

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

KEITH THOMAS, RICHARD HAYES, HERB SMITH, and OKLAHOMA POLICE PENSION & RETIREMENT SYSTEM,

Plaintiffs,

v.

MAGNACHIP SEMICONDUCTOR CORP., SANG PARK, TAE YOUNG HWANG, MARGARET SAKAI, R. DOUGLAS NORBY, ILBOK LEE, NADER TAVAKOLI, RANDAL KLEIN, MICHAEL ELKINS, AVENUE CAPITAL MANAGEMENT II, L.P., BARCLAYS CAPITAL INC., DEUTSCHE BANK SECURITIES INC., CITIGROUP GLOBAL MARKETS INC., UBS SECURITIES LLC, and NEEDHAM & COMPANY, LLC,

Defendants.

CASE NO.: 3:14-CV-01160-JST

CLASS ACTION

**STIPULATION AND AGREEMENT OF SETTLEMENT**

This Stipulation and Agreement of Settlement (the “Stipulation”) dated June 14, 2017 is hereby submitted to the Court pursuant to Rule 23 of the Federal Rules of Civil Procedure. Subject to the approval of the Court, this Stipulation is entered into among the Class Representatives Keith Thomas (“Thomas”) and Herb Smith (“Smith”) and the plaintiff Class certified by the Court on December 22, 2016 (Dkt. No. 286) (collectively, “Plaintiffs”),<sup>1</sup> and defendant Avenue Capital Management II, L.P. (“Avenue Capital”), by and through their respective counsel. Plaintiffs and Avenue Capital are collectively referred to herein as the “Parties” or “Settling Parties.”

1. WHEREAS, on March 12, 2014, plaintiff Richard Hayes filed a putative class action complaint styled as *Richard Hayes v. Magnachip Semiconductor Corp., et al.*, No. 3:14-

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<sup>1</sup> All capitalized words and terms that are not otherwise defined in text shall have the meaning ascribed in the section entitled “Certain Definitions.”

CV-01160 (JST) (the “Litigation”), alleging violations of federal securities laws against MagnaChip Semiconductor Corp. (“MagnaChip”), Sang Park (“Park”), Margaret Sakai (“Sakai”), and Tae Young Hwang (“Hwang”) in the United States District Court for the Northern District of California;

2. WHEREAS, on July 3, 2014, the Court entered an order appointing Keith Thomas (“Thomas”) as Lead Plaintiff, Pomerantz LLP as Lead Plaintiff’s Counsel and Glancy Prongay & Murray LLP (formerly Glancy Binkow & Goldberg) as Liaison Counsel;

3. WHEREAS, on June 26, 2015, Thomas filed the Third Amended Complaint (the “Complaint”) alleging violations of: (i) § 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”) against MagnaChip, Park, Sakai, Hwang, Randal Klein (“Klein”), Michael Elkins (“Elkins”), Douglas Norby (“Lee”), Ilbok Lee (“Lee”), and Nader Tavakoli (“Tavakoli”) (Park, Sakai, Hwang, Klein, Elkins, Norby, Lee, Tavakoli, collectively, the “Individual Defendants”); (ii) § 20(a) of the Exchange Act against Park, Sakai, Hwang, Klein, Elkins, Norby, Lee, Tavakoli, and Avenue Capital; (iii) § 11 of the Securities Act of 1933 (“Securities Act”) against MagnaChip, Park, Sakai, Elkins, Klein, Lee, Norby, and Tavakoli, as well as against Barclays Capital Inc., Deutsche Bank Securities Inc., Citigroup Global Markets Inc., UBS Securities LLC and Needham & Company, LLC (collectively, the “Underwriter Defendants”); (iv) § 12(a)(2) of the Securities Act against Avenue Capital, MagnaChip, Park, Sakai, Elkins, Klein, Lee, Norby, Tavakoli and the Underwriter Defendants; (v) § 15 of the Securities Act against MagnaChip, Avenue Capital, Park, Sakai and Hwang; and (vi) § 20A of the Exchange Act against Avenue Capital;

4. WHEREAS, on or about February 5, 2016, Plaintiffs entered into a Stipulation of Settlement with MagnaChip and the Individual Defendants settling in full the claims against them

in this Litigation and with the Underwriter Defendants dismissing the claims against them, which did not settle or release the claims against Avenue Capital;

5. WHEREAS, by Order dated March 4, 2016, the Court entered an order granting Avenue Capital's motion to dismiss the Securities Act claims, denying Avenue Capital's motion to dismiss the Exchange Act claims alleged against it in the Complaint, and denying all motions to dismiss filed by other defendants as moot in light of the February 5, 2016 Stipulation of Settlement (Dkt. No. 194);

6. WHEREAS, on November 21, 2016, the Court granted final approval to the February 5, 2016 Stipulation of Settlement with defendants other than Avenue Capital (Dkt. No. 269);

7. WHEREAS, on December 22, 2016, the Court granted class certification of a Class Period beginning February 1, 2012 and ending March 11, 2014 with respect to claims remaining against Avenue Capital (the "Class") (Dkt. No. 286);

8. WHEREAS, on February 8, 2017, the Court struck a motion by Plaintiffs to certify a second class of shareholders who purchased MagnaChip stock during a proposed class period beginning March 12, 2014 and ending February 12, 2015 with respect to claims remaining against Avenue Capital (Dkt. No. 298);

9. WHEREAS, Class Representatives and Avenue Capital, by their counsel, over the course of this Litigation engaged in extensive discovery, including the production and review of hundreds of thousands of pages of documents and more than a dozen fact and expert depositions;

10. WHEREAS, the Settlement set forth in this Stipulation is the product of substantial, protracted arm's-length negotiations, including significant mediation efforts conducted in person

on July 12, 2016 and thereafter by former United States District Judge Layn R. Phillips, and on May 12, 2017 by experienced mediator Michelle Yoshida;

11. WHEREAS, in recognition of the inherent risks and costs of continued litigation and the benefits of resolving this Litigation, the Parties desire to settle and resolve any and all actual or potential claims by or between Plaintiffs, on the one hand, and the Released Persons, on the other hand, arising out of or relating to the subject matter of this action (the “Action”);

12. WHEREAS, the Released Persons deny any wrongdoing and/or fault whatsoever, and the Settling Parties agree that this Stipulation, the fact of settlement, any settlement discussions, any settlement proceedings, and any statements and/or documents relating to this Settlement and/or to any settlement term do not constitute and in no event shall be construed as (or be considered evidence of) an admission or concession: (i) by any Released Person with respect to any fact or matter stated or alleged in the Action; (ii) by any Released Person with respect to any actual or potential claim, liability, wrongdoing, fault, or damage whatsoever; (iii) by any Released Person with respect to any infirmity in any defense or other argument that any Released Person has asserted; or (iv) by Plaintiffs with respect to any infirmity in the claims asserted in the Action;

13. WHEREAS, the Parties wish to settle and compromise any dispute regarding the Action or its subject matter, including but not limited to whether the Action was filed by Plaintiffs and defended by Avenue Capital in good faith and with adequate basis in fact under Rule 11 of the Federal Rules of Civil Procedure, and agree that the Action is being voluntarily settled after extensive work with experienced mediators and on advice of counsel, and that the terms of the Settlement are fair, reasonable, and adequate;

14. WHEREAS, Class Counsel, on the basis of the extensive discovery taken to date, their further investigation, and the opinions of retained experts, have thoroughly analyzed both the underlying events and transactions alleged in the Action and the remaining claims against Avenue Capital, and the potential defenses thereto. As a result of this information and their discussions with Class Counsel, Class Representatives Thomas and Smith have sufficient basis to evaluate the Settlement on behalf of Plaintiffs and the Class, as described in this Stipulation, and have concluded that the Settlement is fair, reasonable and adequate;

15. WHEREAS, Class Counsel have also concluded that the terms and conditions of the Settlement set forth herein are fair, reasonable, and adequate to Plaintiffs and the Class, and in their best interests, after considering: (i) the substantial benefits that the Class will receive from settlement of the remaining claims against Avenue Capital; (ii) the attendant costs and risks of continued litigation; and (iii) the desirability of permitting the Settlement to be consummated as provided by the terms of this Stipulation;

NOW, THEREFORE, without any admission or concession on the part of the Plaintiffs of any lack of merit in the Action whatsoever, and without any admission or concession on the part of Avenue Capital of any liability, wrongdoing, fault, or lack of merit in the defenses asserted in the Litigation whatsoever,

The Parties hereby STIPULATE AND AGREE, through their respective attorneys, subject to approval of the Court pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, to the following terms and conditions:

**A. CERTAIN DEFINITIONS**

As used in this Stipulation, the following terms have the meanings specified below:

1. “Action” means *Thomas et al. v. MagnaChip Semiconductor Corp. et al.*, No. 3:14-CV-1160 (JST), pending in the United States District Court for the Northern District of California.

2. “Attorneys’ Fees and Expenses” means any portion of the Gross Settlement Fund approved by the Court for payment to Plaintiffs’ Counsel, including reasonable attorneys’ fees, costs, litigation expenses, and fees and expenses of experts (excluding Notice and Administration Expenses).

3. “Avenue Capital” means Avenue Capital Management II, L.P.

4. “Authorized Claimant” means any Claimant whose claim for recovery has been allowed pursuant to the terms of the Stipulation or by order of the Court.

5. “Award to Class Representatives” means any portion of the Gross Settlement Fund approved by the Court for payment to Class Representatives Thomas and/or Smith for their service to the Class in this Action, and of reasonable costs and expenses directly relating to the representation of the Class pursuant to 15 U.S.C. § 78u-4(a)(4).

6. “Bar Order” means that portion of the Order and Final Judgment, the text of which will be substantially in the form set out in paragraphs 8-10 of Exhibit B that the Settling Parties will ask the Court to enter and that is an essential term of the Settlement.

7. “Barred Claims” means any claim, if any, however styled, whether for indemnification, contribution, or otherwise and whether arising under state, federal or common law, against the Released Persons (including claims asserted by Released Persons against other Released Persons) where the claim is or arises from a Released Claim and the alleged injury to such Person arises from that Person’s alleged liability to the Class or any Class Member, including any claim in which a Person seeks to recover from any of the Released Persons (i) any amounts such person or entity has or might become liable to pay to the Class or any Class Member and/or

(ii) any costs, expenses, or attorneys' fees from defending any claim by the Class or any Class Member.

8. "Claimant" means any Class Member who has already filed a Proof of Claim in connection with the February 5, 2016 Stipulation of Settlement, or who files a Proof of Claim in such form and manner, and within such time, as set forth in this Stipulation, or as the Court shall prescribe.

9. "Claims Administrator" means the accounting and claims administration firm, Strategic Claims Services, that the Court has approved to administer the settlement with other defendants set forth in the February 5, 2016 Stipulation of Settlement, and that Class Counsel requests the Court to appoint to administer this Settlement and disseminate notice to the Class.

10. "Class" means the following class certified by the Court on December 22, 2016 with respect to claims remaining against Avenue Capital:

all persons who purchased or otherwise acquired MagnaChip Semiconductor Corporation ("MagnaChip" or the "Company") common stock between February 1, 2012 and March 11, 2014 (the "Class Period"), inclusive. Excluded from the Class are any parties who are or have been Defendants in this Litigation, the present and former officers and directors of MagnaChip and any subsidiary thereof, members of their immediate families and their legal representatives, heirs, successors or assigns and any entity in which any current or former Defendant has or had a controlling interest.

(Dkt. No. 286).

11. "Class Counsel" means the law firms of Pomerantz LLP and The Rosen Law Firm, P.A.

12. "Class Representatives" means Keith Thomas and Herb Smith.

13. "Court" means the United States District Court for the Northern District of California.

14. "Defendant" means Avenue Capital.

15. “Defendant’s Counsel” means the law firm of Akin, Gump, Strauss, Hauer & Feld LLP.

16. “Distribution Order” means the order entered by the Court, upon application of Plaintiffs’ Counsel and on notice to the Settling Defendants’ counsel, following the occurrence of the events identified in paragraph D.11 below, which authorizes the Claims Administrator to distribute the Net Settlement Fund to the Class.

17. “Effective Date” means the date on which all of the conditions set forth below in paragraph K.1 shall have been satisfied.

18. “Escrow Agent” means the Claims Administrator or its duly appointed agent(s). The Escrow Agent shall perform the duties as set forth in this Stipulation.

19. “Final” shall mean, with respect to the Court’s Order and Final Judgment, the occurrence of either of the following (whichever is earlier): (i) if timely appeal or review is not sought by any Person from the Order and Final Judgment, the day following the expiration of the time to appeal or petition from the Order and Final Judgment; or (ii) if an appeal or review is sought from the Order and Final Judgment, the day after such Order and Final Judgment is affirmed or the appeal or review is dismissed or denied and such Order and Final Judgment is no longer subject to further judicial review, including upon appeal or review by writ of certiorari.

20. “Gross Settlement Fund” means the Settlement Amount plus all interest earned thereon.

21. “MagnaChip Securities” means MagnaChip common stock.

22. “Net Settlement Fund” means the Gross Settlement Fund, less: (i) taxes on the income thereof and any Tax Expenses; (ii) the Notice and Administration Expenses as authorized by this Stipulation; (iii) Attorneys’ Fees and Expenses authorized by the Court; (iv) any Award to

Class Representatives authorized by the Court; and (v) other fees and expenses authorized by the Court.

23. “Notice and Administration Escrow Account” means the account to be established from the Gross Settlement Fund and maintained by Class Counsel. The Notice and Administration Escrow Account may be drawn upon by Class Counsel for Notice and Administration Expenses without further order of the Court. Prior to the Effective Date, no more than \$250,000.00 (Two Hundred Fifty Thousand Dollars and Zero Cents) may be paid for Notice and Administration Expenses without further order of the Court.

24. “Notice and Administration Expenses” means all expenses incurred (whether or not paid) in connection with the preparation, printing, mailing, and publication of the Notice to the Class of the proposed settlement, all expenses associated with the Notice and Administration Escrow Account, Settlement Escrow Account, and Escrow Agent, and all other expenses of Settlement administration; provided, however, that none of these expenses shall be deemed to include Attorneys’ Fees and Expenses through the Effective Date. All such Notice and Administration Expenses shall be paid from the Gross Settlement Fund.

25. “Order and Final Judgment” means the order and final judgment entered by the Court, substantially in the form attached hereto as Exhibit B.

26. “Person” means any individual, corporation, partnership, limited liability company or partnership, limited partnership, professional corporation, association, joint stock company, trust, estate, unincorporated association, government, or any political subdivision or agency thereof, any other type of legal or political entity, any representative, and, as applicable, their respective spouses, heirs, predecessors, successors-in-interest, representatives, and assigns.

27. “Plaintiffs’ Counsel” means Pomerantz LLP, the Rosen Law Firm, P.A., and Glancy Prongay & Murray LLP.

28. “Plan of Allocation” means the plan for allocating the Net Settlement Fund (as set forth in the Notice of Pendency and Proposed Partial Settlement of Class Action (the “Notice”), attached as Exhibit A-1 to the Order of Preliminary Approval of Settlement) to Authorized Claimants after payment of Notice and Administration Expenses, Taxes and Tax Expenses, and Attorneys’ Fees and Expenses. Any Plan of Allocation is not part of the Stipulation and the Released Persons shall have no liability with respect thereto.

29. “Released Claims” means any and all claims, rights, demands, obligations, damages, actions or causes of action, or liabilities whatsoever, of every nature and description, whether known or unknown, whether arising under federal, state, common or foreign law or regulation, that arise out of or relate in any way to the purchase or sale of MagnaChip securities during the Class Period and the acts, facts, statements, or omissions that were or could have been alleged or asserted by Plaintiffs or any member of the Class in the Action or in any other action in any court or, including Unknown Claims, except that expressly excluded from the definition of Released Claims are: (i) all claims of any Person who submits a request for exclusion from the Settlement, to the extent that the Court grants any such request; and (ii) all claims to enforce any of the terms of this Stipulation.

30. “Released Defendant’s Claims” means all claims, demands, rights, remedies, liabilities, and causes of action of every nature and description whatsoever, whether based on federal, state, local, statutory, or common law, or any other law, rule, or regulation, including both known and Unknown Claims, that: (i) have been or could have been asserted in the Action by any of the Released Persons or the successors and assigns of any of them, against any of the Plaintiffs

or any of their attorneys; and (ii) arise out of or relate in any way to the institution, prosecution, or Settlement of this Action or the Released Claims, including but not limited to all claims for malicious prosecution or sanctions. “Released Defendant’s Claims” does not include claims to enforce any of the terms of this Stipulation.

31. “Released Persons” means Avenue Capital, its present and former parents, subsidiaries, divisions, departments, affiliates (including any investment funds it manages), stockholders, officers, directors, employees, agents, and any of their advisors, counsel, underwriters, representatives (and the predecessors, successors, insurers, administrators and assigns of each of the foregoing).

32. “Settlement” means the settlement of the Action contemplated by this Stipulation.

33. “Settlement Amount” means the total sum in the amount of \$6,200,000.00 (Six Million Two Hundred Thousand Dollars and Zero Cents).

34. “Settlement Class Member” means a Person in the Class.

35. “Settlement Escrow Account” means the interest-bearing account selected by the Escrow Agent for depositing the Settlement Amount less Notice and Claims Administration Costs. The Settlement Escrow Account shall be managed by the Escrow Agent for the benefit of the Class Representatives and the Class until the Effective Date of the Settlement.

36. “Settlement Hearing” means the final hearing to be held by the Court to determine: (i) whether the proposed Settlement should be approved as fair, reasonable, and adequate; (ii) whether all Released Claims should be dismissed with prejudice; (iii) whether the Order and Final Judgment approving the Settlement should be entered thereon; (iv) whether the allocation of the Gross Settlement Fund should be approved; and (v) whether the application for an award of Attorneys’ Fees and Expenses and an Award to Class Representatives should be approved.

37. “Taxes and Tax Expenses” means: (i) taxes (including any 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 MagnaChip 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; and (ii) expenses and costs incurred in connection with the operation and implementation of paragraph E.3 (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 paragraph E.3).

38. “Unknown Claims” means: (i) any claims that Class Representatives or any Class Member does not know or suspect to exist in his, her, or its favor at the time of the release of the Released Persons, which if known by him, her, or it, might have affected his, her, or its decision(s) with respect to the Settlement, including, but not limited to, the decision not to object to or opt out of the Settlement, provided such claim arises out of or relates to the purchase or sale of MagnaChip Securities; and (ii) Defendant’s Claims that Defendant does not know or expect 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 Released Defendant’s Claims, the Parties stipulate and agree that upon the Effective Date, the Parties shall expressly waive, and each of the Class Members shall be deemed to have waived and by operation of the Order and Final Judgment shall have 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 that 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.**

Class Representatives acknowledge, and the Class Members shall be deemed by operation of the Order and Final Judgment to have acknowledged, that the inclusion of “Unknown Claims” in the definitions of Released Claims and Released Defendant’s Claims was separately bargained for and a key element of the Settlement of which this release is a part.

**B. THE SETTLEMENT CONSIDERATION**

1. Subject to the terms of this Stipulation, the total sum of \$6,200,000.00 (Six Million Two Hundred Thousand Dollars and Zero Cents) out of insurance proceeds shall be paid as follows, provided that Class Counsel has provided to Neal Marder and Peter Altman of Akin, Gump, Strauss, Hauer & Feld LLP wiring instructions and a complete, accurate, and signed W-9 form for the Gross Settlement Fund that reflects a valid taxpayer identification number: (i) no later than ten (10) calendar days after the Court enters the Preliminary Approval Order, Avenue Capital (or its successor), through its insurers, shall cause to be wired \$250,000 (Two Hundred Fifty Thousand Dollars) into the Notice and Administration Escrow Account; and (ii) no later than thirty (30) calendar days after the Court enters the Preliminary Approval Order, Avenue Capital (or its successor), through its insurers, shall cause to be wired the balance of the Settlement Amount: \$5,950,000.00 (Five Million Nine Hundred Fifty Thousand Dollars and Zero Cents) into the Settlement Escrow Account. Collectively, those payments shall constitute the Settlement Amount.

2. The Gross Settlement Fund, net of any Taxes on the income thereof and any Tax Expenses, shall be used to pay: (i) the Notice and Administration Expenses as authorized by this Stipulation; (ii) Attorneys’ Fees and Expenses authorized by the Court; (iii) any Award to Class Representatives authorized by the Court; and (iv) other fees and expenses authorized by the Court. The balance of the Gross Settlement Fund remaining after the above payments shall be the Net

Settlement Fund, which shall be distributed to the Authorized Claimants in accordance with this Stipulation. Defendant and Released Persons shall have no responsibility, duties or liability with respect to the allocation of the Gross Settlement Fund between and among Class Representatives, their counsel, any Class Members, or any other Persons.

3. Any sums required to be held in escrow hereunder shall be held by the Escrow Agent for the benefit of the Class Representatives and other Class Members until the Effective Date. Until the date the Order and Final Judgment is entered, the Settlement Escrow Account and the Notice and Administration Escrow Account shall be jointly controlled by Class Counsel and Defendant's Counsel. Upon the Court's entry of the Order and Final Judgment, Defendant's Counsel shall relinquish all rights to control of the Settlement Escrow Account and the Notice and Administration Escrow Account. All funds held by the Escrow Agent shall be deemed to be *in custodia legis* and shall remain subject to the jurisdiction of the Court until such time as the funds shall be distributed or returned pursuant to this Stipulation and/or further order of the Court. Other than amounts disbursed for providing notice to the Class, customary administration costs, and Taxes and Tax Expenses, and the Attorneys' Fees and Expenses (which shall be paid to Plaintiffs' Counsel as allocated by Class Counsel immediately after the Court executes an order awarding such fees and expenses), the remainder of the Gross Settlement Fund shall not be distributed until the Effective Date. The Escrow Agent shall not disburse the Gross Settlement Fund, or any portion thereof, except as provided in this Stipulation, or upon Order of the Court. The Escrow Agent shall bear all risks related to the holding of the Gross Settlement Fund in the Settlement Escrow Account and the Notice and Administration Escrow Account, and Avenue Capital shall have no responsibilities, duties or liabilities with respect thereto.

4. The Escrow Agent shall invest all funds exclusively in accounts 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 a U.S. Treasury Fund or a bank account that is either (a) fully insured by the Federal Deposit Insurance Corporation (“FDIC”) or (b) secured by instruments backed by the full faith and credit of the United States Government. The Escrow Agent shall reinvest the proceeds of these accounts as they mature in similar instruments at their then-current market rates. Interest earned on the money deposited into the Settlement Escrow Account and the Notice and Administration Escrow Account shall be part of the Gross Settlement Fund.

5. The Notice and Administration Expenses shall be paid from the Gross Settlement Fund. Any monies from the Notice and Administration Fund that remain after administration shall be disbursed to the Settlement Escrow Account upon twenty-four (24) hours’ advance written notice to Defendant’s Counsel. The Notice and Administration Escrow Account may be drawn upon by Class Counsel for Notice and Administration Expenses, without further Court approval. The Notice and Administration Escrow Account shall be administered solely by the Escrow Agent. Any taxes or other expenses incurred in connection with the Notice and Administration Escrow Account shall be paid from the Notice and Administration Escrow Account or from the remainder of the Gross Settlement Fund. The Released Persons will have no obligation for payment of taxes or other expenses associated with the Notice and Administration Escrow Account. In no event shall the Class, Class Representatives or Class Counsel be responsible to pay any amount for Notice and Administration Expenses.

6. Class Counsel and Defendant’s Counsel shall have access to all records of the Settlement Escrow Account and the Notice and Administration Escrow Account, and upon request

made to the Escrow Agent, shall receive copies of all records of disbursements, deposits, and statements of accounts.

7. After the Effective Date, the Released Persons shall have no interest in the Gross Settlement Fund or in the Net Settlement Fund. The Released Persons shall not be liable for the loss of any portion of the Gross Settlement Fund, nor have any liability, obligation, or responsibility for the payment of claims, taxes, legal fees, or any other expenses payable from the Gross Settlement Fund.

### **C. SCOPE AND EFFECT OF SETTLEMENT AND RELEASES**

1. The obligations incurred pursuant to this Stipulation shall be in full and final disposition of the Action and any and all Released Claims as against all Released Persons and any and all Released Defendant's Claims as against the Class Representatives, Class Members, and their attorneys.

2. Pursuant to the Order and Final Judgment, upon the Effective Date of this Settlement, Class Representatives and each of the Class Members on behalf of themselves, their current, former and future heirs, executors, administrators, successors, attorneys, insurers, agents, representatives, and assigns, and any Person they represent, shall, with respect to each and every Released Claim, release, waive and forever relinquish and discharge, and shall forever be enjoined from prosecuting, all Released Claims and any and all claims arising out of, relating to, or in connection with the Settlement, or the resolution of the Action against the Released Persons, whether or not such Class Member executes and delivers the Proof of Claim, except with respect to claims to enforce any of the terms of this Stipulation. Further, all Class Members on behalf of themselves, their current, former and future heirs, executors, administrators, successors, attorneys, insurers, agents, representatives, and assigns, expressly covenant not to assert any claim or action

against any of the Released Persons that: (i) arises out of or relates to the purchase or sale of MagnaChip Securities during the Class Period, or (ii) that could have been alleged, asserted, or contended in any forum by the Class Members or any of them against any of the Released Persons, arising out of or relating to the purchase or sale of MagnaChip Securities during the Class Period, and shall forever be enjoined from commencing, instituting, or prosecuting any such claim, so long as such claim relates to the purchase or sale of MagnaChip Securities (including solicitation thereof). The Released Persons' liability to Class Representatives and to the Class thus expressly is extinguished under this settlement.

3. Class Members who have already submitted a Proof of Claim to the Claims Administrator in connection with the February 5, 2016 Stipulation of Settlement shall not be required to resubmit their transactional data. However, notice provided shall inform all Class Members that their claims against Avenue Capital are wholly released and extinguished as provided in this Section whether or not they submit a Proof of Claim. A Proof of Claim substantially in the form and content contained in Exhibit A-3 to the Preliminary Approval Order attached hereto as Exhibit A will be made available to Class Members who have not previously submitted their transactional data.

4. Pursuant to the Order and Final Judgment, upon the Effective Date of this Settlement, Defendant shall release and forever discharge each and every one of the Released Defendant's Claims, and shall forever be enjoined from prosecuting the Released Defendant's Claims as against the Class Representatives, Class Members, or their attorneys, including but not limited to claims for malicious prosecution or sanctions.

**D. ADMINISTRATION AND CALCULATION OF CLAIMS, FINAL AWARDS,  
AND DISTRIBUTION OF NET SETTLEMENT FUND**

1. The Claims Administrator shall administer and calculate the claims that shall be allowed and oversee distribution of the Net Settlement Fund, under the supervision of Class Counsel, and subject to appeal to, and jurisdiction of, the Court. The Released Persons shall have no liability, obligation, or responsibility for the administration of the Gross Settlement Fund or Net Settlement Fund, or for the distribution of the Net Settlement Fund, including with respect to: (i) any act, omission, or determination by Class Counsel, the Escrow Agent, and/or the Claims Administrator, or any of their respective designees or agents, in connection with the administration of the Settlement or otherwise; (ii) the management or investment of the Gross Settlement Fund or the Net Settlement Fund, or the distribution of the Net Settlement Fund; (iii) the Plan of Allocation; (iv) the determination, administration, calculation, or payment of any claims asserted against the Gross Settlement Fund; (v) any losses suffered by, or fluctuations in value of, the Gross Settlement Fund, or (vi) the payment or withholding of any taxes, expenses, and/or costs incurred with the taxation of the Gross Settlement Fund or the filing of any federal, state, or local returns.

2. Except as otherwise provided below, on and after the Effective Date, the Gross Settlement Fund shall be applied as follows:

a. To the extent not paid from the Notice and Administration Escrow Account, to pay following an order of the Court approving any such payment, the expenses incurred in connection with providing notice to Class Members, administering and distributing the Net Settlement Fund to Class Members, processing Proofs of Claim, processing requests for exclusion, escrow fees and costs, and any applicable taxes;

b. Subject to the approval and further order(s) of the Court, the Net Settlement Fund shall be allocated to Authorized Claimants as set forth in paragraph F below.

c. After the Claims Administrator calculates the recognized losses of each Authorized Claimant, Class Counsel shall file a motion for distribution of the Net Settlement Fund with the Court listing each Authorized Claimant, the amount of each claim that Class Counsel believes should be allocated and distributed to each such Authorized Claimant, accounting for all Notice and Administration Expenses, and requesting Court approval to distribute the Net Settlement Fund to the Authorized Claimants and pay any further Notice and Administration expenses.

3. Each Class Member wishing to participate in the Settlement who has not already submitted a Proof of Claim to the Claims Administrator in connection with the February 5, 2016 Stipulation of Settlement shall be required to timely submit a Proof of Claim (in substantially the form set forth in Exhibit A-3 to the Preliminary Approval Order, which *inter alia* confirms the release of all Released Claims against all Released Persons), signed under penalty of perjury by the beneficial owner(s) of the MagnaChip Securities that are the subject of the Proof of Claim, or by someone with documented authority to sign for the beneficial owners and supported by such documents as specified in the instructions accompanying the Proof of Claim. All Proofs of Claim submitted in connection with the February 5, 2016 Stipulation of Settlement shall be deemed to be equally sufficient to establish transactions in MagnaChip securities as if submitted separately in connection with this Settlement, and the release by all such claimants of all Released Persons shall be of the same force and effect as if they submitted a Proof of Claim in the form attached to the Preliminary Approval Order as Exhibit A-3).

4. All Proofs of Claim must be postmarked or received within the time prescribed in the Preliminary Approval Order unless otherwise ordered by the Court. Any Class Member who fails to submit a properly completed Proof of Claim (including a properly completed Proof of

Claim in connection with the February 5, 2016 Stipulation of Settlement) within such period as shall be authorized by the Court shall be forever barred from receiving any payments pursuant to this Stipulation or from the Net Settlement Fund (unless Class Counsel in its discretion deems such late filing to be a formal or technical defect and waives the late filing in the interest of achieving substantial justice, or unless by order of the Court a later submitted Proof of Claim by such Class Member is approved), but will in all other respects be subject to the provisions of this Stipulation and Order and Final Judgment, including, without limitation, the release of the Released Claims and dismissal of the Action. Provided that it is received before the motion for the Class Distribution Order is filed, a Proof of Claim shall be deemed to have been submitted when posted if received with a postmark indicated on the envelope and if mailed by first-class mail and addressed in accordance with the instructions thereon. In all other cases, the Proof of Claim shall be deemed to have been submitted when actually received by the Claims Administrator.

5. Each Proof of Claim shall be submitted to the Claims Administrator who shall determine, under the supervision of Class Counsel, in accordance with this Stipulation and any applicable orders of the Court, the extent, if any, to which each claim shall be allowed, subject to appeal to the Court.

6. Proofs of Claim that do not meet the filing requirements may be rejected. Prior to rejection of a Proof of Claim, the Claims Administrator shall communicate with the Claimant in order to remedy curable deficiencies in the Proof of Claim submitted. The Claims Administrator, under the supervision of Class Counsel, shall notify in a timely fashion and in writing, all Claimants whose Proofs of Claim they propose to reject in whole or in part, setting forth the reasons thereof, and shall indicate in such notice that the Claimant whose claims are to be rejected

has the right to review by the Court if the Claimant so desires and complies with the requirement of paragraph D.7 below.

7. If any Claimant whose claim has been rejected in whole or in part desires to contest such rejection, the Claimant must, within ten (10) days after the date of mailing of the notice required by paragraph D.6 above, serve upon the Claims Administrator a notice and statement of reasons indicating the Claimant's ground for contesting the rejection along with any supporting documentation, and requesting a review thereof by the Court. If a dispute concerning a claim cannot be otherwise resolved, Class Counsel shall thereafter present the request for review to the Court.

8. The administrative determination of the Claims Administrator accepting and rejecting claims shall be presented to the Court, on notice to all parties, for approval by the Court in the Class Distribution Order. For efficiency and clarity, the presentment and proposed Class Distribution Order may be combined with the presentment and proposed Settlement Class Distribution Order related to the February 5, 2016 Stipulation of Settlement.

9. Payment pursuant to this Stipulation shall be deemed final and conclusive against all Class Members. All Class Members whose claims are not approved by the Court shall be barred from participating in distributions from the Net Settlement Fund, but are otherwise bound by all of the terms of the Order and Final Judgment to be entered in the Litigation and the releases provided for in this Stipulation, and will be barred from bringing any action against the Released Persons arising out of or relating to the Released Claims.

10. All proceedings with respect to the administration, processing, and determination of claims described in this Stipulation and the determination of all controversies relating thereto,

including disputed questions of law and fact with respect to the validity of claims, shall be subject to the jurisdiction of the Court.

11. The Net Settlement Fund shall be distributed to Authorized Claimants by the Claims Administrator upon application to the Court by Class Counsel for a Class Distribution Order only after all of the following have occurred: (i) the Effective Date; (ii) all claims have been processed, and all Claimants whose claims have been rejected or disallowed, in whole or in part, have been notified and provided the opportunity to be heard concerning such rejection or disallowance; (iii) all objections with respect to all rejected or disallowed claims have been resolved by the Court, and all appeals therefrom have been resolved or the time therefor has expired; (iv) all matters with respect to Attorneys' Fees and Expenses, Award to Class Representatives, costs, and disbursements have been resolved by the Court, and all appeals therefrom have been resolved or the time therefor has expired; and (v) all costs of administration have been paid.

12. If any funds remain in the Net Settlement Fund by reason of uncashed checks or otherwise, then, after the Claims Administrator has made reasonable and diligent efforts to have Class Members who are entitled to participate in the distribution of the Net Settlement Fund cash their distribution checks, any balance remaining in the Net Settlement Fund six (6) months after the initial distribution of such funds shall be re-distributed, after payment of any unpaid costs or fees incurred in administering the Net Settlement Fund for such redistribution, to Class Members who have cashed their checks and who would receive at least \$10.00 (Ten Dollars) from such re-distribution. If any funds shall remain in the Net Settlement Fund six months after such re-distribution, then such balance shall be contributed in equal amounts to Bay Area Legal Aid and to the Institute of Law and Economic Policy ([www.ilep.info](http://www.ilep.info)).

13. Before the Effective Date, Class Counsel shall file with the Court a declaration under penalty of perjury describing how notice of the Settlement was given to the Class.

#### **E. TAX TREATMENT**

1. Class Representatives agree to treat the Gross Settlement Fund as being at all times a qualified settlement fund within the meaning of Treasury Regulation § 1.468B-1 and Section 468B of the Internal Revenue Code, as amended, for the taxable years of the Gross Settlement Fund, beginning with the date it is created. In addition, the Escrow Agent and, as required, Class Representatives and Avenue Capital, shall jointly and timely make such elections as are 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)(2)) back to 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.

2. For purposes of Section 468B of the Internal Revenue Code, as amended, and the regulations promulgated thereunder, the "administrator" shall be the Claims Administrator. The Claims Administrator shall timely and properly file all tax returns necessary or advisable with respect to the Gross Settlement Fund, and make all required tax payments, including deposits of estimated tax payments in accordance with Treas. Reg. § 1.468B-2(k). Such returns (as well as the election described in paragraph E.1 hereof) shall be consistent with this paragraph and reflect that all taxes (including any interest or penalties) on the income earned by the Gross Settlement Fund shall be paid out of the Gross Settlement Fund as provided in paragraph E.3 hereof.

3. All Taxes and Tax Expenses shall be paid out of the Gross Settlement Fund. In all events, the Released Persons shall have no liability for the Taxes and Tax Expenses. Further, Taxes and Tax Expenses shall be treated as, and considered to be, a cost of administration of the Settlement and shall be timely paid by the Escrow Agent out of the Gross Settlement Fund without prior order from the Court. The Escrow Agent shall be obligated (notwithstanding anything in this Stipulation to the contrary) to withhold from distribution to the Class Members any funds necessary to pay such Taxes and Tax Expenses, including the establishment of adequate reserves for any Taxes and Tax Expenses. Class Representatives agree to cooperate with the Escrow Agent, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of this paragraph.

4. The Released Persons shall have no liability for or obligations with regard to Taxes and Tax Expenses. The Gross Settlement Fund shall indemnify and hold each of the Released Persons harmless for any Taxes and Tax Expenses (including, without limitation, taxes payable by reason of such indemnification).

5. Class Representatives, the Class and Class Counsel shall have no liability for or obligations with regard to Taxes and Tax Expenses. The Gross Settlement Fund shall indemnify and hold each of Class Representative, the Class and Class Counsel harmless for any Taxes and Tax Expenses (including, without limitation, taxes payable by reason of such indemnification).

#### **F. ALLOCATION OF NET SETTLEMENT FUND**

1. The Plan of Allocation is based upon Class Counsel's assessment of the merits and the relative strengths and weaknesses, including recoverable damages, of the claims of the Class Members.

2. The Released Persons do not take any position as to the proposed Plan of Allocation and shall have no responsibility for or obligations or liabilities of any kind whatsoever in connection with the proposed or finalized Plan of Allocation.

3. The Released Persons shall have no responsibility for and no obligations or liabilities of any kind whatsoever in connection with the determination, administration, calculation, or payment of claims to Class Members.

4. The Released Persons shall have no involvement in the solicitation or review of Proofs of Claim, and shall have no involvement in the administration process itself, which shall be conducted by the Claims Administrator in accordance with this Stipulation and the Order and Final Judgment to be entered by the Court. No Claimant or Authorized Claimant shall have any claim against the Released Persons or their counsel based on, or in any way relating to any Proof of Claim, Plan of Allocation, or the distributions from either the Gross Settlement Fund or the Net Settlement Fund.

5. No person shall have any claim against Class Counsel or the Claims Administrator based on, or in any way relating to, the distributions from the Net Settlement Fund that have been made substantially in accordance with this Stipulation and any applicable orders of the Court.

6. Any change in the allocation of the Net Settlement Fund ordered by the Court shall not affect the validity, finality or enforceability of this Settlement.

**G. OBLIGATIONS OF AND LIMITATIONS OF LIABILITY OF ESCROW AGENT**

1. The Escrow Agent's obligations shall be limited to maintaining account of and properly paying sums as required by this Stipulation to the limited extent that such sums have been delivered into the Settlement Escrow Account or the Notice and Administration Escrow Account

as required by this Stipulation. The Escrow Agent shall be liable only for acts of fraud, gross negligence, willful misconduct or material violations of the obligations in this Stipulation.

**H. CLASS COUNSEL'S REQUEST FOR AN AWARD OF ATTORNEYS' FEES AND EXPENSES**

1. Class Counsel intends to submit an application to the Court on behalf of each Plaintiffs' Counsel, on notice to counsel for Defendant, for the payment of Attorneys' Fees and Expenses, including: (i) an award of attorneys' fees; (ii) an award of litigation costs and expenses, plus interest, including fees and expenses of experts, incurred in connection with the prosecution of the Action; and (iii) an Award to Class Representatives.

2. Any Attorneys' Fees and Expenses awarded by the Court shall be paid from the Gross Settlement Fund no later than ten (10) calendar days after the Court enters the Order and Final Judgment (substantially in the Form attached as Exhibit B hereto). Class Counsel shall thereafter be solely responsible for allocating the Attorneys' Fees and Expenses among themselves and other Plaintiffs' Counsel in a manner in which Class Counsel in good faith believe reflects the contributions of such counsel to the initiation, prosecution, and resolution of the Action. If, and when, as a result of any appeal and/or further proceedings on remand, or successful collateral attack, the Attorneys' Fees and Expense award is overturned or lowered, or if the Settlement is terminated or is not approved by the Court, or if there is an appeal and any order approving the settlement does not become final and binding upon the Class, then, within thirty (30) calendar days after receiving notice from Defendant's Counsel or such an order from a court of appropriate jurisdiction, each Plaintiffs' Counsel law firm shall refund to the Gross Settlement Fund such fees and expenses previously paid to them from the Gross Settlement Fund plus interest thereon at the same rate as earned on the Gross Settlement Fund in an amount consistent with such reversal or modification. Each Plaintiffs' Counsel law firm shall be jointly and severally liable for the

repayment of all Attorneys' Fees and Expenses awarded by the Court, and, by receiving Attorneys' Fees and Expenses, as a condition of receiving such fees and expenses, on behalf of itself and each partner and/or shareholder of it, agrees that (i) it and its partners and/or shareholders are subject to the jurisdiction of the Court for the purpose of enforcing this Stipulation; (ii) it and its partners and/or shareholders shall be subject to repayment of all Attorneys' Fees and Expenses awarded by the Court allocated to it, including all amounts paid as referral fees to other law firms, as well as accrued interest; and (iii) the Court may, upon application of Defendant or Defendant's Counsel summarily issue orders, including, without limitation, judgments and attachment orders, and may make appropriate findings of or sanctions for contempt against any of Plaintiffs' Counsel law firm or any of its partners and/or shareholders should such Plaintiffs' Counsel law firm fail timely to repay Attorneys' Fees and Expenses pursuant to this paragraph. Released Persons shall not be liable in any respect for the allocation of Attorneys' Fees and Expenses.

3. Any Award to Class Representatives shall be paid from the Gross Settlement Fund ten (10) days following the Order and Final Judgment becoming Final.

4. It is agreed that the procedure for and the allowance or disallowance by the Court of any applications by Class Counsel for Attorneys' Fees and Expenses and for the Award to Class Representatives, including fees for experts and consultants to be paid out of the Gross Settlement Fund, and any order or proceeding relating thereto, shall not operate to terminate or cancel this Stipulation or affect its finality, and shall have no effect on the terms of this Stipulation or on the validity or enforceability of this Settlement. The approval of the Settlement, and it becoming Final, shall not be contingent on the award of Attorneys' Fees and Expenses, any Award to Class Representatives, or any other amounts to Class Representatives or Class Counsel, nor any appeals to such awards.

**I. THE PRELIMINARY APPROVAL ORDER**

1. Upon execution of this Stipulation, and by no later than July 6, 2017, Class Counsel shall submit the Stipulation together with its exhibits to the Court and shall apply for entry of a Preliminary Approval Order in connection with settlement proceedings substantially in the form annexed hereto as Exhibit A, providing for, among other things, preliminary approval of the Settlement and notice to the Class of the Settlement Hearing. The Preliminary Approval Order (Exhibit A hereto) to be submitted to the Court shall contain exhibits substantially in the form set forth in: (i) the Notice (Exhibit A-1 to the Preliminary Approval Order); (ii) the Summary Notice of Pendency and Proposed Partial Settlement of Class Action (“Summary Notice”) (Exhibit A-2 to the Preliminary Approval Order); and (iii) the Proof of Claim (Exhibit A-3 to the Preliminary Approval Order).

2. The Released Persons are not liable or responsible for the method of, or representations made in, the Notice or the Summary Notice.

**J. ORDER AND FINAL JUDGMENT TO BE ENTERED BY THE COURT APPROVING THE SETTLEMENT**

1. The Parties shall seek to have the Court enter an Order and Final Judgment substantially in the form of Exhibit B hereto.

2. The Order and Final Judgment shall, as a material condition of the settlement, contain the following provision in the Bar Order:

Subject to the provisions of the Stipulation, all Persons are barred from commencing, prosecuting, or asserting any Barred Claims. All Barred Claims are hereby extinguished, discharged, satisfied, and unenforceable.

3. Inclusion of the Bar Order in the Order and Final Judgment is material to the Parties’ decision to participate in this Stipulation. If the Order and Final Judgment fails to include

the Bar Order, or if appellate review of the Bar Order is sought and on such review the Bar Order is vacated, modified or reversed, then the conditions specified in K.1 shall not be met.

4. The Order and Final Judgment will provide that (i) nothing in the Order and Final Judgment will bar the Released Persons from pursuing claims that are outside the scope or independent of the Released Defendant's Claims, including but not limited to any claim that any Released Person may have for indemnification related to costs and expenses incurred in responding to the Action; and (ii) nothing in the Order and Final Judgment will bar or constitute a release of any claim by any of the Released Persons for insurance coverage arising out of, related to, or in connection with this Action or the Released Claims.

#### **K. CONDITIONS OF SETTLEMENT**

1. The Effective Date of the Settlement shall be the date on which ALL of the following conditions have been satisfied:

a. The Court has entered the Preliminary Approval Order (Exhibit A hereto) in all material respects, or such other preliminary approval order that the Parties agree is consistent with this Settlement;

b. No party has exercised, within the required time period, any right to terminate the Settlement as permitted by paragraph L below;

c. The Court has entered the Order and Final Judgment (Exhibit B hereto) in all material respects, or such other final approval order and judgment as the Parties agree is consistent with this Settlement;

d. The Court's Order and Final Judgment has become "Final," as defined in paragraph A.15;

e. The Settlement Amount has been paid, as set forth in paragraph B.1 above;  
and

f. The Court has entered the Bar Order.

2. Upon the occurrence of ALL of the events referenced in paragraph K.1 above, Class Representatives shall have, and each and all of the members of the Class shall hereby be deemed to have, and by operation of the Order and Final Judgment shall have, fully, finally, and forever released, waived, settled, and discharged, in accordance with the terms of paragraph C. above, the Released Persons from and with respect to the Released Claims, whether or not such members of the Class execute and deliver a Proof of Claim.

3. Upon the occurrence of ALL of the events referenced in paragraph K.1 above, the obligation of the Escrow Agent to return funds from the Gross Settlement Fund to Avenue Capital pursuant to paragraph L.4 or any other provision of this Stipulation shall be absolutely and forever extinguished.

**L. RIGHTS OF TERMINATION AND EFFECTS THEREOF**

1. Defendant and Class Representatives shall each have the right to terminate the Settlement and this Stipulation by providing written notice of their election to do so to all other counsel for the Settling Parties within thirty (30) days after the date on which any of the following occurs:

a. the Court declines to enter the Preliminary Approval Order (Exhibit A hereto) in any material respect or to enter an alternative preliminary approval order that all Parties agree is consistent with the terms of this Settlement;

b. the Court issues an order declining to approve this Stipulation or any material part of it, except with respect to any decision by the Court concerning the Attorneys' Fees and Expenses and Award to Class Representatives;

c. the Court declines to enter the Order and Final Judgment (Exhibit B hereto) in any material respect or to enter such alternative final approval order and judgment that all Parties agree is consistent with the terms of this Settlement; or

d. the Order and Final Judgment is modified or reversed in any material respect by a Court of Appeals or the United States Supreme Court.

2. If, prior to the Settlement Hearing, Persons who otherwise would be Class Members have filed with the Court valid and timely requests for exclusion ("Requests for Exclusion") from the Class in accordance with the provisions of the Preliminary Approval Order and the notice given pursuant thereto, and such Persons in the aggregate purchased MagnaChip Securities during the Class Period in an amount greater than the amounts specified in a separate Supplemental Agreement between the Parties (the "Supplemental Agreement"), then Defendant, in its sole discretion, shall have the option to terminate this Stipulation and Settlement in strict accordance with the requirements and procedures set forth in the Supplemental Agreement ("Opt-out Termination Option"). If permitted, the Supplemental Agreement shall be filed with the Court under seal. Copies of all Requests for Exclusion received, together with copies of all written revocations of Requests for Exclusion, shall be delivered to Defendant's Counsel no later than twenty-one (21) days prior to the Settlement Hearing. The required procedure for and consequences of exercising an Opt-out Termination Option are as follows:

a. To exercise the Opt-out Termination Option, Defendant must serve written notice, signed by its counsel, upon counsel for the other Settling Parties, not less than seven (7) days before the Settlement Hearing;

b. If Defendant exercises the Opt-out Termination Option as provided in this Stipulation, then this Stipulation shall be null and void, and the provisions of paragraph L hereof shall apply.

3. If Defendant (or its successor) does not pay or cause to be paid the Settlement Amount within the time period specified in paragraph B.1 of this Stipulation, then Class Counsel, in their sole discretion, may elect, at any time prior to the Court entering the Order and Final Judgment: (i) to terminate the Settlement by providing written notice to counsel for the Settling Parties; or (ii) to enforce the terms of the Settlement and this Stipulation and seek a judgment effecting the terms in this Stipulation.

4. Upon termination of the Stipulation pursuant to the terms of the Stipulation, the Escrow Agent shall refund the Gross Settlement Fund, less amounts already expended for notice to the Class pursuant to the terms of the Stipulation, to Avenue Capital, through its insurers, within ten (10) calendar days thereafter (the "Returned Settlement Amount"). Under no circumstances shall Class Counsel be liable for any monies dispersed from the Notice and Administration Escrow Account, or any other Notice and Administration Expenses.

5. If this Stipulation is terminated pursuant to its terms, and at the request of Defendant or Class Representatives, then the Escrow Agent or the Escrow Agent's designee shall apply for any tax refund owed to the Gross Settlement Fund and pay the percentage of the proceeds of the tax refund, after deduction of any fees and expenses incurred in connection with such application(s) for refund, to Defendant.

6. If this Stipulation is terminated pursuant to its terms, all of the Parties shall be deemed to have reverted *nunc pro tunc* to their respective status prior to the execution of the Memorandum of Understanding between the Settling Parties dated May 12, 2017, and the Parties shall proceed in all respects as if that Memorandum of Understanding and this Stipulation had not been executed and the related orders had not been entered, without prejudice in any way from the negotiation, fact, or terms of the Settlement, and preserving all of their respective claims and defenses in the Action, and shall revert to their respective positions in the Action, except that the provisions of paragraphs A., E.1-3, G., H.2, L.4-6, M.4, M.6-16, and M.18 shall survive termination.

7. No order of the Court or modification or reversal of any order of the Court concerning the Plan of Allocation or the amount of any attorneys' fees, costs, and expenses awarded by the Court shall constitute grounds for termination of the Stipulation.

#### **M. MISCELLANEOUS PROVISIONS**

1. The Parties: (i) acknowledge that it is their intent to consummate the Settlement contemplated by this Stipulation; (ii) agree to cooperate to the extent necessary to effectuate and implement all terms and conditions of this Stipulation; and (iii) agree to exercise their best efforts and to act in good faith to accomplish the foregoing terms and conditions of the Stipulation.

2. The Parties acknowledge and warrant as follows:

a. By executing this Stipulation, each of the Parties represents that they have carefully read and fully understand this Stipulation and its final and binding effect;

b. By executing this Stipulation, each of the Parties represents that they have the right, legal capacity, power and authority to enter into this Stipulation and to perform their

obligations hereunder, without requiring additional consent, approval, or authorization of any other person, board, entity, tribunal, or other regulatory or governmental authority;

c. By executing this Stipulation, each of the Parties represents that the execution and delivery of this Stipulation and the performance of each and every obligation in this Stipulation does not and will not result in a breach of or constitute a default under, or require any consent under, any duty, relationship, contract, agreement, covenant, promise, guarantee, obligation or instrument to which the executing Settling Party is a party or by which the executing Settling Party is bound or affected;

d. By executing this Stipulation, each of the Parties represents that there is no demand for monetary, non-monetary, or injunctive relief, or any civil, criminal, administrative, or arbitration proceeding for monetary, nonmonetary, or injunctive relief known or suspected to exist against them that would affect this Stipulation or their ability to enter into, execute or perform each and every obligation in this Stipulation;

e. By executing this Stipulation, each of the Parties represents that no representations, warranties, inducements or promises of any kind or character have been made by any other Party, Released Person, or anyone else to induce the execution of this Stipulation except as expressly provided in this Stipulation, and that this Stipulation constitutes the entire agreement between the Settling Parties;

f. By executing this Stipulation, each of the Parties represents that this Stipulation is fair and is executed voluntarily, with full knowledge of the consequences and implications of the obligations contained in this Stipulation;

g. By executing this Stipulation, each of the Parties represents that this Stipulation is not the result of any fraud, duress, or undue influence, and that they have not

assigned, transferred, or conveyed, or purported to assign, transfer, or convey, voluntarily, involuntarily or by operation of law, any or all of their respective rights and claims or any security interest with respect to any of their respective rights and claims;

h. By executing this Stipulation, each of the Parties represents that they have had the opportunity to be represented by counsel of their choice throughout the negotiations which preceded the execution of this Stipulation and in connection with the preparation and execution of this Stipulation; and

i. By executing this Stipulation, each of the Parties represents that they have been afforded sufficient time and opportunity to review this Stipulation with advisors and counsel of their choice.

3. All of the exhibits attached hereto are hereby incorporated by reference as though fully set forth in this Stipulation.

4. No amendment or modification of this Stipulation shall be effective unless in writing and signed by, or on behalf of, the Parties or their successors-in-interest.

5. Except for claims under this Stipulation, neither Class Representatives nor any Class Member will voluntarily become a party to any suit or proceeding arising from or in connection with any attempt by or on behalf of any third party to enforce or collect an amount based on any Released Claims.

6. Whenever this Stipulation requires or contemplates that a Party shall or may give notice to the other, unless otherwise specified, notice shall be provided by email and/or next-day (excluding Saturday and Sunday) express delivery service as follows, and shall be deemed effective upon delivery to the indicated electronic or physical address, as the case may be, below:

(i) If to the Class:

Patrick V. Dahlstrom  
Joshua B. Silverman  
Pomerantz LLP  
10 South LaSalle, Suite 3505  
Chicago, IL 60603  
pdahlstrom@pomlaw.com  
jbsilverman@pomlaw.com

and

Laurence M. Rosen  
Jonathan Stern  
The Rosen Law Firm, P.A.  
275 Madison Avenue, 34th Floor  
New York, NY 10016  
lrosen@rosenlegal.com  
jstern@rosenlegal.com

(ii) If to Settling Defendants:

Neal R. Marder  
Peter I. Altman  
Akin, Gump, Strauss, Hauer & Feld, LLP  
1999 Avenue of the Stars  
Suite 600  
Los Angeles, CA 90067-3010  
paltman@akingump.com  
nmarder@akingump.com

7. Except as otherwise provided herein, each Party shall bear its own costs. Plaintiffs' Counsels' Attorneys' Fees and Expenses, subject to Court approval, shall be paid only out of the Gross Settlement Fund, and the Released Persons shall have no obligation with respect to the payment of said Attorneys' Fees and Expenses.

8. Class Counsel, on behalf of the Class, is expressly authorized to take all appropriate action required or permitted to be taken by the Class pursuant to this Stipulation to effectuate its

terms and is also expressly authorized to enter into any modifications or amendments to this Stipulation on behalf of the Class.

9. The persons signing this Stipulation represent that they are authorized to do so on behalf of their respective clients.

10. This Stipulation may be executed in one or more original, photocopied, PDF copies or facsimile counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. A copy of the complete set of executed counterparts of this Stipulation shall be electronically filed with the Court.

11. This Stipulation shall be binding upon, and inure to the benefit of, the successors, assigns, executors, administrators, heirs, insurers, and representatives of the Parties. No assignment shall relieve any party hereto of any obligations hereunder.

12. All terms of this Stipulation and all exhibits hereto shall be governed and interpreted according to the laws of the State of California without regard to its rules of conflicts of law, except to the extent that federal law requires that federal law governs, and in accordance with the laws of the United States.

13. Class Representatives, on behalf of themselves and each member of the Class, and Defendant hereby irrevocably submit to the jurisdiction of the Court for any suit, action, proceeding, or dispute arising out of or relating to this Stipulation, the applicability of this Stipulation, or the enforcement of this Stipulation. The administration and consummation of the Settlement as embodied in this Stipulation shall be under the authority of the Court, and the Court shall retain jurisdiction for the purpose of entering orders providing for awards of Attorneys' Fees and Expenses to Plaintiffs' Counsel, any Award to Class Representatives, and enforcing the terms of this Stipulation.

14. Because of the arm's-length negotiations that preceded the execution of this Stipulation, all Parties have contributed substantially and materially to the preparation of this Stipulation. This Stipulation shall not be construed against any Party on the basis that such party was the primary drafter of this Stipulation, or if so construed, this Stipulation shall be construed as if all Parties participated equally in such drafting.

15. Neither this Stipulation, nor the fact of the Settlement, is an admission or concession by Released Persons of any liability or wrongdoing whatsoever. This Stipulation shall not constitute a finding of the validity or invalidity of any factual allegation or any claims in the Action or of any liability or wrongdoing by any of the Released Persons. This Stipulation, the fact of settlement, the settlement proceedings, the settlement negotiations, and any related documents, shall not be used or construed as an admission of any factual allegation, fault, liability, or wrongdoing by any person or entity, and shall in no event be offered or received in evidence as an admission, concession, presumption, or inference against any party in any action or proceeding of any nature, or otherwise referred to or used in any manner in or before any court or other tribunal, except in such proceeding as may be necessary to enforce this Stipulation.

16. The Parties intend the Settlement to be a final and complete resolution of all claims and disputes asserted or that could be asserted by the Class Members against the Released Persons with respect to the Released Claims. Accordingly, unless the Court's Order and Final Judgment approving the Settlement does not become Final, the Parties agree not to assert in any forum that the Action was brought by Plaintiffs or defended by Defendant in bad faith or without a reasonable basis. Additionally, the Parties shall not assert any claims of any violation of Rule 11 of the Federal Rules of Civil Procedure relating to the prosecution, defense, or settlement of the Action. The Parties agree that the amount paid and the other terms of the Settlement were negotiated at arm's-

length in good faith by the Parties, is fair, reasonable, and adequate, and reflects a settlement that was reached voluntarily after consultation with experienced legal counsel.

17. All agreements made and orders entered during the course of this Action relating to the confidentiality of information shall survive this Settlement.

18. The headings in this Stipulation are used for purposes of convenience and ease of reference only and are not meant to have any legal effect, nor are they intended to influence the construction of this Stipulation in any way.

19. The waiver by one Released Person of any breach of this Stipulation by any other Settling Party shall not be deemed a waiver by any other Released Person or of any other breach of this Stipulation. The provisions of this Stipulation may not be waived except by a writing signed by the affected Party or counsel for that Party. No failure or delay on the part of any Party in exercising any right, remedy, power, or privilege under this Stipulation shall operate as a waiver thereof or of any other right, remedy, power, or privilege of such Party under this Stipulation; nor shall any single or partial exercise of any right, remedy, power, or privilege under this Stipulation on the part of any Party operate as a waiver thereof or of any other right, remedy, power, or privilege of such Party under this Stipulation, or preclude further exercise thereof or the exercise of any other right, remedy, power, or privilege.

20. The Parties agree that nothing contained in this Stipulation shall cause any Party to be the agent or legal representative of another Party for any purpose whatsoever, nor shall this Stipulation be deemed to create any form of business organization between the Parties, nor is any Party granted any right or authority to assume or create any obligation or responsibility on behalf of any other Party, nor shall any Party be in any way liable for any debt of another Settling Party as a result of this Stipulation except as explicitly set forth in this Stipulation.

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IN WITNESS WHEREOF, the Parties, intending to be legally bound by this Stipulation, have caused this Stipulation to be executed, by their duly authorized attorneys, as of the day and year first above written.

**POMERANTZ LLP**

  
\_\_\_\_\_  
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Louis C. Ludwig  
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and

**THE ROSEN LAW FIRM, P.A.**

  
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*Class Counsel*

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