

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

BRONISLAW LAS, CHRISTIAN LEMMLER,	)	
RICHARD GETZLOFF, MICHAEL LOESS,	)	
ROBYN LOESS, ANTOINETTE NAVA,	)	
KRISTINA GLAZIER, DALLAS BOWMAN,	)	Case No. 12 CV 5538
and JEFFERY GIACOBBE, individually and	)	
on behalf of all others similarly situated,	)	Magistrate Judge Sidney I. Schenkier
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
DISTRICT TOWING, INC.; DISTRICT	)	
REBUILDERS, INC.; DISTRICT RECOVERY,	)	
INC.; DISTRICT ENTERPRISES, INC.;	)	
DISTRICT CRANE, INC.; DISTRICT AUTO	)	
PARTS, INC.; DISTRICT REAL ESTATE	)	
L.L.C.; and SHERRY RADWANSKI,	)	
	)	
Defendants.	)	

**STIPULATION OF SETTLEMENT**

This Stipulation of Settlement and Release (“**Stipulation of Settlement**” or “**Settlement Agreement**”) is made and entered into on July 25, 2013 by and between Plaintiffs BRONISLAW LAS, CHRISTIAN LEMMLER, RICHARD GETZLOFF, MICHAEL LOESS, ROBYN LOESS, ANTOINETTE NAVA, KRISTINA GLAZIER, DALLAS BOWMAN, JEFFERY GIACOBBE and CATHERINE ZUTANT, individually and on behalf of all opt in claimants and all others similarly situated, (together, “**Plaintiffs**”) and Defendants DISTRICT TOWING, INC.; DISTRICT REBUILDERS, INC.; DISTRICT RECOVERY, INC.; DISTRICT ENTERPRISES, INC.; DISTRICT CRANE, INC.; DISTRICT AUTO PARTS, INC.; DISTRICT REAL ESTATE L.L.C.; SHERRY RADWANSKI, jointly and severally (together

“**Defendants**”) and is subject to the terms and conditions hereof and the approval of the Court. Plaintiffs and Defendants are referenced collectively herein as “the Parties.”

### **BACKGROUND AND RECITALS**

1. On July 13, 2012, one former District Towing light duty tow truck driver, Bronislaw Las, and one former District Towing dispatcher, Christian Lemmler, filed the instant litigation as a putative class action in the District Court of the Northern District of Illinois alleging that Defendants had violated the Illinois Minimum Wage Law (“**IMWL**”), the Illinois Wage Payment and Collection Act (“**IWPCA**”) and the Fair Labor Standards Act (“**FLSA**”), 29 U.S.C. § 201, *et seq.* by failing to pay employees in Illinois straight time and overtime compensation for all hours they worked (the “**Action**”).

2. As of the date of this Settlement Agreement, Plaintiffs have not moved for certification of a class under Fed. R. Civ. P. Rule 23 and have not moved for conditional certification of an FLSA collective action under 29 U.S.C. § 216(b).

3. The Parties conducted discovery at the outset of the litigation relating to the insurance coverage of the defendants, the classification of Plaintiffs as exempt employees and the payroll practices in question. The Parties informally requested and received thousands of pages of documents, including payroll and timekeeping data, DOT records, dispatch records, primary and excess insurance policy documents, personnel files, tax returns, banking statements, asset statements and supporting financial documents for all corporate defendants and Sherry Radwanski. The primary insurance coverage for these claims contained "eroding" coverage and Defendants also produced a "denial of coverage" letter from Defendants' excess insurer, therefore the Court urged the parties to explore resolution. On September 5, 2012, the parties entered into a tolling agreement for the statute of limitations for the putative collective action and

for the class, and pursued mediation with the Court. After three mediation sessions with the Court, a private review of Defendants' financial records with a tax consultant, and appraisal of several corporate and personal assets, both sides accepted a proposed compromise settlement proposed by the Court.

4. At all times, the negotiations leading to this Stipulation of Settlement have been adversarial, non-collusive, and at arm's length. At the time of settlement, the parties had exchanged Rule 26(a)(1) disclosures and had discussed a discovery plan that would include at least one Rule 30(b)(6) witness covering various topics, including Defendants timekeeping practices, weekend "on-call" duty for the drivers and Defendants' record keeping practices. The parties were also in the process of executing an extensive ESI search protocol of the Defendants' email custodians and electronic repositories.

5. For purposes of this Settlement Agreement, the "**Settlement Class**" consists of all Settlement Class Members who fail to opt out of the Settlement Agreement. "**Settlement Class Members**" shall be defined as follows:

All individuals who are currently employed or were employed by the Defendants, their subsidiaries, predecessors or affiliated companies, as dispatchers, light duty tow truck drivers, heavy duty tow truck drivers or other similarly titled positions at any time from July 13, 2002 through July 25, 2013 or who are otherwise identified by name on the Class Settlement List attached hereto as Exhibit A to the Settlement Agreement.

6. For purposes of settling this case, the Parties conditionally stipulate and agree that the requirements for establishing class certification with respect to the Settlement Class Members have been met, and therefore, stipulate to class certification. More specifically, the Parties conditionally stipulate and agree that:

a. The number of Settlement Class Members is so numerous as to make it impracticable to join all Settlement Class Members as parties.

b. There are common questions of law and fact including, but not limited to, whether Defendant failed to pay wages and overtime as required by Illinois law and the FLSA.

c. Plaintiff's claims are typical of the claims of the members of the Settlement Class.

d. Glen J. Dunn, Jr. and Joel T. Finch of Glen J. Dunn & Associates, Ltd. and Jeffrey Grant Brown of Jeffrey Grant Brown, P.C. should be deemed "**Class Counsel**" and will fairly and adequately protect the interests of the Settlement Class.

e. The prosecution of separate actions by individual members of the Settlement Class would create the risk of inconsistent or varying adjudications, which would establish incompatible standards of conduct.

f. Questions of law and fact common to the members of the Settlement Class predominate over questions affecting individual members in the Settlement Class and a class action is superior to other available means for the fair and efficient adjudication of the controversy.

g. For settlement purposes only, the Parties agree that this Action also may be maintained as an FLSA collective action pursuant to 29 U.S.C. §216(b).

7. Pursuant to the terms of this Settlement Agreement, it is the desire of the Parties to fully, finally, and forever settle, compromise, and discharge all disputes and claims which exist between them arising from this Action. In order to achieve a full and complete release of Defendant of such disputes and claims, each Settlement Class Member (which includes any legal heirs and/or successors-in-interest of each Settlement Class Member), through execution of the Stipulation and Settlement by their counsel, acknowledges that this Stipulation

of Settlement is intended to include in its effect all claims arising from the allegations in the Complaint.

8. It is the intention of the Parties that this Stipulation of Settlement shall constitute a full and complete settlement and release of all unpaid compensation claims arising from the factual allegations in this Action, including, without limitation, claims in the nature of claims for unpaid wages, unpaid vacation, unpaid premium pay, overtime pay, unpaid pre-shift time or post-shift time worked, wage and hour violations, lunch or meal break violations, minimum wage violations, recordkeeping violations and including but not limited to claims under the IMWL, FLSA, and the IWPCA, and One Day Rest in Seven Act, as well as claims for attorneys' fees and costs based on the foregoing claims. Said release shall include in its effect the named Defendants, and each of their present and former parent companies, subsidiaries, affiliates, shareholders, officers, partners, directors, members, servants, employees, agents, attorneys, insurers, predecessors, representatives, accountants, past, present, and future, successors and assigns, and each and all of their respective officers, partners, directors, members, servants, agents, shareholders, employees, representatives, accountants, insurers, and attorneys, past, present, and future, and all persons acting under, by, through, or in concert with any of them.

#### **TERMS OF SETTLEMENT**

9. Effective Date: The settlement embodied in this Settlement Agreement is conditioned on the occurrence of each of the following events: (i) counsel for the Parties executing this Settlement Agreement; (ii) this Court granting preliminary approval to the Settlement Agreement; (iii) notice being given to the putative Settlement Class Members, providing them with an opportunity to submit claims or opt out of the Settlement; and (iv) this

Court holding a final fairness hearing and entering a final order and judgment approving this Stipulation of Settlement and dismissing this case with prejudice (the “**Final Approval Order**”). Assuming each of these events has occurred, the effective date of the Stipulation of Settlement (“**Effective Date**”) shall be the later of either (1) the date of entry of a Final Approval Order, unless there are objections to approval asserted by a person with standing and filed in a manner permitted by this Stipulation of Settlement, in which case the date shall be the day following expiration of the date for filing an appeal from the Court’s Final Approval Order (e.g., 31 calendar days from Entry of the Final Approval Order) or (2) if a timely appeal is made, the date of the final resolution of that appeal or any subsequent appeals resulting in final judicial approval of the Stipulation of Settlement. If there is a failure to reach the Effective Date: (1) the Settlement Agreement shall have no force and effect, and no Party shall be bound by any of its terms; (2) Defendants shall have no obligation to make any payments to the Class Members or Class Counsel; and (3) the Settlement Agreement and all negotiations, statements, proceedings and data relating thereto shall be protected by Evidence Rule 408 and shall be without prejudice to the rights of any of the Parties, all of whom shall be restored to their respective positions in this Action as of September 5, 2012.

10. Administration of Settlement Payments:

a. Attorneys’ Fees and Costs: Subject to the Court’s approval, Defendants agree to pay up to \$80,000.00 out of the Settlement Fund, defined in Paragraph 11 below, to Class Counsel for attorneys’ fees (“**Attorneys’ Fees Award**”). The Attorneys’ Fees Award will compensate and reimburse Class Counsel for (1) all of the work already performed by Class Counsel in this case; and (2) all of the work remaining to be performed by Class Counsel in documenting the settlement, securing Court approval of the settlement, making sure that the

settlement is fairly administered and implemented, and obtaining dismissal of this Action. All costs actually incurred and reasonably anticipated to be incurred by Class Counsel in litigating and finalizing this Action shall be reimbursed separately from the Settlement Fund, and Plaintiffs agree that the reimbursable expenses shall not exceed \$5,000.00. The payment to Settlement Class Members who file timely and valid claims to participate in the Settlement as described in this Agreement (“**Settlement Participants**”) is not contingent upon Class Counsel’s receipt of the Attorney’s Fees Award, and the Court’s disapproval of any portion of the payment to Class Counsel shall not be grounds for voiding other provisions of this Agreement. Should the Court approve an attorney fee award to plaintiffs’ counsel that is less than \$80,000.00 in fees, plus costs, the remainder of funds shall be distributed proportionately to the Settlement Participants. Plaintiffs’ Counsel agree they will not seek an award of attorney’s fees in excess of \$80,000.00. Defendants agree to not object to any application to the Court by Class Counsel for payment of the Attorneys’ Fees Award or to their application for reimbursement of costs.

b. Enhancement Awards: Defendants will pay \$5,000 each to named class representative Plaintiffs Bronislaw Las and Christian Lemmler, for their service in this Action. Defendant will pay \$2,500 to named plaintiffs Richard Getzloff, Catherine Zutant, Jeff Giacobbe and Dallas Bowman for their efforts in securing information and evidence during the mediation phase and for their attendance at the mediation sessions. Should the Court approve an enhancement award less than those set forth herein, any unapproved portion shall be distributed proportionately to the Settlement Participants.

c. Costs of Claims Administrator: Plaintiffs have selected Dahl Administration, LLC as the Claims Administrator in this Action, and Defendants agree not to

oppose Plaintiffs' selection of the Claims Administrator. Plaintiffs reasonably believe that the fee for claims administration charges in this Action will not exceed \$5,000.00, which Defendant will pay out of the Settlement Fund, defined in Paragraph 11 below. In the event the claims administration expenses will exceed \$5,000.00, Plaintiffs counsel will take all reasonable steps to minimize overage costs by performing some or all of the remaining claims administration work and any resulting overage will be paid out of the Settlement Fund. In the event the claims administration charges are less than \$5,000.00, the remainder shall revert to the FLSA Settlement Fund to be distributed proportionately to the Settlement Participants in that fund. The Claims Administrator's duties shall include performing a National Change Of Address ("NCOA") update of Settlement Class Members' address data as provided to it by Defendant pursuant to Paragraph 10(e) below; mailing the Notice Packets (with all documents in the Notice Packet, including the Notice and Claim Form); performing necessary skip traces on Notice Packets returned as undeliverable; reviewing and authenticating Claim Forms received from Settlement Class Members; processing payments; receiving written notices of mailing requests to cure deficiencies in Claim Forms; providing Class Counsel and Defendant' counsel with the reports set forth in Paragraph 11(d) of this Settlement Agreement, and preparing and mailing of all Settlement Participants' settlement checks.

d. Notice to the Settlement Class: Following the preliminary approval of the Settlement by the Court, Defendants will have five (5) business days to provide the Claims Administrator with the data and information necessary to perform the national change of address update, skip traces and mail class notices. Defendants will furnish the Claims Administrator with the names, last known home addresses, social security numbers, employee identification numbers and number of work weeks during which each Settlement Class Member received a



paycheck for regular wages from July 13, 2002, up to and including July 25, 2013 (“**Class Data List**”). Class Counsel may also furnish the Claims Administrator with any current addresses of Settlement Class Members that are known to them.

e. The addresses provided by Defendants will be run through a NCOA Link database, or a similar product by the Claims Administrator, and the Notice will be sent to any updated addresses indicated as compared to Defendant’s records. After running the addresses through a NCOA Link database, and after Notice has been mailed, if any mail is returned as undeliverable (“**RUM**”), the Claims Administrator will perform one basic “skip trace” search for any RUM received without a forwarding address. The basic level search will utilize Accurant (a division of Lexis-Nexis), or a similar product and service, to retrieve the most accurate and updated information.

f. Within seven (7) calendar days after the Administrator receives the Class Data List, the Claims Administrator will send Settlement Class Members, by first-class mail, postage pre-paid, at their NCOA-updated address, the court-approved Notice of Class Action Settlement and Final Approval Hearing Date (“**Class Notice**”) in the form attached hereto as Exhibit “B” and a Claim Form in the form attached hereto as Exhibit “C.” A Class Notice and a Claim Form shall be referred to collectively as a “Notice Packet.” The Claims Administrator shall also mail a Notice Packet to any Settlement Class Member who contacts the Claims Administrator and requests a Notice Packet. The Notice Packet shall include an envelope addressed to the Claims Administrator with prepaid “business reply” postage. The information contained in a Notice Packet will also be published once during the opt-in period in a newspaper of general circulation in the geographic area of Defendants' offices, such as the Southtown Economist and/or the Des Plaines Valley News; and shall also be conspicuously posted throughout the opt-in period, in an areas readily accessible by employees and the public at the premises of Defendants' business at 7450 S. Archer Rd., Justice, Illinois 60458. The posted notice can be confirmed, without notice, by Plaintiff's counsel or designate visiting Defendants' business

at 7450 S. Archer Rd., Justice, Illinois 60458. Any dispute regarding the content of the Class Notice or the Claim Form shall be decided by the Court.

g. All mailings by the Claims Administrator will be by first class mail. Settlement Class Members will have seventy-five (75) calendar days from the date of mailing to submit Claim Forms by mail, and the Claim Form must be received on or before the deadline set forth in the Class Notice. The date of receipt of the claim form, as confirmed by the Claims Administrator, shall be the exclusive means of determining whether a Claim Form was timely submitted. The individual class member will have the sole responsibility of possessing and producing any and all evidence to prove the timely delivery of a Claim Form upon the Claims Administrator when a dispute arises as to the timeliness of any Claim Form. Each member of the Settlement Class who returns a valid and timely Claim Form (“**Qualified Claim**”) shall be referred to herein as a “**Settlement Participant**.”

h. If an original Notice Packet is returned as undeliverable with a forwarding address provided by the United States Postal Service, the Claims Administrator will promptly resend a Notice Packet to that forwarding address. If an original Notice Packet is returned as undeliverable and without a forwarding address, the Claims Administrator will perform a skip trace, and if it obtains a more recent address, will resend a Notice Packet to the new address. The Claims Administrator shall also mail a Notice Packet to any Settlement Class Member who contacts the Claims Administrator and requests a Notice Packet.

i. Within three (3) business days of receipt by the Claims Administrator of each timely-submitted Claim Form, the Claims Administrator will send a Deficiency Notice to the Settlement Class Member for any deficiencies subject to cure in his or her completed Claim Form. The Deficiency Notice will provide the Settlement Class Member no more than ten (10) days from the mailing of the Deficiency Notice and not more than eighty-five (85) days from the initial mailing of the Notice Packet to postmark a written response to cure all deficiencies. The failure of a Settlement Class Member to timely submit a Claim Form, or timely submit a response

to any Deficiency Notice, shall invalidate a claim and will not be considered subject to cure unless agreed to by all counsel for the Parties and approved by the Court.

j. All original Claim Forms shall be mailed directly to the Claims Administrator at the address indicated on the Claim Form, unless submitted to Class Counsel. After the Notice Packets are mailed, the Claims Administrator shall provide a weekly report to Class Counsel and Defendants' counsel, setting forth the number of Qualified Claims filed each week, the number of deficient claims for which a Deficiency Notice is sent to a Settlement Class Member and the number of opt-outs received. Within five (5) business days after the last date to cure deficiencies, the Claims Administrator will provide a final report certifying jointly to Class Counsel and Defendants' counsel which claims were valid and timely filed.

k. Objections to the Settlement and Requests to Opt-Out. The Class Notice also will inform Settlement Class Members of the right to object to the Settlement and the right to opt out of and request to be excluded from the Settlement and not be bound by the Settlement Agreement. If a person wishes to have the Court consider an objection to the Stipulation of Settlement, such person (1) must not have excluded himself from the Settlement, and (2) must file with the Court and mail to Class Counsel and counsel for Defendant a written objection, along with any supporting documentation that the person wishes the Court to consider, by no later than seventy-five (75) calendar days from the initial mailing of the Notice Packet. If such an objection is submitted and overruled by the Court, the objecting Settlement Class Member shall remain fully bound by the terms of this Stipulation and the Order of Final Approval entered by the Court.

If a person wishes to be excluded from the settlement, they must deliver to the Claims Administrator, no later than seventy-five (75) calendar days after the mailing of the Class Notice, an appropriate request for exclusion including his or her name, address, and telephone number and a general statement that they wish to be excluded from the settlement. All such requests for exclusion must be signed by the Settlement Class Member requesting exclusion or his or her legal representative, and no person may exclude a Settlement Class Member other than himself

or herself or their legal representative. The original requests for exclusion will be retained by the Claims Administrator and copies will be provided to Class Counsel and Defendant's counsel within five (5) calendar days of receipt by the Claims Administrator.

11. Establishment of Settlement Fund. Defendants shall create a pool to fund their settlement obligations in this Action ("**Settlement Fund**") in accordance with this paragraph. Payments by Defendant pursuant to this Settlement Agreement shall settle all pending issues between the Parties, including, but not limited to, all payments of class claims, administration costs, attorneys' fees and costs, and enhancement awards. Defendants shall be responsible for paying, in addition to the Settlement Fund, any appropriate and lawfully required employer payroll taxes. The payments made to Settlement Participants shall not be construed as compensation for purposes of determining eligibility for unemployment compensation or any benefits offered by Defendants, including health and welfare benefits.

a. Gross Settlement Value: The total settlement fund is \$235,000.00, which includes all monies paid to plaintiffs, the settlement class, their attorneys and the claims administrator. The gross settlement value ("**GSV**"), which represents the portion of the fund allocated to the plaintiffs and settlement class members, carries a minimum value of \$150,000.00, less the amount of the Enhancement Payments paid to Bronislaw Las, Christian Lemmler, Richard Getzloff, Cathy Zutant and Dallas Bowman (not to exceed a total value of \$20,000.00) and the claims administration costs (not to exceed a total value of \$5,000.00). In accordance with paragraph 13(a) above, class counsel have agreed that their petition for attorney's fees and costs shall not exceed \$85,000.00, but in the event the Court approves an attorney fee award to plaintiffs' counsel that is less than \$80,000.00 or reimbursable costs are less than \$5,000.00, the remainder of the settlement funds allocated for attorney's fees and/or costs shall be added to the GSV.

b. Calculation of Settlement Class Members' Payments: In consideration for settlement and a release of all claims of the Settlement Class against the Defendants, each Settlement Participant as defined in Paragraph 10(g) above shall receive a settlement payment calculated pursuant to this paragraph. Within five (5) business days after receiving the final report of Settlement Participants as defined in Paragraph 10(j) above, the Claims Administrator will provide Class Counsel with an updated Class Data List containing: (1) the aggregate combined number of work weeks in which any Settlement Participant received a paycheck for regular wages from (a) July 13, 2002 through July 12, 2009 and (b) from July 13, 2009 through July 25, 2013; and (2) for each Settlement Participant, the total number of work weeks that Settlement Participant received a paycheck for regular wages from (a) July 13, 2002 through July 12, 2009 and (b) July 13, 2009 through July 17, 2013. There is a rebuttable presumption that Defendants personnel and payroll records are correct, but Settlement Participants may, should they disagree with Defendant's records, provide documentation and/or an explanation to show contrary employment dates and/or records of time worked no later than 7 days after the close of the 75-day opt-in period defined in paragraph 10(g) above. Such a dispute shall be directed to the Claims Administrator, who will notify all Counsel of the individual's dispute, provide Counsel with a copy of the records provided by the individual and any other pertinent records, and inform Counsel of the determination of the dispute. If either party objects to the determination of the claims administrator, then the dispute will be finally resolved by the Court.

c. The GSV shall be divided into two separate sub-funds: The first settlement sub-fund, which will be referred to as the "**IWPCA Settlement Fund**," is created to pay all Settlement Participants whose work tenure for Defendants falls in whole, or in part, outside of the FLSA and IMWL statutes of limitations (prior to July 13, 2009) but within, in whole or in part,

the IWPCA statute of limitations (on or after July 13, 2002). The total value of the "IWPCA Settlement Fund" will be \$20,000.00. The Defendants have represented to Plaintiffs that the approximate aggregate combined total number of work weeks where putative Settlement Participants received a paycheck during the "IWPCA Settlement Fund" claim period is 1448. The second settlement sub-fund, which will be referred to as the "**FLSA Settlement Fund**" is created to pay all claimants whose work tenure for the Defendants falls, in whole or in part, inside the FLSA and IMWL statutes of limitations (on or after July 13, 2009). The "FLSA Settlement Fund" has a minimum value of \$107,500.00. The Defendants have represented to Plaintiffs that the approximate aggregate total number of work weeks that any plaintiff and settlement fund class member received a paycheck for regular wages from July 13, 2009 through July 25, 2013 is 2507. All unclaimed funds from the "IWPCA Settlement Fund" will revert into the "FLSA Settlement Fund", which is discussed in the below paragraph, and be distributed, pro-rata, to those Settlement Participants claiming into the "FLSA Settlement Fund". If a Settlement Participant received a paycheck for regular wages both before and after July 13, 2009, then that Settlement Participant shall be entitled to claim into both settlement sub-funds.

The total number of individual shares in the "IWPCA Settlement Fund" is equivalent to the total number of work weeks in which any plaintiff or settlement class member received a paycheck for regular wages from July 13, 2002 through July 12, 2009. The Claims Administrator will calculate the value of each individual share ("**IWPCA Settlement Fund Share Value**") by dividing \$20,000 by the total combined number of work weeks worked in the class period, which is approximately 1448. Each IWPCA Settlement Fund Participant will receive one share for each work week in which he or she worked from July 13, 2002 through July 12, 2009. Each IWPCA Settlement Fund Participant is entitled to payment for the total

value of his or her share(s) (“**Settlement Share**”), which will be equal to the number of shares he or she receives multiplied by the Share Value. The Parties estimate that there are 56 Settlement Class Members who worked a total of 1448 work weeks during the Class Period (i.e., July 13, 2002 to July 12, 2009). Every IWPCA Settlement Fund Participant who files a valid and timely claim form will be entitled to receive payments consistent with the below chart, assuming the Settlement Participant worked for Defendant for 12 months, 24 months, 36 months or 48 months, he or she would be paid within the following approximate range (pre-tax):

Tenure of Class Member	Approx. Payment
12 months (52 weeks)	\$728.00
24 months (104 weeks)	\$1,456.00
36 months (156 weeks)	\$2,184.00
48 months (208 weeks)	\$2,912.00

The total number of individual shares in the "FLSA Settlement Fund" is equivalent to the total number of work weeks in which every FLSA Settlement Fund Participant received a paycheck for regular wages from July 13, 2009 through July 25, 2013. The Claims Administrator will calculate the value of each individual share (“**FLSA Settlement Fund Share Value**”) by adding \$105,000.00 to all unclaimed funds from the "IWPCA Settlement Fund" and, if applicable, any remaining funds from the attorney fee award, general expenses and claims administration expenses, then dividing that sum by the aggregate combined total number of work weeks where any Settlement Fund Participant claiming into the "FLSA Settlement Fund" received a paycheck for regular wages between July 13, 2009 through July 25, 2013. Each Settlement Fund Participant will receive one share for each work week in which he or she worked from July 13, 2009 through July 25, 2013. Each Settlement Fund Participant is entitled

to payment for the total value of his or her share(s) (“**Settlement Share**”), which will be equal to the number of shares he or she receives multiplied by the FLSA Settlement Fund Share Value. The Parties estimate that there are 75 Settlement Class Members who worked a total of 2507 work weeks during the Class Period (i.e., July 13, 2009 to July 25, 2013). Assuming a claim-in rate of 20% to 40%, the parties estimate that each FLSA Settlement Fund Participant who files a valid and timely claim form will be entitled to receive a payment that, on average, equates to an approximate minimum range in share value of \$214.39 to \$107.19 per workweek for which they worked for Defendants. Thus, if a person worked for Defendants for 12 months, 24 months, 36 months or 48 months, he or she would be paid within the following approximate minimum range (pre-tax):

Tenure of Class Member	Approx. Payment
12 months (52 weeks)	\$11,148 - \$5, 574
24 months (104 weeks)	\$22,296 - \$11,148
36 months (156 weeks)	\$33,445 - \$16,722
49 months (208 weeks)	\$44,593 - \$22,295

d. After the Claims Administrator has calculated each Settlement Fund Participant’s Settlement Shares in either of the settlement sub-funds, the Claims Administrator will provide an Excel spreadsheet to counsel that lists the name and address of the Settlement Fund Participant and the Settlement Participant’s Settlement Shares in either fund. The Claims Administrator shall be responsible for calculating and withholding all required state and federal taxes on behalf of both Settlement Fund Participants and Defendants, and for mailing each Settlement Fund Participant an award check. On the reverse of each award check will be printed above the space for endorsement a statement that, “by cashing the check, the Settlement Fund Participant fully and finally waives all claims as defined in paragraph 15 of the Settlement Agreement, against



Defendants pursuant to this Agreement” (“**Waiver Warning**”). Each settlement check will also bear a legend directing the payer’s bank not to accept the settlement check for payment if: (a) the settlement check is unsigned; or (b) the waiver warning, or any part of it, has been altered or deleted.

e. If any Settlement Participants fail to cash their award checks within one hundred twenty (120) calendar days of distribution, the uncashed checks and their unclaimed funds and property shall escheat to the State of Illinois as unclaimed property pursuant to applicable statute. By failing timely to cash their checks, the Settlement Participants will be deemed to have waived irrevocably any rights in or claim to their Settlement Award. The settlement checks will be printed to so advise Settlement Participants. The Claims Administrator shall provide Class Counsel with a list of all issued settlement checks that have not been cashed 90 days after distribution.

f. Exclusion Requests. The Class Notice will inform Settlement Class Members of the right of each individual Settlement Class Member to opt out of the proposed Settlement. Any Settlement Class Member who wishes to opt out of the Settlement Agreement must submit a written statement requesting exclusion from the settlement within seventy-five (75) calendar days from the date the Notice Packet is mailed to the Settlement Class Member. Such written request for exclusion must contain the full name, current home (or mailing) address, and it must include the statement “I wish to be excluded from the settlement of the case entitled *Bronislaw Las, et al. v. District Towing, Inc., et al*, N.D.Ill. Case No. 12-cv-5538”, or words to that effect. The written request must be signed by the person requesting exclusion or their legal representative and must be delivered to the Claims Administrator at the specified address set forth on the Class Notice or to Class Counsel on or before the deadline set forth on the Class

Notice. The date of receipt of the request for exclusion, as confirmed by the Claims Administrator, shall be the exclusive means of determining whether a request for exclusion was timely submitted.

In the event of any dispute concerning whether a Settlement Class Member has timely and properly opted out of the Settlement, counsel for the Parties shall meet and confer in good faith to resolve such dispute.

g. Funding of Settlement: Within seventy-five (75) calendar days after the execution of this Settlement Agreement, Defendants will deposit \$235,000.00 into Account No. 3800257521 at Northern Trust Bank, bearing the Tax ID of 261825161, to create the Settlement Fund. Defendants' payment obligations, including its obligation to pay any Attorneys' Fees or costs, will be fully satisfied upon depositing this amount into the Settlement Fund. In the event this Settlement Agreement is terminated by the Court, the Settlement Fund account, and all accrued interest, shall be returned to Defendants' possession after five (5) business days from such the entry of such Court order.

h. Payment Procedure: Within and no later than ten (10) calendar days of the Effective Date, the Claims Administrator will pay all claims to the Settlement Class Members and Enhancement Payments and will wire payment of all attorneys' fees and costs approved by the Court to Class Counsel at their bank of choice, with the routing numbers and account numbers to be provided under separate cover and to be held by the Claims Administrator.

i. Tax Treatment of Each Settlement Share: The settlement payment to each Settlement Participant will be allocated as follows: 50 percent of the payment will be considered and treated as non-wage penalties and interest, and 50 percent of the payment will be considered and treated as wages. This allocation shall not apply to the enhancement to the Class

Representative because no part of such enhancement will be wages. The employee-side share of payroll deductions for the wage portion of the settlement payments will be calculated by the Claims Administrator, subtracted from the settlement payments, and paid to the appropriate government agencies. Defendants shall be responsible for the employer-side share of payroll taxes. The Claims Administrator will calculate the amount owed by Defendants for each Settlement Participant and provide those calculations to Defendants. Within twenty-one (21) calendar days of receipt of the calculations, Defendants shall pay their share of payroll taxes to the appropriate government agencies. Defendants will then timely prepare and send a Form 1099 and a Form W-2 to each Settlement Participant, reflecting each Settlement Participant's non-wage income and wage income, respectively; and Defendants will be responsible for preparing and filing these forms correctly with the appropriate government agencies, along with payment of Defendants' share of payroll taxes to the appropriate government agencies on behalf of Defendants.

j. Tax Treatment of Enhancement Awards: Named Plaintiffs Bronislaw Las, Christian Lemmler, Jeffrey Giacobbe, Richard Getzloff, Cathy Zutant, and Dallas Bowman will receive an IRS Form 1099 for their individual enhancement awards, and will be solely responsible for correctly characterizing this additional compensation for tax purposes and for payment of any taxes owing on said amount.

**RELEASE BY THE CLASS**

12. Upon entry of the final judgment and dismissal with prejudice, each member of the Settlement Class, as defined in Paragraph 5 above, will release, to the extent permitted by law, Defendants (which also specifically includes Justice Suzuki Auto, Inc.), and their present and former parent companies, subsidiaries, affiliates, shareholders, officers, partners, directors, members, servants, employees, agents, attorneys, insurers, predecessors, representatives,

accountants, past, present, and future, successors and assigns, and each and all of their respective officers, partners, directors, members, servants, agents, shareholders, employees, representatives, accountants, insurers, and attorneys, past, present, and future, and all persons acting under, by, through, or in concert with any of them (collectively “**Releasees**”), from any and all claims asserted in this Action and any and all claims asserting a failure to pay all lawfully required compensation due during the period of July 13, 2002 through July 25, 2013, including, without limitation, any such unpaid wage claims arising under contract, federal, state and/or local law, statute, ordinance, regulation, common law or other source of law, as well as any claims for unpaid wages, unpaid premium pay, overtime pay, unpaid pre-shift time or post-shift time worked, wage and hour violations, lunch or meal break violations, minimum wage violations, recordkeeping violations, including unpaid wage claims under the IMWL, the FLSA, and the IWPCA and One Day Rest in Seven Act and including all claims, liabilities, demands, obligations, guarantees, costs, expenses, attorneys’ fees, damages, penalties, interest or causes of action asserted in this Action.

Settlement Class Members who do not respond to the Notice Packet (*i.e.*, who neither opt out of the class nor timely file a claim form) are bound by the terms of the Settlement Agreement, with the exception that Settlement Class Members who do not respond to the Notice Packet (*i.e.*, neither opt out of the class nor file a Qualified Claim) do not release any claims, rights, liabilities, demands, obligations, guarantees, costs, expenses, attorneys’ fees, damages, or causes of action under the FLSA.

This release excludes any claim of a Settlement Class Member that cannot be released by private agreements, such as, without limitation, benefits, rights, claims or causes of action for unemployment insurance benefits and compensable workers’ compensation injuries. This release does not apply to any Settlement Class Member (other than the Named Plaintiffs as addressed below in Paragraph 13) benefit, right, claim, demand, complaint or cause of action

under 29 U.S.C. 1132(a)(1)(B) of ERISA nor to benefits accrued under any employee benefit plan.

### **RELEASE BY THE NAMED PLAINTIFFS**

13. In addition to releasing the claims set forth in Paragraph 12 above, Named Plaintiffs Bronislaw Las, Christian Lemmler, Richard Getzloff, Michael Loess, Robyn Loess, Antoinette Nava, Kristina Glazier, Dallas Bowman, Jeffrey Giacobbe and Catherine Zutant, on their own behalf and on behalf of their successors, assigns, agents, heirs and attorneys, release and forever discharge the Releasees from any and all claims, demands, damages, judgments, expenses, actions, causes of action or suits of any nature whatsoever, that they may have had or may now have or could assert in the future, whether known or unknown, whether anticipated or unanticipated, suspected or claimed, fixed or contingent, and having accrued prior to or up to the execution of this Agreement, and whether damage has yet been suffered or not or unknown, which (i) were or could have been asserted by them against Releasees and/or (ii) are based on any other matter, cause, or thing whatsoever between them and Releasees, and/or (iii) relate to or arise out of any aspect of the relationship between any of the Named Plaintiffs and Releasees. The Named Plaintiffs further understand and acknowledge that it is within their contemplation that they may have claims that they do not know of or suspect to exist in their favor at the time of executing this Settlement Agreement, and which, if known by them, might have materially affected this Settlement Agreement with Defendants, and all the Named Plaintiffs do hereby expressly waive those claims. This general release shall also include, but not be limited to, any and all claims for reimbursement of any of the Named Plaintiffs' attorneys' fees and costs (collectively, with paragraph 12 above, the "**Named Plaintiffs' Settled Claims**").

### **DUTIES OF THE PARTIES PRIOR TO COURT APPROVAL**

14. The Parties shall promptly prepare and file with the Court a joint motion for preliminary approval and determination by the Court as to the fairness, adequacy, and

reasonableness of this Settlement. The joint motion for preliminary approval shall request entry of a preliminary order which would accomplish the following:

a. Scheduling a fairness hearing on the question of whether the proposed Settlement, including payment of attorneys' fees and costs and the Class Representative's enhancement award, should be finally approved as fair, reasonable, and adequate as to the Settlement Class Members;

b. Certifying a Settlement Class for all claims;

c. Certifying this Action under Civil Rule 23 as a class action for purposes of settlement;

d. Approving as to form and content the proposed Class Notice;

e. Approving as to form and content the proposed Claim Form;

f. Directing the mailing of the Notice Packet by first class mail to the Settlement Class Members;

g. Preliminarily approving the Settlement Agreement subject only to the objections of Settlement Class Members and final review by the Court; and

h. Preliminarily approving the Claims Administrator and approving payment of the charges of the Claims Administrator pursuant to the terms of this Stipulation of Settlement.

i. Approve the settlement as a fair and reasonable resolution of contested claims arising out of a *bona fide* dispute over FLSA liability.

#### **DUTIES OF THE PARTIES FOLLOWING FINAL APPROVAL**

15. Approving the Settlement, adjudging the terms thereof to be fair, reasonable, and adequate, and directing consummation of its terms and provisions;

16. Releasing all claims against the Defendants during the Settlement Class Period pursuant to the terms of the Settlement Agreement; and

17. Dismissing this Action on the merits and with prejudice.

18. Defendant shall not oppose the proposed final order submitted by Class Counsel or any portion thereof, provided that the final order is consistent with this Stipulation of Settlement and Release.

#### **PARTIES' AUTHORITY**

19. The signatories hereto hereby represent that they are fully authorized to enter into this Stipulation of Settlement and bind the Parties hereto to the terms and conditions hereof. Class Counsel specifically represents and warrants that they are authorized to act on behalf of members of the Settlement Class.

#### **NO PENDING OR FUTURE ACTIONS**

20. As a material inducement for the Defendants to enter into this Settlement Agreement, and in consideration for the promises of Defendants as set forth in this Agreement, the Named Plaintiffs represent and warrant that, other than the Action, they have not instituted any claims, legal proceedings or actions against any of the Defendants. The Named Plaintiffs also acknowledge and agree that this Settlement Agreement provides full, final, and complete relief and they will not accept any money or other relief if any other entity or person brings any action or claim within the scope of this Settlement Agreement against any of the Defendants on their behalf.

#### **MUTUAL FULL COOPERATION**

21. The Parties agree to fully cooperate with each other to accomplish the terms of this Stipulation of Settlement, including but not limited to, execution of such documents and to take such other action as may reasonably be necessary to implement the terms of this Stipulation

of Settlement. The Parties to this Stipulation of Settlement shall use their best efforts, including all efforts contemplated by this Stipulation of Settlement and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate this Stipulation of Settlement and the terms set forth herein. As soon as practicable after execution of this Stipulation of Settlement, Class Counsel shall, with the assistance and cooperation of Defendants and their counsel, take all necessary steps to secure the Court's final approval of this Settlement Agreement.

#### **NO PRIOR ASSIGNMENTS**

22. The Parties hereto represent, covenant, and warrant that they have not directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action, or rights herein released and discharged except as set forth herein.

#### **NO ADMISSION**

23. Nothing contained herein, nor the consummation of this Stipulation of Settlement, is to be construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part of the Defendants. Defendants specifically deny any liability. Each of the Parties hereto has entered into this Stipulation of Settlement with the intention to avoid further disputes and litigation with the attendant inconvenience and expenses.

#### **CONSTRUCTION**

24. The Parties hereto agree that the terms and conditions of this Stipulation of Settlement are the result of lengthy, intensive arm's-length negotiations between the Parties. The Parties further agree that this Stipulation of Settlement shall not be construed in favor of or against any Party by reason of the extent to which any Party or its counsel participated in the drafting of this Stipulation of Settlement.



### **CAPTIONS AND INTERPRETATIONS**

25. Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Stipulation of Settlement or any provision hereof. Each term of this Stipulation of Settlement is contractual and not merely a recital.

### **MODIFICATION**

26. This Stipulation of Settlement may not be changed, altered, or modified, except in writing and signed by the Parties hereto, and approved by the Court. This Stipulation of Settlement may not be discharged except by performance in accordance with its terms or by a writing signed by the Parties hereto.

### **INTEGRATION CLAUSE**

27. This Stipulation of Settlement contains the entire agreement between the Parties relating to the settlement and transaction contemplated hereby, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a Party or such Party's legal counsel, are merged herein. No rights hereunder may be waived except in writing.

### **BINDING ON ASSIGNS**

28. This Stipulation of Settlement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators, successors and assigns.

### **PLAINTIFFS' COUNSEL SIGNATORIES**

29. It is agreed that because of the large number of Settlement Class Members, it is impossible or impractical to have each Settlement Class Member execute this Stipulation of

Settlement. The Class Notice will advise all Settlement Class Members of the binding nature of the release and such shall have the same force and effect as if this Stipulation of Settlement were executed by each member of the Class.

**COUNTERPARTS**

30. This Stipulation of Settlement may be executed in counterparts, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one Stipulation of Settlement, which shall be binding upon and effective as to all Parties.

**NO REHIRE**

31. The Named Plaintiffs understand that their employment with any of the Defendants is forever terminated, and they agree that they will not seek or accept employment with any of the Defendants from the date of this Settlement Agreement forward.

**PLAINTIFFS' COUNSELS' REPRESENTATIONS**

32. Plaintiffs' counsel, Glen J. Dunn Jr. and Joel T. Finch of Glen J. Dunn & Associates, Ltd. and Jeffrey Grant Brown of Jeffrey Grant Brown, P.C., on their own behalf and on behalf of their respective attorneys, employees, agents and representatives, represent and warrant that, other than the claims asserted by the Named Plaintiffs, they do not currently represent any other party who has informed them they have an additional claim against any of the Defendants that has not yet been asserted or released by this Settlement Agreement..

*[The Remainder of This Page Has Intentionally Been Left Blank]*

*[Signature Page Follows]*

Dated: July 25, 2013

PLAINTIFFS BRONISLAW LAS;  
CHRISTIAN LEMMLER; RICHARD  
GETZLOFF; MICHAEL LOESS,  
ANTIONETTE NAVA, KRISTINA GLAZIER,  
DALLAS BOWMAN, JEFFERY GIACOBBE;  
CATHERINE ZUTANT

DEFENDANTS DISTRICT TOWING, INC.;  
DISTRICT REBUILDERS, INC.; DISTRICT  
RECOVERY, INC.; DISTRICT ENTERPRISES,  
INC.; DISTRICT CRANE, INC.; DISTRICT  
AUTO PARTS, INC.; DISTRICT REAL  
ESTATE L.L.C.; SHERRY RADWANSKI

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

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**COUNSEL FOR DEFENDANTS**