

EXECUTION

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10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**
12 **WESTERN DIVISION**

13 ROBERT FORD, INDIVIDUALLY)
14 AND ON BEHALF OF ALL OTHERS)
15 SIMILARLY SITUATED,)

16 Plaintiff,

17 vs.

18 NATURAL HEALTH TRENDS CORP.,)
19 CHRIS T. SHARNG, and TIMOTHY S.)
20 DAVIDSON,)

21 Defendants.)

No. 2:16-cv-00255-TJH-AFM

CLASS ACTION

STIPULATION OF SETTLEMENT

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1 On June 15, 2016, Defendants filed a Motion to Dismiss, which Plaintiffs
2 opposed. On December 5, 2016, the Court denied Defendants' Motion to Dismiss.
3 (ECF No. 66.)

4 Following the denial of Defendants' Motion to Dismiss, counsel for the
5 Parties held a discovery conference on January 5, 2017. At or around this time,
6 Defendants requested an extension of their deadline to answer the Consolidated
7 Complaint, and the Parties so stipulated. On February 3, 2017, the Court entered an
8 order instructing Defendants to answer the Consolidated Complaint on or before
9 February 17, 2017, and instructing the Parties to exchange initial disclosures
10 pursuant to Rule 26(a)(1) on or before February 24, 2107. (ECF No. 78.)

11 In accordance with the Court's Order, on February 17, 2017, Defendants filed
12 and served their Answer to the Consolidated Complaint (ECF No. 79), denying the
13 material allegations in the Consolidated Complaint and asserting a number of
14 affirmative defenses.

15 The Parties exchanged initial disclosures on February 24, 2017, and
16 thereafter engaged in document discovery, exchanging demands and responses to
17 requests for production and interrogatories.

18 On or around June 22, 2017, in advance of Plaintiffs' deadline for filing a
19 motion for class certification, the Parties began negotiating a potential resolution of
20 the case. These negotiations prompted the Parties to jointly submit a stipulation to
21 the Court on June 29, 2017, seeking to extend various case management deadlines
22 pending settlement discussions. On July 10, 2017, the Court granted the Parties'
23 stipulation, and stayed the Litigation for thirty (30) days. (ECF No. 87.)

24 The Parties continued thereafter to engage in settlement discussions. On or
25 around July 18, 2017, the Parties agreed upon a settlement in principle. Thereafter,
26 they promptly notified the Court of their tentative agreement and requested the
27 Court to stay all pending deadlines to allow them time to negotiate and submit a

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1 written settlement agreement and motion for preliminary approval of a class action
2 settlement. On July 25, 2017, the Court granted the request and stayed all deadlines
3 for a period of sixty (60) days. (ECF No. 89.)

4 **II. CLAIMS OF PLAINTIFFS AND BENEFITS OF SETTLEMENT**

5 Plaintiffs believe that the claims asserted in the Litigation have merit and that
6 the evidence developed to date supports the claims. However, Plaintiffs and their
7 counsel recognize and acknowledge the expense and length of continued
8 proceedings necessary to prosecute the Litigation against Defendants through trial
9 and through appeals. Plaintiffs and their counsel also have taken into account the
10 uncertain outcome and the risk of any litigation, especially in complex actions such
11 as this Action, as well as the difficulties and delays inherent in such litigation.
12 Plaintiffs and their counsel also are mindful of the inherent problems of proof, and
13 possible defenses to the securities law violations asserted in the Litigation.
14 Plaintiffs and their counsel believe that the Settlement set forth in this Stipulation
15 confers substantial benefits upon the Settlement Class. Based on their evaluation,
16 Plaintiffs and Co-Lead Counsel have determined that the Settlement set forth in the
17 Stipulation is in the best interests of Plaintiffs and the Settlement Class.

18 **III. DEFENDANTS' DENIALS OF WRONGDOING AND LIABILITY**

19 Defendants believe that the claims asserted in the Litigation are completely
20 without merit. Defendants have denied and continue to deny any and all
21 wrongdoing whatsoever and maintain that their conduct was at all times proper and
22 in compliance with applicable provisions of law. Defendants have denied, and
23 continue to deny each and all of the claims alleged by Plaintiffs in the Litigation
24 and deny that they have committed any of the wrongful acts or violations of law
25 alleged in the Consolidated Complaint, including that they made any material
26 misrepresentations or omissions. Defendants deny all charges of wrongdoing or
27 liability against them arising out of any of the conduct, statements, acts, or

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1 omissions alleged, or that could have been alleged, in the Litigation. Defendants
2 also deny, among other things, the allegations that the Plaintiffs or the Settlement
3 Class have suffered damages or were harmed in any way by the conduct alleged in
4 the Consolidated Complaint or its predecessor complaints. In addition, Defendants
5 believe that they have meritorious defenses to all claims alleged in the Litigation.
6 Nonetheless, Defendants have agreed to enter into the Settlement to avoid the
7 expense, distraction, and time associated with continuing the Litigation.
8 Defendants have concluded that further conduct of the Litigation would be
9 protracted and expensive and that it is desirable that the Litigation be fully and
10 finally settled in the manner and upon the terms and conditions set forth in this
11 Stipulation. Nothing in this Stipulation shall be construed or deemed to be an
12 admission or concession on the part of any Defendant with respect to any claim,
13 fault, liability, wrongdoing, or damage whatsoever, or with respect to the validity of
14 the defenses that Defendants have asserted or may assert.

15 **IV. TERMS OF STIPULATION AND AGREEMENT OF SETTLEMENT**

16 NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by
17 and among Plaintiffs, on behalf of themselves and all Settlement Class Members,
18 and Defendants, by and through their respective counsel of record, that, subject to
19 the approval of the Court pursuant to Federal Rule of Civil Procedure 23(e), the
20 Litigation, the Released Claims, and all matters encompassed within the scope of
21 the releases set forth herein shall be finally, fully, and forever compromised, settled,
22 and released, and the Litigation shall be dismissed with prejudice, upon and subject
23 to the terms and conditions of the Stipulation, as follows:

24 **DEFINITIONS**

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

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1 1.1 “Authorized Claimant” means any Settlement Class Member whose
2 claim for recovery has been allowed pursuant to the terms of the Stipulation.

3 1.2 “Claimant” means any Settlement Class Member who files a Proof of
4 Claim and Release in such form and manner, and within such time, as the Court
5 shall prescribe.

6 1.3 “Claims Administrator” means Strategic Claims Services.

7 1.4 “Co-Lead Counsel” means Levi & Korsinsky, LLP and The Rosen
8 Law Firm, P.A.

9 1.5 “Consolidated Complaint” means the Consolidated Class Action
10 Complaint filed in the Litigation on April 29, 2016, ECF No. 32.

11 1.6 “Court” means the United States District Court for the Central District
12 of California.

13 1.7 “Defendants” means Natural Health Trends Corp., Chris T. Sharng,
14 Timothy S. Davidson, and George K. Broady.

15 1.8 “Effective Date” means the first date by which all of the events and
16 conditions specified in ¶ 9.1 of the Stipulation have been met and have occurred.

17 1.9 “Escrow Account” means the interest-bearing account controlled by
18 the Escrow Agent.

19 1.10 “Escrow Agent” means The Rosen Law Firm, P.A.

20 1.11 “Fee and Expense Application” means the application or applications
21 Co-Lead Counsel may submit for an award of attorneys’ fees not to exceed 25% of
22 the Settlement Amount, plus expenses incurred in connection with prosecuting the
23 Litigation, plus any interest on such attorneys’ fees and expenses at the same rate
24 and for the same time periods as earned by the Settlement Fund (until paid), as may
25 be awarded by the Court.

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1 1.12 “Fee and Expense Award” means the order of the Court authorizing
2 the payment from the Settlement Fund of Co-Lead Counsel’s attorneys’ fees and
3 expenses if and to the extent allowed by the Court.

4 1.13 “Final” means the time when any judgment or order, including the
5 Judgment, has not been reversed, vacated, or modified in any way and is no longer
6 subject to appellate review, either because: (i) no appeal has been filed and the time
7 has passed for any notice of appeal to be timely filed in the Action; or (ii) an appeal
8 has been filed and the court of appeals has either affirmed the underlying order or
9 judgment in its entirety or dismissed that appeal, and the time for any
10 reconsideration or further appellate review has passed; or (iii) the Supreme Court
11 has either denied review or granted review and either affirmed the underlying order
12 or judgment in its entirety, or affirmed the court of appeals’ decision affirming the
13 order or judgment in its entirety or dismissing the appeal. For purposes of this
14 paragraph, an “appeal” shall include any petition for a writ of certiorari or other writ
15 that may be filed in connection with approval or disapproval of this Settlement, but
16 shall not include any appeal that concerns only the issue of attorneys’ fees and/or
17 expenses, the Plan of Allocation of the Settlement Fund, the procedures for
18 determining Authorized Claimants’ recognized claims, or distribution of the Net
19 Settlement Fund to Authorized Claimants. Any appeal or proceeding relating solely
20 to one or more of these excluded issues shall not in any way delay or affect the time
21 set forth above for the Judgment to become Final, or otherwise preclude the
22 Judgment from becoming Final.

23 1.14 “Final Approval Hearing” means the hearing to determine whether the
24 proposed Settlement embodied by this Stipulation is fair, reasonable, and adequate
25 to the Settlement Class, whether the Settlement Class should be certified for
26 purposes of effectuating the Settlement, and whether the Court should enter a
27 Judgment approving the proposed Settlement.

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1 1.15 “Individual Defendants” means Chris T. Sharn, Timothy S. Davidson,
2 and George K. Broady.

3 1.16 “Judgment” means the Final Judgment and Order of Dismissal with
4 Prejudice to be rendered by the Court, in the form attached hereto as Exhibit B, or
5 such other substantially similar form agreed to by the Parties and approved by the
6 Court.

7 1.17 “Litigation” and “Action” both mean and refer to this proceeding,
8 *Ford v. Natural Health Trends Corp. et al.*, Case No. 2:16-cv-00255-TJH-AFM,
9 pending in this Court, including, without limitation, all cases consolidated under
10 that caption.

11 1.18 “Net Settlement Fund” means the Settlement Fund less (i) any Fee and
12 Expense Award; (ii) Notice and Administration Costs; (iii) Taxes and Tax
13 Expenses; and (iv) other Court-approved deductions.

14 1.19 “NHTC” means Defendant Natural Health Trends Corp.

15 1.20 “Notice” means the Notice of Proposed Class Action Settlement, in the
16 form annexed hereto as Exhibit A-1 to the Preliminary Approval Order, or such
17 other substantially similar form agreed to by the Settling Parties and approved by
18 the Court.

19 1.21 “Notice and Administration Costs” means the reasonable costs and
20 expenses that are actually incurred in connection with (i) providing notice of the
21 Settlement to the Settlement Class; (ii) locating Settlement Class Members;
22 (iii) assisting with the filing of claims; (iv) processing Proof of Claim and Release
23 forms; (v) administering and distributing the Net Settlement Fund to Authorized
24 Claimants; and (vi) paying escrow fees and costs, if any.

25 1.22 “Party” or “Parties” means individually or collectively, as the context
26 requires, Plaintiffs and the Defendants.

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1 1.23 “Person” means a natural person, individual, corporation, partnership,
2 limited partnership, association, joint stock company, joint venture, limited liability
3 company, professional corporation, estate, legal representative, trust or trustee,
4 unincorporated association, government or any political subdivision or agency
5 thereof, and any other type of legal, business or political entity.

6 1.24 “Plaintiffs” means and includes Wang Juan and Manh Dao, appointed
7 as Co-Lead Plaintiffs by Order of the Court dated March 29, 2016 (ECF No. 27),
8 and Plaintiffs Aboghassem Tehrani and Tony A Tran.

9 1.25 “Plan of Allocation” means a plan or formula for allocation of the Net
10 Settlement Fund to be approved by the Court, which plan or formula will govern the
11 distribution of the Net Settlement Fund to Authorized Claimants. Any Plan of
12 Allocation is not part of the Stipulation, and Released Persons shall have no
13 responsibility for the Plan of Allocation or its implementation and no liability with
14 respect thereto. Any order or proceedings relating to the Plan of Allocation shall
15 not operate to terminate or cancel this Stipulation or affect the finality of the
16 Judgment or any other orders entered by the Court pursuant to this Stipulation.

17 1.26 “Preliminary Approval Order” means the [Proposed] Order Granting
18 Preliminary Approval of Settlement and Directing Dissemination of Notice to
19 Settlement Class, in the form annexed hereto as Exhibit A, or such other
20 substantially similar form agreed to by the Settling Parties, as entered by the Court.

21 1.27 “Proof of Claim and Release” means a completed Proof of Claim and
22 Release, substantially in the form of Exhibit A-2 attached hereto, signed under
23 penalty of perjury and supported by such documents as are specified in the Proof of
24 Claim and Release, submitted as required under ¶ 7.3 herein.

25 1.28 “Related Persons” means any of a Person’s affiliates, parents,
26 subsidiaries and divisions, and each of their or the Person’s past, present or future
27 directors, officers, employees, partners, members, principals, agents, owners,

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1 fiduciaries, shareholders, accountants, auditors, attorneys, associates, consultants,
2 advisors, insurers, co-insurers, reinsurers, trustees, estates, beneficiaries,
3 administrators, foundations, underwriters, banks or bankers, personal or legal
4 representatives, predecessors, successors, assigns, joint ventures, spouses,
5 immediate family members, heirs, executors, and any trust of which a Person is the
6 trustee or settlor or which is for the benefit of the Person or his or her family.

7 1.29 “Released Claims” means any and all claims (including Unknown
8 Claims as defined in ¶ 1.42 hereof), duties, debts, demands, rights, disputes, suits,
9 matters, damages, losses, obligations, proceedings, issues, judgments, liabilities,
10 and causes of action of every nature and description whatsoever (including, but not
11 limited to, any claims for damages, whether compensatory, consequential, special,
12 punitive, exemplary or otherwise; restitution; rescission; interest; attorneys’ fees;
13 expert or consulting fees; and any other costs, expenses, charges, or liability
14 whatsoever), whether based on federal, state, local, statutory, common,
15 administrative, or foreign law or any other law, rule or regulation, or at equity,
16 whether known or unknown, discoverable or undiscoverable, concealed or hidden,
17 suspected or unsuspected, liquidated or unliquidated, fixed or contingent, choate or
18 inchoate, accrued or unaccrued, matured or unmatured, at law or in equity, whether
19 class, derivative, or individual in nature, which now exist or heretofore have existed
20 or have been or could have been asserted in any forum, whether foreign or
21 domestic, by Plaintiffs or any Settlement Class Member, or any Person claiming
22 through or on behalf of any of them, against any of the Released Persons based
23 upon, arising out of, or relating in any way to the claims, allegations, acts, events,
24 facts, matters, transactions, occurrences, statements, representations,
25 misrepresentations or omissions that are, were, or could have been alleged in the
26 Litigation. Expressly excluded from Released Claims are: (i) the matters set forth
27 in ¶ 6.5 of this Stipulation; and (ii) the shareholder derivative claims asserted in

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Stipulation of Settlement

Case No. 2:16-cv-00255-TJH-AFM

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1 *Zhou v. Sharnng et al.* and *Kleinfeldt v. Sharnng et al.*, pending in the Superior Court
2 of the State of California, County of Los Angeles, and the United States District
3 Court for the Central District of California, respectively.

4 1.30 “Released Persons” means each and all of the Defendants and their
5 respective Related Persons.

6 1.31 “Settlement” means the settlement between Plaintiffs, on behalf of
7 themselves and all Settlement Class Members, and Defendants on the terms set
8 forth in this Stipulation.

9 1.32 “Settlement Amount” means One Million Seven Hundred Fifty
10 Thousand Dollars (\$1,750,000).

11 1.33 “Settlement Class” and “Settlement Class Members” mean and
12 include, for purposes of this Settlement, and to be certified pursuant to Fed. R. Civ.
13 P. 23 for purposes of effectuating this Settlement only: all Persons who purchased
14 NHTC securities between March 6, 2015 and March 15, 2016, inclusive, and who
15 were damaged thereby, including Plaintiffs. Excluded from the Settlement Class
16 are Defendants; members of the Defendants’ immediate families; officers, directors,
17 and subsidiaries of NHTC; any firm, entity, or corporation wholly owned by any
18 Defendant and/or any member(s) of a Defendant’s immediate family; any trust of
19 which a Defendant is the settlor or which is for his benefit and/or that of any
20 member of his immediate family; and the legal representatives, heirs, or successors-
21 in-interest of NHTC and the Individual Defendants. Also excluded from the
22 Settlement Class are those Persons who timely and validly request exclusion from
23 the Settlement Class in accordance with the instructions provided in the Notice.

24 1.34 “Settlement Class Period” means the period between March 6, 2015
25 and March 15, 2016, inclusive.

26 1.35 “Settlement Fund” means the Settlement Amount, plus any accrued
27 interest earned thereon.

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1 1.36 “Settling Parties” means, collectively, Defendants and Plaintiffs on
2 behalf of themselves and all Settlement Class Members.

3 1.37 “Stipulation” means this Stipulation of Settlement, including the
4 recitals and Exhibits hereto, each of which is incorporated by reference as though
5 set forth in the Stipulation itself.

6 1.38 “Summary Notice” means the summary notice describing the
7 Settlement of the Litigation and the Final Approval Hearing, in the form annexed
8 hereto as Exhibit A-3 to the Preliminary Approval Order, or such other substantially
9 similar form agreed to by the Settling Parties and approved by the Court.

10 1.39 “Supplemental Agreement” means the confidential agreement
11 described in ¶ 9.5 of this Stipulation.

12 1.40 “Taxes” means all federal, state and local taxes of any kind (including
13 any estimated taxes, interest or penalties) arising with respect to the income earned
14 by the Settlement Fund, including any taxes or tax detriments that may be imposed
15 upon Defendants or their counsel with respect to any income earned on the
16 Settlement Fund for any period during which the Settlement Fund does not qualify
17 as a “Qualified Settlement Fund” for federal or state income tax purposes.

18 1.41 “Tax Expenses” means any expenses and costs incurred in connection
19 with the calculation and payment of Taxes or the preparation of tax returns and
20 related documents including, without limitation, expenses of tax attorneys and/or
21 accountants and mailing and distribution costs and expenses relating to filing (or
22 failing to file) the returns described in ¶ 2.9.

23 1.42 “Unknown Claims” means any and all claims, debts, demands,
24 obligations, disputes, rights, issues, controversies, causes of action, suits, matters,
25 damages, or liabilities of every kind, nature, description and character whatsoever
26 that Plaintiffs and/or any Settlement Class Member does not know or suspect to
27 exist in his, her, or its favor at the time this Stipulation or the Judgment is entered

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1 which, if known by him, her, or it, would or might have affected his, her, or its
2 settlement with and release of the Released Persons, or would or might have
3 affected his, her, or its decision: (i) not to object to this Settlement; (ii) not to
4 exclude himself, herself, or itself from the Settlement Class; or (iii) to release the
5 Released Claims. Plaintiffs and Settlement Class Members may hereafter discover
6 facts in addition to or different from those which they now know or believe to be
7 true with respect to the subject matter of the Released Claims. Nevertheless, upon
8 the Effective Date, Plaintiffs shall expressly, fully, finally, and forever settle and
9 release, and each Settlement Class Member shall be deemed to have, and by
10 operation of the Judgment shall have, fully, finally, and forever settled and released,
11 any and all Released Claims, whether known or unknown, discoverable or
12 undiscoverable, concealed or hidden, suspected or unsuspected, liquidated or
13 unliquidated, fixed or contingent, choate or inchoate, accrued or unaccrued,
14 matured or unmatured, which now exist, or heretofore have existed, upon any
15 theory of law or equity now existing or coming into existence in the future,
16 including, but not limited to, conduct that is negligent, intentional, with or without
17 malice, or a breach of any duty, law or rule, without regard to the subsequent
18 discovery or existence of such different or additional facts. With respect to any and
19 all Released Claims, the Settling Parties stipulate and agree that, upon the Effective
20 Date, Plaintiffs shall expressly waive and relinquish, and each of the Settlement
21 Class Members shall be deemed to have waived and relinquished, and by operation
22 of the Judgment shall have waived and relinquished, any and all provisions, rights,
23 and benefits conferred by any law of any state or territory of the United States, or
24 principle of common law, which is similar, comparable or equivalent to California
25 Civil Code Section 1542, which provides:

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1 **A GENERAL RELEASE DOES NOT EXTEND TO**
2 **CLAIMS WHICH THE CREDITOR DOES NOT**
3 **KNOW OR SUSPECT TO EXIST IN HIS OR HER**
4 **FAVOR AT THE TIME OF EXECUTING THE**
5 **RELEASE, WHICH IF KNOWN BY HIM OR HER**
6 **MUST HAVE MATERIALLY AFFECTED HIS OR**
7 **HER SETTLEMENT WITH THE DEBTOR.**

8 Plaintiffs acknowledge, and the Settlement Class Members shall be deemed
9 by operation of the Judgment to have acknowledged, that the inclusion of Unknown
10 Claims in the definition of Released Claims and the foregoing waiver were
11 separately bargained for and a key element of the Settlement of which this release is
12 a material and essential part.

13 **THE SETTLEMENT**

14 ***The Settlement Fund***

15 2.1 In consideration of the terms of this Stipulation, and in full settlement
16 of all Released Claims against all Released Persons, NHTC shall pay or cause to be
17 paid the Settlement Amount to a separate, interest-bearing escrow account
18 designated and controlled by the Claims Administrator on behalf of Plaintiffs and
19 the Settlement Class no later than twenty-one (21) days after both of the following
20 have taken place: (a) the Court has entered the Preliminary Approval Order granting
21 preliminary approval of the Settlement; and (b) NHTC's counsel have received
22 from Co-Lead Counsel a Form W-9 providing the tax identification number for the
23 escrow account. No other Defendant or Released Person shall be responsible for
24 any payments of any kind under this Stipulation.

25 2.2 The payments described in ¶ 2.1 are the only payments to be made by
26 or on behalf of Defendants in connection with this Settlement. All fees, costs, and
27 expenses incurred by or on behalf of Plaintiffs and Settlement Class Members
28 associated with this Settlement, including, but not limited to, Taxes, Tax Expenses,
29 Notice and Administration Costs, and any Fee and Expense Award shall be paid

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1 from the Settlement Fund, and in no event shall Released Persons bear any
2 responsibility or liability for any such fees, costs, or expenses.

3 2.3 This is not a claims-made settlement. Upon the occurrence of the
4 Effective Date, neither NHTC nor any other Person that paid any portion of the
5 Settlement Fund on Defendants' behalf shall have any right to the return of the
6 Settlement Fund or any portion thereof irrespective of the collective amount of
7 losses of Authorized Claimants, the percentage of recovery of losses, or the
8 amounts to be paid to Authorized Claimants from the Net Settlement Fund. In no
9 instance shall NHTC (or any other Defendant or Released Person) be required to
10 pay any amount in excess of the Settlement Amount.

11 ***The Escrow Agent***

12 2.4 The Escrow Agent shall invest the Settlement Amount(s) deposited
13 pursuant to ¶ 2.1 hereof in short-term United States agency or other Treasury
14 securities or other instruments backed by the full faith and credit of the United
15 States Government or fully insured by the United States Government or an agency
16 thereof, and shall reinvest the proceeds of these instruments as they mature in
17 similar instruments at their then-current market rates. All risks related to the
18 investment of the Settlement Fund shall be borne by the Escrow Agent, and the
19 Released Persons shall have no responsibility for, interest in, or liability whatsoever
20 with respect to any investment decisions or actions taken, or any transactions
21 executed, by the Escrow Agent.

22 2.5 The Escrow Agent shall not disburse the Settlement Fund except as
23 provided in the Stipulation or by an order of the Court.

24 2.6 Subject to further order and/or directions as may be made by the Court,
25 or as provided in the Stipulation, the Escrow Agent is authorized to execute such
26 transactions as are consistent with the terms of the Stipulation.

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1 2.7 All funds held by the Escrow Agent shall be deemed and considered to
2 be in *custodia legis* of the Court, and shall remain subject to the jurisdiction of the
3 Court, until such time as such funds shall be distributed or returned pursuant to this
4 Stipulation and/or further order(s) of the Court.

5 2.8 Without further order of the Court, the Settlement Fund may be used
6 by Co-Lead Counsel to pay Notice and Administration Costs actually incurred
7 consistent with this Stipulation and ¶ 18 of the Preliminary Approval Order in a
8 cumulative amount not to exceed \$150,000.

9 ***Taxes***

10 2.9 (a) The Settling Parties and the Escrow Agent agree to treat the
11 Settlement Fund as being at all times a “Qualified Settlement Fund” within the
12 meaning of Treas. Reg. § 1.468B-1. In addition, the Escrow Agent shall timely
13 make such elections as necessary or advisable to carry out the provisions of this
14 ¶ 2.9, including the “relation-back election” (as defined in Treas. Reg. § 1.468B-1)
15 back to the earliest permitted date. Such elections shall be made in compliance with
16 the procedures and requirements contained in such regulations. It shall be the
17 responsibility of the Escrow Agent to timely and properly prepare and deliver the
18 necessary documentation for signature by all necessary parties, and thereafter to
19 cause the appropriate filing to timely occur.

20 (b) For the purpose of § 1.468B of the Internal Revenue Code of
21 1986, as amended, and the regulations promulgated thereunder, the “administrator”
22 shall be the Escrow Agent. The Escrow Agent shall timely and properly file all
23 informational and other tax returns necessary or advisable with respect to the
24 Settlement Fund (including, without limitation, the returns described in Treas. Reg.
25 § 1.468B-2(k)). Such returns (as well as the election described in ¶ 2.9(a) hereof)
26 shall be consistent with this ¶ 2.9 and in all events shall reflect that all Taxes
27 (including any estimated Taxes, interest or penalties) on the income earned by the
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1 Settlement Fund shall be paid out of the Settlement Fund as provided in ¶ 2.9(c)
2 hereof.

3 (c) All Taxes and Tax Expenses shall be paid out of the Settlement
4 Fund; in no event shall any Released Person, their counsel, or their insurers have
5 any responsibility for, or liability whatsoever with respect to, the Taxes or the Tax
6 Expenses. The Escrow Agent, through the Settlement Fund, shall indemnify and
7 hold each of the Released Persons harmless for any Taxes and Tax Expenses
8 (including, without limitation, Taxes payable by reason of any such
9 indemnification). Further, Taxes and Tax Expenses shall be treated as, and
10 considered to be, a cost of administration of the Settlement Fund and shall be timely
11 paid by the Escrow Agent out of the Settlement Fund without prior order from the
12 Court, and the Escrow Agent shall be authorized (notwithstanding anything herein
13 to the contrary) to withhold from distribution to Authorized Claimants any funds
14 necessary to pay such amounts, including the establishment of adequate reserves for
15 any Taxes and Tax Expenses (as well as any amounts that may be required to be
16 withheld under Treas. Reg. § 1.468B-2(1)(2)). In all events neither Defendants nor
17 their counsel and insurers, nor any other Released Person, shall have any
18 responsibility for or liability whatsoever with respect to any Taxes or Tax Expenses
19 or the filing of any tax returns or other documents with the Internal Revenue
20 Service or any state or local taxing authority in connection with the Settlement
21 Fund. The Settling Parties agree to cooperate with the Escrow Agent, each other,
22 and their tax attorneys and accountants to the extent reasonably necessary to carry
23 out the provisions of this paragraph.

24 ***Termination of the Settlement***

25 2.10 In the event that the Stipulation is not approved, or is terminated,
26 canceled, or fails to become effective or Final for any reason, the Settlement
27 Amount, including accrued interest, less any Notice and Administration Costs,
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1 Taxes, and Tax Expenses paid, incurred or due and owing shall be refunded to such
2 Persons that paid the Settlement Amount(s) in accordance with ¶¶ 8.3 and 9.6
3 herein.

4 **PRELIMINARY APPROVAL ORDER AND FINAL APPROVAL**
5 **HEARING**

6 3.1 Promptly after execution of the Stipulation, Co-Lead Counsel shall
7 submit the Stipulation together with its Exhibits to the Court, and Co-Lead Counsel
8 shall apply for entry of the Preliminary Approval Order, substantially in the form of
9 Exhibit A attached hereto, requesting, among other things, the preliminary approval
10 of the Settlement set forth in the Stipulation; approval for mailing the Notice, in the
11 form of Exhibit A-1 attached hereto, or such other substantially similar form agreed
12 to by the Parties and approved by the Court; and publication of the Summary
13 Notice, in the form of Exhibit A-3 attached hereto, or such other substantially
14 similar form agreed to by the Settling Parties and approved by the Court.

15 3.2 Lead Counsel shall request that, after notice is given, the Court hold a
16 Final Approval Hearing to consider and determine, among other things, whether to
17 approve the Settlement pursuant to the terms of this Stipulation as fair, reasonable,
18 and adequate, and whether the Judgment, substantially in the form of Exhibit B
19 attached hereto, should be entered approving the Settlement and dismissing the
20 Litigation with prejudice. At or after the Final Approval Hearing, Co-Lead Counsel
21 also will request that the Court approve the proposed Plan of Allocation and the Fee
22 and Expense Application.

23 **CERTIFICATION OF THE SETTLEMENT CLASS**

24 4.1 For purposes of this Settlement only, and subject to approval by the
25 Court, the Settling Parties stipulate to: (i) certification of the Settlement Class
26 pursuant to Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure;
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1 (ii) appointment of Plaintiffs as the class representatives for the Settlement Class;
2 and (iii) appointment of Co-Lead Counsel as counsel to the Settlement Class.

3 4.2 Nothing in this Stipulation shall serve in any fashion, either directly or
4 indirectly, as evidence of or support for certification of a class other than for
5 purposes of the Settlement. If this Stipulation is terminated, the Settlement is not
6 approved by the Court, or the Effective Date does not occur for any reason, any
7 certification of the Settlement Class will be null and void and the Litigation shall
8 proceed as if the Settlement Class had never been certified. Defendants expressly
9 reserve all rights and grounds to oppose class certification in the event the
10 Settlement is terminated or the Effective Date does not occur for any reason.

11 **REQUESTS FOR EXCLUSION**

12 5.1 Settlement Class Members requesting exclusion from the Settlement
13 Class shall be requested to provide certain information in the manner described in
14 the Settlement Notice. Any request for exclusion must also be signed by the Person
15 requesting exclusion.

16 5.2 All Persons who submit valid and timely requests for exclusion in the
17 manner set forth in the Notice shall have no rights under the Stipulation, shall not
18 share in the distribution of the Net Settlement Fund, and shall not be bound by the
19 Stipulation or the Judgment. The deadline for submitting requests for exclusion
20 shall be set by the Court, but shall be no later than twenty-one (21) calendar days
21 before the Final Approval Hearing. Exclusion requests may not be submitted by e-
22 mail, unless otherwise ordered by the Court.

23 5.3 Copies of all requests for exclusion received by the Claims
24 Administrator, Co-Lead Counsel and counsel for Defendants, together with copies
25 of all written revocations of requests for exclusion, shall be delivered to counsel for
26 all Parties within five (5) calendar days of receipt and in no event later than fourteen
27 (14) calendar days before the Final Approval Hearing.

1 **RELEASES**

2 6.1 The satisfaction of the obligations incurred pursuant to this Stipulation
3 shall be in full and final disposition of the Litigation and any and all Released
4 Claims.

5 6.2 Upon the Effective Date, Plaintiffs and all other Settlement Class
6 Members, each of their respective Related Persons, and all other Persons who have
7 or claim the right, ability, standing, or capacity to assert, prosecute, or maintain on
8 behalf of any Settlement Class Member any of the Released Claims (or to obtain the
9 proceeds of any recovery therefrom) shall be deemed to have, and by operation of
10 the Judgment shall have, fully, finally, and forever released, relinquished,
11 discharged, and dismissed all Released Claims (including Unknown Claims) against
12 the Released Persons, whether or not such Settlement Class Member executes and
13 delivers a Proof of Claim and Release form, seeks or obtains a distribution from the
14 Net Settlement Fund, is entitled to receive a distribution under the Plan of
15 Allocation approved by the Court, or has objected to any aspect of the Stipulation or
16 the Settlement, the Plan of Allocation, or Co-Lead Counsel's Fee and Expense
17 Application.

18 6.3 Upon the Effective Date, Plaintiffs, all Settlement Class Members and
19 anyone claiming through or on behalf of any of them, shall be forever barred and
20 enjoined from commencing, instituting, maintaining or continuing to prosecute any
21 action or proceeding in any court of law or equity, arbitration tribunal,
22 administrative forum, or other forum of any kind, asserting any of the Released
23 Claims (including Unknown Claims) against any of the Released Persons; provided,
24 however, that nothing herein shall in any way restrict or impair the rights of any
25 Settling Party to enforce the terms of the Stipulation and Settlement.

26 6.4 Upon the Effective Date, Defendants shall be deemed to have, and by
27 operation of the Judgment shall have, fully, finally, and forever released,

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1 relinquished, and discharged Plaintiffs, Settlement Class Members, Co-Lead
2 Counsel and their respective Related Persons from all claims (including Unknown
3 Claims) arising out of, relating to, or in connection with the institution, prosecution,
4 assertion, settlement, or resolution of the Litigation or the Released Claims;
5 provided, however, that nothing herein shall in any way restrict or impair the rights
6 of any Defendant or other Released Person to enforce the terms of the Stipulation
7 and Settlement.

8 6.5 Nothing in this Stipulation constitutes or reflects a waiver or release of
9 any rights or claims of Defendants with respect to their insurers and/or the insurers'
10 Related Persons, including, but not limited to, any rights or claims under any
11 directors' and officers' liability insurance or other applicable insurance coverage
12 maintained by NHTC.

13 **ADMINISTRATION AND CALCULATION OF CLAIMS AND**
14 **SUPERVISION AND DISTRIBUTION OF SETTLEMENT FUND**

15 7.1 The Claims Administrator, subject to such supervision and direction of
16 Co-Lead Counsel and the Court as may be necessary under the circumstances, shall
17 administer and calculate the claims submitted by Settlement Class Members and
18 shall oversee distribution of the Net Settlement Fund to Authorized Claimants.

19 7.2 The Settlement Fund shall be applied as follows:

- 20 (a) To pay the Notice and Administrative Costs, including:
- 21 i. Printing and mailing of the Notice and Proof of Claim and
22 Release to the Settlement Class;
- 23 ii. Publication of the Summary Notice;
- 24 iii. The Claims Administrator's costs and fees for services
25 performed in connection with the administration of the Settlement contemplated by
26 this Stipulation;
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1 iv. Costs to reimburse brokers or nominees in connection
2 with dissemination of the Notice to the Class;

3 v. Fees and expenses reasonably and actually incurred in
4 locating members of the Settlement Class;

5 (b) To pay the fees and expenses reasonably and actually incurred in
6 connection with assisting with the filing of claims and processing of Proofs of
7 Claim and Releases;

8 (c) To pay escrow fees and costs, if any;

9 (d) To pay Taxes and Tax Expenses;

10 (e) After the Judgment is Final, to pay the Fee and Expense Award;

11 and

12 (f) After the Effective Date, to distribute the balance of the Net
13 Settlement Fund to Authorized Claimants as allowed by the Stipulation and Plan of
14 Allocation, as approved by the Court.

15 7.3 After the Effective Date, and in accordance with the terms of the
16 Stipulation, the Plan of Allocation, or such further orders of the Court as
17 circumstances may warrant or require, the Net Settlement Fund shall be distributed
18 to Authorized Claimants, subject to and in accordance with the following: Within
19 one hundred ten (110) days after the mailing of the Notice or such other time as
20 may be set by the Court, each Person claiming to be an Authorized Claimant shall
21 be required to submit to the Claims Administrator a completed Proof of Claim and
22 Release, substantially in the form of Exhibit A-2 attached hereto, signed under
23 penalty of perjury and supported by such documents as are specified in the Proof of
24 Claim and Release. All Proof of Claim and Release forms must be submitted by the
25 date specified in the Notice, unless such period is extended by the Court.

26 7.4 Except as otherwise ordered by the Court, all Settlement Class
27 Members who fail to timely submit a Proof of Claim and Release within such

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1 period described in ¶ 7.3 above, or such other period as may be ordered by the
2 Court, shall be forever barred from receiving any payments pursuant to the
3 Stipulation and the Settlement set forth herein, but will in all other respects be
4 subject to and bound by the provisions of the Stipulation, the releases contained
5 herein, and the Judgment. Notwithstanding the foregoing, Co-Lead Counsel shall
6 have the discretion to accept late-submitted claims so long as distribution of the Net
7 Settlement Fund is not materially delayed thereby.

8 7.5 The Claims Administrator shall calculate the Claims of Authorized
9 Claimants, determine the extent to which claims shall be allowed, and oversee
10 distribution of the Net Settlement Fund in accordance with the Plan of Allocation
11 set forth in the Notice and approved by the Court. If there is any balance remaining
12 in the Net Settlement Fund after six (6) months from the date of initial distribution
13 of the Net Settlement Fund (whether by reason of tax refunds, uncashed checks or
14 otherwise), Co-Lead Counsel shall, if feasible, reallocate such balance among
15 Authorized Claimants in an equitable and economic fashion. Thereafter, any
16 balance which still remains in the Net Settlement Fund shall be, subject to the
17 payment of any additional previously unreimbursed Notice and Administration
18 Costs, donated to an appropriate, non-profit 501(c)(3) charitable organization as
19 determined by Co-Lead Counsel.

20 7.6 Defendants, their counsel, and their insurers shall have no role in,
21 responsibility for, interest in, or liability with respect to any of the following:
22 (i) any act, omission, or determination of Co-Lead Counsel, the Escrow Agent, or
23 the Claims Administrator, or any of their respective designees or agents, in
24 connection with administering the Settlement; (ii) the management, investment, or
25 distribution of the Settlement Fund; (iii) the Plan of Allocation; (iv) the review,
26 determination, administration, calculation, or payment of any claims asserted
27 against the Settlement Fund; (v) any losses suffered by, or fluctuations in the value

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1 of, the Settlement Fund; or (vi) the payment or withholding of any Taxes, Tax
2 Expenses, and/or costs incurred in connection with the taxation of the Settlement
3 Fund or filing of any returns. No Person shall have any claim of any kind against
4 any Released Person with respect to the administration, investment, distribution,
5 and/or supervision of the Settlement Fund, and Lead Plaintiff, all Settlement Class
6 Members, and Co-Lead Counsel release all Released Persons from any and all
7 liability arising from or with respect to the administration, investment, distribution,
8 and/or supervision of the Settlement Fund.

9 7.7 It is understood and agreed by the Settling Parties that any proposed
10 Plan of Allocation of the Net Settlement Fund including, but not limited to, any
11 adjustments to an Authorized Claimant's claim set forth therein, is not a part of this
12 Stipulation and is to be considered by the Court separately from the Court's
13 consideration of the fairness, reasonableness, and adequacy of the Settlement set
14 forth in this Stipulation. It is further understood and agreed by the Settling Parties
15 that any order or proceeding relating to the Plan of Allocation shall not operate to
16 terminate or cancel this Stipulation or affect or delay the finality of the Court's
17 Judgment approving this Stipulation and the Settlement set forth herein (including
18 the releases contained herein), or any other orders entered pursuant to this
19 Stipulation.

20 **CO-LEAD COUNSEL'S ATTORNEYS' FEES AND EXPENSES**

21 8.1 Co-Lead Counsel may submit the Fee and Expense Application for an
22 award of attorneys' fees not to exceed 25% of the Settlement Amount, plus
23 expenses incurred in connection with prosecuting the Litigation, plus any interest
24 on such attorneys' fees and expenses at the same rate and for the same time periods
25 as earned by the Settlement Fund (until paid), as may be awarded by the Court.
26 Any Fee and Expense Award shall be payable solely from the Settlement Fund.
27 Aside from payment of the Settlement Amount, no Defendant or any other Released
28

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1 Person shall have any obligation to pay any portion of Co-Lead Counsel's
2 attorneys' fees or Litigation expenses or the Fee and Expense Award, and
3 Defendants take no position with respect to Co-Lead Counsel's Fee and Expense
4 Application.

5 8.2 The Fee and Expense Award, if and to the extent allowed by the Court,
6 shall be paid to Co-Lead Counsel from the Settlement Fund upon the Court's entry
7 of the Judgment, notwithstanding the existence of any timely filed objections
8 thereto, or any appeal or potential for appeal therefrom, or collateral attack on the
9 Settlement or any part thereof, subject to Co-Lead Counsel's obligation to make
10 appropriate refunds or repayments to the Settlement Fund as specified below in

11 ¶ 8.3. An award of attorneys' fees and/or expenses is not a necessary term of this
12 Stipulation and is not a condition of the Settlement embodied herein. Neither
13 Plaintiffs nor Co-Lead Counsel may cancel or terminate the Settlement based on
14 this Court's or any appellate court's ruling with respect to attorneys' fees and/or
15 Litigation expenses.

16 8.3 If the Effective Date does not occur, or the Judgment is reversed or
17 modified, or the Fee and Expense Award is reduced or reversed, or the Stipulation
18 is canceled or terminated for any other reason, and in the event that the Fee and
19 Expense Award has been paid to any extent, then Co-Lead Counsel shall within
20 seven (7) days after (a) receiving notice of termination of the Settlement from
21 Defendants' Counsel or (b) any order reversing or modifying the Judgment or
22 reducing or reversing the Fee and Expense Award has become Final, refund to the
23 Settlement Fund the fees and expenses previously paid to Co-Lead Counsel from
24 the Settlement Fund, plus interest thereon at the same rate as earned by the
25 Settlement Fund, in an amount consistent with such termination, reversal or
26 modification. Co-Lead Counsel receiving fees and expenses agree as a condition of
27 receiving such fees and expenses that they are subject to the jurisdiction of the

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1 Court for the purpose of enforcing this paragraph. Each Co-Lead Counsel agrees
2 that the Court may, upon application of Defendants and notice to Co-Lead Counsel,
3 summarily issue orders including, but not limited to, judgments and attachment
4 orders and may make appropriate findings of or sanctions for contempt, should such
5 law firm fail timely to repay fees and expenses pursuant to this ¶ 8.3.

6 8.4 The procedure for and the allowance or disallowance by the Court of
7 any Fee and Expense Application or Award to be paid out of the Settlement Fund,
8 are not part of the Settlement set forth in this Stipulation, and are to be considered
9 by the Court separately from the Court's consideration of the fairness,
10 reasonableness, and adequacy of the Settlement. Any order or proceeding relating
11 to the Fee and Expense Application, or any appeal from any order relating thereto
12 or reversal or modification thereof, shall not operate to terminate or cancel this
13 Stipulation, or affect or delay the finality of the Judgment approving the Stipulation
14 and the Settlement and releases set forth herein.

15 8.5 The Released Persons shall have no responsibility for, or liability with
16 respect to any Fee and Expense Application or the payment of any Fee and Expense
17 Award to Co-Lead Counsel out of the Settlement Fund. The Released Persons shall
18 have no responsibility for, or liability with respect to, the allocation of any Fee and
19 Expense Award among Co-Lead Counsel and/or any other Person who may assert
20 some claim thereto, and the Released Persons take no position with respect thereto.

21 **CONDITIONS OF SETTLEMENT, EFFECT OF DISAPPROVAL,**
22 **CANCELLATION OR TERMINATION**

23 9.1 The Effective Date of this Stipulation shall be the date when all of the
24 following shall have occurred and is conditioned on the occurrence of all of the
25 following events:

26 (a) Lead Counsel and Defendants' Counsel have executed this
27 Stipulation and the Supplemental Agreement;

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1 (b) The Court has entered the Preliminary Approval Order as
2 described in ¶ 3.1 hereof;

3 (c) NHTC has paid or caused to be paid into the Escrow Account
4 the Settlement Amount as set forth in ¶ 2.1;

5 (d) NHTC has not notified Co-Lead Counsel of its election to
6 terminate the Settlement pursuant to ¶ 9.5 hereof or, if such election has been made,
7 the resulting termination has been withdrawn pursuant to the terms of the
8 Supplemental Agreement;

9 (e) The Court has entered the Judgment, substantially in the form of
10 Exhibit B attached hereto, or such other substantially similar form agreed to by the
11 Settling Parties;

12 (f) No Settling Party has given notice of its election to terminate the
13 Settlement pursuant to ¶ 9.3, and the time for doing so has expired; and;

14 (g) The Judgment has become Final, as defined in ¶ 1.13 hereof.

15 9.2 Upon the occurrence of all of the events referenced in ¶ 9.1 hereof, any
16 and all remaining interest or right of Defendants in or to the Settlement Fund, if
17 any, shall be absolutely and forever extinguished. If all of the conditions specified
18 in ¶ 9.1 hereof are not met, then the Stipulation shall be canceled and terminated
19 subject to ¶ 9.7 hereof unless Co-Lead Counsel and counsel for Defendants
20 mutually agree in writing to otherwise proceed with the Stipulation.

21 9.3 Defendants and Plaintiffs shall each have the right to terminate the
22 Settlement and this Stipulation by providing written notice of their election to do so
23 (a “Termination Notice”) to all other Parties hereto within thirty (30) days of:
24 (a) the Court’s declining to enter the Preliminary Approval Order in any material
25 respect; (b) the Court’s refusal to approve this Stipulation or any material part of it;
26 (c) the Court’s declining to enter the Judgment in any material respect; or (d) the
27 date upon which the Judgment is modified or reversed in any material respect by

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1 the court of appeals or the Supreme Court. However, no order of the Court or
2 modification or reversal on appeal of any order of the Court concerning the Plan of
3 Allocation or the amount of any attorneys' fees, costs, expenses, and interest
4 awarded by the Court to Co-Lead Counsel shall constitute grounds for cancellation
5 or termination of the Stipulation.

6 9.4 If the Settlement Fund payable pursuant to paragraph 2.1 of this
7 Settlement Stipulation is not paid, then Plaintiffs, in their sole discretion, may
8 either: (i) terminate the Settlement by providing written notice to all Parties; or
9 (ii) enforce the terms of the Stipulation and seek a judgment effecting the terms of
10 the Settlement set forth herein. Failure of NHTC to cause the Settlement Fund to be
11 paid shall not serve as a basis for any Defendant to terminate the Settlement.

12 9.5 If, prior to the Final Approval Hearing, the aggregate number of shares
13 of NHTC Common Stock purchased by Persons who would otherwise be
14 Settlement Class Members, but who, in accordance with the provisions in the
15 Notice, timely and validly request exclusion from the Settlement Class, exceeds the
16 sum specified in a separate supplemental agreement between Plaintiffs and
17 Defendants (the "Supplemental Agreement"), NHTC shall have the option (which
18 option shall be exercised on behalf of all Defendants in its sole discretion) to
19 terminate this Stipulation and the Settlement in accordance with the procedures set
20 forth in the Supplemental Agreement, without providing any further reason for its
21 decision to exercise its option to terminate. For purposes of the Supplemental
22 Agreement, any request for exclusion that results in the exclusion of the Settlement
23 Class Member from the Settlement Class, by order of the Court or otherwise, shall
24 be treated as timely and valid. The Supplemental Agreement is confidential and
25 will not be filed with the Court unless requested by the Court or unless a dispute
26 among the Settling Parties concerning its interpretation or application arises and, in
27 that event, the Settling Parties shall request that the Supplemental Agreement be

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1 filed and maintained under seal. In the event of a termination of the Settlement
2 pursuant to the Supplemental Agreement, this Stipulation shall become null and
3 void and of no further force and effect.

4 9.6 Unless otherwise ordered by the Court, in the event the Stipulation is
5 terminated or canceled, or the Effective Date fails to occur for any reason, then
6 within seven (7) days after written notification of such event is sent by counsel for
7 Defendants or Co-Lead Counsel to the Escrow Agent, the Settlement Fund
8 (including accrued interest), less any Notice and Administration Costs reasonably
9 and actually incurred pursuant to ¶ 2.8 and Taxes and Tax Expenses that have been
10 paid pursuant to ¶ 2.9 hereof, shall be refunded to the entity or entities that provided
11 the funds, based on their *pro rata* contribution to the Settlement Fund, as indicated
12 in writing to Co-Lead Counsel and the Escrow Agent by Defendants' counsel. The
13 Escrow Agent or its designee shall apply for any tax refund owed on the Settlement
14 Fund and pay the proceeds, after deduction of any fees or expenses incurred in
15 connection with such application(s) for refund, in a similar *pro rata* manner,
16 pursuant to written instructions from Defendants' counsel.

17 9.7 In the event that the Stipulation is not approved by the Court or the
18 Settlement set forth in the Stipulation is terminated or fails to become effective for
19 any reason, the Settling Parties shall be deemed to have reverted to their respective
20 status and positions in the Litigation as of the date and time immediately prior to the
21 execution of this Stipulation. In such event, the terms and provisions of the
22 Stipulation, with the exception of ¶¶ 2.5, 2.7-2.10, 4.2, 8.3, 9.6-9.8, 10.2-10.4, 11.3,
23 and 11.13-11.14 hereof, shall have no further force and effect with respect to the
24 Settling Parties and shall not be used in this Litigation or in any other proceeding
25 for any purpose, and any judgment or order entered by the Court in accordance with
26 the terms of the Stipulation shall be treated as vacated, *nunc pro tunc*. No order of
27 the Court or modification or reversal on appeal of any order of the Court concerning
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1 the Plan of Allocation or the amount of any Fee and Expense Award shall constitute
2 grounds for cancellation or termination of the Stipulation.

3 9.8 Notwithstanding any provision herein to the contrary, if the Effective
4 Date does not occur, or if the Stipulation is terminated pursuant to its terms, neither
5 Plaintiffs nor Co-Lead Counsel shall have any obligation to repay any amounts
6 actually and properly disbursed pursuant to ¶¶ 2.8-2.9 hereof. In addition, any
7 Notice and Administrative Costs, Taxes and Tax Expenses already incurred and
8 properly chargeable pursuant to ¶¶ 2.8-2.9 hereof at the time of such termination or
9 cancellation, but which have not been paid, shall be paid by the Escrow Agent in
10 accordance with the terms of the Stipulation prior to the balance being refunded in
11 accordance with ¶¶ 2.10 and 9.6 hereof.

12 **NO ADMISSION OF WRONGDOING**

13 10.1 The Settling Parties intend this Settlement to be a final and complete
14 resolution of all disputes between them with respect to the Litigation. The
15 Settlement compromises claims that are contested and shall not be deemed an
16 admission by any Settling Party as to the merits of any claim or defense. The
17 Judgment will contain a finding that, during the course of the Litigation, the Parties
18 and their respective counsel at all times complied with the requirements of Federal
19 Rule of Civil Procedure 11. The Settling Parties agree that the terms of the
20 Settlement were negotiated in good faith and reflect a settlement that was reached
21 voluntarily after consultation with competent legal counsel.

22 10.2 Whether or not the Settlement is approved by the Court, and whether
23 or not the Settlement is consummated, the fact and terms of this Stipulation,
24 including its exhibits, all negotiations, discussions, drafts, and proceedings in
25 connection with this Settlement, and any act performed or document signed in
26 connection with the Settlement, shall not, in this or any other court, administrative
27 agency, arbitration forum, or other tribunal, constitute an admission of, or evidence

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1 of, or be deemed to create any inference of: (i) any acts of wrongdoing or lack
2 thereof; (ii) any fault, misstatement, omission or liability on the part of any of the
3 Defendants or the Released Persons to Plaintiffs, the Settlement Class, or anyone
4 else; (iii) any deficiency of any claim or defense that has been or could have been
5 asserted in the Litigation; or (iv) any damages, or lack of damages, suffered by
6 Plaintiffs, the Settlement Class, or anyone else.

7 10.3 The Stipulation and the Settlement contained herein, and any act
8 performed or document executed pursuant to or in furtherance of the Stipulation or
9 the Settlement: (i) is not nor may be deemed to be or used as an admission of, or
10 evidence of, the validity of any Released Claim, or of any wrongdoing or liability of
11 Defendants; and (ii) is not nor may be deemed to be or used as an admission of, or
12 evidence of, any fault or omission of any Defendant in any civil, criminal or
13 administrative proceeding in any court, administrative agency or other tribunal.

14 10.4 The Stipulation and the Settlement contained herein, and any act
15 performed or document executed pursuant to or in furtherance of the Stipulation or
16 the Settlement: (i) shall not be construed against any Released Parties, Plaintiffs, or
17 any other Settlement Class Member as an admission, concession, or presumption
18 that the consideration to be given hereunder represents the amount that could or
19 would have been recovered after trial; and (ii) shall not be construed as or admitted
20 in evidence as an admission, concession, or presumption against Plaintiffs or any
21 other member of the Settlement Class that any of their claims are without merit or
22 that damages recoverable under the Consolidated Complaint would not have
23 exceeded the Settlement Amount.

24 **MISCELLANEOUS PROVISIONS**

25 11.1 The Settling Parties: (i) acknowledge that it is their intent to
26 consummate this Settlement; (ii) agree to cooperate to the extent reasonably
27 necessary to effectuate and implement all terms and conditions of the Stipulation;

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1 and (iii) agree to exercise their reasonable best efforts to accomplish the foregoing
2 terms and conditions of the Stipulation.

3 11.2 Pending final determination of whether the Stipulation should be
4 approved, Co-Lead Counsel, Plaintiffs, and all Settlement Class Members are
5 barred and enjoined from commencing, maintaining or prosecuting any action
6 asserting any Released Claims against any Released Persons in any forum.

7 11.3 All agreements made and orders entered during the course of the
8 Litigation relating to the confidentiality of information shall survive this
9 Stipulation.

10 11.4 All of the Exhibits to the Stipulation are material and integral parts
11 hereof and are fully incorporated herein by this reference.

12 11.5 This Stipulation shall not be construed more strictly against one
13 Settling Party than another merely by virtue of the fact that it, or any part of it, may
14 have been prepared by counsel for one of the Settling Parties, it being recognized
15 that it is the result of arm's-length negotiations between the Settling Parties and that
16 all Settling Parties have contributed substantially and materially to the preparation
17 of this Stipulation.

18 11.6 The Stipulation may be amended or modified only by a written
19 instrument signed by or on behalf of all Settling Parties or their respective
20 successors-in-interest.

21 11.7 The Stipulation and the Exhibits attached hereto and the Supplemental
22 Agreement constitute the entire agreement among the Settling Parties, and no
23 representations, warranties, or inducements have been made to any Settling Party
24 concerning the Stipulation, its Exhibits, or the Supplemental Agreement other than
25 the representations, warranties, and covenants contained and memorialized in such
26 documents. Except as otherwise provided herein, each Settling Party shall bear its
27 own costs.

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1 choice-of-law principles, except to the extent that federal law requires that federal
2 law govern.

3 11.15 Pending approval by the Court of the Settlement, all proceedings in the
4 Litigation shall be stayed.

5 11.16 The Released Persons may file the Stipulation and/or the Judgment in
6 any action or proceeding that may be brought against them in order to support a
7 defense or counterclaim based on principles of *res judicata*, collateral estoppel,
8 release, good faith settlement, judgment bar or reduction, or any other theory of
9 claim preclusion or issue preclusion or similar defense or counterclaim.

10 11.17 If any Party is required to give notice to the other Parties under this
11 Stipulation, such notice shall be in writing and shall be deemed to have been duly
12 given upon receipt by hand delivery, facsimile transmission, or electronic mail.
13 Notice shall be provided to the counsel indicated on the signature block below.

14 11.18 Within twenty-one (21) days following the Parties' execution of the
15 Stipulation, and without any charge to Plaintiffs or the Settlement Class, NHTC
16 shall provide such shareholder lists as may be within its possession, custody, or
17 control, as appropriate for providing notice to the Class.

18 IN WITNESS WHEREOF, the parties hereto have caused the Stipulation to
19 be executed, by their duly authorized attorneys, dated as of October 2, 2017.

20
21 AGREED TO AND ACCEPTED, this 2nd day of October, 2017.

22
23 **LEVI & KORSINSKY, LLP**

24 By: /s/ Nicholas I. Porritt
25 Nicholas I. Porritt

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THE ROSEN LAW FIRM, P.A.

By: /s/ Laurence Rosen
Laurence Rosen

*Attorneys for Lead Plaintiffs
and Co-Lead Counsel for the Class*

AGREED TO AND ACCEPTED, this 2nd day of October, 2017.

COOLEY LLP

By: /s/ Angela L. Dunning
Angela L. Dunning

Attorneys for Defendants

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SIGNATURE ATTESTATION

Under Section 2.f.4 of the Court’s CM/ECF Administrative Policies, I hereby certify that authorization for the filing of this document has been obtained from each of the other signatories shown above and that all signatories have authorized placement of their electronic signature on this document.

By: s/ Adam C. McCall
Adam C. McCall