

**UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON**

**No. 3:20-cv-00171-AC**

JOHN BYRNE, Individually and on behalf of all  
others similarly situated,

Plaintiff,

v.

WESTPAC BANKING CORPORATION, BRIAN  
CHARLES HARTZER, and PETER FRANCIS  
KING,

Defendants.

**STIPULATION AND AGREEMENT OF SETTLEMENT**

This Stipulation and Agreement of Settlement, dated as of October 6, 2020 (the “Stipulation”) is entered into between (a) Lead Plaintiff Edward Davies and named plaintiff John Byrne (collectively “Plaintiffs”), on behalf of themselves and the Settlement Class (defined below); and (b) defendant Westpac Banking Corporation (“Westpac”), and defendants Brian Charles Hartzler and Peter Francis King (collectively, the “Individual Defendants,” and, together with Westpac, the “Defendants”) (Plaintiffs and Defendants together are referred to herein as the “Parties”), and embodies the terms and conditions of the Settlement of the above-captioned action (the “Action”).<sup>1</sup> Subject to the approval of the Court and the terms and conditions expressly provided herein, this Stipulation is intended to fully, finally and forever compromise, settle, release, resolve, and dismiss with prejudice the Action and all Released Claims (defined below).

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<sup>1</sup> All words or terms used herein shall have the meaning ascribed to those words or terms as set forth herein and in Paragraph 1 herein entitled “Definitions”. All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in Paragraph 1 herein.

WHEREAS:

A. On January 30, 2020, John Byrne filed a class action complaint (the “Complaint”) in the United States District Court for the District of Oregon asserting claims against all Defendants under Section 10(b) of the Securities Exchange Act of 1934 (the “Exchange Act”) and Rule 10b-5 promulgated thereunder, and against the Individual Defendants under Section 20(a) of the Exchange Act. Among other things, the Complaint alleged that Defendants made materially false and misleading statements about Westpac’s policies concerning, and compliance with, anti-money laundering/counterterrorism financing (AML/CTF) laws. The Complaint further alleged that the prices of Westpac’s publicly-traded securities were artificially inflated as a result of Defendants’ allegedly false and misleading statements, and declined when the truth was revealed. Defendants deny those allegations.

B. By Order dated April 16, 2020, this Court appointed Edward Davies as Lead Plaintiff for the Action; and appointed the Rosen Law Firm, P.A. as Lead Counsel.

C. On August 13, 2020 the Parties conducted lengthy discussions and arm’s-length negotiations during the course of a mediation before mediator Mr. Jed Melnick, Esq. The mediation culminated in the Parties reaching an agreement in principle to settle the Action that was memorialized in a memorandum of understanding (the “MOU”) executed on August 14, 2020. The MOU sets forth, among other things, the Parties’ agreement to settle all Released Claims (as defined below) in return for a cash payment by Westpac on behalf of Defendants of \$3,100,000 U.S. Dollars for the benefit of the Settlement Class, subject to certain terms and conditions, including the execution of a stipulation of settlement and related papers.

D. It is the intent of the Parties to fully and finally resolve the Action and any claims that arise out of, are based upon, or relate in any way to the purchase, sale or other acquisition of Westpac Securities during the Settlement Class Period.

E. This Stipulation (together with the exhibits hereto and the Supplemental Agreement described in Paragraph 40 herein) reflects the final and binding agreement between the Parties.

F. Based upon their investigation, prosecution and mediation of the Action, Plaintiffs and Lead Counsel have concluded that the terms and conditions of this Stipulation are fair, reasonable and adequate to Plaintiffs and the other members of the Settlement Class, and in their best interests. Based on Plaintiffs' direct oversight of the prosecution of this matter and with the advice of their counsel, Plaintiffs have agreed to settle and release the claims raised in the Action pursuant to the terms and provisions of this Stipulation, after considering, among other things: (a) the substantial financial benefit that Plaintiffs and the other members of the Settlement Class will receive under the proposed Settlement; and (b) the significant risks and costs of continued litigation and trial.

G. No Party admits any factual or legal assertion that has been advanced in this Action and this Stipulation shall not constitute or be deemed an admission by any Party with respect to any factual or legal assertion, or claim, that has been advanced in this Action. Defendants are entering into this Stipulation solely in order to avoid the continuing cost and burden of, and business interruption associated with, the Action. Each of the Defendants has denied and continues to deny each and every allegation of any wrongdoing that has or could have been asserted by or on behalf of Plaintiff Releasers, and this Stipulation shall in no event be construed or deemed to be evidence of or an admission or concession on the part of any of the Defendants with respect to any factual or legal assertion, claim or allegation of any fault or liability or wrongdoing or damage

whatsoever, or any infirmity in the defenses that the Defendants have, or could have, asserted in this Action. The Defendants expressly deny that Plaintiffs have asserted any valid claims as to any of them, and expressly deny any and all allegations of fault, liability, wrongdoing or damages whatsoever. Defendants further deny they have violated the U.S. federal securities laws, or any other laws of any jurisdiction or have otherwise misled investors, and maintain that they have meritorious defenses to all claims alleged in this Action. Similarly, this Stipulation shall in no event be construed or deemed to be evidence of or an admission or concession on the part of Plaintiffs of any infirmity in any of the claims asserted in the Action, or an admission or concession that any of the Defendants' defenses to liability had any merit. Each of the Parties recognizes and acknowledges, however, that the Action has been initiated, filed and prosecuted by Plaintiffs in good faith and defended by Defendants in good faith, that the Action is being voluntarily settled with the advice of counsel, and that the terms of the Settlement are fair, adequate and reasonable.

NOW THEREFORE, it is hereby STIPULATED AND AGREED, by and among the Parties, through their respective undersigned attorneys and subject to the approval of the Court pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, that, in consideration of the benefits flowing to the Parties from the Settlement, all Released Plaintiffs' Claims as against the Defendant Releasees and all Released Defendants' Claims as against the Plaintiff Releasees shall be settled and released, upon and subject to the terms and conditions set forth below.

#### **DEFINITIONS**

1. As used in this Stipulation and any exhibits attached hereto and made a part hereof, the following capitalized terms shall have the following meanings:

(a) "Action" means the matter captioned *Byrne v. Westpac Banking Corp. et al.*, 3:20-cv-00171-AC currently pending in the District Court for the District of Oregon.

(b) “Alternate Judgment” means a form of final judgment that may be entered by the Court herein but in a form other than the form of Judgment provided for in Exhibit B to this Stipulation where none of the Parties elects to terminate this Settlement by reason of such variance.

(c) “Authorized Claimant” means a Settlement Class Member who timely submits a valid Proof of Claim Form to the Claims Administrator that is approved for payment from the Net Settlement Fund.

(d) “Claim” means a Proof of Claim Form submitted to the Claims Administrator by a Claimant.

(e) “Claim Form” or “Proof of Claim Form” means the form, substantially in the form attached hereto as Exhibit 2 to Exhibit A, that a Claimant or Settlement Class Member must complete and submit should that Claimant or Settlement Class Member seek to share in a distribution of the Net Settlement Fund.

(f) “Claimant” means a person or entity who or which submits a Claim Form to the Claims Administrator seeking to be eligible to share in the proceeds of the Settlement Fund.

(g) “Claims Administrator” means, subject to Court approval, Strategic Claims Services, the firm retained by Plaintiffs and Lead Counsel to provide all notices approved by the Court to potential Settlement Class Members and to administer the Settlement.

(h) “Class Distribution Order” means an order entered by the Court authorizing and directing that the Net Settlement Fund be distributed, in whole or in part, to Authorized Claimants.

(i) “Complaint” means complaint filed by John Byrne in the Action on January 30, 2020 (Dkt. No. 1).

(j) “Court” means the United States District Court for the District of Oregon.

(k) “Defendants” means Westpac and the Individual Defendants.

(l) “Defendants’ Counsel” means Cravath, Swaine & Moore LLP and Jones Day.

(m) “Defendant Releasees” means each and all of the Defendants and each and all of their respective past, present or future officers, directors, stockholders, agents, representatives, employees, attorneys, financial or investment advisors, advisors, consultants, accountants, investment bankers, commercial bankers, trustees, engineers, agents, insurers, co-insurers and reinsurers, heirs, executors, general or limited partners or partnerships, personal or legal representatives, estates, administrators, predecessors, successors and assigns, each and all of Defendants’ respective past, present or future families, parent entities, associates, affiliates or subsidiaries, and each and all of their respective past, present or future officers, directors, stockholders, agents, representatives, employees, attorneys, financial or investment advisors, advisors, consultants, accountants, investment bankers, commercial bankers, trustees, engineers, agents, insurers, co-insurers and reinsurers, heirs, executors, general or limited partners or partnerships, personal or legal representatives, estates, administrators, predecessors, successors and assigns. The Defendant Releasees are express third-party beneficiaries of this Stipulation.

(n) “Defendant Releasers” means Defendants and their respective heirs, executors, administrators, predecessors, successors, and assigns in their capacities as such.

(o) “Dismissed Hartzer Claims” means all claims asserted in the Action against Brian Charles Hartzer. With respect to the Dismissed Hartzer Claims, the Parties stipulate and agree that all claims asserted in the Action against Brian Charles Hartzer will be voluntarily dismissed with prejudice upon entry of the Final Judgment (defined below), substantially in the form attached hereto as Exhibit D.

(p) “Dismissed King Claims” means all claims asserted in the Action against Peter Francis King. With respect to the Dismissed King Claims, the Parties stipulate and agree that all claims asserted in the Action against Peter Francis King will be voluntarily dismissed with prejudice upon entry of the Final Judgment (defined below), substantially in the form attached hereto as Exhibit C.

(q) “Effective Date” with respect to the Settlement means the first date by which all of the events and conditions specified in Paragraph 36 of this Stipulation have been met and have occurred or have been waived.

(r) “Escrow Account” means an account maintained at The Huntington National Bank wherein the Settlement Amount shall be deposited and held in escrow under the control of Lead Counsel.

(s) “Escrow Agent” means The Huntington National Bank.

(t) “Escrow Agreement” means the agreement between Lead Counsel and the Escrow Agent setting forth the terms under which the Escrow Agent shall maintain the Escrow Account.

(u) “Excluded Claims” means: (i) any claims relating to enforcement of the Settlement; and (ii) any claims by, for or against any person or entity who or which submits a request for exclusion that is accepted by the Court.

(v) “Final,” with respect to the Judgment or, if applicable, the Alternate Judgment, or any other court order, means: (i) if no appeal is filed, the expiration date of the time provided for filing or noticing any appeal under the Federal Rules of Appellate Procedure, *i.e.*, thirty (30) days after entry of the judgment or order; or (ii) if there is an appeal from the judgment or order, (a) the date of final dismissal of all such appeals, or the final dismissal of any proceeding

on certiorari or otherwise, or (b) the date the judgment or order is finally affirmed on an appeal, the expiration of the time to file a petition for a writ of certiorari or other form of review, or the denial of a writ of certiorari or other form of review, and, if certiorari or other form of review is granted, the date of final affirmance following review pursuant to that grant. However, any appeal or proceeding seeking subsequent judicial review pertaining solely to an order issued with respect to (i) attorneys' fees, costs or expenses, or (ii) the plan of allocation of Settlement proceeds (as submitted or subsequently modified), shall not in any way delay or preclude a judgment from becoming Final.

(w) "Immediate Family" means children, stepchildren, parents, stepparents, spouses, siblings, mothers-in-law, fathers-in-law, sons-in-law, daughters-in-law, brothers-in-law, and sisters-in-law. As used in this paragraph, "spouse" shall mean a husband, a wife, or a partner in a state-recognized domestic relationship or civil union.

(x) "Individual Defendants" means Brian Charles Hartzler and Peter Francis King.

(y) "Judgment" means the judgment, substantially in the form attached hereto as Exhibit B, to be entered by the Court approving the Settlement, terminating all proceedings of any kind in this Action as between Plaintiffs (including the Settlement Class) and Defendants and dismissing the Action and all claims therein against Defendants with prejudice.

(z) "Lead Counsel" means the Rosen Law Firm, P.A.

(aa) "Lead Plaintiff" means Edward Davies.

(bb) "Litigation Expenses" means costs and expenses incurred in connection with commencing, prosecuting and settling the Action (which may include the costs and expenses of



Plaintiffs directly related to their representation of the Settlement Class), for which Lead Counsel intends to apply to the Court for reimbursement from the Settlement Fund.

(cc) “Net Settlement Fund” means the Settlement Fund less: (i) any Taxes; (ii) any Notice and Administration Costs; (iii) any Litigation Expenses awarded by the Court; and (iv) any attorneys’ fees awarded by the Court.

(dd) “Notice” means the Notice of (i) Pendency of Class Action and Proposed Settlement; (ii) Settlement Hearing; and (iii) Motion for an Award of Attorneys’ Fees and Reimbursement of Litigation Expenses, substantially in the form attached hereto as Exhibit 1 to Exhibit A, which shall be made available online at a website maintained by the Claims Administrator or mailed to Settlement Class Members upon request.

(ee) “Notice and Administration Costs” means the costs, fees and expenses that are incurred by the Claims Administrator and/or Lead Counsel in connection with: (i) providing notices to the Settlement Class; and (ii) administering the Settlement, including but not limited to the Claims process, as well as the costs, fees and expenses incurred in connection with the Escrow Account.

(ff) “Parties” means Defendants and Plaintiffs, on behalf of themselves and the Settlement Class.

(gg) “Plaintiffs” means Lead Plaintiff Edward Davies and named plaintiff John Byrne.

(hh) “Plaintiffs’ Counsel” means Lead Counsel and all other legal counsel who, at the direction and under the supervision of Lead Counsel, performed services on behalf of the Settlement Class in the Action.

(ii) “Plaintiff Releasees” means Plaintiffs, Lead Counsel, all Settlement Class Members, and their respective past, present or future families, parent entities, associates, affiliates or subsidiaries, and each and all of their respective past, present or future officers, directors, stockholders, agents, representatives, employees, attorneys, financial or investment advisors, advisors, consultants, accountants, investment bankers, commercial bankers, trustees, engineers, agents, insurers, co-insurers and reinsurers, heirs, executors, general or limited partners or partnerships, personal or legal representatives, estates, administrators, predecessors, successors and assigns.

(jj) “Plaintiff Releasers” means Plaintiffs and all members of the Settlement Class and each and all of their respective past, present or future families, parent entities, associates, affiliates or subsidiaries, and each and all of their respective past, present or future officers, directors, stockholders, agents, representatives, employees, attorneys, financial or investment advisors, advisors, consultants, accountants, investment bankers, commercial bankers, trustees, engineers, agents, insurers, co-insurers and reinsurers, heirs, executors, general or limited partners or partnerships, personal or legal representatives, estates, administrators, predecessors, successors and assigns.

(kk) “Plan of Allocation” means the proposed plan of allocation of the Net Settlement Fund set forth in the Notice.

(ll) “Postcard Notice” means the Postcard Notice of (i) Pendency of Class Action, Certification of Settlement Class, and Proposed Settlement; (ii) Settlement Hearing; and (iii) Motion for an Award of Attorneys’ Fees and Reimbursement of Litigation Expenses, substantially in the form attached hereto as Exhibit 4 to Exhibit A, which is to be mailed to Settlement Class Members.

(mm) “Preliminary Approval Order” means the order, substantially in the form attached hereto as Exhibit A, to be entered by the Court preliminarily approving the Settlement and directing that notice of the Settlement be provided to the Settlement Class.

(nn) “Released Claims” means all Released Defendants’ Claims and all Released Plaintiffs’ Claims.

(oo) “Released Defendants’ Claims” means all claims and causes of action of every nature and description whether known claims or Unknown Claims, whether arising under federal, state, common or foreign law, whether class or individual in nature, by Defendants or any Defendant Releasees, which arise out of, are based upon, or relate in any way to the institution, prosecution or settlement of the claims against Defendants in the Action.

(pp) “Released Plaintiffs’ Claims” means any and all claims (including any claim that this Stipulation was fraudulently induced) debts, demands, rights, actions, suits, causes of action or liabilities whatsoever (including, but not limited to, any and all claims for damages, interest, attorneys’ fees, expert or consulting fees, and any other costs, expense or liability whatsoever), known or unknown, including any other current proceedings and future claims, whether based on federal, state, local, statutory or common law or any other law, rule or regulation (whether foreign or domestic), whether class or individual in nature, including both known claims and Unknown Claims) that were or could have been asserted by Plaintiffs or members of the Settlement Class related to the purchase, sale or other acquisition of Westpac Securities during the Settlement Class Period and which in any way arise from or concern the facts, matters, allegations, transactions, events, disclosures, statements, acts or omissions which have been or could have been asserted by or on behalf of Plaintiffs or any member of the Settlement Class in any forum, whether individual, class, representative, legal, equitable or any other type in any other capacity against

Defendants and Defendant Releasees. Released Plaintiffs' Claims do not include any claims relating to the enforcement of the Settlement or any claims against any person or entity who or which submits a request for exclusion from the Settlement Class that is accepted by the Court.

(qq) "Releasee(s)" means each and any of the Defendant Releasees and each and any of the Plaintiff Releasees.

(rr) "Releases" means the releases set forth in Paragraphs 5-9 of this Stipulation.

(ss) "Settlement" means the settlement between Plaintiffs and Defendants on the terms and conditions set forth in this Stipulation.

(tt) "Settlement Amount" means \$3,100,000 U.S. Dollars in cash.

(uu) "Settlement Class" means all persons who purchased or otherwise acquired Westpac Securities from November 11, 2015 to November 19, 2019, inclusive. Excluded from the Settlement Class are: (i) the Defendants; (ii) members of the Immediate Family of each of the Individual Defendants; (iii) any entity in which any Defendant has a controlling interest; (iv) the officers and directors of Westpac during the Settlement Class Period; and (v) the legal representatives, heirs, successors or assigns of any such excluded party. Also excluded from the Settlement Class are any persons and entities who or which exclude themselves by submitting a request for exclusion that is accepted by the Court.

(vv) "Settlement Class Member" means each person and entity who or which is a member of the Settlement Class.

(ww) "Settlement Class Period" means the period between November 11, 2015 and November 19, 2019, inclusive.

(xx) "Settlement Fund" means the Settlement Amount plus any and all interest earned thereon.

(yy) “Settlement Hearing” means the hearing set by the Court under Rule 23(e)(2) of the Federal Rules of Civil Procedure to consider final approval of the Settlement.

(zz) “Summary Notice” means the Summary Notice of (i) Pendency of Class Action and Proposed Settlement; (ii) Settlement Hearing; and (iii) Motion for an Award of Attorneys’ Fees and Reimbursement of Litigation Expenses, substantially in the form attached hereto as Exhibit 3 to Exhibit A, to be published as set forth in the Preliminary Approval Order.

(aaa) “Taxes” means: (i) all federal, state and/or local taxes of any kind (including any interest or penalties thereon) on any income earned by the Settlement Fund; (ii) the expenses and costs incurred by Lead Counsel in connection with determining the amount of, and paying, any taxes owed by the Settlement Fund (including, without limitation, expenses of tax attorneys and accountants); and (iii) all taxes imposed on payments by the Settlement Fund, including withholding taxes.

(bbb) “Unknown Claims” means any Released Plaintiffs’ Claims which any Plaintiff Releasor does not know or suspect to exist in his, her or its favor at the time of the release of such claims, and any Released Defendants’ Claims which any Defendant Releasor does not know or suspect to exist in his, her, or its favor at the time of the release of such claims, which, if known by him, her or it, might have affected his, her or its decision(s) with respect to this Settlement. With respect to any and all Released Claims, the Parties stipulate and agree that, upon the Effective Date of the Settlement. Plaintiffs and Defendants shall expressly waive, and each of the Plaintiff Releasors and each of the other Defendant Releasors shall be deemed to have waived, and by operation of the Judgment or the Alternate Judgment, if applicable, shall have expressly waived, any and all provisions, rights, and benefits conferred by any law of any state or territory

of the United States, or principle of common law or foreign law, which is similar, comparable, or equivalent to California Civil Code §1542, which provides:

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

Plaintiff Releasors may hereafter discover facts in addition to or different from those which they now know or believe to be true with respect to the subject matter of the Released Plaintiffs' Claims, but each of them hereby stipulates and agrees that Plaintiff Releasors shall be deemed to settle and release, and upon the Effective Date and by operation of the Judgment or Alternate Judgment shall have settled and released, fully, finally, and forever, any and all Released Plaintiffs' Claims against Defendants, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist, or which heretofore existed upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct that is negligent or intentional and with or without malice, or a breach of any duty, law, or rule, without regard to the subsequent discovery or existence of such different or additional facts. Similarly, Defendant Releasors may hereafter discover facts in addition to or different from those which they now know or believe to be true with respect to the subject matter of Released Defendants' Claims, but each of them hereby stipulates and agrees that Defendant Releasees shall be deemed upon the Effective Date and by operation of the Judgment or Alternate Judgment, to have fully, finally, and forever settled and released any and all Released Defendants' Claims against Plaintiffs, known or unknown, suspected or unsuspected contingent or non-contingent, whether or not concealed or hidden, which now exist, or heretofore have existed upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct which is negligent, intentional, with or without malice, or a breach of any duty, law, or

rule, without regard to the subsequent discovery or existence of such different or additional facts. Plaintiffs and Defendants acknowledge, and each of the other Plaintiff Releasors and each of the other Defendant Releasors shall be deemed by operation of law to have acknowledged, that the foregoing waiver was separately bargained for and a key element of the Settlement.

(ccc) “Westpac” means Westpac Banking Corporation.

(ddd) “Westpac Securities” means any Westpac securities traded on a U.S. exchange, including but not limited to, Westpac American Depositary Receipts (“ADRs”) traded on the New York Stock Exchange (“NYSE”).

### **CLASS CERTIFICATION**

2. Solely for purposes of the Settlement and for no other purpose, Defendants stipulate and agree to: (a) certification of the Action as a class action pursuant to Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure on behalf of the Settlement Class; (b) certification of Lead Plaintiff as class representative for the Settlement Class; and (c) appointment of Lead Counsel as class counsel for the Settlement Class pursuant to Rule 23(g) of the Federal Rules of Civil Procedure. If the Settlement does not receive the Court’s final approval, if the Court’s approval is reversed or vacated on appeal, if the Settlement is terminated, or if the Settlement otherwise fails to become effective, Defendants retain all of its objections, arguments, and defenses with respect to class certification and this Settlement, and/or any other settlement-related statement, documentation or communications become null and void *ab initio* and may not be cited in any way relating to certification of a class, or in support of an argument for certifying any class for any purpose related to this Action or any other proceeding.

### **PRELIMINARY APPROVAL OF SETTLEMENT**

3. Within fourteen (14) days of execution of this Stipulation, Plaintiffs will move for preliminary approval of the Settlement, certification of the Settlement Class for settlement purposes only, and the scheduling of a hearing for consideration of final approval of the Settlement, which motion shall be unopposed by Defendants. Concurrently with the motion for preliminary approval, Plaintiffs shall apply to the Court for, and Defendants shall agree to, entry of the Preliminary Approval Order, substantially in the form attached hereto as Exhibit A.

### **RELEASE OF CLAIMS**

4. The obligations incurred pursuant to this Stipulation are in consideration of: (i) the full and final disposition of the Action as against Defendants; and (ii) the Releases provided for herein.

5. Pursuant to the Judgment, or the Alternate Judgment, if applicable, without further action by anyone, upon the Effective Date of the Settlement, Plaintiff Releasors and each of the other Settlement Class Members, on behalf of themselves, and their respective heirs, executors, administrators, predecessors, successors, and assigns in their capacities as such, shall be deemed to have, and by operation of law and of the judgment shall have, fully, finally and forever compromised, settled, released, resolved, relinquished, waived and discharged and dismissed, with prejudice, and agreed not to institute, maintain or prosecute each and every Released Plaintiffs' Claim against the Defendants and the other Defendant Releasees, and shall forever be barred and enjoined without the necessity of posting a bond from commencing or prosecuting any action or proceeding asserting any or all of the Released Plaintiffs' Claims against any of the Defendant Releasees. This release and injunction expressly extend to all claims covered by this stipulation and all Plaintiff Releasors defined herein. This release shall not apply to any Excluded Claims.



6. Pursuant to the Judgment, or the Alternate Judgment, if applicable, without further action by anyone, upon the Effective Date of the Settlement, Defendant Releasors shall be deemed to have, and by operation of law and of the judgment shall have, fully, finally and forever compromised, settled, released, resolved, relinquished, waived and discharged each and every Released Defendants' Claim against Plaintiffs and the other Plaintiff Releasees, and shall forever be barred and enjoined from prosecuting any or all of the Released Defendants' Claims against any of the Plaintiff Releasees. This release shall not apply to any person or entity who or which submits a request for exclusion from the Settlement Class that is accepted by the Court or to any Excluded Claims.

7. Pursuant to the Judgment, or the Alternate Judgment, if applicable, without further action by anyone, upon the Effective Date of the Settlement, Plaintiff Releasors shall be deemed to have, and by operation of law and of the Judgment, or the Alternate Judgment, shall have, voluntarily dismissed with prejudice the Action as to all Defendants.

8. Plaintiffs agree to voluntarily dismiss with prejudice the Dismissed Hartzler Claims on the terms set forth herein. Pursuant to the Judgment, or the Alternate Judgment, if applicable, without further action by anyone, upon the Effective Date of the Settlement, Plaintiff Releasors shall be deemed to have, and by operation of law and of the judgment shall have, voluntarily dismissed with prejudice the Dismissed Hartzler Claims. At the time Plaintiffs seek preliminary approval, the Plaintiffs will also seek approval by the Court of the voluntary dismissal of the Dismissed Hartzler Claims, substantially in the form attached hereto as Exhibit D, to be effective on the Effective Date.

9. Plaintiffs agree to voluntarily dismiss with prejudice the Dismissed King Claims on the terms set forth herein. Pursuant to the Judgment, or the Alternate Judgment, if applicable,

without further action by anyone, upon the Effective Date of the Settlement, Plaintiff Releasors shall be deemed to have, and by operation of law and of the judgment shall have, voluntarily dismissed with prejudice the Dismissed King Claims. At the time Plaintiffs seek preliminary approval, the Plaintiffs will also seek approval by the Court of the voluntary dismissal of the Dismissed King Claims, substantially in the form attached hereto as Exhibit C, to be effective on the Effective Date.

10. Notwithstanding Paragraphs 5-9 above, nothing in the Judgment, or the Alternate Judgment, if applicable, shall bar any action by any of the Parties to enforce or effectuate the terms of this Stipulation or the Judgment, or Alternate Judgment, if applicable.

#### **THE SETTLEMENT CONSIDERATION**

11. In consideration of the settlement of the Released Plaintiffs' Claims against Defendants and the other Defendant Releasees, Westpac shall pay, for and on behalf of Defendants, the Settlement Amount into the Escrow Account no later than twenty-one (21) calendar days after the later of: (a) the date of entry by the Court of an order preliminarily approving this Settlement; or (b) Defendants' Counsel's receipt from Lead Counsel of the information necessary to effectuate a transfer of funds to the Escrow Account, including wiring instructions that include the bank name and ABA routing number, account name and number, and a signed W-9 reflecting a valid taxpayer identification number for the qualified settlement fund in which the Settlement Amount is to be deposited. Upon deposit of the Settlement Amount into the Escrow Account, the Settlement Amount and any income or interest earned thereon thereafter shall be the Settlement Fund. In no event shall Defendant Releasees be liable for or required to pay any amounts of any kind in addition to the Settlement Amount to the Plaintiff Releasors, including without limitation, interest on the Settlement Amount of any kind and relating to any time period

(including prior to the payment of the Settlement Amount into the Escrow Account) and payment to Lead Counsel or Plaintiffs' Counsel of their attorneys' fees or reimbursement of any other fees or expenses. Defendant Releasees shall not be liable for any additional sums beyond that amount for any reason (including but not limited to, attorneys' fees, administration costs, notice costs, expenses, or any costs of any kind incurred by the Plaintiff Releasees with resolution of this matter).

### **USE OF SETTLEMENT FUND**

12. The Settlement Fund shall be used to pay: (a) any Taxes; (b) any Notice and Administration Costs; (c) any Litigation Expenses awarded by the Court; and (d) any attorneys' fees awarded by the Court. The balance remaining in the Settlement Fund, that is, the Net Settlement Fund, shall be distributed to Authorized Claimants as provided in Paragraphs 23-34 below.

13. Except as provided herein or pursuant to orders of the Court, the Net Settlement Fund shall remain in the Escrow Account prior to the Effective Date. All funds held by the Escrow Agent shall be deemed to be in the custody of the Court and shall remain subject to the jurisdiction of the Court until such time as the funds shall be distributed or returned pursuant to the terms of this Stipulation and/or further order of the Court. The Escrow Agent shall invest any funds in the Escrow Account exclusively in United States Treasury Bills (or a mutual fund invested solely in such instruments) and shall collect and reinvest all interest accrued thereon, except that any residual cash balances up to the amount that is insured by the FDIC may be deposited in any account that is fully insured by the FDIC. In the event that the yield on United States Treasury Bills is negative, in lieu of purchasing such Treasury Bills, all or any portion of the funds held by the Escrow Agent may be deposited in any account that is fully insured by the FDIC or backed by

the full faith and credit of the United States. Additionally, if short-term placement of the funds is necessary, all or any portion of the funds held by the Escrow Agent may be deposited in any account that is fully insured by the FDIC or backed by the full faith and credit of the United States.

14. The Parties agree that the Settlement Fund is intended to be a Qualified Settlement Fund within the meaning of Treasury Regulation § 1.468B-1 and that Lead Counsel, as administrator of the Settlement Fund within the meaning of Treasury Regulation § 1.468B-2(k)(3), shall be solely responsible for filing or causing to be filed all informational and other tax returns as may be necessary or appropriate (including, without limitation, the returns described in Treasury Regulation § 1.468B-2(k)) for the Settlement Fund. Lead Counsel shall also be responsible for causing payment to be made from the Settlement Fund of any Taxes owed with respect to the Settlement Fund. The Defendant Releasees shall not have any liability or responsibility for any such Taxes. Lead Counsel, as administrator of the Settlement Fund within the meaning of Treasury Regulation § 1.468B-2(k)(3), shall timely make such elections as are necessary or advisable to carry out this paragraph, including, as necessary, making a “relation back election,” as described in Treasury Regulation § 1.468B-1(j), to cause the Qualified Settlement Fund to come into existence at the earliest allowable date, and shall take or cause to be taken all actions as may be necessary or appropriate in connection therewith.

15. All Taxes shall be paid out of the Settlement Fund, and shall be timely paid by the Escrow Agent pursuant to the disbursement instructions to be set forth in the Escrow Agreement, and without further order of the Court. Any tax returns prepared for the Settlement Fund (as well as the election set forth therein) shall be consistent with the previous paragraph and in all events shall reflect that all Taxes on the income earned by the Settlement Fund shall be paid out of the Settlement Fund as provided herein. The Defendant Releasees shall have no responsibility or

liability for the acts or omissions of Lead Counsel or its agents with respect to the payment of Taxes, as described herein.

16. The Settlement is non-recapture and not a claims-made settlement. Upon entry of the Final Judgment, or Final Alternate Judgment if applicable, Westpac shall have no ability to get back any of the Settlement Amount.

17. Subject to approval of the Court, Lead Counsel may pay from the Settlement Fund, without further approval from Defendants, costs and expenses actually incurred in connection with providing notice of the Settlement to the Settlement Class by mail, publication, and other means, locating Settlement Class Members, assisting with the submission of claims, processing proof of claim and release forms, administering the class settlement, and paying escrow taxes, fees and costs, if any, up to a maximum of \$150,000 U.S. Dollars. The \$150,000 maximum only applies to such costs and expenses paid prior to the effective date of the Settlement. After the effective date of the Settlement, Lead Counsel may pay all of the costs and expenses actually incurred in connection with the administration of the Settlement. In the event that the Settlement does not become final, any money paid or incurred for the above purposes, including any related fees, shall not be returned or repaid to Westpac.

18. Defendant Releasees shall have no responsibility or liability for or interest in the administration or allocation of the Settlement Fund, including the claims administration process, and shall have no role or responsibility for the management or investment of the Settlement Amount.

#### **ATTORNEYS' FEES AND LITIGATION EXPENSES**

19. Lead Counsel will apply to the Court for a collective award of attorneys' fees to Plaintiffs' Counsel to be paid from (and out of) the Settlement Fund. Lead Counsel also will apply

to the Court for reimbursement of Litigation Expenses, which may include a request for reimbursement of Plaintiffs' costs and expenses directly related to their representation of the Settlement Class, to be paid from (and out of) the Settlement Fund. Lead Counsel's application for an award of attorneys' fees and/or Litigation Expenses is not the subject of any agreement between Defendants and Plaintiffs other than what is set forth in this Stipulation.

20. Any attorneys' fees and Litigation Expenses that are awarded by the Court shall be paid to Lead Counsel immediately upon award, notwithstanding the existence of any timely filed objections thereto, or potential for appeal therefrom, or collateral attack on the Settlement or any part thereof, subject to Lead Counsel's obligation to make appropriate refunds or repayments to the Settlement Fund, plus accrued interest at the same net rate as is earned by the Settlement Fund, if the Settlement is terminated pursuant to the terms of this Stipulation or if, as a result of any appeal or further proceedings on remand, or successful collateral attack, the award of attorneys' fees and/or Litigation Expenses is reduced or reversed and such order reducing or reversing the award has become Final. Lead Counsel shall make the appropriate refund or repayment in full no later than thirty (30) days after: (a) receiving from Defendants' Counsel notice of the termination of the Settlement; or (b) any order reducing or reversing the award of attorneys' fees and/or Litigation Expenses has become Final. An award of attorneys' fees and/or Litigation Expenses is not a necessary term of this Stipulation and is not a condition of the Settlement embodied herein. Neither Plaintiffs nor Lead Counsel may cancel or terminate the Settlement based on this Court's or any appellate court's ruling with respect to attorneys' fees and/or Litigation Expenses.

21. Lead Counsel shall allocate the attorneys' fees awarded amongst Plaintiffs' Counsel in a manner which it, in good faith, believes reflects the contributions of such counsel to the institution, prosecution, and settlement of the Action.

22. Defendants take no position with respect to Lead Counsel's request for an award of attorneys' fees and reimbursement of expenses. Defendant Releasees shall have no responsibility for or liability whatsoever for any fees and expenses associated with the pursuit of this Action by Plaintiffs and the Settlement Claims, including with respect to the allocation or award of attorneys' fees or Litigation Expenses. The attorneys' fees and Litigation Expenses that are awarded to Plaintiffs' Counsel shall be payable solely from the Escrow Account.

### **NOTICE AND SETTLEMENT ADMINISTRATION**

23. As part of the Preliminary Approval Order, Plaintiffs shall seek appointment of a Claims Administrator. The Claims Administrator shall administer the Settlement, including but not limited to the process of receiving, reviewing and approving or denying Claims, under Lead Counsel's supervision and subject to the jurisdiction of the Court. Other than Westpac's obligation to cooperate with the Claims Administrator as provided in Paragraph 24 below, none of the Defendants, nor any other Defendant Releasees, shall have any involvement in or any responsibility, authority or liability whatsoever for the selection of the Claims Administrator, the Plan of Allocation, the administration of the Settlement, providing notice to the Settlement Class, the Claims process, or disbursement of the Net Settlement Fund, and shall have no liability whatsoever to any person or entity, including, but not limited to, Plaintiffs, any other Settlement Class Members or Lead Counsel in connection with the foregoing. Defendants' Counsel shall cooperate in the administration of the Settlement to the extent reasonably necessary to effectuate its terms.

24. In accordance with the terms of the Preliminary Approval Order to be entered by the Court, Lead Counsel shall cause the Claims Administrator to mail the Postcard Notice to those members of the Settlement Class as may be identified through reasonable effort. Lead Counsel

shall also cause the Claims Administrator to: (a) post downloadable copies of the Notice and Claim Form online at [www.strategicclaims.net](http://www.strategicclaims.net); and (b) have the Summary Notice published in accordance with the terms of the Preliminary Approval Order to be entered by the Court.

25. The Claims Administrator shall receive Claims and determine first, whether the Claim is a valid Claim, in whole or part, and second, each Authorized Claimant's *pro rata* share of the Net Settlement Fund based upon each Authorized Claimant's Recognized Claim compared to the total Recognized Claims of all Authorized Claimants (as set forth in the Plan of Allocation set forth in the Notice attached hereto as Exhibit 1 to Exhibit A, or in such other plan of allocation as the Court approves).

26. The Plan of Allocation proposed in the Notice is not a necessary term of the Settlement or of this Stipulation and it is not a condition of the Settlement or of this Stipulation that any particular plan of allocation be approved by the Court. Plaintiffs and Lead Counsel may not cancel or terminate the Settlement (or this Stipulation) based on this Court's or any appellate court's ruling with respect to the Plan of Allocation or any other plan of allocation in this Action. Defendants and the other Defendant Releasees shall not object in any way to the Plan of Allocation or any other plan of allocation in this Action. No Defendant, nor any other Defendant Releasees, shall have any involvement with or liability, obligation or responsibility whatsoever for the application of the Court-approved plan of allocation.

27. Any Settlement Class Member who does not submit a valid Claim Form will not be entitled to receive any distribution from the Net Settlement Fund, but will otherwise be bound by all of the terms of this Stipulation and Settlement, including the terms of the Judgment or, the Alternate Judgment, if applicable, to be entered in the Action and the releases provided for herein and therein, and will be permanently barred and enjoined from bringing any action, claim, or other



proceeding of any kind against the Defendant Releasees with respect to the Released Plaintiffs' Claims in the event that the Effective Date occurs with respect to the Settlement.

28. Lead Counsel shall be responsible for supervising the administration of the Settlement and the disbursement of the Net Settlement Fund subject to Court approval. No Defendant, or any other Defendant Releasees, shall be permitted to review, contest or object to any Claim Form, or any decision of the Claims Administrator or Lead Counsel with respect to accepting or rejecting any Claim for payment by a Settlement Class Member. Lead Counsel shall have the right, but not the obligation, to waive what it deems to be formal or technical defects in any Claim Forms submitted in the interests of achieving substantial justice.

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

(a) Each Settlement Class Member shall be required to submit a Claim Form, substantially in the form attached hereto as Exhibit 2 to Exhibit A, supported by such documents as are designated therein, including proof of the Claimant's loss, or such other documents or proof as the Claims Administrator or Lead Counsel, in their discretion, may deem acceptable;

(b) All Claim Forms must be submitted by the date set by the Court in the Preliminary Approval Order and specified in the Notice. Any Settlement Class Member who fails to submit a Claim Form by such date shall be forever barred from receiving any distribution from the Net Settlement Fund or payment pursuant to this Stipulation (unless by Order of the Court such Settlement Class Member's Claim Form is accepted), but shall in all other respects be bound by all of the terms of this Stipulation and the Settlement, including the terms of the Judgment or Alternate Judgment, if applicable, and the Releases provided for herein and therein, and will be permanently barred and enjoined from bringing any action, claim or other proceeding of any kind

against any Defendant Releasees with respect to any Released Plaintiffs' Claim. Provided that it is mailed by the claim-submission deadline, a Claim Form shall be deemed to be submitted when postmarked, if received with a postmark indicated on the envelope and if mailed by first-class mail and addressed in accordance with the instructions thereon. In all other cases, the Claim Form shall be deemed to have been submitted on the date when actually received by the Claims Administrator;

(c) Each Claim Form shall be submitted to and reviewed by the Claims Administrator who shall determine in accordance with this Stipulation and the plan of allocation the extent, if any, to which each Claim shall be allowed, subject to review by the Court pursuant to subparagraph (e) below as necessary;

(d) Claim Forms that do not meet the submission requirements may be rejected. Prior to rejecting a Claim in whole or in part, the Claims Administrator shall communicate with the Claimant in writing, to give the Claimant the chance to remedy any curable deficiencies in the Claim Form submitted. The Claims Administrator shall notify, in a timely fashion and in writing, all Claimants whose Claim the Claims Administrator proposes to reject in whole or in part, setting forth the reasons therefor, and shall indicate in such notice that the Claimant whose Claim is to be rejected has the right to a review by the Court if the Claimant so desires and complies with the requirements of subparagraph (e) below; and

(e) If any Claimant whose Claim has been rejected in whole or in part desires to contest such rejection, the Claimant must, within twenty (20) days after the date of mailing of the notice required in subparagraph (d) above, serve upon the Claims Administrator a notice and statement of reasons indicating the Claimant's grounds for contesting the rejection along with any supporting documentation, and requesting a review thereof by the Court. If a dispute concerning

a Claim cannot be otherwise resolved, Lead Counsel shall thereafter present the request for review to the Court.

30. Each Claimant shall be deemed to have submitted to the jurisdiction of the Court with respect to the Claimant's Claim, and the Claim will be subject to investigation and discovery under the Federal Rules of Civil Procedure, provided, however, that such investigation and discovery shall be limited to that Claimant's status as a Settlement Class Member and the validity and amount of the Claimant's Claim. No discovery shall be allowed on the merits of this Action or of the Settlement in connection with the processing of Claim Forms.

31. Lead Counsel will apply to the Court, on notice to Defendants' Counsel, for a Class Distribution Order: (a) approving the Claims Administrator's administrative determinations concerning the acceptance and rejection of the Claims submitted; (b) approving payment of any administration fees and expenses associated with the administration of the Settlement from the Escrow Account; and (c) if the Effective Date has occurred, directing payment of the Net Settlement Fund to Authorized Claimants from the Escrow Account.

32. Payment pursuant to the Class Distribution Order shall be final and conclusive against all Settlement Class Members. All Settlement Class Members whose Claims are not approved by the Court for payment shall be barred from participating in distributions from the Net Settlement Fund, but otherwise shall be bound by all of the terms of this Stipulation and the Settlement, including the terms of the Judgment or Alternate Judgment, if applicable, to be entered in this Action and the Releases provided for herein and therein, and will be permanently barred and enjoined from bringing any action against any and all Defendant Releasees with respect to any and all of the Released Plaintiffs' Claims.

33. No person or entity shall have any claim against Plaintiffs, Lead Counsel, the Claims Administrator or any other agent designated by Lead Counsel, or the Defendant Releasees and/or their respective counsel, including Defendants' Counsel, arising from distributions made substantially in accordance with the Stipulation, the plan of allocation approved by the Court, or any order of the Court. Plaintiff Releasees and Defendant Releasees, and their respective counsel, shall have no liability whatsoever for the investment or distribution of the Settlement Fund or the Net Settlement Fund, the plan of allocation, or the determination, administration, calculation, or payment of any claim or nonperformance of the Claims Administrator, the payment or withholding of taxes (including interest and penalties) owed by the Settlement Fund, or any losses incurred in connection therewith.

34. All proceedings with respect to the administration, processing and determination of Claims and the determination of all controversies relating thereto, including disputed questions of law and fact with respect to the validity of Claims, shall be subject to the jurisdiction of the Court. All Settlement Class Members and Parties to this Settlement expressly waive trial by jury (to the extent any such right may exist) and any right of appeal or review with respect to such determinations.

#### **TERMS OF THE JUDGMENT**

35. If the Settlement contemplated by this Stipulation is approved by the Court, Lead Counsel and Defendants' Counsel shall request that the Court enter a Judgment, substantially in the form attached hereto as Exhibit B.

#### **CONDITIONS OF SETTLEMENT AND EFFECT OF DISAPPROVAL, CANCELLATION OR TERMINATION**

36. The Effective Date of the Settlement shall be deemed to occur on the occurrence or waiver of all of the following events:

(a) the Court has entered the Preliminary Approval Order, substantially in the form set forth in Exhibit A attached hereto, as required by Paragraph 3 above;

(b) the Settlement Amount has been deposited into the Escrow Account in accordance with the provisions of Paragraph 11 above;

(c) Defendants have not exercised their option to terminate the Settlement pursuant to the provisions of this Stipulation (including the Supplemental Agreement described in Paragraph 40 below);

(d) Plaintiffs have not exercised their option to terminate the Settlement pursuant to the provisions of this Stipulation; and

(e) the Court has approved the Settlement as described herein, following notice to the Settlement Class and a hearing, as prescribed by Rule 23 of the Federal Rules of Civil Procedure, and entered the Judgment and the Judgment has become Final, or the Court has entered an Alternate Judgment and none of the Parties seek to terminate the Settlement and the Alternate Judgment has become Final.

37. Upon the occurrence of all of the events referenced in Paragraph 36 above, any and all remaining interest or right of Defendants in or to the Settlement Fund, if any, shall be absolutely and forever extinguished and the Releases herein shall be effective.

38. If (i) Defendants exercise their right to terminate the Settlement as provided in this Stipulation; (ii) Plaintiffs exercise their right to terminate the Settlement as provided in this Stipulation; (iii) the Court disapproves the Settlement; or (iv) the Effective Date as to the Settlement otherwise fails to occur, then:

(a) The Settlement and the relevant portions of this Stipulation shall be canceled and terminated.

(b) Plaintiffs and Defendants shall revert to their respective positions in the Action as of immediately prior to the execution of the MOU on August 14, 2020.

(c) The terms and provisions of this Stipulation, with the exception of this Paragraph 38 and Paragraphs 40, 42 and 43, shall have no further force and effect with respect to the Parties and shall not be used in the Action or in any other proceeding for any purpose, and any Judgment, or Alternate Judgment, if applicable, or order entered by the Court in accordance with the terms of this Stipulation shall be treated as vacated, *nunc pro tunc*.

(d) Within five (5) business days after joint written notification of termination is sent by Defendants' Counsel and Lead Counsel to the Escrow Agent, the Settlement Fund (including accrued interest thereon and any funds received by Lead Counsel consistent with Paragraph 20 above), less any Notice and Administration Costs actually incurred, paid or payable and less any Taxes paid, due or owing shall be refunded by the Escrow Agent to Defendants (or such other persons or entities as Defendants may direct). In the event that the funds received by Lead Counsel consistent with Paragraph 20 above have not been refunded to the Settlement Fund within the five (5) business days specified in this paragraph, those funds shall be refunded by the Escrow Agent to Defendants (or such other persons or entities as Defendants may direct) immediately upon their deposit into the Escrow Account consistent with Paragraph 20 above.

39. It is further stipulated and agreed that Plaintiffs and Defendants shall each have the option to terminate the Settlement and this Stipulation, by providing written notice of their election to do so ("Termination Notice") to the other Parties to this Stipulation within thirty (30) days of: (a) the Court's refusal to certify the Settlement Class or the amendment of the scope of the Settlement Class by any court; (b) the Court's final refusal to enter the Preliminary Approval Order in any material respect; (c) the Court's final refusal to approve the Settlement or any material part

thereof; (d) the Court's refusal to enter the Judgment in any material respect; (d) the date upon which the Judgment is modified or reversed in any material respect by the United States Court of Appeals for the Ninth Circuit or the United States Supreme Court; or (e) the date upon which an Alternate Judgment is modified or reversed in any material respect by the United States Court of Appeals for the Ninth Circuit or the United States Supreme Court, and the provisions of Paragraph 38 above shall apply. However, Plaintiffs shall not be able to terminate the Stipulation if any court disapproves or modifies the plan of distribution or any motion for fees and expenses. Any decision or proceeding, whether in this Court or any appellate court, with respect to an application for attorneys' fees or reimbursement of Litigation Expenses or with respect to any plan of allocation shall not be considered material to the Settlement, shall not affect the finality of any Judgment or Alternate Judgment, if applicable, and shall not be grounds for termination of the Settlement.

40. In addition to the grounds set forth in Paragraph 39 above, Defendants shall each and all have the right to terminate the Settlement in the event that Settlement Class Members timely and validly requesting exclusion from the Settlement Class meet the conditions set forth in Defendants' confidential supplemental agreement with Plaintiffs (the "Supplemental Agreement"), in accordance with the terms of that agreement. The Supplemental Agreement, which is being executed concurrently herewith, shall not be filed with the Court and its terms shall not be disclosed in any other manner (other than the statements herein and in the Notice, to the extent necessary, or as otherwise provided in the Supplemental Agreement) unless and until the Court otherwise directs or a dispute arises between Plaintiffs and Defendants concerning its interpretation or application, in which event the Parties shall submit the Supplemental Agreement to the Court in camera and request that the Court afford it confidential treatment.

41. If the Settlement Amount is not timely paid into the Escrow Account in accordance with Paragraph 11 of this Stipulation, then Plaintiffs, on behalf of the Settlement Class, and not Defendants, shall have the right in Plaintiffs' sole discretion to either enforce the terms of this Stipulation and Settlement against Defendants or to terminate the Settlement, but only if (a) Lead Counsel has first notified Defendants' Counsel in writing of Plaintiffs' intent to enforce or terminate pursuant to this paragraph, and (b) the entire Settlement Amount is not deposited in the Escrow Account within five (5) business days after Lead Counsel has provided such written notice.

**NO ADMISSION OF WRONGDOING**

42. Neither the MOU, this Stipulation (whether or not consummated), including the exhibits hereto and the Plan of Allocation contained therein (or any other plan of allocation that may be approved by the Court), the negotiations leading to the execution of the MOU and this Stipulation, nor any proceedings taken pursuant to or in connection with the MOU, this Stipulation and/or approval of the Settlement (including any arguments proffered in connection therewith):

(a) shall be offered against any of the Defendant Releasees as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by any of the Defendant Releasees with respect to the truth of any fact alleged by Plaintiffs or the validity of any claim that was or could have been asserted or the deficiency of any defense that has been or could have been asserted in this Action or in any other litigation, or of any liability, negligence, fault, or other wrongdoing of any kind of any of the Defendant Releasees or in any way referred to for any other reason as against any of the Defendant Releasees, in any civil, criminal or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Stipulation;



(b) shall be offered against any of the Plaintiff Releasors, as evidence of, or construed as, or deemed to be evidence of any presumption, concession or admission by any of the Plaintiff Releasors that any of their claims are without merit, that any of the Defendant Releasees had meritorious defenses, or that damages recoverable under the Complaint would not have exceeded the Settlement Amount or with respect to any liability, negligence, fault or wrongdoing of any kind, or in any way referred to for any other reason as against any of the Plaintiff Releasors, in any civil, criminal or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Stipulation; or

(c) shall be construed against any of the Releasees as an admission, concession, or presumption that the consideration to be given hereunder represents the amount which could be or would have been recovered after trial; *provided, however*, that if this Stipulation is approved by the Court, the Parties and the Releasees and their respective counsel may refer to it to effectuate the protections from liability granted hereunder or otherwise to enforce the terms of the Settlement.

### **PUBLICITY**

43. In no event shall Plaintiffs and Lead Counsel on the one hand, and Defendants and Defendants' Counsel on the other hand, make any public statement that disparages the business or reputation of the other (including without limitation their officers, directors, management and employees).

44. Whether or not the Stipulation is approved by the Court and whether or not the Stipulation is consummated, or the Effective Date occurs, the Parties and their counsel shall use their best efforts to keep all negotiations, discussions, acts performed, agreements, drafts, documents signed and proceedings in connection with the Stipulation confidential.

45. Notwithstanding the foregoing, the Parties agree that this Stipulation may be filed publicly via ECF as part of any motion for preliminary approval of the Settlement. Nothing herein shall preclude Lead Counsel from identifying on their respective web sites and in any other materials describing their respective law firms, the fact that they were Lead Counsel in the Action and referring to the relief obtained pursuant to this Settlement upon its final approval.

#### **MISCELLANEOUS PROVISIONS**

46. All of the exhibits attached hereto and the Supplemental Agreement are material and integral parts hereof are hereby incorporated by reference as though fully set forth herein. Notwithstanding the foregoing, in the event that there exists a conflict or inconsistency between the terms of this Stipulation and the terms of any exhibit attached hereto, the terms of the Stipulation shall prevail.

47. Westpac warrants that, as to the payments made or to be made by or on behalf of Defendants, at the time of entering into this Stipulation and at the time of such payment it, or to its knowledge any persons or entities contributing to the payment of the Settlement Amount, were not insolvent, nor will the payment required to be made by or on behalf of Defendants render Westpac insolvent, within the meaning of and/or for the purposes of the United States Bankruptcy Code, including §§ 101 and 547 thereof. This representation is made by Westpac and not by its counsel.

48. In the event of the entry of a final order of a court of competent jurisdiction determining the transfer of money to the Settlement Fund or any portion thereof by or on behalf of Defendants to be a preference, voidable transfer, fraudulent transfer or similar transaction and any portion thereof is required to be returned, and such amount is not promptly deposited into the Settlement Fund by others, then, at the election of Plaintiffs, Plaintiffs and Defendants shall jointly move the Court to vacate and set aside the Releases given and the Judgment or Alternate Judgment,

if applicable, entered in favor of Defendants and the other Releasees pursuant to this Stipulation, in which event the releases and Judgment, or Alternate Judgment, if applicable, shall be null and void, and the Parties shall be restored to their respective positions in the litigation as provided in Paragraph 38 above and any cash amounts in the Settlement Fund (less any Taxes paid, due or owing with respect to the Settlement Fund and less any Notice and Administration Costs actually incurred, paid or payable) shall be returned as provided in Paragraph 38.

49. The Parties intend this Stipulation and the Settlement to be a final and complete resolution of all disputes asserted or which could be asserted by Plaintiffs and any other Settlement Class Members against the Defendant Releasees with respect to the Released Plaintiffs' Claims. Accordingly, Plaintiffs and their counsel and Defendants and their counsel agree not to assert in any forum that this Action was brought by Plaintiffs or defended by Defendants in bad faith or without a reasonable basis. No Party shall assert any claims of any violation of Rule 11 of the Federal Rules of Civil Procedure relating to the institution, prosecution, defense, or settlement of this Action. The Parties agree that the amounts paid and the other terms of the Settlement were negotiated at arm's-length and in good faith by the Parties and reflect the Settlement that was reached voluntarily after extensive negotiations and consultation with experienced legal counsel, who were fully competent to assess the strengths and weaknesses of their respective clients' claims or defenses.

50. While retaining their right to deny that the claims asserted in the Action were meritorious, Defendants and their counsel, in any statement made to any media representative (whether or not for attribution) will not assert that the Action was commenced or prosecuted in bad faith, nor will they deny that the Action was commenced and prosecuted in good faith and is being settled voluntarily after consultation with competent legal counsel. In all events, Plaintiffs

and their counsel and Defendants and their counsel shall not make any accusations of wrongful or actionable conduct by either Party concerning the prosecution, defense, and resolution of the Action, and shall not otherwise suggest that the Settlement constitutes an admission of any claim or defense alleged.

51. The terms of the Settlement, as reflected in this Stipulation, may not be modified or amended, nor may any of its provisions be waived except by a writing signed on behalf of both Plaintiffs and Defendants (or their successors-in-interest).

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

53. The administration and consummation of the Settlement as embodied in this Stipulation shall be under the authority of the Court, and the Court shall retain jurisdiction for the purpose of entering orders providing for awards of attorneys' fees and Litigation Expenses to Plaintiffs' Counsel and enforcing the terms of this Stipulation, including the Plan of Allocation (or such other plan of allocation as may be approved by the Court) and the distribution of the Net Settlement Fund to Settlement Class Members.

54. The waiver by one Party of any breach of this Stipulation by any other Party shall not be deemed a waiver of any other prior or subsequent breach of this Stipulation.

55. This Stipulation and its exhibits and the Supplemental Agreement constitute the entire agreement among Plaintiffs and Defendants concerning the Settlement and this Stipulation and its exhibits. All Parties acknowledge that no other agreements, representations, warranties, or inducements have been made by any Party hereto concerning this Stipulation, its exhibits or the Supplemental Agreement other than those contained and memorialized in such documents.

56. This Stipulation may be executed in one or more counterparts, including by signature transmitted via facsimile, or by a .pdf/.tif image of the signature transmitted via email. All executed counterparts and each of them shall be deemed to be one and the same instrument.

57. This Stipulation shall be binding upon and inure to the benefit of the successors and assigns of the Parties, including any and all Releasees and any corporation, partnership, or other entity into or with which any Party hereto may merge, consolidate or reorganize.

58. The construction, interpretation, operation, effect and validity of this Stipulation, the Supplemental Agreement and all documents necessary to effectuate it shall be governed by the internal laws of the State of Oregon without regard to conflicts of laws, except to the extent that federal law requires that federal law govern.

59. Any action arising under or to enforce this Stipulation or any portion thereof, shall be commenced and maintained only in the Court.

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

61. All counsel and any other person executing this Stipulation and any of the exhibits hereto, or any related Settlement documents, warrant and represent that they have the full authority to do so and that they have the authority to take appropriate action required or permitted to be taken pursuant to the Stipulation to effectuate its terms.

62. Lead Counsel and Defendants' Counsel agree to cooperate fully with one another in seeking Court approval of the Preliminary Approval Order and the Settlement, as embodied in this Stipulation, and to use best efforts to promptly agree upon and execute all such other

documentation as may be reasonably required to obtain final approval by the Court of the Settlement.

63. If any Party is required to give notice to another Party under this Stipulation, such notice shall be in writing and shall be deemed to have been duly given upon receipt of hand delivery or facsimile or email transmission, with confirmation of receipt. Notice shall be provided as follows:

If to Plaintiffs or Lead Counsel:           The Rosen Law Firm, P.A.  
Attn: Sara Fuks, Esq.  
275 Madison Avenue, 40<sup>th</sup> Floor  
New York, New York 10016  
Telephone: (212) 686-1060  
Email: sfuks@rosenlegal.com

If to Defendants:                               Cravath, Swaine & Moore LLP  
Attn: Timothy G. Cameron, Esq.  
Worldwide Plaza  
825 Eighth Avenue  
New York, New York 10019  
Telephone: (212) 735-3000  
Email: tcameron@cravath.com

Jones Day  
Attn: Robert Micheletto, Esq.  
250 Vesey Street  
New York, NY 10281  
Telephone: (212) 326-3939  
Email: rmicheletto@jonesday.com

64. Except as otherwise provided herein, each Party shall bear its own costs.

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

66. No opinion or advice concerning the tax consequences of the proposed Settlement to individual Settlement Class Members is being given or will be given by the Parties or their counsel; nor is any representation or warranty in this regard made by virtue of this Stipulation.

Each Settlement Class Member's tax obligations, and the determination thereof, are the sole responsibility of the Settlement Class Member, and it is understood that the tax consequences may vary depending on the particular circumstances of each individual Settlement Class Member.

67. Pending final determination of whether the Settlement should be approved, all proceedings in this Action shall be stayed and all Settlement Class Members shall be barred and enjoined from prosecuting any of the Released Plaintiffs' Claims against Defendants or any of Defendant Releasees.

**IN WITNESS WHEREOF**, the Parties hereto have caused this Stipulation to be executed,  
by their duly authorized attorneys, as of October 6, 2020.

**ROSEN LAW FIRM P.A.**

By:   
Laurence Rosen, Esq.  
Sara Fuks, Esq.  
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sfuks@rosenlegal.com

*Lead Counsel for Plaintiffs  
and the Settlement Class*

**CRAVATH SWAINE & MOORE LLP**

By: \_\_\_\_\_  
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Lauren M. Rosenberg, Esq.  
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*Counsel for Defendants Westpac Banking  
Corporation and Peter King*

**JONES DAY**

By: \_\_\_\_\_  
Robert Micheletto, Esq.  
Lauri W. Sawyer, Esq.  
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Telephone: (212) 326-3939  
Email: rmicheletto@jonesday.com  
lwsawyer@jonesday.com

*Counsel for Defendant Brian Hartzler*




**IN WITNESS WHEREOF**, the Parties hereto have caused this Stipulation to be executed,  
by their duly authorized attorneys, as of October 6, 2020.

**ROSEN LAW FIRM P.A.**

By: \_\_\_\_\_  
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*Lead Counsel for Plaintiffs  
and the Settlement Class*

**CRAVATH SWAINE & MOORE LLP**

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*Counsel for Defendants Westpac Banking  
Corporation and Peter King*

**JONES DAY**

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Email: rmicheletto@jonesday.com  
lwsawyer@jonesday.com

*Counsel for Defendant Brian Hartzler*

IN WITNESS WHEREOF, the Parties hereto have caused this Stipulation to be executed,  
by their duly authorized attorneys, as of October 6, 2020.

**ROSEN LAW FIRM P.A.**

By: \_\_\_\_\_  
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*Lead Counsel for Plaintiffs  
and the Settlement Class*

**CRAVATH SWAINE & MOORE LLP**

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