

SETTLEMENT AGREEMENT

This Settlement Agreement (“Settlement Agreement” or “Settlement”) is made and entered into between Plaintiffs Kasiaa Thomas and Toni Durio-Adams (“Plaintiffs”), acting in a private attorney general capacity, and Defendants Reserve National Insurance Company dba Kemper National Life Insurance Company and United Insurance Company of America (collectively “United Insurance” or “Defendants”) (together with Plaintiffs, the “Parties”).

I. DEFINITIONS

The following terms, when used in this Settlement Agreement, shall have the following meanings:

1. “Action” means the matter titled *Kasiaa Thomas and Toni Durio-Adams v. Reserve National Life Insurance Company dba Kemper National Life Insurance Company, et al.*, Alameda County Superior Court Case No. 21CV001780.
2. “Aggrieved Employees” consist of all current and former commission paid outside sales agents of United Insurance in California who worked pursuant to United Insurance’s “Field Representatives Agreement” at any time during the PAGA Period. United Insurance represents that there are approximately 132 Aggrieved Employees as of the date of Mediation.
3. “United Insurance” or “Defendants” means, collectively, Reserve National Insurance Company dba Kemper National Life Insurance Company and United Insurance Company of America.
4. “Settlement Administrator” means Phoenix Settlement Administrators.
5. “Complaint” means the operative First Amended Complaint in the Action.
6. “Court” means the Superior Court of California for the County of Alameda.
7. “Individual PAGA Payment” means the amount to be paid to each Aggrieved Employee based on the formula described herein.
8. “LWDA” means the California Labor and Workforce Development Agency.
9. “Gross Settlement Amount” is the non-reversionary sum of Three Hundred Seventy-Five Thousand Dollars and Zero Cents (\$375,000.00), which represents the total amount payable under this Settlement Agreement by United Insurance (subject to the Escalator Clause described below), including, without limitation, payments to all Aggrieved Employees, payment to the LWDA, payment of Plaintiffs’ attorneys’ fees and costs, payment of Plaintiffs’ enhancement payment, and payment to the Settlement Administrator for administration costs.
10. “Net Settlement Amount” is the amount remaining to distribute to the LWDA and Aggrieved Employees after the following amounts, if approved by the Court, are subtracted from the Gross Settlement Amount: (a) Plaintiffs’ attorneys’ fees up to one third of the Gross Settlement Amount; (b) Plaintiffs’ costs up to \$20,000.00; (c) Plaintiffs’ enhancement payment up to \$5,000.00 each; and (d) administration costs up to \$5,000.00.

11. “PAGA” means the California Labor Code Private Attorneys General Act, California Labor Code § 2698, *et seq.*

12. “PAGA Period” means the time period from February 15, 2020 through the earlier of (i) July 25, 2022 or (ii) the date of approval of this settlement by the Court.

13. “PAGA Released Claims” mean all claims for civil penalties under the PAGA, that were alleged in the Action or that could have been alleged based on the facts alleged in Plaintiffs’ PAGA notices and in the Action, arising from Aggrieved Employees’ employment with Defendants during the PAGA Period, including claims for PAGA civil penalties based on alleged violations of Labor Code §§ 201-204, 221-223, 226, 246, 558, 1174, 1198, 2802, and 2804.

14. “Parties” means, collectively, Plaintiffs and United Insurance.

15. “Plaintiffs’ Counsel” means Paul K. Haines of Haines Law Group, APC.

16. “Released Parties” means Defendants and their former, present and future owners, parents, and subsidiaries, and all of their current, former and future officers, directors, members, managers, partners, shareholders, joint venturers, successors, assigns, accountants, insurers, or legal representatives.

17. “Effective Date” means the following: (i) if there are no objectors or proposed intervenors who have objected to the Settlement or asserted a right to appeal, then the date the Court approves the Settlement and enters judgment thereon; or (ii) if there are objectors or proposed intervenors who have objected to the Settlement or asserted a right to appeal, then the expiration date for any appeal, without any appeal having been filed, or, if an appeal has been filed, the date after the conclusion of the appellate process (i.e., where the deadline to file any further appeal has passed), with the settlement having been affirmed on appeal or any appeal having been dismissed.

II. RECITALS

1. Plaintiffs performed work for United Insurance as commission-based employees pursuant to United Insurance’s Field Representatives Agreement in California during the PAGA Period, and are therefore Aggrieved Employees.

2. On August 12, 2021 Plaintiffs provided written notice to the LWDA and United Insurance asserting claims for civil penalties pursuant to PAGA stemming from alleged violations of various Labor Code sections and their intent to file a civil lawsuit under the PAGA.

3. On November 4, 2021, Plaintiffs filed their representative complaint titled *Kasiaa Thomas and Toni Durio-Adams v. Reserve National Life Insurance Company dba Kemper National Life Insurance Company, et al.*, Alameda County Superior Court Case No. 21CV001780, asserting a claim for PAGA civil penalties against United Insurance for violations of the Labor Code on a representative basis. Plaintiffs later submitted a second letter to the LWDA asserting an additional theory of liability for PAGA civil penalties, and filed the operative Complaint on February 3, 2022.

4. In response to Plaintiffs' Counsel's informal discovery requests, United Insurance provided Plaintiff's Counsel with information and documents pertaining to Plaintiffs and other Aggrieved Employees in order for Plaintiffs' Counsel to investigate Plaintiffs' allegations and value the claims prior to mediation.

5. On May 25, 2022, the Parties participated in mediation before mediator Lisa Klerman, Esq. With the assistance of Ms. Klerman, the Parties agreed to fully and finally resolve the PAGA Released Claims as to Plaintiffs and Aggrieved Employees.

III. OPERATIVE TERMS OF SETTLEMENT AGREEMENT

The Parties agree as follows:

1. **Non-Admission.** The Parties agree that this Settlement Agreement is not evidence that the allegations in the Action have any merit, nor does it constitute an admission of any wrongdoing by Defendants. Defendants do not admit to liability or to the suitability of this case for representative litigation other than for purposes of settlement. This Settlement Agreement will not be deemed admissible in any other proceeding or in this proceeding other than to effectuate this settlement. If the Court does not grant approval of this settlement, then the Parties revert to their previous positions with respect to the Plaintiffs' PAGA claims. However, to the extent the Court does not approve the Settlement, the Parties agree to work together in good faith to amend the settlement to address any concerns of the Court.

2. **Gross Settlement Amount.** United Insurance shall pay Three Hundred Seventy-Five Thousand Dollars and Zero Cents (\$375,000.00) as the non-reversionary Gross Settlement Amount. United Insurance will not pay more than the Gross Settlement Amount (subject to the Escalator Clause below). United Insurance shall deposit the Gross Settlement Amount into a Qualified Settlement Account and agrees to fund the settlement within thirty (30) days of the Effective Date.

The Gross Settlement Amount shall be used to pay: (1) Amounts distributable to the LWDA and Aggrieved Employees; (2) Plaintiffs' attorneys fees and costs; (3) Plaintiffs' enhancement payments; and (4) Settlement administration costs.

3. **Escalator Clause.** United Insurance represents that as of the date of Mediation there are approximately 12,100 pay periods worked by Aggrieved Employees during the PAGA Period ("Affected Pay Periods"). If the actual number of Affected Pay Periods as of the date of Mediation is more than 5% greater than this number (i.e., if there are 12,705 or more Affected Pay Periods as of the date of Mediation), United Insurance shall increase the GSA in proportion to the increase in Affected Pay Periods over 5% (e.g., if the number of Affected Pay Periods as of the date of Mediation is 12% greater than 12,100, United Insurance will increase the GSA by 7%).

4. **Net Settlement Amount.** The Parties agree that the following amounts should be subtracted from the Gross Settlement Amount, if approved by the Court, resulting in a Net Settlement Amount to distribute to the LWDA and Aggrieved Employees:

a. **Plaintiffs' Attorneys' Fees and Costs.** United Insurance will not oppose Plaintiffs' request for attorneys' fees in the amount up to one third of the Gross Settlement Amount

(currently estimated to be \$125,000) and costs up to \$20,000.00 incurred in prosecuting this Action. In the event the Court approves less than these amounts, the difference will be added to the Net Settlement Amount. United Insurance, via the Settlement Administrator, will report these payments on an IRS Form 1099 issued to Plaintiffs' Counsel.

b. Plaintiffs' Enhancement Payment. United Insurance will not oppose Plaintiffs' request for an enhancement payment of up to \$5,000.00 each for serving as the representative plaintiffs in this Action. In the event the Court approves a payment of less than the requested amount, the difference will be added to the Net Settlement Amount. United Insurance, via the Settlement Administrator, will report this payment on IRS Form 1099 issued to Plaintiffs.

c. Administration Costs. United Insurance will not oppose the Settlement Administrator's costs in the amount up to \$5,000.00 for administering the settlement. In the event the Court approves a payment of less than this amount, the difference will be added to the Net Settlement Amount. United Insurance, via the Settlement Administrator, will report this payment on IRS Form 1099 issued to the Settlement Administrator.

5. Allocation of Net Settlement Amount. One hundred percent (100%) of the Net Settlement Amount shall be designated as "civil penalties" and shall be distributed 75% to the LWDA and 25% to Aggrieved Employees, pursuant to Lab. Code § 2699(i). The 25% portion to be paid to Aggrieved Employees shall be paid to all Aggrieved Employees pro rata based on the number of pay periods worked by each Aggrieved Employee during the PAGA Period.

a. The Parties agree that should the Court deny approval of the Settlement based on the allocation of the Gross Settlement Amount or the Net Settlement Amount, the Parties agree to re-negotiate in good faith in an effort to obtain approval of the Settlement.

6. PAGA Released Claims. Upon the occurrence of the Effective Date and the Settlement being fully funded, Plaintiffs, the State of California and the LWDA, will release the PAGA Released Claims against the Released Parties that arose during the PAGA Period. Upon the occurrence of the Effective Date and the Settlement being fully funded, Plaintiffs, the State of California and the LWDA, or any individual seeking civil penalties under the PAGA based upon the authority conferred by LWDA through the PAGA, will be forever barred and precluded from seeking penalties for the PAGA Released Claims that arose during the PAGA Period against the Released Parties.

7. Confidentiality. Except as provided below to the extent necessary to effectuate the settlement or as required by court or legal process, Plaintiffs and Plaintiffs' Counsel will keep the terms of this Settlement Agreement confidential. Neither Plaintiffs nor Plaintiffs' Counsel shall issue a press release, hold a press conference, publish information about the settlement on any website or through any social media or otherwise publicize the settlement or communicate its terms in public or in private, unless ordered by the Court. However, for the limited purpose of establishing adequacy of counsel in future actions, Plaintiffs' counsel may reference the Action by name and case number in a declaration establishing adequacy as class or representative counsel.

To permit judicial review and approval of the Settlement, as required by Labor Code section 2698, *et seq.*, Plaintiffs' Counsel will file the Settlement Agreement with the Court and

submit the Settlement to the LWDA as part of seeking Court approval of the Settlement, per Labor Code § 2699(1)(2).

8. **Motion for Approval of PAGA Settlement by Plaintiffs' Counsel.** Plaintiffs' Counsel shall be responsible for preparing and filing the Motion for Approval of the PAGA Settlement.

9. **Termination of Settlement Agreement.** If the Court does not approve the settlement, if the Court does not enter judgment as provided for in this Settlement Agreement, or if appellate review is sought and, on such review, the Court's decision is materially modified or reversed, or if one or more of the material terms of the Settlement Agreement is not approved or is materially modified or reversed or found to be invalid, then either of the Parties shall have the right within 10 days of written notice thereof to elect to terminate the Settlement Agreement, in which case the Settlement Agreement shall have no force or effect, and the Parties shall be deemed to have reverted to their respective status as of the date and time immediately prior to the execution of this Settlement Agreement. However, before any Party may invoke the right to terminate the Settlement, the Party shall meet and confer in good faith with the other Parties in an effort to modify the Settlement in order to obtain Court approval.

10. **Judgment.** As part of the Motion to approve the Settlement, Plaintiffs shall submit a proposed judgment which enters judgment in the Action in accordance with the terms of the Settlement, retains jurisdiction over the Action under Cal. Code Civ. Proc. § 664.6 for the purpose of enforcing the terms of the Settlement following approval of the Settlement, and enjoins the prosecution of any of the PAGA Released Claims against any of the Released Parties upon the occurrence of the Effective Date and the Settlement being fully funded. This Settlement Agreement is expressly conditioned upon the Court entering judgment as set forth herein. The judgment will not release or bar any claims other than the PAGA Released Claims as to Plaintiffs and Aggrieved Employees.

IV. ADMINISTRATION OF SETTLEMENT

1. **Settlement Administrator.** The Parties agree to ask the Court to approve Phoenix Settlement Administrators to handle the administration of this settlement.

2. **Provision of Information for Aggrieved Employees.** Within five (5) business days after the Effective Date, United Insurance shall provide the Settlement Administrator with information for Aggrieved Employees. United Insurance will in good faith compile from its records a list of Aggrieved Employees that will be in a computer-readable format, such as a Microsoft Excel spreadsheet, and shall include each Aggrieved Employee's full name, last known mailing address, last known telephone number, dates of employment or number of Affected Pay Periods worked during the PAGA Period, and Social Security numbers to the extent available from United Insurance's records. Because Social Security numbers are included in the list, the Settlement Administrator will maintain the list in confidence, and access shall be limited to those with a need to use the list as part of the administration of the Settlement. Within the same 5 business-day period, United Insurance shall also send Plaintiffs' Counsel a redacted list of Aggrieved Employees with dates of employment or Affected Pay Period information, so that Plaintiffs' Counsel can determine whether the Escalator Clause has been triggered. Within 7 calendar days of receiving the Aggrieved Employees' information from United Insurance, the

Settlement Administrator will circulate to counsel for both Parties an anonymized spreadsheet containing the Individual PAGA Payments to each Aggrieved Employee and the data used to calculate said payments. The Settlement Administrator shall obtain approval from all counsel of the calculations before mailing Individual PAGA Payments.

3. **Explanatory Letter and Individual PAGA Payments.** Upon receipt of the information for Aggrieved Employees, the Settlement Administrator will perform a search on the National Change of Address database to update the Aggrieved Employees' addresses. Within twenty-one (21) calendar days after the Settlement has been fully funded and after receiving approval from Plaintiffs' Counsel and Defendants' counsel of the payment calculations as provided above, the Settlement Administrator shall mail copies of the explanatory letter, which has been mutually approved by the Parties and is attached hereto as **Exhibit A**, along with Individual PAGA Payments to all Aggrieved Employees via regular First-Class U.S. Mail.

The Settlement Administrator will calculate the amount to be received by each Aggrieved Employee, which will be based on the formula set forth in Section III.5., *supra*. The Settlement Administrator will send each Aggrieved Employee a check for his or her Individual PAGA Payment along with the explanatory letter. Checks will remain negotiable for 180 days. Each Individual PAGA Payment shall be deemed 100% penalties and reported using IRS Form 1099, with no withholdings taken.

4. **Undeliverable Notices.** The Settlement Administrator shall exercise its best judgment to determine the current mailing address for each Aggrieved Employee. The address identified by the Settlement Administrator as the current mailing address shall be presumed to be the best mailing address for each Aggrieved Employee.

Any checks returned as non-deliverable on or before the check-cashing deadline will be sent promptly via regular First-Class U.S. Mail to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator will promptly attempt to determine the correct address using a skip-trace or other reputable search method using the name, address and/or Social Security number of the Aggrieved Employee involved, and will perform up to a single re-mailing if a new address is located.

Funds represented by checks returned as undeliverable after a re-mailing, checks for whom the Settlement Administrator could not locate an updated address after performing a skip trace, and funds represented by checks remaining un-cashed more than 180 days after issuance (collectively, "Uncashed Checks"). In the event that any Aggrieved Employee fails to deposit, cash, or otherwise negotiate his or her Settlement Check within the 180-day period, then the check will be cancelled and the corresponding funds will be donated to *cy pres* recipient, CASA, Court Appointed Special Advocates for Children, Alameda County. The Settlement Administrator shall distribute any *cy pres* payment.

5. **Distribution of Payments.** Within twenty-one (21) calendar days of the Settlement being fully funded, the Settlement Administrator shall issue payments to (1) Aggrieved Employees; (2) the LWDA; (3) Plaintiffs' Counsel for Plaintiffs' Counsel's Court-approved attorneys' fees and litigation costs; (4) Plaintiffs for the Court-approved enhancement payments; and (5) the Settlement Administrator for Court-approved Settlement administration costs incurred in connection with the Settlement.

6. **Accounting.** Within 45 days after all payments have been made under the Settlement, the Settlement Administrator will provide an accounting under oath to the Parties of the amounts paid from the settlement.

7. **Tax Consequences.** Neither Plaintiffs nor United Insurance, nor counsel for either of the Parties, makes any representations or warranties with respect to tax consequences of any payment under this Settlement Agreement.

V. **MISCELLANEOUS PROVISIONS**

1. **Drafting.** The Parties agree that the terms and conditions of this Settlement Agreement are the result of lengthy, intensive, arm's-length negotiations between the Parties and that neither Party shall be considered the "drafter" of this Settlement Agreement for purposes of having terms construed against that Party.

2. **Successors.** This Settlement Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators and successors.

3. **Costs and Fees.** The Parties shall each bear their own costs and attorneys' fees incurred in connection with this Settlement Agreement, the Action and Plaintiffs' claims, except as otherwise set forth specifically herein.

4. **Governing Law.** This Settlement Agreement shall be construed under and governed by the laws of the State of California. This Settlement Agreement shall be deemed to have been entered into in California, and all questions of validity, interpretation or performance of any of its terms or of any rights or obligations of the Parties to this Settlement Agreement shall be governed by California law. If any legal or equitable action is necessary to enforce the terms of this Settlement Agreement, it shall be brought in the Alameda County Superior Court. The prevailing party in any motion or other legal action to enforce this Settlement Agreement shall be entitled to recover his/her/its reasonable attorneys' fees and costs incurred in connection with such legal action.

5. **Complete Agreement.** The Parties each acknowledge and represent that no promise or representation not contained in this Settlement Agreement has been made to them with respect to the subject matter of this Settlement Agreement, and acknowledge and represent that this Settlement Agreement contains the entire understanding between them and contains all terms and conditions pertaining to the compromise and settlement of the PAGA claim in the Action.

6. **Judgment and Continued Jurisdiction.** As noted above, after approval of this settlement, the Court will have continuing jurisdiction under Cal. Code Civ. Proc. § 664.6 for purposes of addressing: (i) the interpretation and enforcement of the terms of the settlement, (ii) settlement administration matters, and (iii) such post-Judgment matters as may be appropriate under court rules or as set forth in this Settlement Agreement.

7. **Amendment or Modification.** This Settlement Agreement may be amended or modified only by a written instrument, signed by either the Parties or their successors-in-interest, or by counsel for all Parties, and subject to any necessary Court approval.

8. **Authorization to Enter into Settlement Agreement.** Counsel for all Parties warrant and represent that they are expressly authorized by the Parties whom they represent to negotiate this Settlement Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant to this Settlement Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Settlement Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the settlement.

9. **Execution and Counterparts.** This Settlement Agreement may be executed in one or more counterparts. All executed counterparts, and each of them, including facsimile and scanned copies of the signature page, will be deemed to be one and the same instrument.

10. **Acknowledgement that the Settlement is Fair and Reasonable.** The Parties believe this Settlement Agreement is a fair, adequate and reasonable settlement of the Action, and have arrived at this settlement after arm's-length negotiations by experienced counsel. The Parties further acknowledge that they are each represented by competent counsel and that they have had an opportunity to consult with their counsel regarding the fairness and reasonableness of this settlement.

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

12. **Severability.** If any term or provision of this Settlement Agreement is held to be invalid or unenforceable, the remaining portions of this Settlement Agreement will continue to be valid and will be performed, construed and enforced to the fullest extent permitted by law, and the invalid or unenforceable term will be deemed amended and limited in accordance with the intent of the Parties, as determined from the face of the Agreement, to the extent necessary to permit the maximum enforceability or validation of the term or provision.

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

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

15. **Binding Agreement.** The Parties warrant that they understand and have full authority to enter into this settlement, and further intend that this Settlement Agreement will be fully enforceable and binding on all Parties, and agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that otherwise might apply under federal or state law.

**[SIGNATURES ON FOLLOWING PAGE]
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IN WITNESS THEREOF, the Parties each acknowledge that he/she/it has read the foregoing Settlement Agreement, accepts and agrees to the provisions contained in this Settlement Agreement, and hereby executes it voluntarily and with full understanding of its consequences.

Dated: Dec 12, 2022
_____, 2022


KASIAA THOMAS (Dec 12, 2022 12:20 PST)

Kaisaa Thomas, Plaintiff

Dated: _____, 2022

Toni Durio-Adams, Plaintiff

**RESERVE NATIONAL INSURANCE COMPANY
dba KEMPER NATIONAL LIFE INSURANCE
COMPANY**

Dated: _____, 2022

By:
Its:

UNITED INSURANCE COMPANY OF AMERICA

Dated: _____, 2022

By:
Its:

APPROVED AS TO FORM:

Dated: _____, 2022

HAINES LAW GROUP, APC

By: _____
Paul K. Haines
Sean M. Blakely
Attorneys for Plaintiff

Dated: _____, 2022

LITTLER MENDELSON P.C.

By: _____
Robert S. Blumberg
Attorneys for Defendants

IN WITNESS THEREOF, the Parties each acknowledge that he/she/it has read the foregoing Settlement Agreement, accepts and agrees to the provisions contained in this Settlement Agreement, and hereby executes it voluntarily and with full understanding of its consequences.

Dated: _____, 2022

Kaisaa Thomas, Plaintiff

Dated: Dec 6, 2022, 2022

Toni Durio

Toni Durio (Dec 6, 2022 12:16 PST)

Toni Durio-Adams, Plaintiff

**RESERVE NATIONAL INSURANCE COMPANY
dba KEMPER NATIONAL LIFE INSURANCE
COMPANY**

Dated: _____, 2022

By:
Its:

UNITED INSURANCE COMPANY OF AMERICA

Dated: _____, 2022

By:
Its:

APPROVED AS TO FORM:

Dated: _____, 2022

HAINES LAW GROUP, APC

By: *P. H.*

Paul K. Haines
Sean M. Blakely
Attorneys for Plaintiff

Dated: _____, 2022

LITTLER MENDELSON P.C.

By: _____
Robert S. Blumberg
Attorneys for Defendants

IN WITNESS THEREOF, the Parties each acknowledge that he/she/it has read the foregoing Settlement Agreement, accepts and agrees to the provisions contained in this Settlement Agreement, and hereby executes it voluntarily and with full understanding of its consequences.

Dated: _____, 2022

Kaisaa Thomas, Plaintiff

Dated: _____, 2022

Toni Durio-Adams, Plaintiff

**RESERVE NATIONAL INSURANCE COMPANY
dba KEMPER NATIONAL LIFE INSURANCE
COMPANY**

Dated: Dec 12, 2022

Robin Buendia (based on Kemper
By: Robin Buendia ^{ownership during the}
Its: Head of Employee Relations ^{release + PAGA}
Kemper ^{period})

UNITED INSURANCE COMPANY OF AMERICA

Dated: Dec 12, 2022

Robin Buendia
By: Robin Buendia
Its: Head of Employee Relations
Kemper

APPROVED AS TO FORM:

Dated: _____, 2022

HAINES LAW GROUP, APC

By: _____
Paul K. Haines
Sean M. Blakely
Attorneys for Plaintiff

Dated: December 13, 2022

LITTLER MENDELSON P.C.

By: Robert S. Blumberg
Robert S. Blumberg
Attorneys for Defendants