

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
FORT LAUDERDALE DIVISION**

NANCY TAYLOR, on behalf of herself and all  
others similarly situated,

Plaintiff,

Case No.: 20-CV-60709-RAR

v.

SERVICE CORPORATION  
INTERNATIONAL, et al.,

Defendants.

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**CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE**

This Class Action Settlement Agreement and Release (“Agreement”) is entered into, by and between: (i) Nancy Taylor and Hazel Benjamin, on behalf of themselves and all others similarly situated (“Plaintiffs”); (ii) SCI Direct, Inc. (“SCI Direct”); (iii) Neptune Management Corp. a/k/a Neptune Society Management Corporation d/b/a Neptune Society (“Neptune”); and (iv) NCS Marketing Services, LLC d/b/a National Cremation Society (“NCS”); (SCI Direct, Neptune, and NCS are collectively referred to herein as “Defendants”). Plaintiffs, SCI Direct, Neptune and NCS may be separately referred to herein as a “Party” and collectively referred to herein as the “Parties” and the above-captioned case is referred to herein as the “Lawsuit.” This Agreement is intended by the Parties to fully, finally and forever resolve, discharge and settle all the claims specified below, subject to approval by the Court and the settlement terms set forth below.

**I. RECITALS**

A. Neptune and NCS are engaged in the sale of Preneed Funeral Agreements to provide preneed cremation services and Retail Merchandise Agreements to provide related merchandise throughout the State of Florida. On behalf of Medical Air Services Association of Florida, Inc. (“MASA”), Neptune and NCS also engaged in the sale of Transportation and Relocation Protection Plans (“TRPP”) throughout the State of Florida to provide membership in a transportation services plan should the purchaser or beneficiary relocate or be outside of seventy-five (75) miles of his or her residence at the time of passing. Under statutory law, purchasers of preneed funeral services have the right to cancel the agreement and receive a full refund for unused services at any time. Under their current contracts, purchasers of retail merchandise that is delivered have the right to cancel those agreements for thirty (30) days from the date of purchase.

B. On or about August 15, 2017, Plaintiff Taylor purchased a Preneed Funeral Agreement, Retail Merchandise Agreement and TRPP from Neptune.

C. On or about December 22, 2017, Plaintiff Hazel Benjamin purchased a Preneed Funeral Agreement, Retail Merchandise Agreement, and TRPP from NCS.

D. On April 4, 2020, Plaintiff Taylor filed a Class Action Complaint against Service Corporation International, Inc., SCI Direct, SCI Funeral Services of Florida, LLC, S.E. Combined Services of Florida, LLC, NCS Marketing Services, LLC, Neptune and John Does 1-20.

E. On July 10, 2020, Plaintiff Taylor filed an Amended Class Action Complaint against Service Corporation International, SCI Direct, Neptune and John Does 1-20.

F. On May 17, 2021, Plaintiff Taylor filed a Second Amended Class Action Complaint against SCI Direct, Neptune and John Does 1-20.

G. Plaintiff Taylor intends to request leave to file a Third Amended Class Action Complaint adding (subject to the Court’s permission) additional Plaintiff Hazel Benjamin and additional Defendant NCS.

H. Plaintiffs allege in the Lawsuit that Defendants violated Florida’s Funeral Act, Chapter 497, Florida Statutes, by, among other things, misrepresenting to customers the different statutory rights applicable to preneed services and related merchandise. Plaintiffs also allege that Defendants engaged in unfair and deceptive practices in their marketing and sale of the TRPP by, among other things, materially misrepresenting their financial interest in the sale. Among other things, Plaintiffs ask the Court for the option to rescind some or all of their contracts and all contracts of all those similarly situated.

I. Defendants have asserted substantial legal and factual defenses against Plaintiffs’ claims, and deny Plaintiffs’ allegations in the Lawsuit. Defendants deny any liability to the Plaintiffs, Settlement Classes, or any Settlement Class Member, for any claims, causes of action, costs, expenses, attorneys’ fees, or damages of any kind.

J. On January 28, 2021, the Parties participated in a voluntary mediation with the assistance of mediator Rodney Max, but were unable to agree on the terms of a settlement.

K. On March 24, 2022, the Parties participated in another voluntary (in person) mediation with the assistance of mediator Hunter Hughes, but were still unable to agree on the terms of a settlement.

L. The Parties continued to discuss settlement with the assistance and input of Mr. Hughes over the following weeks and months and, on or about June 19, 2022, agreed on the terms of a settlement, subject to final approval by the Court after notice to the Settlement Classes as defined herein;

M. Plaintiffs and their counsel have concluded that it is in the best interests of the Members of the Settlement Classes to compromise and settle all claims against Defendants for consideration reflected in the terms and benefits of this Settlement Agreement. After arm's length negotiations with counsel for the Defendants, including through the efforts of two mediators, Plaintiffs have considered, among other things: (i) the complexity, expense, and likely duration and distraction due to the litigation; (ii) the stage of the litigation and amount of fact gathering completed; (iii) the potential for the Defendants to prevail on class certification issues and on the merits; and (iv) the range of possible recovery, and have determined that this Settlement Agreement is fair, reasonable, adequate, and in the best interests of the Plaintiffs and the Settlement Classes.

N. The Defendants have concluded that it is in their best interests to compromise and settle all claims brought by Plaintiffs and the Settlement Classes for consideration reflected in the terms and benefits of this Settlement Agreement. After arm's length negotiations with counsel for Plaintiffs, including through the efforts of two mediators, Defendants have considered, among other things: (i) the complexity, expense, and likely duration of the litigation and business disruption due to the litigation; (ii) the stage of the litigation and amount of fact gathering completed; (iii) the potential for the Plaintiffs and the Settlement Classes to prevail on class certification issues and on the merits; and (iv) the range of possible recovery. The Defendants agree with Plaintiffs and their counsel that this Settlement Agreement is a fair, reasonable, and adequate resolution of the claims asserted by Plaintiffs in the Lawsuit.

O. The Parties desire and intend to seek Court review and approval of the Settlement Agreement, and, upon preliminary approval by the Court, the Parties intend to seek a Final Order and Judgment from the Court dismissing with prejudice the Third Amended Class Action Complaint and ordering the dismissal with prejudice of all claims alleged by Plaintiffs, either individually or on behalf of Settlement Class Members.

P. This Settlement Agreement will not be construed as evidence of, or as an admission by, the Defendants of any liability or wrongdoing whatsoever.

NOW, THEREFORE, it is stipulated and agreed that the foregoing recitals are hereby expressly incorporated into this Settlement Agreement and made a part hereof and further, that in consideration of the agreements, promises, and covenants set forth in this Settlement Agreement, including the Releases and Covenants Not to Sue, the entry by the Court of the Final Order and Judgment dismissing the Third Amended Class Action Complaint with prejudice and approving the terms and conditions of the Settlement Agreement, and for other good and valuable

consideration, the receipt and sufficiency of which are hereby acknowledged, this action shall be settled and compromised under the following terms and conditions.

## **II. DEFINITION OF SETTLEMENT CLASSES**

Pursuant to Fed. R. Civ. P. 23(b)(2) and 23(b)(3), the Parties stipulate to certification, for settlement purposes only, of the following Settlement Classes, which may be collectively referred to herein as the “Settlement Classes”:

### **A. Preneed and Retail Merchandise Plan Settlement Class:**

All persons who, between April 1, 2016 and the present, purchased a Preneed Funeral Agreement and a Retail Merchandise Agreement from Neptune or NCS (“Preneed and Retail Merchandise Plan”), within the State of Florida, excluding all Preneed and Retail Merchandise Plans for which the contracted for cremation services have been performed, and all irrevocable preneed contracts.

### **B. TRPP Settlement Class:**

All persons who, between April 1, 2016 and the present, purchased a TRPP from Neptune or NCS, within the State of Florida, excluding all TRPPs where the beneficiary has already been cremated or buried.

Also excluded from the Settlement Classes are: (i) SCI Direct, Neptune, NCS, and any of their employees, officers, or directors; (ii) members of the judiciary and their staff to whom these actions are assigned; and (iii) Counsel for the Parties.

## **III. DEFINITIONS**

In addition to terms defined elsewhere in this Agreement, the following terms shall be defined as follows:

- A. “Administration Expenses” means expenses associated with administering the settlement, and shall include, but not be limited to, the expenses of the Settlement Administrator.
- B. “Agreement” or “Settlement Agreement” means this Settlement Agreement and Release, including all exhibits hereto.
- C. “Attorneys’ Fee Award” means the total award of attorneys’ fees, costs and expenses agreed to by the Parties, sought by Class Counsel and/or allowed by the Court.
- D. “Claim Form” means the documentation a Settlement Class Member must submit to be considered for payment under the Agreement as provided in Section IX.

- E. “Class Counsel” means the attorneys approved and appointed by the Court to represent the Settlement Classes and the Settlement Class Members as provided in Section VII.
- F. “Class Representatives” means Nancy Taylor and Hazel Benjamin.
- G. “Confidential Information” means all confidential or proprietary information shared hereunder, or in connection herewith, either prior to, on or after the date of settlement, and any and all prior or subsequent drafts, representations, negotiations, conversations, correspondence, understandings, analyses, proposals, term sheets, and letters, whether oral or written, of any kind or nature, with respect to the subject matter hereof.
- H. “Effective Date” means the later of (a) the date defined in Section XIX, or (b) the thirtieth day after entry of the Final Judgment.
- I. “Final Approval Hearing” means the hearing to be held to consider final approval of the Settlement as provided in Section XI.
- J. “Final Order and Judgment” means the order and judgment fully and finally disposing of all claims asserted in the Lawsuits and all claims settled under this Settlement as provided in Section XI.
- K. “Individual Notice” means a Notice of the preliminary approval of this Agreement and the Settlement which will be mailed to potential Settlement Class Members as provided in Section VII.
- L. “Legally Authorized Representative” means an administrator/ administratrix, personal representative, or executor/executrix of a deceased Settlement Class Member’s estate, a guardian, conservator, or next friend of an incapacitated Settlement Class Member or any other legally appointed Person or entity responsible for the handling of the business affairs of a Settlement Class Member.
- M. “Opt-Out” means a member of the Settlement Classes who properly and timely submits a request for exclusion from the Settlement in accordance with the Preliminary Approval Order and/or Section X.
- N. “Participating Class Member” means a Settlement Class Member who submits a timely and valid Claim Form.
- O. “Person” means any natural person, individual, corporation, association, partnership, trust, or any other type of legal entity.
- P. “Preliminary Approval” means the Preliminary Approval Order to be entered by the Court, as provided in Section VII.

- Q. “Preneed Funeral Agreement” means an agreement sold by Neptune and/or NCS in the State of Florida to provide preneed cremation services to the purchaser or beneficiary at the time of passing.
- R. “Preneed and Retail Merchandise Released Claims” means and includes any and all claims, rights, demands, actions, causes of action, allegations, or suits of whatever kind or nature, whether *ex contractu* or *ex delicto*, debts, liens, contracts, liabilities, agreements, attorneys’ fees, costs, penalties, interest, expenses, or damages (including actual, consequential, statutory, extra-contractual, and/or punitive or exemplary damages), known or unknown, arising from or relating to marketing, distribution, sales, or the amount and timing of the placement of funds into trust related to Preneed and Retail Merchandise Agreements by Neptune and/or NCS in the State of Florida, including but not limited to those claims which have been alleged or which could have been alleged by Plaintiffs in the Lawsuit, on behalf of themselves and/or on behalf of the Preneed and Retail Merchandise Plan Settlement Class, against Defendants. Preneed and Retail Merchandise Released Claims do not include any claim for enforcement of this Agreement and/or Final Order and Judgment.
- S. “TRPP Released Claims” means and includes any and all claims, rights, demands, actions, causes of action, allegations, or suits of whatever kind or nature, whether *ex contractu* or *ex delicto*, debts, liens, contracts, liabilities, agreements, attorneys’ fees, costs, penalties, interest, expenses, or damages (including actual, consequential, statutory, extra-contractual, and/or punitive or exemplary damages), known or unknown, arising from or relating to marketing, distribution, sales or the amount and timing of the placement of funds into trust related to TRPPs by Neptune and/or NCS in the State of Florida, including but not limited to those claims which have been alleged or which could have been alleged by Plaintiffs in the Lawsuit, on behalf of herself and/or on behalf of the TRPP Settlement Class, against Defendants. TRPP Released Claims do not include any claim for enforcement of this Agreement and/or Final Order and Judgment.
- T. “Released Persons” means Service Corporation International, SCI Direct, Inc., Neptune Society of America, Inc., Neptune Management Corp. a/k/a Neptune Society Management Corporation d/b/a Neptune Society, NCS Marketing Services, LLC d/b/a National Cremation Society, Medical Air Services Association, Inc., Medical Air Services Association of Florida, Inc., and all of their insurers, and their respective past, present, and future, parents, subsidiaries, affiliates, divisions, predecessors, successors, heirs, legal representatives, legatees, and assigns, together with the past, present, and future officers, directors, board members, shareholders, members, presidents, affiliates, managers, partners, employees, agents, servants, representatives, consultants, in-house or outside counsel, sureties, insurers, and reinsurers of each of the foregoing.
- U. “Retail Merchandise Agreement” means an agreement sold by Neptune and/or NCS in the State of Florida for cremation-related merchandise, including a memento

chest, urn, photo keepsake, thank you cards or a planning guide, for delivery to the purchaser at or soon after the time of purchase.

- V. “Settlement” means the settlement described in this Settlement Agreement and Release.
- W. “Settlement Administrator” means the independent professional service company selected by the Parties to oversee the distribution of Individual Notice as well as the processing and payment of claims to Settlement Class Members as set forth in the Agreement. The Parties have agreed that Angeion Group will serve as Settlement Administrator, subject to the Court’s approval and Angeion Group’s acceptance of the appointment. In the event the Court does not approve Angeion Group or Angeion Group declines the appointment, the Parties shall submit another mutually agreeable firm to the Court for appointment as Settlement Administrator.
- X. “Settlement Class Member” means any Person who is included within the definition of one of the Settlement Classes as defined in Section II above (or succeeds to the interests of such a Person); *provided however* that the term Settlement Class Member as used herein with respect to any right or obligation after the Final Approval date does not include any opt-outs as provided in Section X.
- Y. “TRPP” means a Transportation and Relocation Protection Plan sold by Neptune and/or NCS on behalf of Medical Air Services Association of Florida, Inc. and/or Medical Air Services Association, Inc. (“MASA”) within the State of Florida to provide a membership for transportation services of a purchaser or beneficiary’s remains, should the purchaser or beneficiary relocate or be outside of seventy-five (75) miles of his or her residence at the time of passing. Membership and accrual of benefits in the TRPP is immediate upon purchase.

#### **IV. CONSIDERATION AND BENEFITS TO PARTICIPATING CLASS MEMBERS**

A. The Parties have negotiated a compromise of disputed claims, and have agreed on consideration for payment of claims to Participating Class Members, as provided herein, in exchange for a release of Preneed and Retail Merchandise Released Claims and/or TRPP Released Claims to Released Persons by all Settlement Class Members, and Dismissal With Prejudice of the Lawsuit. The option to cancel available to Participating Class Members and entitlement to an online obituary shall be deemed sufficient consideration provided to all Settlement Class Members in exchange for a full release of the Preneed and Retail Merchandise Released Claims and/or TRPP Released Claims.

B. Participating Class Members of the Preneed and Retail Merchandise Plan Settlement Class (defined in Section II(A) above) will have sixty (60) days from the date of the Individual Notice to exercise the option to cancel both their Retail Merchandise Agreement and Preneed Funeral Agreement and receive a full refund of the purchase price paid for each agreement, less any amounts previously refunded. This extended right of cancellation for purchasers of the Retail Merchandise Agreement is contingent upon the Participating Class

Member returning the merchandise received (in substantially original condition) under that agreement. A Participating Class Member cannot exercise this extended right to cancel the Retail Merchandise Agreement without also cancelling the Preneed Funeral Agreement.

C. Participating Class Members of the TRPP Settlement Class (defined in Section II(B) above) will have sixty (60) days from the date of the Individual Notice to cancel their TRPP and receive a full refund of the purchase price paid for that agreement, less any amounts previously refunded. This extended right of cancellation is contingent upon the Participating Class Member also cancelling any Preneed Funeral Agreement and/or Retail Merchandise Agreement he or she purchased for the same beneficiary as the TRPP from Neptune or NCS. In order to cancel their TRPP, all of the Participating Class Member's agreements with NCS or Neptune for the same beneficiary must also be cancelled (and the merchandise must be returned in substantially original condition), and he or she will receive a full refund of the purchase price paid for all the cancelled agreements.

D. To the extent Settlement Class Members choose not to submit a claim to cancel their Agreements, Neptune and/or NCS will provide the beneficiary with entitlement to an online obituary, free of charge. This includes the services of Neptune or NCS personnel to work with families to craft the language of the obituary. Settlement Class Members do not need to submit a Claim Form to receive this benefit. Entitlement to the obituary will be noted in each Settlement Class Member's records, and it, along with the services each Settlement Class Member purchased, will be available to the Settlement Class Member at the time of need.

E. To the extent Neptune or NCS continue to sell the TRPP on behalf of MASA in the State of Florida using substantially the same form as that used with the Plaintiffs here, within sixty (60) days of the Effective Date of this Settlement Agreement, Neptune and NCS will amend the TRPP contract forms sold on behalf of MASA to include a specific disclaimer stating the following or substantially similar language: "As a third party seller of MASA, the seller has a financial interest in and receives compensation based on the sale of this Plan."

F. The Individual Notice sent to all Settlement Class Members shall also include the following disclosure regarding their existing cancellation rights under their Preneed Funeral Agreements, to the extent such an agreement was purchased: "Unless your Preneed Services Agreement has been made irrevocable, it may be cancelled at any time by giving written notice to the seller. Upon providing such notice you shall be entitled to a refund for unused services, cash advance items, and facilities portions of the Agreement as provided by law. *See Fla. Stat. § 497.459(1)-(2).*"

G. The payments/refunds described in this Section IV(B)-(C) are the only payments/refunds to which any Participating Class Members will be entitled under the Settlement. The payments/refunds to Participating Class Members will be deemed to be inclusive of any claims for penalties and interest.

H. The payment of claims and other obligations incurred pursuant to this Agreement shall be in full and final disposition of the Lawsuit, and in consideration for the release of any and all Released Claims as against any and all Released Persons and as between the Parties. The Parties



agree to work together in good faith to expeditiously administer the terms of this Settlement Agreement and settlement called for herein.

**V. SETTLEMENT OF ALL CLAIMS AGAINST DEFENDANTS**

A. The Settlement settles and resolves with finality the Lawsuit against the Defendants, which includes all claims that have been brought, could have been brought, or could be brought now or at any time in the future, by any Settlement Class Member against any Defendant or Released Person(s) in the Lawsuit, or any other proceeding that arises out of, concerns, is connected with, or otherwise relates, directly or indirectly, to the Lawsuit whether legal or otherwise.

**VI. DISMISSAL OF ACTION AND RELEASE OF CLAIMS**

A. Release by Preneed and Retail Merchandise Plan Settlement Class Members. In consideration of the benefits described and the agreement and covenants contained in this Settlement Agreement, and by operation of the Final Order and Judgment, the Preneed and Retail Merchandise Plan Settlement Classes, the Class Representatives and each Preneed and Retail Merchandise Plan Settlement Class Member, on his, her, its, or their own behalf and on behalf of his or her respective predecessors, successors, assigns, assignors, representatives, attorneys, agents, trustees, insurers, heirs, next of kin, estates, beneficiaries, executors, administrators, and any natural, legal, or juridical person or entity to the extent he, she, or it is entitled to assert any claim on behalf of any Preneed and Retail Merchandise Plan Settlement Class Member hereby release, acquit, forever discharge and hold harmless the Released Persons, and each of them, of and from any and all past, present and future claims, counterclaims, crossclaims, actions, lawsuits, rights or causes of action, liabilities, suits, demands, damages, losses, payments, judgments, debts, dues, sums of money, costs and expenses (including, without limitation, attorneys' fees and costs), accounts, reckonings, bills, covenants, contracts, controversies, agreements, obligations, or promises, in law or in equity, contingent or non-contingent, known or unknown, suspected or unsuspected, foreseen or unforeseen, matured or unmatured, accrued or unaccrued, liquidated or unliquidated, whether direct, representative, class or individual in nature, in any forum that the Preneed and Retail Merchandise Plan Settlement Class Member, and each of them, had, has, or may have in the future arising from or relating to the Preneed and Retail Merchandise Released Claims, and agree not to institute, maintain, or assert any Preneed and Retail Merchandise Released Claims against the Released Persons.

B. Release by TRPP Settlement Class Members. In consideration of the benefits described and the agreement and covenants contained in this Settlement Agreement, and by operation of the Final Order and Judgment, the TRPP Settlement Classes, the Class Representatives and each TRPP Settlement Class Member, on his, her, its, or their own behalf and on behalf of his or her respective predecessors, successors, assigns, assignors, representatives, attorneys, agents, trustees, insurers, heirs, next of kin, estates, beneficiaries, executors, administrators, and any natural, legal, or juridical person or entity to the extent he, she, or it is entitled to assert any claim on behalf of any TRPP Settlement Class Member hereby release, acquit, forever discharge and hold harmless the Released Persons, and each of them, of and from any and all past, present and future claims, counterclaims, crossclaims, actions, lawsuits, rights or causes of action, liabilities, suits, demands, damages, losses, payments, judgments, debts, dues, sums of

money, costs and expenses (including, without limitation, attorneys' fees and costs), accounts, reckonings, bills, covenants, contracts, controversies, agreements, obligations, or promises, in law or in equity, contingent or non-contingent, known or unknown, suspected or unsuspected, foreseen or unforeseen, matured or unmatured, accrued or unaccrued, liquidated or unliquidated, whether direct, representative, class or individual in nature, in any forum that the TRPP Settlement Class Member, and each of them, had, has, or may have in the future arising from or relating to the TRPP Released Claims, and agree not to institute, maintain, or assert any TRPP Released Claims against the Released Persons.

C. Plaintiffs and each Settlement Class Member: (i) represents, warrants, and agrees that such Settlement Class Member waives and is forever estopped from asserting any Preneed and Retail Merchandise Released Claim or TRPP Released Claim against any Released Person; and (ii) covenants that such Settlement Class Member will not now or in the future sue or threaten to sue any Released Person for any Preneed and Retail Merchandise Released Claim or TRPP Released Claim, or otherwise assert or threaten to assert any Preneed and Retail Merchandise Released Claim or TRPP Released Claim against any Released Person.

D. Nothing contained in this Agreement shall: (i) preclude the enforcement of the terms of this Agreement or the Final Order and Judgment; or (ii) preclude Plaintiffs or Settlement Class Members from participating in the claim administration process outlined in this Agreement.

E. Upon entry of the Final Order and Judgment described in Section XI, the Lawsuit will be dismissed by the Court with prejudice, and Plaintiffs, individually and on behalf of the Settlement Classes, will release with prejudice all the Released Persons from all of the Preneed and Retail Merchandise Released Claims and/or TRPP Released Claims.

## **VII. PRELIMINARY APPROVAL AND CLASS CERTIFICATION**

A. No later than September 7, 2022, Class Counsel shall submit this Settlement Agreement to the Court and request entry of the Preliminary Approval Order substantially in the form set forth in **Exhibit "1"** that will, among other things:

(i) Preliminarily certify the Settlement Classes, as defined in Section II, for settlement purposes and designate the following attorneys as Class Counsel for the Settlement Classes:

Randall P. Ewing, Jr.  
**KOREIN TILLERY LLC**  
205 North Michigan Plaza, Suite 1950  
Chicago, IL 60601  
Phone: (312) 641-9750  
rewing@koreintillery.com

Alec H. Schultz  
**HILGERS GRABEN PLLC**  
1221 Brickell Avenue, Suite 900  
Miami, Florida 33131  
Phone: 305.630.8304  
aschultz@hilgersgraben.com

- (ii) Preliminarily approve this Agreement as sufficiently fair and reasonable to warrant sending notice to the Settlement Classes preliminarily certified for settlement purposes;
- (iii) Preliminarily enjoin any Settlement Class Member from bringing a new alleged class action or attempting to amend an existing action to assert any class claims that would be released pursuant to this Agreement;
- (iv) Grant leave to file the Third Amended Complaint;
- (v) Appoint Angeion Group as the Settlement Administrator;
- (vi) Determine that distribution of the Individual Notice as described herein, are the reasonable and best practicable notice under the circumstances; are reasonably calculated to apprise Settlement Class Members of the pendency of the Lawsuit and of their right to object or opt-out of the Settlement; constitute due, adequate, and sufficient notice to all persons entitled to receive notice; and meet the requirements of the Federal Rules of Civil Procedure, and requirements of due process under the Florida and United States Constitutions, and the requirements of any other applicable rules or law;
- (vii) Preliminarily appoint Nancy Taylor and Hazel Benjamin as the Class Representatives; and
- (viii) Schedule a date to conduct the Final Approval Hearing, which shall not be held until after the Opt-Out period has concluded.

B. The Parties agree to jointly request that the Court stay the Lawsuit, and enjoin all Settlement Class Members, unless and until they have been excluded from the Settlement Classes, or until the Court denies approval of the Settlement, or until the Settlement Agreement is otherwise terminated, from filing, commencing, prosecuting, intervening in, participating in and/or maintaining, as plaintiffs, claimants, or class members in, any other lawsuit, including, without limitation, or administrative, regulatory, arbitration, or other proceeding in any jurisdiction (whether state, federal or otherwise), against Released Persons based on, relating to any of the Released Claims or arising out of the claims and causes of action, or the facts and circumstances at issue, in the Lawsuit.

C. The Parties recognize that there may be further pleadings, discovery responses, documents, testimony, or other matters or materials owed by the Parties to each other pursuant to existing pleading requirements, discovery requests, pretrial rules, procedures, orders, decisions, or otherwise. As of the Effective Date of this Agreement, each Party expressly waives any right to receive, inspect, or hear such pleadings, discovery, testimony, or other matters or materials during

the pendency of the settlement proceedings contemplated by this Settlement Agreement and subject to further order of the Court.

D. Preliminary certification of the Settlement Classes and appointment of the Class Representatives and Class Counsel for purposes of this Settlement by the Court shall be binding only with respect to the Settlement. In the event the Settlement is not consummated due to a termination of this Agreement in accordance with its terms, a failure or refusal of the Court to approve the Settlement, or a reversal or modification of the Court's approval of the Settlement on appeal, or for any other reason: (i) the Court shall vacate the certification of the Settlement Classes; (ii) the Parties shall proceed as though the Agreement had never been entered and the Settlement Classes had never been certified; (iii) the terms of this Agreement and the fact that the Parties reached an agreement on resolution shall be inadmissible in any future proceedings; and (iv) Defendants shall have the right to contest the certification of any class herein or as otherwise may be sought in the Lawsuits. Nothing herein shall preclude the Court from considering the merits of any motion for class certification.

E. The Parties shall undertake reasonable best efforts, including all efforts and steps contemplated by and consistent with this Agreement, to effectuate and carry out the terms of this Agreement. No Party shall take any action that directly or indirectly interferes with the effort to obtain entry of the Preliminary Approval Order or Final Order and Judgment, except as specifically provided otherwise in this Agreement.

#### **VIII. NOTICE TO SETTLEMENT CLASS MEMBERS**

A. Within thirty (30) days after Preliminary Approval of the Settlement as provided in Section VII above, Defendants shall provide to the Settlement Administrator information and documents in their possession and readily obtainable that include the name and last known address of each potential member of the Settlement Classes that they have been able to identify, after conducting a reasonable search and making a reasonable inquiry of their records. Any spreadsheets or other electronic documents will be provided in their native or similar machine-parsable format.

B. Within fifty-five (55) days after Preliminary Approval of the Settlement, as provided in Section VII above, the Settlement Administrator will send a copy of the Individual Notice and a Claim Form by first-class mail to the last known address of all putative members of the Settlement Classes. For any Individual Notices returned as undeliverable, the Settlement Administrator will utilize the services of a commercial database resources entity (e.g., Accurant, TransUnion, IDI, etc.), and attempt to obtain current mailing addresses for such returned Individual Notice(s), and should the commercial database show a more current address, the Settlement Administrator shall re-send the returned Individual Notice to the more current address; *provided however*, if a determination is made in good faith by the Settlement Administrator that it is not possible to further update any particular Settlement Class Member's address(es) in sufficient time to re-send the Individual Notice(s) at least forty-five (45) days before the scheduled Final Approval Hearing, then the Settlement Administrator need not make any further efforts to provide further Individual Notice to such Settlement Class Member(s).

C. The Individual Notice will be approved as to form and content by the Court and be substantially in the form attached hereto as **Exhibit "2"**, unless otherwise modified by agreement

of the Parties and approved by the Court. The mailing to the Settlement Class Members that contains the Individual Notice will also include a copy of the Claim Form, in a format substantially similar to **Exhibit “3”**.

D. The Individual Notice and Claim Form will also be made available to all potential Settlement Class Members by request to the Settlement Administrator, who shall send via first class U.S. mail any of these documents as requested from the Settlement Administrator by any potential Settlement Class Member.

E. The Individual Notice and Claim Form and important deadlines will also be published on a website created by the Settlement Administrator relating to the Lawsuit, or as the Court may direct, and further information and details will be available at a toll-free number.

**IX. SUBMISSION OF CLAIMS BY SETTLEMENT CLASS MEMBERS AND CLAIMS ADMINISTRATION**

A. To obtain the relief set forth in Section IV (B)-(C), Members of the Settlement Classes must timely submit a Claim Form in accordance with this Section.

B. Claim Forms shall be included with the Individual Notices mailed to Settlement Class Members as provided in Section VIII above. In addition, the Settlement Administrator will provide Claim Forms to Settlement Class Members upon request, and Claim Forms will be published on a website created by the Settlement Administrator relating to the Lawsuit. Claim Forms may be submitted on behalf of deceased or incapacitated Settlement Class Members by their Legally Authorized Representatives, who must provide reasonable proof of their authority, as determined solely by the Settlement Administrator. Any rights to settlement payments under this Agreement shall inure solely to the benefit of Settlement Class Members and are not transferable or assignable to others.

C. Claim Forms must affirm that the information contained in it (name and address of the Settlement Class Member) correctly identifies an individual who meets the definition of a Settlement Class Member and be completed under the penalty of perjury. Claim Forms must be mailed to the address of the Settlement Administrator as specified in the Claim Form, and postmarked, or electronically submitted as provided on the website, no later than sixty (60) days after the date the Individual Notice is issued by the Settlement Administrator (the “Claims Deadline”). Claim Forms will not be considered if they are postmarked or received after the Claims Deadline.

D. The Settlement Administrator shall be responsible for reviewing all Claim Forms and for making a determination whether such Claim Forms are timely, complete, and under the penalty of perjury. For any deficient Claim Forms, the Settlement Administrator will assist the Settlement Class Members in curing the deficiency. Any claim that is not substantially in compliance with the instructions on the Claim Form or the terms of this Settlement Agreement after an opportunity to cure any deficiencies, or is postmarked or electronically received later than the Claims Deadline shall be rejected. Following the Claims Deadline, the Settlement Administrator shall provide a report of all accepted or rejected claims to counsel for Defendants and Class Counsel.

E. Participating Class Members who timely submit Claim Forms in accordance with this Section will be eligible to receive the relief set forth in Section IV(B) or (C) above, provided that: (i) a Participating Class Member in the Preneed Retail Merchandise Plan Settlement Class has agreed to cancel both agreements and has returned the merchandise purchased in the Retail Merchandise Agreement in substantially original condition and pursuant to the instructions on the Individual Notice; and (ii) a Participating Class Member in the TRPP Settlement Class has also agreed to cancel any Preneed Funeral Agreement and/or Retail Merchandise Agreement purchased for the same beneficiary, and has returned any merchandise under the Retail Merchandise Agreement, (in substantially original condition and pursuant to the instructions on the Individual Notice).

F. For all Settlement Class Members who do not opt out of the Settlement or timely submit Claims Forms, Neptune and/or NCS will provide the beneficiary with entitlement to an online obituary, free of charge. Entitlement to the obituary will be noted in each Settlement Class Member's records, and it, along with the services the Settlement Class Member purchased, will be available to each Settlement Class Member at the time of need. This includes the services of Neptune or NCS personnel to work with families to craft the language of the obituary.

G. All refunds due under the terms of this Settlement pursuant to Section IV(B) or (C) will be paid within ninety (90) days after the Effective Date.

**X. REQUESTS FOR EXCLUSION/OPT OUT AND OBJECTIONS TO THE SETTLEMENT**

A. Any Settlement Class Member who wishes to exclude themselves from either of the Settlement Classes, thereby becoming an Opt-Out, must send a written request for exclusion, via First Class Mail to the Settlement Administrator no later than forty-five (45) days after the first date Notice is issued by the Settlement Administrator. To be effective, such a request must include: the above referenced case number; the Settlement Class Member's full name, address, and telephone number; a clear and unequivocal statement that the Settlement Class Member wishes to be excluded from whichever Settlement Class he or she is a member of, and the signature of the Settlement Class Member or, in the case of a Settlement Class Member who is deceased or incapacitated only, the signature of the Legally Authorized Representative of the Settlement Class Member. The Opt-Out request must be postmarked within the forty-five day period set forth above. If the Settlement is finally approved by the Court, all Settlement Class Members who have not opted out by the end of the forty-five day period will be bound by the Settlement, and the relief provided by the Settlement will be their sole and exclusive remedy for the claims alleged by the Settlement Classes. Class Counsel shall file all opt outs with the Court by a date prior to the Final Approval Hearing to be determined by the Court.

B. If the Opt-Out Request is submitted by someone other than the Settlement Class member, the third-party signer (e.g. attorney, billing agent, or Legally Authorized Representative) must include the following attestations on the Opt-Out Request:

I certify and attest to the Court that the Settlement Class Member on whose behalf this Opt-Out Request is submitted, has been provided a copy of and a reasonable opportunity to read the Class Notice and after

reviewing their own internal records to confirm that they are a Settlement Class Member specifically requested to be excluded from this Settlement Class.

I have also actually advised the Settlement Class Member of the salient terms of the Settlement Agreement, including the monetary terms of the Settlement Agreement and a comparison of recovery based on the monetary terms of the Settlement and what that proposed Settlement Class Member could expect without the Settlement set forth in the Settlement Agreement and that after a full consultation of this information, the proposed Settlement Class Member still desires to opt out of the Settlement.

C. Settlement Class Members who do not timely request to opt out of the Settlement may object to the Settlement. Any Settlement Class Member who has any objection to certification of the Settlement Classes, or to approval of this Settlement or any terms hereof, or to the approval process, must make that objection by the following procedure:

- (i) the objection must be in writing;
- (ii) the objection must set forth all objections and the reasons therefore, and a statement whether the Settlement Class Member intends to appear at the Final Approval Hearing, either with or without the objector's counsel. The objection must identify any witnesses intended to be called, the subject area of the witnesses' testimony, and all documents to be used or offered into evidence at the Final Approval Hearing;
- (iii) the objection must be signed by the individual Settlement Class Member and by his/her/its counsel; an objection signed by counsel alone shall not be sufficient;
- (iv) the objection must contain the caption of the Lawsuit and include the name, mailing address, e-mail address, if any (an e-mail address is not required), and telephone number of the objecting Settlement Class Member; and
- (v) the objection must be mailed to the Settlement Administrator and must be postmarked no later than thirty (30) days prior to the Final Approval Hearing. Class Counsel shall file all objections with the Court by a date prior to the Final Approval Hearing to be determined by the Court.
- (vi) Failure to comply timely and fully with these procedures shall result in the invalidity and dismissal of any objection. Any Settlement Class Member who does not fully and timely comply with these procedures shall waive the right to object or to be heard at the Final Approval Hearing and shall be forever barred from making any objection (whether by appeal or otherwise) to the Settlement. Settlement Class Members have the right to exclude themselves from the Settlement and pursue a separate and independent remedy against Defendants by complying with the exclusion provisions set forth in subsection A, above. Settlement Class Members who object to the Settlement shall remain in the Settlement Classes and will have voluntarily waived their right to pursue an independent remedy against Defendants. To the extent any Settlement Class

Member(s) objects to the Settlement, and such objection is overruled in whole or in part, such Settlement Class Member(s) will be forever bound by the Final Order and Judgment of the Court.

**XI. FINAL APPROVAL AND DISMISSAL WITH PREJUDICE**

A. After the completion of the mailing and publishing of Individual Notices and the passage of the deadlines for seeking exclusion from the Settlement Classes, Class Counsel will file a motion seeking the Court's final approval of the Settlement at a Final Approval Hearing to be held at the time, date, and location stated in the Individual Notice, and in the Preliminary Approval Order. Plaintiffs shall request that the Court enter final judgment substantially in the form of the Final Order and Judgment attached hereto as **Exhibit "4"** which will, among other things:

(i) Find that the Court has personal jurisdiction over all Settlement Class Members and subject matter jurisdiction to approve the Agreement;

(ii) Approve the Settlement without material alteration and direct the parties and counsel to comply with and consummate the terms of this Agreement;

(iii) Certify the Settlement Classes for settlement purposes only;

(iv) Find Class Counsel and Plaintiffs have adequately represented the Settlement Classes;

(v) Find the terms of this Agreement are fair, reasonable, and adequate to the Settlement Classes;

(vi) Provide that each member of the Settlement Classes shall be bound by the provisions of this Agreement, including the releases in Section VI, and that the Agreement shall have *res judicata* and preclusive effect in all pending and future lawsuits or other proceedings maintained by or on behalf of Plaintiffs and any and all other Settlement Class Members;

(vii) Find that the mailing of the Individual Notice approved by the Court were the best practicable notice and satisfied the requirements of the Federal Rules of Civil Procedure and the requirements of due process under the Florida and United States Constitutions, and the requirements of any other applicable rules or law;

(viii) Dismiss all claims in the Lawsuit on the merits and with prejudice, and enter final judgment thereon, without fees or costs to any party except as provided in this Agreement;

(ix) Permanently enjoin Settlement Class Members who have not opted out from filing, commencing, prosecuting, continuing, intervening in, or participating in (as parties and/or class members) any action regarding any Preneed and Retail Merchandise Released Claim or TRPP Released Claim against any Released Person.

(x) Authorize the Parties, without further approval from the Court, to agree to and adopt such amendments, modifications and expansions of the Agreement and its implementing documents as: (i) shall be consistent in all material respects with the Final Judgment; or (ii) do not limit the rights of Settlement Class Members;



(xi) Without affecting the finality of the Final Approval Order for purposes of appeal, retain jurisdiction as to all matters relating to administration, consummation, enforcement and interpretation of the Settlement Agreement and the Final Approval Order, and for any other necessary purpose;

(xii) Approve the payment of an Attorneys' Fee Award to Class Counsel in the amount of up to Five Million, Five Hundred Thousand Dollars (\$5,500,000.00); and

(xiii) Expressly incorporate the terms of this Settlement Agreement and provide that the Court retains continuing and exclusive jurisdiction over the Parties, the Settlement Class Members and this Settlement Agreement, to interpret, implement, administer and enforce the Settlement Agreement in accordance with its terms.

B. The Parties to this Agreement further agree that any Party to this Agreement, counsel in any capacity in which they may act under the authority of the Agreement, and any employees, representatives, or agents of such law firms or the Parties to the Agreement (including, without limitation, the Settlement Administrator and those employees and independent contractors who may furnish services in connection with the proposed Settlement) shall not be liable for anything done or omitted in connection with the settlement called for in this Agreement, the prosecution and defense of the Lawsuit, and/or the claims administration process under it except for their own willful misconduct. Neither Plaintiffs, Defendants, nor any of their counsel shall be liable for any act or omission of the Settlement Administrator.

## **XII. REPRESENTATION OF OPT OUTS**

A. Class Counsel and their firms agree not to represent, encourage, solicit or otherwise assist, in any way whatsoever, including but not limited to referrals to other counsel, any person to submit written objections to the Settlement, requests for exclusion from the Settlement, or to encourage Settlement Class Members or any persons to appeal from the Preliminary Approval Order and/or the Final Order and Judgment.

## **XIII. ADMINISTRATION EXPENSES**

A. Defendants shall pay all reasonable costs of Notice to the Settlement Classes, as described in Section VIII above, and all Administration Expenses contemplated by this Agreement, including the reasonable costs of printing, reproducing, and mailing the checks, forms, notices, and responses that they send in connection with the administration of the claims process described above.

## **XIV. ATTORNEYS' FEE AWARD**

A. Defendants recognize that Class Counsel shall be entitled to petition the Court for an award of their reasonable attorneys' fees incurred in the Lawsuit, subject to Court approval. Subject to Court approval, Defendants agree to pay an Attorneys' Fee Award in a total amount of Five Million, Five Hundred Thousand Dollars (\$5,500,000.00). Class Counsel agree that they will not seek an Attorneys' Fee Award of more than Five Million, Five Hundred Thousand dollars (\$5,500,000.00). Defendants agree not to oppose, or support or encourage anyone else's opposition to, any award of attorneys' fees equal to or less than Five Million, Five Hundred Thousand dollars

(\$5,500,000.00). The Attorneys' Fees shall be paid to Class Counsel directly and shall not reduce Class Members' recovery. Class Counsel's petition for an Attorneys' Fee Award shall be filed no later than thirty (30) days prior to the deadline for objections set forth above in Section X(B). The payment of any Attorneys' Fee Award shall be separate from and in addition to any payments made to Settlement Class Members. Any Attorneys' Fee Award is subject to the approval of the Court. Each Party shall bear their own costs and expenses from the Litigation.

B. Any approved Attorneys' Fee Award shall be payable to Class Counsel within sixty (60) days after the Effective Date of this Agreement. Other than as set forth in this Section XV(A) above, Class Counsel hereby waives, discharges and releases Defendants and counsel for Defendants of and from any and all other claims for attorneys' fees, costs, and/or expenses of litigation, in connection with any legal or other services provided by Class Counsel in the Lawsuit.

#### **XV. DISAPPROVAL OR TERMINATION OF THE SETTLEMENT**

A. This Settlement Agreement shall terminate and cancel, without any further action from any Party, upon the occurrence of any of the following events:

- (i) The Court declines to enter the Preliminary Approval Order;
- (ii) The Final Approval Hearing is not held by the Court;
- (iii) The Final Order and Judgment approving the Settlement in materially the same terms as set forth herein and/or certifying the Settlement Classes as defined herein is not entered by the Court, or is reversed by a higher court;

or

- (iv) The Court declines to dismiss with prejudice all claims in the Lawsuit.

B. Defendants will have the option, in their sole discretion, to void this Settlement Agreement and return the Parties back to their pre-settlement positions if more than ten percent (10%) of potential Settlement Class Members who are sent notice validly opt-out of the Settlement Classes.

C. If the Settlement fails for any reason other than a breach by one of the Parties, or if this Agreement is automatically terminated or terminated by Defendants pursuant to Subsection B, above:

(i) This Settlement Agreement and the Settlement shall have no further force or effect, and all proceedings that have taken place with regard to this Agreement and the Settlement shall be without prejudice to the rights and contentions of the parties hereto and any of the putative Settlement Class Members;

(ii) This Settlement Agreement, all of its provisions (including, without limitation, any provisions regarding class certification), and all negotiations, statements and proceedings relating to them shall be without prejudice to the rights of any of the parties, each of

whom shall be restored to their respective positions existing immediately before settlement negotiations and the execution of this Settlement Agreement;

(iii) This Settlement Agreement, any provision of this Settlement Agreement (including without limitation the provisions regarding class certification), and the fact of this Settlement Agreement having been made, shall not be admissible or entered into evidence for any purpose whatsoever and shall not be subject to discovery;

(iv) Any judgment or order entered in the Lawsuit after the date of this Settlement Agreement, including, without limitation, any order certifying the Settlement Classes, will be vacated and will be without any force or effect in any action or proceeding. The Parties hereto agree they will promptly file a joint motion with the Court to vacate all orders entered pursuant to the terms of this Settlement Agreement; and

(v) The Parties hereby agree they will not thereafter argue or raise a claim or defense, including, but not limited to, waiver, estoppel and other similar or related theories, that this Settlement Agreement and related pleadings and filings, any provision of this Settlement Agreement (including without limitation the provisions regarding class certification), the fact of this Settlement Agreement having been made, and any settlement negotiations preclude Defendants from opposing certification or the claims in the Lawsuit, or any other proceeding.

#### **XVI. COURT TO RETAIN JURISDICTION**

Notwithstanding any other provision of this Settlement Agreement, the Court shall retain continuing jurisdiction over the Lawsuit, the Settlement Classes, the Settlement Class Members, and the Settlement for the purposes of administering, supervising, construing and enforcing the Settlement. Any disputes or controversies arising out of, or related to, the interpretation, implementation, administration, and enforcement of this Settlement Agreement will be made by motion to the Court. The Parties and each Settlement Class Member hereby submit and consent to the exclusive jurisdiction of this Court for any suit, action, proceeding, or dispute arising out of, or relating to, this Settlement Agreement.

#### **XVII. DENIAL OF WRONGDOING; NO ADMISSION OF LIABILITY**

A. This Settlement Agreement, whether or not the Settlement becomes effective, is for settlement purposes only and is to be construed solely as a reflection of the Parties' desire to facilitate a resolution of the Lawsuit. The Defendants expressly deny that they have violated any duty to, breached any obligation to, committed any fraud on, or otherwise engaged in any wrongdoing with respect to the Class Representatives, the Settlement Classes, any Settlement Class Member, or any Opt Out, and expressly deny the allegations asserted in the Lawsuit and deny any and all liability related thereto. Neither this Settlement Agreement nor any actions undertaken by the Defendants or the Released Persons in the negotiation, execution, or satisfaction of this Settlement Agreement will constitute, or be construed as, an admission of any liability or wrongdoing, or recognition of the validity of any claim made by the Class Representatives, the Settlement Classes, any Settlement Class Member, or any Opt Out, or waiver of arbitration defenses for anything other than settlement purposes, in the Lawsuit, or any other action or proceeding.

B. This Settlement Agreement and the Settlement provided for herein, are not, and shall not be construed to be, an admission by any Released Person of any validity of any of the claims asserted in the Lawsuit, the certifiability of any classes or of any liability to the Class Representatives, any Settlement Class Member, or anyone else, or of any wrongdoing whatsoever.

C. The Parties specifically acknowledge and agree that this Settlement Agreement and its exhibits, along with all related drafts, motions, pleadings, conversations, negotiations, correspondence, orders or other documents shall be considered a compromise within the meaning of the Federal Rule of Evidence Rule 408. The Parties also agree that this Settlement Agreement and its exhibits, along with all related drafts, motions, pleadings, conversations, negotiations, correspondence, orders or other documents entered in furtherance of this Settlement, and any acts in the performance of this Settlement are not intended to be, nor shall they in fact be, admissible, discoverable, or relevant in any case or other proceeding against any Released Person: (i) to establish grounds for certification of any class involving any Settlement Class Member; or (ii) as evidence of any obligation that any Party hereto has or may have to anyone.

D. The provisions of this Settlement Agreement, and any orders, pleadings or other documents entered in furtherance of this Settlement, may be offered or received in evidence solely: (i) to enforce the terms and provisions hereof or thereof; (ii) as may be specifically authorized by a court of competent jurisdiction after an adversary hearing upon application of a Party hereto; or (iii) to obtain Court approval of the Settlement.

#### **XVIII. COOPERATION; ROLE OF CLASS**

A. The Parties will cooperate, assist, and undertake all reasonable actions to accomplish the steps contemplated by this Settlement Agreement and to implement the Settlement on the terms and conditions provided herein. The Parties agree to take all actions necessary to obtain final approval of the Settlement and entry of a Final Order and Judgment, including the terms and provisions described in this Settlement Agreement, and, upon final approval and entry of such order, an order dismissing the Lawsuit with prejudice as to the Class Representatives, the Settlement Classes, and each Settlement Class Member.

B. The Parties and their counsel agree to support the final approval and implementation of this Settlement Agreement and defend it against objections, appeal, collateral attack or any efforts to hinder or delay its approval and implementation.

#### **XIX. EFFECTIVE DATE**

A. The Effective Date of this Settlement shall be the first date on which all of the following statements are true:

- (i) All parties have executed this Agreement;
- (ii) No party has terminated the Agreement;
- (iii) The Court has preliminarily approved this Agreement and the Settlement;

(iv) The Court has entered a Final Order and Judgment substantially in the form of **Exhibit “4”** hereto, approving this Agreement and the Settlement without material alteration, releasing all of the Released Persons from all of the Preeed and Retail Merchandise Released Claims and TRPP Released Claims, and dismissing the Lawsuit with prejudice and without leave to amend; and

(v) Either: (i) The time to file an appeal from the Final Judgment has expired without the filing of any appeal(s) or (ii) if any appeal has been taken from the Final Judgment, then the date on which all appeals therefrom, including petitions for rehearing or reconsideration, petitions for rehearing *en banc*, and petitions for certiorari, or any other form of judicial review have been finally disposed of in a manner that affirms the Final Judgment without material alteration

## **XX. REPRESENTATIONS AND WARRANTIES**

A. Class Counsel represents and warrants as of the date this Agreement is executed that they have authority to enter into this Settlement Agreement on behalf of the Class Representatives and the members of the Settlement Classes.

B. The Class Representatives represent and warrant as of the date this Agreement is executed that they: (i) have agreed to serve as representatives of the Settlement Classes proposed to be certified herein; (ii) are willing, able, and ready to perform all of the duties and obligations as representatives of the Settlement Classes; (iii) are familiar with the pleadings in the Lawsuit, or has had the contents of such pleadings described to them; (iv) are familiar with the terms of this Settlement Agreement, including the exhibits attached to this Settlement Agreement, or has received a description of the Settlement Agreement, including the exhibits attached to this Settlement Agreement, from Class Counsel, and have agreed to its terms; (v) have consulted with, and received legal advice from, Class Counsel about the Lawsuit, this Settlement Agreement (including the advisability of entering into this Settlement Agreement and its Releases and the legal effects of this Settlement Agreement and its Releases), and the obligations of a representative of the Settlement Classes; (vi) have authorized Class Counsel to execute this Settlement Agreement on their behalf; and (vii) will remain in and not request exclusion from the Settlement Classes and will serve as representatives of the Settlement Classes until the terms of this Settlement Agreement are effectuated, this Settlement Agreement is terminated in accordance with its terms, or the Court at any time determines that such Class Representatives cannot represent the Settlement Classes.

C. Each Defendant represents and warrants as of the date this Agreement is executed that: (i) such Defendant has all requisite corporate power and authority to execute, deliver, and perform this Settlement Agreement; (ii) the execution, delivery, and performance of this Settlement Agreement by such Defendant has been duly authorized by all necessary corporate action; (iii) this Settlement Agreement has been duly and validly executed and delivered by such Defendant; and (iv) this Settlement Agreement constitutes a legal, valid, and binding obligation of such Defendant.

## **XXI. NOTICES**

A. Unless otherwise specified, any and all notices or other communications required or permitted to be given under any of the provisions of this Agreement shall be in writing and shall be deemed to have been duly given when personally delivered or delivered by nationally recognized overnight courier (e.g., FedEx) addressed to the parties at the addresses set forth below (or at such other address as any Party may specify by notice to the other Parties):

If to Plaintiffs:           Randall P. Ewing, Jr.  
KOREIN TILLERY LLC  
205 North Michigan Plaza, Suite 1950  
Chicago, IL 60601  
rewing@koreintillery.com

If to Defendants:       Service Corporation International  
Attn: Albert Lohse and Mary Rose Browder  
P.O. Box 130548  
Houston, Texas 77219

With a copy to:           Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC  
Attn: Nicholas Panayotopoulos  
3344 Peachtree Road  
Suite 2400  
Atlanta, Georgia 30326  
npanayo@wwhgd.com

## **XXII. MISCELLANEOUS**

A. Confidentiality of Information Relating to the Settlement. The Parties will treat Confidential Information in conformity with strict confidence and will not disclose Confidential Information to any non-Party (who is not a Released Person) without the prior written consent of the Party that shared the Confidential Information, except: (i) as required by applicable law, regulation, or by order or request of a court of competent jurisdiction, regulator, or self-regulatory organization (including subpoena or document request), provided that the Party that shared the Confidential Information is given prompt written notice thereof and, to the extent practicable, an opportunity to seek a protective order or other confidential treatment thereof, provided further that the Party subject to such requirement or request cooperates fully with the Party that shared the Confidential Information in connection therewith, and only such Confidential Information is disclosed as is legally required to be disclosed in the opinion of legal counsel for the disclosing Party; (ii) under legal (including contractual) or ethical obligations of confidentiality, on an as-needed and confidential basis to such Party's present and future accountants, counsel, insurers, or reinsurers; or (iii) with regard to any information that is already publicly known through no fault of such Party. This Settlement Agreement, all exhibits hereto, any other documents filed in connection with the Settlement, and any information disclosed through a public court proceeding shall not be deemed Confidential Information.

B. Entire Agreement. This Settlement Agreement and its exhibits, attachments, and appendices will constitute the entire agreement and understanding among the Parties and supersedes all prior proposals, negotiations, letters, conversations, agreements, term sheets, and understandings, whether written or oral, relating to the subject matter of this Settlement Agreement. The Parties acknowledge, stipulate, and agree that no covenant, obligation, condition, representation, warranty, inducement, negotiation, agreement, arrangement, or understanding, whether written or oral, concerning any part or all of the subject matter of this Settlement Agreement has been made or relied on except as expressly set forth in this Settlement Agreement. Prior drafts shall not be used to construe this Agreement.

C. Headings. The headings used in this Settlement Agreement are intended for the convenience of the reader only and will not affect the meaning or interpretation of this Settlement Agreement in any manner. Any inconsistency between the headings used in this Settlement Agreement and the text of the Articles and Sections of this Settlement Agreement will be resolved in favor of the text.

D. Incorporation of Exhibits. All of the exhibits attached hereto are hereby incorporated by reference as though fully set forth herein. Notwithstanding the foregoing, any inconsistency between this Settlement Agreement and any attachments, exhibits, or appendices hereto will be resolved in favor of this Settlement Agreement.

E. Amendments. This Settlement Agreement may be amended or modified only by a written instrument signed by counsel for all Parties. Amendments and modifications may be made without additional notice to the potential Settlement Class Members unless such notice is required by the Court.

F. Mutual Preparation. The Parties have negotiated all of the terms and conditions of this Settlement Agreement at arm's length. No Party or its counsel shall be considered the sole drafter of this Settlement 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 Settlement Agreement. This Settlement Agreement will be deemed to have been mutually prepared by the Parties and will not be construed against any of them by reason of authorship.

G. Extensions of Time. The Parties may agree in writing, subject to approval of the Court where required, to reasonable extensions of time to implement the provisions of this Settlement Agreement.

H. Execution in Counterparts. This Settlement Agreement may be executed in counterparts, and a facsimile signature will be deemed an original signature for purposes of this Settlement Agreement.

I. Waiver. The waiver by any Party of any breach of this Settlement Agreement by another Party will not be deemed or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, of this Settlement Agreement.

J. Governing Law. This Agreement and the Releases herein shall be governed by, and construed and enforced in accordance with, the laws of the State of Florida without regard to conflict of laws principles.

K. Severability. Except as otherwise provided in this Agreement, if any term or provision of this Agreement is invalid, illegal, or unenforceable, then such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision or the Settlement; *provided, however*, that if any fundamental term or provision of this Agreement (including the terms set forth in Section VI (Releases), and Section X (Opt-Out), is declared invalid, illegal, or unenforceable, then the remainder of this Agreement and the Settlement contemplated herein shall be unenforceable. Upon a determination that any term or provision is invalid, illegal, or unenforceable before entry of the Final Order and Judgment, the Parties hereto shall negotiate in good faith to modify this Agreement to affect the original intent of the Parties.

L. This Settlement Agreement shall be deemed to have been executed upon the last date of execution by all the undersigned parties and/or counsel.

**IN WITNESS WHEREOF**, the Parties hereto have executed this Settlement Agreement pursuant to the effective date stated hereinabove.

**[SIGNATURE PAGE FOLLOWS]**



Nancy L. Taylor  
NANCY TAYLOR, on behalf of herself, and  
others similarly situated.

Abel Benjamin  
Abel Benjamin, on behalf of himself/herself,  
and others similarly situated.

By: [Signature]  
Dolores Ramos  
PRINT

Vice President  
TITLE  
SCI DIRECT, INC.

By: [Signature]  
Tim Nicholson  
PRINT

President  
TITLE  
NEPTUNE MANAGEMENT CORP.,  
A/K/A NEPTUNE SOCIETY  
MANAGEMENT CORPORATION

By: [Signature]  
GARY SOBCZAK  
PRINT

Vice President  
TITLE  
NCS MARKETING SERVICES, LLC d/b/a  
NATIONAL CREMATION SOCIETY