SETTLEMENT AGREEMENT AND MUTUAL GENERAL RELEASE

This Settlement Agreement and Release ("Agreement") is entered into by and among Robert E. Swanson ("Mr. Swanson"), an individual and on behalf of The Richard Swanson 2001 Supplemental Needs Trust (the "Trust"), and Craig R. Swanson ("Craig") and Lois C. Yu ("Lois" or "Ms. Yu"). Robert E. Swanson, Craig R. Swanson, and Lois C. Yu are collectively referred to herein as the "Parties."

RECITALS

- A. On or about December 11, 2007, a breach of contract action was filed on behalf of Mr. Swanson against Craig and Lois entitled *Swanson v. Swanson, et al.*, San Diego Superior Court Case No. 37-2007-00083531-CU-BC-CTL (the "Subject Action").
- B. On or about August 14, 2008, Lois filed a cross-complaint against Craig for slander per se (the "Cross-Complaint").
- C. Each party to this Agreement is fully apprised of the facts set forth in these Recitals and of the facts and contentions in the Subject Action and Cross-Complaint, and in all other aspects of the disputes between or among the Parties, whether pled or not, and each has been advised as to the contentions, issues and possibilities of each action and matter described herein.
- D. The Parties hereto desire to settle all disputes and claims which exist or which may exist between and among them, including all disputes and claims which arise out of the facts, matters and events specified in the Subject Action and Cross-Complaint, and the Recitals set forth above, and without admitting any liability therefore.

AGREEMENT

NOW THEREFORE, for and in consideration of the covenants, promises, conditions and mutual releases set forth herein, the Parties hereto agree to the following terms of settlement:

- 1. Craig and Lois each agree to pay Mr. Swanson the sum of twenty-five thousand dollars (\$25,000.00), for a total of fifty thousand dollars (\$50,000), on or before December 20, 2008, or as soon thereafter as practicable for the parties to obtain approval from Judge Alksne. Craig and Lois shall both execute a stipulation requesting that Judge Alksne, the family court judge presiding over the dissolution case of *Yu v. Swanson* (Case No. DN143066), release the \$50,000.00 settlement amount from the community funds currently held in William Blatchley's client trust account. Craig and Lois agree that they will each direct their respective family law attorneys to approve and authorize the stipulation for release of the aforementioned funds.
- 2. Lois agrees to dismiss the Cross-Complaint with prejudice. A request for dismissal with prejudice will be filed by Lois's counsel upon receipt of the signatures of all Parties to this Agreement.

- 3. Upon execution and exchange of this Agreement by all Parties and receipt by Mr. Swanson of the referenced settlement checks totaling \$50,000.00, and confirmation that said checks have been paid by the banks upon which they are drawn, Mr. Swanson, through Mr. Harmeling, shall file a Request for Dismissal of the Subject Action with prejudice.
- 4. <u>Consideration for Agreement</u> The releases, promises and warranties and covenants of each party contained herein shall constitute consideration for this Agreement to each other party.
- 5. **Fees and Costs** Except as otherwise provided in this Agreement, each Party to this Agreement shall bear all of its own respective attorney's fees and costs relating to this matter.
- 6. Swanson Release Craig R. Swanson Except for obligations, warranties and representations set forth in this Agreement, Mr. Swanson hereby forever and fully releases, acquits, and discharges Craig R. Swanson, his employees, agents, attorneys, insurers and affiliates, personal representatives, predecessors, successors, and assigns, and each of them, of and from any and all claims, demands, actions or causes of action, suits, liens, debts, obligations, damages, liabilities, and judgments of any kind, nature, or amount, whether in tort, contract, or otherwise, whether in law or equity, whether known or unknown, anticipated or unanticipated, liquidated or unliquidated, including any and all claimed or unclaimed compensatory damages, consequential damages, incidental damages, punitive and exemplary damages, interest costs, expenses and fees (including reasonable attorney's fees), which may arise out of, relate to, result from, or are in any way related to the Subject Action, or any of the facts, matters, or events referred to in the Recitals set forth above.
- 7. Swanson Release Lois C. Yu Except for obligations, warranties and representations set forth in this Agreement, Mr. Swanson hereby forever and fully releases, acquits, and discharges Lois C. Yu, her employees, agents, attorneys, insurers and affiliates, personal representatives, predecessors, successors, and assigns, and each of them, of and from any and all claims, demands, actions or causes of action, suits, liens, debts, obligations, damages, liabilities, and judgments of any kind, nature, or amount, whether in tort, contract, or otherwise, whether in law or equity, whether known or unknown, anticipated or unanticipated, liquidated or unliquidated, including any and all claimed or unclaimed compensatory damages, consequential damages, incidental damages, punitive and exemplary damages, interest costs, expenses and fees (including reasonable attorney's fees), which may arise out of, relate to, result from, or are in any way related to the Subject Action, or any of the facts, matters, or events referred to in the Recitals set forth above.
- 8. Yu Release Craig R. Swanson Except for obligations, warranties and representations set forth in this Agreement, Lois C. Yu hereby forever and fully releases, acquits, and discharges Craig R. Swanson, his employees, agents, attorneys, insurers and affiliates, personal representatives, predecessors, successors, and assigns, and each of them, of and from any and all claims, demands, actions or causes of action, suits, liens, debts, obligations, damages, liabilities, and judgments of any kind, nature, or amount, whether in tort, contract, or otherwise, whether in law or equity, whether known or unknown, anticipated or unanticipated, liquidated or unliquidated, including any and all claimed or unclaimed compensatory damages, consequential damages, incidental damages, punitive and exemplary damages, interest costs, expenses and fees (including reasonable attorney's fees), which may arise out of, relate to, result from, or are in any way related

to the Cross-Complaint, or any of the facts, matters, or events referred to in the Recitals set forth above.

- 9. Yu Release Robert E. Swanson Except for obligations, warranties and representations set forth in this Agreement, Lois C. Yu hereby forever and fully releases, acquits, and discharges Robert E. Swanson, his employees, agents, attorneys, insurers and affiliates, personal representatives, predecessors, successors, and assigns, and each of them, of and from any and all claims, demands, actions or causes of action, suits, liens, debts, obligations, damages, liabilities, and judgments of any kind, nature, or amount, whether in tort, contract, or otherwise, whether in law or equity, whether known or unknown, anticipated or unanticipated, liquidated or unliquidated, including any and all claimed or unclaimed compensatory damages, consequential damages, incidental damages, punitive and exemplary damages, interest costs, expenses and fees (including reasonable attorney's fees), which may arise out of, relate to, result from, or are in any way related to the Cross-Complaint, or any of the facts, matters, or events referred to in the Recitals set forth above.
- 10. Swanson Release of Unknown Claims
 Except for the obligations set forth in this Agreement, Mr. Swanson acknowledges and agrees that he may hereafter discover facts different from, or in addition to, those facts known to him or which he now believes to be true with respect to any and all of the claims, demands, actions, causes of action, suits, liens, debts, obligations, damages liabilities, judgments, costs, expenses, and fees (including reasonable attorney's fees), which are herein released. He nevertheless agrees that the releases set forth herein have been negotiated and agreed upon, notwithstanding such acknowledgment and agreement, and hereby expressly waives any and all rights which he has or may have under any federal or state statute or common law principal which may provide that a general release does not extend to claims which are not known to exist at the time of execution, including, without limitation, California Civil Code Section 1542, which provides that:

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.

Mr. Swanson, as an individual and as trustee for the Trust, understands and acknowledges the significance and consequence of his waiver of California Civil Code Section 1542 and assumes full responsibility for any and all damages, losses, costs, and expenses he may incur as a result of any of the facts, matters, and events referred to in this Recitals set forth above.

 not known to exist at the time of execution, including, without limitation, California Civil Code Section 1542, which provides that:

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.

Lois C. Yu's release and waiver pursuant to California Civil Code Section 1542 expressly **excludes** any rights and/or issues pending in the dissolution case of *Yu v. Swanson* (Case No. DN143066).

Ms. Yu, as an individual, understands and acknowledges the significance and consequence of her waiver of California Civil Code Section 1542 and assumes full responsibility for any and all damages, losses, costs, and expenses she may incur as a result of any of the facts, matters, and events referred to in this Recitals set forth above.

- 12. <u>Effective Date of Agreement</u> The Releases set forth above shall not be effective until execution and exchange of this Agreement by all Parties and receipt by Mr. Swanson of the referenced settlement checks totaling \$50,000.00, and confirmation that said checks have been paid by the bank upon which they are drawn.
- (a) he/she is the sole owner of all rights, claims, damages, actions, causes of action, suits and defenses, as the case may be, at law or in equity, it has or may have or that were asserted by any party against any other party; and (b) he/she has not assigned, transferred, conveyed or purported to assign, transfer or convey to any person or entity any real property interest, right, claim, action, cause of action, suit (at law or in equity), defense, demand, debt, liability, account or obligation herein released or any part thereof, or which would, absent such assignment, transfer or conveyance, be subject to the releases set forth in this Agreement. In the event that any Party breaches such warranty and representation or in the event that any claim, demand or suit shall be made or instituted against any released party because of any such purported assignment, or transfer, the assigning or transferring party agrees to indemnify and hold such released party free and harmless from and against any such claim, demand or suit, including reasonable costs and attorneys' fees incurred in connection therewith.
- 14. <u>Non-defamation Agreement</u> Craig agrees not to defame Lois, either directly or indirectly, as defamation is defined by California law.
- 15. <u>Non-inducement Agreement</u> All Parties agree that they will not induce any third parties to undertake any illegal, defamatory, or harassing conduct against any Party.

16. Internet Posting(s)

- a. <u>Harassment</u> All Parties agree that they will not harass each other as that term is defined under California law. The Parties agree that Internet postings regarding any other Party constitute an element of harassment, and may constitute defamation, under this Agreement and under California law.
- b. Removal All Parties agree to immediately undertake efforts to remove from any website or publication any and all statements or materials related to, pertaining to, or referring to any other Party, and to refrain from posting or publishing any statement related to, pertaining to, or referring to any other Party. All Parties agree that within 10 days of execution of this Agreement that any such postings within the direct control of any party are to be deleted or removed. All Parties will undertake efforts within 10 days of execution of this Agreement to attempt to delete or remove any content from Internet sites not within the direct control of the Parties. Any such efforts will be made in writing, and shall be communicated within 24 hours of transmission via email and facsimile to counsel for all other Parties. Similarly, any response from any such Internet site not directly within the control of any Party shall be transmitted via email and facsimile to counsel for all other Parties within 24 hours of receipt. Failure of Internet sites not directly under the dominion or control of any Party to timely remove any infringing content does not constitute a breach by any Party, provided that reasonable efforts are made to remove or delete such content, and that all counsel has been apprised of such efforts and any response (or lack thereof).
- (i) All Parties agree to freely, voluntarily and willingly transmit to each other, by way of counsel listed below, any material that they request be removed or deleted from any Internet site pursuant to Paragraph 16(b).
- (ii) If, after the execution of this Agreement, a Party becomes aware of any content that is potentially infringing of Paragraph 16(b), such Party agrees, by and through its counsel of record herein, to make all other counsel aware of such infringement and to allow any Party, by and through its counsel, to request the removal or deletion of such content pursuant to this Agreement.
- 17. Non-Assignment Robert E. Swanson warrants and represents that he has not assigned or transferred to any person not a party to this Agreement any released matter or any right to any of the payments or other consideration provided herein pursuant to this Agreement. Robert agrees to defend, indemnify, and hold Craig and Lois harmless from any and all claims based on or in connection with or arising out the matters released herein, and any such assignment or transfer made, purported, or claimed.

18. General Provisions

- a. Acknowledgments Each of the Parties hereto respectively acknowledges and agrees that:
- (i) This Agreement is executed voluntarily by each of the Parties hereto and without any duress or undue influence on the part of, or on behalf of, any such Party; and

- (ii) Each of the Parties hereto has been represented by counsel of his/her own choice, or has had the opportunity to be represented by counsel and to seek advice in connection with the negotiations for, and in the preparation of, this Agreement and that it has read this Agreement and that he/she is fully aware of its contents and legal effects.
- b. <u>Recitals</u> The Recitals contained in this Agreement are made a part hereof and incorporated herein by this reference.
- c. <u>No Admission</u> This Agreement effects a settlement of claims which are contested and denied. Nothing herein shall be construed as an admission by any party of any of the Recitals of this Agreement or of any liability of any kind to the other party or parties except as created or referred to herein.
- d. <u>Applicable Law; Construction</u> This Agreement shall in all respects be interpreted, enforced and governed exclusively by and under the laws of the State of California. This Agreement is deemed to have been jointly prepared by the Parties, but according to the application of the rules of interpretation of contracts.
- e. <u>Binding Effect</u> This Agreement shall be binding on, and shall inure to the benefit of, the Parties hereto and their respective administrators, representatives, successors, transferees and assigns.
- f. <u>Severability</u> If any of the provisions of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, the validity and enforceability of the remaining provisions shall not be affected thereby.
- g. <u>Further Assurances</u> The Parties agree to do all acts and things and to make, execute, acknowledge and deliver such written documents, instructions and/or instruments in such form as shall from time to time be reasonably required to carry out the terms and provisions of this Agreement.
- h. Attorney's Fees If any Party hereto commences any action arising out of this Agreement, including, without limitation, any action to enforce or interpret this Agreement, the prevailing party in such action shall be entitled to recover their reasonable attorney's fees and other expenses incurred in such action. Any award of attorney's fees hereunder shall not be computed according to any court schedule, but instead, shall be in such amount as to fully reimburse all attorney's fees actually incurred in good faith, regardless of the size of the judgment, since it is the intention of all Parties to compensate fully the prevailing party for all attorney's fees paid or incurred in good faith.

- i. <u>Counterparts and Fax Signatures</u> This Agreement may be executed by the Parties in any number of counterparts, each of which shall be deemed to be an original and all of which, collectively, shall be deemed to be one and the same instrument. A fax or e-mail signature on this Agreement shall be deemed to be an original signature for purposes hereof.
- j. <u>Modification</u> This Agreement shall not be modified by either party by oral representation made before or after the execution of this Agreement. All modifications must be in writing and signed by the Parties.
- k. <u>Entire Agreement</u> This Agreement contains the entire agreement between and among the Parties hereto and supersedes all prior and contemporaneous discussions, negotiations, understandings and agreements, whether oral or written, express or implied, between or among them relating to the subject matter hereof.
- l. <u>Confidentiality</u> The Parties specifically understand that a material term of this Agreement is that the terms of the Agreement are confidential as to all third persons and entities, except as to effectuate the purposes of this Settlement Agreement only and specifically to effectuate the purposes of paragraphs 14, 15 and 16 herein. Except as required by law, the Parties will not disclose or cause to be disclosed the confidential terms to any third person or entity. The Parties agree that if they violate the confidentiality portion of the Agreement, an action may be brought to recover for all damages resulting from the breach, including, but not limited to, attorney's fees incurred in connection with such action.

IN WITNESS HEREOF, each of the Parties hereto has executed this Agreement on the date set forth opposite his or her name below.

Dated: December 10, 2008	By: Robert E. Swanson, an individual and as trustee of the Richard Swanson 2001 Supplemental Needs Trust
Dated: December 10 , 2008	By: Craig R. Swanson, an individual
Dated: December, 2008	By: Lois C. Yu, an individual

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(Signatures Continue Below)

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- i. <u>Counterparts and Fax Signatures</u> This Agreement may be executed by the Parties in any number of counterparts, each of which shall be deemed to be an original and all of which, collectively, shall be deemed to be one and the same instrument. A fax or e-mail signature on this Agreement shall be deemed to be an original signature for purposes hereof.
- j. Modification This Agreement shall not be modified by either party by oral representation made before or after the execution of this Agreement. All modifications must be in writing and signed by the Parties.
- k. Entire Agreement This Agreement contains the entire agreement between and among the Parties hereto and supersedes all prior and contemporaneous discussions, negotiations, understandings and agreements, whether oral or written, express or implied, between or among them relating to the subject matter hereof.
- 1. <u>Confidentiality</u> The Parties specifically understand that a material term of this Agreement is that the terms of the Agreement are confidential as to all third persons and entities, except as to effectuate the purposes of this Settlement Agreement only and specifically to effectuate the purposes of paragraphs 14, 15 and 16 herein. Except as required by law, the Parties will not disclose or cause to be disclosed the confidential terms to any third person or entity. The Parties agree that if they violate the confidentiality portion of the Agreement, an action may be brought to recover for all damages resulting from the breach, including, but not limited to, attorney's fees incurred in connection with such action.

IN WITNESS HEREOF, each of the Parties hereto has executed this Agreement on the date set forth opposite his or her name below.

Dated: December, 2008	Ву:
	Robert E. Swanson, an individual and as trustee of the Richard Swanson 2001 Supplemental Needs Trust
Dated: December, 2008	By: Craig R. Swanson, an individual
Dated: December <u>//</u> , 2008	Lois C. Yu, an individual
(Signatures Continue Below)	
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APPROVED AS TO FORM.

LAW OFFICES OF HENRY HARMELING IV, APC

Dated:	December, 2008	By: Henry Harmeling IV, Esq. Attorneys for Plaintiff Robert E. Swanson
		LAREYBI & ASSOCIATES
Dated:	December, 2008	By: Alex Lareybi Allan Cate Attorneys for Defendant/Cross-Complainant Lois C. Yu
Dated:	December \(\sum_ 2008\)	By: State Marco B. Mercaldo Stephan A. Lopez Attorneys for Defendant/Cross-Defendant Craig R. Swanson

APPROVED AS TO FORM.

LAW OFFICES OF HENRY HARMELING IV, APC

Dated:	December, 2008	By: Henry Harmeling IV, Esq. Attorneys for Plaintiff Robert E. Swanson
		LAREYBI & ASSOCIATES
Dated:	December ₩, 2008	By: Alex Lareybi Allan Cate Attorneys for Defendant/Cross-Complainant Lois C.
		Yu RYAN MERCALDO & WORTHINGTON, LLP
Dated:	December, 2008	Ву:
		Marco B. Mercaldo
		Stephan A. Lopez
		Attorneys for Defendant/Cross-Defendant Craig R. Swanson