1 2 3 4 5	RUTAN & TUCKER, LLP Philip J. Blanchard (State Bar No. 192378) pblanchard@rutan.com Eliot M. Houman (State Bar No. 278280) ehouman@rutan.com 611 Anton Boulevard, Suite 1400 Costa Mesa, California 92626-1931 Telephone: 714-641-5100 Facsimile: 714-546-9035	ELECTRONICALLY FILED Superior Court of California, County of Orange 03/28/2014 at 10:36:42 AM Clerk of the Superior Court By Norri Lau,Deputy Clerk		
6 7	Attorneys for Plaintiff ARB, INC.			
8	SUPERIOR COURT OF TH	IE STATE OF CALIFORNIA		
9	FOR THE COUNTY OF ORANC	E, CENTRAL JUSTICE CENTER		
10	r			
11	ARB, INC.,	Case No. 30-2014-00713437-CU-BC-CJC		
12	Plaintiff,	COMPLAINT FOR:		
13	V.	<ol> <li>BREACH OF CONTRACT;</li> <li>PROMISSORY FRAUD;</li> </ol>		
	California limited liability company;	<ul> <li>(3) CONVERSION;</li> <li>(4) VIOLATION OF PENAL CODE 496;</li> </ul>		
15	HEATHER MAGILL, an individual; JEFF SHEA, an individual; TOM MAGILL, an individual; MATTHEW A. FLAMENCO, an	and (5) DECLARATORY RELIEF.		
16	individual; and Does 1-20,	Judge Gregory H. Lewis		
17	Defendants.	budge oregory II. Lewis		
18				
19	· · · · · · · · · · · · · · · · · · ·			
20		line on information and halisfi		
21	Plaintiff ARB, Inc. (" <b>ARB</b> ") alleges as fo			
22		<u>ARTIES</u>		
23		mentioned herein was, a California corporation in		
24	good standing organized and existing under the State of California with its principal place of			
25	business in the County of Orange, State of Califo			
26	2. Defendant Always Protective Services, LLC ("APS") is, and at all material times			
27	mentioned herein was, a limited liability company organized and existing under the laws of the			
28	State of California.			
LLP	-	1-		

Rutan & Tucker, LLP	
attorneys at law	

13.Defendant Heather Magill ("Heather") is, and at all material times mentioned2herein was, a resident of the State of California.

3 4. Defendant Tom Magill ("Tom") is, and at all material times mentioned herein was,
4 a resident of the State of California.

5 5. Defendant Jeff Shea ("Shea") is, and at all material times mentioned herein was, a
6 resident of the State of California.

7 6. Defendant Matthew A. Flamenco ("Flamenco") is, and at all material times
8 mentioned herein was, a resident of the State of California.

7. ARB is unaware of the true names and capacities of defendants Does 1 through 20,
inclusive, and therefore sues these defendants by such fictitious names. ARB will amend this
complaint to show the true names and capacities of such fictitiously named defendants when the
same have been ascertained or upon proof at trial. ARB is informed and believes and based
thereon alleges that each of the fictitiously named defendants is legally responsible for the events
and damages alleged herein.

8. At all relevant times certain of the defendants, including the Doe defendants, were
acting as the partners, agents, servants, employees, alter egos, successors or predecessors in
interest, or contractors of others of the defendants, and were acting within the course and scope of
such relationship, with the knowledge, express or implied, of each such other named defendant.

19 9. Defendants APS, Heather, Tom, Shea, Flamenco, and Does 1 – 20, inclusive, will
20 be referred to collectively as "Defendants."

21

### JURISDICTION AND VENUE

10. Venue is proper in the Superior Court of the State of California for the County of
Orange under California Code of Civil Procedure Section 395 because Orange County is the
county where the contract at issue was entered into and to be performed.

25

## **OPERATIVE FACTS**

In or about September 2012, ARB retained APS to provide site security services at
various ARB construction sites throughout the greater San Diego area ("Project").

28 ///

1	12.	Subsequently thereafter, a dispute arose between ARB and APS over the quantity			
2	and calculation of APS charges related to security work done at the Project, as well as APS'				
3	representation of its disadvantaged business entity status. As such, ARB terminated its				
4	relationship with <b>APS</b> on or about April 1, 2013.				
5	13.	Upon termination, APS contended that it was owed the sum of \$255,712.00 for			
6	services performed in connection with the <b>Project</b> , while <b>ARB</b> disputed this contention.				
7	("Dispute").				
8	14.	In order to avoid litigation and resolve the Dispute, on or about November 22,			
9	2013, <b>APS</b> an	d ARB entered into a settlement agreement and release whereby APS, in exchange			
10	for the negotia	ated sum of \$135,360, agreed to settle and release any and all claims between it and			
11	ARB in conne	ection with the <b>Dispute</b> and <b>Project</b> (the " <b>Release</b> "), including any claim of			
12	entitlement to the remaining sum of \$120,352, i.e., the difference between \$255,712 (what APS				
13	claimed it was owed) and \$135,360 (the negotiated settlement amount). A true and correct copy				
14	of the Release	e is attached as Exhibit A.			
15	15.	The <b>Release</b> provision regarding the release and the consideration provided,			
16	specifically st	ates:			
17		NOW, THEREFORE, in consideration for the payment of One			
18		Hundred Thirty-Five Thousand Three Hundred Sixty Dollars (\$135,360.00) made by ARB, APS on behalf of itself and its past,			
19		present and future members, shareholders, partners, agents, servants, representatives, employees, officers, directors, affiliates,			
20		subsidiaries, successors and assigns ('Releasing Parties'), hereby releases acquits and forever discharges ARB and its members,			
21		shareholders, partners, agents, servants, representatives,			
22		employees, officers, directors, insurers, successors and assigns, and all other persons, firms, corporations, associations,			
23		partnerships, parent companies, affiliates, subsidiaries and any other entity connection therewith (collectively 'Released			
24		Parties'), of and from any and all claims, actions, causes of action, demands, rights, damages, costs, expenses and/or			
25		compensation, of any nature whatsoever which APS now has or			
26		which may hereafter accrue to APS, known or unknown, foreseen or unforeseen, on account of, in connection with or in any way			
27		growing out of the Dispute, the services performed by APS for the Project, ARB's retention of APS for the Project, and ARB's			
28		termination of APS from the Project.			
LP					

Rutan & Tucker, LLP attorneys at law

1	(Exhibit A; emphasis added.)				
2	16.	Defendant Shea, APS' Executive Vice President, executed the Release in Orange			
3	County, California on APS' behalf as its authorized representative. The Release specifically				
4	affirms Shea'	affirms Shea's authority, stating:			
5		APS further agrees that its authorized representative has read and			
6		fully understands this Release and is so authorized to execute same, and in so doing APS further acknowledges that ARB is			
7		expressly relying upon the authority of such representation such that this Release will be binding upon APS and all Releasing Parties.			
8	(Exhibit A; ei	mphasis added.)			
9	17.	On or about December 26, 2013, approximately a month after the Release was			
10	executed, AR	B, as part of its year-end accounting process, mistakenly issued and mailed a check			
11	payable to AI	<b>PS</b> for the sum of \$120,352, which is the difference between \$255,712 (the sum APS			
12	claimed it wa	s owed) and \$135,360 (the sum for which APS agreed to settle the Dispute).			
13	18.	Worse yet, APS, with full knowledge of the Release and its waiver of any			
14	entitlement to	the \$120,352, proceeded to cash the check on or about January 2, 2014.			
15	19.	On or about January 7, 2014, immediately upon discovering this error, ARB			
16	contacted AP	S and advised APS of the mistake and requested that APS issue a reimbursement			
17	check to ARE	in the amount of \$120,352.			
18	20.	Inexplicably, on or about January 28, 2014, APS asserted for the first time that			
19	contrary to its	s written representations in the Release, Shea was not an authorized representative of			
20	APS. Althou	gh ARB reminded APS that Shea made a series of written and oral representations			
21	confirming hi	s authority and that he was APS' Executive Vice President, APS continues to refuse			
22	to acknowled	ge Shea's authority, honor the Release terms, and return the \$120,352.			
23	21.	As such, ARB has been left with no choice but to file this action and seek recovery			
24	of the monies	Defendants wrongfully acquired and are wrongfully withholding.			
25		FIRST CAUSE OF ACTION			
26		[For Breach of Contract Against APS and Does 1 – 20]			
27	22.	ARB repeats and realleges each allegation contained in the foregoing paragraphs of			
28	the Complain	t as if set forth in full herein.			
- 115					

Rutan & Tucker, LLP attorneys at law 23. On or about November 22, 2013, APS entered into a Release as described herein
 and attached as Exhibit A.

3 24. APS breached and repudiated the Release in numerous material respects, including,
4 without limitation, the following:

a. by failing and refusing to honor the provisions of the Release in which APS
releases and waives all further claims by APS against ARB in connection with the Project and
Dispute, including any claim of entitlement to the sum of \$120,352.

8

b. by failing and refusing to remit to **ARB** the sum of \$120,352; and

9 c. by misrepresenting to ARB that the person signing the Release was
10 authorized to do so and was acting within the full authorization of the APS.

11 25. ARB has fully performed all of its covenants and obligations under the Release,
12 except those whose performance has been waived or legally excused.

13 26. Implicit in the **Release** is a covenant of good faith and fair dealing obligating the 14 parties to act towards each other in good faith, to deal fairly with one another, to make all material 15 disclosures, and not to do anything which might deprive the other of the expectations and benefits 16 of the **Release** and obligating each party to do everything that the **Release** presupposes to 17 accomplish its purposes. For the reasons stated herein, **APS** and Does 1 through 20, and each of

18 them, have breached the covenant of good faith and fair dealing.

19 27. As a direct and proximate result of the APS' breaches as described herein, ARB
20 has been damaged in an amount to conform to proof at trial, but not less than \$120,352, plus
21 interest as allowed by law, and attorneys' fees and costs as provided by law.

22

23

# SECOND CAUSE OF ACTION

### [For Promissory Fraud (False Promise) Against All Defendants]

24 28. ARB repeats and realleges each allegation contained in the foregoing paragraphs of
25 the Complaint as if set forth in full herein.

26 29. At the time Shea executed the Release on behalf of APS and as its Executive Vice
27 President, he was acting within the scope of his employment as a director or officer of APS, and at
28 the instruction and/or consent of Heather, APS' managing member and owner.

30. APS entered into the Release on November 22, 2013 with the intention of
 deceiving ARB into believing:

a. APS would release and waive all further claims it had against ARB in
connection with the Project and Dispute, including any claim of entitlement to the sum of
\$120,352; and

6

b.

**Shea** had the authority to bind **APS** to the Release.

7 31. The representations made by Shea on behalf of APS, and at Heather's instruction
8 and/or with her consent, were false at the time they were made, Shea, APS, and Heather knew
9 they were false, and they were made for the purpose of inducing ARB to immediately provide
10 APS payment of \$135,360 under the terms of the Release.

At the time Shea made these false representations on behalf of APS, ARB was ignorant of the true facts and believed the representations to be true. ARB in fact relied on the representations by immediately delivering to Shea, APS, and Heather payment of \$135,360 pursuant to the Release. ARB's reliance was reasonable in that the false representations were made to it orally and in writing by Shea, who held himself out as APS' Executive Vice President with full authority to bind APS to the Release, and who had signed other documents on behalf of APS with APS' knowledge and without objection by APS.

18 33. If ARB had known the true facts it would not have acted as it did and specifically,
19 would not have provided APS with payment and benefits under the Release.

34. APS' officers and/or directors Heather and Shea authorized, directed, and/or
participated in APS' allegedly tortious conduct alleged herein, and as such, are personally liable,
along with APS, for the tort of promissory fraud. (*See, Frances T. v. Village Green Owners Assn.*(1986) 42 Cal.3d 490; *PMC, Inc. v. Kadisha* (2000) 78 Cal.App.4th 1368, 1380-1382.)

As a direct and proximate result of the fraud engaged in by Shea, APS, and
Heather, ARB has been damaged in an amount to be determined at time of trial, but not less than
\$120,352, plus interest.

- 27 ///
- 28 ///

Rutan & Tucker, LLP attorneys at law

2524/018579-0182 6791722.1 a03/24/14 -6-COMPLAINT 36. Flamenco and Tom, and DOES 1-20, were aware that Shea, APS, Heather and
 DOES 1-20, planned to, and did, engage in the foregoing wrongful conduct and they agreed with
 and intended that Shea, APS, Heather, and DOES 1-20, engage in the above wrongful conduct.

37. Flamenco and Tom, and DOES 1-20, gave substantial assistance and/or
encouragement to Shea, APS, Heather, and DOES 1-20 for the purpose of facilitating the
wrongful conduct alleged herein, including, but not limited to direct communications with ARB
regarding the resolution of the Dispute and the Release, and that, as a result, Flamenco and Tom,
and DOES 1-20's, conduct was a substantial factor in causing harm to ARB.

38. By conspiring with, and aiding and abetting Shea, APS, Heather, and DOES 1-20,
as alleged herein, Flamenco and Tom, and DOES 1-20, have proximately caused harm to ARB
and are therefore jointly and severally liable for such harm as Shea, APS, Heather, and DOES 120's, as co-conspirators and aider and abettors. ARB will seek damages, according to proof at
trial, for all of the harm caused by the acts of Shea, APS, Heather, and DOES 1-20, and their coconspirators and aider and abettors, Flamenco and Tom, and DOES 1-20.

39. Shea, APS, Heather, and DOES 1-20, and their co-conspirators and aider and
abettors Flamenco and Tom, and DOES 1-20, engaged in despicable conduct and acted with
willful, reckless and conscious disregard of the rights of ARB, and in doing the things herein
alleged were guilty of oppression and malice. Accordingly, ARB seeks punitive and exemplary
damages in an amount according to proof at trial.

20

# 21

## THIRD CAUSE OF ACTION [For Conversion Against All Defendants]

40. ARB repeats and realleges each allegation contained in the foregoing paragraphs of
the Complaint as if set forth in full herein.

41. ARB owned and had a right to possess the \$120,352 check APS wrongfully
deposited and cashed on or about January 2, 2014 without ARB's consent.

42. APS' cashing and depositing of the \$120,352 check and subsequent refusal to
return the \$120,352, intentionally and substantially interfered with ARB's ownership and
possession of said monies.

Rutan & Tucker, LLP attorneys at law

-7-COMPLAINT 1 43. **ARB** was harmed as a result of **APS** cashing and depositing of the \$120,352 check. 2 and APS' conduct, was a substantial factor in causing said harm.

3 44. APS' officers and/or directors Heather and Shea authorized, directed, and/or 4 participated in the allegedly tortious conduct alleged herein, and as such, are personally liable. 5 along with APS, for the tort of conversion. (See, Granoff v. Yackle (1961) 196 Cal.App.2d 253; 6 Frances T. v. Village Green Owners Assn. (1986) 42 Cal.3d 490.)

7 45. Flamenco and Tom, and DOES 1-20, were aware that Shea, APS, Heather and 8 DOES 1-20, planned to, and did, engage in the foregoing wrongful conduct and they agreed with 9 and intended that Shea, APS, Heather, and DOES 1-20, engage in the above wrongful conduct.

10 46. Flamenco and Tom, and DOES 1-20, gave substantial assistance and/or 1.1encouragement to Shea, APS, Heather, and DOES 1-20 for the purpose of facilitating the 12 wrongful conduct alleged herein, and that, as a result, Flamenco and Tom, and DOES 1-20's, 13 conduct was a substantial factor in causing harm to ARB.

14 47. By conspiring with, and aiding and abetting Shea, APS, Heather, and DOES 1-20, 15 as alleged herein, Flamenco and Tom, and DOES 1-20, have proximately caused harm to ARB 16 and are therefore jointly and severally liable for such harm as Shea, APS, Heather, and DOES 1-17 20's, as co-conspirators and aider and abettors. ARB will seek damages, according to proof at 18 trial, for all of the harm caused by the acts of Shea, APS, Heather, and DOES 1-20, and his co-19 conspirators and aider and abettors, Flamenco and Tom, and DOES 1-20.

2048. Shea, APS, Heather, and DOES 1-20, and his co-conspirators and aider and 21abettors Flamenco, and Tom, and DOES 1-20, engaged in despicable conduct and acted with 22 willful, reckless and conscious disregard of the rights of ARB, and in doing the things herein 23 alleged were guilty of oppression and malice. Accordingly, ARB seeks punitive and exemplary 24 damages in an amount according to proof at trial.

- 25

## FOURTH CAUSE OF ACTION

26

## [For Violation of Penal Code 496 Against All Defendants]

49. 27 **ARB** repeats and realleges each allegation contained in the foregoing paragraphs of the Complaint as if set forth in full herein. 28

Rutan & Tucker, LLP attorneys at law

50. Where one, through mistake or fraud receives money to which he is not entitled, he
 becomes the trustee of that money for the benefit of the one justly entitled to it. (Cal. Civ. Code
 § 2224.) In the course of, and by virtue of the above-averred acts, APS – at the authorization,
 direction, and/or with the participation of Shea and Heather – fraudulently converted and used the
 \$120,352 for its own use and exclusive benefit and with the intent to deprive ARB of its use of the
 monies.

7 51. One who fraudulently appropriates property which has been entrusted to him is
8 guilty of theft. (Cal. Pen. Code § 484.)

9 52. APS, Shea, and Heather's actions as described above constitute violations of
10 Penal Code Section 496. As a result of APS, Shea, and Heather's violation of Penal Code
11 section 496, ARB is entitled to a just award of treble damages (\$361,052), costs of suit, and
12 reasonable attorneys' fees. (Penal Code section 496(c); *Bell v. Feibush* (2013) 212 Cal.App.4th
13 1041.)

14 53. As a direct and proximate result of APS, Shea, and Heather's actions, ARB has
15 suffered, and continues to suffer, actual damages in amount to be proven at trial, but which
16 include, among other things, the value of the monies that it entrusted to APS, interest, attorneys
17 fees, and costs.

Flamenco and Tom, and DOES 1-20, were aware that Shea, APS, Heather and
DOES 1-20, planned to, and did, engage in the foregoing wrongful conduct and they agreed with
and intended that Shea, APS, Heather, and DOES 1-20, engage in the above wrongful conduct.

55. Flamenco and Tom, and DOES 1-20, gave substantial assistance and/or
encouragement to Shea, APS, Heather, and DOES 1-20 for the purpose of facilitating the
wrongful conduct alleged herein, and that, as a result, Flamenco and Tom, and DOES 1-20's,
conduct was a substantial factor in causing harm to ARB.

-9-

COMPLAINT

25 ///

26 ///

27 ///

28 ///

2524/018579-0182

6791722.1 a03/24/14

Rutan & Tucker, LLP attorneys at law

\_\_\_\_\_

1	1 56. By conspiring with, and aiding and abetting <b>Shea</b> , <b>APS</b> , <b>Heather</b> , and DOES				
2	2 as alleged herein, Flamenco and Tom, and DOES 1-20, have proximately caused harm to				
3	3 and are therefore jointly and severally liable for such harm as Shea, APS, Heather, and D				
4	4 20's, as co-conspirators and aider and abettors. <b>ARB</b> will seek damages, according to pro-				
5	5 trial, for all of the harm caused by the acts of Shea, APS, Heather, and DOES 1-20, and his of				
6					
7	FIFTH CAUSE OF ACTION				
8	[Declaratory Relief Against APS and Does 1-20]				
9	9 57. An actual controversy as arisen between <b>ARB</b> and <b>APS</b> which requires a judici				
10	declaration of their respective rights and liabilities.				
11	11 58. In consideration for the negotiated sum of \$135,360, <b>APS</b> executed the				
12	2 which it agreed to settle and release any and all claims between it and <b>ARB</b> in connection with the				
13	3 Dispute and Project.				
14	59.	APS contends Shea did not have the authority to bind APS to the Release, and as			
15	5 such, APS is not bound by the Release.				
16	60.	ARB contends that the Release is valid and enforceable against APS.			
17	61.	A declaration of the Court is necessary and appropriate at this time to settle the			
18	matter in controversy among the parties involved and to avoid a multiplicity of actions.				
19 62. Specifically, if it is determined that <b>APS</b> is not bound		Specifically, if it is determined that APS is not bound by the Release, ARB seeks a			
20	20 judicial declaration that <b>APS</b> shall return the consideration it received under the terms of the				
21	Release, i.e., S	\$135,360.			
22	2 PRAYER FOR RELIEF				
23	THEREFORE, plaintiff prays for judgment against defendants as follows:				
24	1.	On the First, Second, and Third Causes of Action:			
25		a. An award of all damages available in law and according to proof at trial;			
26	and				
27		b. for punitive and exemplary damages.			
28	///				
Rutan & Tucker, LLP attorneys at law		-10-			
	2524/018579-0182 6791722.1 a03/28/14	COMPLAINT			

.

### COMPLAINT

1	2.	<u>On th</u>	e Forth Cause of Action:	
2		a.	For treble damages according to proof at trial, but not less than \$361,056.	
3	3.	<u>On th</u>	e Fifth Cause of Action:	
4		a.	Alternatively, in the event APS is not bound the terms of the Release, a	
5	judicial declar	ration b	y the Court determining and declaring that APS must return the consideration	
6	it received un	ed under the terms of the Release, i.e., \$135,360.		
7	4.	<u>On Al</u>	Il Causes of Action:	
8		a.	For interest to the extent allowed by law;	
. 9		b.	for reasonable attorneys' fees to the extent allowed by law and/or the	
10	Release;			
11		c.	for costs of suit incurred; and	
12		d.	for such other and further relief as the Court deems just and proper.	
13				
14	Dated: Marcl	n 28, 20	14 RUTAN & TUCKER, LLP PHILIP J. BLANCHARD	
15			ELIOT M. HOUMAN	
16			By: Mynstill	
17			Philip J. Blanchard Attorneys for Plaintiff	
18			ARB, INC.	
19				
20				
21				
22				
23				
24				
25				
26				
27				
28				
Rutan & Tucker, LLP attorneys at law	2524/019570 0192		-11-	
	2524/018579-0182 6791722.1 a03/24/14		COMPLAINT	

# **EXHIBIT** A

#### RELEASE

THIS RELEASE is made effective this 22<sup>nd</sup> day of November, 2013 as between Always Protective Services LLC, located at 15068 Rosecrans Avenue, #164, La Mirada, California 90638 ("APS") and ARB, Inc., 26000 Commercentre Drive, Lake Forest, California 92630 ("ARB").

WHEREAS, ARB entered into a contract with Sempra Energy to perform work and provide services in connection with the San Diego Gas & Electric Retrofit and Short Notice Program in various locations throughout the greater San Diego area in California (the "Project").

WHEREAS, in connection with the Project, ARB retained APS to provide site security services at the relevant Project locations in 2012 and 2013. ARB terminated its relationship with APS on the Project on or about April 1, 2013.

WHEREAS, upon the termination of APS by ARB, APS contends it is owed the sum of \$255,712.00 for services performed in connection with the Project, and ARB contends that APS is not entitled to that sum (the "Dispute").

WHEREAS, ARB and APS desire to fully and finally settle and compromise any and all claims between and among them in connection with the Dispute and APS's work on the Project.

NOW, THEREFORE, in consideration for the payment of One Hundred Thirty-Five Thousand Three Hundred Sixty Dollars (\$135,360.00) made by ARB, APS on behalf of itself and its past, present and future members, shareholders, partners, agents, servants, representatives, employees, officers, directors, affiliates, subsidiaries, successors and assigns ("Releasing Parties"), hereby releases, acquits and forever discharges ARB and its members, shareholders, partners, agents, servants, representatives, employees, officers, directors, insurers, successors and assigns, and all other persons, firms, corporations, associations, partnerships, parent companies, affiliates, subsidiaries and any other entity connected therewith (collectively "Released Parties"), of and from any and all claims, actions, causes of action, demands, rights, damages, costs, expenses and/or compensation, of any nature whatsoever which APS now has or which may hereafter accrue to APS, known or unknown, foreseen or unforeseen, on account of, in connection with or in any way growing out of the Dispute, the services performed by APS for the Project, ARB's retention of APS for the Project, and ARB's termination of APS from the Project.

In further exchange for the consideration delineated hereinabove, APS and the Releasing Parties also agree to defend, indemnify and hold harmless ARB and the Released Parties from and against any and all claims, actions, causes of action, demands, fines, penalties, damages, costs and expenses (including attorney's fees) on account of, in connection with or in any way growing out of the Dispute, the services performed by APS for the Project, ARB's retention of APS for the Project, and ARB's termination of APS from the Project.

APS has received no inducement, promise or offer of any kind whatsoever except for the consideration delineated hereinabove, and this Release is executed without reliance on any statement or representation by the Released Parties.

It is understood and agreed that this settlement is the compromise of a disputed claim and that the consideration furnished is not to be construed as an admission of liability on the part of the Released Parties, and that the Released Parties have denied liability on the claim herein and intend merely to avoid litigation and buy their peace by this compromise. The compromise and settlement which forms the basis of this Release has been arrived at after thorough bargaining and negotiation and represents a final, mutually agreeable compromise.

APS AGREES THAT ANY AND ALL RIGHTS UNDER SECTION 1542 OF THE CIVIL CODE OF CALIFORNIA AND OF ANY SIMILAR LAW OF ANY STATE OR TERRITORY OF THE UNITED STATES ARE HEREBY EXPRESSLY WAIVED. SAID SECTION 1542 READS AS FOLLOWS: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR."

APS agrees that this Release contains the entire agreement between the parties hereto and that the terms of this release are contractual and not a mere recital.

APS further agrees that its authorized representative has read and fully understood this Release and is so authorized to execute same, and in so doing APS further acknowledges that ARB is expressly relying upon the authority of such representative such that this Release will be binding upon APS and all Releasing Parties.

DATED:

ALWAYS PROTECTIVE SERVICES, LLC

Bv: JEFA

≫Name: Jess Shea Title: Executive Vice President