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14
15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
16 **COUNTY OF LOS ANGELES**

17 TINA PATEL, in her representative capacity,
18 Plaintiff,

19 v.

20 ONEWEST RESOURCES, LLC, and Does 1-50,
21 inclusive,
22 Defendants.

**JOINT STIPULATION OF CLASS
ACTION SETTLEMENT AND RELEASE
OF CLAIMS**

1 exempt non-branch positions for Defendant in California at any time during the period from September 18, 2014,
2 through December 31, 2015.

3 7. "Class Period" means the period from September 18, 2011, through the date the Court enters an
4 order granting Preliminary Approval.

5 8. "Class Representative Enhancement Payment" means any payment, subject to Court approval, to
6 Plaintiff from the Class Settlement Amount in recognition of her effort and work in prosecuting the Action and
7 the Prior Action on behalf of Class Members, and for her general release of claims.

8 9. "Class Settlement Amount" means the maximum potential settlement payment of Four Hundred
9 Twenty Thousand Dollars (\$420,000), inclusive of any Attorneys' Fees and Costs Award, Class Representative
10 Enhancement Payment, LWDA Payment, Settlement Administration Costs, and Individual Settlement Payments
11 (including all employee share of payroll taxes), that Defendant may be required to pay in connection with an order
12 granting Final Approval. This Class Settlement Amount has been agreed to by Plaintiff and Defendant based on
13 the aggregation of the agreed-upon settlement value of individual claims. In no event will Defendant be liable for
14 more than the Class Settlement Amount except as otherwise explicitly set forth herein. There will be no reversion
15 of the Class Settlement Amount to Defendant. Defendant will be separately responsible for any employer payroll
16 taxes required by law for payments designated as wages under the Agreement, including the employer FICA,
17 FUTA and SDI contributions, which shall not be paid from the Class Settlement Amount.

18 10. "Court" means the Superior Court of the State of California for the County of Los Angeles or any
19 other court taking jurisdiction of the Action or Settlement.

20 11. "Defendant" means One West Resources LLC and its parent companies and successors.

21 12. "Effective Date" means the date by which the order granting Final Approval and the Court's
22 Judgment become binding. For purposes of this Agreement, the Judgment becomes binding upon the later of: (i)
23 sixty-two (62) days after Plaintiff files and serves Defendant with a Notice of Entry of Judgment, which Plaintiff
24 is required to file, and no appeal is filed within that period; (ii) if an appeal is filed, and the appeal is finally
25 disposed of by ruling, dismissal, denial or otherwise, the day after the last date for filing a request for further
26 review of the Court of Appeal's decision passes, and no further review is requested; (iii) if an appeal is filed and
27 there is a final disposition by ruling, dismissal, denial, or otherwise by the Court of Appeal, and further review of
28 the Court of Appeal's decision is requested, the day after the request for review is denied with prejudice and/or no

1 further review of the judgment can be requested, or (iv) if review is accepted, the day the California Supreme
2 Court affirms the Settlement.

3 13. "Individual Settlement Payment" means each Participating Class Member's respective share of
4 the Net Settlement Amount.

5 14. "LWDA Payment" means any payment, subject to Court approval, to the State of California
6 Labor and Workforce Development Agency ("LWDA") in connection with the Labor Code Private Attorneys
7 General Act of 2004 (Cal. Lab. Code §§ 2698, *et seq.*, "PAGA").

8 15. "Net Settlement Amount" means the portion of the Class Settlement Amount allocated to
9 Participating Class Members for all Individual Settlement Payments, including the employees' shares of payroll
10 taxes, after deductions for any Attorneys' Fees and Costs Award, Class Representative Enhancement Payment,
11 Settlement Administration Costs, and LWDA Payment.

12 16. "Notice of Objection" means a Participating Class Member's valid and timely written objection
13 to the Settlement. For the Notice of Objection to be valid, it must include the objector's full name, signature,
14 address, telephone number, and a written statement of all grounds for the objection..

15 17. "Notice Packet" means the Notice of Class Action Settlement, substantially in the form attached
16 as Exhibit A.

17 18. "Parties" means Plaintiff and Defendant collectively.

18 19. "Participating Class Members" means all Class Members who do not submit timely and valid
19 Requests for Exclusion.

20 20. "Plaintiff" or "Class Representative" means Plaintiff, Tina Patel, as an individual or as a
21 representative on behalf of the State of California and on behalf of all others similarly situated.

22 21. "Preliminary Approval" means the Court order granting preliminary approval of the Settlement.

23 22. "Release" or "Released Claims" means all claims, rights, demands, liabilities, and causes of
24 action, of every nature and description, arising during the Class Period, whether known or unknown, that were or
25 could have been brought based on the same set of operative facts as those set forth in the Action (via the
26 complaint attached as Exhibit B) or the September 18, 2015 complaint in the Prior Action, to the date the Court
27 grants preliminary approval of the settlement. The claims released by the Participating Class Members include,
28 but are not limited to, statutory, constitutional, contractual or common law claims for wages, damages, unpaid

1 costs or expenses, penalties, liquidated damages, punitive damages, interest, attorneys' fees, litigation costs,
2 restitution, or equitable relief, arising out of or based upon the following categories of allegations regardless of the
3 forum in which they may be brought, to the fullest extent such claims are releasable by law: (i) all claims for
4 unpaid overtime; (ii) all claims for meal break violations; (iii) all claims for unpaid minimum wages; (iv) all
5 claims for the failure to timely pay wages upon termination; (v) all claims for the failure to timely pay wages
6 during employment; (vi) all claims for wage statement violations; and (vii) all other penalties recoverable for such
7 claims under PAGA. As to the foregoing Released Claims, specifically the causes of action alleged in the
8 complaints in the action, this release also includes a waiver of unknown claims in accordance with the provisions
9 of California Civil Code § 1542, which provides: "A general release does not extend to claims which the creditor
10 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
11 her must have materially affected his or her settlement with the debtor."

12 23. "Released Parties" means Defendant, its subsidiaries, affiliates, parents, divisions, and their
13 respective successors and predecessors in interest, and assigns, their past or present officers, directors,
14 shareholders, board members, trustees, attorneys, employees, agents, principals, heirs, representatives,
15 accountants, auditors, consultants, insurers and reinsurers, and and other persons acting on their behalf, and each
16 of them, but only with respect to a Class Member's employment with Defendant OneWest Resources LLC, or
17 any later claim that flows from, or is premised upon, the alleged conduct or wrongs during that employment with
18 OneWest Resources LLC that is released under the definitions contained in Paragraph 22 above.

19 24. "Request for Exclusion" means a letter submitted by a Class Member indicating a request to be
20 excluded from the Settlement that (i) sets forth the name, address, telephone number, and last four digits of the
21 Social Security Number of the Class Member requesting exclusion; (ii) is signed by the Class Member; (iii) is
22 returned to the Settlement Administrator; (iv) clearly states that the Class Member does not wish to be included in
23 the Settlement; and (v) is postmarked on or before the Response Deadline. Any Request for Exclusion that does
24 not include all required information or that is not submitted on a timely basis shall be deemed null, void, and
25 ineffective.

26 25. "Response Deadline" means the deadline by which Class Members must postmark responses to
27 the Settlement Administrator, which will be sixty (60) calendar days from the initial mailing of the Notice Packet
28 by the Settlement Administrator, unless the 60th day falls on a Sunday or State holiday, in which case the

1 Response Deadline will be extended to the next day on which the U.S. Postal Service is open.

2 26. "Settlement Administration Costs" means any payment, subject to Court approval, payable from
3 the Class Settlement Amount to the Settlement Administrator for administering this Settlement, including, but not
4 limited to, printing, distributing, or tracking documents for this Settlement, processing any required tax payments
5 or reporting, providing any required tax forms, distributing the Class Settlement Amount, and providing necessary
6 reports and declarations, as requested by the Parties. The Settlement Administration Costs will be paid from the
7 Class Settlement Amount, including, if necessary, any such costs in excess of the amount represented by the
8 Settlement Administrator as being the maximum costs necessary to administer the Settlement, following Court
9 approval.

10 27. "Settlement Administrator" means CAC Services Group, LLC, or any other third-party class
11 action settlement administrator agreed to by the Parties and approved by the Court for the purposes of
12 administering this Settlement. The Parties each represent that they do not have any financial interest in the
13 Settlement Administrator or otherwise have a relationship with the Settlement Administrator that could create a
14 conflict of interest.

15 28. "Workweeks" means the number of days of employment for each Class Member during the
16 Class Period, subtracting days on leave of absence (if any), dividing by seven (7), and rounding up to the nearest
17 whole number. All Class Members will be credited with at least one Workweek.

18 **TERMS OF AGREEMENT**

19 Plaintiff, on behalf of herself, the State of California, and the Settlement Class, on the one hand, and
20 Defendant, on the other hand, agree as follows:

21 29. New Action. As a condition of the Settlement, Plaintiff will file a new action in Los Angeles
22 Superior Court, via the Complaint attached as Exhibit B. The purpose of the new action is to seek approval of this
23 Settlement Agreement. Defendant in no way waives the enforceability of its arbitration agreements with Plaintiff
24 and the putative class members and agrees to the terms of this Settlement Agreement (i) for the sole and limited
25 purpose of obtaining final approval of the settlement and (ii) only upon Plaintiff's agreement to seek, and take all
26 actions necessary to effect, dismissal of Plaintiff's non-PAGA claims or any non-PAGA claims alleged by another
27 named plaintiff in the Action, if the settlement is not approved. If approval is not obtained, Plaintiff will continue
28 with her representative PAGA claim, the statute of limitations of which was tolled pursuant to the parties'

1 separate agreement. Defendant does not impliedly or expressly waive any arguments or defenses to the New
2 Action, other than those specifically covered by the parties' tolling agreement, which is attached as Exhibit C.

3 30. Withdrawal of Appeals. As a condition of the Settlement, Plaintiff will not object to or appeal
4 any further decisions in Los Angeles Superior Court Case No. BC562538.

5 31. Funding of the Class Settlement Amount. Defendant will make a one-time deposit of the Class
6 Settlement Amount of Four Hundred Twenty Thousand Dollars (\$420,000) into a Qualified Settlement Account
7 to be established by the Settlement Administrator. Defendant will deposit the Class Settlement Amount within
8 ten (10) days of Notice of Entry of Judgment. The Settlement Administrator will not disburse any funds until five
9 (5) court days after the Effective Date. After the Effective Date, the Class Settlement Amount will be used for:
10 (i) any LWDA Payment; (ii) any Class Representative Enhancement Payment; (iii) any Attorneys' Fees and
11 Costs Award; (iv) any Settlement Administration Costs; and (v) all Individual Settlement Payments, including
12 any employees' share of payroll taxes such as FICA, FUTA, and SDI contributions. If the Effective Date does
13 not occur, the Settlement Administrator will return the Class Settlement Amount, with interest, to Defendant.

14 32. Attorneys' Fees and Costs Award. Class Counsel intends to request—and Defendant agrees not
15 to oppose or impede—that the Court approve an Attorneys' Fees and Costs Award of not more than One
16 Hundred Forty Thousand Dollars (\$140,000), plus the reimbursement of costs and expenses associated with Class
17 Counsel's litigation of the Action and the Prior Action, not to exceed Sixteen Thousand Dollars (\$16,000). Except
18 as provided in the Settlement Agreement, Defendant shall have no liability for any attorneys' fees or costs in
19 connection with the Action or the Prior Action.

20 33. Class Representative Enhancement Payment. In exchange for Plaintiff's individual general
21 release, and in recognition of her effort and work in prosecuting the Action and the Prior Action on behalf of the
22 State of California and on behalf of Class Members, Class Counsel intends to request—and Defendant agrees not
23 to oppose or impede—that the Court approve a Class Representative Enhancement Payment of Ten Thousand
24 Dollars (\$10,000). Any Class Representative Enhancement Payment will be paid from the Class Settlement
25 Amount and will be in addition to Plaintiff's Individual Settlement Payment paid pursuant to the Settlement.
26 Plaintiff will be solely and legally responsible to pay any and all applicable taxes on the Class Representative
27 Enhancement Payments.

28 34. Settlement Administration Costs. The Settlement Administrator will be paid for the reasonable

1 costs of administration of the Settlement and distribution of payments from the Class Settlement Amount, which
2 is currently estimated to be Seven Thousand Dollars (\$7,000). These costs, which will be paid from the Class
3 Settlement Amount, will include, *inter alia*, the required tax reporting on the Individual Settlement Payments, the
4 issuing of 1099 and W-2 IRS Forms, distributing Notice Packets, calculating and distributing Individual
5 Settlement Payments, and providing necessary reports and declarations.

6 35. LWDA Payment. Class Counsel intends to request that the Court approve allocation of Sixteen
7 Thousand Dollars (\$16,000) from the Class Settlement Amount to be designated for satisfaction of Plaintiff and
8 Class Members' PAGA claims and that (i) Seventy-Five Percent (75%), or Twelve Thousand Dollars (\$12,000),
9 of this sum be allocated to the LWDA Payment and (ii) Twenty-Five Percent (25%), or Four Thousand Dollars
10 (\$4,000), be allocated to the Net Settlement Amount.

11 36. Awards and Payments Not Material. The Court's approvals of the Attorneys' Fees and Costs
12 Award, or Class Representative Enhancement Payment, requested by Class Counsel are not a material term of
13 this Agreement. If the Court does not approve any or all of such distributions (or approves only a different amount
14 than requested by Class Counsel), the other terms of this Agreement shall apply. Similarly, the approval of
15 LWDA Payment is also not a material term of this Agreement if approved within a 25% variance of the agreed
16 upon amount set forth in Paragraph 35 above. The Court's refusal to approve any or all of such distributions
17 requested by Class Counsel does not give Plaintiff or Class Counsel any basis to abrogate this Agreement. Any
18 amount of such distributions requested by Class Counsel but unapproved by the Court shall be allocated to the
19 Net Settlement Amount. If the approved amount of the LWDA Payment is more than 25% above the agreed
20 upon amount, or more than 25% below the agreed upon amount, the parties agree to further confer and attempt to
21 negotiate a resolution prior to the abrogation of this Agreement.

22 37. Net Settlement Amount. The entire Net Settlement Amount will be allocated to Participating
23 Class Members. No portion of the Net Settlement Amount will revert or be retained by Defendant.

24 38. Individual Settlement Payment Calculations. Individual Settlement Payments will be calculated
25 and apportioned from the Net Settlement Amount based on the pro rata number of Workweeks a Participating
26 Class Member worked during the Class Period. The Settlement Administrator shall calculate Individual
27 Settlement Payments for Participating Class Members. Specific calculations of Individual Settlement Payments
28 will be made as follows:

1 38(a) The Settlement Administrator will calculate the number of Workweeks worked by
2 each Participating Class Member during the Class Period and the aggregate total
3 number of Workweeks worked by all Participating Class Members during the Class
4 Period. The Net Settlement Amount will be divided by the aggregate total number of
5 Workweeks worked by all Participating Class Members, resulting in the "Workweek
6 Value." Each Participating Class Member's allocation of the Net Settlement Amount
7 will be calculated by multiplying his or her number of Workweeks by the Workweek
8 Value.

9 38(b) Each Participating Class Member's allocation of the Net Settlement Amount will be
10 reduced by any required deductions for each Participating Class Member as
11 specifically set forth herein, including employee-side tax withholdings or deductions.
12 The balance of each Participating Class Member's allocation shall be distributed as
13 Individual Settlement Payments. The entire Net Settlement Amount will be allocated
14 to all Class Members who do not submit timely and valid Requests for Exclusion. If
15 there are any valid and timely Requests for Exclusion, the Settlement Administrator
16 shall proportionately increase the Individual Settlement Payment for each
17 Participating Class Member according to the number of Workweeks worked, so that
18 the amount actually distributed equals 100% of the Net Settlement Amount.

19 39. No Credit Toward Benefit Plans. The Individual Settlement Payments made to Participating
20 Class Members under this Settlement, as well as any other payments made pursuant to this Settlement, shall not
21 be utilized to calculate any additional benefits under any benefit plans to which any Class Members may be
22 eligible, including, but not limited to profit-sharing plans, bonus plans, 401(k) plans, stock purchase plans,
23 vacation plans, sick leave plans, PTO plans, and any other benefit plan, including, without limitation, all plans,
24 subject to Employee Retirement Income Security Act ("ERISA"). The Parties agree these payments do not
25 represent any modification of any employee's previously-credited hours of service or other eligibility criteria
26 under any employee pension benefit plan, employee welfare benefit plan, or other program or policy. Rather, it is
27 the Parties' intention that this Settlement Agreement will not affect any rights, contributions, or amounts to which
28 any Class Members may be entitled under any benefit plans.

1 40. Administration Process. The Parties agree to cooperate in the administration of the Settlement
2 and to make all reasonable efforts to control and minimize the costs and expenses incurred in administration of the
3 Settlement.

4 41. Delivery of the Class List and Data for Calculating Estimated Individual Settlement Payments.
5 Within twenty (20) calendar days of Preliminary Approval, Defendant will provide the Class List and data
6 necessary for calculating the estimated individual settlement payments to the Settlement Administrator.

7 42. Notice by First-Class U.S. Mail. Within ten (10) days after receiving the Class List from
8 Defendant, the Settlement Administrator will mail a Notice Packet to all Class Members via regular First-Class
9 U.S. Mail.

10 43. Confirmation of Contact Information in the Class Lists. Prior to mailing, the Settlement
11 Administrator will perform a search based on the National Change of Address Database for information to update
12 and correct for any known or identifiable address changes. Any Notice Packets returned to the Settlement
13 Administrator as non-deliverable on or before the Response Deadline will be sent promptly via regular First-Class
14 U.S. Mail to the forwarding address affixed thereto and the Settlement Administrator will indicate the date of such
15 re-mailing on the Notice Packet. If no forwarding address is provided, the Settlement Administrator will
16 promptly attempt to determine the correct address using a skip-trace, or other search using the name, address
17 and/or Social Security number of the Class Member involved, and will then perform a single re-mailing.

18 44. Notice Packets. All Class Members will be mailed a Notice Packet. Each Notice Packet will
19 provide: (i) information regarding the nature of the Action; (ii) a summary of the Settlement's principal terms;
20 (iii) the Settlement Class definition; (iv) the current number of Workweeks each respective Class Member worked
21 for Defendant during the Class Period; (v) each Class Member's estimated Individual Settlement Payment and the
22 formula for calculating Individual Settlement Payments; (vi) the dates which comprise the Class Period; (vii)
23 instructions on how to submit Requests for Exclusion or Notices of Objection; (viii) the deadlines by which the
24 Class Member must postmark Request for Exclusions, or postmark Notices of Objection to the Settlement; (ix)
25 the claims to be released; and (x) notice of the date of the final approval hearing; and (xi) and contact information
26 for class counsel including address, phone number, and web address. The estimated Individual Settlement
27 Payment will be based on the assumption of one hundred percent (100%) participation by class members and
28 court approval of maximum requested attorneys' fees, costs and enhancement payment.

1 45. Disputed Information on Notice Packets. Defendant's records will be presumed correct, but
2 Class Members will have an opportunity to dispute the information provided in their Notice Packets. To the
3 extent Class Members dispute their current number of Workweeks, Class Members may produce evidence to the
4 Settlement Administrator showing that such information is inaccurate. The Settlement Administrator shall inform
5 the Parties' counsels of this evidence within ten (10) days to allow the Parties to meet and confer in attempt to
6 resolve this issue. If the Parties' counsel are not able to reach agreement, the Settlement Administrator will
7 evaluate the evidence submitted by the Class Member and will make the final decision as to the merits of the
8 dispute. All disputes will be decided within ten (10) business days of the Response Deadline.

9 46. Request for Exclusion Procedures. Any Class Member wishing to opt out from the Settlement
10 must sign and postmark a timely and valid Request for Exclusion to the Settlement Administrator by the
11 Response Deadline. In the case of Requests for Exclusion that are mailed to the Settlement Administrator, the
12 postmark date will be the exclusive means to determine whether a Request for Exclusion has been timely
13 submitted.

14 47. Settlement Terms Bind All Class Members Who Do Not Opt Out. Any Class Member who does
15 not affirmatively opt out of the Settlement by submitting a timely and valid Request for Exclusion will be bound
16 by all of its terms, including those pertaining to the Released Claims, as well as any Judgment that may be entered
17 by the Court if it grants final approval to the Settlement. Any Class Member who opts out from the Settlement
18 pursuant to the terms of this Agreement shall not be permitted to object to the settlement, shall not receive any
19 Individual Settlement Payments, and shall not be bound by the release provisions in this Agreement or the
20 applicable release provisions in any order granting Final Approval.

21 48. Defendant's Right to Rescind. Defendant will have, in its sole discretion, the right to void and
22 withdraw from the Settlement if, at any time prior to final approval, Five Percent (5%) or more of Class Members
23 opt out of the Settlement Class. Defendant must exercise this right of rescission in writing to Class Counsel within
24 fourteen (14) calendar days after the opt-out deadline. If the option to rescind is exercised then Defendant will be
25 solely responsible for all costs of the settlement administration incurred to that point.

26 49. Objection Procedures. To object to the Settlement Agreement, a Class Member must sign and
27 postmark a timely and valid Notice of Objection to the Settlement Administrator by the Response Deadline. The
28 Notice of Objection must be signed by the Class Member and contain all information required by Paragraph 16 of

1 this Settlement Agreement. The postmark will be deemed the exclusive means for determining that the Notice of
2 Objection is timely. Class Members who submit an objection pursuant to the procedures set forth in the Class
3 Notice may appear at the hearing on a motion for final approval for class action settlement, either in person or
4 through counsel. Class Members may withdraw their objections at any time. Class Members who submit an
5 objection shall remain subject to be bound by the release provisions in this Agreement or the applicable release
6 provisions in any order granting Final Approval. At no time will any of the Parties or their counsel seek to solicit
7 or otherwise encourage Class Members to submit written objections to the Settlement or appeal from the Order
8 and Judgment. Class Counsel will not represent any Class Members with respect to any such objections to this
9 Settlement.

10 50. Certification Reports Regarding Individual Settlement Payment Calculations. The Settlement
11 Administrator will provide Defendant's counsel and Class Counsel a weekly report that certifies the number of
12 Class Members who have submitted valid Requests for Exclusion, objections to the Settlement, and whether any
13 Class Member has submitted a challenge to any information contained in their Notice Packet.

14 51. Distribution Timing of Individual Settlement Payments. Within five (5) days of the Effective
15 Date, the Settlement Administrator will issue payments to: (i) Participating Class Members; (ii) the Labor and
16 Workforce Development Agency; (iii) Plaintiff; and (iv) Class Counsel. The Settlement Administrator will also
17 issue a payment to itself for Court-approved services performed in connection with the Settlement.

18 52. Un-cashed Settlement Checks. Funds represented by Individual Settlement Payment checks
19 returned as undeliverable and Individual Settlement Payment checks remaining un-cashed for more than 180 days
20 after issuance will be tendered to the California Department of Industrial Relations Unpaid Wage Fund (*see* Cal.
21 Lab. Code § 96.6).

22 53. Certification of Completion. Upon completion of administration of the Settlement, the
23 Settlement Administrator will provide a written declaration under oath to certify such completion to the Court and
24 counsel for all Parties.

25 54. Treatment of Individual Settlement Payments. All Individual Settlement Payments will be
26 allocated as follows: (i) Twenty Five Percent (25%) of each Individual Settlement Payment will be allocated as
27 wages for which IRS Forms W-2 will be issued; and (ii) Seventy Five Percent (75%) will be allocated as non-
28 wages for which IRS Forms 1099-MISC will be issued.

1 55. Administration of Taxes by the Settlement Administrator. The Settlement Administrator will be
2 responsible for issuing to Plaintiff, Participating Class Members, and Class Counsel any W-2, 1099, or other tax
3 forms as may be required by law for all amounts paid pursuant to this Settlement. The Settlement Administrator
4 will also be responsible for forwarding all payroll taxes and penalties to the appropriate government authorities.

5 56. Tax Liability. Defendant makes no representation as to the tax treatment or legal effect of the
6 payments called for hereunder, and Plaintiff, Participating Class Members, and Class Counsel are not relying on
7 any statement, representation, or calculation by Defendant or by the Settlement Administrator in this regard.

8 57. Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR PURPOSES OF
9 THIS SECTION, THE “ACKNOWLEDGING PARTY” AND EACH PARTY TO THIS AGREEMENT
10 OTHER THAN THE ACKNOWLEDGING PARTY, AN “OTHER PARTY”) ACKNOWLEDGES AND
11 AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION
12 OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER
13 ADVISERS, IS OR WAS INTENDED TO BE, NOR WILL ANY SUCH COMMUNICATION OR
14 DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN
15 THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10,
16 AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS,
17 HER, OR ITS OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX
18 ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS
19 AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY
20 ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON
21 ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY OTHER
22 PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING
23 PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER PARTY HAS IMPOSED ANY
24 LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY’S OR
25 ADVISER’S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY
26 BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR
27 TAX STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED
28 BY THIS AGREEMENT.

1 58. No Prior Assignments. The Parties and their counsel represent, covenant, and warrant that they
2 have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to
3 any person or entity any portion of any liability, claim, demand, action, cause of action or right herein released
4 and discharged.

5 59. Nullification of Settlement Agreement. In the event that: (i) the Court does not grant Final
6 Approval as provided herein; or (ii) the Settlement does not become binding for any other reason, then this
7 Settlement Agreement, and any documents generated to bring it into effect, will be null and void. Any order or
8 judgment entered by the Court in furtherance of this Settlement Agreement will likewise be treated as void from
9 the beginning.

10 60. Preliminary Approval Hearing. Plaintiff will obtain a hearing before the Court to request the
11 Preliminary Approval of the Settlement Agreement, and the entry of a Preliminary Approval Order for: (i)
12 conditional certification of the Settlement Class for settlement purposes only, (ii) preliminary approval of the
13 proposed Settlement Agreement, (iii) setting a date for a Final Approval/Settlement Fairness Hearing. The
14 Preliminary Approval Order will provide for the Notice Packet to be sent to all Class Members as specified
15 herein. In conjunction with the Preliminary Approval hearing, Plaintiff will submit this Settlement Agreement,
16 which sets forth the terms of this Settlement, and will include the proposed Notice Packet, which will include the
17 proposed Notice of Class Action Settlement document, attached as Exhibit A. Class Counsel will be responsible
18 for drafting all documents necessary to obtain preliminary approval.

19 61. Final Approval Hearing and Entry of Judgment. Upon expiration of the deadlines to postmark
20 Requests for Exclusion or objections to the Settlement Agreement, and with the Court's permission, a Final
21 Approval hearing will be conducted to determine the Final Approval of the Settlement Agreement along with the
22 amounts properly payable for: (i) any Individual Settlement Payments; (ii) any LWDA Payment; (iii) any Class
23 Representative Enhancement Payment; (iv) any Attorneys' Fees and Costs Award; and (v) any Settlement
24 Administration Costs. The Final Approval hearing will not be held earlier than thirty (30) days after the Response
25 Deadline. Class Counsel will be responsible for drafting all documents necessary to obtain Final Approval. Class
26 Counsel will also be responsible for drafting the attorneys' fees and costs application to be heard at the Final
27 Approval hearing.

28 62. Judgment and Continued Jurisdiction. Upon Final Approval of the Settlement by the Court or

1 after the Final Approval hearing, the Parties will present the Judgment to the Court for its approval. After entry of
2 the Judgment, the Court will have continuing jurisdiction solely for purposes of addressing: (i) the interpretation
3 and enforcement of the terms of the Settlement, (ii) Settlement administration matters, and (iii) such post-
4 Judgment matters as may be appropriate under court rules or as set forth in this Settlement Agreement.

5 63. Release by Participating Class Members and Plaintiff.

6 (a) Upon the Effective Date, the Participating Class Members will release and forever discharge the
7 Released Parties of and from any and all Released Claims.

8 (b) Upon the Effective Date, in addition to the claims being released by all Participating Class
9 Members, Plaintiff will release and forever discharge the Released Parties, to the fullest extent permitted by law,
10 of and from any and all claims, known and unknown, asserted and not asserted, which Plaintiff have or may have
11 against the Released Parties as of the date of execution of this Settlement Agreement. To the extent the foregoing
12 release is a release to which Section 1542 of the California Civil Code or similar provisions of other applicable
13 law may apply, Plaintiff expressly waive any and all rights and benefits conferred upon them by the provisions of
14 Section 1542 of the California Civil Code or similar provisions of applicable law which are as follows:

15 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR
16 DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF
17 EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE
18 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

19 64. Exhibits Incorporated by Reference. The terms of this Settlement Agreement include the terms
20 set forth in any attached Exhibits, which are incorporated by this reference as though fully set forth herein. Any
21 Exhibits to this Settlement Agreement are an integral part of the Settlement.

22 65. Entire Agreement. This Settlement Agreement and any attached Exhibits constitute the entirety
23 of the Parties' settlement terms. Other than the tolling agreement between the parties (Exhibit C), no other prior
24 or contemporaneous written or oral agreements may be deemed binding on the Parties. The Parties expressly
25 recognize California Civil Code Section 1625 and California Code of Civil Procedure Section 1856(a), which
26 provide that a written agreement is to be construed according to its terms and may not be varied or contradicted by
27 extrinsic evidence, and the Parties agree that no such extrinsic oral or written representations or terms will modify,
28 vary or contradict the terms of this Settlement Agreement.

1 66. Amendment or Modification. No amendment, change, or modification to this Settlement
2 Agreement will be valid unless in writing and signed by the Parties or their counsel. Nevertheless, the Parties'
3 counsels can agree to non-material changes and the Parties agree to act in good faith to address any concerns
4 raised by the Court at the preliminary or final approval hearing so that parties may attempt to resubmit the
5 Settlement Agreement for preliminary or final approval, if necessary.

6 67. Authorization to Enter Into Settlement Agreement. Counsel for all Parties warrant and represent
7 they are expressly authorized by the Parties whom they represent to negotiate this Settlement Agreement and to
8 take all appropriate action required or permitted to be taken by such Parties pursuant to this Settlement Agreement
9 to effectuate its terms and to execute any other documents required to effectuate the terms of this Settlement
10 Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the
11 implementation of the Settlement. If the Parties are unable to reach agreement on the form or content of any
12 document needed to implement the Settlement, or on any supplemental provisions that may become necessary to
13 effectuate the terms of this Settlement, the Parties may seek the assistance of the Court to resolve such
14 disagreement.

15 68. Binding on Successors and Assigns. This Settlement Agreement will be binding upon, and inure
16 to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

17 69. California Law Governs. All terms of this Settlement Agreement and Exhibits hereto will be
18 governed by and interpreted according to the laws of the State of California.

19 70. Execution and Counterparts. This Settlement Agreement is subject only to the execution of all
20 Parties. However, the Settlement Agreement may be executed in one or more counterparts. All executed
21 counterparts and each of them, including facsimile and scanned copies of the signature page, will be deemed to be
22 one and the same instrument provided that counsel for the Parties will exchange among themselves original
23 signed counterparts.

24 71. Acknowledgement that the Settlement Is Fair and Reasonable. The Parties believe this
25 Settlement Agreement is a fair, adequate and reasonable settlement of the Action and have arrived at this
26 Settlement after arm's-length negotiations and in the context of adversarial litigation, taking into account all
27 relevant factors, present and potential. The Parties further acknowledge that they are each represented by
28 competent counsel and that they have had an opportunity to consult with their counsel regarding the fairness and

1 reasonableness of this Settlement.

2 72. Invalidity of Any Provision. Before declaring any provision of this Settlement Agreement
3 invalid, the Court will first attempt to construe the provision as valid to the fullest extent possible consistent with
4 applicable precedents so as to define all provisions of this Settlement Agreement valid and enforceable.

5 73. Waiver of Certain Appeals. The Parties agree to waive appeals and to stipulate to class
6 certification for purposes of this Settlement only; except, however, that Plaintiff or Class Counsel may appeal any
7 reduction to the Attorneys' Fees and Costs and Class Representative Enhancement Payment below the amount
8 they request from the Court, and either party may appeal any court order that materially alters the Settlement
9 Agreement's terms.

10 74. Class Action Certification for Settlement Purposes Only. The Parties agree to stipulate to class
11 action certification for purposes of the Settlement only. If, for any reason, the Settlement is not approved, the
12 stipulation to certification will be void. The Parties further agree that certification for purposes of the Settlement
13 is not an admission that class action certification is proper under the standards applied to contested certification
14 motions and that this Settlement Agreement will not be admissible in this or any other proceeding as evidence that
15 either (i) a class action should be certified or (ii) Defendant is liable to Plaintiff or any Class Member, other than
16 according to the Settlement's terms.

17 75. Non-Admission of Liability. In entering into this Settlement, Defendant does not admit, and
18 specifically denies, (i) all of the allegations made by Plaintiffs in the Action and the Prior Action, (ii) that it
19 violated any applicable laws, (iii) that it would be liable or owes damages, penalties, or any other type of remedies
20 to anyone with respect to the alleged facts or claims asserted in the Action or the Prior Action, and (iv) that class
21 certification or representative treatment of the Action or any alleged claims would be proper. Nonetheless,
22 without admitting or conceding any liability or wrongdoing whatsoever and without admitting or conceding that
23 class certification or representative treatment would be appropriate for any purpose other than settlement purposes
24 alone, Defendant has agreed to settle the Action on the terms and conditions set forth in this Agreement to avoid
25 the burden, expense, and uncertainty of continuing the Action. Any stipulation or statement by Defendant
26 contained herein is made for settlement purposes only. Neither this Settlement Agreement, nor any of its terms or
27 provisions, nor any of the negotiations connected with it, will be construed as an admission or concession by
28 Defendant of any such violations or failures to comply with any applicable law. Except as necessary in a

1 proceeding to enforce the terms of this Settlement, this Settlement Agreement and its terms and provisions will not be
2 offered or received as evidence in any action or proceeding to establish any liability or admission on the part of
3 Defendant or to establish the existence of any condition constituting a violation of, or a non-compliance with, federal,
4 state, local or other applicable law.

5 76. No Public Comment: The Parties and their counsel agree that they will not issue any press releases,
6 initiate any contact with the press about the fact, amount or terms of the Settlement.

7 77. Waiver. No waiver of any condition or covenant contained in this Settlement Agreement or failure to
8 exercise a right or remedy by any of the Parties hereto will be considered to imply or constitute a further waiver by such
9 party of the same or any other condition, covenant, right or remedy.

10 78. Enforcement Actions. In the event that one or more of the Parties institutes any legal action or other
11 proceeding against any other Party or Parties to enforce the provisions of this Settlement or to declare rights and/or
12 obligations under this Settlement, the successful Party or Parties will be entitled to recover from the unsuccessful Party
13 or Parties reasonable attorneys' fees and costs, including expert witness fees incurred in connection with any
14 enforcement actions.

15 79. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms and conditions of
16 this Settlement Agreement. Accordingly, this Settlement Agreement will not be construed more strictly against one
17 party than another merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being
18 recognized that, because of the arms-length negotiations between the Parties, all Parties have contributed to the
19 preparation of this Settlement Agreement.

20 80. Representation By Counsel. The Parties acknowledge that they have been represented by counsel
21 throughout all negotiations that preceded the execution of this Settlement Agreement, and that this Settlement
22 Agreement has been executed with the consent and advice of counsel. Further, Plaintiff and Class Counsel warrant and
23 represent that there are no liens on the Settlement Agreement.

24 81. All Terms Subject to Final Court Approval. All amounts and procedures described in this Settlement
25 Agreement herein will be subject to final Court approval.

26 82. Cooperation and Execution of Necessary Documents. All Parties will cooperate in good faith and
27 execute all documents to the extent reasonably necessary to effectuate the terms of this Settlement Agreement.

28 83. Binding Agreement. The Parties warrant that they understand and have full authority to enter

1 into this Settlement Agreement, and further intend that this Settlement Agreement will be fully enforceable and
2 binding on all parties, and agree that it will be admissible and subject to disclosure in any proceeding to enforce its
3 terms, notwithstanding any mediation confidentiality provisions that otherwise might apply under federal or state
4 law.

5
6 **READ CAREFULLY BEFORE SIGNING**

7 **PLAINTIFF**

8
9 Dated: 07-28-17

By: 
Tina Patel

10
11 **DEFENDANT ONE WEST RESOURCES LLC**

12
13 Dated: 7/25/17

By: 
Nancy E. Campanozzi, Director – Law Department
CIT Bank, N.A. on behalf of One West Resources LLC

14
15 **APPROVED AS TO FORM**

16 **BAKER CURTIS & SCHWARTZ, P.C.**

17
18 Dated: 7-28-17

By: drs for 
Mike Curtis

Attorneys for Plaintiff Tina Patel

19
20 **SEYFARTH SHAW LLP**

21
22 Dated: 8/1/17

By: 
Brian P. Long

Attorneys for Defendant One West Resources LLC