

**POWER OF ATTORNEY AND  
CONTINGENCY FEE AGREEMENT**

This agreement (“Agreement”) is made the \_\_\_\_ day of \_\_\_\_\_ 2016, between the following parties (“Parties”):

\_\_\_\_ (“Client”),  
and Circelli, Walter & Young, PLLC (“Attorneys”). In consideration of the mutual promises herein contained, the Parties agree as follows:

**1. Purpose of Representation**

1.1 Client retains and employs Attorneys to represent Client, to investigate and if appropriate, file a lawsuit for and attempt to recover any damages and compensation to which Client may be entitled against the National Collegiate Athletic Association (“NCAA”) (if applicable), certain college football conference(s) (if applicable), various helmet manufacturers, and/or high school athletic oversight entities (if applicable), and/or other defendants Attorneys believe Client has a valid claim against for damages related to brain injuries suffered by Client or Client’s family member resulting from football activities in high school and/or college. (the “Claims”). Client here by acknowledges and affirms Client’s understanding that **Attorneys will not bring suit against any school, university, or school district on Client’s behalf, and that Client consents to such strategy and decision.**

1.2 Client represents that Client has not retained the services of other counsel to represent Client relating to these Claims, or that if Client previously retained counsel to represent Client on claims arising from or relating to the Claims, Client has formally released prior counsel and counsel has formally released Client from all contractual obligations and liens for expenses and fees. Client represents that Client has not assigned any portion of Client’s claims related to the Claims to any other individual and Client warrants that there are not outstanding liens for attorney’s fees or litigation expenses pending against Client’s claims arising from the Claims.

**2. Attorneys’ Fees**

2.1. For and in consideration of the legal services to be rendered by the Attorneys, Client agrees to pay, and hereby assign to the Attorneys, a lien on any claims related to the Claims and monies paid or payable, whether by settlement, verdict or judgment, in an amount constituting **the greater of:**

36 % of the total amount recovered on behalf of Client, of settlement or payment of Final Judgment; or

40 % of the total recovery if appealed by either side to be defined by the filing of a Motion for Judgment Not Withstanding the Verdict, Notice of Appeal, or similar post-verdict pleading.

2.2. Client acknowledges that future payments may be required to be structured. If the Claims are settled by means of a Structured Settlement, Client acknowledges and agrees that the Attorneys' fee will be calculated based upon the present value benefit of the Structured Settlement to the Client, not to exceed the cost of the Structured Settlement. Client authorizes the Attorneys to take their attorneys' fee in a lump sum cash payment, regardless of the terms of payment to Client. Accordingly, Client authorizes the Attorneys to set aside sufficient cash from any structured settlement to pay the Attorneys' Fees, which will be figured on the present value of the total settlement, including the present value of future payments, as stated above.

2.3. The interest conveyed to the Attorneys is based upon the *total* amount recovered, and the fact that some portion of the amount recovered may be designated as "attorneys' fees" by the court or settling party will not limit the compensation to be paid under this Agreement.

2.4. Client acknowledges that the Attorneys may pledge or collateralize their contingency fee interest to third parties, and authorize such action.

2.5. No compromise or settlement of Client's claim will be made without the consent of both Client and the Attorneys. This means the Client will not attempt to settle the case without notice to the Attorneys and the Attorneys will not settle the case without notice and approval of Client. Client grants the Attorneys the exclusive privilege to determine when and where suit shall be filed and whether or not an appeal should be perfected from any Judgment rendered or order entered. It is also the Attorneys' privilege to determine, using its sole discretion, whether to participate in any appeal.

### **3. *Court Costs and Expenses***

3.1. Attorneys may advance any or all of the court costs and expenses that appear to Attorneys to be reasonably necessary for the investigation, preparation, trial, and/or settlement of this matter. If such costs and expenses are advanced or incurred by Attorneys, they shall be deducted from the recovery obtained for the Client from the Client's portion of recovery. Attorneys' contingent fee shall be computed on the total recovery without deduction for costs, expenses, or disbursements.

3.2. The terms "court costs" and "expenses" include without limitation: filing fees, court costs, expert fees (regarding, without limitation, evaluation, reports, and/or testimony), consultant fees, postage, long distance telephone calls, fax transmissions or receptions, messengers, court reporter fees, record service fees, photocopying, preparation of exhibits and photographs, travel (including airfare and air charters), transportation and/or lodging expenses and parking, service of citation, investigative fees and expenses, court-mandated expenditures, specialized outside counsel fees and expenses (i.e., probate, taxation, bankruptcy), special staff, any expenses of a structured settlement, witness' fees and mileage, subpoenas, and all other reasonable and necessary costs and expenses which Attorneys in their professional judgment, determine to be reasonably needed to prosecute and/or settle the Claims.

3.3. If Attorneys have represented the Client throughout the course of the litigation and do not obtain for Client a settlement or recovery, then the Client will not owe Attorneys a fee or have to pay back any of the above expenses that have been advanced by Attorneys.

3.4. Any and all costs and expenses incurred by the Attorneys in the investigation,

prosecution, settlement and/or appeal of this claim shall be repaid to the Attorneys from Client's portion of the recovery, *after* all attorney's fees are paid pursuant to paragraph 2, above. Such costs, as well as all expenses, are independent of and in addition to the contingent attorney fee agreement between Client and the Attorneys outlined above.

#### **4. Cooperation of Client and Attorneys Withdrawal**

4.1 Client agrees to cooperate with Attorneys at all times. Client further agrees to keep Attorneys advised of Client's whereabouts (and provide changes of address, email and telephone numbers), and Client agrees to appear on reasonable notice upon request of Attorneys, to appear for all depositions and court appearances upon reasonable notice, and to comply with all reasonable requests of Attorneys in connection with the preparation and presentation of the Claims.

4.2 Client further agree to provide the Attorneys complete and timely information regarding all entities that may potentially have a subrogation or lien interest with regard to recoveries obtained in this litigation, including Medicare, Medicaid, hospitals, emergency transport companies, self-insured plans, private insurance carriers and service providers who have accepted letters of protection to withhold collection efforts in return for payment of services out of recoveries obtained on the instant claim. It also includes timely informing the Attorneys of whether Client filed for personal bankruptcy or anticipates filing for personal bankruptcy.

4.3 Attorneys may, at each of their options, and at any time, withdraw from the case and cease to represent Client should Client fail to comply with any portion of this Agreement ("for cause"), including the provisions of this paragraph concerning cooperation of client, or should Attorneys decide for whatever reason they cannot continue to represent Client or prosecute the Claims ("without cause"). These reasons could include, but are not limited to, the Attorneys' resources, costs and expenses required to further prepare or present Client's case at trial or on appeal. In the event of withdrawal for cause, and Client collects monies on the Claims with other attorneys, Attorneys shall be entitled to a quantum merit claim for all time and expenses expended by Attorneys. In the event of withdrawal without cause, Attorneys shall be entitled to no amount.

#### **5. Texas Law to Apply**

5.1 This Agreement shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Tarrant County, Texas.

#### **6. Parties Bound**

6.1 This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns where permitted by this Agreement.

#### **7. Legal Construction**

7.1 In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

## **8. *Miscellaneous***

8.1 This Agreement constitutes the sole and only agreement of the parties hereto and supersedes any prior understandings or written or oral agreements between the parties with respect to its subject matter.

8.2 Client certifies and acknowledges that Client has had the opportunity to read this Agreement, has been provided a copy of this Agreement, and has knowingly and voluntarily entered into this Agreement fully aware of its terms and conditions. Client further certifies and acknowledges that the decision to pursue these claims and to employ Attorneys are solely Client's independent decisions after carefully considering the matters. Attorneys have advised Client to retain independent counsel to review this Agreement, and given client ample opportunity to do so. Client has had ample opportunity to retain independent counsel to review this Agreement and is satisfied with its terms.

8.3 IN THE EVENT OF A DISPUTE, CLIENT WAIVE THE ATTORNEY/CLIENT PRIVILEGE AS TO COMMUNICATIONS RELATING TO ATTORNEY'S FEES ARISING FROM THIS AGREEMENT.

## **9. *Power of Attorney and HIPAA waiver***

9.1 The Attorneys are hereby granted a power of attorney so that they may have full authority to prepare, sign, and file all legal instruments, pleadings, drafts, authorizations, and papers as shall be reasonably necessary to conclude this representation including settlement and/or reducing to possession any and all monies or other things of value due to Client in connection with the cause of action, as fully as Client could do so in person.

9.2 Client agrees to share all relevant medical information with Attorneys, that Attorneys may access all of Client's medical records, and that Client will separately sign a HIPAA waiver form. Client agrees to cooperate with Attorneys to grant Attorneys access to all of Client's medical records and documents requested by Attorneys.

## **10. *No Guarantee of Results and No Financial Advice***

10.1. Client understands that litigation is uncertain and that the Attorneys have not, will not, and cannot make any guarantees regarding the outcome of the litigation, including the likelihood of a recovery or the amount of recovery, if any, or that if there is a judgment, that the debtor will be capable or willing to satisfy the judgment.

10.2 The Attorneys offer no financial advice and make no representations regarding the tax consequences on any recovery. Client acknowledges that the Attorneys are not providing legal advice regarding the Client's rights, obligations and legal exposure with regard to any recovery that Client might receive, including but not limited to Structured Settlements, Subrogation Claims and liens by Government Entities, including Medicare and Medicaid, or with regard to potential taxation of settlement recoveries, or tax consequences of settlement recoveries or investment of such recoveries. Client acknowledges that Client has the right to and has been advised by the Attorneys to seek outside consultation in regards to tax consequences on any recovery.

**11. Investigation and Right to Withdraw After Investigation**

11.1. Client understands that Attorneys’ agreement to represent Client begins with the Attorneys’ investigation of Client’s potential claims related to the Claims (the “Initial Investigation”). The Attorneys expect the Initial Investigation to last 3-4 for weeks, or more, and may consist of witness interviews, background investigation, medical records retention and legal research relating to the potential claims. Client agrees that the Attorneys may withdraw from this representation at the conclusion of the Initial Investigation based on the results of that Investigation, which will be shared with Client. Client further agrees that the Attorneys may withdraw from this case, at any time, if the Attorneys determine through their investigation that there is no likely factual and/or legal basis for liability, or that it is not economically feasible to pursue further litigation. Client further agrees that the Attorneys may withdraw from this case, at any time, should the Attorneys determine that any information provided by Client to the Attorneys was untrue. If the Attorneys voluntarily withdraw from representing Client, the Attorneys shall be discharged from further obligation under this contract. If on the other hand the Client terminates the attorney-client relationship with the Attorneys, the Client agrees to protect out of any recovery obtained, the Attorneys’ fees and expenses as set forth herein.

**12. Association of Additional Counsel**

12.1 Attorneys are authorized to associate other lawyers and law firms to assist them in prosecuting Client’s cause of action if deemed necessary by Attorneys. Client hereby authorizes Attorneys to associate such other lawyers and law firms. In the event additional law firms or lawyers are associated, the fee to be paid to such firms will not increase the total fee owed by the Client, but will instead be paid from the attorneys’ fees and/or costs described in paragraph 2. All Attorneys shall assume joint responsibility for prosecution of Client’s cause of action; however, Attorneys Circelli, Walter & Young, PLLC shall at all times act as lead counsel. Should any other lawyers or law firms become associated or engaged on this case, Client will be duly informed of such association.

**13. State Bar of Texas Disclaimer**

13.1. The State Bar of Texas requires all attorneys licensed in Texas to inform their client as follows:

CLIENT MAY REPORT ANY PERCEIVED UNPROFESSIONAL CONDUCT BY THE ATTORNEYS TO THE STATE BAR OF TEXAS BY CONTACTING THE STATE BAR OF TEXAS, AS FOLLOWS: OFFICE OF THE GENERAL COUNSEL, STATE BAR OF TEXAS, P. O. BOX 12487, AUSTIN, TX 78711, 512-463-1381, 1-800-932-1900 (TOLL FREE).

AGREED:

\_\_\_\_\_  
CLIENT

\_\_\_\_\_  
Circelli, Walter & Young, PLLC

\_\_\_\_\_  
CLIENT

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

CLIENT CONTACT INFORMATION

Name \_\_\_\_\_

Home Address \_\_\_\_\_

Phone Number (Home) \_\_\_\_\_

Phone Number (Cell) \_\_\_\_\_

Phone Number (Alt) \_\_\_\_\_

E-mail Address \_\_\_\_\_

CLIENT CONTACT INFORMATION

Name \_\_\_\_\_

Home Address \_\_\_\_\_

Phone Number (Home) \_\_\_\_\_

Phone Number (Cell) \_\_\_\_\_

Phone Number (Alt) \_\_\_\_\_

E-mail Address \_\_\_\_\_