

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

NORTHUMBERLAND COUNTY)	
RETIREMENT SYSTEM and OKLAHOMA)	
LAW ENFORCEMENT RETIREMENT SYSTEM,)	Case No. CIV-11-520-D
Individually and On Behalf of All Others Similarly)	
Situated,)	
)	
Plaintiffs,)	
v.)	
)	
GMX RESOURCES INC., et al.,)	
)	
Defendants.)	
)	

STIPULATION AND AGREEMENT OF SETTLEMENT

This Stipulation and Agreement of Settlement (the “Stipulation”), dated as of March 25, 2014 and submitted pursuant to Rule 23 of the Federal Rules of Civil Procedure and Rule 408 of the Federal Rules of Evidence, is made and entered into by and between: (i) Plaintiffs, Northumberland County Retirement System and Oklahoma Law Enforcement Retirement System (collectively, “Lead Plaintiffs”), on behalf of themselves and each of the Settlement Class Members (as defined in ¶ 1.27), by and through Lead Counsel (as defined in ¶ 1.10); (ii) defendants Ken Kenworthy, Jr. and James Merrill (collectively, the “Individual Defendants”); (iii) defendants BBVA Securities Inc., Capital One Southcoast, Inc., Credit Suisse Securities (USA) LLC, Fortis Securities LLC, Howard Weil Incorporated (n/k/a Scotia Capital USA Inc.), Jefferies & Company, Inc., Merrill Lynch, Pierce, Fenner & Smith Incorporated, Pritchard Capital

Partners, LLC, and Wedbush Morgan Securities Inc. (collectively, the “Underwriter Defendants”); and (iv) defendant Smith Carney & Co. (“Smith Carney”) (together with the Individual Defendants, and the Underwriter Defendants, the “Settling Defendants”).

This is a global settlement and includes all parties to the Litigation (as defined in ¶ 1.12) resolving all claims against the Settling Defendants. The Settling Parties (as defined in ¶ 1.28) intend this Stipulation to fully, finally, and forever resolve, discharge, and settle the Released Claims and Released Defendants’ Claims (as defined in ¶ 1.22 and ¶ 1.23, respectively), subject to the terms and conditions stated herein.

I. THE LITIGATION

On March 10, 2011 a putative class action was filed by Lead Plaintiffs in the District Court of Oklahoma County, State of Oklahoma, asserting claims for alleged violation of federal securities laws against GMX Resources Inc. (“GMX”) and the Settling Defendants, among others. Lead Plaintiffs asserted claims in connection with secondary offerings of common stock commenced by GMX on or about July 18, 2008 (the “July 2008 Offering”), May 13, 2009 (the “May 2009 Offering”), and October 22, 2009 (the “October 2009 Offering”). On May 12, 2011, Defendants removed the lawsuit to the United States District Court for the Western District of Oklahoma (the “Court”). On June 6, 2011, Lead Plaintiffs moved to remand the litigation back to the District Court of Oklahoma County. On November 16, 2011 the Court denied Lead Plaintiffs’ motion to remand. On July 3, 2012, the Court appointed Northumberland County Retirement System and Oklahoma Law Enforcement Retirement System as Lead Plaintiffs. The Court further appointed Kessler Topaz Meltzer & Check, LLP and Nix Patterson &

Roach, LLP as co-lead counsel (“Lead Counsel”) and Nelson, Roselius, Terry & Morton (n/k/a Nelson, Terry, Morton, DeWitt, Paruolo & Wood) as liaison counsel (“Liaison Counsel”).

On August 17, 2012, Lead Plaintiffs filed their Amended Class Action Complaint (the “Complaint”). The Complaint asserted claims against GMX and the Settling Defendants on behalf of purchasers or acquirers of GMX common stock pursuant or traceable to the May 2009 Offering and the October 2009 Offering.¹ In particular, the Complaint asserted claims for violations of Sections 11, 12, and 15 of the Securities Act of 1933 (15 U.S.C. §§ 77k, 77l, and 77o) based on allegations that GMX and the Settling Defendants made untrue statements, material misrepresentations and/or omissions in the offering materials for the May 2009 Offering and October 2009 Offering, including without limitation, the prospectus GMX filed with the U.S. Securities and Exchange Commission (the “SEC”) on June 25, 2008, prospectus supplements GMX filed with the SEC on May 14, 2009 and October 26, 2009, and the GMX financial statements and SEC filings incorporated by reference into the prospectus and prospectus supplements.

On October 1, 2012, GMX and the Settling Defendants filed motions to dismiss. On April 1, 2013, GMX filed for Chapter 11 bankruptcy in the United States Bankruptcy Court for the Western District of Oklahoma (the “Bankruptcy Court”). On July 17, 2013, as a result of GMX’s bankruptcy filing, the parties filed a stipulation dismissing Lead

¹ Lead Plaintiffs did not assert any claims based on the July 2008 Offering in the Complaint.

Plaintiffs' claims against GMX with prejudice. On September 16, 2013, the Court entered an order denying the Settling Defendants' motions to dismiss.

Thereafter, Lead Plaintiffs and the Settling Defendants (the "Settling Parties") agreed to begin discussing a potential settlement of the Litigation, and on November 4, 2013, the Settling Parties engaged in mediation with the Honorable Layn R. Phillips, United States District Judge for the Western District of Oklahoma (Ret.). Following the mediation, with the continued assistance of Judge Phillips, the Settling Parties continued to negotiate a resolution, which culminated in the Settling Parties reaching an agreement in principle to settle the Litigation on November 25, 2013.

II. CLAIMS OF LEAD PLAINTIFFS AND BENEFITS OF SETTLEMENT

Lead Plaintiffs and Lead Counsel believe that the claims asserted in the Litigation have merit. However, Lead Plaintiffs and Lead Counsel recognize and acknowledge the expense and length of continued proceedings necessary to prosecute the Litigation against the Settling Defendants through discovery and trial. Lead Plaintiffs and Lead Counsel also have taken into account the uncertain outcome and the risk of any litigation, especially in complex actions such as the Litigation, as well as the risks posed by the difficulties and delays inherent in such litigation. Lead Plaintiffs and Lead Counsel also are aware of the potential defenses to the alleged securities law violations asserted in the Litigation. Lead Plaintiffs and Lead Counsel believe that the Settlement set forth in this Stipulation confers substantial benefits upon the Settlement Class in light of the circumstances present here.

Based on their evaluation, Lead Plaintiffs and Lead Counsel have determined that the terms and conditions of this Stipulation are fair, reasonable and adequate to Lead Plaintiffs and the Settlement Class, and in their best interests. As set forth below, this Stipulation shall in no event be construed as or deemed to be a concession by Lead Plaintiffs of any infirmity of the claims asserted in the Litigation.

III. SETTling DEFENDANTS' DENIALS OF WRONGDOING AND LIABILITY

The Settling Defendants have denied and continue to deny that they violated the federal securities laws or any other laws. The Settling Defendants have denied and continue to deny, specifically, each and all of the claims and contentions alleged in the Litigation, along with all charges of wrongdoing or liability against them arising out of or relating to any of the conduct, statements, acts, or omissions alleged, or that could have been alleged, in the Litigation. The Settling Defendants also have denied and continue to deny, among other things, the allegations that any of the Settling Defendants made any material misstatements or omissions; that any Settlement Class Member has suffered damages; that any Settlement Class Member was harmed by the conduct alleged in the Litigation; or that the Settling Defendants knew or were reckless with respect to the alleged misconduct. In addition, the Settling Defendants maintain that they have meritorious defenses to all claims alleged in the Litigation.

Nonetheless, taking into account the uncertainty, risks, and costs inherent in any litigation, especially in complex cases such as the Litigation, the Settling Defendants have concluded that proceeding further with the Litigation could be protracted and

distracting. The Settling Defendants have, therefore, determined that it is desirable and beneficial to them that the Litigation be settled in the manner and upon the terms and conditions set forth in this Stipulation. As set forth below, this Stipulation shall in no event be construed as or deemed to be evidence of an admission or concession by the Settling Defendants with respect to any claim of any fault, liability, wrongdoing or damage whatsoever.

IV. TERMS OF STIPULATION AND AGREEMENT OF SETTLEMENT

NOW, THEREFORE, without any admission or concession on the part of Lead Plaintiffs of any lack of merit of the Litigation whatsoever, and without any admission or concession of any liability or wrongdoing or lack of merit in the defenses whatsoever by the Settling Defendants, IT IS HEREBY STIPULATED AND AGREED by and among Lead Plaintiffs (for themselves and the Settlement Class Members) and the Settling Defendants, by and through their respective counsel of record, that, subject to the approval of the Court, in consideration of the benefits flowing to the Settling Parties from the Settlement set forth herein, the Released Claims and Released Defendants' Claims shall be finally and fully compromised, settled, and released, and the Litigation shall be dismissed with prejudice, as to all Settling Defendants, upon and subject to the terms and conditions of this Stipulation, as follows.

1. Definitions

As used in this Stipulation, and any exhibits attached hereto and made a part hereof, the following terms have the meanings specified below:

1.1. “Authorized Claimant” means any Settlement Class Member who submits a timely and valid Proof of Claim and Release form and whose claim for recovery has been allowed pursuant to the terms of this Stipulation.

1.2. “Claims Administrator” means Strategic Claims Services (“SCS”).

1.3. “Court” means the United States District Court for the Western District of Oklahoma.

1.4. “Effective Date” means the first date by which all of the events and conditions specified in ¶ 9.1 of this Stipulation have been met and have occurred.

1.5. “Escrow Agent” means the Huntington National Bank.

1.6. “Final” means, with respect to any judgment or order entered by the Court, including but not limited to the Final Judgment (substantially in the form of Exhibit B attached hereto), that such judgment or order represents a final and binding determination of all issues within its scope and is not subject to further review on appeal or otherwise. A judgment or order becomes “Final” when the last of the following shall occur: (a) the expiration of the time to file a motion to alter or amend the Final Judgment under Federal Rule of Civil Procedure 59(e) has passed without any such motion having been filed; (b) the expiration of the time in which to appeal the Final Judgment has passed without any appeal having been taken; and (c) if a motion to alter or amend is filed or if an appeal is taken, the determination of that motion or appeal in such a manner as to permit the consummation of the Settlement, in accordance with the terms and conditions of this Stipulation. For purposes of this paragraph, an “appeal” shall include any petition for a writ of certiorari or other writ that may be filed in connection with approval or

disapproval of this Settlement, but shall not include any appeal that concerns only the issue of attorneys' fees and expenses or any Plan of Distribution of the Settlement Fund.

1.7. "Final Judgment" or "Judgment" means the judgment and order of dismissal with prejudice to be rendered by the Court upon approval of the Settlement, substantially in the form attached hereto as Exhibit B.

1.8. "Final Approval Hearing" means the final hearing to be held by the Court to determine whether the proposed Settlement should be approved as fair, reasonable and adequate; whether an order approving the Settlement should be entered thereon; whether the Plan of Allocation of the Settlement Fund should be approved; and whether and in what amounts to award attorneys' fees and expenses to Lead Counsel and reimbursement to Lead Plaintiffs.

1.9. "Gross Settlement Fund" or "Settlement Fund" means the Settlement Amount plus all interest earned thereon.

1.10. "Lead Counsel" means Kessler Topaz Meltzer & Check, LLP and Nix Patterson & Roach, LLP.

1.11. "Liaison Counsel" means Nelson, Terry, Morton, DeWitt, Paruolo & Wood.

1.12. "Litigation" means the lawsuit styled *Northumberland County Retirement System and Oklahoma Law Enforcement Retirement System v. GMX Resources Inc., et al.*, 11-cv-00520-D, in the United States District Court for the Western District of Oklahoma.

1.13. “Net Settlement Fund” means the portion of the Gross Settlement Fund that shall be distributed to Authorized Claimants as allowed by this Stipulation, the Plan of Distribution, or the Court, after provision for the amounts set forth in ¶ 7.4 of this Stipulation:

1.14. “Notice” means the Notice of Pendency and Proposed Settlement of Class Action, Motion for Attorneys’ Fees and Expenses and Final Approval Hearing, substantially in the form attached hereto as Exhibit A-1.

1.15. “Notice and Administration Expenses” means the expenses incurred by the Claims Administrator in connection with the settlement administration, including: the cost of publishing the Summary Notice, as directed by the Court; the cost of identifying potential members of the Settlement Class to whom notice should be sent; the cost of establishing and maintaining a website and toll-free number to assist potential claimants; printing and mailing of the Notice and Proof of Claim, as directed by the Court; and the cost of processing Proofs of Claim and distributing the Net Settlement Fund to Settlement Class Members who timely submit valid Proofs of Claim, as well as any escrow related fees.

1.16. “Person” means an individual, corporation, partnership, limited partnership, limited liability corporation, association, joint stock company, estate, legal representative, trust, trustee, unincorporated association, government or any political subdivision or agency thereof, and any other type of business, political or legal entity, and, to the extent applicable, the spouses, heirs, predecessors, successors, representatives, or assignees of any of the foregoing Persons.

1.17. "Plaintiffs' Counsel" means Lead Counsel and Liaison Counsel.

1.18. "Plan of Distribution" or "Plan of Allocation" means the plan or formula for allocating the Net Settlement Fund, to be approved by the Court, which plan or formula shall govern the manner by which the Net Settlement Fund shall be distributed to Authorized Claimants. The Plan of Distribution is not part of this Stipulation and neither the Settling Defendants nor their Related Persons shall have any responsibility or liability with respect thereto.

1.19. "Preliminary Approval Order" means the order preliminarily approving the Settlement and directing notice thereof to the Settlement Class, to be entered by the Court substantially in the form attached hereto as Exhibit A.

1.20. "Proof of Claim" means the Proof of Claim and Release form, substantially in the form attached hereto as Exhibit A-2.

1.21. "Related Persons" means:

- (a) with respect to Lead Plaintiffs: each and all of their respective present and former parents, subsidiaries, divisions, joint ventures, and affiliates, and each of their respective present and former employees, members, general and limited partners and their partnerships, principals, officers, directors, attorneys, advisors, accountants, auditors, financial advisors, commercial bank lenders, insurers, underwriters, investment bankers, representatives, and insurers; and the predecessors, successors, spouses, estates, heirs, executors, trusts, trustees, administrators, agents, fiduciaries, consultants, representatives and assigns of each of them, in their capacity as such; and

any trust of which any Person described in this subparagraph is the settlor or which is for the benefit of any Person described in this subparagraph and/or member(s) of his or her family; and any entity in which any Person described in this subparagraph has a controlling interest; and

- (b) with respect to Settling Defendants: each and all of their respective present and former parents, subsidiaries, divisions, joint ventures, and affiliates, and each of their respective present and former employees, members, general and limited partners and their partnerships, principals, officers, directors, attorneys, advisors, accountants, auditors, financial advisors, commercial bank lenders, insurers, underwriters, investment bankers, representatives, and insurers; and the predecessors, successors, spouses, estates, heirs, executors, trusts, trustees, administrators, agents, fiduciaries, consultants, representatives and assigns of each of them, in their capacity as such; and any trust of which any Person described in this subparagraph is the settlor or which is for the benefit of any Person described in this subparagraph and/or member(s) of his or her family; and any entity in which any Person described in this subparagraph has a controlling interest.

1.22. "Released Claims" means any and all claims, demands, losses, rights, causes of action, liabilities, obligations, judgments, suits, matters and issues of any kind or nature whatsoever, whether known or Unknown Claims (as defined in ¶ 1.30), contingent or absolute, suspected or unsuspected, disclosed or undisclosed, that have been or could have been asserted against any and/or all Settling Defendants and any

and/or all of Defendants' Released Persons in the Litigation or in any court, tribunal, forum or proceeding (including, but not limited to, any claims arising under federal, state or foreign law, common law, statute, rule or regulation relating to alleged fraud, breach of any duty, negligence, violations of the federal securities laws, or otherwise), whether individual or class, which arise out of, are based on, or relate in any way, directly or indirectly to (1) the purchase or acquisition of GMX common stock pursuant or traceable to the May 2009 Offering or the October 2009 Offering and (2) the acts, facts, statements, or omissions that were or could have been alleged by Lead Plaintiffs in the Litigation. "Released Claims" excludes any claims asserted in any derivative action or ERISA action based on similar allegations or any claims to enforce the Settlement.

1.23. "Released Defendants' Claims" means any and all claims, demands, losses, rights, causes of action, liabilities, obligations, judgments, suits, matters and issues of any kind or nature whatsoever, whether known or Unknown Claims (as defined in ¶ 1.30), contingent or absolute, suspected or unsuspected, disclosed or undisclosed, that have been or could have been asserted in the Litigation or in any court, tribunal, forum or proceeding, by any of the Settling Defendants and/or Defendants' Related Persons, whether brought directly or indirectly against the Lead Plaintiffs, Settlement Class Members, their attorneys, and/or any of their Related Persons, which arise out of or relate in any way to the institution, prosecution, or Settlement of the Litigation. "Released Defendants' Claims" excludes any claims to enforce the Settlement.

1.24. "Released Persons" means:

- (a) with respect to Lead Plaintiffs (“Plaintiffs’ Released Persons”): each and all of the Lead Plaintiffs and each and all of their Related Persons; and
- (b) with respect to Settling Defendants (“Defendants’ Released Persons”): each and all of the Settling Defendants, each and all of their Related Persons and GMX.

1.25. “Settlement” means the settlement effected by this Stipulation.

1.26. “Settlement Amount” means Two Million and Seven Hundred Thousand Dollars (\$2,700,000) in cash that will be paid pursuant to ¶ 4.1 of this Stipulation.

1.27. “Settlement Class” or “Settlement Class Members” means all Persons who purchased or otherwise acquired GMX’s common stock pursuant or traceable to the Company’s May 2009 Offering or October 2009 Offering. Excluded from the Settlement Class are: (a) any putative members of the Settlement Class who submit valid and timely requests for exclusion from the Settlement Class in accordance with the requirements set forth in the Notice and Rule 23 of the Federal Rules of Civil Procedure; and (b) the Settling Defendants, GMX, members of the immediate family of any such Settling Defendant, any parent or subsidiary of any such Settling Defendant, any person, firm, trust, corporation, officer, director, or other individual or entity in which any Settling Defendant or GMX has or had a controlling interest, the partners, officers and directors of any Settling Defendant or GMX, and the legal representatives, agents, executors, heirs, successors, or assigns of any such excluded Person. The Settling Defendants or any entity in which any of the Settling Defendants has or had a controlling interest (for purposes of this paragraph, together a “Defendant-Controlled Entity”) are excluded from

the Settlement Class only to the extent that such Defendant-Controlled Entity itself purchased a proprietary (*i.e.*, for its own account) interest in GMX's common stock. To the extent that a Defendant-Controlled Entity purchased any GMX common stock in a fiduciary capacity or otherwise on behalf of any third-party client, account, fund, trust, or employee benefit plan that otherwise falls within the Settlement Class, neither such Defendant-Controlled Entity nor the third-party client, account, fund, trust, or employee benefit plan shall be excluded from the Settlement Class with respect to such fiduciary purchases.

1.28. "Settling Parties" means Lead Plaintiffs and the Settling Defendants.

1.29. "Summary Notice" means the Summary Notice of Pendency and Proposed Settlement of Class Action, Motion for Attorneys' Fees and Expenses and Final Approval Hearing, substantially in the form attached hereto as Exhibit A-3.

1.30. "Unknown Claims" means any Released Claims that Lead Plaintiffs or any Settlement Class Members do not know or suspect to exist—as well as any Released Defendants' Claims that Settling Defendants or any of their Related Persons do not know or suspect to exist—in his, her, or its respective favor at the time of the release, regardless of whether such Released Claim or Released Defendants' Claim, if known by him, her, or it, might have affected his, her, or its decision with respect to the Settlement and/or release of the claim. With respect to any and all Unknown Claims, the Settling Parties stipulate and agree that, upon the Effective Date, they shall expressly waive, and each of the Settlement Class Members and each of the Settling Defendants' Related Persons shall be deemed to have waived (by operation of the Final Judgment), to the fullest extent

permitted by law the provisions, rights, and benefits of California Civil 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.

The Settling Parties shall expressly waive, and each of the Settlement Class Members and each of the Settling Defendants' Related Persons shall be deemed to have waived (by operation of the Final Judgment), 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 California Civil Code § 1542. The Settling Parties, Settlement Class Members and/or the Settling Defendants' Related Persons may hereafter discover facts in addition to or different from those which he, she, or it now knows or believes to be true with respect to the subject matter of the Released Claims and Released Defendants' Claims, but the Settling Parties shall expressly, and each Settlement Class Member and Settling Defendants' Related Persons, upon the Effective Date, shall be deemed to have, and by operation of the Final Judgment shall have, fully, finally, and forever settled and released any and all Released Claims and Released Defendants' Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist, or heretofore have existed, upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct that is negligent, intentional, with or without malice, or a breach of any duty, law, or rule, without regard to the subsequent discovery

or existence of such different or additional facts. The Settling Parties acknowledge, and the Settlement Class Members and Settling Defendants' Related Persons shall be deemed by operation of the Final Judgment to have acknowledged, that the foregoing waiver was separately bargained for and a key element of the Settlement of which this release is a part.

2. CAFA Notice

2.1 Within ten (10) days of the submission of this Stipulation to the Court, the Settling Defendants shall serve CAFA Notice as required by 28 U.S.C. §1715. The Settling Defendants shall bear the costs associated with serving the CAFA Notice, and these costs shall not be paid from the Settlement Fund.

3. Stipulation of Class Certification

3.1 The Settling Parties stipulate to: (i) the certification, for settlement purposes only, of the Settlement Class (as defined above), pursuant to Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure; (ii) the appointment of Lead Plaintiffs as the class representatives; and (iii) the appointment of Lead Counsel as class counsel. The certification of the Settlement Class shall be binding only with respect to the Settlement of the Action and only if the Final Judgment contemplated by this Stipulation becomes Final and the Effective Date occurs.

4. Payment and Handling of the Settlement Fund

4.1 An escrow agent established by the Settling Defendants (the "Settling Defendants' Escrow Agent") shall pay, on behalf of Settling Defendants, the sum of Two Million and Seven Hundred Thousand Dollars (\$2,700,000.00) into an escrow account

maintained by the Escrow Agent on behalf of Lead Plaintiffs and the Settlement Class no later than twenty-one (21) business days following the Court's entry of the Preliminary Approval Order, substantially in the form attached hereto as Exhibit A. Except for the obligation as set forth in this paragraph to fund the Settlement by making timely payment of the Settlement Amount, Settling Defendants shall have no other payment obligations pursuant to this Stipulation and the Settlement. If the Settlement Fund is not fully and timely funded as provided in this paragraph, Lead Plaintiffs' sole and exclusive remedy is to terminate the Settlement Agreement on five (5) business days' notice to counsel for the Settling Defendants and, if so, Lead Plaintiffs and Settling Defendants would return to their respective litigation positions as of the date immediately prior to their execution of this Stipulation.

4.2 The Escrow Agent shall invest the Settlement Amount deposited into the escrow account, pursuant to ¶ 4.1 hereof, in instruments backed by the full faith and credit of the United States Government or fully insured by the United States Government or an agency thereof, including U.S. Treasury Bills, U.S. Treasury Money Market Fund or a bank account insured by the Federal Deposit Insurance Corporation ("FDIC") up to the guaranteed FDIC limit. All risks related to the investment of the Settlement Fund in accordance with the guidelines set forth in this paragraph shall be borne by the Settlement Fund.

4.3 The Gross Settlement Fund shall be used to pay: (i) any taxes on the income thereof and tax expenses, (ii) Notice and Administration Expenses, (iii) attorneys' fees and expenses, and (iv) reimbursement awards to Lead Plaintiffs, if any (the "Net

Settlement Fund”). The Net Settlement Fund shall be distributed to the Authorized Claimants as set forth in the Plan of Allocation.

4.4 The Escrow Agent shall not disburse the Gross Settlement Fund or the Net Settlement Fund except: (a) as provided in this Stipulation, (b) by an order of the Court, or (c) with the prior written agreement of counsel for the Settling Defendants and Lead Counsel.

4.5 Subject to further order(s) and/or directions as may be made by the Court, or as provided in this Stipulation, the Escrow Agent is authorized to execute such transactions as are prescribed herein in a manner consistent with the terms of this Stipulation. The Defendants’ Released Persons shall have no responsibility for, interest in, or liability whatsoever with respect to the actions of the Escrow Agent, or any transaction executed by the Escrow Agent.

4.6 All funds held by the Escrow Agent shall be deemed and considered to be *in custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court, until such time as such funds shall be distributed pursuant to this Stipulation and/or further order(s) of the Court.

4.7 The Gross Settlement Fund may be used to pay costs and expenses reasonably and actually incurred in connection with providing notice to the Settlement Class (as set forth in ¶ 7.3 hereof), locating Settlement Class Members, assisting with the filing of Proofs of Claims (including the establishment of a website and toll-free phone line), administering and distributing the Net Settlement Fund to Authorized Claimants, processing Proofs of Claim and paying escrow fees and costs (collectively, “Notice and

Administration Expenses”), without further order of the Court or approval of the Settling Defendants. In no event shall the Defendants’ Released Persons or their counsel have any responsibility for or liability with respect to the actions of Plaintiffs’ Counsel, the Escrow Agent, or the Claims Administrator relating to the payment of Notice and Administration Expenses. In the event that the Settlement is not consummated, money paid or incurred for this purpose shall not be returned or repaid to the Settling Defendants and/or such other persons and entities funding the Settlement.

4.8 The Settling Parties agree that the Settlement Fund is intended to be a “Qualified Settlement Fund” within the meaning of U.S. Treas. Reg. § 1.468B-1, and all provisions of this Stipulation shall be interpreted in a manner that is consistent therewith. In addition, the Claims Administrator, as administrator of the Settlement Fund within the meaning of Treasury Regulation §1.468B-2(k)(3), shall timely make such elections as necessary or advisable to carry out the provisions of this paragraph, including the “relation-back election” (as defined in Treas. Reg. § 1.468B-1(j)), to cause the qualified settlement fund to come into existence at the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the responsibility of the Claims Administrator to timely and properly prepare and deliver the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur. In connection with these procedures, it is understood and agreed that:

- (a) For the purpose of § 468B of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, the “administrator” shall be

the Claims Administrator. The Claims Administrator shall be responsible for timely and properly filing all informational and other tax returns required by the Internal Revenue Code and the regulations promulgated thereunder with respect to the Gross Settlement Fund (including, without limitation, the returns described in Treas. Reg. § 1.468B-2(k)). Such returns (as well as the election described in this ¶ 4.8) shall be consistent with this ¶ 4.8 and in all events shall reflect that all Taxes (including any estimated Taxes, interest, or penalties) on the income earned by the Gross Settlement Fund shall be paid out of the Gross Settlement Fund as provided in this ¶ 4.8;

(b) All (i) Taxes (including any estimated Taxes, interest, or penalties) arising with respect to the income earned by the Gross Settlement Fund, including any Taxes or tax detriments that may be imposed upon the Defendants' Released Persons or their counsel with respect to any income earned by the Gross Settlement Fund for any period during which the Gross Settlement Fund does not qualify as a "Qualified Settlement Fund" for federal or state income tax purposes ("Taxes"), and (ii) expenses and costs incurred in connection with the operation and implementation of this ¶ 4.8 (including, without limitation, expenses of tax attorneys and/or accountants and mailing and distribution costs and expenses relating to filing (or failing to file) the returns described in this ¶ 4.8) ("Tax Expenses"), shall be paid out of the Gross Settlement Fund; in all events the Defendants' Released Persons and their counsel shall have no liability or responsibility for the Taxes or the Tax Expenses. The Gross Settlement Fund shall

indemnify and hold each of Defendants' Released Persons and their counsel harmless for Taxes and Tax Expenses (including, without limitation, Taxes payable by reason of any such indemnification). Further, Taxes and Tax Expenses shall be treated as, and considered to be, a cost of administration of the Gross Settlement Fund and shall be timely paid by the Claims Administrator out of the Settlement Fund without prior order from the Court and the Claims Administrator shall be obligated (notwithstanding anything herein to the contrary) to withhold from distribution to Authorized Claimants any funds necessary to pay such amounts, including the establishment of adequate reserves for any Taxes and Tax Expenses (as well as any amounts that may be required to be withheld under Treas. Reg. § 1.468B-2(1)(2)); neither Defendants' Released Persons nor their counsel are responsible nor shall they have any liability therefor. The Settling Defendants agree to cooperate with Lead Counsel, the Claims Administrator, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of this ¶ 4.8; and

(c) In the event this Stipulation is canceled or terminated, the Settling Defendants shall be responsible for the payment of all Taxes (including interest and/or penalties), if any, on their portion of said income.

5. Preliminary Approval Order and Final Approval Hearing

5.1 Promptly after execution of this Stipulation, the Settling Parties shall submit this Stipulation together with its exhibits (the "Exhibits") to the Court and shall apply for entry of the Preliminary Approval Order, substantially in the form of Exhibit A

attached hereto, requesting, among other things, the preliminary approval of the Settlement set forth in this Stipulation, certification of the Settlement Class (for settlement purposes only), and approval for mailing of the Notice and publication of the Summary Notice, substantially in the forms of Exhibits A-1 and A-3 attached hereto.

The Notice shall include the general terms of the Settlement set forth in this Stipulation, the proposed Plan of Distribution, the general terms of any Fee and Expense Application by Lead Counsel, the general terms of any request for reimbursement of costs and expenses by Lead Plaintiffs, the procedure by which Persons who would otherwise be members of the Settlement Class may request to be excluded from the Settlement Class, the date, time and place of the Final Approval Hearing, the procedure by which Settlement Class Members may object to any of the matters to be determined at the Final Approval Hearing, the right of Settlement Class Members to appear at the Final Approval Hearing, and a Proof of Claim, in substantially the form attached as Exhibit A-2 hereto.

5.2 The Settling Parties shall request that after notice is given to the Settlement Class, by mailing and by publication in accordance with the terms of this Stipulation and the Court's Preliminary Approval Order, the Court hold the Final Approval Hearing.

5.3 At the Final Approval Hearing, the Settling Parties shall jointly request entry of a Judgment, substantially in the form attached hereto as Exhibit B:

- (a) finally approving the Settlement as fair, reasonable, and adequate, within the meaning of Rule 23 of the Federal Rules of Civil Procedure, and directing its consummation pursuant to its terms;

(b) directing that the Litigation be dismissed without costs and with prejudice, and releasing the Released Claims and the Released Defendants' Claims;

(c) permanently barring, extinguishing, discharging, rendering unenforceable, and enjoining the institution and prosecution, by Lead Plaintiffs and the Settlement Class Members, on the one hand and Settling Defendants and their Related Persons, on the other hand, of any other action against the Released Persons in any court asserting any Released Claims or any Released Defendants' Claims, respectively;

(d) reserving jurisdiction over the Litigation, including all future proceedings concerning the administration, consummation, and enforcement of this Stipulation;

(e) finding that the Complaint in the Litigation was filed on a good faith basis in accordance with the Private Securities Litigation Reform Act of 1995 (the "PSLRA") and Rule 11 of the Federal Rules of Civil Procedure;

(f) finding, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, that there is no just reason for delaying and directing entry of a final judgment; and

(g) containing such other and further provisions consistent with the terms of this Stipulation to which the Settling Parties expressly consent in writing.

5.4 At or after the Final Approval Hearing, Lead Counsel also shall request that the Court approve the proposed Plan of Distribution, the Fee and Expense Application by

Lead Counsel, and any request for reimbursement of costs and expenses to Lead Plaintiffs.

6. Releases

6.1 Upon the Effective Date, with the exception of claims to enforce the Settlement, Lead Plaintiffs and each of the Settlement Class Members who have not validly requested exclusion from the Settlement Class shall be deemed to have, and by operation of the Final Judgment shall have, fully, finally, and forever released, relinquished, and discharged against the Defendants' Released Persons (whether or not such Settlement Class Members execute and deliver Proof of Claim and Release forms) any and all Released Claims (including, without limitation, Unknown Claims), as well as any claims arising out of, relating to, or in connection with, the defense, settlement, or resolution of the Litigation or the Released Claims.

6.2 Upon the Effective Date, with the exception of claims to enforce the Settlement, Lead Plaintiffs and each of the Settlement Class Members who have not validly requested exclusion from the Settlement Class, and their respective predecessors, successors, beneficiaries, agents, representatives, attorneys, and affiliates, and the respective heirs, executors, administrators, successors, and assigns of each of them, directly or indirectly, individually, derivatively, representatively, or in any other capacity, shall be permanently barred and enjoined from the assertion, institution, maintenance, prosecution, or enforcement against any of Defendants' Released Persons, in any state or federal court or arbitral forum, or in the court of any foreign jurisdiction, of any and all Released Claims (including, without limitation, Unknown Claims), as well as any claims

arising out of, relating to, or in connection with, the defense, settlement, or resolution of the Litigation or the Released Claims.

6.3 The Proof of Claim and Release to be executed by Settlement Class Members shall release all Released Claims against the Defendants' Released Persons.

6.4 Upon the Effective Date, with the exception of claims to enforce the Settlement, the Settling Defendants and each of their Related Persons shall be deemed to have, and by operation of the Final Judgment shall have, fully, finally, and forever released, relinquished, and discharged Lead Plaintiffs, each and all of the Settlement Class Members, Plaintiffs' Counsel, and Plaintiffs' Released Persons from all Released Defendants' Claims (including, without limitation, Unknown Claims) arising out of, relating to, or in connection with, the institution, prosecution, assertion, settlement, or resolution of the Litigation or the Released Claims.

6.5 Upon the Effective Date, with the exception of claims to enforce the Settlement, Settling Defendants and each of their Related Persons, and their respective predecessors, successors, agents, representatives, attorneys, and affiliates, and the respective heirs, executors, administrators, successors, and assigns of each of them, directly or indirectly, individually, derivatively, representatively, or in any other capacity, shall be permanently barred and enjoined from the assertion, institution, maintenance, prosecution, or enforcement against any Lead Plaintiff, Settlement Class Member, Plaintiffs' Counsel, and each of Plaintiffs' Released Persons, in any state or federal court or arbitral forum, or in the court of any foreign jurisdiction, of any and all Released Defendants' Claims (including, without limitation, Unknown Claims), as well as any

claims arising out of, relating to, or in connection with, the defense, settlement, or resolution of the Litigation or the Released Claims.

7. Administration and Calculation of Claims, Final Awards, and Supervision and Distribution of the Settlement Fund

7.1 The Claims Administrator, subject to such supervision and direction of the Court, shall provide notice of the Settlement to the Settlement Class, administer and calculate the claims submitted by Settlement Class Members, and oversee distribution of the Net Settlement Fund to Authorized Claimants. Subject to further order(s) and/or directions as may be made by the Court, or as provided in this Stipulation, the Claims Administrator is authorized to execute such transactions as are prescribed herein in a manner consistent with the terms of this Stipulation. The Defendants' Released Persons shall have no responsibility for, interest in, or liability whatsoever with respect to the actions of the Claims Administrator, or any transaction executed by the Claims Administrator.

7.2 Within five (5) days of the Settling Parties' execution of this Stipulation, the Individual Defendants will make best efforts to cause GMX to request its transfer agent to provide to the Claims Administrator, at no cost to Lead Plaintiffs, Plaintiffs' Counsel or the Settlement Fund, the names of all registered holders of the common stock of GMX who purchased or otherwise acquired GMX common stock during the period May 13, 2009 through March 10, 2011. The Settling Defendants shall have no responsibility for the administration of the Settlement and shall have no liability to the Settlement Class in connection with such administration.

7.3 In accordance with the schedule set forth in the Preliminary Approval Order, the Claims Administrator will cause to be mailed to all Persons who purchased or otherwise acquired GMX common stock during the period May 13, 2009 and March 10, 2011; as identified through the process set forth in ¶ 7.2: (a) the Notice, substantially in the form of Exhibit A-1 attached hereto; and (b) a Proof of Claim, substantially in the form of Exhibit A-2 attached hereto. The Claims Administrator shall also make reasonable efforts to give notice to nominee owners such as brokerage firms and other persons or entities who purchased GMX common stock pursuant or traceable to the May 2009 Offering or the October 2009 Offering. The Settling Parties shall propose, in the Preliminary Approval Order, that the Court order such nominee purchasers to forward copies of the Notice and Proof of Claim to their beneficial owners or to provide the Claims Administrator with lists of the names and addresses of the beneficial owners, and further that the Claims Administrator shall promptly send the Notice and Proof of Claim to such beneficial owners. Additional copies of the Notice and Proof of Claim shall be made available to any record holder requesting same for the purpose of distribution to beneficial owners, and such record holders shall be reimbursed from the Settlement Fund, upon receipt by the Claims Administrator of proper documentation, for the reasonable expense of sending the Notice and Proof of Claim to beneficial owners. The Notice and Proof of Claim form shall also be posted on the Claims Administrator's website. In accordance with the schedule set forth in the Preliminary Approval Order, the Summary Notice, substantially in the form of Exhibit A-3 attached hereto, will also be published

once in the national edition of *Investor's Business Daily* and once over the Business Wire. The cost of providing such notice shall be paid out of the Settlement Fund.

7.4 The Settlement Fund shall be applied as follows:

(a) to pay, in accordance with ¶ 4.7 hereof, all the costs and expenses reasonably and actually incurred in connection with providing notice to the Settlement Class, locating Settlement Class Members, assisting with the filing of claims, paying escrow fees and costs, if any, processing Proofs of Claim, and distributing the Net Settlement Fund to Authorized Claimants;

(b) to pay all Taxes and Tax Expenses as described in ¶ 4.8 hereof;

(c) to pay Plaintiffs' Counsel's attorneys' fees and expenses (the "Fee and Expense Award") and reimbursement of costs and expenses to Lead Plaintiffs, if and to the extent allowed by the Court; and

(d) to distribute the Net Settlement Fund to Authorized Claimants as allowed by this Stipulation, the Plan of Distribution, or the Court.

7.5 Upon the Effective Date and thereafter, and in accordance with the terms of this Stipulation, the Plan of Distribution, or such further approval and further order(s) of the Court as may be necessary or as circumstances may require, the Net Settlement Fund shall be distributed to Authorized Claimants, subject to and in accordance with the following paragraphs.

7.6 Each Person claiming to be an Authorized Claimant shall be required to submit to the Claims Administrator a completed Proof of Claim, substantially in the form of Exhibit A-2 attached hereto, by first class mail, postage prepaid, postmarked no later

than one hundred and twenty (120) calendar days after entry of the Preliminary Approval Order by the Court to the Post Office Box address listed in the Notice, or such other time as may be set by the Court (the "Bar Date"), signed under penalty of perjury and supported by such documents as are specified in the Proof of Claim and Release and as are reasonably available to such Person.

7.7 Except as otherwise ordered by the Court, all Settlement Class Members who fail to submit a Proof of Claim by the Bar Date, or such other period as may be ordered by the Court, or otherwise allowed, or who submit a Proof of Claim that is rejected, shall be forever barred from receiving any payments pursuant to this Stipulation and the Settlement set forth herein, but will in all other respects be subject to and bound by the provisions of this Stipulation, the releases contained herein, and the Final Judgment. Notwithstanding the foregoing, Lead Counsel may, in their discretion, accept for processing late submitted claims so long as the distribution of the Net Settlement Fund to Authorized Claimants is not materially delayed.

7.8 Subject to the approval of and further order(s) of the Court, the Claims Administrator shall distribute the Net Settlement Fund to Authorized Claimants as provided herein and in the manner set forth in the Notice (which shall include the Plan of Distribution) or as otherwise ordered by the Court.

7.9 This is not a claims-made Settlement. The Settling Defendants, or any other person or entity who funded the Settlement Amount, shall not have a reversionary interest in the Net Settlement Fund. If, for any reason, there is a balance remaining in the Net Settlement Fund after six (6) months from the date of the initial distribution of the

Net Settlement Fund, the Claims Administrator shall, if feasible, distribute such balance among Authorized Claimants who cashed the checks sent to them in the initial distribution in an equitable and economical fashion. These redistributions shall be repeated until the balance remaining in the Net Settlement Fund is no longer cost efficient and such remaining balance shall then be donated to a secular § 501(c)(3) organization designated by Lead Counsel.

7.10 The Defendants' Released Persons shall have no responsibility for, interest in, or liability whatsoever with respect to the distribution of the Net Settlement Fund, the Plan of Distribution, the determination, administration, or calculation of claims, the payment or withholding of Taxes, or any losses incurred in connection therewith.

7.11 The Settling Defendants shall take no position with respect to the Plan of Distribution or any other such plan as may be approved by the Court.

7.12 It is understood and agreed by the Settling Parties that any proposed Plan of Distribution of the Net Settlement Fund including, but not limited to, any adjustments to an Authorized Claimant's claim set forth therein, is not a part of this Stipulation and is to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement set forth in this Stipulation, and any order or proceeding relating to the Plan of Distribution shall not operate to terminate or cancel this Stipulation or affect the finality of the Court's Final Judgment approving this Stipulation and the Settlement set forth therein, or any other orders entered pursuant to this Stipulation. Settlement Class Members and the Settling Parties shall be bound by the

terms of this Stipulation, irrespective of whether the Court disapproves or modifies the Plan of Distribution.

7.13 No Person shall have any claim against Lead Plaintiffs, Plaintiffs' Counsel, Plaintiffs' Released Persons or their counsel, or the Claims Administrator, based on distributions made substantially in accordance with the Settlement, this Stipulation, and the Plan of Distribution, or otherwise as further ordered by the Court. No Person shall have any claim against the Settling Defendants, Defendants' Released Persons, or their counsel arising from or relating to the management of, distributions from, or the disposition of the Settlement Fund or the Net Settlement Fund.

8. Lead Counsel's Attorneys' Fees and Expenses

8.1 Lead Counsel, on behalf of Plaintiffs' Counsel, will submit an application or applications (the "Fee and Expense Application") for distributions from the Settlement Fund for (a) an award of attorneys' fees to be paid out of the Settlement Fund, plus (b) expenses incurred in connection with prosecuting the Litigation (including, but not limited to, the fees and expenses of expert consultants), plus (c) interest on both amounts at the same rate and for the same periods as earned by the Settlement Fund (until paid) as may be awarded by the Court. In addition, Lead Plaintiffs may submit requests for reimbursement of costs and expenses in connection with their representation of the Settlement Class. Lead Counsel reserve the right to make an additional application should circumstances so warrant. Neither Lead Counsel nor any Settlement Class Member shall be entitled to terminate this Stipulation if the Court disapproves of or

modifies the terms of this Stipulation with respect to attorneys' fees or expenses or the distribution of the Net Settlement Fund.

8.2 The attorneys' fees and expenses, as awarded by the Court, shall be paid to Lead Counsel from the Gross Settlement Fund, as ordered, immediately after the Court executes an order awarding such fees and expenses. This provision shall apply notwithstanding timely objections to, potential for appeal from, or collateral attack on the Settlement. Lead Counsel shall thereafter allocate the attorneys' fees amongst other Plaintiffs' Counsel in a manner that Lead Counsel in good faith believe reflects the contributions of such counsel to the prosecution and settlement of the Litigation. Any such awards shall be paid solely from the Gross Settlement Fund. In the event that the judgment or the order awarding such fees and expenses paid to Lead Counsel pursuant to ¶ 8.1 is reversed or modified, or if the Settlement is cancelled or terminated for any reason, then Lead Counsel and other Plaintiffs' Counsel shall, in an amount consistent with such reversal or modification, refund such fees or expenses to the Settlement Fund, plus interest thereon at the same rate as earned on the Settlement Fund, within twenty (20) business days from receiving notice from counsel for the Settling Defendants or from a court of competent jurisdiction.

8.3 The procedure for and the allowance or disallowance by the Court of the Fee and Expense Application, to be paid out of the Gross Settlement Fund, are not part of the Settlement set forth in this Stipulation, and any order or proceeding relating to the Fee and Expense Application, or any appeal from any order relating thereto or reversal or modification thereof, shall not operate to terminate or cancel this Stipulation, or affect or

delay the finality of the Final Judgment approving this Stipulation and the Settlement of the Litigation.

8.4 The Settling Defendants, Defendants' Released Persons, and their counsel shall have no responsibility for any payment of attorneys' fees and expenses to Lead Counsel or any Settlement Class Member's counsel over and above payment of the Settlement Fund pursuant to ¶ 4.1.

8.5 The Settling Defendants and the Defendants' Released Persons shall have no responsibility for the allocation among Plaintiffs' Counsel, and/or any other Person who may assert some claim thereto, of any Fee and Expense Award that the Court may make in the Litigation.

9. Conditions of Settlement, Effect of Disapproval, Cancellation, or Termination

9.1 The Effective Date of this Stipulation shall be conditioned on the occurrence of all of the following events:

- (a) execution of this Stipulation and such other documents as may be required to obtain final Court approval of this Stipulation in a form satisfactory to the Settling Parties;
- (b) deposit of the Settlement Amount in accordance with ¶ 4.1;
- (c) entry by the Court of a Preliminary Approval Order, as required by ¶ 5.1 hereof, which, *inter alia*, certifies a Settlement Class;
- (d) Settling Defendants have not exercised their option to terminate this Stipulation pursuant to ¶ 9.3 hereof;

(e) following notice to the Settlement Class and a hearing, as prescribed by Rule 23 of the Federal Rules of Civil Procedure, the entry by the Court of the Final Judgment, substantially in the form attached hereto as Exhibit B, that, among other things, dismisses with prejudice the claims asserted in the Litigation as set forth above; and

(f) finality of the Final Judgment as set forth in ¶ 1.6 hereof.

9.2 Upon the occurrence of all of the events referenced in ¶ 9.1 hereof, any and all remaining interest or right of the Settling Defendants in or to the Net Settlement Fund, if any, shall be absolutely and forever extinguished. If the conditions specified in ¶ 9.1(c) or ¶ 9.1(e) hereof are not met, or if the condition in ¶ 9.1(f) is not met and there is no possibility that the condition in ¶ 9.1(f) can be met, then this Stipulation shall be canceled and terminated subject to ¶ 9.4 hereof unless Lead Counsel and counsel for the Settling Defendants mutually agree in writing to proceed with the Settlement.

9.3 If, prior to the Final Approval Hearing, Persons who otherwise would be Settlement Class Members have timely requested exclusion from the Settlement Class in accordance with the provisions of the Preliminary Approval Order and the Notice given pursuant thereto, and the amount of such requests exceeds the threshold specified in the separate “Supplemental Agreement,” executed between Lead Plaintiffs and the Settling Defendants, the Settling Defendants shall have the option to terminate this Stipulation and Settlement in accordance with the procedures set forth in the Supplemental Agreement. The Supplemental Agreement will not be filed with the Court unless requested by the Court, and then shall only be filed under seal for *in camera* inspection

by the Court. Lead Counsel shall provide counsel for the Settling Defendants with copies of any timely requests for exclusion no later than sixteen (16) calendar days prior to the Final Approval Hearing. The Settling Defendants may terminate this Stipulation and Settlement in accordance with the procedures set forth in the Supplemental Agreement, by serving written notice of termination on the Court and Lead Counsel by electronic mail on or before seven (7) calendar days prior to the Final Approval Hearing (or a later date as agreed to by the Settling Parties in writing). Lead Counsel may attempt to cause retraction of any request for exclusion by a Member of the Settlement Class.

9.4 Unless otherwise ordered by the Court, in the event that the Effective Date does not occur or this Stipulation is terminated, cancelled, or fails to become effective for any reason, including, without limitation, in the event the Final Judgment is reversed or vacated following any appeal taken therefrom, or this Stipulation is successfully collaterally attacked, then:

(a) within five (5) business days after written notification of such event is sent by counsel for the Settling Defendants or Lead Counsel to the Escrow Agent, the Settlement Fund (including accrued interest), less expenses actually incurred or due and owing for Notice and Administration Expenses, Taxes, or Tax Expenses pursuant to ¶¶ 4.7 and 4.8 hereof, shall be refunded pursuant to written instructions from counsel for the Settling Defendants;

(b) at the request of counsel for the Settling Defendants, the Claims Administrator or its designee shall apply for any tax refund owed on the Gross Settlement Fund and pay the proceeds, after deduction of any expenses incurred in

connection with such application(s) for refund, at the written direction of counsel for the Settling Defendants;

(c) the Settling Parties shall be restored to their respective positions in the Litigation as of date immediately prior to the execution of this Stipulation;

(d) the terms and provisions of this Stipulation, with the exception of ¶¶ 1.1-1.30, 4.6-4.8, the last sentence of ¶ 8.2, this ¶ 9.4, and ¶¶ 10.6 and 10.7, below, shall have no further force and effect with respect to the Settling Parties and shall not be used in this Litigation or in any other proceeding for any purpose; and

(e) any Final Judgment or order entered by the Court in accordance with the terms of this Stipulation shall be treated as vacated, *nunc pro tunc*, and the Settling Parties shall be deemed to return to their status as of the date of execution of this Stipulation.

9.5 No order of the Court or modification or reversal on appeal of any order of the Court concerning the Plan of Distribution or the amount of any attorneys' fees, expenses, and interest awarded by the Court to Lead Counsel or reimbursement of costs and expenses to Lead Plaintiffs shall constitute grounds for cancellation or termination of this Stipulation.

9.6 If the Court does not enter the Judgment substantially in the form attached as Exhibit B hereto, or if the Court enters the Judgment and appellate review is sought and, on such review, the entry of the Judgment is finally vacated, modified, or reversed, then this Stipulation and the Settlement incorporated herein shall be cancelled and terminated, unless all parties who are adversely affected thereby, in their sole discretion

within thirty (30) days from the date of the mailing of such ruling to such parties, provide written notice to all other parties hereto of their intent to proceed with the Settlement under the terms of the Judgment as modified by the Court or on appeal. Such notice may be provided on behalf of Lead Plaintiffs and the Settlement Class Members by Lead Counsel. No Settling Party shall have any obligation whatsoever to proceed under any terms other than substantially in the form provided and agreed to herein; provided, however, that no order of the Court concerning any Fee and Expense Application or Plan of Distribution, or any modification or reversal on appeal of such order, shall constitute grounds for cancellation or termination of this Stipulation by any Settling Party. Without limiting the foregoing, each of the Settling Defendants shall have, in his, her, or its sole and absolute discretion, the option to terminate the Settlement in its entirety in the event that the Judgment, upon becoming Final, does not provide for the dismissal with prejudice of the Litigation against him, her, or it. The Settling Defendants may not, however, terminate this Stipulation or the Settlement based upon their failure, or the failure of any of their Related or Released Persons, to timely make the payment of the Settlement Amount, or any portion thereof, as set forth in ¶ 4.1.

9.7 In the event this Stipulation shall be terminated as set forth in ¶¶ 9.1, 9.2 or 9.3, above, within two (2) weeks of such termination, the Settling Parties will jointly request a scheduling conference with the Court. Until such conference occurs and new dates are scheduled, the stay order entered by the Court on September 26, 2013 shall remain in place (Docket No. 135). Until the stay is lifted, all members of the Settlement Class shall be barred and enjoined from prosecuting any of the Released Claims against

any of the Settling Defendants or Defendants' Released Persons and the Settling Defendants and Defendants' Related Persons shall be barred and enjoined from prosecuting any of the Released Defendants' Claims against Lead Plaintiffs, the Settlement Class, Plaintiffs' Counsel, and Plaintiffs' Released Persons.

10. Miscellaneous Provisions

10.1 The Settling Parties (a) acknowledge that it is their intent to consummate this Stipulation; and (b) agree to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of this Stipulation and to exercise their best efforts to accomplish the foregoing terms and conditions of this Stipulation expeditiously.

10.2 The Settling Parties intend this Settlement to be a final and complete resolution of all disputes between them with respect to the Litigation. The Settlement shall not be deemed an admission by any of the Settling Defendants or Defendants' Released Persons as to the merits of any claim or defense, or an admission by any of the Lead Plaintiffs or Plaintiffs' Released Persons as to the infirmity of any claim or the merits of any affirmative defenses thereto.

10.3 The Settling Parties and their counsel agree that they shall not assert or allege in any action, proceeding, or claim that any party hereto or any of the Released Persons violated Rule 11 of the Federal Rules of Civil Procedure, and the Final Judgment shall contain a finding that all Settling Parties, and their respective counsel complied with the requirements of Rule 11 with respect to the institution, prosecution, defense, and resolution of the Litigation. The Settling Parties agree that the amount paid to the

Settlement Fund and the other terms of the Settlement were negotiated in good faith by the Settling Parties and reflect a settlement that was reached voluntarily after consultation with competent legal counsel and with the assistance of an experienced mediator, the Honorable Layn R. Phillips (Ret.). The Settling Parties reserve their right to rebut, in a manner that such party determines to be appropriate, any contention made in any public forum regarding the Litigation, including that the Litigation was brought or defended in bad faith or without a reasonable basis.

10.5 If a case is commenced with respect to any Person contributing to the Settlement Fund under Title 11 of the United States Code (Bankruptcy), or a trustee, receiver or conservator is appointed under any similar law, and in the event of the entry of a final order of a court of competent jurisdiction determining the transfer of the Settlement Fund, or any portion thereof, by or on behalf of any Settling Defendant to be a preference, voidable transfer, fraudulent conveyance, or similar transaction and any portion thereof is required to be returned, then the remaining Settling Defendants shall have the option, but not the obligation, to promptly pay or cause to be paid such amount into the Settlement Fund. If such amount is not promptly deposited to the Settlement Fund by or on behalf of the Settling Defendants then, at the election of Lead Counsel, the Settling Parties shall jointly move the Court to vacate and set aside the releases given and Judgment entered in favor of Defendants' Released Persons pursuant to this Stipulation, which releases and Judgment shall be null and void, and the Settling Parties shall be restored to their respective positions in the Litigation immediately prior to the execution of this Stipulation and any cash proceeds in the Settlement Fund shall be returned as

provided in ¶ 9.4. For the avoidance of doubt, in the event of the entry of a final order of a court of competent jurisdiction determining the transfer of the Settlement Fund, or any portion thereof, by or on behalf of any Settling Defendant to be a preference, voidable transfer, fraudulent conveyance, or similar transactions and any portion thereof is required to be returned, then the remaining Settling Defendants shall have no obligation to pay such amount.

10.6 Neither this Stipulation nor the Settlement contained herein, nor any act performed or document executed pursuant to or in furtherance of this Stipulation or the Settlement (a) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any Released Claim, or of any wrongdoing or liability of the Settling Defendants or their Released Persons; or (b) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of any of the Settling Defendants or their Released Persons; or (c) is or may be deemed to be or may be used as an admission or evidence that any claims asserted by Lead Plaintiffs were not valid or that the amount recoverable was not greater than the Settlement Amount, in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal. Neither this Stipulation nor the Settlement, nor any act performed or document executed pursuant to or in furtherance of this Stipulation or the Settlement shall be admissible in any proceeding for any purpose, except to enforce the terms of the Settlement.

10.7 All agreements made during the course of the Litigation relating to the confidentiality of information shall survive this Stipulation.

10.8 This Stipulation may be amended or modified only by a written instrument signed by or on behalf of all Settling Parties or their respective successors-in-interest.

10.9 This Stipulation and the Exhibits attached hereto (which are a material and integral part of the Settling Parties' agreement), together with the Supplemental Agreement referred to in ¶ 9.3, constitute the entire agreement between the Lead Plaintiffs and the Settling Defendants and no representations, warranties, or inducements have been made by and between Lead Plaintiffs and the Settling Defendants concerning this Stipulation, its Exhibits or the Supplemental Agreement other than the representations, warranties, and covenants contained and memorialized in such documents. Except as otherwise provided herein (or, as between Settling Defendants, in any separate agreements between them), each Settling Party shall bear its own costs.

10.10 Lead Counsel, on behalf of the Settlement Class, are expressly authorized by Lead Plaintiffs to take all appropriate action required or permitted to be taken by the Settlement Class pursuant to this Stipulation to effectuate its terms and also are expressly authorized to enter into any modifications or amendments to this Stipulation on behalf of the Settlement Class which they deem appropriate.

10.11 Lead Plaintiffs and Lead Counsel represent and warrant that none of the Lead Plaintiffs' claims or causes of action referred to in this Litigation or this Stipulation has been assigned, encumbered, or in any manner transferred in whole or in part.

10.12 Each counsel or other Person executing this Stipulation, any of its Exhibits, or any documents prepared in furtherance of this Stipulation on behalf of any Settling Party hereby warrants that such Person has the full authority to do so.

10.13 This Stipulation may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. A complete set of executed counterparts shall be filed with the Court.

10.14 This Stipulation shall be binding upon, and inure to the benefit of, the heirs, successors, and assigns of the Settling Parties hereto.

10.15 The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of this Stipulation, and all Settling Parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the Settlement embodied in this Stipulation.

10.16 With the exception of implementation of the settlement process, pursuant to which the Settling Parties will seek the Preliminary Approval Order and, after notice and hearing, the Final Judgment, the Litigation will remain stayed.

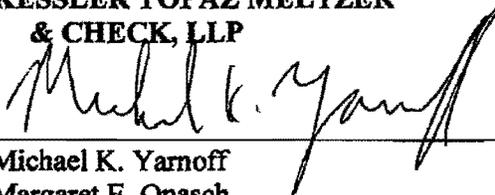
10.17 The Settling Defendants and their Released Persons may file this Stipulation and/or the Final Judgment in any action that may be brought against them in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

10.18 This Stipulation, the Exhibits hereto and the Supplemental Agreement shall be considered to have been negotiated, executed, and delivered, and to be wholly performed, in the State of Oklahoma, and the rights and obligations of the parties to this Stipulation shall be construed and enforced in accordance with, and governed by, the

internal, substantive laws of the State of Oklahoma without giving effect to that State's choice-of-law principles.

IN WITNESS WHEREOF, the parties hereto have caused this Stipulation to be executed, by their duly authorized attorneys, and dated as of March 25, 2014.

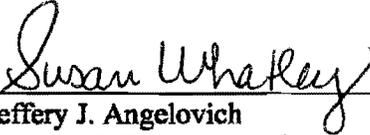
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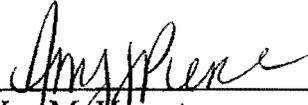
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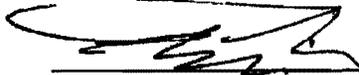
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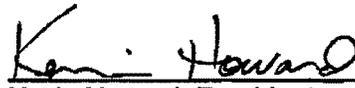
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SMITH CARNEY & CO., P.C.

 3/19/14
Date:
Kevin Howard, President