

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

ANTOINE DE SEJOURNET, ADAM  
HENICK, and LINDA HOLDER,  
INDIVIDUALLY AND ON BEHALF  
OF ALL OTHERS SIMILARLY  
SITUATED,

Case No.: 13-cv-1682-DMG (MRWx)

Plaintiffs,

vs.

GOLDMAN KURLAND AND  
MOHIDIN, LLP, and AHMED  
MOHIDIN,

Defendants.

**STIPULATION AND AGREEMENT OF SETTLEMENT**

This Stipulation and Agreement of Settlement (the “Stipulation”) dated September 30, 2015 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 Lead Plaintiffs Antoine de Sejournet, Adam Henick and Linda Holder (“Lead Plaintiffs”), on behalf of themselves and the certified class (collectively, “Plaintiffs”); and defendants Goldman Kurland & Mohidin, LLP (“GKM”) and Ahmed Mohidin (“Mohidin” and together with GKM, the “Defendants”) by and through their respective counsel.

1. WHEREAS, a class action complaint styled as *Antoine de Sejournet. v. Goldman Kurland Mohidin, LLP and Ahmed Mohidin*, Case No. 13-cv-01682, alleging violations of federal securities laws against the Defendants, was filed in

1 the United States District Court for the Central District of California on March 8,  
2 2013;

3 2. WHEREAS, by Order dated May 31, 2013, the Court appointed  
4 Antoine de Sejournet, Adam Henick and Linda Holder as Lead Plaintiffs and The  
5 Rosen Law Firm, P.A. (“Rosen”) as Lead Counsel;

6 3. WHEREAS, on June 19, 2014, Lead Plaintiffs filed the operative  
7 Second Amended Complaint alleging: (Count 1) violations of Section 10(b) of the  
8 Securities and Exchange Act of 1934 (the “Exchange Act”) against defendants  
9 GKM and Mohidin; and (Count 2) violations of Section 20(a) of the Exchange Act  
10 against defendants Mohidin.

11 4. WHEREAS, on July 16, 2014, the Defendants answered the Second  
12 Amended Complaint;

13 5. WHEREAS, on April 6, 2015, the Court (1) certified a class  
14 consisting of all persons or entities that purchased or otherwise acquired the  
15 publicly traded common stock of Deer Consumer Products, Inc. (“Deer”) between  
16 March 31, 2009 and August 10, 2012, inclusive. Excluded from the Class are  
17 Defendants, the present and former officers and directors of Deer and any  
18 subsidiary thereof, Benjamin Wey, the New York Global Group, the present and  
19 former partners or employees of Defendants (the “Immediate Excluded Persons”),  
20 members of the Immediate Excluded Persons’ immediate families and their legal  
21 representatives, heirs, successors or assigns, and any entity in which the Immediate  
22 Excluded Persons have or had a controlling interest (collectively, the “Excluded  
23 Persons”), (2) appointed Lead Plaintiffs as Class Representatives, and (3)  
24 appointed Rosen as Class Counsel.

25 6. WHEREAS, on June 9, 2015, after submitting mediation briefs, the  
26 parties to this Stipulation (the “Settling Parties”) participated in a full-day  
27 mediation session with Robert J. Kaplan, Esq.;

1           7.     WHEREAS, the Settlement set forth in this Stipulation is the product  
2 of further, extensive arm's-length settlement negotiations that were facilitated by  
3 an experienced mediator;

4           8.     WHEREAS, in recognition of the inherent risks and costs of  
5 continued litigation and the benefits of resolving this litigation, the Parties desire to  
6 settle and resolve any and all actual or potential claims by, between, or among  
7 Plaintiffs, on the one hand, and the Defendants, on the other hand, arising out of or  
8 relating to the subject matter of this action (the "Litigation");

9           9.     WHEREAS, the Defendants deny any wrongdoing whatsoever, and  
10 this Stipulation shall in no event be construed as, or be deemed to be evidence of,  
11 an admission or concession on the part of Defendants with respect to any actual or  
12 potential claim, liability, wrongdoing, or damage whatsoever, or any infirmity in  
13 the defenses that Defendants has asserted. This Stipulation also shall not be  
14 construed as or be deemed to be a concession by the Plaintiffs of any infirmity in  
15 the claims asserted in the Litigation.

16           10.  WHEREAS, the Settling Parties wish to settle and compromise any  
17 dispute regarding the Litigation or its subject matter, including but not limited to  
18 whether the Litigation was filed by the Lead Plaintiffs and defended by the  
19 Defendants in good faith and with adequate basis in fact under Rule 11 of the  
20 Federal Rules of Civil Procedure, and agree that the Litigation is being voluntarily  
21 settled on advice of counsel, and that the terms of the Settlement are fair, adequate,  
22 and reasonable;

23           11.  WHEREAS Lead Plaintiffs' Counsel has conducted an investigation  
24 relating to the claims and the underlying events and transactions alleged in the  
25 Litigation and has analyzed the facts and the applicable law with respect to the  
26 claims of the Lead Plaintiffs against Defendants and the potential defenses thereto,  
27 as well as an investigation into Defendants' ability to pay any judgment, which in  
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1 the Lead Plaintiffs' judgment have provided an adequate and satisfactory basis for  
2 the evaluation of an agreement to settle, as described herein;

3 12. WHEREAS, based upon the investigation conducted by Lead  
4 Plaintiffs' Counsel, Lead Plaintiffs' Counsel has concluded that the terms and  
5 conditions of this Stipulation are fair, reasonable, and adequate to Plaintiffs, and in  
6 their best interests. Lead Plaintiffs have agreed to settle the claims asserted in the  
7 Litigation pursuant to the terms and conditions of this Stipulation after considering  
8 (a) the substantial benefits that Plaintiffs will receive from settlement of the  
9 Litigation; (b) the attendant risks of litigation; and (c) the desirability of permitting  
10 the Settlement to be consummated as provided by the terms of this Stipulation.

11 NOW THEREFORE, without any admission or concession on the part of the  
12 Plaintiffs of any lack of merit in the Litigation whatsoever, and without any  
13 admission or concession on the part of the Defendants of any liability, wrongdoing,  
14 or lack of merit in the defenses asserted in the Litigation whatsoever,

15 It is hereby STIPULATED AND AGREED, by and among the Settling  
16 Parties, through their respective attorneys, subject to approval of the Court  
17 pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, in consideration of  
18 the benefits flowing to the Settling Parties hereto from the Settlement, that any and  
19 all claims made, or that could have been made, including all Settled Claims (as  
20 defined below), by Plaintiffs against the Released Parties (as defined below) shall  
21 be compromised, settled, released, and dismissed with prejudice as provided in this  
22 Stipulation and Agreement of Settlement, to the extent as hereafter provided,  
23 without costs as to the Settling Parties, subject to the approval of the Court, upon  
24 and subject to the following terms and conditions:

25 **A. CERTAIN DEFINITIONS**

26 As used in this Stipulation, the following terms have the meanings specified  
27 below:  
28

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

5           2.     “Authorized Claimant” means any Claimant (as defined below) whose  
6 claim for recovery has been allowed pursuant to the terms of the Stipulation or by  
7 order of the Court.

8           3.     “Award to Lead Plaintiffs” means any award by the Court to Lead  
9 Plaintiffs of reasonable costs and expenses (including lost wages) directly relating  
10 to the representation of the Settlement Class pursuant to 15 U.S.C. § 78u-4(a)(4).

11           4.     “Claimant” means any Settlement Class Member who files a Proof of  
12 Claim and Release (as defined below) in such form and manner, and within such  
13 time, as set forth in this Stipulation, or as the Court shall prescribe.

14           5.     “Claims Administrator” means the accounting and claims  
15 administration firm, Strategic Claims Services, Inc., that Lead Plaintiffs’ Counsel  
16 requests be appointed by the Court to administer the Settlement and disseminate  
17 notice to the Settlement Class.

18           6.     “Class Period” means the period from March 31, 2009 through  
19 August 10, 2012, inclusive.

20           7.     “Court” means the United States District Court for the Central  
21 District of California.

22           8.     “Deer” means Deer Consumer Products, Inc. (“Deer”)

23           9.     “Defendants” means defendants Goldman Kurland & Mohidin, LLP  
24 (“GKM”) and Ahmed Mohidin.

25           10.    “Defendants’ Counsel” means the law firm Hinshaw & Culbertson  
26 LLP.

27           11.    “Effective Date” means the date on which all of the conditions set  
28 forth below in paragraph K.1. shall have been satisfied and the Court’s Order and

1 Final Judgment, substantially in the form of Exhibit B hereto, becomes “Final.”  
2 The Court’s Order and Final Judgment shall be deemed to be “Final” when either  
3 of the following has occurred: (a) if an appeal or review is not sought by any  
4 person from the Order and Final Judgment, the day following the expiration of the  
5 time to appeal or petition from the Order and Final Judgment; or (b) if an appeal or  
6 review is sought from the Order and Final Judgment, the day after such Order and  
7 Final Judgment is affirmed or the appeal or review is dismissed or denied and such  
8 Order and Final Judgment is no longer subject to further judicial review.

9 12. “Escrow Account” means the interest-bearing account selected by the  
10 Escrow Agent. The Escrow Account shall be managed by the Escrow Agent for the  
11 benefit of the Plaintiffs and the Settlement Class until the Effective Date of the  
12 Settlement.

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

16 14. “Gross Settlement Fund” means the Settlement Amount plus all  
17 interest earned thereon.

18 15. “Lead Plaintiffs” means Antoine de Sejournet, Adam Henick and  
19 Linda Holder.

20 16. “Lead Plaintiffs’ Counsel” means The Rosen Law Firm, P.A.

21 17. “Net Settlement Fund” means the Gross Settlement Fund, less: (i)  
22 Attorneys’ Fees and Expenses; (ii) Notice and Administration Expenses; (iii) taxes;  
23 (iv) any Award to Lead Plaintiffs; and (v) other fees and expenses authorized by  
24 the Court.

25 18. “Notice and Administration Account” means the account to be  
26 established from the Gross Settlement Fund and maintained by Lead Plaintiffs’  
27 Counsel. The Notice and Administration Account may be drawn upon by Lead  
28

1 Plaintiffs' Counsel for Notice and Administration Expenses without further order  
2 of the Court.

3 19. "Notice and Administration Expenses" means all expenses incurred  
4 (whether or not paid) in connection with the preparation, printing, mailing, and  
5 publication of the Notice to the Settlement Class of the proposed settlement, and  
6 all expenses of Settlement administration; provided, however, that none of these  
7 expenses shall be deemed to include Attorneys' Fees and Expenses through the  
8 Effective Date. All such Notice and Administration Expenses shall be paid from  
9 the Gross Settlement Fund.

10 20. "Order and Final Judgment" means the order and judgment entered by  
11 the Court.

12 21. "Person" means any individual, corporation, partnership, limited  
13 liability company or partnership, limited partnership, professional corporation,  
14 association, affiliate, joint stock company, trust, estate, unincorporated association,  
15 government, or any political subdivision or agency thereof, any other type of legal  
16 or political entity, any legal representative, and, as applicable, their respective  
17 spouses, heirs, predecessors, successors, representatives, and assigns.

18 22. "Plaintiffs" means the Lead Plaintiffs and the Settlement Class.

19 23. "Plan of Allocation" means the plan for allocating the Net Settlement  
20 Fund (as set forth in the Notice of Pendency and Settlement of Class Action (the  
21 "Notice"), attached as Exhibit A-1 to the Order of Preliminary Approval of  
22 Settlement) to Authorized Claimants after payment of Notice and Administration  
23 Expenses, Taxes and Tax Expenses, and Attorneys' Fees and Expenses. Any Plan  
24 of Allocation is not part of the Stipulation and the Released Parties shall have no  
25 liability with respect thereto.

26 24. "Released Parties" means each of the Defendants and any of their  
27 current, former, or future parents, subsidiaries, affiliates, partners, joint venturers,  
28 officers, directors, principals, shareholders, members, agents (acting in their

1 capacity as agents), employees, attorneys, trustees, insurers (and their respective  
2 businesses, affiliates, subsidiaries, parents and affiliated corporations, divisions,  
3 predecessors, shareholders, partners, joint venturers, principals, insurers,  
4 reinsurers, successors and assigns, and their respective past, present and future  
5 employees, officers, directors, attorneys, accountants, auditors, agents and  
6 representatives), reinsurers, advisors, accountants, associates, and/or any other  
7 individual or entity in which Defendants have or had a controlling interest or which  
8 is or was related to or affiliated with any of the Defendants, and the current,  
9 former, and future legal representatives, heirs, successors-in-interest, or assigns of  
10 any of the Defendants.

11 25. "Settled Claims" means any and all claims, debts, demands, liabilities,  
12 rights, and causes of action of every nature and description whatsoever (including,  
13 but not limited to, any claims for damages, interest, attorneys' fees, expert or  
14 consulting fees, and any other costs, expenses, or liabilities whatsoever), whether  
15 based on federal, state, local, statutory or common law, or any other law, rule, or  
16 regulation, whether fixed or contingent, accrued or unaccrued, liquidated or  
17 unliquidated, at law or in equity, matured or unmatured, whether class or  
18 individual in nature, including both known claims and Unknown Claims (as  
19 defined below) (i) that have been asserted in the Litigation by the Plaintiffs and/or  
20 Settlement Class Members or any of them against any of the Released Parties,  
21 including, without limitation, all statements made by any of the Defendants that  
22 Plaintiffs allege in the Litigation were false or misleading, or any of the alleged  
23 acts, omissions, representations, facts, events, matters, transactions, or occurrences  
24 asserted in or relating to the Litigation, or otherwise alleged, asserted, or contended  
25 in the Litigation; or (ii) that relate to the purchase of Deer securities, including,  
26 without limitation, claims for fraud, negligent misrepresentation, or claims based  
27 upon or related in any way to the purchase, acquisition, or sale of Deer securities  
28 during the Class Period by the Plaintiffs their heirs, executors, administrators,



1 successors, and assigns against the Released Parties or any of them; provided,  
2 however, that Settled Claims do not include any shareholder derivative litigation.  
3 Settled Claims also include any and all claims arising out of, relating to, or in  
4 connection with the Settlement or resolution of the Litigation against the Released  
5 Parties (including Unknown Claims that arise out of, relate to, or are in connection  
6 with the Settlement or resolution of the Litigation against the Released Parties),  
7 except claims to enforce any of the terms of this Stipulation.

8 26. “Settled Defendants’ Claims” means all claims, demands, rights,  
9 remedies, liabilities, and causes of action of every nature and description  
10 whatsoever, whether based on federal, state, local, statutory, or common law, or  
11 any other law, rule, or regulation, including both known and Unknown Claims, that  
12 (i) have been or could have been asserted in the Litigation by any of the  
13 Defendants or the successors and assigns of any of them, against any of the  
14 Plaintiffs or any of their attorneys, and (ii) arise out of or relate in any way to the  
15 institution, prosecution, or Settlement of this Litigation or the Settled Claims,  
16 including but not limited to all claims for malicious prosecution or sanctions.  
17 “Settled Defendants’ Claims” do not include claims to enforce any of the terms of  
18 this Stipulation.

19 27. “Settlement Class” and “Settlement Class Members” mean, for  
20 purposes of this Settlement, all persons who purchased or otherwise acquired the  
21 common stock of Deer between March 31, 2009 and August 10, 2012, inclusive,  
22 and who were allegedly damaged thereby. Excluded from the Class are  
23 Defendants, the officers and directors of, Benjamin Wey, the New York Global  
24 Group, (the “Immediate Excluded Persons”), members of the Immediate Excluded  
25 Persons’ immediate families and their legal representatives, heirs, successors or  
26 assigns, and any entity in which the Immediate Excluded Persons have or had a  
27 controlling interest (collectively, the “Excluded Persons”). Also excluded from the  
28 Settlement Class are those persons who file valid and timely requests for exclusion

1 in accordance with the Court’s Order of Preliminary Approval of Settlement  
2 (“Preliminary Approval Order”) concerning this Stipulation as set forth in Exhibit  
3 A. Also excluded from the Settlement Class are those persons who have no  
4 compensable damages (i.e., those who sold prior to a corrective disclosure).

5 28. “Settlement Class Distribution Order” means the order entered by the  
6 Court, upon application of Lead Plaintiffs’ Counsel following the occurrence of the  
7 events identified in paragraph D.13. below, which authorizes the Claims  
8 Administrator to distribute the Net Settlement Fund to the Settlement Class.

9 29. “Settlement Class Period” means the period from March 31, 2009  
10 through August 10, 2012, inclusive.

11 30. “Settlement” means the settlement contemplated by this Stipulation.

12 31. “Settlement Amount” means a fund in the amount of \$1,425,000 (One  
13 Million Four Hundred Twenty Five Thousand Dollars).

14 32. “Settlement Hearing” means the final hearing to be held by the Court  
15 to determine: (1) whether the proposed Settlement should be approved as fair,  
16 reasonable, and adequate; (2) whether all Settled Claims should be dismissed with  
17 prejudice; (3) whether an order approving the Settlement should be entered  
18 thereon; (4) whether the allocation of the Settlement Fund should be approved; and  
19 (5) whether the application for an award of Attorneys’ Fees and Expenses and an  
20 Award to Lead Plaintiffs should be approved.

21 33. “Unknown Claims” means (a) any Settled Claim that the Plaintiffs or  
22 any Settlement Class Member does not know or suspect to exist in his, her, or its  
23 favor at the time of the release of the Released Parties, which if known by him, her,  
24 or it, might have affected his, her, or its decision(s) with respect to the Settlement,  
25 including, but not limited to, the decision not to object to the Settlement, provided  
26 such claim arises out of or relates to the purchase or sale of Deer securities, and (b)  
27 any Settled Defendant’s Claims that any Defendant does not know or expect to  
28 exist in his, her, or its favor, which if known by him, her, or it might have affected

1 his, her, or its decision(s) with respect to the Settlement. With respect to any and  
2 all Settled Claims and Settled Defendant's Claims, the Settling Parties stipulate  
3 and agree that upon the Effective Date, the Settling Parties shall expressly waive,  
4 and each of the Settlement Class Members shall be deemed to have waived and by  
5 operation of the Order and Final Judgment shall have waived, any and all  
6 provisions, rights, and benefits conferred by any law of any state or territory of the  
7 United States, or principle of common law that is similar, comparable, or  
8 equivalent to Cal. Civ. Code § 1542, which provides:

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

12 **B. SCOPE AND EFFECT OF SETTLEMENT AND RELEASES**

13 1. The obligations incurred pursuant to this Stipulation shall be in full  
14 and final disposition of the Litigation and any and all Settled Claims as against all  
15 Released Parties and any and all Settled Defendants' Claims as against the  
16 Plaintiffs, the Settlement Class Members, and their attorneys.

17 2. Pursuant to the Order and Final Judgment, upon the Effective Date of  
18 this Settlement, the Settlement Class Members on behalf of themselves, their  
19 current and future heirs, executors, administrators, successors, attorneys, insurers,  
20 agents, representatives, and assigns, and any person they represent, shall, with  
21 respect to each and every Settled Claim, release and forever relinquish and  
22 discharge, and shall forever be enjoined from prosecuting, all Settled Claims and  
23 any and all claims arising out of, relating to, or in connection with the Settlement,  
24 the Litigation, or the resolution of the Litigation against the Released Parties,  
25 whether or not such Settlement Class Member executes and delivers the Proof of  
26 Claim and Release, except claims to enforce any of the terms of this Stipulation.  
27 Further, all Settlement Class Members on behalf of themselves, their current and  
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1 future heirs, executors, administrators, successors, attorneys, insurers, agents,  
2 representatives, and assigns, expressly covenant not to assert any claim or action  
3 against any of the Released Parties that (i) arises out of or relates to the purchase or  
4 sale of Deer securities, or (ii) that could have been alleged, asserted, or contended  
5 in any forum by the Settlement Class Members or any of them against any of the  
6 Released Parties, arising out of or relating to the purchase or sale of Deer  
7 securities, and shall forever be enjoined from commencing, instituting, or  
8 prosecuting any such claim, so long as such claim relates to the purchase or sale of  
9 Deer securities.

10 3. The Proof of Claim and Release to be executed by the Settlement  
11 Class Members shall be substantially in the form and content contained in Exhibit  
12 A-3 to the Preliminary Approval Order attached hereto as Exhibit A.

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

19 **C. THE SETTLEMENT CONSIDERATION**

20 1. Subject to the terms of this Stipulation, the sum of \$1,425,000 (One  
21 Million Four Hundred Twenty Five Thousand Dollars) shall be paid by Defendants  
22 into the Escrow Account within seven (7) calendar days after the Court issues the  
23 Preliminary Approval Order. That payment shall constitute the Settlement Amount.

24 2. The Gross Settlement Fund, net of any Taxes (as defined below) on  
25 the income thereof and any Tax Expenses (as defined below), shall be used to pay:  
26 (i) the Notice and Administration Expenses as authorized by this Stipulation; (ii)  
27 Attorneys' Fees and Expenses authorized by the Court; (iii) any Award to Lead  
28

1 Plaintiffs authorized by the Court; and (iv) other fees and expenses authorized by  
2 the Court. The balance of the Gross Settlement Fund remaining after the above  
3 payments shall be the Net Settlement Fund, which shall be distributed to the  
4 Authorized Claimants in accordance with this Stipulation.

5 3. Any sums required to be held in escrow hereunder shall be held by the  
6 Escrow Agent for the benefit of the Plaintiffs and the Settlement Class until the  
7 Effective Date. Until the date the Order and Final Judgment is entered, all  
8 payments made from the Settlement Fund shall require the signature of an  
9 authorized representative of the Escrow. After the Order and Final Judgment is  
10 entered, payments made from the Settlement Fund shall require only the signature  
11 of an authorized representative of the Escrow Agent and shall not require the  
12 signature of Defendants' counsel's authorized representative. All funds held by the  
13 Escrow Agent shall be deemed to be in custodia legis and shall remain subject to  
14 the jurisdiction of the Court until such time as the funds shall be distributed or  
15 returned pursuant to this Stipulation and/or further order of the Court. Other than  
16 amounts disbursed for providing notice to the Settlement Class, customary  
17 administration costs, and Taxes and Tax Expenses, and the Attorneys' Fees and  
18 Expenses (which shall be paid to Lead Plaintiffs' Counsel within three business  
19 days after the Court executes an order awarding such fees and expenses), the  
20 Settlement Fund shall not be distributed until the Effective Date. The Escrow  
21 Agent shall not disburse the Gross Settlement Fund, or any portion thereof, except  
22 as provided in this Stipulation, or upon Order of the Court.

23 4. The Escrow Agent shall invest any funds in excess of \$150,000 in  
24 short-term United States Treasury Securities (or a mutual fund invested solely in  
25 such instruments), and shall collect and reinvest all interest accrued thereon. Any  
26 funds held in escrow in an amount of less than \$150,000 may be held in a bank  
27 account insured to the extent possible by the FDIC. Interest earned on the money  
28 deposited into the Escrow Account shall be part of the Gross Settlement Fund.

1           5.     The Notice and Administration Expenses shall be paid from the Gross  
2 Settlement Fund. In order to pay Notice and Administration Expenses, \$100,000  
3 (One Hundred Thousand Dollars) shall be withdrawn from the Gross Settlement  
4 Fund and deposited into a Notice and Administration Account upon the entry of  
5 the Preliminary Approval Order. Any monies from the Notice and Administration  
6 Fund that remain after administration shall be returned to the Net Settlement Fund.  
7 The Notice and Administration Account may be drawn upon by Lead Plaintiffs'  
8 Counsel for Notice and Administration Expenses without further Court approval.  
9 The Notice and Administration Account shall be administered solely by the  
10 Escrow Agent. Any taxes or other expenses incurred in connection with the Notice  
11 and Administration Account shall be paid from the Notice and Administration  
12 Account or from the remainder of the Gross Settlement Fund. The Released Parties  
13 shall not have any obligation for payment of taxes or other expenses associated  
14 with the Notice and Administration Account. Notice and Administration Expenses  
15 in excess of \$100,000 (One Hundred Thousand Dollars) shall not be paid out of the  
16 Gross Settlement Fund until after the Effective Date. In no event shall an amount  
17 more than the Settlement Amount be paid for Notice and Administration Expenses,  
18 and in no event shall the Released Parties be responsible to pay any amount for  
19 Notice and Administration Expenses.

20           6.     The Settling Parties shall have access to all records of the Escrow  
21 Account, and upon request made to the Escrow Agent, shall receive copies of all  
22 records of disbursements, deposits, and statements of accounts.

23           7.     After the Effective Date, the Released Parties shall have no interest in  
24 the Gross Settlement Fund or in the Net Settlement Fund. The Released Parties  
25 shall not be liable for the loss of any portion of the Settlement Fund, nor have any  
26 liability, obligation, or responsibility for the payment of claims, taxes, legal fees, or  
27 any other expenses payable from the Gross Settlement Fund.  
28

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

3  
4 1. The Claims Administrator shall administer and calculate the claims  
5 that shall be allowed and oversee distribution of the Net Settlement Fund, under  
6 the supervision of Lead Plaintiffs' Counsel, and subject to appeal to, and  
7 jurisdiction of, the Court. The Released Parties shall have no liability, obligation,  
8 or responsibility for the administration of the Gross Settlement Fund or Net  
9 Settlement Fund, or for the distribution of the Net Settlement Fund.

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

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

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

21 c. After the Claims Administrator calculates the recognized losses  
22 of each Authorized Claimant, Lead Plaintiffs' Counsel shall file a motion for  
23 distribution of the Settlement Fund with the Court listing each Authorized  
24 Claimant, the amount of each claim that Lead Plaintiffs' Counsel believes should  
25 be allocated and distributed to each such Authorized Claimant, accounting for all  
26 Notice and Administration Expenses, and requesting Court approval to distribute  
27 the Settlement Fund to the Authorized Claimants and pay any further Notice and  
28 Administration expenses.

1           3. Each Settlement Class Member wishing to participate in the  
2 Settlement shall be required to submit a Proof of Claim and Release (in  
3 substantially the form set forth in Exhibit A-3 hereto, which inter alia releases all  
4 Settled Claims against all Released Parties), signed under penalty of perjury by the  
5 beneficial owner(s) of the securities that are the subject of the Proof of Claim and  
6 Release, or by someone with documented authority to sign for the beneficial  
7 owners and supported by such documents as specified in the instructions  
8 accompanying the Proof of Claim and Release.

9           4. All Proofs of Claim must be postmarked or received within the time  
10 prescribed in the Preliminary Approval Order unless otherwise ordered by the  
11 Court. Any Settlement Class Member who fails to submit a properly completed  
12 Proof of Claim within such period as shall be authorized by the Court shall be  
13 forever barred from receiving any payments pursuant to this Stipulation or from  
14 the Net Settlement Fund (unless Lead Plaintiffs' Counsel in its discretion deems  
15 such late filing to be a formal or technical defect, or unless by Order of the Court a  
16 later submitted Proof of Claim by such Settlement Class Member is approved), but  
17 will in all other respects be subject to the provisions of this Stipulation and Order  
18 and Final Judgment, including, without limitation, the release of the Settled Claims  
19 and dismissal of the Litigation. Provided that it is received before the motion for  
20 the Settlement Class Distribution Order is filed, a Proof of Claim shall be deemed  
21 to have been submitted when posted if received with a postmark indicated on the  
22 envelope and if mailed by first-class mail and addressed in accordance with the  
23 instructions thereon. In all other cases, the Proof of Claim shall be deemed to have  
24 been submitted when actually received by the Claims Administrator.

25           5. Each Proof of Claim shall be submitted to the Claims Administrator  
26 who shall determine, under the supervision of Lead Plaintiffs' Counsel, in  
27 accordance with this Stipulation and any applicable orders of the Court, the extent,  
28 if any, to which each claim shall be allowed, subject to appeal to the Court. No



1 later than seven (7) days prior to disbursement of the Net Settlement Fund, Lead  
2 Plaintiffs' Counsel shall provide Defendants with a list of Proofs of Claim received  
3 by the Claims Administrator indicating which Proofs of Claim have been allowed  
4 by the Claims Administrator.

5 6. Lead Plaintiffs' Counsel shall have the right, but not the obligation, to  
6 waive what they deem to be formal or technical defects in any Proofs of Claim  
7 filed, where doing so is in the interest of achieving substantial justice.

8 7. Proofs of Claim that do not meet the filing requirements may be  
9 rejected. Prior to rejection of a Proof of Claim, the Claims Administrator shall  
10 communicate with the Claimant in order to remedy curable deficiencies in the  
11 Proof of Claim submitted. The Claims Administrator, under the supervision of  
12 Lead Plaintiffs' Counsel, shall notify in a timely fashion and in writing, all  
13 Claimants whose Proofs of Claim they propose to reject in whole or in part, setting  
14 forth the reasons thereof, and shall indicate in such notice that the Claimant whose  
15 claims are to be rejected has the right to review by the Court if the Claimant so  
16 desires and complies with the requirement of paragraph D.8. below.

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

25 9. The administrative determination of the Claims Administrator  
26 accepting and rejecting claims shall be presented to the Court, on notice to  
27 Defendants' Counsel, for approval by the Court in the Settlement Class  
28 Distribution Order.

1           10. Each Claimant shall be deemed to have submitted to the jurisdiction  
2 of the Court with respect to the Claimant's claim, and the claim will be subject to  
3 investigation and discovery under the Federal Rules of Civil Procedure, provided  
4 that such investigation and discovery shall be limited to that Claimant's status as a  
5 Settlement Class Member and the validity and amount of the Claimant's claim. No  
6 discovery shall be allowed on the merits of the Litigation or Settlement in  
7 connection with processing of the Proofs of Claim.

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

15           12. All proceedings with respect to the administration, processing, and  
16 determination of claims described by this paragraph of this Stipulation and the  
17 determination of all controversies relating thereto, including disputed questions of  
18 law and fact with respect to the validity of claims, shall be subject to the  
19 jurisdiction of the Court.

20           13. The Net Settlement Fund shall be distributed to Authorized Claimants  
21 by the Claims Administrator upon application to the Court by Lead Plaintiffs'  
22 Counsel for a Settlement Class Distribution Order only after all of the following  
23 having occurred: (i) the Effective Date; (ii) all claims have been processed, and all  
24 Claimants whose claims have been rejected or disallowed, in whole or in part, have  
25 been notified and provided the opportunity to be heard concerning such rejection  
26 or disallowance; (iii) all objections with respect to all rejected or disallowed claims  
27 have been resolved by the Court, and all appeals therefrom have been resolved or  
28 the time therefor has expired; (iv) all matters with respect to Attorneys' Fees and

1 Expenses, costs, and disbursements have been resolved by the Court, and all  
2 appeals therefrom have been resolved or the time therefor has expired; and (v) all  
3 costs of administration have been paid.

4 14. If any funds remain in the Net Settlement Fund by reason of uncashed  
5 checks or otherwise, then, after the Claims Administrator has made reasonable and  
6 diligent efforts to have Settlement Class Members who are entitled to participate in  
7 the distribution of the Net Settlement Fund cash their distribution checks, any  
8 balance remaining in the Net Settlement Fund one (1) year after the initial  
9 distribution of such funds shall be re-distributed, after payment of any unpaid costs  
10 or fees incurred in administering the Net Settlement Fund for such redistribution,  
11 to Settlement Class Members who have cashed their checks and who would  
12 receive at least \$10.00 from such re-distribution. If any funds shall remain in the  
13 Net Settlement Fund six months after such re-distribution, then such balance shall  
14 be contributed to the Legal Aid Foundation of Los Angeles or any not-for-profit  
15 successor of it.

16 15. Before the Effective Date, Lead Plaintiffs' Counsel shall file with the  
17 Court a declaration under penalty of perjury describing how notice of the  
18 Settlement was given to the Settlement Class.

19 **E. TAX TREATMENT**

20  
21 1. The Parties agree to treat the Gross Settlement Fund as being at all  
22 times a qualified settlement fund within the meaning of Treasury Regulation §  
23 1.468B-1 and Section 468B of the Internal Revenue Code, as amended, for the  
24 taxable years of the Gross Settlement Fund, beginning with the date it is created. In  
25 addition, the Escrow Agent and, as required, the Settling Parties, shall jointly and  
26 timely make such elections as are necessary or advisable to carry out the provisions  
27 of this paragraph, including the "relation-back election" (as defined in Treas. Reg.  
28 § 1.468B-1(j)(2)) back to the earliest permitted date. Such elections shall be made

1 in compliance with the procedures and requirements contained in such regulations.  
2 It shall be the responsibility of Lead Plaintiffs' Counsel to timely and properly  
3 prepare and deliver the necessary documentation for signature by all necessary  
4 parties, and thereafter to cause the appropriate filing to occur.

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

15 3. All (i) taxes (including any interest or penalties) arising with respect  
16 to the income earned by the Gross Settlement Fund, including any taxes or tax  
17 detriments that may be imposed upon Defendants with respect to any income  
18 earned by the Gross Settlement Fund for any period during which the Gross  
19 Settlement Fund does not qualify as a qualified settlement fund for Federal or state  
20 income tax purposes ("Taxes"); and (ii) expenses and costs incurred in connection  
21 with the operation and implementation of this paragraph (including, without  
22 limitation, expenses of tax attorneys and/or accountants, and mailing and  
23 distribution costs and expenses relating to filing (or failing to file) the returns  
24 described in this paragraph) ("Tax Expenses"), shall be paid out of the Gross  
25 Settlement Fund. In all events, the Released Parties shall have no liability for  
26 Taxes or the Tax Expenses, and Plaintiffs and Lead Plaintiff's Counsel agree to  
27 indemnify and hold the Released Parties harmless for Taxes and Tax Expenses.  
28 Further, Taxes and Tax Expenses shall be treated as, and considered to be, a cost of

1 administration of the Settlement and shall be timely paid by the Escrow Agent out  
2 of the Gross Settlement Fund without prior order from the Court. The Escrow  
3 Agent shall be obligated (notwithstanding anything herein to the contrary) to  
4 withhold from distribution to the Settlement Class Members any funds necessary to  
5 pay such Taxes and Tax Expenses, including the establishment of adequate  
6 reserves for any Taxes and Tax Expenses (as well as any amounts that may be  
7 required to be withheld under Treas. Reg. § 1468B-2(1)(2)). The Released Parties  
8 shall have no responsibility or liability therefor. The Settling Parties hereto agree to  
9 cooperate with the Escrow Agent, each other, and their tax attorneys and  
10 accountants to the extent reasonably necessary to carry out the provisions of this  
11 paragraph.

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

13  
14 1. The Plan of Allocation is based upon Lead Plaintiffs' Counsel's  
15 assessment of the merits and the relative strengths and weaknesses, including  
16 recoverable damages, of the claims of the Settlement Class Members.

17 2. Defendants do not and shall not take any position as to the proposed  
18 Plan of Allocation.

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

23 4. Defendants shall have no involvement in the solicitation of, or review  
24 of Proofs of Claim, or involvement in the administration process itself, which shall  
25 be conducted by the Claims Administrator in accordance with this Stipulation and  
26 the Order and Final Judgment to be entered by the Court. No Claimant or  
27 Authorized Claimant shall have any claim against the Released Parties or their  
28

1 counsel based on, or in any way relating to, the distributions from either the Gross  
2 Settlement Fund or the Net Settlement Fund.

3 5. No Authorized Claimant shall have any claim against Lead Plaintiffs'  
4 Counsel or the Claims Administrator based on, or in any way relating to, the  
5 distributions from the Net Settlement Fund that have been made substantially in  
6 accordance with this Stipulation and any applicable orders of the Court.

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

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

11 1. The Escrow Agent shall not be responsible for the payment of any  
12 sums due to Authorized Claimants or other Persons, except to the extent of  
13 maintaining account of and properly paying sums as required by this Stipulation to  
14 the limited extent that such sums have been delivered into the Escrow Account or  
15 Notice and Administration Account as required by this Stipulation. The Escrow  
16 Agent shall be liable only for acts of gross negligence or willful misconduct.

17 **H. LEAD PLAINTIFFS' COUNSEL'S REQUEST FOR AN AWARD OF**  
18 **ATTORNEYS' FEES AND EXPENSES**

19 1. Lead Plaintiffs' Counsel intends to submit an application to the Court,  
20 on notice to counsel for Defendants, for the payment of Attorneys' Fees and  
21 Expenses, including: (i) an award of attorneys' fees up to one-third of the  
22 Settlement Amount; (ii) reimbursement of litigation costs and expenses, plus  
23 interest, including fees and expenses of experts, incurred in connection with the  
24 prosecution of the Litigation; and (iii) an Award to Lead Plaintiffs (for  
25 reimbursement of time and expenses).  
26  
27  
28

1           2. Any attorneys' fees and costs and Award to Lead Plaintiffs awarded  
2 by the Court shall be paid from the Gross Settlement Fund within three (3)  
3 business days after the Court executes an order awarding such fees and expenses.  
4 Lead Plaintiffs' Counsel may thereafter allocate the attorneys' fees among other  
5 Lead Plaintiffs' Counsel in a manner in which Lead Plaintiffs' Counsel in good  
6 faith believe reflects the contributions of such counsel to the initiation, prosecution,  
7 and resolution of the Litigation. If, and when, as a result of any appeal and/or  
8 further proceedings on remand, or successful collateral attack, the Attorneys' Fee  
9 and Expense award is overturned or lowered, or if the settlement is terminated or is  
10 not approved by the Court, or if there is an appeal and any order approving the  
11 settlement does not become final and binding upon the Class, then, within five (5)  
12 business days from receiving notice from Defendants' Counsel or from a court of  
13 appropriate jurisdiction, Lead Plaintiffs' Counsel shall refund to the Settlement  
14 Fund such fees and expenses previously paid to them from the Settlement Fund  
15 plus interest thereon at the same rate as earned on the Settlement Fund in an  
16 amount consistent with such reversal or modification. Each such Plaintiffs'  
17 counsel's law firm receiving fees and expenses, as a condition of receiving such  
18 fees and expenses, on behalf of itself and each partner and/or shareholder of it,  
19 agrees that the law firm and its partners and/or shareholders are subject to the  
20 jurisdiction of the Court for the purpose of enforcing the provisions of this  
21 paragraph.

22           3. Lead Plaintiffs' Counsel waives the right to make an additional  
23 application or applications for payment from the Gross Settlement Fund for fees  
24 and expenses incurred after the Settlement Hearing. The other Settling Parties shall  
25 take no position on any application concerning Lead Plaintiffs' Counsel's request  
26 or award of attorneys' fees and reimbursement of expenses, or Award to Lead  
27 Plaintiffs.

1           4. It is agreed that the procedure for and the allowance or disallowance  
2 by the Court of any applications by Lead Plaintiffs' Counsel for Attorneys' Fees  
3 and Expenses, including fees for experts and consultants to be paid out of the  
4 Gross Settlement Fund, and any order or proceeding relating thereto, shall not  
5 operate to terminate or cancel this Stipulation or affect its finality, and shall have  
6 no effect on the terms of this Stipulation or on the enforceability of this Settlement.

7           **I. THE PRELIMINARY APPROVAL ORDER**

8  
9           1. Promptly after execution of this Stipulation, Defendants and Plaintiffs  
10 shall submit the Stipulation together with its exhibits to the Court and shall jointly  
11 apply for entry of a Preliminary Approval Order in connection with settlement  
12 proceedings substantially in the form annexed hereto as Exhibit A, providing for,  
13 among other things, preliminary approval of the Settlement and notice to the  
14 Settlement Class of the Settlement Hearing. The Preliminary Approval Order  
15 (Exhibit A hereto) to be submitted to the Court shall contain exhibits substantially  
16 in the form set forth in: (i) the Notice of Pendency and Settlement of Class Action  
17 (the "Notice") (Exhibit A-1 to the Preliminary Approval Order); (ii) the Summary  
18 Notice of Pendency and Settlement of Class Action ("Summary Notice") (Exhibit  
19 A-2 to the Preliminary Approval Order); and (iii) the Proof of Claim and Release  
20 (Exhibit A-3 to the Preliminary Approval Order).

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

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

25           1. Defendants and Plaintiffs shall seek to have the Court enter an Order  
26 and Final Judgment substantially in the form of Exhibit B hereto.

27           **K. CONDITIONS OF SETTLEMENT**  
28



1           1.     The Effective Date of the Settlement shall be conditioned upon the  
2 occurrence of ALL of the following events:

3           a.     The Court shall enter the Preliminary Approval Order in all  
4 material respects, as required by paragraph I. above;

5           b.     No party shall have exercised within the required time period  
6 any right to terminate the Settlement as permitted by paragraph L. below;

7           c.     The Court shall enter the Order and Final Judgment in all  
8 material respects, as required by paragraph J. above;

9           d.     The Court's Order and Final Judgment, substantially in the  
10 form of Exhibit B, shall have become "Final," as defined in paragraph A.11.;

11          e.     The Settlement Amount shall have been paid, as set forth in  
12 paragraph C.1. above;

13          2.     Upon occurrence of ALL of the events referenced in paragraph K.1.  
14 above, Plaintiffs shall have, and each and all of the members of the Settlement  
15 Class shall hereby be deemed to have, and by operation of the Order and Final  
16 Judgment shall have, fully, finally, and forever, released, settled, and discharged,  
17 in accordance with the terms of paragraph B. above, the Released Parties from and  
18 with respect to the Settled Claims, whether or not such members of the Settlement  
19 Class execute and deliver a Proof of Claim.

20          3.     Upon occurrence of ALL of the events referenced in paragraph K.1.  
21 above, the obligation of the Escrow Agent to return funds from the Gross  
22 Settlement Fund to Defendants pursuant to paragraph L.4. or any other provision  
23 hereof shall be absolutely and forever extinguished.

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

25          1.     Defendants and the Lead Plaintiffs shall each have the right to  
26 terminate the Settlement and this Stipulation by providing written notice of their  
27  
28

1 election to do so (“Termination Notice”) to all other counsel of the Settling Parties  
2 within thirty (30) days after the date on which any of the following occurs:

3 a. the Court issues an order declining to enter the Preliminary  
4 Approval Order in any material respect;

5 b. the Court issues an order declining to approve this Stipulation  
6 or any material part of it;

7 c. the Court declines to enter the Order and Final Judgment in all  
8 material respects as required by paragraph J. above;

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

11 e. in the event that the Court enters an order and final judgment in  
12 a form other than that provided above (an “Alternative Judgment”) and none of the  
13 Settling Parties elects to terminate this Settlement, the date that such Alternative  
14 Judgment is modified or reversed in any material respect by a Court of Appeals or  
15 the Supreme Court;

16 2. If prior to the Settlement Hearing, persons who otherwise would be  
17 Settlement Class Members have filed with the Court valid and timely requests for  
18 exclusion (“Requests for Exclusion”) from the Settlement Class in accordance with  
19 the provisions of the Preliminary Approval Order and the notice given pursuant  
20 thereto, and such Persons in the aggregate purchased stock during the Settlement  
21 Class Period in an amount greater than the amounts specified in a separate  
22 Supplemental Agreement between the parties (the “Supplemental Agreement”),  
23 then Defendants shall have the option to terminate this Stipulation and Settlement  
24 in strict accordance with the requirements and procedures set forth in the  
25 Supplemental Agreement (“Opt-out Termination Option”). The Supplemental  
26 Agreement shall not be filed with the Court unless and until a dispute among the  
27 parties concerning its interpretation or application arises. Copies of all Requests for  
28 Exclusion received, together with copies of all written revocations of Requests for

1 Exclusion, shall be delivered to the Defendants no later than fourteen (14) days  
2 prior to the Settlement Hearing. The required procedure for and consequences of  
3 exercising an Opt-out Termination Option are as follows:

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

7 b. If Defendants exercise the Opt-out Termination Option as  
8 provided herein, this Stipulation shall be null and void, and the provisions of  
9 paragraph L. hereof shall apply.

10 3. If the Gross Settlement Amount payable pursuant to paragraph C.1. of  
11 this Stipulation is not paid, then the Lead Plaintiffs, in their sole discretion, may  
12 elect, at any time prior to the Court's entering the Order and Final Judgment, (a) to  
13 terminate the Settlement by providing written notice to the Settling Parties; or (b)  
14 to enforce the terms of the Settlement and this Stipulation and seek a judgment  
15 effecting the terms herein; and (c) Defendants may not terminate the Settlement  
16 due to such nonpayment or pursuant to L.1.-2. hereof.

17 4. Upon termination of the Stipulation pursuant to the terms of the  
18 Stipulation, the Escrow Agent shall refund the Gross Settlement Fund, less  
19 amounts already expended for notice to the Settlement Class pursuant to the terms  
20 of the Stipulation, to Defendants within ten (10) business days thereafter (the  
21 "Returned Settlement Amount").

22 5. If this Stipulation is terminated pursuant to its terms, and at the  
23 request of any Defendants or Lead Plaintiffs, the Escrow Agent or his designee  
24 shall apply for any tax refund owed to the Gross Settlement Fund and pay the  
25 percentage of the proceeds of the tax refund, after deduction of any fees and  
26 expenses incurred in connection with such application(s) for refund, to Defendants.

27 6. If this Stipulation is terminated pursuant to its terms, all of the Settling  
28 Parties shall be deemed to have reverted to their respective statuses prior to the

1 execution of this Stipulation, and they shall proceed in all respects as if this  
2 Stipulation had not been executed and the related orders had not been entered,  
3 preserving in that event all of their respective claims and defenses in the Litigation,  
4 and shall revert to their respective positions in the Litigation, except that the  
5 provisions of paragraphs E.1.-3., G., L.5.-7., M.10.-11., and M.13. shall survive  
6 termination.

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

11 **M. MISCELLANEOUS PROVISIONS**

12 1. This is not a claims made settlement. If any funds remain in the  
13 Settlement Fund after payments of Attorneys' Fees and Expenses, Notice and  
14 Administration Expenses, Awards to Lead Plaintiffs, and payments to Authorized  
15 Claimants, there will be no reversion of remaining funds to Defendants or their  
16 insurer.

17 2. The Settling Parties: (a) acknowledge that it is their intent to  
18 consummate the Settlement contemplated by this Stipulation; (b) agree to  
19 cooperate to the extent necessary to effectuate and implement all terms and  
20 conditions of this Stipulation; and (c) agree to exercise their best efforts and to act  
21 in good faith to accomplish the foregoing terms and conditions of the Stipulation.

22 3. The Settling Parties acknowledge and warrant as follows:

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

26 b. By executing this Stipulation, each of the Settling Parties  
27 represents that they have the right, legal capacity, power and authority to enter into  
28

1 this Stipulation and to perform their obligations hereunder, without the consent,  
2 approval, or authorization of any person, board, entity, tribunal, or other regulatory  
3 or governmental authority;

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

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

17 e. By executing this Stipulation, each of the Settling Parties  
18 represents that no representations or promises of any kind or character have been  
19 made by any other Settling Party, Released Party, or anyone else to induce the  
20 execution of this Stipulation except as expressly provided herein;

21 f. By executing this Stipulation, each of the Settling Parties  
22 represents that this Stipulation is fair and is executed voluntarily, with full  
23 knowledge of the consequences and implications of the obligations contained  
24 herein;

25 g. By executing this Stipulation, each of the Settling Parties  
26 represents that this Stipulation is not the result of any fraud, duress, or undue  
27 influence, and that they have not assigned, transferred, or conveyed or purported to  
28

1 assign, transfer, or convey, voluntarily, involuntarily or by operation of law, any or  
2 all of their respective rights and claims;

3 h. By executing this Stipulation, each of the Settling Parties  
4 represents that they have had the opportunity to be represented by counsel of their  
5 choice that is duly licensed to practice in the State of California throughout the  
6 negotiations which preceded the execution of this Stipulation and in connection  
7 with the preparation and execution of this Stipulation; and

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

11 4. All of the exhibits attached hereto are hereby incorporated by  
12 reference as though fully set forth herein.

13 5. No amendment or modification of this Stipulation shall be effective  
14 unless in writing and signed by the Settling Parties or their successors-in-interest.

15 6. This Stipulation, and the exhibits attached hereto, constitute the entire  
16 agreement among the Settling Parties, and no representations, warranties, or  
17 inducements have been made to any Settling Party concerning this Stipulation or  
18 its exhibits, other than the representations, warranties, and covenants contained and  
19 memorialized in such documents.

20 7. Except as otherwise provided herein, each Settling Party shall bear its  
21 own costs. Lead Plaintiffs' Counsel's Attorneys' Fees and Expenses, subject to  
22 Court approval, shall be paid only out of the Gross Settlement Fund, and the  
23 Released Parties shall have no obligation with respect to the payment of said  
24 Attorneys' Fees and Expenses.

25 8. Lead Plaintiffs' Counsel, on behalf of the Settlement Class, is  
26 expressly authorized to take all appropriate action required or permitted to be taken  
27 by the Settlement Class pursuant to this Stipulation to effectuate its terms and is  
28

1 also expressly authorized to enter into any modifications or amendments to this  
2 Stipulation on behalf of the Settlement Class.

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

5 10. This Stipulation may be executed in one or more original,  
6 photocopied, or facsimile counterparts. All executed counterparts and each of them  
7 shall be deemed to be one and the same instrument. The Settling Parties shall  
8 exchange among themselves original signed counterparts of this Stipulation, and a  
9 complete set of executed counterparts of this Stipulation shall be filed with the  
10 Court.

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

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

19 13. The Lead Plaintiffs, on behalf of themselves and each member of the  
20 Settlement Class, and the other Settling Parties hereby irrevocably submit to the  
21 jurisdiction of the Court for any suit, action, proceeding, or dispute arising out of  
22 or relating to this Stipulation, the applicability of this Stipulation, or the  
23 enforcement of this Stipulation. The administration and consummation of the  
24 Settlement as embodied in this Stipulation shall be under the authority of the  
25 Court, and the Court shall retain jurisdiction for the purpose of entering orders  
26 providing for awards of Attorneys' Fees and Expenses to Plaintiffs' Counsel,  
27 Awards to Lead Plaintiffs, and enforcing the terms of this Stipulation.  
28

1           14. None of the Settling Parties shall be considered to be the drafter of  
2 this Stipulation or any provision hereof for purposes of any statute, case law, or  
3 rule of interpretation or construction that would or might cause any provision to be  
4 construed against the drafter hereof. Because of the arm's-length negotiations that  
5 preceded the execution of this Stipulation, all Settling Parties have contributed  
6 substantially and materially to the preparation of this Stipulation.

7           15. Neither this Stipulation, nor the fact of the Settlement, is an admission  
8 or concession by Defendants of any liability or wrongdoing whatsoever. This  
9 Stipulation shall not constitute a finding of the validity or invalidity of any claims  
10 in the Litigation or of any wrongdoing by any Defendants named therein. This  
11 Stipulation, the fact of settlement, the settlement proceedings, the settlement  
12 negotiations, and any related documents, shall not be used or construed as an  
13 admission of any fault, liability, or wrongdoing by any person or entity.

14           16. The Settling Parties intend the Settlement to be a final and complete  
15 resolution of all claims and disputes asserted or that could be asserted by the  
16 Settlement Class Members against the Released Parties with respect to the Settled  
17 Claims. Accordingly, unless the Court's Order and Final Judgment approving the  
18 Settlement does not become Final, the Settling Parties agree not to assert in any  
19 forum that the Litigation was brought by Lead Plaintiffs or defended by  
20 Defendants in bad faith or without a reasonable basis. Additionally, the Settling  
21 Parties shall not assert any claims of any violation of Rule 11 of the Federal Rules  
22 of Civil Procedure relating to the prosecution, defense, or settlement of the  
23 Litigation. The Settling Parties agree that the amount paid and the other terms of  
24 the Settlement were negotiated at arm's-length in good faith by the Settling Parties,  
25 and reflect a settlement that was reached voluntarily after consultation with  
26 experienced legal counsel.



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

4           18. The waiver of one Settling Party of any breach of this Stipulation by  
5 any other Settling Party shall not be deemed a waiver of any other breach of this  
6 Stipulation. The provisions of this Stipulation may not be waived except by a  
7 writing signed by the affected Settling Party or counsel for that Settling Party. No  
8 failure or delay on the part of any Settling Party in exercising any right, remedy,  
9 power, or privilege under this Stipulation shall operate as a waiver thereof or of  
10 any other right, remedy, power, or privilege of such Settling Party under this  
11 Stipulation; nor shall any single or partial exercise of any right, remedy, power, or  
12 privilege under this Stipulation on the part of any Settling Party operate as a waiver  
13 thereof or of any other right, remedy, power, or privilege of such Settling Party  
14 under this Stipulation, or preclude further exercise thereof or the exercise of any  
15 other right, remedy, power, or privilege.

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

24 **THE REMAINDER OF THIS PAGE IS LEFT INTENTIONALLY BLANK**

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

4  
5 **THE ROSEN LAW FIRM, P.A.**

6 /s/ Laurence M. Rosen  
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12 Lead Counsel for Plaintiffs

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21 Attorneys for Defendants  
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28 <sup>1</sup> Pursuant to Local 5-4.3.4. (2), Plaintiffs attest that Defendants concur with this filing's content and have authorized its filing.