Settlement Class Certification**

24. Defendants do not object to the certification of the Settlement Class strictly and solely for settlement purposes only. Certification of the Settlement Class will be effective only with respect to the Settlement of the Litigation. In the event that this Agreement is terminated pursuant to its terms, the Judgment is not entered, or the Effective Date does not occur for any reason, then certification of the Settlement Class, which is strictly and solely for settlement purposes only, will be vacated and of no further force or effect, and the Litigation will proceed as it existed before execution of this Agreement.

#### **Settlement Benefits**

Defendants agree to provide the following settlement benefits to the Settlement Class:

25. Defendants shall deposit within 14 days after the Court issues the Preliminary Approval Order the sum of Two Hundred and Fifty Thousand and No/100 Dollars in U.S. Dollars (\$250,000.00) of the Settlement Fund into the Escrow Account. Defendants shall deposit the balance of Eight Million Seven Hundred and Seventy Thousand and No/100 Dollars in U.S. Dollars (\$8,770,000.00) of the Settlement Fund into the Escrow Account within 14 days after the Effective Date.

26. Upon the establishment of the Escrow Account, the Settlement Fund may be invested in the following types of accounts and/or instruments and no other: (i) demand deposit accounts and/or (ii) time deposit accounts and certificates of deposit, in either case with maturities of forty-five (45) days or less (the “Instruments”). The interest proceeds and the principal may thereafter be reinvested as they mature in similar Instruments, bearing in mind the liquidity requirements of the Escrow Account to ensure that it contains sufficient cash available to pay all invoices, taxes, fees, costs, and expenses, and other required disbursements, in a timely manner. Any interest proceeds will be added to the Settlement Fund. Except as otherwise specified herein, the Instruments at all times will remain in the Escrow Account.

27. The Settlement Fund at all times will be deemed a “qualified settlement fund” within the meaning of United States Treasury Reg. § 1.468B-1. All taxes (including any estimated taxes, and any interest or penalties relating to them) arising with respect to the income earned by the Settlement Fund or otherwise, including any taxes or tax detriments that may be imposed upon Defendants or their counsel with respect to income earned by the Settlement Fund for any period during which the Settlement Fund does not qualify as a “qualified settlement fund” for the purpose of federal or state income taxes or otherwise (collectively “Taxes”), will be paid out of the Settlement Fund. Defendants and their counsel, and Plaintiffs and Settlement Class Counsel, will have no liability or responsibility for any of the Taxes. The Settlement Fund will indemnify and hold Defendants and their counsel, and Plaintiffs and Settlement Class Counsel, harmless for all Taxes (including, without limitation, Taxes payable by reason of any such indemnification).

28. The Settlement Fund will be used to make:

- a. Distribution of the Settlement Payments pursuant to Paragraphs 50-54.

- b. Payment of the Court-ordered award of Settlement Class Counsel's attorneys' fees, costs, and expenses pursuant to Paragraphs 57-58.
- c. Payment of the Court-ordered Settlement Class Representative Service Awards pursuant to Paragraph 59.
- d. Payment of the Escrow Charges and Taxes incurred by the Settlement Fund.
- e. Payment of Notice and Administration Expenses if and only if such expenses exceed \$200,000.

29. In addition to the payment to establish the Settlement Fund, Defendants will pay up to Two Hundred Thousand and No/100 Dollars in U.S. Dollars (\$200,000) to cover the Notice and Administration Expenses, in a timely manner, following Settlement Class Counsel's and counsel for Defendants' receipt and approval of invoices received from the Settlement Administrator. If any fees, costs, or expenses arise that do not constitute Notice and Administration Expenses as defined in Definition S, they will be paid exclusively from the Net Cash Settlement Fund. Furthermore, any Notice and Administration Expenses charged by the Settlement Administrator in excess of Two Hundred Thousand Dollars (\$200,000) will be paid exclusively from the Net Cash Settlement Fund. All payments of fees, costs, or expenses from the Net Cash Settlement Fund will be made in a timely manner after Settlement Class Counsel's and Defendants' counsel's receipt and approval of invoices.

30. Except as provided in Paragraphs 25-29, Defendants will have no other liability or financial responsibility of any kind in connection with the Settlement. Each Claimant agrees to defend and indemnify Defendants up to the Claimant's Settlement Payment for any claims arising out of legally perfected liens, assignments, subrogations, encumbrances, garnishments,

security interests or any other legally perfected right of another person or entity to that Claimant's Settlement Payment.

**Preliminary Approval of Settlement**

31. Promptly after the execution of this Agreement, the Plaintiffs will file this Agreement, including all attached exhibits, an unopposed motion for preliminary approval, and all supporting papers with the Court. The Parties will jointly request that the Court enter the proposed Preliminary Approval Order.

32. The proposed Preliminary Approval Order that will be attached to the motion will be in a form agreed upon by Settlement Class Counsel and counsel for Defendants. The motion for preliminary approval will request that the Court: (i) find that the terms of the Settlement appear to be fair, adequate and reasonable, entered into in good faith without collusion, and within the range of judicial approval; (ii) provisionally certify the Settlement Class pursuant to Federal Rule of Civil Procedure 23(b)(3) and (e) for settlement purposes only; (iii) appoint the appropriate representatives of the Settlement Class; (iv) require that the Settlement Fund be created consistent with the terms of this Agreement; (v) approve the Notice program and Claims process described in this Agreement and approve the form and content of the Notices and the Claim Forms that will be submitted with the motion for preliminary approval; (vi) approve the procedures set forth in Paragraphs 37 and 38 below for Settlement Class Members to exclude themselves from the Settlement Class or to object to the Settlement; (vii) stay the Litigation pending Final Approval of the Settlement; and (viii) schedule a Final Approval Hearing for a time and date mutually convenient for the Court, Settlement Class Counsel and counsel for Defendants, but that is at least 100 days from the date that Defendants send the notice described in Paragraph 42.



### **Discovery**

33. Settlement Class Counsel and Defendants have already engaged in informal discovery. In order to facilitate Notice and the administration of the Settlement, Defendants agree to provide the Settlement Administrator and Settlement Class Counsel with their reasonably available data to permit the Settlement Administrator and Settlement Class Counsel to disseminate Notice and perform the allocation analysis detailed in Paragraphs 49 below. Settlement Class Counsel agrees to use this information for the exclusive purpose of disseminating Notice, evaluating Claims and distributing the Settlement Fund to Settlement Class Members. Settlement Class Counsel further agrees to fully comply with all applicable laws and/or regulations relating to privacy and data security, and that they will not provide this information to anyone other than Settlement Class Counsel or the Settlement Administrator without the written consent of Defendants.

### **Settlement Administrator**

34. Defendants have retained Epiq Class Action & Claims Solutions, Inc. to serve as the Settlement Administrator. The Settlement Administrator will administer various aspects of the Settlement as described in Paragraphs 35-54 below and perform such other functions as are specified for the Settlement Administrator elsewhere in this Agreement, including, but not limited to, providing emailed notice and/or mailed notice to Settlement Class Members; providing notification of the proposed settlement to the appropriate federal and state officials as required by 28 U.S.C. § 1715(b); making available a long-form notice to Settlement Class Members on a Settlement Website; allowing for the electronic submission of Claims through the Settlement Website and for the submission of tear-off and printable Claim Forms in hard copy; distributing the Settlement Fund as provided herein; and repaying the Settlement Fund, less any

previously authorized expenses, to Defendants in the event of a termination of the Settlement pursuant to Paragraphs 61-63 hereof. Settlement Class Counsel and counsel for Defendants will jointly oversee the Settlement Administrator and shall be entitled to inspect the records of the Settlement Administrator at any time, upon reasonable notice.

35. The duties of the Settlement Administrator, in addition to other responsibilities that are described in this Agreement, are as follows:

- a. Assist Settlement Class Counsel in developing the best Notice practicable and method for disseminating same that comports with the requirements of Fed. R. Civ. P. 23(e) and Due Process and, if requested by Settlement Class Counsel, prepare a declaration or affidavit prior to the Parties' submission of Preliminary Approval briefs describing the Notice and delivery of that Notice to Class Members;
- b. Assist Defendants' counsel in preparing the materials to be provided to the appropriate federal and state officials pursuant to 28 U.S.C. § 1715(b) and serve those materials within the time limitations set forth in 28 U.S.C. § 1715(b);
- c. Obtain from Defendants for each Settlement Class Member the name, email address information (to the extent it is available to Defendants), and mailing address information (to the extent it is available to Defendants), and, for Settlement Class Members where an emailed notice is undeliverable, verify and update the mailing addresses received through the National Change of Address database, for the purpose of mailing the mailed notice. The Settlement Administrator shall agree to use this information for the exclusive purpose of

disseminating Notice, evaluating Claims, and distributing the Settlement Fund to the Settlement Class Members;

d. Establish and maintain a post office box for requests for exclusion from the Settlement Class and the submission of hard-copy Claim Forms;

e. Establish and maintain the Settlement Website;

f. Establish and maintain an automated toll-free telephone line for Settlement Class Members to call with Settlement-related inquiries, and certain live telephone support to answer the questions of Settlement Class Members who call with or otherwise communicate such inquiries;

g. Respond to any Settlement Class Member inquiries;

h. Process all requests for exclusion from the Settlement Class;

i. Process all Claims;

j. Provide weekly reports and, no later than fourteen days after the end of the Opt-Out Period, a final report to Settlement Class Counsel and counsel for Defendants that summarizes (1) for the prior week, the number of requests for exclusion, the number of Claims received that week, and the aggregate PA Payments (as defined in Paragraph 49 below) for each category; (2) the total number of exclusion requests, Claims received, and aggregate PA Payments (as defined in Paragraph 49 below) for each category to date; and (3) other pertinent information that may reasonably be requested by Defendants or Settlement Class Counsel;

k. Perform tax-related services for the Escrow Account;

- l. At Settlement Class Counsel's request in advance of the Final Approval Hearing, prepare an affidavit to submit to the Court that identifies each Settlement Class Member who timely and properly requested exclusion from the Class;
- m. Process and transmit Settlement Payments to Claimants from the Net Cash Settlement Fund; and
- n. Administer the Escrow Account as described in this Agreement, and any other Settlement administration-related function at the instruction of Settlement Class Counsel and counsel for Defendants.

**Providing Notice to Settlement Class Members**

36. Upon Preliminary Approval of the Settlement, at the joint direction of Settlement Class Counsel and counsel for Defendants, the Settlement Administrator will implement the notice program provided herein, using the forms of Notice approved by the Court in the Preliminary Approval Order. The Notice will include, among other information: a description of the material terms of the Settlement; a date by which Settlement Class Members may exclude themselves from or "opt out" of the Settlement Class; a date by which Settlement Class Members may object to the Settlement; a date by which Settlement Class Members must file a Claim; the date upon which the Final Approval Hearing will occur; and the web address of the Settlement Website at which Settlement Class Members may access this Agreement, file Claims, and other related documents and information. Settlement Class Counsel and counsel for Defendants will insert the correct dates and deadlines in the Notice before the Notice Program commences, based upon those dates and deadlines set by the Court in the Preliminary Approval Order. Notices and publications provided under or as part of the notice program will not bear or include

APA/APAPO logos or trademarks, the return address of APA/APAPO, or otherwise be styled to appear to originate from APA/APAPO.

37. The Notice will provide that Class Members may opt out of this Agreement, relinquishing their right to any Settlement Payment. Settlement Class Members who opt out of the Settlement will not release their claims under Paragraphs 64-65. Settlement Class Members who wish to opt-out of the Settlement must, by the Opt-Out Deadline, mail a notice of intention to opt out (in no particular format, but which contains the words “opt out,” “exclusion,” or words to that effect clearly indicating an intent not to participate in the Settlement and sets forth the Settlement Class Member’s name, address, and telephone number) to the Settlement Administrator. A request to opt-out is timely only if it contains all of the information identified above and is postmarked on or before the Opt-Out Deadline. The date of the postmark on the mailing envelope will be the exclusive means used to determine whether an opt-out request has been timely submitted. Any envelope with an illegible post-mark will be treated as being mailed three business days before the Settlement Administrator received the submission. Settlement Class Members who fail to submit a valid and timely opt-out request will be bound by all the terms of the Settlement Agreement, any Court order approving the Settlement, and the Judgment. Any Settlement Class Member who submits a timely opt-out request may not file an objection to the Settlement and will be deemed to have waived any rights or benefits under the Agreement.

38. The Notice also will include a procedure for Settlement Class Members, at his or her own expense, to object to the Settlement, to Settlement Class Counsel’s application for attorneys’ fees, costs and expenses, and/or to the application for Settlement Class Representative Service Awards. Objections to the Settlement or to the application for fees, costs, expenses, and Settlement Class Representative Service Awards must be mailed to the Clerk of the Court,

Settlement Class Counsel, and Defendants' counsel. For an objection to be considered by the Court, the objection must be received by the Court, Settlement Class Counsel and Defendants' counsel no later than the Objection Deadline, as specified in the Notice. Any person that fails to object in the manner set forth in this Paragraph shall forever be barred from making any such objections in the Litigation or any other action or proceeding, unless the Court in its discretion shall thereafter otherwise direct upon application of such person and for good cause shown. For an objection to be considered by the Court, the objection must also set forth:

- a. The name of the Litigation;
- b. The objector's full name, address and telephone number;
- c. An explanation of the basis upon which the objector claims to be a Settlement Class Member or otherwise asserts standing to object;
- d. All grounds for the objection, accompanied by any legal support for the objection known to the objector or his counsel;
- e. The number of times in which the objector has objected to a class action settlement within the five years preceding the date that the objector files the objection, and the caption of each case in which the objector has made such objection;
- f. The identity of all counsel who represent the objector, including any former or current counsel who may be entitled to compensation for any reason related to the objection to the Settlement or fee application;
- g. The number of times in which the objector's counsel and/or counsel's law firm have objected to a class action settlement within the five years

preceding the date that the objector files the objection, and the caption of each case in which the counsel or the firm has made such objection;

- h. Any and all agreements that relate to the objection or the process of objecting—whether written or verbal—between objector or objector’s counsel and any other person or entity;
- i. The identity of all counsel representing the objector who will appear at the Final Approval Hearing;
- j. A list of all persons, including if applicable the objector himself, who will be called to testify at the Final Approval Hearing in support of the objection; and
- k. The objector and his attorney’s signature.

39. Each electronic Notice will allow for the submission of claims electronically, including the use of a pre-populated claim form. Each mailed Notice will be accompanied by the tear-off Claim Form. All Settlement Class Members, whether they receive Notice electronically or by mail, may submit Claims electronically through the Settlement Website. The Notice and Claim Form will direct that each Settlement Class Member must submit the electronic or paper Claim Form by the Claim Deadline. As a condition of receiving any Settlement Payment, each Class Member must submit a timely Claim Form. No Settlement Payment will be provided to any Claimant who fails to submit the Claim Form by the Claim Deadline. All Settlement Class Members are subject to the Claim Deadline. The filing of objections to this Agreement will not toll or otherwise extend the Claim Deadline. If a timely but incomplete Claim Form is submitted to the Settlement Administrator before the Claim Deadline, the Settlement Administrator will, as

promptly as reasonably possible, notify the Claimant by email or in writing of any defects in the Claim Form, which must be cured within 21 days or by the Claim Deadline, whichever is longer.

40. Notice will be provided to Settlement Class Members in three different ways: emailed notice; mailed notice; and long-form notice available on the Settlement Website. Not all Settlement Class Members will receive all three forms of Notice, as detailed below; however, Notice will be effectuated in accordance with due process and Fed. R. Civ. P. 23(e). In addition, Defendants shall post a copy of the emailed notice on their respective websites and a link to the Settlement Website.

41. Defendants will identify Settlement Class Members to receive the Notice based on a review of the data currently available in Defendants' computer systems or other records. From the data on their computer systems or other records, Defendants will generate solely for the Settlement Administrator's use, a report showing the name, street address, email address, and amount of APAPO Practice Assessment paid for APA dues year 2001 to the Effective Date for every Settlement Class Member. This information will remain confidential, to be shared only with the Settlement Class Member himself or herself, the Defendants, the Parties' counsel and their employees, the Settlement Administrator and its employees, the Court and its employees, and other persons only on consent of the affected Settlement Class Member or Settlement Class Counsel, or by order of the Court. Settlement Class Counsel may, however, disclose as part of the final approval process the names and addresses of those Class Members opting out of the Settlement, subject to the confidentiality requirements of the Court's Electronic Filing Procedures or as the Court may direct. Defendants may also disclose the names and state of residence of Class Members as part of the notice that it is required to provide pursuant to 28 U.S.C. § 1715(b)(7).



42. The Settlement Administrator will email the emailed notice to each Settlement Class Member at the email address identified in Defendants' records. The Settlement Administrator will take steps to prevent the emailed notices from being treated as spam by internet service providers. Should the Settlement Administrator learn (through an email bounce back or otherwise) that the email address in Defendants' records is invalid, then the Settlement Administrator will mail a mailed notice to that Class Member, as discussed below. If Defendants and Settlement Class Counsel agree that additional emailed notifications are warranted, the Settlement Administrator will carry out any such additional email notifications. The emailed notice program will be completed no later than 30 days after the Court's order of Preliminary Approval.

43. The mailed notice program (which is comprised of both the initial mailed notice, and, when feasible, the Notice Re-mailing Process) will be completed no later than 60 days after the Court's order of Preliminary Approval.

44. For each Settlement Class Member for whom APA does not have a valid email address and for whom emailed notice is returned or bounces back as undeliverable, the Settlement Administrator will mail, via first-class mail postcard, a mailed notice to each Settlement Class Member at the address identified in Defendants' records. Before mailing postcards, the Settlement Administrator will verify and update the mailing addresses received through the National Change of Address database.

45. The Settlement Administrator will perform reasonable address traces for all postcards that are returned as undeliverable. No later than 30 days from the initial mailed notice date, the Settlement Administrator will complete the re-mailing of mailed notice postcards to those Settlement Class Members whose original mailed postcards were returned as undeliverable.

and whose new addresses were identified as of that time through address traces (the “Notice Re-mailing Process”).

46. At the request of Settlement Class Counsel, the Settlement Administrator will provide Settlement Class Counsel and Defendants’ counsel an affidavit confirming that the notice program was completed in a timely manner. Settlement Class Counsel will file that affidavit with the Court as an exhibit to or in conjunction with Plaintiffs’ Motion for Final Approval of the Settlement.

47. Each emailed notice to Settlement Class Members will allow for the submission of claims electronically, including the use of a pre-populated claim form. Each mailed notice will contain a tear-off Claim Form and will list the web address for the Settlement Website to permit a Class Member to submit an electronic Claim Form.

**Allocation of Settlement Fund Among Class Members**

48. Defendants will make available to the Settlement Administrator and Settlement Class Counsel data sufficient to determine and implement the allocation of the Net Cash Settlement Fund as provided in Paragraph 49 of this Agreement. The methodology provided for in Paragraph 49 will be applied to the data as consistently, sensibly, and conscientiously as reasonably possible recognizing and taking into consideration the nature and completeness of the data and the purpose of the computation.

49. Consistent with the limitations described in paragraph 49, the amount of the Settlement Payment from the Net Cash Settlement Fund to which each Claimant is entitled will be determined using the following methodology:

- a. For each Claimant, the Settlement Administrator will determine the total amount of APAPO Practice Assessment fees paid by each Claimant for the APA

dues year 2001 to the Effective Date (referred to herein as each Claimant's "Practice Assessment Payments" or "PA Payments").

b. The Settlement Administrator will then add together the PA Payments calculated for all Claimants (the "Aggregate PA Payments").

c. The Settlement Administrator shall then divide the Net Cash Settlement Fund by the Aggregate PA Payments (the "Claim Ratio").

d. The Settlement Administrator shall thereafter calculate the Settlement Payment to each Claimant by multiplying the Claimant's PA Payments by the Claim Ratio.

**Distribution of Settlement Fund to Settlement Class Members**

50. Within 60 days of the Effective Date, the Settlement Administrator will distribute the Settlement Payments from the Net Cash Settlement Fund to the Claimants who filed timely Claim Forms.

51. The Settlement Administrator will make Settlement Payments by mailed check.

52. Settlement Payments made by check will be cut and mailed by the Settlement Administrator with an appropriate legend, in a form approved by Settlement Class Counsel and Defendants' counsel, to indicate that it is from the Settlement, and will be sent to the addresses that the Claimant provided on the Claim Form. Checks will be valid for 180 days. The Settlement Administrator will make reasonable efforts to locate the proper address for any Claimant whose check is returned by the postal service as undeliverable, and will re-mail it once to the updated address.

53. The amount of the Net Cash Settlement Fund attributable to uncashed checks and checks returned to the Settlement Administrator will remain in the Settlement Fund for one year

from the date that the first distribution check is mailed by the Settlement Administrator, during which time the Settlement Administrator will make a reasonable effort to locate Claimants whose checks were returned as undeliverable to make a second attempt to effectuate delivery of such checks to the Claimants entitled to them. The Settlement Administrator will make only one attempt to determine a valid address and re-mail or re-issue a distribution check.

**Disposition of Residual Funds After Initial Distribution to the Settlement Class**

54. Within 395 days after the date the Settlement Administrator mails the first Settlement Payment, any unallocated or unclaimed funds remaining in the Net Cash Settlement Fund will be distributed as follows:

a. Through a secondary distribution to all or some of the Settlement Class Members who made claims and cashed claim checks. A secondary distribution will only be made if the Parties agree, in good faith, that it is feasible and practical in light of the costs of administering such subsequent payments. If the Parties agree that a secondary distribution is appropriate, Settlement Class Counsel shall propose to Defendants the precise nature of the secondary distribution in a manner designed to fairly and efficiently distribute the funds. Defendants' consent to the nature and manner of the secondary distribution shall be required, which consent shall not be unreasonably withheld. All such costs to prepare and transmit these additional payments will be treated as Notice and Administration Expenses.

b. If distributing the remaining funds as contemplated in subparagraph (a) above is not feasible or practical in light of the costs of administering such subsequent payments, the funds will be distributed through a residual *cy pres* program to Mental Health America, which is a nonprofit organization dedicated to promoting mental health, preventing mental and

substance use conditions and achieving victory over mental illnesses and addictions through advocacy, education, research and service.

c. If residual funds remain after a secondary distribution as contemplated in subparagraph (a) above, the funds will be distributed through a *cy pres* program to Mental Health America.

### **Final Approval Order and Judgment**

55. The Plaintiffs' Motion for Preliminary Approval of the Settlement will include a request to the Court for a scheduled date on which the Final Approval Hearing will occur. Plaintiffs shall file their Motion for Final Approval of the Settlement, and their application for attorneys' fees, costs and expenses and for Class Representative Service Awards no later than 14 days before the Final Approval Hearing. At the Final Approval Hearing the Court will hear argument on Plaintiffs' motion for final approval of the Settlement, and on Settlement Class Counsel's application for attorneys' fees, costs, and expenses and for Settlement Class Representative Service Awards. In the Court's discretion, the Court also will hear argument at the Final Approval Hearing from any Settlement Class Members (or their counsel) who object to the Settlement, provided the objectors filed timely objections that meet all of the requirements listed in paragraph 38 above.

56. The Court at the Final Approval Hearing will determine whether to grant final approval of the Settlement and enter a final approval order, along with accompanying Judgment, and whether to approve Settlement Class Counsel's request for attorneys' fees, costs, expenses and Settlement Class Representative Service Awards. A proposed Judgment will be attached to the motion and will be in a form agreed upon by Settlement Class Counsel and counsel for Defendants. The Judgment will, among other things:

- a. Determine that the Settlement is fair, adequate and reasonable;
- b. Finally certify the Settlement Class for settlement purposes only;
- c. Determine that the provided Notice satisfies Due Process requirements;
- d. Dismiss the Litigation with prejudice and without costs;
- e. Bar and enjoin Plaintiffs and all Settlement Class Members that did not opt-out of the Settlement from asserting any of the Released Claims, as set forth in Paragraphs 64-65, including during any appeal from the final approval order and Judgment;
- f. Release Defendants and the Related Parties from the Released Claims, as set forth in Paragraphs 64-65; and
- g. Reserve the Court's continuing and exclusive jurisdiction over the Parties to this Agreement, including Defendants, all Settlement Class Members, and all objectors, to administer, supervise, construe and enforce this Agreement in accordance with its terms.

**Payment of Attorneys' Fees, Costs, and Incentive Awards**

57. Settlement Class Counsel will apply to the Court for an award of attorneys' fees not to exceed 30% of the Settlement Fund. Defendants will not take a position on the request so long as it is for no more than 30% of the Settlement Fund, and will also take no position on Settlement Class Counsel's request for reimbursement of reasonable costs and expenses. An award of attorneys' fees, costs, and expenses to Settlement Class Counsel will be payable solely out of the Settlement Fund. This application to the Court settles any and all claims for attorneys' fees, costs, and expenses regarding the Litigation. The Parties agree that any attorneys' fee, cost, and expenses award remains within the sole discretion of the Court, and whatever determination

is made in that regard does not give rise to any grounds for rescinding or renegotiating this Settlement. Thus, if the Court grants final approval and enters the Judgment but disallows all or any part of Settlement Class Counsel's application for attorneys' fees, costs, and expenses, any such disallowance or reduction will not operate to terminate or cancel this Agreement or the Settlement, which will remain in full force and effect.

58. Within 14 days after the Effective Date, all Court-approved attorneys' fees, costs, and expenses of Settlement Class Counsel, without interest, will be paid from the Escrow Account into the account described in this paragraph. The payment of attorneys' fees, costs, and expenses of Settlement Class Counsel pursuant to Paragraph 57 will be made from the Escrow Account pursuant to the direction of Lead Settlement Class Counsel

59. Settlement Class Counsel will ask the Court to approve Settlement Class Representative Service Awards of \$5,000 per Plaintiff. All Settlement Class Representative Service Awards are to be paid from the Settlement Fund within 14 days after the Effective Date. Defendants agree to take no position on Settlement Class Counsel's request for payment of the Settlement Class Representative Service Awards. The Parties agree that any Settlement Class Representative Service Award remains within the sole discretion of the Court, and whatever determination is made in that regard does not give rise to any grounds for rescinding or renegotiating this Settlement or this Agreement. Thus, if the Court grants Final Approval and enters the Judgment but disallows all or any part of Settlement Class Counsel's application for Settlement Class Representative Service Awards, such disallowance or reduction will not operate to terminate or cancel this Agreement or the Settlement, which will remain in full force and effect.

60. The Parties negotiated and reached this agreement regarding Paragraphs 57-59 only after reaching agreement on all other material terms of this Settlement.

**Termination of Settlement**

61. This Settlement may be terminated by either Defendants or Settlement Class Counsel by serving on counsel for the opposing Party and filing with the Court a written notice of termination within fourteen days after any of the following occurrences:

- a. The Court rejects or declines to preliminarily or finally approve the Settlement;
- b. An appellate court reverses the final approval order and Judgment, and the Settlement is not reinstated without change by the Court on remand;
- c. Any court incorporates into, or deletes or strikes from, or modifies, amends, or changes, the Preliminary Approval Order, final approval order, Judgment, or the Settlement in a way that Defendant or Settlement Class Counsel seeking to terminate the Settlement reasonably considers material;
- d. The Effective Date does not occur; or
- e. Any other ground for termination provided for elsewhere in this Agreement, including, without limitation, an election by Defendants to withdraw from the Settlement pursuant to Paragraph 62.

62. Defendants also will have the right to terminate the Settlement by serving on Settlement Class Counsel and filing with the Court a notice of termination within fourteen days of its receipt from the Settlement Administrator of the final report specified in Paragraph 35(j) above, if the total amount of APAPO Practice Assessment fees paid by the Settlement Class Members who timely request exclusion from the Settlement Class equals or exceeds the amount



specified in the separate letter agreement executed concurrently with this Settlement by Defendants' counsel and Settlement Class Counsel. This amount will be confidential except to the Court, who shall upon request be provided with a copy of the letter agreement for *in camera* review.

63. In the event that the Settlement as provided for in this Agreement does not become effective for any reason other than the failure of any of the Parties to perform their obligations hereunder, or in the event Defendants withdraw from the Settlement as provided for in Paragraph 62, then the Settlement shall become null and void and of no further force and effect; all negotiations, proceedings, filings, documents, and statements relating thereto shall be without prejudice as to the rights of any and all Parties hereto and their respective predecessors and successors to proceed in the Litigation as if no settlement had been attempted and all Parties and their respective litigation positions existing as of the day prior to the date of this Agreement; and, after payment of any invoices or other fees or expenses mentioned in this Agreement that have been incurred and are due to be paid from the Escrow Account, the balance of the Settlement Fund will be refunded and remitted to Defendants. However, in this event, all reasonable Notice and Administration Expenses incurred up to Two Hundred Thousand and No/100 Dollars in U.S. Dollars (\$200,000) will be paid by Defendants, prior to any reversion of the Settlement Fund to Defendants.

#### **Release**

64. The Settlement Class and each Settlement Class Member, except for Class Members who submit a valid request for exclusion from the Settlement, hereby fully and unconditionally releases and discharges the Released Parties from any and all types or nature of claims or causes of action, whether arising at law or in equity, or in tort, contract, quasi-contract,

redhibition, or under any state or federal law, in any way relating to any or all of the facts that are alleged or could have been alleged in the Litigation, including without limitation those arising out of or relating to the APAPO Practice Assessment through the Effective Date, regardless of whether the claim or cause of action is known or unknown, filed or unfiled, asserted or not asserted, existing or contingent, and regardless of the legal theory involved. The Released Claims expressly include, without limitation, (i) any and all such actual or potential claims against Defendants arising from the facts alleged in the Litigation, and (ii) any and all claims, demands, damages or causes of action in any way seeking, alleging or including claims for negligence, negligent misrepresentation, intentional misrepresentation, fraud, fraudulent inducement, deceptive advertising, breach of contract, breach of fiduciary duty, consumer fraud, violation of public policy, breach of any state or federal consumer law, breach of any state or federal tax law, punitive damages, exemplary damages, attorneys' fees, absolute liability, strict liability, liability for any wanton or reckless conduct, intentional or deliberate acts, and declaratory or injunctive relief arising from the facts alleged in the Litigation. This release discharges the claims of all those who claim through any Settlement Class Member or who assert claims on behalf of Settlement Class Members (including the federal government or any state government in its capacity as *parens patriae*).

65. The Settlement Class, except for Settlement Class Members who submit a valid request for exclusion from the Settlement, specifically waives any and all rights or benefits which any of them may have with respect to the Litigation, arising now or in the future under Section 1542 of the California Civil Code, which section 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.” The Settlement Class acknowledges that some or all of them may hereafter discover facts different from or in addition to those which the Settlement Class now knows, believes, or suspects to be true with respect to the Litigation. Nevertheless, it is the intention of the Settlement Class fully, finally, and forever to settle and release all of the claims released in this Agreement. The Settlement Class assumes the risk of the possible discovery of such additional or different facts and agrees that the release given herein shall be and remain effective in all respects as to the released matters, regardless of the discovery of such additional or different facts.

#### **Additional Terms**

66. The Parties voluntarily agree to enter into a stay of all litigation activities concerning any matters asserted in the Litigation or any of the Released Claims. The stay of all litigation activities will remain in effect until one of the following events occurs: (i) the Effective Date as defined in Definition J above; or (ii) one of the Parties voids this Agreement pursuant to Paragraphs 61 or 62.

67. Neither this Agreement, any document prepared in connection with the Settlement, nor any negotiations, statements and proceedings in connection with the Settlement may be cited or used in any way in any proceeding as an admission by Defendants, Released Parties, or Plaintiffs, including any admission as to the propriety of class treatment, except that any and all provisions of the Agreement may be admitted into evidence and otherwise used in a proceeding to enforce any or all terms of the Agreement, or in defense of any claims released or barred by this Agreement.

68. The Plaintiffs and Defendants represent and warrant that the persons signing this Agreement on their behalf have full power and authority to bind every person, partnership,

corporation or entity included within the definitions of Plaintiffs and Defendants to all terms of this Agreement. Any person executing this Agreement in a representative capacity represents and warrants that he or she is fully authorized to do so and to bind the Party on whose behalf he or she signs this Agreement to all of the terms and provisions of this Agreement. The Agreement is intended to be, and the Parties agree that it is, binding upon and inuring to the benefit not only of the Parties hereto (including Settlement Class Members) but also their respective heirs, executors, estates, administrators, predecessors, successors, and assigns, as well as upon any corporation, partnership, limited liability company, or other entity into or with which any of the foregoing may merge or consolidate.

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

70. The Parties will issue a joint public statement concerning the Litigation and Settlement. The Parties further agree that no Party or their counsel shall make any public statement concerning the Litigation, Settlement or Agreement prior to the issuance of said joint public statement.

71. Unless otherwise specifically provided in this Agreement, all notices, demands or other communications given hereunder will be in writing and will be deemed to have been duly given as of the third business day after mailing, addressed as follows:

**To the Plaintiffs and the Class Members:**

Hassan Zavareei, Esq.  
Lorenzo Cellini, Esq.  
TYCKO & ZAVAREEI LLP  
2000 L Street, N.W., Suite 808  
Washington, D.C. 20036

**To Defendants APA and APAPO:**

David W. Ogden, Esq.  
Jonathan E. Paikin, Esq.  
WILMER CUTLER PICKERING HALE AND DORR LLP  
1875 Pennsylvania Avenue, N.W.  
Washington, D.C. 20006

72. After this Agreement is fully executed by all Parties and their attorneys of record, this Agreement and its attached Exhibits will constitute the entire agreement relating to Settlement of the Litigation, and it will then be deemed and agreed that no oral representations, warranties, or inducements have been made to any party concerning this Agreement or its Exhibits other than the representations, warranties, and covenants expressly stated in this Agreement and its Exhibits.

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

74. All time periods and dates relating to this Agreement are subject to approval and change by the Court. Without further order of the Court, the Parties may agree to reasonable extensions of time to carry out any of the provisions of this Agreement.

75. Settlement Class Counsel unconditionally warrant and represent that they are authorized by Plaintiffs, for whom they are attorneys of record, and the attorneys of record for Defendants unconditionally warrant and represent that they are authorized by Defendants, to take

all appropriate action required or permitted to be taken by their respective clients under this Agreement to effectuate its terms and to execute any other documents required to effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement.

76. This Agreement may be executed in one or more counterparts. All executed counterparts and each of them will be deemed to be one and the same instrument provided that counsel for the Parties to this Agreement will exchange among themselves original signed counterparts. Facsimile or electronically scanned signatures will be accepted if the original signature is provided within seven days. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

77. This Agreement is to be governed by and interpreted under the laws of the District of Columbia, without regard to the District of Columbia choice of law principles.

78. Exhibits A-E attached hereto are hereby incorporated into this Agreement and include the following:

Exhibit A. Escrow Agreement between Defendants, Lead Settlement Class Counsel, on behalf of the Plaintiffs, the Class Counsel and Settlement Class, and (3) Epiq Class Action & Claims Solutions, Inc., in the capacity of Escrow Agent, dated January 21, 2015.

Exhibit B. The long form notice of proposed class action settlement.

Exhibit C. The email form notice of proposed class action settlement.


Exhibit D. The mailed form of notice and accompanying claim form.

Exhibit E. Proposed Preliminary Approval Order

**IV. EXECUTION**

The undersigned, being duly authorized, have caused this Agreement to be executed on the dates shown below and agree that it shall take effect on that date upon which it has been executed by all of the undersigned.

**PLAINTIFFS**

  
\_\_\_\_\_  
Ellen G. Levine  
Settlement Class Representative

1/23/15  
\_\_\_\_\_  
Date

\_\_\_\_\_  
Ruth Fallbaum  
Settlement Class Representative

\_\_\_\_\_  
Date

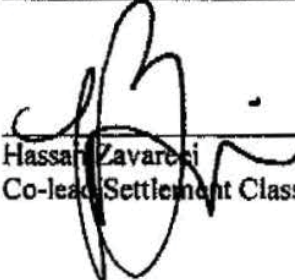
\_\_\_\_\_  
Eric S. Engum  
Settlement Class Representative

\_\_\_\_\_  
Date

\_\_\_\_\_  
Ira Grossman  
Settlement Class Representative

\_\_\_\_\_  
Date

**SETTLEMENT CLASS COUNSEL**

  
\_\_\_\_\_  
Hassan Zavarezi  
Co-lead Settlement Class Counsel

1/21/15  
\_\_\_\_\_  
Date

\_\_\_\_\_  
Edward A. Wallace  
Co-lead Settlement Class Counsel

\_\_\_\_\_  
Date


#### IV. EXECUTION

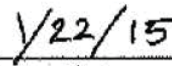
The undersigned, being duly authorized, have caused this Agreement to be executed on the dates shown below and agree that it shall take effect on that date upon which it has been executed by all of the undersigned.

#### PLAINTIFFS

\_\_\_\_\_  
Ellen G. Levine  
Settlement Class Representative

\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Ruth Fallenbaum  
Settlement Class Representative

  
\_\_\_\_\_  
Date

\_\_\_\_\_  
Eric S. Engum  
Settlement Class Representative

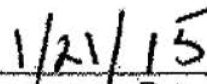
\_\_\_\_\_  
Date

\_\_\_\_\_  
Ira Grossman  
Settlement Class Representative

\_\_\_\_\_  
Date

#### SETTLEMENT CLASS COUNSEL

  
\_\_\_\_\_  
Hassan Zavareh  
Co-lead Settlement Class Counsel

  
\_\_\_\_\_  
Date

\_\_\_\_\_  
Edward A. Wallace  
Co-lead Settlement Class Counsel

\_\_\_\_\_  
Date



#### IV. EXECUTION

The undersigned, being duly authorized, have caused this Agreement to be executed on the dates shown below and agree that it shall take effect on that date upon which it has been executed by all of the undersigned.

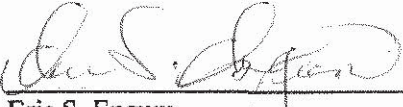
#### PLAINTIFFS

\_\_\_\_\_  
Ellen G. Levine  
Settlement Class Representative

\_\_\_\_\_  
Date

\_\_\_\_\_  
Ruth Fallenbaum  
Settlement Class Representative

\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Eric S. Engum  
Settlement Class Representative

\_\_\_\_\_  
1/22/15  
Date

\_\_\_\_\_  
Ira Grossman  
Settlement Class Representative

\_\_\_\_\_  
Date

#### SETTLEMENT CLASS COUNSEL

  
\_\_\_\_\_  
Hassan Zavareei  
Co-lead Settlement Class Counsel

\_\_\_\_\_  
1/21/15  
Date

\_\_\_\_\_  
Edward A. Wallace  
Co-lead Settlement Class Counsel

\_\_\_\_\_  
Date

#### IV. EXECUTION

The undersigned, being duly authorized, have caused this Agreement to be executed on the dates shown below and agree that it shall take effect on that date upon which it has been executed by all of the undersigned.

#### PLAINTIFFS

\_\_\_\_\_  
Ellen G. Levine  
Settlement Class Representative

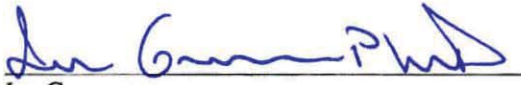
\_\_\_\_\_  
Date

\_\_\_\_\_  
Ruth Fallenbaum  
Settlement Class Representative

\_\_\_\_\_  
Date

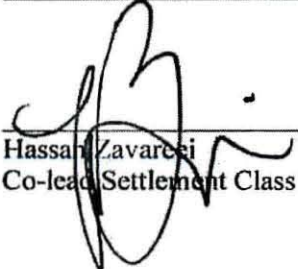
\_\_\_\_\_  
Eric S. Engum  
Settlement Class Representative

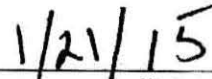
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Ira Grossman  
Settlement Class Representative

  
\_\_\_\_\_  
Date

#### SETTLEMENT CLASS COUNSEL

  
\_\_\_\_\_  
Hassan Zavarezi  
Co-lead Settlement Class Counsel

  
\_\_\_\_\_  
Date

\_\_\_\_\_  
Edward A. Wallace  
Co-lead Settlement Class Counsel

\_\_\_\_\_  
Date

#### **IV. EXECUTION**

The undersigned, being duly authorized, have caused this Agreement to be executed on the dates shown below and agree that it shall take effect on that date upon which it has been executed by all of the undersigned.

#### **PLAINTIFFS**

\_\_\_\_\_  
Ellen G. Levine  
Settlement Class Representative

\_\_\_\_\_  
Date

\_\_\_\_\_  
Ruth Fallenbaum  
Settlement Class Representative

\_\_\_\_\_  
Date

\_\_\_\_\_  
Eric S. Engum  
Settlement Class Representative

\_\_\_\_\_  
Date

\_\_\_\_\_  
Ira Grossman  
Settlement Class Representative

\_\_\_\_\_  
Date

#### **SETTLEMENT CLASS COUNSEL**

  
\_\_\_\_\_  
Hassan Zavareei  
Co-lead Settlement Class Counsel

1/21/15  
\_\_\_\_\_  
Date

\_\_\_\_\_  
Edward A. Wallace  
Co-lead Settlement Class Counsel

\_\_\_\_\_  
Date

#### IV. EXECUTION

The undersigned, being duly authorized, have caused this Agreement to be executed on the dates shown below and agree that it shall take effect on that date upon which it has been executed by all of the undersigned.

#### PLAINTIFFS

\_\_\_\_\_  
Ellen G. Levine  
Settlement Class Representative

\_\_\_\_\_  
Date

\_\_\_\_\_  
Ruth Fallenbaum  
Settlement Class Representative

\_\_\_\_\_  
Date

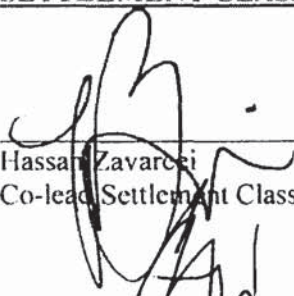
\_\_\_\_\_  
Eric S. Engum  
Settlement Class Representative

\_\_\_\_\_  
Date

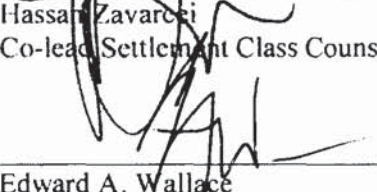
\_\_\_\_\_  
Ira Grossman  
Settlement Class Representative

\_\_\_\_\_  
Date

#### SETTLEMENT CLASS COUNSEL

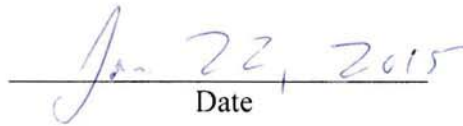
  
\_\_\_\_\_  
Hassan Zavarcei  
Co-lead Settlement Class Counsel

1/21/15  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Edward A. Wallace  
Co-lead Settlement Class Counsel

1/22/15  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Gary E. Mason  
Counsel for Plaintiffs

  
\_\_\_\_\_  
Date

\_\_\_\_\_  
E. Powell Miller  
Counsel for Plaintiffs

\_\_\_\_\_  
Date

\_\_\_\_\_  
Gregory F. Coleman  
Counsel for Plaintiffs

\_\_\_\_\_  
Date

\_\_\_\_\_  
Gary E. Mason  
Counsel for Plaintiffs

\_\_\_\_\_  
Date

*E. Powell Miller /alm*  
\_\_\_\_\_

E. Powell Miller  
Counsel for Plaintiffs

*1/22/15*  
\_\_\_\_\_

Date

\_\_\_\_\_  
Gregory F. Coleman  
Counsel for Plaintiffs

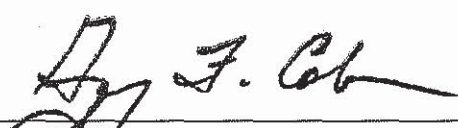
\_\_\_\_\_  
Date

\_\_\_\_\_  
Gary E. Mason  
Counsel for Plaintiffs

\_\_\_\_\_  
Date

\_\_\_\_\_  
E. Powell Miller  
Counsel for Plaintiffs

\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Gregory F. Coleman  
Counsel for Plaintiffs

1/22/15  
\_\_\_\_\_  
Date

**DEFENDANTS**

American Psychological Association

By: \_\_\_\_\_

Title: \_\_\_\_\_

CEO

1/21/2015

Date

American Psychological Association  
Practice Organization

By: \_\_\_\_\_

Title: \_\_\_\_\_

CEO

1/21/15

Date

**DEFENDANTS' COUNSEL**

David W. Ogden

Counsel for Defendants

David W. Ogden/fyp

1/21/15

Date