

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JASON MOOMJY, Individually and On Behalf
of All Others Similarly Situated,

Plaintiff,

v.

HQ SUSTAINABLE MARITIME
INDUSTRIES, INC., NORBERT SPORNS
and JEAN-PIERRE DALLAIRE, *et al.*,

Defendants.

Case No. 2:11-cv-00726-RSL

CLASS ACTION

STIPULATION OF SETTLEMENT

This Stipulation of Settlement dated September 28, 2012 (the "Stipulation") is submitted pursuant to Rule 23 of the Federal Rules of Civil Procedure. Subject to the approval of the Court, the Stipulation is entered into among Lead Plaintiff Trigon Emerging Agri-Sector Fund (the "Trigon Fund" or "Lead Plaintiff") and defendants HQ Sustainable Maritime Industries, Inc. ("HQSM" or the "Company"), Norbert Sporns, Jean-Pierre Dallaire, Lillian Wang Li, Roth Capital Partners, LLC, and Ladenburg Thalmann & Co. Inc. (together, the "Defendants") (Defendants and Lead Plaintiff are the "Parties"), by and through their respective counsel.

WHEREAS:

A. On April 28, 2011, the above-captioned class action (the "Action") was filed against defendants HQSM, Norbert Sporns, and Jean-Pierre Dallaire in the United States District

1 Court for the Western District of Washington alleging violations of the federal securities laws in
2 connection with HQSM's initial public offering, subsequent secondary offerings, and subsequent
3 public reporting.

4 B. On September 12, 2011, the Honorable Robert S. Lasnik appointed the Trigon
5 Fund as Lead Plaintiff and appointed Cohen Milstein Sellers & Toll PLLC ("Cohen Milstein") as
6 lead counsel ("Lead Counsel").

7 C. On November 22, 2011, Lead Plaintiff filed its Class Action Complaint (the
8 "Complaint") asserting claims under §§ 10(b) and 20(a) of the Securities Exchange Act of 1934
9 (the "Exchange Act"), 15 U.S.C. §§ 78j(b) and 78t(a), and Rule 10b-5 promulgated thereunder
10 by the United States Securities and Exchange Commission (the "SEC"), and under §§ 11, 12, and
11 15 of the Securities Act of 1933, 15 U.S.C. §§ 77k, 77l, and 77o, against HQSM, Sporns,
12 Dallaire, and Li (Sporns, Dallaire and Li are sometimes collectively referred to as the "Individual
13 Defendants"), and Roth Capital Partners, LLC ("Roth"), and Ladenburg Thalmann & Co. Inc.
14 ("Ladenburg") (Roth and Ladenburg are sometimes collectively referred to as the
15 "Underwriters"). The Complaint alleged that HQSM and the Individual Defendants
16 disseminated (or controlled those who disseminated) materially false and misleading statements
17 as part of a fraudulent scheme to inflate HQSM's key financial metrics, including revenue and
18 cash on hand, and alleged that Underwriters were liable for violations of Sections 11 and 12 of
19 the Securities Act of 1933.

20 D. On May 11, 2011, and May 20, 2011, two purported derivative actions were filed
21 on behalf of HQSM against certain of HQSM's directors and officers in the Superior Court of the
22 State of Washington for King County. Those two actions were eventually consolidated under the
23 caption *In Re HQ Sustainable Maritime Industries Derivative Litigation*, No. 11-2-16742-9 SEA,
24 before the Honorable Kimberley Prochnau (the "State Derivative Action").

25 E. On May 13, 2011, June 15, 2011, June 20, 2011, and July 12, 2011, four
26 purported derivative actions were filed on behalf of HQSM against certain of HQSM's directors

1 and officers in the United States District Court for the Western District of Washington. Those
2 four actions were eventually consolidated under the caption *In Re HQ Sustainable Maritime*
3 *Industries, Inc. Derivative Litigation*, No. 2:11-cv-00910-RSL (the “Federal Derivative Action”)
4 (the State Derivative Action and the Federal Derivative Action collectively, the “Derivative
5 Actions”).

6 F. As a general matter, it is alleged in the Derivative Actions that the defendant
7 HQSM directors and officers were responsible for causing the Company to make the
8 misrepresentations alleged in the Action in violation of their fiduciary obligations to HQSM.
9 Plaintiffs sought to recover reimbursement from the defendant directors and officers for: (i) any
10 judgment entered against or settlement paid by the Company in the Action; and (ii) other diverse
11 losses the Company allegedly sustained as a result of the defendant directors and officers’
12 purported wrongful actions.

13 G. The defendants in the Derivative Actions filed motions to dismiss in the State
14 Derivative Action and in the Federal Derivative Action.

15 H. On September 12, 2011, the Honorable Robert S. Lasnik, by Order issued in this
16 Action, stayed discovery in the State Derivative Action pending resolution of motions to dismiss
17 defendants intended to file in this Action.

18 I. On November 28, 2011, the Honorable Robert S. Lasnik, by order issued in the
19 Federal Derivative Action, stayed the Federal Derivative Action pending resolution of
20 Defendants’ motions to dismiss in this Action.

21 J. On February 7, 2012, Defendants filed motions to dismiss the Complaint in the
22 Action. The Court granted the Parties’ stipulations to extend time to file briefing on the motions
23 to dismiss in light of settlement progress.

24 K. On April 24, 2012, the Parties to this Action and the Derivative Actions
25 participated in a formal mediation conducted by mediator Jed D. Melnick, Esq. While the parties
26

1 were unable to negotiate a settlement during the mediation, they made sufficient progress that
2 negotiations continued after the formal mediation session.

3 L. During the course of these discussions, the Parties to this Action reached an
4 understanding as to the total Settlement Amount (defined below) to be paid to resolve all claims
5 asserted in the Action and the Derivative Actions, and as to the other matters to be resolved in
6 this Settlement.

7 M. After further negotiations, counsel for the derivative plaintiffs and for the
8 directors and officers agreed upon an amount that would be paid on behalf of the directors and
9 officers in addition to the Settlement Amount as attorneys' fees and costs.

10 N. Defendants have denied and continue to deny that they have committed any act or
11 omission giving rise to any liability and/or violation of law. Nonetheless, Defendants have
12 concluded that it is desirable that the Action be fully and finally settled in the manner and upon
13 the terms and conditions set forth in this Stipulation in order to limit further expense and
14 inconvenience with respect to matters at issue in the Action. This Stipulation shall in no event be
15 construed or deemed to be evidence of or an admission or concession by any party of any
16 infirmity in the defenses asserted, or any infirmity in the claims asserted. The Parties to this
17 Stipulation recognize, however, that the Action is being voluntarily settled after advice of
18 counsel, and that the terms of the Settlement are fair, adequate, and reasonable.

19 O. Lead Counsel has conducted a thorough investigation relating to the claims and
20 the underlying events and transactions alleged in the Complaint. Lead Counsel's investigation
21 and discovery included, *inter alia*: (i) review of publicly available documents, conference calls,
22 and announcements made by Defendants; (ii) review of information regularly obtainable on the
23 Internet; (iii) interviews with several witnesses; and (iv) research of the applicable law with
24 respect to the claims asserted in the Action and the potential defenses thereto.

25 P. Lead Plaintiff, by its counsel, has conducted discussions and arm's-length
26 negotiation with counsel for Defendants with respect to a compromise and settlement of the

1 Action with a view to settling the issues in dispute and achieving the best relief possible
2 consistent with the interests of the Class.

3 Q. Based upon their investigation, Lead Plaintiff and its Counsel have concluded that
4 the terms and conditions of this Stipulation are fair, reasonable and adequate to Lead Plaintiff
5 and the Class, and in their best interests, and have agreed to settle the claims raised in the Action
6 pursuant to the terms and provisions of this Stipulation, after considering: (i) the benefits that
7 Lead Plaintiff and the members of the Class will receive from the settlement of the Action; (ii)
8 the attendant risks of litigation; (iii) the difficulties, expense and delays inherent in such
9 litigation and in the enforcement of any potential judgment and/or collection of any potential
10 recovery; (iv) the belief of Lead Plaintiff that the Settlement is fair, reasonable, and adequate,
11 and in the best interest of all Class Members; and (v) the desirability of permitting the Settlement
12 to be consummated as provided by the terms of this Stipulation.

13 NOW THEREFORE, without any admission or concession on the part of Lead Plaintiff
14 of any lack of merit in the Action whatsoever, and without any admission or concession of any
15 liability or wrongdoing or lack of merit in the defenses whatsoever by Defendants, it is hereby
16 STIPULATED AND AGREED, by and among the Parties to this Stipulation, through their
17 respective counsel of record, subject to approval of the Court pursuant to Rule 23(e) of the
18 Federal Rules of Civil Procedure, in consideration of the benefits flowing to the Parties hereto
19 from the Settlement, that all Released Claims (as defined below) as against the Released Persons
20 (as defined below) shall be compromised, settled, released, discharged and dismissed with
21 prejudice, upon and subject to the following terms and conditions:

22 **CERTAIN DEFINITIONS**

23 1. As used in this Stipulation, the following terms shall have the following
24 meanings:

25 a. "Authorized Claimant" means a Class Member who submits a timely and valid
26 Proof of Claim and Release form ("Proof of Claim") to the Claims Administrator.

b. "Claims Administrator" means Strategic Claims Services, which shall administer the Settlement.

c. "Class" and "Class Members" means all persons or entities who either (1) purchased or otherwise acquired common stock or warrants to purchase common stock of HQSM, issued pursuant or traceable to the Company's June 2009 or August 2010 offerings (the "Offerings") and/or (2) purchased or otherwise acquired the common stock of HQSM, from May 12, 2009 through and including April 1, 2011. Excluded from the Class are the Defendants; any officers or directors of the Defendants during or after the Class Period; any corporation, trust, or other entity in which any Defendant has a controlling interest; the members of the immediate families of Norbert Sporns, Jean-Pierre Dallaire, or Lillian Wang Li (the "Individual Defendants") or their successors, heirs, assigns, and legal representatives. Also excluded from the Class are any putative Class Members who exclude themselves by filing a request for exclusion in accordance with the requirements set forth in the Notice.

d. "Class Period" means the period of time between May 12, 2009 and April 1, 2011, inclusive.

e. "Defendants' Counsel" means any counsel representing any defendant in the Action.

f. "Derivative Counsel" means Faruqi & Faruqi, LLP, Scott + Scott LLP, and the Weiser Law Firm, PC.

g. "Effective Date of Settlement" or "Effective Date" means the date upon which the Settlement contemplated by this Stipulation shall become effective, as set forth in paragraph 30 below.

h. "Escrow Agent" means Eagle Bank.

i. "Lead Counsel" means Cohen Milstein Sellers & Toll PLLC.

j. "Net Settlement Fund" means the Settlement Amount (as defined below), together with any interest earned thereon, less (i) any Taxes, (ii) any amounts incurred for notice and/or

1 administration expenses referred to in paragraphs 9 and 12 hereof, and (iii) the attorneys' fees
2 and expenses awarded to Lead Counsel pursuant to any Fee and Expense Application (referred to
3 in paragraph 13 hereof) and approved by the Court.

4 k. "Notice" means the Notice of Proposed Settlement of Class Action, Motion for
5 Attorneys' Fees and Reimbursement of Expenses and Settlement Fairness Hearing, which is to be
6 sent to members of the Class substantially in the form attached hereto as Exhibit A-1 to Exhibit
7 A.

8 l. "Order and Final Judgment" means the proposed order to be entered by the Court
9 approving the Settlement substantially in the form attached hereto as Exhibit B.

10 m. "Order for Notice and Hearing" means the proposed order preliminarily
11 approving the Settlement and directing notice thereof to the Class substantially in the form
12 attached hereto as Exhibit A.

13 n. "Person" means an individual, corporation, partnership, limited partnership,
14 limited liability company or partnership, association, joint stock company, estate, legal
15 representative, trust, unincorporated association, government or any political subdivision or
16 agency thereof, and/or any business or legal entity and their spouses, heirs, predecessors,
17 successors, representatives, or assignees.

18 o. "Plaintiffs' Counsel" means Cohen Milstein Sellers & Toll PLLC and Keller
19 Rohrback LLP.

20 p. "Plan of Allocation" means a plan or formula of allocation of the Net Settlement
21 Fund to be proposed by Lead Plaintiff and approved by the Court which shall be described in the
22 Notice to be sent to Class Members in connection with the Settlement.

23 q. "Related Parties" means each of Defendants' past or present subsidiaries, parents,
24 affiliates, successors and predecessors, officers, directors, shareholders, general or limited
25 partners, members, managers, agents, employees, attorneys and legal representatives, spouses
26 and any person, firm, trust, corporation, officer, director or other individual or entity in which

1 any Defendant has a controlling interest or which is related to or affiliated with any of the
2 Defendants, and the legal or other representatives, heirs, successors-in-interest or assigns of the
3 Defendants.

4 r. "Released Persons" means each and all of Defendants, their Related Parties
5 (which shall include, without limitation and without in any manner limiting the scope of the
6 preceding paragraph, all current and former members of the HQSM's board of directors), and
7 their insurers, insurers' affiliates, and reinsurers and their related parties. "Released Persons"
8 also includes Non-Defendant Andrew Intrater.

9 s. "Released Claims" shall mean any and all claims, debts, demands, rights or
10 causes of action or liabilities whatsoever, whether based on federal, state, local, statutory or
11 common law, statute, or any other law, rule or regulation, whether fixed or contingent, accrued
12 or unaccrued, liquidated or unliquidated, at law or in equity, matured or unmatured, whether
13 class, and/or individual in nature, including both known claims and "Unknown Claims" (as
14 defined below), (1) that have been asserted in this Action by Lead Plaintiff against any of the
15 Released Persons on behalf of itself or the Class or otherwise, or (2) that could have been
16 asserted in this Action, or in any other action or forum by Lead Plaintiff and/or the members of
17 the Class and/or any HQSM shareholder or any of them, against any of the Released Persons
18 which arise out of or are based upon or relate in any way to the allegations, transactions, facts,
19 matters or occurrences, representations or omissions involved, set forth, or referred to in the
20 Action and/or the Derivative Actions, including by way of example and without limitation, any
21 claims related to or arising out of the purchase or acquisition of HQSM common stock or
22 warrants pursuant or traceable to the Offerings or on the open market during the Class Period.

23 t. "Settled Defendants' Claims" means any and all claims, rights or causes of action
24 or liabilities whatsoever, whether based on federal, state, local, statutory or common law, or any
25 other law, rule, or regulation, including both known claims and Unknown Claims (as defined
26 below), that have been or could have been asserted in the Action or the Derivative Actions or any

forum by the Defendants, or the Related Parties of any of them, against the Lead Plaintiff, any of the Class Members or their attorneys, which arise out of or relate in any way to the institution, prosecution, or settlement of the Action or the Derivative Actions.

u. "Settlement" means the settlement embodied by this Stipulation, which shall include final settlement of this Action and release of the Released Claims and other provisions of this Stipulation.

v. "Settlement Fund" means the principal amount of Two Million Seven Hundred Fifty Thousand Dollars (\$2,750,000) in cash (the "Settlement Amount") plus any interest that may accrue thereon as provided herein.

w. "Summary Notice" means the Summary Notice of Pendency and Proposed Settlement of Class Action for publication substantially in the form attached as Exhibit A-3 to Exhibit A.

x. "Unknown Claims" means any and all Released Claims which Lead Plaintiff or any Class Member or any other HQSM shareholder does not know or suspect to exist in his, her or its favor at the time of the release of the Released Persons, and any Settled Defendants' Claims which any Defendant does not know or suspect to exist in his, her or its favor, which if known by him, her or it might have affected his, her or its decision(s) with respect to the Settlement. With respect to any and all Released Claims and Settled Defendants' Claims, the Parties stipulate and agree that upon the Effective Date, the Parties expressly waive, and each Class member, HQSM shareholder and Released Person shall be deemed to have waived, and by operation of the Order and Final Judgment shall have expressly waived, any and all provisions, rights and benefits conferred by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to Cal. Civ. Code § 1542, which provides:

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

1 The Parties acknowledge, and the Class Members and Released Persons by operation of law
2 shall be deemed to have acknowledged, that the inclusion of "Unknown Claims" in the definition
3 of Released Claims and Settled Defendants' Claims was separately bargained for and was a key
4 element of the Settlement.
5

6 **SCOPE AND EFFECT OF SETTLEMENT**

7 2. HQSM and HQSM's and its directors' and officers' insurers shall pay or cause to
8 be paid the Settlement Amount of Two Million Seven Hundred Fifty Thousand Dollars
9 (\$2,750,000). HQSM's payment obligation is conditioned upon HQSM's and its directors' and
10 officers' insurers' contribution to the Settlement Amount.

11 3. The payment of the Settlement Amount shall be in full and final disposition of the
12 Action against all Defendants and of any and all Released Claims as against all Released Persons
13 and any and all Settled Defendants' Claims.

14 4. Upon the Effective Date of this Settlement:

15 a. Lead Plaintiff and members of the Class on behalf of themselves and each
16 of their past and present subsidiaries, affiliates, parents, employees, successors and predecessors,
17 estates, heirs, executors, issue, administrators, and their respective officers, directors,
18 shareholders, general or limited partners, managers, members, agents, attorneys and legal
19 representatives, spouses, representatives, and any persons they represent, shall and do, with
20 respect to each and every Released Claim, release and forever discharge, and shall forever be
21 enjoined from instituting, commencing, or prosecuting, any Released Claims against any of the
22 Released Persons; and

23 b. Each of the Defendants and Related Parties, on behalf of themselves and
24 each of their past or present subsidiaries, affiliates, parents, successors and predecessors, estates,
25 heirs, executors, administrators, and the respective officers, directors, shareholders, agents, legal
26 representatives, spouses and any persons they represent, shall, with respect to each and every one
of Settled Defendants' Claims, release and forever discharge each and every one of the Settled

1 Defendants' Claims, and shall forever be enjoined from instituting, commencing, or prosecuting
2 the Settled Defendants' Claims.

3 5. The Settlement will be non-recapture; *i.e.*, it is not a claims-made settlement.
4 Defendants have no ability to keep or recover any portion of the Settlement Amount or the
5 Settlement Fund unless the Settlement (which shall include this Action and the Derivative
6 Actions) does not become effective. Plaintiffs shall bear the risk of loss of any investment of the
7 Settlement Fund and payment into the Settlement Fund of the Settlement Amount shall fully
8 satisfy Defendants' obligations hereunder.

9 6. Upon the Effective Date of this Settlement, and conditioned upon the
10 effectiveness of this Settlement including but not limited to the releases set forth in paragraph 4.a
11 above, the Underwriters release and discharge HQSM and its insurers of all claims, either in
12 contract or at law, for indemnification of or contribution for liability for the Released Claims and
13 for reimbursement of the attorneys' fees and costs the Underwriters have incurred in this Action.
14 This release does not extend, *e.g.*, to claims (a) for the indemnification or recovery of attorneys'
15 fees or costs should any class member attempt to enforce a Released Claim or (b) for
16 indemnification, contribution, or reimbursement for attorneys' fees and costs, damages or any
17 other liability related to any claim that may be brought by any putative Class Member who opts
18 out of the settlement.

19 **COURT APPROVAL**

20 7. The Court's preliminary and final approval of the Settlement is a condition
21 subsequent to the effectiveness of this Stipulation.

22 8. Contemporaneously with the execution of this Stipulation, Plaintiffs' Counsel and
23 Defendants' Counsel shall file it with the Court and jointly shall apply to the Court for entry of
24 an Order for Notice and Hearing, substantially in the form annexed hereto as Exhibit A.

25 **THE SETTLEMENT FUND**

1 9. Within fifteen (15) calendar days of (i) entry of the Order for Notice and Hearing,
2 or (ii) receipt of written payment instructions from Lead Counsel, whichever is later, HQSM and
3 HQSM's and its directors' and officers' insurers shall deposit the Settlement Amount, into an
4 interest-bearing escrow account on behalf of Lead Plaintiff and the Class designated and
5 controlled by Lead Counsel. Lead Plaintiff may use \$150,000 of this amount to pay costs
6 incurred for notice and administration of the Settlement. This amount will not limit Lead
7 Counsel's ability to incur additional notice and administrative costs and to seek Court approval
8 for reimbursement of those costs from the Settlement Fund.

9 10. (a) The Settlement Fund, net of any Taxes (as defined below) on the income
10 thereof, shall be used to pay (i) the Notice and Administration Costs referred to in paragraph 9
11 hereof, (ii) the attorneys' fee and expense award referred to in paragraph 13 hereof, and (iii) the
12 remaining administration expenses referred to in paragraph 12 hereof. The balance of the
13 Settlement Fund after the above payments shall be the Net Settlement Fund which shall be
14 distributed to the Authorized Claimants as provided in paragraphs 14-25 hereof. Any sums
15 required to be held in escrow hereunder prior to the Effective Date shall be deposited by Lead
16 Counsel in an account with the Escrow Agent. All funds held by the Escrow Agent shall be
17 deemed to be in the custody of the Court and shall remain subject to the jurisdiction of the Court
18 until such time as the funds shall be distributed or returned to the person(s) paying the same
19 pursuant to this Stipulation and/or further order of the Court. The Escrow Agent, upon
20 instructions from Lead Counsel, shall invest any funds in excess of \$150,000 in short-term
21 United States Agency or Treasury Securities, and shall collect and reinvest all interest accrued
22 thereon. Any funds held in escrow in an amount of less than \$150,000 may be held in an
23 interest-bearing bank account insured by the FDIC. The Parties hereto agree that the Settlement
24 Fund is intended to be a Qualified Settlement Fund within the meaning of Treasury Regulation §
25 1.468B-1 and that, upon instructions from Lead Counsel, the Claims Administrator, as
26 administrator of the Settlement Fund within the meaning of Treasury Regulation § 1.46B-

2(k)(3), shall be responsible for filing tax returns for the Settlement Fund and paying from the Settlement Fund any Taxes owed with respect to the Settlement Fund. Defendants agree to reasonably cooperate with the Claims Administrator and Lead Counsel to provide information available to them that is needed for filing tax returns for the Settlement Fund and will give their consent to the Settlement Fund's filing of any relation back election.

(b) All (i) taxes on the income of the Settlement Fund and (ii) expenses and costs incurred in connection with the taxation of the Settlement Fund (including, without limitation, expenses of tax attorneys and accountants) (collectively, "Taxes") shall be paid out of the Settlement Fund, shall be considered to be a cost of administration of the Settlement and shall be timely paid by the Claims Administrator and Lead Counsel without prior order of the Court. The Defendants and Released Persons shall have no liability or responsibility for the payment of any Taxes. The Settlement Fund shall indemnify and hold the Released Persons harmless for any Taxes (including, without limitation, Taxes payable by reason of any such indemnification).

ADMINISTRATION

11. The Claims Administrator shall administer the Settlement under Lead Counsel's supervision and subject to the jurisdiction of the Court. The Released Persons shall have no liability, obligation or responsibility for the administration of the Settlement or disbursement of the Net Settlement Fund, except for HQSM's and the directors' and officers' insurers' obligation to pay the Settlement Amount, as provided herein, and, if not already made available, to make HQSM's transfer records and shareholder information available to Lead Counsel or their agent to the extent necessary to identify and give notice to the Class within five (5) business days of the Court's entry of the Order for Notice and Hearing.

12. The Settlement Fund shall be applied to pay all reasonable costs and expenses of notice to members of the Class and administration of the Settlement Fund, escrow fees, Taxes, custodial fees and expenses incurred in connection with processing Proofs of Claim or

1 distributing the Settlement Fund. After entry of the Order for Notice and Hearing, and prior to
2 Final Approval, up to \$150,000 may be disbursed from the Settlement Fund for this purpose
3 without further approval of the Court. Upon the Effective Date, Lead Counsel may pay from the
4 Settlement Fund the costs and expenses associated with the administration of the Settlement and
5 the processing of submitted claims in excess of \$150,000, upon Court approval.

6 **ATTORNEYS' FEES AND EXPENSES**

7 13. Plaintiffs' Counsel will apply to the Court for an award from the Settlement Fund
8 of attorneys' fees and reimbursement of costs and expenses (the "Fee and Expense Application"),
9 plus interest earned in the Settlement Fund on both amounts. Such attorneys' fees and expenses,
10 as are awarded by the Court, shall be paid from the Settlement Fund to Plaintiffs' Counsel
11 immediately upon the Effective Date. Defendants will not contest or otherwise negatively
12 comment on Plaintiffs' Counsel's Fee and Expense Application, Derivative Counsel's Fee and
13 Expense Application in the Derivative Actions, or any request for an award to the Lead Plaintiff
14 (if any such request is made). The procedure for and the allowance or disallowance of any
15 application for attorneys' fees and expenses are matters separate and apart from the Settlement
16 and shall be requested to be considered by the Court separately from the Court's consideration of
17 the fairness, reasonableness, and adequacy of the Settlement. Any order or proceeding relating
18 solely to an award of attorneys' fees and expenses, or any appeal from any order relating thereto,
19 or any reversal or modification thereof, shall have no effect on the Settlement and shall not
20 operate to, or be grounds to, terminate or cancel the Settlement or to affect or delay the finality of
21 the final judgment approving the Settlement.

22 **ADMINISTRATION EXPENSES AND DISTRIBUTION ORDER**

23 14. Lead Counsel will apply to the Court, on notice to Defendants' Counsel, for an
24 order (the "Class Distribution Order") approving the Claims Administrator's administrative
25 determinations concerning the acceptance and rejection of the claims submitted herein and
26 approving any fees and expenses not previously applied for, including the fees and expenses of

1 the Claims Administrator, and, if the Effective Date has occurred, directing payment of the Net
2 Settlement Fund to Authorized Claimants.

3 **DISTRIBUTION TO AUTHORIZED CLAIMANTS**

4 15. The Claims Administrator shall determine each Authorized Claimant's *pro rata*
5 share of the Net Settlement Fund based upon each Authorized Claimant's Recognized Claim (as
6 defined in the Plan of Allocation described in the Notice annexed hereto as Exhibit A-1 to
7 Exhibit A, or in such other Plan of Allocation as the Court approves). The Plan of Allocation
8 proposed in the Notice is not a necessary term of this Stipulation and it is not a condition of this
9 Stipulation that the Plan of Allocation be approved. Defendants will take no position with
10 respect to such proposed Plan of Allocation or such plan as may be approved by the Court.

11 16. Each Authorized Claimant shall be allocated a *pro rata* share of the Net
12 Settlement Fund based on his, her, or its Recognized Claim compared to the total Recognized
13 Claims of all Authorized Claimants.

14 17. The Released Persons shall not have any responsibility for or liability, or any
15 rights or claims, whatsoever with respect to: (i) any act, omission, or determination of Lead
16 Counsel, the escrow agents or the Claims Administrator, or any of their respective designees or
17 agents, in connection with the administration of the Settlement or otherwise; (ii) the
18 management, investment or distribution of the Settlement Fund; (iii) the Plan of Allocation; (iv)
19 the determination, administration, calculation, or payment of any claims asserted against the
20 Settlement Fund; (v) any losses suffered by, or fluctuations in the value of, the Settlement Fund;
21 or (vi) the payment or withholding of any Taxes, expenses, and/or costs incurred in connection
22 with the taxation of the Settlement Fund or the filing of any returns.

23 18. Any member of the Class who does not submit a valid Proof of Claim will not be
24 entitled to receive any of the proceeds from the Net Settlement Fund but will otherwise be bound
25 by all of the terms of this Stipulation and the Settlement, including the terms of the Order and
26

1 Final Judgment to be entered in the Action and the releases provided for herein, and will be
2 barred from bringing any action against the Released Persons concerning the Released Claims.

3 19. The Claims Administrator and Lead Counsel shall have the right, but not the
4 obligation, to waive what they deem to be formal or technical defects in any Proofs of Claim
5 submitted in the interests of achieving substantial justice.

6 20. For purposes of determining the extent, if any, to which a Class Member shall be
7 entitled to be treated as an "Authorized Claimant," the following conditions shall apply:

8 (a) Each Class Member shall be required to submit a Proof of Claim (see
9 Exhibit A-2 to Exhibit A), supported by such documents as are designated therein, including
10 poof of the claimant's loss, or such other documents or proof as the Claims Administrator, in the
11 reasonable exercise of its discretion, may deem acceptable;

12 (b) All Proofs of Claim must be submitted by the date specified in the Notice
13 unless such period is extended by Order of the Court. Any Class Member who fails to submit a
14 Proof of Claim by such date shall be forever barred from receiving any payment pursuant to this
15 Stipulation (unless, by Order of the Court, a later submitted Proof of Claim by such Class
16 Member is approved), but shall in all other respects be bound by all of the terms of this
17 Stipulation and the Settlement including the terms of the Order and Final Judgment to be entered
18 in the Action and the releases provided for herein, and will be barred from bringing any action
19 against the Released Persons concerning the Released Claims. Provided that it is received before
20 the motion for the Class Distribution Order is filed, a Proof of Claim shall be deemed to have
21 been submitted when posted, if received with a postmark indicated on the envelope and if mailed
22 by first-class mail, or registered, or certified mail, postage prepaid, and addressed in accordance
23 with the instructions thereon. In all other cases, the Proof of Claim shall be deemed to have been
24 submitted when actually received by the Claims Administrator;

25 (c) Each Proof of Claim shall be submitted to and reviewed by the Claims
26 Administrator, who shall determine in accordance with this Stipulation the extent, if any, to

1 which each claim shall be allowed, subject to review by the Court pursuant to subparagraph (e)
2 below. Lead Counsel will submit the Claims Administrator's recommendations to the Court;

3 (d) Proofs of Claim that do not meet the submission requirements may be
4 rejected. Prior to rejection of a Proof of Claim, the Claims Administrator shall communicate
5 with the claimant in order to remedy the curable deficiencies in the Proofs of Claim submitted.
6 The Claims Administrator shall notify, in a timely fashion and in writing, all claimants whose
7 Proofs of Claim they propose to reject in whole or in part, setting forth the reasons therefor, and
8 shall indicate in such notice that the claimant whose claim is to be rejected has the right to a
9 review by the Court if the claimant so desires and complies with the requirements of
10 subparagraph (e) below;

11 (e) If any claimant whose claim has been rejected in whole or in part desires
12 to contest such rejection, the claimant must, within twenty (20) calendar days after the date of
13 mailing of the notice required in subparagraph (d) above, serve upon the Claims Administrator a
14 notice and statement of reasons indicating the claimant's grounds for contesting the rejection
15 along with any supporting documentation, and requesting a review thereof by the Court. If a
16 dispute concerning a claim cannot be otherwise resolved, Lead Counsel shall thereafter present
17 the request for review to the Court; and

18 (f) The Claims Administrator's recommendations accepting and rejecting
19 claims shall be presented to the Court for its approval in the Class Distribution Order.

20 21. Each claimant shall be deemed to have submitted to the jurisdiction of the Court
21 with respect to the claimant's claim, and the claim will be subject to investigation and discovery
22 under the Federal Rules of Civil Procedure, provided that such investigation and discovery shall
23 be limited to that claimant's status as a Class Member and the validity and amount of the
24 claimant's claim. No discovery shall be allowed on or relating in any manner to the merits of the
25 Action or Settlement (including but not limited to any of the claims asserted in the Action) in
26 connection with processing of the Proofs of Claim.

1 22. Payment pursuant to this Stipulation shall be deemed final and conclusive against
2 all Class Members. All Class Members whose claims are not approved by the Court shall be
3 barred from participating in distributions from the Net Settlement Fund, but otherwise shall be
4 bound by all of the terms of this Stipulation and the Settlement, including the terms of the Order
5 and Final Judgment to be entered in the Action and the releases provided for herein, and will be
6 barred from bringing any action against the Released Persons concerning the Released Claims.

7 23. All proceedings with respect to the administration, processing and determination
8 of claims and the determination of all controversies relating thereto, including disputed questions
9 of law and fact with respect to the validity of claims, shall be subject to the jurisdiction of the
10 Court.

11 24. The Net Settlement Fund shall be distributed to Authorized Claimants by the
12 Claims Administrator only after the Effective Date and after: (i) all claims have been processed,
13 and all claimants whose claims have been rejected or disallowed, in whole or in part, have been
14 notified and provided the opportunity to be heard concerning such rejection or disallowance; (ii)
15 all objections with respect to all rejected or disallowed claims have been resolved by the Court;
16 (iii) all matters with respect to attorneys' fees, costs, and disbursements have been resolved by
17 the Court; and (iv) all costs of administration have been paid.

18 25. If any funds remain in the Net Settlement Fund by reason of uncashed checks, or
19 otherwise, after the Claims Administrator has made reasonable and diligent efforts to have
20 Authorized Claimants who are entitled to participate in the distribution of the Net Settlement
21 Fund cash their distribution checks, then any balance remaining in the Net Settlement Fund six
22 (6) months after the initial distribution of such funds shall be used: (a) first to pay any amounts
23 mistakenly omitted from the initial distribution to Authorized Claimants or to pay any late, but
24 otherwise valid and fully documented claims received after the cut-off date used to make the
25 initial distribution, which were not previously authorized by the Court to be paid, provided that
26 such distributions to any late post-distribution claimants meet all of the other criteria for

1 inclusion in the initial distribution; (b) second to pay any additional settlement administration
2 fees and expenses, including those of Lead Counsel as may be approved by the Court; and (c)
3 finally, to be distributed as recommended by Lead Counsel and approved by the Court.

4 **TERMS AND ORDER OF FINAL JUDGMENT**

5 26. If the Settlement contemplated by this Stipulation is approved by the Court,
6 counsel for the Parties shall request that the Court enter an Order and Final Judgment
7 substantially in the form annexed hereto as Exhibit B.

8 **RIGHT OF EXCLUSION AND OBJECTION**

9 27. Any Person may seek to be excluded from the Class and the Settlement provided
10 for by this Stipulation by submitting a written request for exclusion ("Request for Exclusion").
11 Any Request for Exclusion must be received by the Claims Administrator no later than fourteen
12 (14) calendar days before the Settlement Fairness Hearing date established by the Court. Any
13 Class Member so excluded shall not be bound by the terms of the Stipulation, nor entitled to any
14 of its benefits, and shall not be bound by any Order and Final Judgment and/or other order of the
15 Court entered herein, whether pursuant to this Stipulation or otherwise.

16 28. Any Class Member who does not exclude himself, herself, or itself from the Class
17 and the Settlement shall have the right to submit written objections concerning the Settlement,
18 Plan of Allocation, and/or Lead Counsel's application for attorney's fees and expenses, which
19 objections shall state all of the reasons for the objection(s). Any written objection(s), and any
20 briefs, affidavits or other evidence submitted in support thereof must be filed with the Clerk of
21 the Court no later than fourteen (14) calendar days before the Settlement Fairness Hearing date
22 established by the Court. All persons and/or entities desiring to attend the Settlement Fairness
23 Hearing and be heard as objectors must have filed written objections as provided herein, as a
24 condition of appearing and being heard at such hearing. Any Class Member who does not timely
25 file written objections to the Settlement pursuant to this paragraph and the Notice shall not be
26 permitted to object to the Settlement at the Settlement Fairness Hearing, and shall be foreclosed

1 from objecting to, challenging or otherwise seeking review of the Settlement by appeal or
2 otherwise, in this Action or in any other action.

3 29. To retract or withdraw a Request for Exclusion, a member of the Class must file a
4 written notice with the Claims Administrator stating the person's or entity's desire to retract or
5 withdraw his, her, or its Request for Exclusion and that person's or entity's desire to be bound by
6 any judgment or settlement in this Action; provided, however, that the filing of such written
7 notice may be effected by Lead Counsel. Lead Counsel shall promptly notify Defendants'
8 Counsel of any retraction or withdrawal of a Request for Exclusion.

9 **EFFECTIVE DATE OF SETTLEMENT, WAIVER OR TERMINATION**

10 30. The Effective Date of Settlement shall be the date when all the following shall
11 have occurred:

- 12 (a) funding in conformity with paragraph 9;
- 13 (b) entry of the Order for Notice and Hearing in all material respects in the
14 form annexed hereto as Exhibit A;
- 15 (c) final approval by the Court of the Settlement, following notice to the Class
16 and a hearing, as prescribed by Rule 23 of the Federal Rules of Civil Procedure; and
- 17 (d) entry by the Court of an Order and Final Judgment, in all material respects
18 in the form set forth in Exhibit B annexed hereto, and the expiration of any time for appeal or
19 review of such Order and Final Judgment, or, if any appeal is filed and not dismissed, after such
20 Order and Final Judgment is upheld on appeal in all material respects and is no longer subject to
21 review upon appeal or review by writ of certiorari, or, in the event that the Court enters an order
22 and final judgment in the form other than that provided above ("Alternative Judgment") and
23 none of the Parties hereto elect to terminate this Settlement, the date that such Alternative
24 Judgment becomes final and no longer subject to appeal or review.

25 31. Any of Defendants' Counsel or Lead Counsel shall have the right to terminate the
26 Settlement and this Stipulation by providing written notice of their election to do so

1 (“Termination Notice”) to all other Parties hereto within thirty (30) calendar days of: (a) the
2 Court’s declining to enter the Order for Notice and Hearing in any material respect; (b) the
3 Court’s refusal to approve this Stipulation or any material part of it; (c) the Court’s declining to
4 enter the Order and Final Judgment in any material respect; (d) the date upon which the Order
5 and Final Judgment is modified or reversed in any material respect by the U.S. Court of Appeals
6 or the U.S. Supreme Court; or (e) the date upon which an Alternative Judgment is modified or
7 reversed in any material respect by the U.S. Court of Appeals or the U.S. Supreme Court.

8 32. If, prior to the Settlement Fairness Hearing, any Persons who otherwise would be
9 members of the Settlement Class have timely requested exclusion (“Requests for Exclusion”)
10 from the Settlement Class in accordance with the provisions of the Order for Notice and Hearing
11 and the Notice given pursuant thereto, and such Persons in the aggregate purchased or otherwise
12 acquired a number of shares of HQSM common stock during the Class Period in an amount
13 greater than the sum specified in a separate “Supplemental Stipulation” between Lead Plaintiff
14 and the Defendants, the Defendants shall have, in their sole and absolute discretion, the option to
15 terminate this Stipulation on behalf of all Parties in accordance with the procedures set forth in
16 the Supplemental Stipulation. Notwithstanding the foregoing sentence, no termination of the
17 Stipulation shall be effective unless two of the three following defendant groups consent to
18 termination: (1) HQSM, (2) the directors and officers, and (3) the Underwriters. Lead Plaintiff
19 shall also have the right to seek a retraction of any Request for Exclusion pursuant to the
20 Supplemental Stipulation. The Supplemental Stipulation will not be filed with the Court. If
21 required by the Court, the Supplemental Stipulation and/or any of its terms may be disclosed *in*
22 *camera* to the Court for purposes of approval of the Settlement, but such disclosure shall be
23 carried out to the fullest extent possible in accordance with the practices of the Court so as to
24 preserve the confidentiality of the Supplemental Stipulation, particularly the threshold aggregate
25 number of shares. Copies of all Requests for Exclusion received, together with copies of all
26 written revocations of Requests for Exclusion, shall be delivered to all Defendants’ Counsel as

1 soon as possible after receipt by Lead Plaintiff or Lead Counsel but in any event no later than
2 five (5) calendar days before the Settlement Hearing.

3 33. An order of the Court or modification or reversal on appeal of any order of the
4 Court concerning the Plan of Allocation or the amount of any attorneys' fees, costs, expenses,
5 and interest awarded by the Court to Lead Plaintiff or Lead Plaintiff's Counsel shall not
6 constitute grounds for cancellation or termination of this Stipulation or the Settlement.

7 34. Except as otherwise provided herein, in the event the Settlement is terminated or
8 fails to become effective for any reason, then the Parties to this Stipulation shall be deemed to
9 have reverted to their respective litigation positions as of September 28, 2012, and, except as
10 otherwise expressly provided, the Parties shall proceed in all respects as if this Stipulation and
11 any related orders had not been entered, and any portion of the Settlement Amount previously
12 paid or caused to be paid by Defendants, together with any interest earned thereon, less any
13 Taxes due with respect to such income, and less the costs of administration and notice actually
14 incurred whether paid or not paid, shall be returnable within ten (10) business days to the payors
15 of the Settlement Amount in their respective shares.

16 **NO ADMISSION OF WRONGDOING**

17 35. This Stipulation and all negotiations, statements, and proceedings in connection
18 herewith shall not, in any event, be construed or deemed to be evidence of an admission or
19 concession on the part of Lead Plaintiffs, the Defendants, any member of the Class, or any other
20 person or entity, of any liability or wrongdoing by them, or any of them, and shall not be offered
21 or received in evidence in any action or proceeding (except an action to enforce this Stipulation
22 and Settlement contemplated hereby), or be used in any way as an admission, concession, or
23 evidence of any liability or wrongdoing of any nature, and shall not be construed as, or deemed
24 to be evidence of, an admission or concession that Lead Plaintiff, any member of the Class, any
25 present or former stockholder of HQSM, or any other person or entity, has or has not suffered
26 any damage, except that the Released Persons may file this Stipulation and/or the Judgment in

1 any action that may be brought against them in order to support a defense or counterclaim based
2 on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or
3 reduction or any other theory of claim preclusion or issue preclusion or similar defense or
4 counterclaim.

5 MISCELLANEOUS PROVISIONS

6 36. All of the exhibits attached hereto are material and integral parts hereof and are
7 hereby incorporated by reference as though fully set forth herein.

8 37. After the filing of this Stipulation but before distribution of any portion of the
9 Settlement Fund, if a case is commenced in respect of any Defendant under Title 11 of the
10 United States Code (Bankruptcy), or a trustee, receiver or conservator is appointed under any
11 similar law, and in the event of the entry of a final order of a court of competent jurisdiction
12 determining the transfer of money to the Settlement Fund or any portion thereof by or on behalf
13 of such Defendant to be a preference, voidable transfer, fraudulent transfer or similar transaction
14 and any portion thereof is required to be returned, and such amount is not promptly deposited to
15 the Settlement Fund by other Defendants, then, at the election of Lead Counsel, the Parties may
16 jointly move the Court to vacate and set aside the releases given and Order and Final Judgment
17 entered in favor of such Defendant pursuant to this Stipulation, which releases and Order and
18 Final Judgment shall be null and void, and the Parties shall be restored to their respective
19 positions in the Action immediately prior to the execution of this Stipulation and any cash
20 amounts in the Settlement Fund shall be returned to the persons or entities that paid such
21 amounts, as provided above.

22 38. The Parties to this Stipulation intend the Settlement to be a final and complete
23 resolution of all disputes asserted or which could be asserted by the Class Members or other
24 releasing parties against the Released Persons with respect to the Released Claims. Accordingly,
25 Lead Plaintiff, on behalf of itself and the Class, and Defendants agree not to assert in any forum
26 that the Action was brought by Lead Plaintiff or defended by Defendants in bad faith or without

1 a reasonable basis. The Parties hereto shall assert no claims of any violation of Rule 11 of the
2 Federal Rules of Civil Procedure relating to the prosecution, defense, or settlement of the Action.
3 The Parties agree that the amount paid and the other terms of the Settlement were negotiated at
4 arm's-length in good faith by the Parties, and reflect a Settlement that was reached voluntarily
5 after consultation with experienced legal counsel.

6 39. This Stipulation may not be modified or amended, nor may any of its provisions
7 be waived except by a writing signed by all Parties hereto or their successors-in-interest.

8 40. The headings herein are used for the purpose of convenience only and are not
9 meant to have legal effect.

10 41. The administration and consummation of the Settlement as embodied in this
11 Stipulation shall be under the authority of the Court, and the Court shall retain jurisdiction for the
12 purpose of entering orders providing for awards of attorney's fees and expenses to Lead Counsel
13 and enforcing the terms of this Stipulation.

14 42. The waiver by one party of any breach of this Stipulation by any other party shall
15 not be deemed a waiver of any other prior or subsequent breach of this Stipulation.

16 43. This Stipulation and its exhibits constitute the entire agreement among the Parties
17 hereto concerning the Settlement of the Action, and no representations, warranties, or
18 inducements have been made by any party hereto concerning this Stipulation and its exhibits
19 other than those contained and memorialized in such documents.

20 44. This Stipulation may be executed in one or more counterparts. All executed
21 counterparts and each of them shall be deemed to be one and the same instrument provided that
22 counsel for the Parties to this Stipulation shall exchange among themselves original signed
23 counterparts.

24 45. This Stipulation is binding upon and shall inure to the benefit of the Parties and
25 their respective agents, successors, executors, heirs and assigns.
26

1 46. The construction, interpretation, operation, effect and validity of this Stipulation,
2 and all documents necessary to effectuate it, shall be governed by the laws of the State of
3 Washington without regard to any choice of law provision, except to the extent that federal law
4 requires that federal law governs.

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

10 48. All counsel and any other person executing this Stipulation and any of the
11 exhibits hereto, or any related settlement documents, warrant and represent that they have been
12 authorized to do so and to take appropriate action required or permitted to be taken pursuant to
13 the Stipulation to effectuate its terms.

14 49. Lead Counsel and Defendants' Counsel agree to cooperate fully with one another
15 in seeking Court approval of the Order for Notice and Hearing, the Stipulation and the
16 Settlement, and to promptly agree upon and execute all such other documentation as may be
17 reasonably required to obtain final approval by the Court of the Settlement.

18 50. The Parties agree that the mediator for the Action, Jed D. Melnick, Esq., shall
19 continue to assist them with any disputes over the terms of the Settlement until such time as the
20 Court grants preliminary approval.
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1 DATED this 28th day of September, 2012. COHEN MILSTEIN SELLERS & TOLL PLLC

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