

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA — SAN DIEGO DIVISION

ONOSAI FESULUAI FAALELE,
individually; et al.,

Plaintiffs,

vs.

SINGAPORE TECHNOLOGIES
MARINE, LTD., et al.,

Defendants.

AND RELATED CROSS-CLAIMS,
COUNTERCLAIMS AND THIRD-
PARTY CLAIMS

Case No. 3:14-CV-02321-H-KSC
Consolidated with Case
No. 3:14-CV-01734-H-KSC

**JOINT MOTION FOR
DETERMINATION OF GOOD
FAITH SETTLEMENT**

Complaint Filed: 8/7/14

Judge: Hon. Marilyn L. Huff

Hearing Date: December 19, 2016

Hearing Time: 10:30 a.m.

Pursuant to Local Rule 7.2, Plaintiffs (“Faalele Plaintiffs”) and Defendants Singapore Technologies Marine Ltd. (“ST Marine”), Pacific Princess Partnership, Oceans Unlimited, Inc. (collectively “PPP”), Starkist Co. and Starkist Samoa Co. (collectively “Starkist”) submit this Joint Motion for Determination of Good Faith Settlement under California Code of Civil Procedure §§ 877 and 877.6, and/or U.S. admiralty and maritime common law.

I. STATEMENT OF FACTS

The parties have entered into an agreement to settle this wrongful death and survival action (“Action”) whereby in exchange for the payment to the Faalele Plaintiffs of Twelve Million Two Hundred and Fifty Thousand U.S. Dollars (\$12,250,000.00), new money,¹ the Faalele Plaintiffs will release their claims against the world arising out of the Accident and dismiss with prejudice all actions relating to the Accident, each party to bear their own costs of suit and attorneys’ fees. As a condition of the settlement, Defendants have required a determination by the Court that the settlement is in good faith under California law and/or U.S. admiralty and maritime law.

This Action stems from an accident (“Accident” as hereinafter defined) on August 9, 2011, onboard F/V PACIFIC PRINCESS, a tuna fishing boat (the “Vessel”) owned by PPP. The Accident occurred during unloading operations at the Starkist tuna cannery dock in American Samoa. Complaint for Survival and Wrongful Death Remedies (“Comp.”), Dkt. 1-1 at ¶ 3.² Plaintiffs’ Decedent Papu Faalele (“Decedent”) was a longshoreman working for Pacific Stevedoring Services (“PSS”) onboard the Vessel when the mid-starboard hydraulic crane being used to unload tuna failed catastrophically. When the crane failed, the boom of the crane crashed down on Decedent and caused fatal injuries. Dkt. 1-1 at 3:14-19 and Dkt. 8 at 3:10-15. The cause of the Accident was the failure of the hydraulic cylinder which raises and lowers the crane boom (the “cylinder”). Dkt. 1-1 at 3:17-18 and Dkt. 8 at 3:12-14. The hydraulic cylinder allegedly failed due to severe corrosion affecting its outer wall, which reduced the strength of the cylinder and caused it to

¹ Plaintiffs previously received some money from certain Defendants. The sums to be paid to Plaintiffs are in addition to that advance.

² See also Plaintiffs’ First Amended Counterclaims and Third Party Claims (“Counterclaims”) in the related and now consolidated case, Case No. 3:14-cv-01734, Dkt. 8 at 3:6-9. All references to Dkt. 8 are to the Counterclaims alleged in that action.

1 fail while lifting a load of tuna from the hold of the Vessel. Starkist owns and
2 operates the tuna cannery and unloading facility where the Accident took place.
3 Starkist contracted with the stevedoring company, PSS. Tri-Marine International,
4 Inc., and Tri Marine International (Pte) Ltd. (collectively "TriMarine") contracted
5 with PPP to purchase its catch of fish and with Starkist to deliver and sell that catch
6 of fish, which was being unloaded at the Starkist cannery at the time of the
7 Accident.. ST Marine owns and operates a shipyard in Singapore where the Vessel
8 underwent significant modifications, repairs and maintenance between December
9 2009 and August 2010. Plaintiffs, PPP and Starkist have alleged that ST Marine
10 should have, but failed to discover the deficiency in the hydraulic cylinder and, as
11 such, is liable for its failure.

12 Plaintiffs are the Decedent's wife and eight children and the Decedent's estate.
13 Decedent was born March 15, 1973. Decedent's wife was born May 29, 1976. They
14 were married in Pago Pago, American Samoa, on September 23, 1998. The Faalele
15 children and their birth dates are: daughter Mema Tali Faalele (9/24/1998), son
16 Matthew Papu Faalele (3/4/2000), daughter Martha Emma Faalele (11/29/01),
17 daughter Nuumau Monette Faalele (9/8/2003), son McCutcheon Iosua Faalele
18 (2/8/2005), daughter Malaeolema Sula Faalele (5/23/2007), son Meaalofa Kerisimasi
19 Faalele (12/25/2008) and son Isaiah Misialofa Faalele (5/20/11).

20 Plaintiffs currently reside in San Diego. At the time of the Accident the
21 Faalele Family resided in American Samoa in a small rental house on land owned by
22 a relative. In the wake of the Accident, Plaintiffs filed multiple lawsuits and
23 administrative claims, including the instant consolidated Action, Case No. 3:14-cv-
24 02321-H-KSC, entitled *Onosai Fesuluai Faalele, et al. v. Singapore Technologies*
25 *Marine, Ltd., et al.* This Action was originally filed in the Superior Court for the
26 State of California in and for the County of San Diego, before it was removed to this
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28

1 Court and consolidated with other actions.³ Collectively, these lawsuits and
 2 administrative claims are hereinafter referred to as the “Faalele Lawsuits.”

3 II. EXTENSIVE SETTLEMENT NEGOTIATIONS

4 A. Earlier Mediations and Settlement Conferences

5 Settlement negotiations first occurred on May 8, 2014 (“2014 Mediation”),
 6 when Plaintiffs and PPP participated in a mediation before Judge Herbert B.
 7 Hoffman (Sup. Ct. Ret.) in connection with the lawsuit filed by Plaintiffs against
 8 PPP in the Superior Court of the State of California, County of San Diego.
 9 (Declaration of the Honorable Herbert B. Hoffman (“Hoffman Decl.”), ¶ 3.) The
 10 2014 Mediation was unsuccessful and occurred before much discovery had been
 11 done and before ST Marine and Starkist were parties to the captioned case.
 12 Thereafter, Plaintiffs and Defendants filed actions and claims against each other and
 13 ultimately, this Action became the main action, and the Faalele v. PPP state court
 14 action was stayed.

15 In February 2016, the parties participated in an Early Neutral Evaluation
 16 Conference (“ENE”) before Magistrate Judge Crawford. Dkt. 93. Thereafter,

17 ³ The other lawsuits and administrative claims are as follows:

18 *Onosai Fesuluai Faalele, et al. v. Pacific Princess Partnership, LLP, and Oceans*
 19 *Unlimited, Inc., et al.*, Case No. 37-2013-00050010-CU-PO-CTL, pending in the
 Superior Court for the State of California in and for the County of San Diego
 (“Fa’alele v. PPP state court action”);

20 *Onosai Fesuluai Faalele, et al. v. Pacific Stevedoring Services and Roy Ausage*,
 Case No. 30-15, pending in the High Court of American Samoa;

21 *Pacific Princess Partnership, Ltd., and Oceans Unlimited, Inc. v. Pacific*
 22 *Stevedoring Services*, Case No. 52-013, pending in the High Court of American
 Samoa;

23 *Pacific Princess Partnership, Ltd., and Oceans Unlimited, Inc. v. Singapore*
 24 *Technologies Marine, Ltd.*, Case No. 63-014, previously pending in the High Court
 of American Samoa;

25 *Onosai Fesuluai Faalele et al. v. Starkist Inc., et al.*, Case No. 66-014, pending in the
 High Court of American Samoa; and

26 U.S. Department of Labor, O.W.C.P. No. 15-054408, asserting claims under the
 27 Longshore and Harbor Workers’ Compensation Act for deceased Papu naming
 employers Starkist and/or PSS.

Magistrate Crawford held three telephonic settlement conferences. Dkt. 99, 108 & 116.

B. Extensive Settlement Discussions and Mediation with Judge Hoffman

Pursuant to an agreement among the parties and because Judge Hoffman had previously acted as a mediator for claims as between Plaintiffs and PPP, the parties agreed to conduct a two-day mediation with Judge Hoffman on August 4 and 5, 2016. Although the case did not settle at the in-person mediation, the parties continued to work with Judge Hoffman and eventually arrived at an agreement on September 28, 2016, to settle all of Plaintiffs' claims arising out of the Accident between Plaintiffs and the world, including without limitation, those claims asserted in the captioned Action.⁴ Former parties to this Action, PSS, Roy Ausage and Peter Kennedy, are also parties to the Agreement settling the claims. Additionally, TriMarine is a party to the Agreement even though neither of the TriMarine entities are parties to this action. The named Defendants in this Action and PSS, Roy Ausage, Peter Kennedy and TriMarine shall be hereinafter collectively as the "Defendants."

The terms of the settlement are set forth in the Mutual Release and Settlement Agreement that is attached to the Declaration of Pamela L. Schultz ("Schultz Dec."), ¶ 2, as Ex. A (the "Agreement").

C. Judge Hoffman Believes the Settlement and the Agreement are Fair and Reasonable to all Parties as well as Non-Collusive and in Good Faith

As more fully set forth in the Declaration of Judge Hoffman, the settlement is a global agreement relating to all claims in any way arising under the Accident and a non-collusive settlement agreement, entered into in good faith.

Prior to the mediation, the parties submitted extensive mediation briefs (Hoffman Decl. at ¶ 3.) Judge Hoffman held a two-day mediation, where

⁴ The Agreement reserves claims defined as "Reserved Claims" therein.

1 Defendants' representatives were in attendance. (*Id.*) Judge Hoffman addressed the
2 pros and cons of settlement for all sides. (*Id.*) Judge Hoffman expressed to all
3 parties that a jury might sympathize with Plaintiffs, especially the minor children
4 who would not remember their father. (*Id.*) However, Judge Hoffman also
5 expressed that a jury may not enter an eight figure verdict in view of Plaintiffs'
6 relatively modest life in American Samoa. (*Id.*) Judge Hoffman reviewed the
7 parties' submissions of jury verdicts involving similar claims, and he opined that the
8 settlement amount was fair and reasonable in view of the claims and the risks to all
9 parties. (*Id.*) Judge Hoffman also opined that all counsel were skilled and
10 experienced, and that there were significant risks to all sides that a jury may not see
11 the case as they did. (*Id.*) Judge Hoffman also expressed to the parties how
12 expensive it would be to try the case and that tremendous costs would be avoided by
13 settlement. (*Id.*) Plaintiffs and Defendants were far apart at the end of the second
14 day of mediation but Judge Hoffman continued to try to assist the parties in
15 resolution. (*Id.* at ¶ 4.) Between August 5 and September 28, 2016, Judge Hoffman
16 was constantly communicating with the parties and individuals with the authority to
17 settle the claims. (*Id.*) Judge Hoffman continually reminded the parties of the risks
18 and costs they faced if the case went to trial. (*Id.*) Judge Hoffman solicited new
19 demands and counteroffers and slowly brought the parties closer together. (*Id.*)
20 Eventually, the parties came to a settlement that all believed was acceptable and
21 commercially reasonable.

22 As set forth in Judge Hoffman's declaration, the Agreement was reached after
23 over 100 hours of negotiations, both in person, via email, text and over the
24 telephone. Judge Hoffman believes that all parties fought very hard for their clients
25 (*Id.* at ¶ 5.) Based on Judge Hoffman's personal knowledge, skill, training and
26 experience as a lawyer, trial judge and mediator, he believes: 1) the settlement and
27 the terms and conditions of the Agreement are fair and reasonable to all parties,
28 including without limitation the minor children of the Faalele Family; 2) that the

1 settlement and the Agreement are non-collusive and were entered into in good faith
2 by all parties. (*Id.*)

3 **D. Terms of Settlement**

4 The settlement at issue is a global settlement and encompasses all parties in all
5 jurisdictions where actions are pending which have been filed by Plaintiffs as well as
6 all potential defendants. As set forth in the Agreement, the settlement is contingent
7 on this Court's approval of the minors' compromise and a determination by this
8 Court that the settlement is non-collusive and in good faith either under California
9 Code of Civil Procedure sections 877 and 877.6, and/or U.S. Maritime common law.
10 Defendants wished to resolve the claims relating to the Accident.

11 Pursuant to the terms of the Agreement, ST Marine is funding the settlement
12 in the U.S. and has agreed to pay USD\$12,250,000.00 new money to Plaintiffs in
13 exchange for a release of all claims filed against Defendants in the Faalele Lawsuits.
14 Similarly, as part of the terms of the Agreement, and although the other Defendants
15 are not obliged to contribute monetarily to the settlement, as part of the consideration
16 for entering into the Agreement, all Parties including these Defendants have released
17 all claims that they have asserted against each other in the Faalele Lawsuits,
18 including claims for indemnity, contribution, attorney fees and costs.⁵ This
19 Agreement was reached after many hours of work with the Honorable Judge
20 Hoffman, who acted as mediator in this case both in 2014 and 2016, as well as the
21 assistance of Magistrate Judge Karen Crawford who held an ENE and at least three
22 settlement conferences with the parties.

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26 ⁵ As set forth in the Agreement, PPP and ST Marine reserve certain claims that they
27 have against each other in arbitration proceedings, and, therefore, those claims are
28 not encompassed by the Agreement.

1 **III. THIS COURT HAS THE AUTHORITY TO MAKE A**
2 **DETERMINATION OF A NON-COLLUSIVE GOOD FAITH**
3 **SETTLEMENT**

4 This Court has jurisdiction over the claims in this case, which claims are
5 before this Court under this Court's diversity jurisdiction under 28 U.S.C. § 1332.
6 This action was originally filed in the Superior Court for the State of California,
7 County of San Diego, as 37-2014-00026560-CU-PO-CTL. It was subsequently
8 removed to this Court under 28 U.S.C. § 1441 based on diversity of citizenship
9 among the parties. Dkt. 1. Since Plaintiffs originally filed their maritime claims in
10 state court under the "saving to suitors" clause (28 U.S.C. § 1333(1)) and because the
11 matter was removed based upon diversity jurisdiction, Plaintiffs should have been
12 entitled to a jury trial on all issues raised in the complaint even after removal. Under
13 *McDermott, Inc. v. AmClyde and River Don Castings*, 511 U.S. 202 (1994), and
14 *Boca Grande Club, Inc. v. Florida Power & Light Co., Inc.*, 511 U.S. 222 (1994),
15 and their progeny, all claims for equitable contribution, implied contractual
16 indemnity or implied tort indemnity are barred once a non-collusive good faith
17 settlement is reached. *See J.A.R. Barge Lines, L.P. Limitation Proceedings M/V*
18 *Rose G*, 2005 WL 642700 (W.D. Penn 2005). The exact procedure to follow when
19 determining a non-collusive good faith settlement in a diversity case has not been
20 ruled upon by the U.S. Supreme Court or the Ninth Circuit. The districts courts in
21 the Ninth Circuit have taken differing procedural paths to determine whether a
22 settlement is non-collusive and in good faith. The Honorable Barry Ted Moskowitz,
23 Chief Judge of this Court, followed the procedure set forth in California Code of
24 Civil Procedure sections 877 and 877.6 in *Marine Grp., LLC v. Marine Travelift,*
25 *Inc.*, No. 10CV846 BTM KSC, 2013 WL 416407, at *3 (S.D. Cal. Jan. 30, 2013), to
26 determine whether a settlement was non-collusive and in good faith. Whether the
27 procedure set forth in California Code of Civil Procedure sections 877 and 877.6 is
28 followed or whether the trial judge uses a common law approach, once a settlement

1 is determined to be non-collusive and in good faith, all claims for equitable
 2 indemnity or equitable contribution are barred. *Id.* (citing *Trentacosta v. Frontier*
 3 *Pac. Aircraft Indus., Inc.*, 813 F.2d 1553, 1559 (9th Cir. 1987)). Therefore, the
 4 parties move the Court for an order that the settlement between Plaintiffs and
 5 Defendants is non-collusive and in good faith, thereby barring all present and future
 6 claims for equitable indemnity and contribution.

7 **IV. THIS SETTLEMENT IS MADE IN GOOD FAITH UNDER**
 8 **CALIFORNIA CODE OF CIVIL PROCEDURE § 877.6 AND**
MARITIME COMMON LAW

9 **A. Procedure for Good Faith Determination**

10 For a settling party to obtain a determination that it reached a non-collusive
 11 settlement in good faith, the settling party must give notice of settlement to all parties
 12 and to the Court, together with an application for determination of good faith
 13 settlement. *U.S. ex rel. Collins Plumbing, Inc. v. Turner-Penick Joint Venture*, No.
 14 3:11-CV-2834-GPC-MDD, 2014 WL 3696106, at *2 (S.D. Cal. July 23, 2014).
 15 Here, all parties have joined in this Joint Motion, and, therefore, none of the parties
 16 to this action will be opposing the application for a good faith determination. Once
 17 this Court makes a determination of whether the settlement is non-collusive and in
 18 good faith, the settling parties are discharged from all liability for contribution or
 19 indemnity from any settling and/or non-settling party under California Code of Civil
 20 Procedure section 877(b) as well as maritime common law. Similarly, upon notice
 21 and opportunity to be heard regarding the application for a good faith determination,
 22 all non-party joint tortfeasors are also barred from seeking contribution or indemnity
 23 from the settling parties. Cal. Code Civ. Proc. § 877.6; *City of Emeryville v.*
 24 *Robinson*, 621 F.3d 1251, 1266 (9th Cir. 2010) (citing *Gackstetter v. Frawley*, 135
 25 Cal.App.4th 1257, 1273 (2006)). The non-parties will be notified of the settlement,
 26 and as set forth above, the non-parties are actually parties to the Agreement.
 27
 28

B. *Tech-Bilt* Factors Applicable to Good Faith Determination

Courts determining whether a settlement is in good faith apply a test first articulated in *Tech-Bilt, Inc. v. Woodward-Clyde & Associates*, 38 Cal.3d 488, 494 (1985). Essentially, the court must determine “whether the amount of the settlement is within the reasonable range of the settling tortfeasor’s proportional share of comparative liability for the plaintiff’s injuries.” *Id.* at 499. The factors include

- (1) “a rough approximation of the plaintiffs’ total recovery and a settlor’s proportionate liability”; (2) “the amount paid in settlement”; (3) “a recognition that a settlor should pay less in settlement than if found liable after a trial”; (4) “the allocation of settlement proceeds among plaintiffs”; (5) “the financial conditions and insurance policy limits of settling defendants”; and (6) evidence of “collusion, fraud, or tortious conduct aimed to injure the interests of nonsettling defendants.

Id. at 499-500. Where the application for a good faith determination is unopposed, a comprehensive *Tech-Bilt* analysis is not necessary. *Marine Travelift*, 2013 WL 416407, at *3. However, in the event this application is challenged, the settlement reached between Plaintiffs and all remaining Defendants⁶ easily meets the *Tech-Bilt* factors.

This settlement is a global settlement between Plaintiffs and all Defendants in all jurisdictions where the Faalele Lawsuits as defined in the Agreement are pending and/or were filed. The amount of the settlement, USD\$12,250,000.00, represents the result of extensive arm’s length negotiations between these parties, with the help of Magistrate Judge Crawford and retired Judge Hoffman. The amount paid in settlement is far above the vast majority of jury verdicts for wrongful death cases in the jurisdictions where the Faalele Lawsuits were pending. Importantly, Decedent

⁶ Non-parties PSS, Peter Kennedy, Roy Ausage and TriMarine are also signatories to the Agreement. The first three were dismissed from this case after filing a motion to dismiss on the ground of lack of personal jurisdiction. TriMarine was involved in an arbitration with Starkist relating to the Accident.

1 was a minimum wage worker at best. Plaintiffs' initial disclosures in this Action
2 claimed at a maximum approximately USD\$700,000 in economic losses suffered by
3 Plaintiffs.

4 The third factor of the good faith settlement test under *Tech-Bilt* is the
5 recognition that the settlor(s) should pay less in settlement than they would if found
6 liable at trial. Given the nature of this case, which would be heard by a jury as a
7 wrongful death case with nine individual survivors of the Decedent, including young
8 children, and the fact that it involved punitive damage claims, the parties believe that
9 this settlement represents a compromise and that had Defendants been found liable at
10 trial, the potential damages could have been much higher than the USD\$12.25
11 million agreement that was ultimately reached.

12 The fourth *Tech-Bilt* factor, the allocation of the settlement proceeds among
13 Plaintiffs, is not a factor here since Plaintiffs are all members of a single nuclear
14 family, and this Court's approval of the settlement as a minors' compromise has
15 been requested. With the exception of one of the Decedent's children who turned 18
16 in September 2016, all the minor Plaintiffs are still under the care and protection of
17 their mother, Decedent's wife. They were also represented in this action through a
18 guardian *ad litem*.

19 The fifth factor, insurance policy limits of the settling defendants, is also not
20 applicable. By any measure the amount is within "the reasonable range" of the
21 liability to Plaintiffs.

22 Finally, as to the sixth factor, there is no evidence whatsoever of collusion or
23 fraud in the negotiation of this settlement agreement. The settlement was reached
24 after years of contentious litigation involving three courts; approximately fifty days
25 of depositions in locations such as Singapore, American Samoa and Hawaii;
26 voluminous document productions; an arbitration in Singapore between ST Marine
27 and PPP; numerous motions, including, without limitation, several discovery
28 motions, motions to dismiss for lack of jurisdiction, a motion to dismiss for *forum*

1 *non-conveniens*, a motion for judgment on the pleadings and hundreds of thousands
 2 of dollars spent on experts and much more on attorney fees and costs. (Declaration
 3 of Pamela L. Schultz, ¶¶ 10-14.)

4 V. CONCLUSION

5 Plaintiffs and Defendants, as well as non-parties, have negotiated at length and
 6 in good faith to bring this matter to a close for the sake of judicial and private
 7 economy. The settlement was also reached so all parties involved could resolve all
 8 claims relating to the Accident and allow the Plaintiffs to put this tragedy behind
 9 them. As such, all parties jointly request that the Court determine that this global
 10 settlement is non-collusive, and made in good faith pursuant to California Code of
 11 Civil Procedure sections 877 and 877.6 and/or maritime common law.

12
 13 Respectfully submitted,

14 DATED: December 5, 2016

BANNING, LLP

15 By: */s/ William L. Banning*

16 WILLIAM L. BANNING

17 Attorneys for Plaintiffs

ONOSAI FESULUAI FAALELE et al.

Email: wbanning@banningllp.com

18 DATED: December 5, 2016

HOLMES, WEDDLE & BARCOTT, PC

19
 20 By: */s/ Michael A. Barcott*

21 MICHAEL A. BARCOTT

22 Attorneys for Defendants

PACIFIC PRINCESS PARTNERSHIP,

23 LTD., and OCEANS UNLIMITED,

INC.

Email: mbarcott@hwb-law.com

1 DATED: December 5, 2016

PROCOPIO, CORY, HARGREAVES
& SAVITCH LLP

2
3 By: /s/ Edward Walton

EDWARD WALTON
Attorneys for Defendants
STARKIST CO. and STARKIST
SAMOA CO.
Email: ed.walton@procopio.com

4
5
6 DATED: December 5, 2016

HINSHAW & CULBERTSON LLP

7
8 By: /s/ Pamela L. Schultz

PAMELA SCHULTZ
Attorneys for Plaintiff, Defendant,
Third Party Defendant and Third Party
Plaintiff
SINGAPORE TECHNOLOGIES
MARINE, LTD.
Email: fbooth@hinshawlaw.com

9
10 I, Pamela L. Schultz, am the ECF user whose identification and password are being
11 used to file this JOINT MOTION FOR DETERMINATION OF GOOD FAITH
12 SETTLEMENT. I hereby attest that William L. Banning, Michael A. Barcott, and
13 Edward Walton have concurred in this filing.

14
15
16 DATED: December 5, 2016

17 By: /s/ Pamela L. Schultz

Pamela L. Schultz

CERTIFICATE OF SERVICE

Faalele, et al. v. Singapore Technologies Marine Ltd., et al.

Case No. 3:14-CV-02321-H-KSC
[Consolidated with Case No. 3:14-CV-01734-H-KSC]

STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO:

I am a citizen of the United States and employed in San Francisco, California, at the office of a member of the bar of this Court at whose direction this service was made. I am over the age of 18 and not a party to the within actions; my business address is One California Street, 18th Floor, San Francisco, California 94111.

On December 5, 2016, I served the document(s) entitled **JOINT MOTION FOR DETERMINATION OF GOOD FAITH SETTLEMENT**, on the interested parties in this action by placing true copies thereof enclosed in a sealed envelope(s) addressed as stated below:

SEE ATTACHED SERVICE LIST

☐ **(BY MAIL):** I deposited such envelope in the mail at San Francisco, California with postage fully prepaid. I am readily familiar with this firm's practice of collection and processing correspondence for mailing. Under that practice it would be placed for collection and mailing, and deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at San Francisco, California, in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after date of deposit for mailing in affidavit.

☐ **(VIA OVERNIGHT MAIL):** I deposit such envelope to be placed for collection and handling via UPS following our ordinary business practices. I am readily familiar with this business' practice for collecting and processing correspondence for UPS. On the same day that material is placed for collection, it is picked by UPS at San Francisco, California.

☐ **(BY ELECTRONIC MAIL):** By transmitting a true copy thereof to the electronic mail addresses as indicated below, or as set forth in the attached service list, **per agreement**.

☒ **(BY CM/ECF SERVICE):** I caused such document(s) to be delivered electronically via CM/ECF as noted herein.

I declare under penalty of perjury under the laws of the United States that the above true and correct and was executed on December 5, 2016, at San Francisco, California.


Juli A. Carter

SERVICE LIST

Faalele, et al. v. Singapore Technologies Marine Ltd., et al.

**Case No. 3:14-CV-02321-H-KSC
[Consolidated with Case No. 3:14-CV-01734-H-KSC]**

NOTE: See Electronic Service List at end of document (eff 8/3/15; updated 8/30/16)

William Banning
Kathryn Garrett
Rebecca Rojas
Banning LLP
16409 Via De Santa Fe, #9600
Rancho Santa Fe, CA 92067

*Attorneys for Plaintiffs ONOSAI
FESULUAI FAALELE, Individually,
and MAREN MILLER, Administrator of
the Estate of Papu Faalele, Decedent;
Mema Tali Faalele, Mathew Papu
Faalele, Martha Emma Faalele,
Nuumau Monette Faalele, Mccutcheon
Iosua Faalele, Malaeolema Sula
Faalele, Meaalofa Kerisimasi Faalele
and Isaiah Misialofa Faalele, Minors,
by and Through Their Guardian Ad
Litem, Maren Miller*

Tel: (858) 756-0056
Fax: (858) 756-0003
Email: wbanning@banninglllp.com
kgarrett@banninglllp.com
rrojas@banninglllp.com

Michael D. Padilla
O'Mara and Padilla Law Office
320 Encinitas Blvd., Suite A
Encinitas, CA 92024

*Attorneys for Plaintiffs ONOSAI
FESULUAI FAALELE, Individually,
and MAREN MILLER, Administrator of
the Estate of Papu Faalele, Decedent;
Mema Tali Faalele, Mathew Papu
Faalele, Martha Emma Faalele,
Nuumau Monette Faalele, Mccutcheon
Iosua Faalele, Malaeolema Sula
Faalele, Meaalofa Kerisimasi Faalele
and Isaiah Misialofa Faalele, Minors,
by and Through Their Guardian Ad
Litem, Maren Miller*

Tel: (858) 481-5454
Fax: (858) 720-9797
Email: padilla@oplawfirm.com

1 Michael Barcott
Sterling Stires
2 Gary Wilmot
Holmes Weddle & Barcott, P.C.
3 999 3rd Avenue, Suite 2600
Seattle, WA 98104

*Attorneys for Defendants Pacific
Princess Partnership Ltd. and Oceans
Unlimited, Inc.*

Tel: (206) 292-8008
Fax: (206) 340-02889
Email: mbarcott@hwb-law.com
sstires@hwb-law.com
gwilmot@hwb-law.com

6 Steven Schossberger
Stephen Smith
7 **Hawley Troxell Ennis &
Hawley LLP**
8 877 Main Street, Suite 100
P.O. Box 1617
9 Boise, ID 83701-1617

*Attorneys for Defendants Pacific
Stevedoring Services and Roy Ausage*

Tel: (208) 344-6000
Fax: (208) 954-5268
Eml: sschossberger@hawleytroxell.com
scsmith@hawleytroxell.com

10 Edward Walton
Sean Sullivan
11 Sean Gaffney
12 **Procopio, Cory, Hargreaves &
Savitch LLP**
13 525 B Street, Suite 2200
San Diego, CA 92101

*Attorneys for Defendants Starkist Co.
and Starkist Samoa Co.*

Tel: (619) 238-1900
Fax: (619) 235-0398
Email: ed.walton@procopio.com
sean.sullivan@procopio.com
sean.gaffney@procopio.com

14 **Plaintiff:**

15 WBanning@banningllp.com kgarrett@banningllp.com
16 legalassistant@banningllp.com rrojas@banningllp.com padilla@oplawfirm.com

17 **Defendant Pacific Princess Partnership/ Oceans Unlimited**

mbarcott@hwb-law.com sspivak@hwb-law.com hmote@hwb-law.com

18 **Defendant Pacific Stevedoring Services:**

19 sschossberger@hawleytroxell.com scsmith@hawleytroxell.com

20 **Defendant Singapore Technologies Marine Ltd:**

21 fbooth@hinshawlaw.com pschultz@hinshawlaw.com jcarter@hinshawlaw.com
22 bpace@hinshawlaw.com kbaldwin@hinshawlaw.com hdavis@hinshawlaw.com
klee@hinshawlaw.com

23 **Defendant Starkist Co and Starkist Samoa Co.:**

24 ed.walton@procopio.com sean.sullivan@procopio.com
sean.gaffney@procopio.com susan.orrantia@procopio.com
calendaring@procopio.com

FORREST BOOTH (SBN 74166)
PAMELA L. SCHULTZ (SBN 269032)
KEVIN BALDWIN (SBN 287580)
Email: pschultz@hinshawlaw.com
HINSHAW & CULBERTSON LLP
One California Street, 18th Floor
San Francisco, CA 94111
Telephone: 415-362-6000
Facsimile: 415-834-9070

Attorneys for SINGAPORE TECHNOLOGIES MARINE, LTD.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA — SAN DIEGO DIVISION

ONOSAI FESULUAI FAALELE,
individually; et al.,

Plaintiffs,

vs.

SINGAPORE TECHNOLOGIES
MARINE, LTD., et al.,

Defendants.

AND RELATED CROSS-CLAIMS,
COUNTERCLAIMS AND THIRD-
PARTY CLAIMS

Case No. 3:14-CV-02321-H-KSC
Consolidated with
Case No. 3:14-cv-01734

**DECLARATION OF PAMELA
SCHULTZ IN SUPPORT OF
JOINT MOTION FOR
DETERMINATION OF GOOD
FAITH SETTLEMENT**

Complaint Filed: 8/7/14

Judge: Hon. Karen S. Crawford

I, Pamela Schultz, declare as follows:

1. I am an attorney, in good standing and licensed to practice in the State of California, and am admitted to practice in the United States District Court for the Southern District of California. I am a partner in the firm of Hinshaw & Culbertson LLP and am counsel of record for Singapore Technologies Marine, Ltd. ("ST Marine"), in the above-captioned action. I have personal knowledge of the matters set forth herein or believe them to be true based on information

1 provided to me, and if called to testify, I could and would testify competently
2 thereto.

3 2. I am providing this declaration in support of the Joint Motion for
4 Determination of Good Faith Settlement. Attached as **Exhibit A** is a true and
5 correct copy of the Mutual Release and Settlement Agreement entered into
6 between the parties to the captioned action as well as other non-parties and/or
7 parties which have been dismissed from this action.

8 3. I have been actively involved in this case since September or October
9 of 2014. In the course of my representation of ST Marine, and prior to ST
10 Marine's being a party to any litigation, I have been advised that the Faalele
11 Plaintiffs and Defendants Pacific Princess Partnership and Oceans Unlimited, Inc.
12 (collectively "PPP") participated in mediation on May 8, 2014 with Judge Herbert
13 B. Hoffman, (Sup. Ct. Ret.) (the "May 2014 mediation").

14 4. At the time of that mediation, the claims of Plaintiffs against PPP
15 were pending in state court in the Superior Court of the State of California, Count
16 of San Diego. I have also been advised that the May 2014 mediation between
17 Plaintiffs and PPP was unsuccessful and occurred when only limited discovery had
18 been conducted and before ST Marine and Defendants Starkist Samoa Co. and
19 Starkist Co. (collectively "Starkist") were parties to the captioned case.

20 5. Thereafter, Plaintiffs and Defendants filed actions and claims against
21 each other and ultimately, the captioned action became the main action, and the
22 aforementioned state court action was stayed.

23 6. As the case progressed, the parties participated in an Early Neutral
24 Evaluation Conference ("ENE") before Magistrate Judge Crawford and three
25 telephonic settlement conferences were held.

26 7. Although the involvement of Magistrate Judge Crawford was helpful
27 in getting the parties closer to resolution of the case, the parties agreed to a two-

1 day mediation with Judge Hoffman, who was already familiar with the case,
2 having mediated with Plaintiffs and PPP in May of 2014.

3 8. A two day mediation was held with Judge Hoffman on August 4 and
4 5, 2016 (the "August 2016 mediation"). Numerous representatives of the parties
5 were in attendance at the mediation.

6 9. Although the case did not resolve at the August 2016 mediation,
7 Judge Hoffman spent considerable time with the parties via telephone and email in
8 the weeks following the August 2016 mediation. At the end of September 2016,
9 the parties agreed to a settlement.

10 10. The settlement was reached after many years of contentious litigation,
11 and lawsuits had been filed in federal and state courts in San Diego and the High
12 Court of American Samoa. Plaintiffs had also commenced proceedings before the
13 Department of Labor, Office of Workers Compensation, and a five day arbitration
14 hearing in Singapore on claims between ST Marine and PPP was held.

15 11. I actively participated in many of the depositions taken in connection
16 with this case, and I estimate that approximately almost 50 days of depositions had
17 been conducted, many of which were taken in locations such as Singapore,
18 American Samoa and Hawaii.

19 12. Tens of thousands of pages of documents were produced in this case.

20 13. The parties filed multiple motions, including discovery motions,
21 motions to dismiss for lack of personal jurisdiction and on the basis of *forum non-*
22 *conveniens*, were also briefed and presented to the courts where the proceedings
23 were held.

24 14. By the time that the settlement was reached and since the case was set
25 for trial in January 2017, our office had spent considerable time and expenses on
26 expert discovery, expert disclosures and working with experts. Based on my
27 discussions with other attorneys representing the parties to this action, I believe

1 that other counsel also spent considerable time and expense working with their
2 experts. Although I do not have an exact figure as to how much the parties spent
3 working with experts, I believe that given the contentious nature of the litigation
4 and the status of the case when settlement was reached, that the parties could have
5 easily spent more than a million dollars on expert time and associated attorney
6 time relating to expert issues.

7 I declare under the penalty of perjury that the foregoing is true and correct.

8
9 DATED: December 5, 2016

HINSHAW & CULBERTSON LLP

10 By: /s/ Pamela Schultz

11 PAMELA SCHULTZ
12 Attorneys for SINGAPORE
13 TECHNOLOGIES MARINE, LTD.
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Exhibit A

MUTUAL RELEASE AND SETTLEMENT AGREEMENT

This Release and Settlement Agreement (the “Agreement”) is entered into between and among ONOSAI FESULUAI FA’ALELE; MEMA TALI FA’ALELE; MAREN MILLER, as Administrator of the ESTATE OF PAPU ULISESE FA’ALELE; MATHEW PAPU FA’ALELE, MARTHA EMMA FA’ALELE, NUUMAU MONETTE FA’ALELE, MCCUTCHEON IOSUA FA’ALELE, MALAEOLEMA SULA FA’ALELE, MEAALOFA KERISIMASI FA’ALELE and ISAIAH MISIALOFA FA’ALELE, individually, as minor children of Decedent, by and through guardians *ad litem* MAREN MILLER and SANDRA FRUEAN; PACIFIC PRINCESS PARTNERSHIP LLP; OCEANS UNLIMITED, INC.; STARKIST CO.; STARKIST SAMOA CO.; SINGAPORE TECHNOLOGIES MARINE, LTD.; PETER KENNEDY; PACIFIC STEVEDORING SERVICES, ROY AUSAGE, the F/V PACIFIC PRINCESS, TRI-MARINE INTERNATIONAL, INC., TRI MARINE INTERNATIONAL (PTE) LTD. (hereinafter collectively “the Parties”), as further set forth below.

DEFINITIONS

1. The term “Plaintiffs” is defined as Plaintiffs Onosai Fesuluai Fa’alele, Mema Tali Fa’alele,¹ Maren Miller, as Administrator of the Estate of Papu Ulisese Fa’alele, Mathew Papu Fa’alele, Martha Emma Fa’alele, Nuumau Monette Fa’alele, Mccutcheon Iosua Fa’alele, Malaeolema Sula Fa’alele, Meaalofa Kerisimasi Fa’alele Isaiah Misialofa Fa’alele, individually, as minor children of Decedent, by and through guardians *ad litem* Maren Miller and Sandra Fruean.

¹Mema Tali Fa’alele (“Mema”) was previously an individual plaintiff by and through guardian *ad litem* Maren Miller. However, Mema has now reached the age of 18 and, therefore, is legally competent to represent herself.

2. The term “Miller” is defined as Maren Miller, as Administrator of the Estate of Papu Ulisese Fa’alele, and as the guardian *ad litem* for Plaintiffs Mathew Papu Fa’alele, Martha Emma Fa’alele, Nuumau Monette Fa’alele, Mccutcheon Iosua Fa’alele, Malaeolema Sula Fa’alele, Meaalofa Kerisimasi Fa’alele, Isaiah Misialofa Fa’alele.
3. The term “Fruean” is defined as Sandra Fruean, the guardian *ad litem* for Plaintiffs Mathew Papu Fa’alele, Martha Emma Fa’alele, Nuumau Monette Fa’alele, Mccutcheon Iosua Fa’alele, Malaeolema Sula Fa’alele, Meaalofa Kerisimasi Fa’alele, Isaiah Misialofa Fa’alele.
4. The term “Papu Fa’alele” is defined as Papu Ulisese Fa’alele, deceased.
5. The term “Vessel” is defined as the F/V PACIFIC PRINCESS.
6. The term “Pacific Princess” is defined as Pacific Princess Partnership LLP and any of its affiliated entities.
7. The term “Oceans Unlimited” is defined as Oceans Unlimited, Inc., and any of its affiliated entities.
8. The term “Pacific Stevedoring” is defined as Pacific Stevedoring Services and any of its affiliated entities.
9. The term “Starkist” is defined as Starkist Co. and Starkist Samoa Co., and any of its affiliated entities.
10. The term “ST Marine” is defined as Singapore Technologies Marine, Ltd., and any of its affiliated entities.
11. The term “TriMarine” is defined as Tri-Marine International, Inc., and Tri Marine International (Pte) Ltd., and any of its affiliated entities.

12. The term “Defendants” is defined as Pacific Princess, Oceans Unlimited, the F/V PACIFIC PRINCESS, Pacific Stevedoring, Roy Ausage, Gloria Ausage, Starkist, ST Marine, Peter Kennedy and TriMarine even though each of these entities and/or individuals may not all be defendants in the same litigation or proceeding.
13. The term “incident” is defined as the accident that occurred on board the Vessel on or about August 9, 2011, during which Papu Fa’alele was killed.
14. The term “Fa’alele Lawsuits” mean the following lawsuits or administrative claim proceedings:
 - a. Case No. 3:14-cv-02321-H-KSC filed in the United States District Court for the Southern District of California entitled *Onosai Fesuluai Faalele, et al. v. Singapore Technologies Marine, Ltd., et al.*, which case was originally filed in the Superior Court for the State of California in and for the County of San Diego as Case No. 37-2014-00026560-CU-PO-CTL; (“Consolidated San Diego Federal Action”)
 - b. Case No. 3:14-cv-01734-H-KSC filed in the United States District Court for the Southern District of California entitled *Singapore Technologies Marine, Ltd. v. Pacific Princess Partnership, Ltd., et al.*; (“Consolidated San Diego Federal Action”)
 - c. *Onosai Fesuluai Faalele, et al. v. Pacific Princess Partnership, LLP, and Oceans Unlimited, Inc., et al.*, Case No. 37-2013-00050010-CU-PO-CTL pending in the Superior Court for the State of California in and for the County of San Diego; (“State Court Action”)

- d. *Onosai Fesuluai Faalele, et al. v. Pacific Stevedoring Services and Roy Ausage*, Case No. 30-15 pending in the High Court of American Samoa;
 - e. *Pacific Princess Partnership, Ltd., and Oceans Unlimited, Inc. v. Pacific Stevedoring Services*, Case No. 52-013 pending in the High Court of American Samoa;
 - f. *Pacific Princess Partnership, Ltd., and Oceans Unlimited, Inc. v. Singapore Technologies Marine, Ltd.*, Case No. 63-014, which case was pending in the High Court of American Samoa;
 - g. *Onosai Fesuluai Faalele et al. v. Starkist Inc., et al.*, Case No. 66-014 pending in the High Court of American Samoa;
 - h. U.S. Department of Labor, O.W.C.P. Case No. 15-054408, asserting claims under the Longshore and Harbor Workers' Compensation Act, for deceased employee Papu Fa'alele, naming employers Starkist, StarKist Samoa, and/or Pacific Stevedoring; and
 - i. Any claims asserted under the American Samoa Worker's Compensation Act by or on behalf of the estate Papu Fa'alele or any of Plaintiffs related to or arising from the death of Papu Fa'alele.
 - j. *Starkist Co. et al. v. TriMarine International, Inc., et al.*, AAA Case No. 01-15-0004-5252-1-BC.
15. The term "Parties" is defined to include Onosai Fesuluai Fa'alele; Mema Tali Fa'alele; Maren Miller, as Administrator of the Estate of Papu Ulisese Fa'alele; Mathew Papu Fa'alele, Martha Emma Fa'alele, Nuumau Monette Fa'alele, Mccutcheon Iosua Fa'alele, Malaeolema Sula Fa'alele, Meaalofa Kerisimasi Fa'alele,

Isaiah Misialofa Fa'alele, individually as minor children of Decedent, by and through their guardians *ad litem*, Maren Miller and Sandra Fruean; Pacific Princess; Oceans Unlimited; Pacific Stevedoring; Roy Ausage; Gloria Ausage; Starkist; ST Marine; Peter Kennedy; and TriMarine.

16. The term "Reserved Claims" specifically refers to *In the Matter of an Arbitration Under the Arbitration Rules of the Singapore International Arbitration Centre SIAC Rules (5th Edition, 1 April 2013)*, SIAC Arbitration No. 194 of 2014 between Singapore Technologies Marine Ltd. and Pacific Princess Partnership Ltd.

RECITALS

- A. WHEREAS, allegedly as a result of the incident, Papu Fa'alele was killed;
- B. WHEREAS, the Parties disputed who, if any, of them was responsible for the death of Papu Fa'alele;
- C. WHEREAS, as a result of the incident, the Fa'alele Lawsuits were filed; and,
- D. WHEREAS, the Parties to this Agreement, without in any way conceding the validity or sufficiency of any claim or contention of any of the Parties, now desire to resolve the claims in the Fa'alele Lawsuits.

NOW, THEREFORE, in consideration of the covenants, agreements, representations and warranties contained in this Agreement, and other valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. **Payment and Release.** In addition to any sums previously paid to Plaintiffs, in consideration of the mutual release of claims between the parties to this Agreement contained herein and the receipt of the sum of USD\$12,250,000.00 (Twelve Million, Two Hundred Fifty Thousand United States Dollars and No Cents) (the "settlement proceeds"), which sum will be

distributed, as set forth in Paragraph 9 below, after the courts where the Consolidated San Diego Federal Court Action and State Court Action are pending have issued orders approving or accepting this Agreement and after the court where the Consolidated San Diego Federal Court Action is pending has approved the settlement as a “minor’s compromise,” Plaintiffs hereby forever release and discharge Defendants, and all of their principals, officers, shareholders, directors, owners, lessors, managers, administrators, partners, predecessors, successors, parents, subsidiaries, affiliates, attorneys, insurers, protection and indemnity clubs, underwriters, agents, representatives, employees, independent contractors, heirs, spouses, beneficiaries, trustors, trustees, executors, and assigns from any and all claims, including those for negligence, strict products liability, breach of warranty, breach of warranty of workmanlike services, unseaworthiness, Jones Act negligence pursuant to 46 U.S.C. § 30104 *et seq.*, benefits under the Longshore and Harbor Workers’ Compensation Act, 33 U.S.C. § 901 *et seq.* (“LHWCA”), wages and other claims under the Merchant Seaman Protection and Relief Act (46 U.S.C. § 10601), negligence under 33 U.S.C. § 905(b), alleged other wrongful conduct, survival, personal injury, wrongful death, loss of consortium, loss of love, loss of companionship, loss of care, loss of assistance, loss of protection, loss of affection, loss of moral support, loss of training and guidance, loss of the enjoyment of sexual relationships, loss of society, loss of support, loss of wages and wage benefits, loss of inheritance, loss of gifts or benefits, funeral and burial expenses, loss of household services, property damage, workers’ compensation, maintenance, cure, willful and arbitrary failure to pay maintenance and/or cure, attorney fees and costs, punitive damages, pre-judgment interest, failure to procure appropriate insurance or other security, alter ego and other constructive liability and all other damages, claims and injuries, actions and causes of action of every kind and nature, known or unknown, existing, claimed to

exist, connected in any way to or which can ever hereafter arise out of or result from or in connection with the Fa'alele Lawsuits and/or the incident as defined above.

As part of and in consideration of this Agreement and the settlement proceeds received from it, Plaintiffs agree to dismiss with prejudice, with each party to bear its own costs and attorney fees, any and all claims and causes of action, including cross-claims, they have or may have against Defendants in the Fa'alele Lawsuits or any other action in any jurisdiction or tribunal, within 5 days of receipt of the settlement funds by their counsel or other designee.

2. **Warranties of Plaintiffs.** Plaintiffs warrant that they are the only members of Papu Fa'alele's family entitled to assert claims relating to the incident and the death of Papu Fa'alale, and that no other lawsuits or claims have been filed anywhere on their behalf except as identified above within the definition of Fa'alele Lawsuits, nor do they intend to file any other lawsuits or pursue any other claims relating to the incident and the death of Papu Fa'alele. Plaintiffs also represent and warrant that they have not assigned or transferred, or agreed to assign or transfer, or attempted to assign or transfer, to any third party or entity (including without limitation any insurers or protection and indemnity clubs) any interest in any of their claims or potential claims in any way arising out of the incident.

3. **Medicare.** Plaintiffs further warrant and represent that: (1) Medicare has paid nothing to them at any time; (2) they are not currently Medicare-eligible; (3) they have no reasonable expectation of becoming a Medicare beneficiary within thirty months of the date of this settlement; (4) they are not enrolled in Medicare; (5) no Medicare liens exist; (6) they have no intention of applying for Social Security Disability payment in the next thirty months; and (7) they are not intending to appeal or refile for Social Security Disability benefits. Plaintiffs warrant that no Medicare Set-Aside allocation is required.

The parties have considered Medicare's interests in this settlement and have determined that an allocation for future Medicare covered expenses is also not required due to the fact that Plaintiffs' claims are denied by Defendants.

Plaintiffs have been apprised of their right to seek assistance from legal counsel of their choosing or directly from the Social Security Administration or other governmental agencies regarding the impact this Agreement may have on Plaintiffs' current or future entitlement to Social Security or other governmental benefits.

Plaintiffs understand that the receipt of the settlement proceeds may affect Plaintiffs' rights to other governmental benefits, insurance benefits, disability benefits, or pension benefits. Despite this possibility, Plaintiffs desire to enter into this Agreement to settle their claims as set forth in this Agreement.

Plaintiffs understand that if CMS (Medicare) finds that a Medicare Set-Aside allocation should have been established and that Medicare's interests were not adequately protected, CMS (Medicare) may require Plaintiffs to expend up to the entire amount of the settlement proceeds on Medicare covered expenses related to the incident before Medicare will provide coverage for any claims. Plaintiffs voluntarily accept this risk and waive any and all claims of any nature and/or damages against Defendants and Defendants' insurers and protection and indemnity clubs, should Medicare take such action, including, but not limited to a private cause of action against Defendants' insurers and/or protection and indemnity clubs under the Medicare Secondary Payer Act (MSP) pursuant to 42 USC § 1395y(b)(3)(A).

As part of this Agreement, Plaintiffs agree to hold Defendants, their principals, officers, shareholders, directors, owners, lessors, managers, administrators, partners, predecessors, successors, parents, subsidiaries, affiliates, attorneys, insurers, protection and indemnity clubs,

underwriters, agents, representatives, employees, independent contractors, heirs, spouses, beneficiaries, trustors, trustees, lenders, executors, and assigns harmless and to defend and indemnify them, up to the full amount of the settlement proceeds, against and from any Medicare claims, actions, judgments or settlements, arising from the death of Papu Fa'alele which is the subject of this Agreement.

4. **Plaintiffs' California Civil Code Section 1542 Waiver.** Plaintiffs understand that this release is a general release and they hereby expressly waive the provisions of section 1542 of the Civil Code of the State of California which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

Plaintiffs also expressly waive the provision of any equal or similar case law and/or statutes of the State of California, the territory of American Samoa and or any other state, states or jurisdictions.

5. **Defendants' Release and Agreement to Dismiss.** Except as provided in the second paragraph of this section 5 below which applies only to Defendants as more particularly described therein, in consideration of the payments and mutual promises made pursuant to this Agreement, Defendants hereby forever release and discharge Plaintiffs and all other Defendants, and each of Plaintiffs' and Defendants' principals, officers, shareholders, directors, owners, lessors, managers, administrators, partners, predecessors, successors, parents, subsidiaries, affiliates, attorneys, insurers, protection and indemnity clubs, underwriters, agents, representatives, employees, independent contractors, heirs, spouses, beneficiaries, trustors, trustees, lenders, executors, and assigns from all claims including without limitation, claims for reimbursement, contribution, indemnity, attorney fees and costs, punitive damages, pre-judgment

interest and all other damages, claims, losses and injuries, actions and causes of action, including third party claims, counterclaims, cross-claims and claims of a similar nature, known or unknown, existing, claimed to exist, connected in any way to or which can ever hereafter arise out of or result from or in connection with the Fa'alele lawsuits and/or the incident as defined above. As part of and in consideration of this Agreement, Defendants agree to dismiss with prejudice, with each party to bear its own costs and attorney fees, any and all claims and causes of action they have or may have against each other in the Fa'alele Lawsuits or any other actions in any jurisdiction or tribunal, except for the Reserved Claims specifically identified in this Agreement, within 5 days of receipt of confirmation that the settlement funds have been paid to Plaintiffs. As part of and in consideration of this Agreement, Starkist and TriMarine agree to dismiss with prejudice, each party to bear its own costs and attorney fees, any and all claims and causes of action they have or may have against each other in *Starkist Co. et al. v. TriMarine International, Inc., et al.*, AAA Case No. 01-15-0004-5252-1-BC.

Pacific Princess and ST Marine expressly agree that this Agreement does not release or in any way affect any claims either of them may have *In the Matter of an Arbitration Under the Arbitration Rules of the Singapore International Arbitration Centre SIAC Rules (5th Edition, 1 April 2013)*, SIAC Arbitration No. 194 of 2014 between Singapore Technologies Marine Ltd. and Pacific Princess Partnership Ltd., which are expressly reserved. Pacific Princess and ST Marine also expressly agree that this Agreement, including the provision that each party will bear its own costs and attorney fees, does not impact the ability of either Pacific Princess or ST Marine to collect costs and fees in the arbitration mentioned in this paragraph. Further, the Parties expressly agree that this Agreement, including any provisions relating to each party bearing its own fees or costs, does not impact, release or in any way affect their rights or cross-

indemnity rights as have been or may be determined in the Reserved Claims. The release by Oceans Unlimited shall not be construed as a waiver by Pacific Princess in relation to the Reserved Claims.

ST Marine, Starkist and TriMarine expressly agree that they will incorporate this Agreement in its entirety into a separate agreement between them entitled “MUTUAL RELEASE AND SETTLEMENT AGREEMENT BETWEEN STARKIST, TRIMARINE AND ST MARINE” (“Supplementary Agreement”) which Supplementary Agreement will set forth additional terms which are binding upon the parties to that Supplementary Agreement, and this Agreement is not intended, and shall not be construed to, negate or supersede the terms addressed in such Supplementary Agreement.

6. **Defendants’ California Civil Code Section 1542 Waiver.** Defendants understand that this release is a general release and they hereby expressly waive the provisions of section 1542 of the Civil Code of the State of California which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

Defendants also expressly waive any similar provision contained in the case law and/or statutes of the State of California, the territory of American Samoa and or any other state, states or jurisdictions.

Pacific Princess and ST Marine expressly agree that this waiver does not release or in any way affect any claims each or both of them may have *In the Matter of an Arbitration Under the Arbitration Rules of the Singapore International Arbitration Centre SIAC Rules (5th Edition, 1 April 2013)*, SIAC Arbitration No. 194 of 2014 between Singapore Technologies Marine Ltd. and Pacific Princess Partnership Ltd., which are expressly reserved.

7. **Legal Advice.** Plaintiffs and Defendants acknowledge that they have been represented by competent maritime legal counsel with respect to the claims released herein, that they had the opportunity to seek the advice of said counsel prior to signing this Agreement, and that they have done so.

8. **No Admissions.** This Agreement and the release contained herein affect the settlement of claims which are denied and contested, and nothing contained herein shall be construed as an admission by any party of liability of any kind to any other party or as an acknowledgement or admission as to any court's jurisdiction over the parties or subject matter. The Parties acknowledge that the Fa'alele Lawsuits involve issues of law and fact which the Parties hereto now have settled and compromised without admitting or acknowledging the truth or falsity of any contention as to such issues of law and fact which were or could have been alleged by any of the parties. No payment or consideration exchanged pursuant to this Agreement, including but not limited to the settlement proceeds, nor any term of this Agreement, shall be interpreted or construed to be an admission on the part of any party. Defendants expressly deny any and all liability associated with or related to the Fa'alele Lawsuits, the incident and the claims and events underlying said actions.

9. **Binding Agreement.** Payment of the settlement proceeds shall occur within fourteen (14) calendar days after each of the following occurs: 1) the court in the Consolidated San Diego Federal Action issues an order approving the settlement as it relates to the minors as a "minor's compromise"; 2) the courts in the Consolidated San Diego Federal Action and State Court Action approve the settlement memorialized by this Agreement as being a Good Faith Settlement. Payment of the settlement proceeds shall be as outlined and directed in **Exhibit A**, attached hereto and incorporated herein by this reference as though fully set forth. Thereafter,

the Plaintiffs will forthwith dismiss and conclude any and all actions against Defendants in a manner consistent with this Agreement. TriMarine and Starkist also agree to forthwith cease their pursuit of any claims in any way relating to the arbitration between Starkist and TriMarine, *Starkist Co. et al. v. TriMarine International, Inc., et al.*, AAA Case No. 01-15-0004-5252-1-BC. The intent of this Agreement is to immediately end any and all claims, litigation, arbitrations or other proceedings between Plaintiffs, Defendants and the world arising out of the Accident. This Agreement is contingent on each of the conditions enumerated above being satisfied

The Parties, and each of them, expressly condition their consent to the terms of this Agreement and agreement to release the claims in the Fa'alele Lawsuits as referenced in this Agreement, on ST Marine's payment of the settlement proceeds. Once all of these contingencies are satisfied, the provisions of this Agreement, and all documents executed or delivered pursuant to it, shall be binding upon and inure to the benefit of the Parties and their principals, officers, shareholders, directors, owners, lessors, managers, administrators, partners, predecessors, successors, parents, subsidiaries, affiliates, attorneys, insurers, protection and indemnity clubs, underwriters, agents, representatives, employees, heirs, beneficiaries, spouses, trustors, trustees, executors, and assigns.

10. **Allocation of Settlement Proceeds.** Plaintiffs acknowledge that Defendants have not made any representations or recommendations regarding how the settlement proceeds should be allocated among Plaintiffs in this global settlement. Defendants also have no control over the allocation of the settlement proceeds, which is solely the responsibility of counsel for Plaintiffs and the guardians *ad litem*. Plaintiffs warrant that, if requested or ordered to do so, Plaintiffs will represent to the Court how the Settlement Proceeds will be allocated, including any allocation of attorney fees and costs. Plaintiffs' counsel and the guardians *ad litem* also warrant that they will

allocate the settlement proceeds in accordance with any and all orders from any court where the Fa'alele Lawsuits were filed and/or are pending.

11. **Tax Liabilities.** Plaintiffs acknowledge they are solely responsible for any and all potential tax liabilities in any way relating to receipt of the settlement proceeds and that Defendants have not made any representations to Plaintiffs regarding the tax consequences of their receipt and acceptance of the settlement proceeds.

12. **Entire Agreement.** Except as to the Reserved Claims and the Supplementary Agreement, this Agreement comprises the entire understanding between and among the Parties concerning the subject matter of this Agreement and supersedes and replaces all prior and contemporaneous agreements, understandings, oral agreements, written contracts or other writings that purport to represent an agreement by, between and among the Parties. The Parties also expressly agree that this Agreement, including the provision that each party will bear its own costs and attorney fees, does not impact the ability of Pacific Princess and ST Marine to collect costs and fees in connection with the Reserved Claims.

13. **Preparation of Agreement.** This Agreement is the product of negotiation by and among the Parties and their respective attorneys. Neither this Agreement nor any provision or provisions thereof shall be deemed prepared or drafted by any one party or its attorneys, and the same shall not be construed more strongly against any party or parties than against any other party or parties.

14. **Amendments.** This Agreement cannot be amended or modified in any respect, except by a writing duly executed by the party against whom the alteration, amendment, or modification is to be charged.

15. **Severability.** The provisions of this Agreement are severable. If a court of competent jurisdiction rules that any provision of the Agreement is invalid or unenforceable as to any term or party, the court's ruling will not affect the validity and enforceability of the other provisions of the Agreement.

16. **Protective Order.** The Parties expressly acknowledge that they are bound by the terms of any and all Protective Orders entered in the Fa'alele Lawsuits. If a request is made to any party or its counsel for any documents, testimony or information covered by the Protective Orders, all other parties will be advised immediately so that they can take whatever action they choose to take to protect the documents, testimony or other information from disclosure. The Parties and their counsel further acknowledge that the Parties, principals, counsel and experts have signed Protective Orders, the terms, conditions and obligations of which remain in full force and effect, and the Parties to this Agreement specifically agree to follow and adhere to the requirements of said Protective Orders, including but not limited to the protective order dated June 21, 2016. To the extent permitted by law, the Parties and their counsel also agree that all documents, testimony and other information received in connection with the Fa'alele Lawsuits, (such as medical records of Plaintiffs and documentation from the Occupational Safety and Health Administration and/or the United States Coast Guard), and/or exchanged through the discovery process were produced or provided to each other and their counsel solely for purposes of the Fa'alele Lawsuits, and not for any other purpose. Accordingly, the Parties and their counsel agree not to disclose any documents, testimony or other information received from the Parties or third parties and/or exchanged through the discovery process to any third party, unless ordered to do so by a court or administrative tribunal of competent jurisdiction, or otherwise as required by law. ST Marine and Pacific Princess also specifically agree to adhere to and be

bound by the confidentiality rules and requirements of the Singapore International Arbitration Centre (SIAC), as regards to *In the Matter of an Arbitration Under the Arbitration Rules of the Singapore International Arbitration Centre SIAC Rules (5th Edition, 1 April 2013)*, SIAC Arbitration No. 194 of 2014 between Singapore Technologies Marine Ltd. and Pacific Princess Partnership Ltd..

17. **Covenant Not to Sue.** Except in the case of breach of this Agreement by Defendants, Plaintiffs hereby covenant and agree never to commence, assist in any way, prosecute or cause, or advise to be commenced or prosecuted against Defendants, any appeal, action at law, suit in equity, complaint, or any other proceeding based upon any claims, demands, causes of action, rights, obligations, damages or liabilities of any nature whatsoever, including actions by insurers or protection and indemnity clubs, whether or not now known or suspected, or claims which Plaintiffs ever had, now have, or hereafter may have or claim to have against Defendants arising out of the incidents referred to and described above.

Conversely, except in the case of breach of this Agreement by Plaintiffs, except with respect to the Reserved Claims, Defendants hereby covenant and agree never to commence, assist in any way, prosecute or cause, or advise to be commenced or prosecuted against Plaintiffs or any other Defendants any appeal, action at law, suit in equity, complaint, or any other proceeding based upon any claims, demands, causes of action, rights, obligations, damages or liabilities of any nature whatsoever, including actions by insurers or protection and indemnity clubs, whether or not now known or suspected, or claims which Defendants ever had, now have, or hereafter may have or claim to have against Plaintiffs or other Defendants arising out of the incidents referred to and described above.

The Parties expressly agree that this covenant does not release or in any way affect any claims in the Reserved Claims, which are expressly reserved. The Parties also expressly agree that this Agreement, including the provision that each party will bear its own costs and attorney fees, does not impact the ability of Pacific Princess and ST Marine to collect costs and fees in connection with the Reserved Claims.

18. **Injunctive Relief.** The Parties shall be entitled to injunctive relief and/or any other available remedy in the event of a breach of paragraphs 16 or 17 of this Agreement.

19. **Attorney Fees for Breach.** In the event a party seeks relief from a breaching party for an alleged breach of paragraph 16 or 17 hereto, the prevailing party shall be entitled to its reasonable attorney fees and costs.

20. **Governing Law.** This Agreement shall be governed by and construed in accordance with California law. The Parties' agreement to the application of California law is not to be construed as a waiver of any argument that the courts of California lack jurisdiction over any party to this Agreement nor to affect the governing law in relation to the Reserved Claims.

21. **Court Retains Jurisdiction.** The parties agree that the United States District Court for the Southern District of California, the Honorable Marilyn L. Huff or other judge of that Court to whom the case is assigned, shall have and retain jurisdiction to adjudicate any issues and/or disputes connected with or arising out of this Agreement. If that Court declines to exercise jurisdiction, the parties agree to have the Superior Court of the State of California, County of San Diego adjudicate any issues and/or disputes connected with or arising out of this Agreement. This paragraph does not preclude the ability of the parties to submit any issues

and/or disputes connected with or arising out of this Agreement to the Honorable Herbert B. Hoffman or other mediator agreed by the parties in the first instance.

22. **Attorney Fees.** Except as to the Reserved Claims, which claims are expressly reserved, the Parties shall bear their own costs and attorney fees incurred in connection with the Fa'alele Lawsuits and execution of this Agreement. However, if any party to this Agreement has to enforce this Agreement in accordance with paragraph 21, above, the prevailing party shall be entitled to attorney fees and costs.

23. **Counterparts.** This Agreement may be executed in several counterparts, and all counterparts when duly executed shall constitute one agreement which shall be binding upon all parties to this Agreement, notwithstanding that all signatures of the parties do not appear on the same page. Plaintiffs agree to deliver to counsel for ST Marine original signed copies of this Agreement.

24. **Authority of Counsel.** This Agreement is freely and voluntarily entered into by Plaintiffs. As mandated by section 6149.5 of the California Business & Professions Code, Plaintiffs are hereby advised of this settlement.

DATED: December ____, 2016

Onosai Fesuluai Fa'alele

DATED: December ____, 2016

Mema Tali Fa'alele

DATED: December ____, 2016

Maren Miller, as Administrator of the Estate of Papu Ulisese Fa'alele, and as the guardian ad litem for Plaintiffs Mathew Papu Fa'alele, Martha Emma Fa'alele, Nuumau Monette Fa'alele, Mccutcheon Iosua Fa'alele, Malaeolema Sula Fa'alele, Meaalofa Kerisimasi Fa'alele, Isaiah Misialofa Fa'alele

Maren Miller

DATED: December ____, 2016

Sandra Fruen, as the guardian ad litem for Plaintiffs Mathew Papu Fa'alele, Martha Emma Fa'alele, Nuumau Monette Fa'alele, Mccutcheon Iosua Fa'alele, Malaeolema Sula Fa'alele, Meaalofa Kerisimasi Fa'alele, Isaiah Misialofa Fa'alele

Sandra Fruen

I, William L. Banning, do hereby represent that I am the attorney of record for the Plaintiffs in certain of the Fa'alele Lawsuits, that I advised my clients Onosai Fesuluai Fa'alele; Mema Tali Fa'alele, and Maren Miller as Administrator of the Estate of Papu Ulisese Fa'alele, and Maren Miller and Sandra Fruen, as the guardians *ad litem* for Plaintiffs Mathew Papu Fa'alele, Martha Emma Fa'alele, Nuumau Monette Fa'alele, Mccutcheon Iosua Fa'alele, Malaeolema Sula Fa'alele, Meaalofa Kerisimasi Fa'alele, Isaiah Misialofa Fa'alele as to the contents of this Agreement, which is a Release of all claims, both as to known and unknown claims, and I have answered all of their questions concerning this Agreement and witnessed them execute it.

DATED: December ____, 2016

BANNING LLP

By: _____
William L. Banning

DATED: December ____, 2016

PACIFIC STEVEDORING SERVICES,

By: _____

Its: _____

ROY AUSAGE

I, Stephen Smith, do hereby represent that I am the attorney of record for Pacific Stevedoring Services and Roy and Gloria Ausage in certain of the Fa'alele Lawsuits, that I advised my clients as to the contents of this Agreement, which is a Release of all claims, both as to known and unknown claims, and I have answered all of their questions concerning this Agreement and witnessed them execute it.

DATED: December ____, 2016

HAWLEY TROXELL ENNIS & HAWLEY LLP

By: _____
Stephen C. Smith

DATED: December ____, 2016

PACIFIC PRINCESS PARTNERSHIP LLP

By: _____

Its: _____

DATED: December ____, 2016

OCEANS UNLIMITED, INC.

By: _____

Name: _____

Its: _____

DATED: December ____, 2016

PETER KENNEDY

I, Michael Barcott, do hereby represent that I am the attorney of record for Pacific Princess Partnership, LLP, and Oceans Unlimited, Inc., in certain of the Fa'alele Lawsuits, and also attorney for Peter Kennedy, and that I advised my clients as to the contents of this Agreement, which is a Release of all claims in the Fa'alele Lawsuits as that term is defined in the Agreement, both as to known and unknown claims, and I have answered all of their questions concerning this Agreement and witnessed them execute it.

DATED: December ____, 2016

HOLMES WEDDLE & BARCOTT, P.C.

By: _____

Michael Barcott

DATED: December ____, 2016

STARKIST CO.

By: _____

Name: _____

Its: _____

DATED: December ____, 2016

STARKIST SAMOA CO.

By: _____

Name: _____

Its: _____

I, Edward Walton, do hereby represent that I am the attorney of record for Starkist Co. and Starkist Samoa Co. in certain of the Fa'alele Lawsuits, that I advised my clients as to the contents of this Agreement, which is a Release of all claims, in the Fa'alele Lawsuits as that term is defined in the Agreement, both as to known and unknown claims, and I have answered all of their questions concerning this Agreement and witnessed them execute it.

DATED: December ____, 2016

PROCOPIO, CORY, HARGREAVES &
SAVITCH LLP

By: _____
Edward Walton

DATED: December ____, 2016

SINGAPORE TECHNOLOGIES
MARINE, LTD.

By: _____

Name: _____

Its: _____

I, Forrest Booth, do hereby represent that I am the attorney of record for Singapore Technologies Marine, Ltd., in certain of the Fa'alele Lawsuits, that I advised my client as to the contents of this Agreement, which is a Release of all claims in the Fa'alele Lawsuits as that term is defined in the Agreement, both as to known and unknown claims, and I have answered all of its questions concerning this Agreement and witnessed it execute it.

DATED: December ____, 2016

HINSHAW & CULBERTSON LLP

By: _____
Forrest Booth

DATED: December ____, 2016

TRI-MARINE INTERNATIONAL, INC.

By: _____

Name: _____

Its: _____

DATED: December ____, 2016

TRI MARINE INTERNATIONAL (PTE) LTD.

By: _____

Name: _____

Its: _____

I, Roland T. Koke, do hereby represent that I am the attorney for Tri-Marine International, Inc., and Tri Marine International (Pte) Ltd. in the arbitration, *Starkist Co. et al. v. TriMarine International, Inc., et al.*, AAA Case No. 01-15-0004-5252-1-BC, that I advised my client as to the contents of this Agreement, which is a Release of all claims in the Fa'alele Lawsuits as that term is defined in the Agreement, both as to known and unknown claims, and I have answered all of its questions concerning this Agreement and witnessed it execute it.

DATED: December ____, 2016

RENDE, RYAN & DOWNES, LLP

By: _____

Roland T. Koke

EXHIBIT “A” TO MUTUAL RELEASE AND SETTLEMENT AGREEMENT

1. PAYMENTS

1.1 In consideration of the release set forth in the **MUTUAL RELEASE AND SETTLEMENT AGREEMENT** (the “Agreement”), Singapore Technologies Marine Ltd. (“ST Marine”) agrees to pay Total Settlement amount of Twelve Million, Two Hundred Fifty Thousand United States Dollars (USD\$12,250,000.00) (the “settlement proceeds”) as outlined below.

- A. USD\$2,100,000.00 payable to METLIFE TOWER RESOURCES GROUP, INC.**
- B. USD\$1,000,000.00 payable to LIBERTY ASSIGNMENT CORPORATION**
- C. USD\$9,150,000.00 payable to BANNING LLP**

1.2 Periodic payments to be made according to the schedule as follows (the “periodic payments”) to be funded by the combined total of USD\$2,100,000.00 (**USD\$300,000.00** each minor Plaintiff identified as a “Payee” below, collectively referred to as “Plaintiffs/Payees” below) which is inclusive of annuity costs and fees, if any, payable directly to **METLIFE TOWER RESOURCES GROUP, INC.** (hereinafter “METLIFE ASSIGNEE”):

A. TO PLAINTIFF AND PAYEE: NUUMAU MONETTE FA’ALELE

USD\$12,500.00 payable semi-annually, guaranteed for 4 years, beginning on 9/8/2021, with the last guaranteed payment on 3/8/2025.

USD\$2,420.61 payable monthly, guaranteed for 9 years beginning on 9/8/2024, increasing at a rate of 2.50% compounded annually, with the last guaranteed payment on 8/8/2033.

B. TO PLAINTIFF AND PAYEE: MALAEOLEMA SULA FA’ALELE

USD\$12,500.00 payable semi-annually, guaranteed for 4 years, beginning on 5/23/2025, with the last guaranteed payment on 11/23/2028.

USD\$2,875.88 payable monthly, guaranteed for 9 years beginning on 5/23/2028, increasing at a rate of 2.50% compounded annually, with the last guaranteed payment on 4/23/2037.

C. TO PLAINTIFF AND PAYEE: ISIAH MISIALOFA FA'ALELE

USD\$12,500.00 payable semi-annually, guaranteed for 4 years, beginning on 5/20/2029, with the last guaranteed payment on 11/20/2032.

USD\$3,419.05 payable monthly, guaranteed for 9 years beginning on 5/20/2032, increasing at a rate of 2.50% compounded annually, with the last guaranteed payment on 4/20/2041.

D. TO PLAINTIFF AND PAYEE: MARTHA EMMA FA'ALELE

USD\$12,500.00 payable semi-annually, guaranteed for 4 years, beginning on 11/29/2019, with the last guaranteed payment on 5/29/2023.

USD\$2,217.82 payable monthly, guaranteed for 9 years beginning on 11/29/2022, increasing at a rate of 2.50% compounded annually, with the last guaranteed payment on 10/29/2031.

E. TO PLAINTIFF AND PAYEE: MATHEW PAPU FA'ALELE

USD\$12,500.00 payable semi-annually, guaranteed for 4 years, beginning on 3/4/2018, with the last guaranteed payment on 9/4/2021.

USD\$2,041.62 payable monthly, guaranteed for 9 years beginning on 3/4/2021, increasing at a rate of 2.50% compounded annually, with the last guaranteed payment on 2/4/2030.

F. TO PLAINTIFF AND PAYEE: McCUTCHEON IOSUA FA'ALELE

USD\$12,500.00 payable semi-annually, guaranteed for 4 years, beginning on 2/8/2023, with the last guaranteed payment on 8/8/2026.

USD\$2,591.64 payable monthly, guaranteed for 9 years beginning on 2/8/2026, increasing at a rate of 2.50% compounded annually, with the last guaranteed payment on 1/8/2035.

G. TO PLAINTIFF AND PAYEE: MEAALOFA KIRISIMASI FA'ALELE

USD\$12,500.00 payable semi-annually, guaranteed for 4 years, beginning on 12/25/2026, with the last guaranteed payment on 6/25/2030.

USD\$3,084.65 payable monthly, guaranteed for 9 years beginning on 12/25/2029, increasing at a rate of 2.50% compounded annually, with the last guaranteed payment on 11/25/2038.

Periodic payments to be made according to the schedule as follows (the “periodic payments”) to be funded by the total of USD\$1,000,000.00 to Plaintiff Onosai Fa’alele, who is also a “Plaintiff/Payee” and included within the category of “Plaintiffs/Payees” below, which total is inclusive of annuity costs and fees, if any, payable directly to **LIBERTY ASSIGNMENT CORPORATION** (hereinafter “LIBERTY ASSIGNEE”):

H. TO PLAINTIFF AND PAYEE: ONOSAI FA'ALELE

USD\$3,829.00 payable monthly for life, guaranteed for 30 years, beginning on 2/2/2017 with last guaranteed payment on 1/2/2047. All sums set forth herein constitute damages on account of personal injuries and sickness, within the meaning of Section 104(a) (2) of the Internal Revenue Code of 1986, as amended.

2. PLAINTIFFS/PAYEES' RIGHT TO PAYMENTS

2.1 Plaintiffs/Payees acknowledge that the periodic payments cannot be accelerated, deferred, increased or decreased by Plaintiffs/Payees; nor shall Plaintiffs/Payees have the power to sell, mortgage, encumber, or anticipate the periodic payments, or any part thereof, by assignment or otherwise.

3. PLAINTIFFS/PAYEES' BENEFICIARY

3.1 Any payments to be made after the death of any Plaintiff/Payee pursuant to the terms of this Agreement shall be made to such person or entity as shall be designated in writing by each Plaintiff/Payee identified in sections 1.2.A through 1.2.G above, or guardian *ad litem* appointed on that Plaintiff/Payee’s behalf to the METLIFE ASSIGNEE. Any payments to be

made after the death of Onosai Fa'alele pursuant to the terms of this Agreement shall be made to such person or entity as shall be designated in writing by Onosai Fa'alele to the LIBERTY ASSIGNEE. If no person or entity is so designated by Plaintiff/Payee or if the person designated is not living at the time of Plaintiff/Payee's death, such payments shall be made to the estate of Plaintiff/Payee. No such designation, nor any revocation thereof, shall be effective unless it is in writing and delivered to ASSIGNEE. The designation must be in a form acceptable to ASSIGNEE before such payments are made.

4. CONSENT TO QUALIFIED ASSIGNMENT

4.1 Each Plaintiff/Payee identified in sections 1.2.A through 1.2.G above, acknowledge and agree that ST Marine may make a "qualified assignment", within the meaning of Section 130(c) of the Internal Revenue Code of 1986, as amended, of ST Marine's liability to make the periodic payments set forth in the Payments Sections to the METLIFE ASSIGNEE. The METLIFE ASSIGNEE's obligation for payment of the periodic payments shall be no greater than that of ST Marine (whether by judgment or agreement) immediately preceding the assignment of the periodic payments obligation.

4.2 Any such assignment made in section 4.1 above, if made, shall be accepted by each Plaintiff/Payee identified in sections 1.2.A through 1.2.G above, without right of rejection and shall completely release and discharge ST Marine from the periodic payments obligation assigned to the METLIFE ASSIGNEE. Each plaintiff/payee identified in sections 1.2.A through 1.2.G above, recognizes that, in the event of such an assignment, the METLIFE ASSIGNEE shall be the sole obligor with respect to the periodic payments obligation, and that all other releases with respect to the periodic payments obligation that pertain to the liability of ST Marine and all Defendants as described in the "Mutual Release and Settlement Agreement" and their Insurers or Protection & Indemnity Clubs (the "Released Parties") shall thereupon become final, irrevocable and absolute.

4.3 Onosai Fa'alele acknowledges and agrees that ST Marine may make a "qualified assignment", within the meaning of Section 130(c) of the Internal Revenue Code of 1986, as amended, of ST Marine's liability to make the periodic payments set forth in the Payments Sections to the LIBERTY ASSIGNEE. The LIBERTY ASSIGNEE's obligation for payment of

the periodic payments shall be no greater than that of ST Marine (whether by judgment or agreement) immediately preceding the assignment of the periodic payments obligation.

4.4 Any such assignment made in section 4.3 above, if made, shall be accepted by Onosai Fa'alele, without right of rejection and shall completely release and discharge ST Marine from the periodic payments obligation assigned to the LIBERTY ASSIGNEE. Onosai Fa'alele recognizes that, in the event of such an assignment, the LIBERTY ASSIGNEE shall be the sole obligor with respect to the periodic payments obligation, and that all other releases with respect to the periodic payments obligation that pertain to the liability of ST Marine and all Defendants as described in the "Mutual Release and Settlement Agreement" and their Insurers or Protection & Indemnity Clubs (the "Released Parties") shall thereupon become final, irrevocable and absolute.

5. RIGHT TO PURCHASE AN ANNUITY

5.1 The METLIFE ASSIGNEE, reserves the right to fund the liability to make the periodic payments through the purchase of an annuity policy from **METROPOLITAN LIFE INSURANCE COMPANY** (hereinafter "METLIFE ANNUITY ISSUER"). The METLIFE ASSIGNEE shall be the sole owner of the annuity policy and shall have all rights of ownership. The METLIFE ASSIGNEE may have the METLIFE ANNUITY ISSUER mail payments directly to each of the Plaintiffs/Payees identified in sections 1.2.A through 1.2.G above. Plaintiffs/Payees identified in sections 1.2.A through 1.2.G above shall be responsible for maintaining a current mailing address for each of the Plaintiffs/Payees identified in sections 1.2.A through 1.2.G above with the METLIFE ANNUITY ISSUER.

5.2 The LIBERTY ASSIGNEE, reserves the right to fund the liability to make the periodic payments through the purchase of an annuity policy from **LIBERTY LIFE ASSURANCE COMPANY OF BOSTON** (hereinafter "LIBERTY ANNUITY ISSUER"). The LIBERTY ASSIGNEE shall be the sole owner of the annuity policy and shall have all rights of ownership. The LIBERTY ASSIGNEE may have the LIBERTY ANNUITY ISSUER mail payments directly to Onosai Fa'alele. Onosai Fa'alele shall be responsible for maintaining a current mailing address with the LIBERTY ANNUITY ISSUER.

6. DISCHARGE OF OBLIGATION

6.1 The obligation of the METLIFE ASSIGNEE to make each periodic payment shall be discharged upon the mailing of a valid check in the amount of such payment to the designated address of each of the Plaintiffs/Payees identified in sections 1.2.A through 1.2.G above of this Exhibit A. In the event that the check is not received and cashed by the designated Plaintiff/Payee, METLIFE ASSIGNEE shall issue a replacement check.

6.2 The obligation of the LIBERTY ASSIGNEE to make each periodic payment shall be discharged upon the mailing of a valid check in the amount of such payment to the designated address of Onosai Fa'alele. In the event that the check is not received and cashed by Onosai Fa'alele, LIBERTY ASSIGNEE shall issue a replacement check.

1 FORREST BOOTH (SBN 74166)
 2 PAMELA L. SCHULTZ (SBN 269032)
 3 KEVIN BALDWIN (SBN 287580)
 Email: pschultz@hinshawlaw.com
 4 HINSHAW & CULBERTSON LLP
 One California Street, 18th Floor
 San Francisco, CA 94111
 Telephone: 415-362-6000
 5 Facsimile: 415-834-9070

6 Attorneys for SINGAPORE TECHNOLOGIES MARINE, LTD.

7
 8 UNITED STATES DISTRICT COURT

9 SOUTHERN DISTRICT OF CALIFORNIA — SAN DIEGO DIVISION

10 ONOSAI FESULUAI FAALELE,
 11 individually; et al.,

12 Plaintiffs,

13 vs.

14 SINGAPORE TECHNOLOGIES
 MARINE, LTD., et al.,

15 Defendants.

16 AND RELATED CROSS-CLAIMS,
 17 COUNTERCLAIMS AND THIRD-
 18 PARTY CLAIMS

Case No. 3:14-CV-02321-H-KSC
 Consolidated with
 Case No. 3:14-cv-01734

**DECLARATION OF HON.
 HERBERT B. HOFFMAN
 RELATING TO JOINT MOTION
 FOR DETERMINATION OF
 GOOD FAITH SETTLEMENT**

Complaint Filed: 8/7/14

Judge: Hon. Karen S. Crawford

19 I, Herbert B. Hoffman, declare as follows:

20 I. I am an attorney, in good standing and licensed to practice in the State
 21 of California. I am also a retired judge, having served as judge from 1985 to 1998
 22 in the Superior Court of the State of California, County of San Diego. Since
 23 retirement, I have served as a mediator-arbitrator, and since 2008 I have been
 24 associated with JudicateWest and in this capacity, I have been retained as a
 25 mediator in over 3,000 civil cases by parties having their disputes mediated
 26 without further court intervention. As a trial judge, I presided over more than 150
 27 civil jury trials in twelve plus years. In my capacity as a trial judge, I was required

28 **HOFFMAN DECLARATION RE JOINT MOTION FOR DETERMINATION OF GOOD
 FAITH SETTLEMENT**

Case No. 3:14-cv-02321-H-KSC
 3532922v2 0971696

1 many times to make a judicial determination that the settlement entered into by
2 certain parties to the litigation was a good faith settlement in accordance with
3 California Code of Civil Procedure sections 877 and 877.6.

4 2. I am providing this declaration in support of the Joint Motion for
5 Determination of Good Faith Settlement, filed by the parties herein. As is more
6 fully set forth in the Declaration of Pamela Schultz In Support of Joint Motion for
7 Determination of Good Faith Settlement (the "Schultz Decl.") filed herewith, the
8 settlement is a global agreement relating to all claims arising out of the fatal
9 accident, and in my opinion is a non-collusive settlement agreement, entered into
10 in good faith.

11 3. I first became involved with this case when I held a mediation
12 between Plaintiffs and defendants Pacific Princess Partnership LP and Oceans
13 Unlimited Inc. in May 2014; however this effort was not successful. Subsequently,
14 several defendants were added and extensive litigation took place, including the
15 consolidation of the two actions in this Court. After the consolidation of these
16 cases and nearly a year of further litigation I held a two-day mediation in August,
17 2016, where all Defendants' representatives were in attendance. Prior to the
18 mediation, the parties submitted extensive mediation briefs to me. I addressed the
19 pros and cons of settlement for all sides. I expressed to all parties that a jury might
20 sympathize with Plaintiffs, especially the minor children who would not remember
21 their deceased father. However, I also expressed the opinion that a jury may not
22 enter an eight figure verdict in view of Plaintiffs' relatively modest life in
23 American Samoa. I reviewed the parties' submissions of jury verdicts involving
24 similar claims, and I more or less recommended the settlement amount of
25 \$12,250,000 in new money, which I believe was fair and reasonable in view of the
26 claims and the risks to all parties. I also expressed the view that even though

1 counsel were skilled and experienced, that there were significant risks that a jury
2 may not see the case as they did. I also expressed to the parties how expensive it
3 would be to try the case and that tremendous costs would be avoided by
4 settlement.

5 4. Plaintiffs and Defendants were far apart at the end of the second day
6 of mediation, but I continued to try to assist the parties in resolution. Between
7 August 5 and September 28, 2016, I constantly communicated and met with the
8 parties and individuals with the authority to settle the claims. I continually
9 reminded the parties of the risks and costs they faced if the case went to trial. I
10 solicited new demands and counteroffers and slowly brought the parties closer
11 together. Eventually, the parties came to a settlement that all believed was
12 acceptable and commercially reasonable.

13 5. As set forth herein, the Agreement was reached after over 100 hours
14 of negotiations, both in person, via email, text and over the telephone. I believe
15 that all parties fought very hard for their clients. Based on my personal
16 knowledge, training and experience as a lawyer, trial judge and mediator, I
17 believe: a) the settlement and the terms and conditions of the Agreement are fair
18 and reasonable to all parties, including without limitation the minor children of the
19 Fa'alele Family; and b) the settlement and the Agreement are non-collusive and
20 were entered into in good faith by all parties.

21 I declare under the penalty of perjury that the foregoing is true and correct.

22 DATED: November ²³ __, 2016
23

24 By: 

25 Hon. Herbert B. Hoffman (Ret.)
26
27

28
3
HOFFMAN DECLARATION RE JOINT MOTION FOR DETERMINATION OF GOOD
FAITH SETTLEMENT
Case No. 3:14-cv-02321-H-KSC