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10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA

12 ETHAN YOUNG and GREG YOUNG,
13 Derivatively on Behalf of Nominal
14 Defendant, DPW HOLDINGS, INC.,

15 Plaintiffs,

16 vs.

17 MILTON C. AULT III, AMOS KOHN,
18 WILLIAM B. HORNE, and KRISTINE
19 AULT,

20 Defendants,

21 and

22 DPW HOLDINGS, INC.,

23 Nominal Defendant.
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Case No. 2:18-cv-06587-SJO-
PLA

**STIPULATION AND
AGREEMENT OF
SETTLEMENT**

1 This Stipulation and Agreement of Settlement dated as of February 24, 2020
2 (the “Stipulation”) is made and entered into by and among the following Parties: (i)
3 Ethan Young and Greg Young (“Plaintiffs”), plaintiffs in the above-captioned
4 shareholder derivative action; (ii) nominal defendant DPW Holdings, Inc. (“DPW” or
5 the “Company”); and (iii) Milton C. Ault III, Amos Kohn, William B. Horne, and
6 Kristine Ault (collectively, the “Individual Defendants,” and together with DPW, the
7 “Defendants”), by and through their counsel. Subject to the approval of the Court,
8 the Stipulation is intended by Plaintiffs and Defendants (together, the “Parties”) to
9 fully, finally and forever resolve, discharge, and settle the Action (defined below) and
10 the Released Claims (defined below), upon and subject to the terms and conditions
11 hereof.

12 **I. THE ACTION**

13 WHEREAS, Plaintiffs’ Counsel (defined below) performed an extensive and
14 thorough investigation relating to the claims and the underlying events alleged in the
15 Action, including, but not limited to, reviewing and analyzing public filings with the
16 United States Securities and Exchange Commission (“SEC”) and other publicly
17 available information.

18 WHEREAS, Plaintiffs commenced the above-captioned action against the
19 Individual Defendants in the U.S. District Court for the Central District of California
20 (the “Court”), asserting claims derivatively on behalf of DPW (the “Action”).
21 Plaintiffs filed their first complaint on July 31, 2018 (“Initial Complaint”), asserting,
22 among other things, that the Individual Defendants had breached their fiduciary
23 duties. The detailed Initial Complaint, comprised of 332 paragraphs and 114 pages,
24 was filed against the Individual Defendants, as well as the following current board of
25 directors: Jeff Bentz, Robert O. Smith and Mordechai Rosenberg.

26 WHEREAS, on November 28, 2018, Defendants filed a Motion to Dismiss the
27 Initial Complaint. The motion to dismiss was fully briefed and on February 25, 2019,
28 the Court granted, and denied, in part the Motion to Dismiss the Initial Complaint

1 with leave to amend.

2 WHEREAS, on March 11, 2019, Plaintiffs filed an Amended Complaint (the
3 “Amended Complaint”).

4 WHEREAS, on March 25, 2019, the Defendants filed a Motion to Dismiss the
5 Amended Complaint. The Parties fully briefed the Motion to Dismiss the Amended
6 Complaint.

7 WHEREAS, on May 21, 2019, the Court issued an order granting, and denying,
8 in part the Motion to Dismiss the Amended Complaint (the “May 21, 2019 Order”),
9 which, among other things, the Court: (i) dismissed Jeff Bentz, Robert O. Smith and
10 Mordechai Rosenberg; and (ii) held, *inter alia*, that with respect to the other
11 Defendants named in the Amended Complaint, Plaintiffs (a) adequately pled demand
12 futility, (b) sufficiently alleged claims for breach of fiduciary duty related to certain
13 transactions, and (c) adequately pled a claim for unjust enrichment. The Motion to
14 Dismiss the Amended Complaint was granted with leave to amend. Plaintiffs chose
15 not to file a second amended complaint and proceed on the claims asserted in the
16 Amended Complaint.

17 WHEREAS, the May 21, 2019 Order also permitted Plaintiffs’ breach of
18 fiduciary duty allegations surrounding certain transactions to proceed, including: (i)
19 claims based on related party transactions; (ii) claims based on loans and other debt
20 financing; and (iii) claims based on stock issuances.

21 WHEREAS, on June 27, 2019, Defendants filed an answer to the Amended
22 Complaint.

23 WHEREAS, Plaintiffs propounded Requests for the Production of Documents
24 on August 7, 2019, to which Defendants timely served responses and objections on
25 September 6, 2019.

26 WHEREAS, on October 21, 2019, the Parties and the Defendants’ directors
27 and officers’ liability insurer participated in a day-long mediation in New York, New
28 York (the “Mediation”), which was presided over by Jed D. Melnick, Esq. of JAMS

1 (the “Mediator”). At the Mediation, the Parties reached an agreement in principle with
2 respect to the material terms of the corporate governance reforms to be instituted by
3 DPW. As consideration for the Settlement (defined below), DPW will institute
4 certain corporate governance reforms, the terms of which are fully set forth in Exhibit
5 A attached hereto (the “Reforms”).

6 WHEREAS, only after agreeing in principle to the material terms of the
7 Reforms to be instituted by DPW did the Parties begin to negotiate, with the assistance
8 of the Mediator, the attorneys’ fee and expense award to be paid to Plaintiffs’ counsel.
9 The Parties did not reach an agreement on attorneys’ fees and expenses at Mediation.

10 WHEREAS, following Mediation, with the assistance of the Mediator, the
11 Parties continued to discuss the attorneys’ fee and expense award to be paid by the
12 Defendants’ directors and officers’ liability insurance. On October 28, 2019, an
13 agreement was reached on the issue of attorneys’ fee and expense award to be paid to
14 Plaintiffs’ counsel.

15 WHEREAS, as a result of the extensive, arm’s length negotiations among the
16 Parties, on January 21, 2020 the Parties finalized the complete terms of the Reforms
17 as set forth in Exhibit A attached hereto, which includes the material terms that the
18 Parties agreed to at Mediation.

19 WHEREAS, although Plaintiffs believe their claims have merit, they recognize
20 the expense and length of continued proceedings necessary to prosecute such claims
21 through trial and subsequent appeals. Plaintiffs’ Counsel also have taken into account
22 the costs and risks inherent in proceeding further with litigation. Moreover,
23 Defendants, without an agreement to resolve this litigation, will continue to
24 vigorously defend the claims. Therefore, Plaintiffs and Plaintiffs’ Counsel believe
25 that the Settlement, on the terms and conditions set forth herein, is fair, reasonable,
26 adequate, and in the best interests of DPW and its shareholders.

27 WHEREAS, Defendants have denied and continue to deny any and all
28 wrongdoing whatsoever and maintain that their conduct was at all times proper and

1 in compliance with applicable provisions of law. Defendants have denied and
2 continue to deny each and all of the claims alleged by Plaintiffs in the Action and
3 deny that they have committed any of the wrongful acts or violations of law that are
4 alleged in the Action, including without limitation that they committed any breach of
5 fiduciary duty. In addition, Defendants believe that they have meritorious defenses
6 to all claims alleged in the Action. Nonetheless, Defendants have agreed to enter into
7 the Settlement to avoid the expense, distraction, and time associated with continuing
8 the Action. Nothing in this Stipulation shall be construed or deemed to be an
9 admission or concession on the part of any Defendant with respect to any claim, fault,
10 liability, wrongdoing, or damage whatsoever, or with respect to the validity of the
11 defenses that Defendants have asserted or may assert.

12 **NOW, THEREFORE, IT IS STIPULATED AND AGREED**, by and among
13 the Parties, by and through their respective undersigned counsel, as follows:

14 **II. CERTAIN DEFINITIONS**

15 **1.** To the extent not otherwise defined herein, as used in this Stipulation,
16 the following terms have the meanings specified below. In the event of any
17 inconsistency between any definition set forth below and any definition set forth in
18 any document attached as an exhibit to the Stipulation, the definition set forth below
19 shall control.

20 **a.** “**Action**” means the above-captioned derivative action styled
21 *Young et al. v. Ault et al.*, No. 2:18-cv-06587-SJO-PLA.

22 **b.** “**Court**” means the U.S. District Court for the Central District of
23 California.

24 **c.** “**Defendants**” means the Individual Defendants and DPW.

25 **d.** “**Defendants’ Counsel**” means Pacific Premier Law Group and
26 Sichenzia Ross Ference LLP.

27 **e.** “**Effective Date**” means the first date by which all of the events
28 and conditions specified in Paragraph 15 of this Stipulation have been met and have

1 occurred.

2 **f. “Execution Date”** means the date that this Stipulation has been
3 signed by all the signatories hereto through their counsel.

4 **g. “Final”** means, with respect to any order of court, including,
5 without limitation, the Judgment, that such order represents a final and binding
6 determination of all issues within its scope and is not subject to further review on
7 appeal or otherwise. Without limitation, an order or judgment becomes “Final” when
8 it has not been reversed, vacated, or modified in any way and is no longer subject to
9 appellate review, either because: (a) no appeal has been filed and the prescribed time
10 for commencing any appeal has expired; or (b) an appeal has been filed and the Court
11 of Appeals has either affirmed the underlying order or judgment in its entirety or
12 dismissed that appeal, and the time for any reconsideration or further appellate review
13 has passed; or (c) the Supreme Court has granted review and that Court has either
14 affirmed the underlying order or judgment in its entirety, or affirmed the Court of
15 Appeals’ decision affirming the order or judgment in its entirety or dismissing the
16 appeal. For purposes of this Paragraph, an “appeal” includes appeals as of right,
17 discretionary appeals, interlocutory appeals, proceedings involving writs of certiorari
18 or mandamus, and any other proceedings seeking review, alteration, amendment, or
19 appeal of a court’s order, but shall not include any appeal that concerns only the issue
20 of the Fee and Expense Award (defined below) or any Service Award (defined below)
21 to Plaintiffs. Any appeal or proceeding relating solely to these excluded issues shall
22 not in any way delay or affect the time set forth above for the Judgment to become
23 Final, or otherwise preclude the Judgment from becoming Final.

24 **h. “Final Hearing”** means the hearing to determine whether the
25 proposed Settlement embodied by this Stipulation is fair and reasonable, and whether
26 the Court should enter the Judgment approving the proposed Settlement.

27 **i. “Immediate Family”** means an individual’s spouse, domestic
28 partner, parents, grandparents, children and grandchildren.

1 **j.** “**Individual Defendants**” means collectively Milton C. Ault III,
2 Amos Kohn, William B. Horne, and Kristine Ault.

3 **k.** “**Judgment**” means the judgment to be entered by the Court,
4 substantially in the form attached as Exhibit E hereto.

5 **l.** “**DPW**” or the “**Company**” means DPW Holdings, Inc.

6 **m.** “**DPW Shareholder**” means any Person with an ownership or
7 beneficial interest in DPW common stock.

8 **n.** “**Notice**” means the Notice of Proposed Settlement, substantially
9 in the form attached hereto as Exhibit C.

10 **o.** “**Parties**” means collectively Plaintiffs and Defendants.

11 **p.** “**Person**” means any individual, corporation, limited liability
12 company, professional corporation, partnership, limited partnership, limited liability
13 partnership, association, joint stock company, joint venture, estate, legal
14 representative, trust or trustee, unincorporated association, government or any
15 political subdivision or agency thereof, and any other type of legal, business or
16 political entity, together with the spouses, heirs, predecessors, successors,
17 representatives, or assigns of any of the foregoing.

18 **q.** “**Plaintiffs**” means collectively Plaintiff Ethan Young and
19 Plaintiff Greg Young.

20 **r.** “**Plaintiffs’ Counsel**” means Faruqi & Faruqi, LLP.

21 **s.** “**Preliminary Approval Order**” means the [Proposed]
22 Preliminary Approval Order, in the form annexed hereto as Exhibit B, or such other
23 substantially similar form agreed to by the Parties, as entered by the Court.

24 **t.** “**Reforms**” means the corporate governance reforms set forth in
25 Exhibit A hereto.

26 **u.** “**Released Claims**” means any and all claims, rights, demands,
27 causes of action, or liabilities of any kind, nature, and character whatsoever, whether
28 based on federal, state, local, statutory or common law, or any other law, rule or

1 regulation, whether foreign or domestic, whether fixed or contingent, accrued or
2 unaccrued, liquidated or unliquidated, at law or in equity, matured or unmatured,
3 whether known or unknown, including, without limitation, Unknown Claims (as
4 defined below) (collectively “Claims”) against any of the Released Persons that have
5 been, could have been, or could in the future be, asserted in the Action or in any other
6 forum or proceeding by any Person (including but not limited to Plaintiffs)
7 derivatively on behalf of DPW, or by DPW itself, against any of the Released Persons
8 that arise out of or are related, directly or indirectly, in any way to:

- 9 (a) any of the facts, matters, occurrences, actions, practices, conduct, events,
10 transactions, statements, disclosures, representations,
11 misrepresentations, omissions, or failures to act that were involved, set
12 forth, referred to, asserted, or alleged, in the Action, including, but not
13 limited to, claims for breach of fiduciary duty, unjust enrichment, or
14 other claims that could have been raised in the Action; or,
- 15 (b) that would have been barred by res judicata, collateral estoppel, or any
16 other doctrine of issue or claim preclusion had the Action been fully
17 litigated to a final judgment,
- 18 (c) for the avoidance of doubt, the Released Claims do not cover, settle or
19 release any direct claims held by any current, former, or future
20 stockholder of DPW,

21 *provided that* Released Claims shall not include claims to enforce the Settlement.

22 v. “**Released Persons**” means Defendants, the Company, and any
23 entity in which the Company has a controlling interest, as well as their respective
24 current and former parents, affiliates, subsidiaries, officers, directors, agents,
25 successors, predecessors, assigns, assignees, partnerships, partners, committees, joint
26 ventures, trustees, trusts, employees, immediate family members, insurer and
27 reinsurers (in their capacities as such), consultants, experts, and attorneys.

28 w. “**Settlement**” means the settlement embodied in this Stipulation.

1 x. “**Summary Notice**” means the Summary Notice of Proposed
2 Settlement, substantially in the form attached hereto as Exhibit D.

3 y. “**Unknown Claims**” means any Claims that Plaintiffs, DPW or
4 any DPW Shareholder (claiming in the right of, or on behalf of, the Company) does
5 not know or suspect to exist in his, her, or its favor at the time of the release of the
6 Released Persons which, if known by him, her, or it, might have affected his, her, or
7 its settlement with and release of the Released Persons, or might have affected his,
8 her, or its decision not to object to this Settlement. Unknown Claims include those
9 Claims in which some or all of the facts comprising the Claim may be unsuspected,
10 or even undisclosed or hidden. With respect to any and all Released Claims, including
11 Unknown Claims, Plaintiffs and DPW stipulate and agree that, upon the Effective
12 Date, they shall expressly waive, and every DPW Shareholder shall be deemed to
13 have, and by operation of the Judgment shall have, expressly waived the provisions,
14 rights, and benefits of California Civil Code § 1542, which provides:

15 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS**
16 **THAT THE CREDITOR OR RELEASING PARTY DOES NOT**
17 **KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT**
18 **THE TIME OF EXECUTING THE RELEASE AND THAT, IF**
 KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY
 AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR
 OR RELEASED PARTY.

19 Plaintiffs and DPW shall expressly waive, and every DPW Shareholder shall be
20 deemed to have, and by operation of the Judgment shall have, expressly waived any
21 and all provisions, rights, and benefits conferred by any law of any state or territory
22 of the United States, or principle of common law or foreign law, which is similar,
23 comparable or equivalent in effect to California Civil Code § 1542.

24 Plaintiffs, Defendants, DPW, and/or the current DPW stockholders may
25 hereafter discover facts in addition to or different from those which he, she, or it now
26 knows or believes to be true with respect to the Released Claims but, upon the Court’s
27 entry of the Judgment, Plaintiffs, Defendants, DPW, and each of the current DPW
28 shareholders shall be deemed to have, and by operation of the Judgment shall have,

1 fully, finally, and forever settled any and all Released Claims without regard to the
2 subsequent discovery or existence of such different or additional facts. Plaintiffs,
3 Defendants, and the Company acknowledge that the foregoing waiver was separately
4 bargained for and a key element of the Settlement.

5 **III. CORPORATE GOVERNANCE REFORMS AND PRIOR ACTIONS**
6 **TAKEN BY DPW**

7 2. Not later than thirty (30) days after the Effective Date, DPW's board of
8 directors will adopt by resolution, or other means as appropriate, the corporate
9 governance Reforms set forth in Exhibit A hereto, and incorporated by reference
10 herein, and the Company will maintain the Reforms for at least five (5) years
11 thereafter, subject to certain terms and conditions set forth in Exhibit A. Defendants
12 acknowledge that in the course of the Parties' negotiations at arm's length, the
13 Reforms were first presented to the Defendants as part of the Action, and as a result
14 of the filing, pendency, and settlement of the Action, DPW agreed to implement the
15 Reforms. The Parties agree that the Reforms confer a material benefit to DPW
16 Shareholders.

17 3. To the extent that (a) any changes, modifications, and improvements to
18 DPW's corporate governance and business ethics practices, and (b) any changes to
19 DPW's Board of Directors or management personnel were made by the Company
20 following the initiation of the Action, DPW acknowledges that the filing and
21 pendency of the Action comprised a contributing factor thereto. These changes
22 include, but are not limited to, the prior actions taken by DPW that are set forth in
23 Exhibit A hereto.

24 4. DPW further acknowledges that the filing and pendency of the Action
25 comprised a material contributing factor to any changes, modifications, and
26 improvements to DPW's corporate governance and business ethics practices made up
27 to the Effective Date.

28

1 **IV. PROCEDURE FOR IMPLEMENTING THE SETTLEMENT**

2 5. Promptly after the Execution Date, counsel for Plaintiffs shall submit the
3 Stipulation together with its Exhibits to the Court, and shall make an application,
4 which shall be unopposed by Defendants, for entry of the Preliminary Approval Order
5 substantially in the form of Exhibit B hereto. Such application shall be supported by
6 a memorandum of law submitted by Plaintiffs' Counsel. The application shall
7 request, *inter alia*, the preliminary approval of the Settlement set forth in the
8 Stipulation, approval of notice to DPW Shareholders in the form attached as Exhibit
9 C ("Notice") and Exhibit D ("Summary Notice") hereto, as well as a date for a hearing
10 at which the Court will decide whether to grant final approval of the Settlement
11 ("Final Hearing"). The Notice shall include the general terms of the proposed
12 Settlement set forth in the Stipulation, the agreed-upon Fee and Expense Award
13 (defined below), contact information for Plaintiffs' Counsel, and the date of the Final
14 Hearing.

15 6. Subject to Court approval, within ten (10) days of the Court's entry of
16 the Preliminary Approval Order, DPW shall: (a) post a copy of the Stipulation (with
17 Exhibit A attached hereto) and Notice on the Investor Relations portion of the DPW
18 website; (b) cause a Current Report on Form 8-K to be filed with the SEC that attaches
19 the contents of the Summary Notice, and provides a link in the 8-K to the Stipulation
20 and Notice that shall be posted on the Investor Relations portion of DPW's website;
21 and (c) publish the contents of the Summary Notice via a press release to be widely
22 distributed by a reputable press release distribution service that includes a link to the
23 Stipulation and Notice that shall be posted on the Investor Relations portion of DPW's
24 website. All costs of such notice shall be paid by the Individual Defendants and/or
25 its insurer. The Parties believe the content and manner of such notice procedure
26 constitutes adequate and reasonable notice to DPW Shareholders pursuant to
27 applicable law and due process.

28

1 **V. ATTORNEYS' FEES**

2 7. In recognition of the material benefits provided to DPW and DPW
3 Shareholders as a result of the settlement of the Action, the Company, acting through
4 its Board of Directors, has agreed to cause Defendants' directors and officers liability
5 insurance carrier to pay Plaintiffs' Counsel an award of attorneys' fees and expenses
6 in the total amount of Six-Hundred Thousand Dollars (\$600,000.00), subject to
7 approval by the Court ("Fee and Expense Award"). The Parties mutually agree that
8 the Fee and Expense Award is fair and reasonable in light of the substantial benefits
9 conferred upon DPW and DPW Shareholders by the Reforms. Defendants agree not
10 to oppose Plaintiffs' application for the Fee and Expense Award.

11 8. The Fee and Expense Award shall be transferred via wire to a bank
12 account designated by Plaintiffs' Counsel or by check sent to Plaintiffs' Counsel
13 within ten (10) business days after both of the following have occurred: (a) the Court
14 has entered Judgment and the thirty (30) day appeal period has expired, whether an
15 appeal has been filed or not; and (b) Plaintiffs' Counsel has provided Defendants'
16 Counsel all necessary payment details to accomplish payment of the Fee and Expense
17 Award by wire transfer or check.

18 9. Payment of the Fee and Expense Award in the amount approved by the
19 Court shall constitute final and complete payment for Plaintiffs' Counsel's attorneys'
20 fees and expenses that have been incurred or will be incurred in connection with the
21 filing and prosecution of the Action and the resolution of the claims alleged therein.
22 Defendants shall have no obligation to make or cause to be made any payment to
23 Plaintiffs' Counsel other than the Fee and Expense Award in the amount approved by
24 the Court. In the event of an appeal and/or further proceedings on remand, or
25 successful collateral attack, which results in the Judgment or the Fee and Expense
26 Award being overturned or substantially modified, Plaintiffs' Counsel and their
27 successors shall be obligated to repay to DPW's insurance carrier, within fifteen (15)
28 business days, the portion of the Fee and Expense Award paid by or on behalf of

1 Defendants that they received and that was ultimately not awarded to Plaintiffs’
2 Counsel, together with any accrued interest thereon. Plaintiffs’ Counsel is subject to
3 the Court’s jurisdiction for the purposes of enforcing this Paragraph or any other
4 provisions related to the Fee and Expense Award

5 **10.** Except as otherwise provided herein, each of the Parties shall bear his,
6 her, or its own costs and attorneys’ fees related to the Action.

7 **11.** In light of the material benefits they have helped to create for DPW and
8 all DPW Shareholders, each of the Plaintiffs may apply for Court-approved service
9 awards in the amount of Two-Thousand Five Hundred Dollars (\$2,500.00) (“Service
10 Awards”). The Service Awards to each of the Plaintiffs, to the extent that it is applied
11 for and approved in whole or part, shall be funded solely from the Fee and Expense
12 Award distributed to Plaintiffs’ Counsel, to the extent that the Fee and Expense Award
13 is approved in whole or in part. Defendants shall take no position on the Service
14 Awards and shall have no obligation to pay them.

15 **VI. JUDGMENT APPROVING THE SETTLEMENT**

16 **12.** At the Final Hearing, Plaintiffs’ Counsel shall request entry of the
17 Judgment, substantially in the form attached hereto as Exhibit E.

18 **VII. RELEASES**

19 **13.** Upon the Effective Date, Plaintiffs, DPW, and all current DPW
20 Shareholders, on behalf of themselves, and each of their respective personal
21 representatives, Immediate Family members, trustees, heirs, executors,
22 administrators, parent entities, subsidiaries, associates, affiliates, predecessors,
23 successors and assigns, and any other Person claiming (now or in the future) to be
24 acting for, through, or on behalf of any of them, shall be deemed to have, and by
25 operation of the Judgment shall have, fully, finally, and forever released, relinquished,
26 settled, and discharged all Released Claims against the Released Persons and shall be
27 permanently barred and enjoined from instituting, commencing, participating in,
28 continuing, maintaining, asserting, or prosecuting any Released Claims against any

1 of the Released Persons, or assisting any Person in instituting, commencing,
2 participating in, continuing, maintaining, asserting or prosecuting any Released
3 Claims against any of the Released Persons. Nothing herein shall in any way impair
4 or restrict the rights of any of the Parties to enforce the terms of this Stipulation.

5 **14.** Upon the Effective Date, the Released Persons shall be deemed to have,
6 and by operation of the Judgment shall have, fully, finally, and forever released,
7 relinquished, and discharged Plaintiffs and Plaintiffs' Counsel from all claims arising
8 out of, relating to, or in connection with the institution, prosecution, assertion,
9 settlement, or resolution of the Released Claims, including all claims that each
10 Released Person does not know or suspect to exist in his, her, or its favor at the time
11 of the release of Plaintiffs and Plaintiffs' Counsel, which, if known by him, her, or it,
12 might have affected his, her, or its settlement with and release of Plaintiffs and
13 Plaintiffs' Counsel, or might have affected his, her, or its decision not to object to this
14 Settlement. Nothing herein shall in any way impair or restrict the rights of any of the
15 Parties to enforce the terms of this Stipulation.

16 **VIII. CONDITIONS OF SETTLEMENT; EFFECT OF DISAPPROVAL,**
17 **CANCELLATION, OR TERMINATION**

18 **15.** The Effective Date of this Stipulation, and the Settlement incorporated
19 herein, shall be the first date on which all of the following events have occurred:

20 (a) Plaintiffs' Counsel and Defendants' Counsel have executed this
21 Stipulation;

22 (b) The Court has entered the Preliminary Approval Order as
23 described in Paragraph 5 hereof;

24 (c) The Court has entered the Judgment, substantially in the form of
25 Exhibit E attached hereto, or such other substantially similar form agreed to by the
26 Parties;

27 (d) The Judgment has become Final; and
28

1 (e) No Parties have given notice of their election to terminate the
2 Settlement pursuant to Paragraph 16 below, and the time for doing so has expired.

3 **16.** The Parties shall each have the right to terminate the Settlement, and
4 thereby this Stipulation, by providing written notice of their election to do so
5 (“Termination Notice”) to all other Parties hereto within thirty (30) calendar days of:

6 (a) the Court’s declining to enter the Preliminary Approval Order in
7 any respect that the terminating Party reasonably and in good faith believes is
8 materially adverse to it;

9 (b) the Court’s refusing to approve the Settlement as set forth in this
10 Stipulation in any respect that the terminating Party reasonably and in good faith
11 believes is materially adverse to it;

12 (c) the Court’s declining to enter the Judgment in any respect that the
13 terminating Party reasonably and in good faith believes is materially adverse to it;

14 (d) the date upon which the Judgment is modified or reversed by the
15 Court, the Ninth Circuit Court of Appeals, or the U.S. Supreme Court in any respect
16 that the terminating Party reasonably and in good faith believes is materially adverse
17 to it; or

18 (e) the date upon which an alternative judgment is modified or
19 reversed by the Court, the Ninth Circuit Court of Appeals, or the Supreme Court in
20 any respect that the terminating Party reasonably and in good faith believes is
21 materially adverse to it.

22 Notwithstanding anything above, Plaintiffs may not terminate the Settlement
23 based on the amount of the Fee and Expense Award and/or Service Awards, if any,
24 awarded by the Court.

25 **17.** In the absence of any of the events enumerated in Paragraph 16 above,
26 no Party shall have the right to terminate the Stipulation for any reason.

27 **18.** If the Settlement is terminated by Plaintiffs or Defendants pursuant to
28 Paragraph 16 (a “Termination”): (a) the Settlement shall be without force and effect

1 upon the rights of the Parties, and none of its terms (other than the terms of this
2 Paragraph and Paragraphs 21 and 32) shall be effective or enforceable;
3 (b) the Parties shall revert to their litigation positions immediately prior to the
4 Execution Date, and no claims, rights, or defenses, whether legal or equitable, of any
5 of the Parties hereto that existed prior to executing this Stipulation shall be diminished
6 or prejudiced in any way; and (c) within ten (10) business days from the date of such
7 Termination, Plaintiffs' Counsel shall return to DPW any and all sums paid pursuant
8 to Paragraph 8 above, and all interest, if any, earned on such sums.

9 **IX. NO ADMISSIONS**

10 **19.** The Parties intend the Settlement as described herein to be a final and
11 complete resolution of all disputes between them with respect to the Action and to
12 compromise claims that are contested. Entry into this Settlement shall not be deemed
13 an admission by Defendants hereto as to the merits of any claim or defense or any
14 allegation made in the Action.

15 **20.** The Defendants make no admission of liability or any form of
16 wrongdoing whatsoever, deny that any of them have committed any violations of law,
17 deny that any of the Individual Defendants have committed any breaches of duty to
18 DPW, the Plaintiffs, DPW Shareholders, or anyone else, or aided and abetted the
19 same, and expressly maintain that they diligently and scrupulously complied with any
20 and all fiduciary and other legal duties.

21 **21.** This Stipulation, whether or not it is consummated and whether or not it
22 is terminated, any of its provisions, any negotiations, proceedings, or agreements
23 relating to the Stipulation and the Settlement, all matters arising in connection with
24 such negotiations, proceedings, or agreements, and all acts performed or documents
25 executed pursuant to or in furtherance of this Stipulation:

26 a) shall not be offered or received against any of the Released
27 Persons as evidence of a presumption, concession, or admission of any kind;

28

1 b) shall not be offered or received against any of the Released
2 Persons as evidence of an admission by any of those Released Persons with respect
3 to the truth of any fact alleged in the Action or the validity of any Released Claims,
4 or the deficiency of any defense that has been or could have been asserted, or of any
5 liability, negligence, fault, or wrongdoing of the Released Persons;

6 c) shall not be offered or received against the Released Persons as
7 evidence of any fault, misrepresentation, omission, or other actionable conduct with
8 respect to any statement or written document approved or made by any of the
9 Released Persons;

10 d) shall not be offered or received against the Released Persons as
11 evidence of any liability, negligence, fault or wrongdoing, or in any way referred to
12 for any other reason as evidence against any of the Released Persons, in any other
13 civil, criminal, or administrative action or proceeding, other than such proceedings as
14 may be necessary to effectuate the provisions of this Stipulation; provided, however,
15 that if this Stipulation is approved by the Court, the Released Persons may refer to it
16 to effectuate the release of Released Claims and other liability protections granted
17 them hereunder;

18 e) shall not be construed against any of the Released Persons as an
19 admission, concession, or presumption that the consideration to be given hereunder
20 represents the amount that could be or would have been recovered after trial;

21 f) shall not be construed as or received in evidence as an admission,
22 concession, or presumption against Plaintiffs that any of their claims are without
23 merit, or that any defenses asserted by the Defendants have any merit; and

24 g) shall not, in the event of a Termination, be used by any Party for
25 any purpose in any trial in the Action.

26 Any Party may file or introduce this Stipulation and/or the Judgment in (i) any
27 action or proceeding that may be brought against them in order to support a defense
28 or counterclaim based on principles of *res judicata*, collateral estoppel, release, good

1 faith settlement, judgment bar, or reduction, or any other theory of claim preclusion
2 or issue preclusion or similar defense or counterclaim or (ii) in any action or
3 proceeding related to rights or claims of Defendants to indemnification and/or
4 advancement in connection with the Action.

5 **X. MISCELLANEOUS PROVISIONS**

6 **22.** The Parties: (a) acknowledge that it is their intent to consummate the
7 Settlement; and (b) agree to cooperate to the extent reasonably necessary to effectuate
8 and implement all terms and conditions of the Stipulation and to exercise their best
9 efforts to accomplish the foregoing terms and conditions of the Stipulation.

10 **23.** Pending final determination of whether the Stipulation should be
11 approved, Plaintiffs and all DPW Shareholders are barred and enjoined from
12 commencing or prosecuting any action asserting any Released Claims against any
13 Released Persons.

14 **24.** The Stipulation may be amended or modified only by a written
15 instrument signed by or on behalf of all Parties or their respective successors-in-
16 interest. The Parties reserve the right, upon the agreement of all of them and subject
17 to the Court's approval, to make any reasonable extensions of time or modifications
18 to the Exhibits that might be necessary to carry out any of the provisions of this
19 Stipulation.

20 **25.** The Stipulation, including its Exhibits, constitutes the entire agreement
21 among the Parties and no representations, warranties, or inducements have been made
22 to any Party concerning the Stipulation other than the representations, warranties, and
23 covenants contained and memorialized in such documents. Any and all prior or
24 contemporaneous discussions, negotiations, agreements, commitments, and
25 understandings related thereto are superseded hereby. The Parties understand and
26 acknowledge that, except for the matters expressly represented herein, the facts or law
27 with respect to which this Stipulation is entered into may turn out to be other than, or
28 different from, the facts now known to each Party or believed by such Party to be true;

1 each Party therefore expressly assumes the risk of the facts or law turning out to be
2 different, and agrees that this Stipulation shall be in all respects effective and not
3 subject to termination by reason of any such different facts or law. Except as
4 otherwise provided herein, each Party shall bear its own costs and attorneys' fees.

5 **26.** The Stipulation may be executed in one or more counterparts. All
6 executed counterparts and each of them shall be deemed to be one and the same
7 instrument. A complete set of executed counterparts shall be filed with the Court.
8 The Parties agree that facsimile or scanned signatures shall have the same force and
9 effect as original signatures.

10 **27.** The Stipulation shall be binding upon, and inure to the benefit of, the
11 heirs, executors, administrators, trustees, successors, and assigns of the Parties,
12 including any corporation or other entity into or with which any Party merges,
13 consolidates, or reorganizes.

14 **28.** The Court shall retain jurisdiction with respect to implementation and
15 enforcement of the terms of the Stipulation, and all Parties and their counsel hereto
16 submit to the jurisdiction of the Court for purposes of implementing and enforcing
17 the Settlement embodied in the Stipulation.

18 **29.** Nothing in this Stipulation, Settlement, or the negotiations or
19 proceedings relating to the foregoing is intended to or shall be deemed to constitute a
20 waiver of any applicable privilege or immunity, including, without limitation, the
21 accountants' privilege, the attorney-client privilege, the joint defense privilege, or the
22 work-product privilege. All information transmitted between Plaintiffs' Counsel and
23 Defendants' Counsel in connection with this Settlement shall be inadmissible in any
24 proceeding in any federal or state court or other tribunal or otherwise, in accordance
25 with Rule 408 of the Federal Rules of Evidence as if such Rule applied in all respects
26 in any such proceeding or tribunal unless necessary to effectuate the terms of this
27 Settlement.

28 **30.** This Stipulation and the Settlement contemplated by it, and all disputes

1 arising out of or relating to the Stipulation and Settlement, shall be construed and
2 enforced in accordance with, and governed by, the substantive laws and procedural
3 rules of the State of California without giving effect to conflicts of law principles,
4 except to the extent that federal law requires application of federal law. Any dispute
5 relating to this Stipulation or the Settlement shall be brought exclusively in the Court.

6 **31.** This Stipulation should not be construed more strictly against one Party
7 than another merely by virtue of the fact that it, or any part of it, may have been
8 prepared by counsel for one of the Parties, it being recognized that the Stipulation is
9 the result of arm's length negotiations between the Parties, and all Parties have
10 contributed substantially and materially to the preparation of the Stipulation.

11 **32.** All agreements by, between, or among the Parties, their counsel and their
12 other advisors as to the confidentiality of information exchanged between or among
13 them shall remain in full force and effect, and shall survive the execution and any
14 termination of this Stipulation and the final consummation of the Settlement, if finally
15 consummated.

16 **33.** In the event any proceedings by or on behalf of DPW, whether voluntary
17 or involuntary, are initiated under any chapter of the U.S. Bankruptcy Code, including
18 any act of receivership, asset seizure, or similar federal or state law action
19 ("Bankruptcy Proceedings"), the Parties agree to use their reasonable best efforts to
20 obtain all necessary orders, consents, releases, and approvals for effectuation of the
21 Stipulation and Court approval of the Settlement in a timely and expeditious manner,
22 to the extent consistent with applicable law. If any Bankruptcy Proceedings by or on
23 behalf of DPW are initiated prior to the payment of the Fee and Expense Award, the
24 Settling Parties agree that all dates and deadlines in the Action, if any, or any dates
25 and deadlines associated with the appeal of the Action, if any, will be extended for
26 such periods of time as are necessary to attempt to obtain necessary orders, consents,
27 releases, and approvals from the bankruptcy court to carry out the terms and
28 conditions of this Settlement, to the extent consistent with applicable law.

1 **34.** The Parties intend this Stipulation and the Settlement to be a final and
2 complete resolution of all disputes asserted or which could be asserted by Plaintiffs
3 and all DPW shareholders against the Released Persons with respect to the Released
4 Claims. Accordingly, the Parties agree not to assert under Rule 11 of the Federal
5 Rules of Civil Procedure or any similar law, rule, or regulation, that the Action was
6 brought or defended in bad faith or without a reasonable basis. No party shall assert
7 any claims of any violation of Rule 11 of the Federal Rules of Civil Procedure relating
8 to the institution, prosecution, defense, or settlement of this Action. The Parties agree
9 that the amounts paid and the other terms of the Settlement were negotiated at arm's-
10 length and in good faith by the Parties, including through a mediation process
11 supervised and conducted by the Mediator, and reflect the Settlement that was reached
12 voluntarily after extensive negotiations and consultation with experienced legal
13 counsel, who were fully competent to assess the strengths and weaknesses of their
14 respective clients' claims or defenses.

15 **35.** Any written notice required pursuant to or in connection with this
16 Stipulation shall be addressed to the Parties' counsel as designated and identified
17 below, and sent by both email and overnight mail.

18 **36.** The waiver by one Party of any breach of this Stipulation by any other
19 Party shall not be deemed a waiver of any other prior or subsequent breach of this
20 Stipulation.

21 **37.** The captions contained in this Stipulation are inserted only as a matter
22 of convenience and in no way define, limit, extend or describe the scope of the
23 Stipulation or the intent of any provision.

24 **38.** All of the Exhibits to this Stipulation are material and integral parts
25 hereof and are fully incorporated herein by this reference.

26 **39.** Each counsel or other Person executing the Stipulation or any of its
27 Exhibits on behalf of any Party hereto hereby warrants that such Person has the full
28 authority to do so.

EXHIBIT A

DPW CORPORATE GOVERNANCE REFORMS

The Board of Directors (the “**Board**”) of DPW Holdings, Inc. (the “**Company**” or “**DPW**”) shall adopt and/or maintain resolutions and amendments to committee Charters and/or Bylaws¹ within thirty (30) days of issuance of the Order and Final Judgment to ensure adherence to the following corporate governance policies (the “**Reform(s)**”), which shall remain in effect for no less than five (5) years, subject to any of the following: (a) a determination by a majority of the independent directors that the Reform is no longer in the best interest of the Company, including, but not limited to, due to circumstances making the Reform no longer applicable, feasible, or available on commercially reasonable terms, or (b) modifications which the Company reasonably believes are required by applicable law or regulation. If a Reform is eliminated or modified, the Board shall within twenty (20) business days adopt a replacement provision that accomplishes substantially the same objective; provided, however, that no such replacement provision need be adopted if, in the reasonable good faith business judgment of a majority of the Board’s independent directors, it is not possible or reasonably feasible to do so.

Defendants acknowledge that in the course of the Parties’² negotiations at arm’s length, the Reforms were first presented to the Defendants, and as a result of the filing, pendency, and settlement of the Action, DPW agreed to implement the Reforms. Defendants acknowledge and agree that Plaintiffs in the above-captioned Action were a primary factor in the adoption and implementation of the Reforms set forth herein. The Parties agree that the Reforms will confer a substantial benefit to DPW and DPW’s shareholders. The Reforms are set forth below:

1. REMOVAL OF CURRENT BOARD MEMBER AND APPOINTMENT OF NEW BOARD MEMBERS

As part of the settlement current Board member Amos Kohn shall resign as a director and President of the Company and two (2) new independent directors (“**New**

¹ The term “Bylaws” refers to the Bylaws of DPW, dated September 25, 2017 and incorporated by reference in the Company’s September 30, 2019 Form 10-Q filed with the SEC on November 19, 2019.

² Terms not defined herein shall have the meanings ascribed to them in the Stipulation.

Independent Directors”) are to be appointed to the Board.³ The two (2) New Independent Directors shall be “independent directors” as defined in Section 2(a) below. By appointing these two (2) New Independent Directors, the Board will have seven (7) directors, including five (5) directors that the Company considers independent, pursuant to Section 2(a). One (1) of the two (2) New Independent Directors shall be appointed to the Company’s three-member Audit Committee and shall be an audit committee financial expert (the “**Expert**”) as such term is defined by the Securities and Exchange Commission (the “**Commission**”). Both of the two (2) New Independent Directors shall be appointed to the Company’s three-member Nomination and Governance Committee (the “**Governance Committee**”). The Governance Committee will have at least three (3) members at all times during the time period of this agreement. At all time during the five (5) year period of this agreement the Board will be composed of a majority of independent directors.

2. COMPOSITION OF THE BOARD OF DIRECTORS

(a) Each of the independent directors shall meet the definition and requirements of an independent director under Section 803 of the NYSE American rules and other applicable listing requirements. In addition, the Company shall revise its Bylaws to require that independence be defined as follows:

1. is not, and in the past four (4) years has not been, employed by the Company or any of its subsidiaries or affiliates, or employed by any company that is a “Related Party,” as such term is defined herein;

2. does not receive, and in the past four (4) years has not received, any remuneration as an advisor or consultant, excluding legal counsel, to the Company or any of its subsidiaries, executive officers or directors as qualified by Section 2(a)(viii), below;

3. does not have, and in the past four (4) years has not had, any material business relationship or engaged in any material transaction with the Company or any of its subsidiaries other than his or her service as a director as qualified by Section 2(a)(viii), below;

³ One of whom has been appointed as of December 30, 2019. This individual is not the Expert required to be appointed hereunder but has been appointed to serve on the Governance Committee.

4. is not, and in the past four (4) years has not been, affiliated with or employed by any present or former independent auditor or financial advisor, of the Company or any of its subsidiaries or affiliates;

5. is not, and in the past four (4) years has not been, a director, executive officer and/or consultant of any company for which any executive officer of DPW serves as a director, executive officer, employee and/or consultant;

6. is not, and in the past four (4) years has not been, a member of a law firm that has been engaged by the company during the one (1) year prior to the date that Motion for Preliminary Approval is filed;

7. is not a member of the immediate family of a person who is not independent pursuant to subsections (i)-(vi), above, and;

8. a director is deemed to have received remuneration (other than remuneration as a director, including remuneration provided to a non-executive Chairman of the Board, Committee Chairman, or Lead Director), directly or indirectly, if remuneration, other than *de minimis* remuneration, was paid by the Company, its subsidiaries, or affiliates, to any entity in which the director has a beneficial ownership interest of ten percent (10%) or more or voting control of five percent (5%) or more of such entity, or to an entity by which the director is employed or self-employed other than as a director. Remuneration is deemed *de minimis* remuneration if such remuneration is \$120,000 or less in any calendar year.

9. In addition to the requirements of Section 2(a) above, each of the three (3) members of the Governance Committee will have the same independence requirement as audit committee members pursuant to Section 803(B)(2) of the NYSE American rules, applicable listing requirements and Rule 10A-3 under the Securities Exchange Act of 1934, provided, however, that the members of the Governance need not meet the requirements of Section 803B(2)(iii).

(b) The Board will determine if each proposed independent director is independent as defined above.

(c) Each independent director shall provide immediate notice of any change in circumstances related to his or her independent status.

(d) The Company shall exercise its reasonable best efforts to ensure that all directors be present at the Company's annual meeting of shareholders either by telephone or in person.

(e) All directors shall be required to annually attend at least seventy-five percent (75%) of all Board meetings, either in person or by telephone. Additionally, all directors shall be required to annually attend at least seventy-five (75%) of all meetings of each of the committees on which they serve, either in person or by telephone.

(f) The Company expects that all directors shall keep themselves apprised of all developments that affect their ability to competently perform their work. The Company will ensure that its directors have the resources to receive education and training as necessary.

(g) No person shall serve as a member of the DPW Board for a period of time exceeding twenty (20) years.

3. RELATED PARTY TRANSACTION COMPLIANCE

The Company shall create a Related Party Transaction Policy (the “**Policy**”) that will be administered by the Governance Committee. The responsibilities of the Governance Committee as it concerns Related Party Transaction Policy shall include:

(a) Review all transactions deemed a Related Party Transaction (as hereinafter defined) by the full Board.

(b) Recommend to the Board whether the Company should enter into the reviewed Related Party Transaction.

(c) Complying with the Policy as set forth in Section 4.

4. RELATED PARTY TRANSACTION POLICIES AND PROCEDURES

(a) **Policy:** It is the policy of the Board of DPW that all Related Party Transactions, as that term is defined in the Policy, shall be subject to review in accordance with the procedures set forth below. The Board has determined that the Governance Committee is best suited to review all Related Party Transactions and the Governance Committee Charter will be revised accordingly.

(b) **Procedures:** The Governance Committee shall review the material facts of all prospective Related Party Transactions and shall first provide its recommendation to approve or disapprove of the Related Party Transactions to the full Board, subject to the exceptions described below. After receiving the Governance Committee recommendation, the Board’s independent directors will

vote upon whether or not to enter into the Related Party Transaction. Where advance Governance Committee review of a Related Party Transaction is not feasible, then the Related Party Transaction shall be reviewed subsequently by the Governance Committee (and such transaction may be ratified subsequently by the Governance Committee). In connection with its review of a Related Party Transaction, the Governance Committee will take into account, among other factors it deems appropriate, whether the Related Party Transaction is on terms no less favorable than terms generally available to an unaffiliated third-party under the same or similar circumstances and the extent of the Related Party's interest in the Related Party Transaction.

Management shall present to the Governance Committee the following information, to the extent relevant, with respect to actual or potential Related Party Transactions:

1. A general description of the transaction(s), including the material terms and conditions.
2. The name of the Related Party and the basis on which such person or entity is a Related Party.
3. The Related Party's interest in the transaction(s), including the Related Party's position or relationship with, or ownership of, any entity that is a party to or has an interest in the transaction(s).
4. The approximate dollar value of the transaction(s), and the approximate dollar value of the Related Party's interest in the transaction(s) without regard to amount of profit or loss.
5. In the case of a transaction providing for periodic payments or installments, the aggregate amount of all periodic payments or installments expected to be made.
6. In the case of indebtedness, the aggregate amount of principal to be outstanding and the rate or amount of interest to be payable on such indebtedness.
7. Any other material information regarding the transaction(s) or the Related Party's interest in the transaction(s).

The Governance Committee shall be authorized to review in advance and provide standing pre-approval in advance for certain Related Party Transactions or categories of Related Party Transactions. The Governance Committee has reviewed the Related Party Transactions described below in "Standing Pre-Approval for

Certain Related Party Transactions” and determined that each of the Related Party Transactions described therein shall be deemed to have been reviewed and approved in advance by the Governance Committee under the terms of the Policy. Nothing herein shall affect the full Board’s authority to require approval pursuant to the Company’s Bylaws or Governance Committee Charter.

Each director who is a Related Party with respect to a particular Related Party Transaction shall disclose all material information to the Governance Committee concerning such Related Party Transaction and his or her interest in such transaction.

If a Related Party Transaction will be ongoing, the Governance Committee may establish guidelines for the Company’s management to follow in its ongoing dealings with the Related Party. Thereafter, the Governance Committee shall periodically review and assess ongoing relationships with the Related Party. Any material amendment, renewal or extension of a transaction, arrangement or relationship previously reviewed under the Policy shall also be subject to subsequent review thereunder.

The Policy is intended to augment and work in conjunction with other Company policies having any code of conduct, code of ethics and/or conflict of interest provisions.

(c) Definitions:

A **“Related Party Transaction(s)”** is any financial transaction, arrangement or relationship or series of similar transactions, arrangements or relationships (including any indebtedness or guarantee of indebtedness) in which:

- (1) the aggregate amount involved will or may be expected to exceed \$120,000 in any calendar year;
- (2) the Company or any of its subsidiaries is a participant; and
- (3) any Related Party has or will have a direct or indirect interest.

A **“Related Party”** is:

- (4) a related party according to the definitions as set forth in SEC Item 404 of Regulation S-K, 17 C.F.R. §229.404 and the Instructions thereto;
- (5) any entity where:

(i) an officer, director, or consultant of the Company serves as an officer, director, or consultant of the entity;

(ii) an officer, director, or consultant of the Company has a 10% or greater beneficial ownership interest in the entity, either individually or through his/her interest in another entity; or

(iii) an officer, director, or consultant of the Company exercises voting control of the entity through ownership of securities in that entity either individually or through his/her interest in another entity;

(6) Avalanche International Corp., Alzamend Neuro, Inc., Ault & Company, MTIX International, Philou Ventures, LLC and any of their respective subsidiaries, affiliates and successors in interest.

(d) Standing Pre-Approval For Certain Related Party Transactions.

The Governance Committee has reviewed the types of Related Party Transactions described below and determined that each of the following Related Party Transactions shall be deemed to have been reviewed in advance and pre-approved by the Governance Committee, even if the aggregate amount involved will exceed \$120,000.

(1) Director Compensation: In consultation with the Compensation Committee, any compensation paid to a director if the compensation is required to be reported in the Company's proxy statement under Item 402 of Regulation S-K.

(2) Transactions Where All Shareholders Receive Proportional Benefits: Any transactions, arrangements or relationships where the Related Party's interest arises solely from the ownership of the Company's common stock and all holders of the Company's common stock received the same benefit on a pro rata basis (e.g., dividends or stock splits).

(3) Transactions Involving Competitive Bids: Any transactions, arrangements or relationships involving a Related Party where the rates or charges involved are determined by competitive bids.

(4) Regulated Transactions: Any transactions, arrangements or relationships with a Related Party involving the rendering of services

as a common or contract carrier, or public utility, at rates or charges fixed in conformity with law or governmental authority.

(e) **Disclosure:** All Related Party Transactions that are required to be disclosed in the Company's filings with the Commission, as required by the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended, and related rules and regulations, shall be so disclosed in accordance with such laws, rules and regulations. The material terms of the Policy shall be disclosed in the Company's Annual Report on Form 10-K or in the Company's proxy statement, as required by applicable laws, rules and regulations.

(f) **Administrative Measures:** Management shall institute appropriate administrative measures to provide that all Related Party Transactions are not in violation of, and are reviewed in accordance with, the Policy.

(g) **Interpretation:** In any circumstance where the terms of the Policy differ from any existing or newly enacted law, rule, regulation or standard governing the Company, the law, rule, regulation or standard will take precedence over the Policy.

5. IMPROVEMENTS TO THE AUDIT COMMITTEE CHARTER

DPW shall adopt a resolution to amend the Audit Committee Charter. The amended Audit Committee Charter shall be posted on the Company's website. The Audit Committee Charter shall be amended as follows:

(a) The Audit Committee, with the assistance of the Compliance Officer, shall review, reassess and update as necessary the Code of Ethics and Business Conduct (the "**Code of Conduct**") at least annually.

(b) The Audit Committee shall review Whistleblower complaints (as described herein), in consultation with and under the supervision of DPW's legal counsel and present an account of the review to the full Board at each regularly scheduled meeting as necessary.

(c) All Company employees shall be required to cooperate with Audit Committee investigations. Any failure to cooperate shall be grounds for discipline by the Board. This applies to all Company employees and consultants, including, but not limited to, the CEO and CFO;

(d) The Audit Committee shall receive annually a report listing all trades in DPW securities engaged in by Section 16 officers;

(e) The Company’s independent auditing firm shall be rotated every five (5) years (the Audit Committee Charter shall be amended accordingly) beginning in the year 2025; and

(f) The Audit Committee shall compile a list of potential independent auditors and conduct the necessary preemptive due diligence to ensure that the Company is not without an Independent Registered Public Accounting Firm (a “**Firm**”) for more than thirty (30) days upon the resignation or termination of its current Firm.

6. REVIEW OF DEBT FINANCING

The Audit Committee shall have specific tasks concerning debt financing that includes review and oversight over all loans and Future Receipts Agreements.⁴ The Audit Committee shall review all debt financing, including loans and Future Receipts Agreements, that are greater than \$250,000. The Audit Committee will make a recommendation to the full Board. The full Board will vote on whether to enter the transaction. The Audit Committee shall not delegate its responsibilities under this section to anyone else including, but not limited to, the Company’s executives or another Board committee. The Audit Committee Charter will be updated accordingly.

7. REVIEW OF STOCK ISSUANCES

The Governance Committee shall have specific tasks concerning stock or other securities issuances by the Company that includes review and oversight over all stock and other securities issuances. The Governance Committee will make a recommendation to the full board. The full Board will vote on whether to enter the transaction. The Governance Committee shall not delegate their responsibilities under this section to anyone else including, but not limited to, the Company’s executives or another Board committee. The Governance Committee Charter will be updated accordingly.

⁴ The term “Future Receipts Agreements” is defined as follows: agreements whereby the Company receives funds in exchange for a promise to pay back the funds received using future receipts or future receivables of the Company. Future Receipts Agreements include agreements whereby the Company is required to make repayment regardless of whether or not the Company has any receipts or receivables.

8. EXECUTIVE REPORTS

At each regularly scheduled Board meeting, the CFO shall provide a written report as to the Company's financial condition and prospects, including, but not limited to, a discussion of all reasons for material increases in expenses and liabilities, if any, and material decreases in revenues and earnings, if any, management plans for ameliorating or reversing such negative trends and the success or failure of any such plans presented in the past. All Section 16 officers shall make written reports to the Board regarding their respective areas of responsibility at least quarterly and shall meet at least quarterly with the Board.

9. WHISTLEBLOWERS

The Board shall require management to adopt a specific written policy protecting whistleblowers (the "**Whistleblower Policy**") that consists of the following and shall include such policy on the Company's website.

(a) The Company's Whistleblower Policy shall:

(1) Encourage interested parties to bring forward ethical and legal violations and/or a reasonable belief that ethical and legal violations have occurred to the Audit Committee, or the Company's General Counsel so that action may be taken to resolve the problem. These complaints shall be reviewed by the Audit Committee (as established in the current Audit Committee Charter), in consultation with and under the supervision of DPW's legal counsel, and presented to the full Board; and

(2) The policy shall communicate effectively that DPW is serious about adherence to its corporate governance policies.

(b) The Whistleblower Policy – with the endorsement of the Board and the most senior management of the Company – must adequately notify employees, and, independent contractors of DPW of the following:

(1) Whistleblower complaints may be directed to the Audit Committee and/or the Company's General Counsel, and the complaints will be handled by these parties anonymously and in confidence;

(2) If a whistleblower brings his or her complaint to an outside regulator or other governmental entity, he or she will be protected by the terms of the Whistleblower Policy just as if he or she directed the complaint to the Audit Committee and/or the General Counsel;

(3) Retaliation of any kind against any employee who files a complaint or voices a concern under this policy is strictly prohibited. Employees determined to have engaged in retaliatory behavior may be subject to discipline, which could include termination of employment;

(4) If an employee is subject to an adverse employment decision as a result of whistleblowing, the employee may file a complaint with the Department of Labor, or other government agency, within 90 days of the alleged violation (a failure to report such claims within the 90-day window does not foreclose any other available legal remedy);

(c) The Whistleblower Policy shall reward successful whistleblowers. Towards that end, the minimum award to a whistleblower uncovering corruption, fraud and/or similar unlawful activities at DPW shall be \$25,000, in addition to any award that the employee may be entitled to from any government agencies.

(d) The Company shall remind employees of whistleblower options and whistleblower protections in employee communications provided at least twice a year.

10. CLAWBACK POLICY FOR RESTATEMENTS

Within six (6) months of the date of the approval of the Order and Final Judgment, the Board shall approve a resolution requiring that, in the event that DPW is required under Generally Accepted Accounting Principles (“GAAP”) to prepare an accounting restatement to correct an accounting error on an interim or annual financial statement included in a report on Form 10-Q or 10-K, due to material noncompliance with any financial reporting requirement under the federal security laws, the Board shall determine whether the restatement was caused by the knowing misconduct of the CEO, CFO or other Section 16 Officer:

(a) If the Board determines that knowing misconduct by any member of the Board, the CEO, the CFO or any other Section 16 officer has occurred and caused such restatement, it shall take the steps necessary to secure reimbursement from his/her:

(1) any bonus or other incentive-based or equity-based compensation received by the responsible officer or director from DPW during the 9-month period following the first public issuance or filing with the Commission (whichever occurs first) of the financial document embodying such error; and

(2) any net profits realized by the responsible officer or director from the sale of DPW securities during that 9-month period; and

(b) If the Board determines that the restatement was due to something other than misconduct, then the Board must recoup any excess incentive- or performance-based compensation paid to executive officers based on overstated DPW performance in order to ensure proper alignment of compensation with actual performance and long-term value creation. The Board's determination and bases therefor must be recorded in the Board resolutions or minutes;

(c) The Board shall disclose in DPW's proxy statement the results of its investigation into the reasons for the restatement and the amount of incentive compensation recouped, if any, on the basis of the investigation;

(d) This provision does not purport to limit Section 304 of the Sarbanes-Oxley Act of 2002 (the "**SOX**") in any way, but any monies recovered under this provision shall be deemed by DPW to have been recovered under Section 304 of SOX; and

(e) All current employment agreements and contracts relating to compensation of DPW's officers and directors shall be modified to reflect this policy.