

## SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release of Claims (the "Settlement Agreement") is made and entered into this 31<sup>st</sup> day of December, 2013, by and between Gerber Life Insurance Company and its predecessors, successors, assigns, and subsidiaries ("Gerber" or the "Company"), on the one hand, and the California State Controller's Office ("California"), on the other. Gerber and California also are collectively referred to herein as the "Parties," or separately as a "Party."

### Recitals

A. Gerber represents that on July 5, 2011, the New York State Insurance Department issued a letter pursuant to Section 308 of the New York Insurance Law (the "New York 308 Letter"), advising authorized life insurers, including Gerber, to check the Death Master File ("DMF") to identify any deceased insureds for which proceeds had not been paid. Gerber further represents that the Company cross-checked all of its policies with the DMF to identify deceased insureds.

On May 4, 2012, Gerber submitted a Holder Notice Report (the "Report") to California pursuant to which Gerber reported \$359,221.00 in unclaimed life insurance policies to California. Gerber represents that in the intervening period between May 4, 2012 and the due date of the Report, Gerber conducted remediation and due diligence efforts and was able to locate certain beneficiaries, as well as determine that certain insureds were not deceased, resulting in Gerber's payment of 40 claims totaling \$192,320.05. On or about February 14, 2013, the Unclaimed Property Division of the California State Controller's Office transmitted a letter to Gerber (the "SCO Letter") instructing the Company to pay \$192,394.20 in interest pursuant to California Code of Civil Procedure § 1577 that was assessed on the life insurance policies reported by Gerber in the Report. A dispute arose between the Parties with regard to the Company's obligation to pay interest as demanded by the SCO Letter. The Company denies any wrongdoing or activities that violate any applicable laws of California or any other applicable laws and, further, denies any liability related to the disposition of unclaimed or other property, but in view of the complex issues raised and the probability that long-term litigation and/or administrative proceedings would be required to resolve the disputes between the Parties hereto, the Company and California desire to resolve differences between the Parties as to the interpretation and enforcement of the Unclaimed Property/Escheat Laws of California and all claims that California has asserted.

B. This Settlement Agreement is entered into in good faith for the purpose of fully and finally settling any and all differences, disputes, and/or claims that may exist between the Parties regarding the demand set forth in the SCO Letter, as set forth in paragraph 1 below.

### Settlement Agreement

In consideration of the Settlement Amount described below and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties, each and all intending to be legally bound, hereby stipulate and agree as follows:

1. Release And Discharge.

a. California shall and does hereby (a) relieve the Company from any further duties under California's Unclaimed Property Laws with respect to life insurance policies (including any group life insurance certificates issued thereunder) that (i) were in-force at any time during the period January 1, 1992 through December 31, 2011 (the "Review Period"); (ii) were identified by the Company in connection with comparisons it performed in identifying the property listed on the Report; or (iii) were identified by the Company in connection with the comparisons it performed pursuant to the NY 308 Letter, regardless of whether they are currently listed as active, and including, but not limited to, policies identified as lapsed, expired, matured, remitted, reported and remitted to California (escheated), rescinded, or terminated (collectively (i), (ii), and (iii) constitute the "Covered Life Insurance Policies") and (b) release, discharge, and indemnify the Company, and/or hold the Company harmless to the extent authorized by, and in accordance with, the Unclaimed Property/Escheat Laws of California, which are incorporated herein by reference, for "good faith" payment or delivery and reporting of unclaimed property with respect to the Covered Life Insurance Policies (the "Release"). Notwithstanding any other provision of his Agreement, such release is made only to the extent of the authority vested in the California State Controller under the California Unclaimed Property laws and is not made pursuant to the authority of insurance regulators. With respect to any proceeds from Covered Life Insurance Policies that the Company has escheated to California, the Company shall be released from any further obligation with respect to those proceeds. Notwithstanding the foregoing, nothing in this Settlement Agreement shall limit California from auditing or making claims with respect to proceeds, policies, contracts, or accounts that are not within the Review Period.

b. California agrees that payment of the Settlement Amount set forth in Section 3 below constitutes full compensation and settlement of any and all lawsuits, actions, claims, or demands of any nature covered by the Release and that California will not seek anything further, including any other payment, from Gerber in connection with the Company's obligation to escheat proceeds from the Covered Life Insurance Policies. California further waives any right to audit or examine the books and records of the Company with respect to unclaimed property subject to the Release in the previous paragraph.

c. Notwithstanding anything herein to the contrary, each of the following is specifically excluded from this Release:

- i. Any dispute under this Settlement Agreement and/or any lawsuit, action, proceeding, or claim to enforce its terms; and
- ii. Any obligation or duty created by this Settlement Agreement.

## 2. No Admission Of Liability.

This Settlement Agreement is not intended by the Parties to be and shall not in any way be construed as an admission by Gerber that it or any of its officers, directors, employees, or agents, have acted wrongfully with respect to California or any other state. Gerber specifically disclaims that it, or its officers, directors, employees, or agents, have any liability to, or have engaged in any wrongful acts against California or violated California's Unclaimed Property Laws.

3. Settlement Amount.

a. Payment at the time of settlement is as follows:

i. One-hundred Ninety-Two Thousand, Three-Hundred Ninety-Four Dollars and Twenty Cents (\$192,394.20) payable by check to:

California State Controller  
State of California  
Unclaimed Property Division  
Bureau of Accounting & Special Operations  
P.O. Box 942850  
Sacramento, CA 94250

4. Authority.

Each Party represents that such Party has full power and authority to enter into this Settlement Agreement, and carry out the transactions contemplated hereby and has not assigned any right or claim related to the matters that are released under this Settlement Agreement. Specifically, California agrees that the individual signing this Agreement on its behalf has authority to do so.

5. Binding Effect; No Assignment.

This Settlement Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors, assigns, and present, former, or future shareholders, directors, officers, employees, attorneys, accountants, advisors, agents and representatives, heirs, assigns and beneficiaries; provided, however, that neither Party may assign any of its rights or delegate any of its duties under this Settlement Agreement without the written consent of the other Party, or as provided in this Settlement Agreement.

6. Applicable Law and Disputes.

This Settlement Agreement is entered into in the State of California and shall be construed, interpreted, and enforced in accordance with its laws, without regard to the application of any state's conflict of law principles. Any disputes arising under or with respect to this Settlement Agreement shall be heard in the Superior Court of the State of California in and for the County of Sacramento. The Parties hereby irrevocably consent to the jurisdiction and venue of that court to hear such dispute and shall not seek transfer of the dispute to another court.

7. Entire Agreement.

This Settlement Agreement contains the entire agreement of the Parties. None of the Parties are relying upon any promise, representation, or statement not contained within the Settlement Agreement. This Settlement Agreement supersedes any and all prior agreements, arrangements, negotiations, discussions, or understandings, written or oral, between or among the Parties on the subject matter of this Settlement Agreement. No oral understanding, statement, promise, or inducement contrary to the terms of this Agreement exists. In executing

this Settlement Agreement, the Parties have relied on their own counsel's analysis of the facts and information of which they are independently aware, and assume the risk that there may prove to be facts or information different from or in addition to what they now know or believe.

8. Amendments.

Any modification or amendment to this Settlement Agreement or additional obligation assumed by any Party in connection with this Settlement Agreement shall be evidenced in a writing signed by all of the Parties. Additionally, this Settlement Agreement cannot be changed, amended, or terminated orally, and may be changed or modified only in writing signed by all of the Parties.

9. Understanding.

Both Parties represent that they are fully and completely competent to execute and deliver this Settlement Agreement, and that they have read and fully understand the terms of this Settlement Agreement

10. Joint Preparation.

The Parties agree this Settlement Agreement shall be deemed to have been prepared by the Parties jointly, and no ambiguity shall be resolved against any Party on the premise that it was responsible for drafting this Settlement Agreement, in whole or in part.

11. Attorneys' Fees, Costs, And Expenses.

Each Party shall be solely responsible for its own attorneys' fees, expenses, and costs related to the negotiation, execution, and delivery of this Settlement Agreement.

12. Severability.

13. If any term of this Settlement Agreement shall be determined by a court to be illegal, invalid, unconscionable, or unenforceable, the remaining provisions will remain effective and legally binding, and the illegal, invalid, unconscionable, or unenforceable term shall be deemed not to be part of this Settlement Agreement. No Waiver.

No waiver of any of the terms of this Settlement Agreement shall be valid unless in writing and signed by all of the Parties. The waiver by the Parties of performance under any provision of this Settlement Agreement shall not operate or be construed as a waiver of any subsequent breach by any Party under that provision or under any other provision, nor shall any waiver operate or be construed as a rescission of this Settlement Agreement.

14. Counterparts.

This Settlement Agreement may be executed in counterparts and all such counterparts so executed shall together be deemed to constitute one final Settlement Agreement, as if one document had been signed by all of the Parties. A facsimile signature or one sent by pdf shall be as enforceable as an original for execution of this Settlement Agreement.

15. Subject Headings.

Subject headings have been included in this Settlement Agreement for the convenience of the Parties but do not constitute any part of the Settlement Agreement.

16. Recitals.

The Recitals are expressly made a part of this Settlement Agreement.

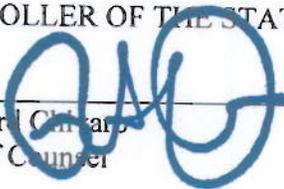
17. Consultation With Counsel.

The Parties acknowledge that before entering into this Settlement Agreement, each has had an opportunity to consult with legal counsel of their own choosing and has done so. The Parties further acknowledge that each has entered into this Settlement Agreement of their own free will, and that no promises or representations have been made to any Party by any person to induce such Party to enter into this Settlement Agreement other than set out in the express terms set forth herein.

18. Effectiveness.

This Settlement Agreement shall become effective immediately following execution by each of the Parties.

CONTROLLER OF THE STATE OF CALIFORNIA

By:  \_\_\_\_\_  
Richard Chirba  
Its Chief Counsel

Date: 12/31/13

GERBER LIFE INSURANCE COMPANY

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

Date: JAN 2, 2014

Its: CRAIG THOMPSON  
CEO