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14
15 **UNITED STATES DISTRICT COURT**
16 **DISTRICT OF ARIZONA**

17 KUI ZHU, *et al.*,
18 Plaintiffs,
19 v.
20 TARONIS TECHNOLOGIES, INC., *et al.*,
21 Defendants.
22

Case No. CV-19-04529-PHX-GMS

**STIPULATION AND AGREEMENT
OF SETTLEMENT**

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1 This Stipulation and Agreement of Settlement, dated as of September 24, 2020
2 (the “Stipulation”) is entered into between (a) Kui Zhu (“Lead Plaintiff”), on behalf of
3 himself and the Class (defined below); and (b) defendants Robert L. Dingess, Scott
4 Mahoney, Ermanno P. Santilli, Kevin Pollack, and William W. Staunton (collectively,
5 the “Defendants”) (Lead Plaintiff and Defendants shall collectively be referred to as the
6 “Parties”), and embodies the terms and conditions of the settlement of the above-
7 captioned action (the “Action”). Subject to the approval of the Court and the terms and
8 conditions expressly provided herein, this Stipulation is intended to fully, finally, and
9 forever compromise, settle, release, resolve, waive, discharge, and dismiss with prejudice
10 the Action and all Released Plaintiffs’ Claims (defined below) and all Released
11 Defendants’ Claims (also defined below), both of which include Unknown Claims.

12 WHEREAS:

13 A. On April 15, 2019, Plaintiff Chad Hatten filed a putative class action
14 complaint in the United States District Court for the Middle District of Florida, styled
15 *Hatten v. Taronis Technologies, Inc., et al.*, Case No. 8:19-cv-00889, asserting federal
16 securities claims against Taronis Technologies, Inc. (“Taronis”) and Defendants.

17 B. On June 21, 2019, the court entered an order transferring the Action to the
18 District of Arizona (the “Court”).

19 C. On July 10, 2019, the Court appointed Kui Zhu as Lead Plaintiff for the
20 Action and approved Lead Plaintiff’s selection of Matthew M. Guiney and Kevin G.
21 Cooper of Wolf Haldenstein Adler Freeman & Herz LLP as Lead Counsel.

22 D. On August 30, 2019, Lead Plaintiff filed and served the First Amended
23 Class Action Complaint (“Amended Complaint”) asserting claims against Taronis and
24 Defendants, under Section 10(b) of the Securities Exchange Act of 1934 (the “Exchange
25 Act”) and Rule 10b-5 promulgated thereunder, and against Defendants under Section
26 20(a) of the Exchange Act. The Amended Complaint alleged that Taronis and
27 Defendants made materially false and misleading statements about Taronis’s contract
28 with the City of San Diego. The Complaint further alleged that the price of Taronis’s

1 common stock was artificially inflated as a result of the allegedly false and misleading
2 statements and declined when the truth was revealed.

3 E. On October 14, 2019, Taronis and Defendants filed and served a motion to
4 dismiss the Amended Complaint. On November 27, 2019, Plaintiffs served and filed
5 their memorandum of law in opposition to the motion to dismiss and, on December 24,
6 2019, Taronis and Defendants served their reply papers. The Court heard oral argument
7 on the motion on February 21, 2020. On April 8, 2020, the Court granted in part and
8 denied in part the motion to dismiss the Amended Complaint.

9 F. The Parties thereafter discussed the possibility of resolving the litigation
10 through settlement and agreed to mediation before Michelle Yoshida, of Phillips ADR.
11 On July 8, 2020 and July 22, 2020, the Parties exchanged detailed opening and reply
12 mediation statements with numerous exhibits that were also submitted to Ms. Yoshida. A
13 full-day mediation session with Ms. Yoshida was held by video on August 5, 2020. At
14 the mediation session, the Parties engaged in vigorous settlement negotiations with the
15 assistance of Ms. Yoshida and were able to reach an agreement on a mediator's proposal.

16 G. On August 5, 2020, the Parties agreed to the terms of a settlement in
17 principle to settle the Action in return for a cash payment by or on behalf of Defendants
18 of \$1,700,000 for the benefit of the Class, subject to certain terms and conditions and the
19 execution of a customary "long form" stipulation and agreement of settlement and related
20 papers.

21 H. This Stipulation (together with the exhibits hereto) reflects the final and
22 binding agreement between the Parties.

23 I. Based upon their investigation, prosecution, and mediation of the case,
24 Lead Plaintiff and Lead Counsel have concluded that the terms and conditions of this
25 Stipulation are fair, reasonable and adequate to Lead Plaintiff and the other members of
26 the Class, and in their best interests. Based on Lead Plaintiff's direct oversight of the
27 prosecution of this matter and with the advice of its counsel, Lead Plaintiff has agreed to
28 settle and release the Released Plaintiffs' Claims pursuant to the terms and provisions of

1 this Stipulation, after considering, among other things: (a) the substantial financial benefit
2 that Lead Plaintiff and the other members of the Class will receive under the proposed
3 Settlement; and (b) the significant risks and costs of continued litigation and trial.

4 J. This Stipulation constitutes a compromise of all matters that are in dispute
5 between the Parties. Defendants are entering into this Stipulation solely to eliminate the
6 uncertainty, burden and expense of further protracted litigation. Each of the Defendants
7 and Taronis denies any wrongdoing, and this Stipulation shall in no event be construed or
8 deemed to be evidence of or an admission or concession on the part of any of the
9 Defendants or Taronis with respect to any claim or allegation of any fault or liability or
10 wrongdoing or damage whatsoever, or any infirmity in the defenses that Defendants or
11 Taronis have, or could have, asserted. Defendants and Taronis expressly deny that Lead
12 Plaintiff has asserted any valid claims as to any of them, and expressly deny any and all
13 allegations of fault, liability, wrongdoing or damages whatsoever. Similarly, this
14 Stipulation shall in no event be construed or deemed to be evidence of or an admission or
15 concession on the part of Lead Plaintiff of any infirmity in any of the claims asserted in
16 the Action, or an admission or concession that any of the Defendants' defenses to liability
17 had any merit.

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

26 **DEFINITIONS**

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

1 (a) “Authorized Claimant(s)” means a Class Member who or which
2 submits to the Claims Administrator a Claim Form that is approved by the Court for
3 payment from the Net Settlement Fund.

4 (b) “Claim,” “Claim Form” or “Proof of Claim Form” means the form,
5 substantially in the form attached hereto as Exhibit 2 to Exhibit A or in electronic format,
6 that a Claimant must complete and submit to the Claims Administrator in order to be
7 eligible to share in a distribution of the Net Settlement Fund.

8 (c) “Claimant” means a person or entity who or which submits a Claim
9 Form to the Claims Administrator seeking to be eligible to share in the Net Settlement
10 Fund.

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

14 (e) “Class” means all persons and entities who purchased or otherwise
15 acquired Taronis Technologies, Inc. common stock between January 28, 2019, and
16 February 12, 2019, both dates inclusive, and were damaged thereby. Excluded from the
17 Class are Defendants, current and former officers and directors of Taronis, members of
18 their Immediate Families and their legal representatives, heirs, successors or assigns, and
19 any entity in which Defendants have or had a controlling interest. Also excluded from the
20 Class are those Persons who are found by the Court to have timely and validly requested
21 exclusion from the Class.

22 (f) “Class Member(s)” means each person and entity who or which is a
23 member of the Class.

24 (g) “Class Period” means the period between January 28, 2019, and
25 February 12, 2019, both dates inclusive.

26 (h) “Defendants’ Counsel” means the law firms of King & Spalding
27 LLP and DLA Piper LLP.

28 (i) “Defendants’ Releasees” means Defendants and Taronis, together

1 with their past, present, or future affiliates, divisions, joint ventures, assigns, assignees,
2 direct or indirect parents or subsidiaries, controlling shareholders, successors,
3 predecessors, and entities in which a Defendant or Taronis has a controlling interest, and
4 each of their past, present, or future officers, directors, agents, employees, general
5 partners, limited partners, members, attorneys, controlling shareholders, advisors,
6 investment advisors, auditors, accountants, insurers (including reinsurers and co-
7 insurers), and Immediate Family members, and the legal representatives, heirs, trusts,
8 trustees, executors, estates, administrators, beneficiaries, predecessors, successors in
9 interest, or assigns of any of the foregoing

10 (j) “Effective Date” with respect to the Settlement means the first date
11 by which all of the events and conditions specified in ¶ 31 of this Stipulation have been
12 met and have occurred, or have been waived.

13 (k) “Escrow Account” means an account maintained at Signature Bank
14 wherein the Settlement Amount shall be deposited and held in escrow under the control
15 of the Escrow Agent.

16 (l) “Escrow Agent” means Signature Bank, which has been selected by
17 Lead Counsel to be responsible for overseeing, safeguarding, and distributing the Escrow
18 Account.

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

22 (n) “Final” means, with respect to any order of court, including, without
23 limitation, the Judgment, that such order represents a final and binding determination of
24 all issues within its scope and is not subject to further review on appeal or otherwise.
25 Without limitation, an order becomes “Final” when: (i) no appeal has been filed and the
26 prescribed time for commencing any appeal has expired; or (ii) an appeal has been filed
27 and either (a) the appeal has been dismissed and the prescribed time, if any, for
28 commencing any further appeal has expired, or (b) the order has been affirmed in all

1 material respects and the prescribed time, if any, for commencing any further appeal has
2 expired. For purposes of this paragraph, an “appeal” shall include any motion for
3 reconsideration or rehearing or petition for a writ of certiorari or other writ that may be
4 filed in connection with approval or disapproval of this Settlement. Any appeal or
5 proceeding seeking subsequent judicial review pertaining solely to an order issued with
6 respect to: (i) attorneys’ fees, costs, or expenses or awards to Lead Plaintiff, Lead
7 Counsel, or other class representatives, (ii) the Plan of Allocation (as submitted or
8 subsequently modified), or (iii) the procedures for determining Authorized Claimants’
9 recognized claims, shall not in any way delay, affect, or preclude the time set forth above
10 for the Judgment to become Final, or otherwise preclude the Judgment from becoming
11 Final.

12 (o) “Immediate Family” means children, stepchildren, parents,
13 stepparents, spouses, siblings, mothers-in-law, fathers-in-law, sons-in-law, daughters-in-
14 law, brothers-in-law, sisters-in-law and any persons (other than a tenant or employee)
15 sharing the household. As used in this paragraph, “spouse” shall mean a husband, a wife,
16 or a partner in a state-recognized domestic relationship or civil union.

17 (p) “Judgment” means the document, substantially in the form attached
18 hereto as Exhibit B, entered by the Court approving the Settlement.

19 (q) “Lead Counsel” means the law firm Wolf Haldenstein Adler Freeman
20 & Herz LLP.

21 (r) “Litigation Expenses” means the reasonable costs and expenses
22 incurred by Lead Counsel in connection with commencing, prosecuting and settling the
23 Action (which may include the reasonable costs and expenses of Lead Plaintiff directly
24 related to their representation of the Class), for which Lead Counsel intends to apply to
25 the Court for reimbursement from the Settlement Fund.

26 (s) “Net Settlement Fund” means the Settlement Fund less: (i) any Taxes
27 and Tax Expenses; (ii) any Notice and Administration Costs; (iii) any Litigation Expenses
28 awarded by the Court; (iv) any attorneys’ fees awarded by the Court; (v) any fees,

1 expenses, or costs awarded by the Court to Lead Plaintiff; and (vi) any other costs or fees
2 approved by the Court.

3 (t) “Notice” means the Notice of (I) Pendency of Class Action and
4 Proposed Settlement; (II) Settlement Fairness Hearing; and (III) Motion for an Award of
5 Attorneys’ Fees and Reimbursement of Litigation Expenses, substantially in the form
6 attached hereto as Exhibit 1 to Exhibit A, which is to be posted as set forth in the
7 Preliminary Approval Order, as well as the “Postcard Notice,” substantially in the form
8 attached hereto as Exhibit 4 to Exhibit A which is to be mailed to potential Class
9 Members.

10 (u) “Notice and Administration Costs” means the costs, fees, and
11 expenses that are reasonably and actually incurred by the Claims Administrator and/or
12 Lead Counsel in connection with: (i) providing notice to the Class; and (ii) administering
13 the Settlement, including, but not limited to, the Claims process, as well as the reasonably
14 and actually incurred costs, fees, and expenses incurred in connection with the Escrow
15 Account.

16 (v) “Parties” means Defendants and Lead Plaintiff, on behalf of himself
17 and the Class.

18 (w) “Plaintiffs’ Counsel” means Lead Counsel, and Johnson Fistel LLP.

19 (x) “Plaintiffs’ Releasees” means (i) Lead Plaintiff, his attorneys, and all
20 other Class Members; (ii) the current and former parents, affiliates, subsidiaries,
21 successors, predecessors, assigns, and assignees of each of the foregoing in (i); and (iii)
22 the current and former officers, directors, Immediate Family members, heirs, trusts,
23 trustees, executors, estates, administrators, beneficiaries, agents, affiliates, predecessors,
24 successors, and assigns of each of the persons or entities listed in (i) and (ii), in their
25 capacities as such.

26 (y) “Plan of Allocation” means Lead Plaintiff’s proposed plan set forth in
27 the Notice to be utilized for determining the allocation of the Net Settlement Fund, as
28 submitted or subsequently modified.

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

4 (aa) “Released Claims” means all Released Defendants’ Claims and all
5 Released Plaintiffs’ Claims.

6 (bb) “Released Defendants’ Claims” means any and all claims, rights,
7 duties, controversies, obligations, demands, actions, debts, sums of money, suits,
8 contracts, agreements, promises, damages, losses, judgments, liabilities, allegations,
9 arguments, and causes of action of every nature and description, whether known claims
10 or Unknown Claims, whether arising under federal, state, local, common, statutory,
11 administrative, or foreign law, or any other law, rule or regulation, at law or in equity,
12 whether class or individual in nature, whether fixed or contingent, whether accrued or
13 unaccrued, whether liquidated or unliquidated, whether matured or unmatured, that arise
14 out of or relate in any way to the institution, prosecution, or settlement of the claims
15 asserted in the Action. “Released Defendants’ Claims” does not include (i) any claims
16 relating to the enforcement of the Settlement; or (ii) any claims against any person or
17 entity who submits a request for exclusion from the Class that is accepted by the Court
18 (“Excluded Defendants’ Claims”).

19 (cc) “Released Plaintiffs’ Claims” means any and all claims, rights, duties,
20 controversies, obligations, demands, actions, debts, sums of money, suits, contracts,
21 agreements, promises, damages, losses, judgments, liabilities, allegations, arguments, and
22 causes of action of every nature and description (including, but not limited to, any claims
23 for damages, interest, attorneys’ fees, expert or consulting fees, and any other costs,
24 expenses, or liability whatsoever), whether known claims or Unknown Claims, whether
25 arising under federal, state, local, common, statutory, administrative, or foreign law, or
26 any other law, rule or regulation, at law or in equity, whether class or individual in nature,
27 whether fixed or contingent, whether accrued or unaccrued, whether liquidated or
28 unliquidated, whether matured or unmatured, whether pleaded or unpleaded, whether

1 suspected or unsuspected, that Lead Plaintiff or any other Class Member (i) asserted in
2 the Action or (ii) could have asserted in any court or forum that arise out of or are based
3 upon the allegations, transactions, facts, matters or occurrences, representations, or
4 omissions set forth in the complaints filed in the Action and/or that relate to the purchase,
5 acquisition, or ownership of shares of Taronis common stock during the Class Period.
6 “Released Plaintiffs’ Claims” does not include (i) any claims relating to the enforcement
7 of the Settlement; or (ii) any claims of any person or entity who or which submits a
8 request for exclusion from the Class that is accepted by the Court (“Excluded Plaintiffs’
9 Claims”).

10 (dd) “Releasee(s)” means each and any of the Defendants’ Releasees and
11 each and any of the Plaintiffs’ Releasees.

12 (ee) “Releases” means the releases set forth in ¶¶ 4-6 of this Stipulation.

13 (ff) “Settlement” means the settlement on the terms and conditions set
14 forth in this Stipulation.

15 (gg) “Settlement Amount” means one million seven hundred thousand
16 United States dollars (US \$1,700,000.00) to be paid by check(s) or wire transfer(s) to the
17 Escrow Agent pursuant to ¶ 8 of this Stipulation. Defendants’ Releasees shall not have any
18 obligation whatsoever to pay any amount over and above the Settlement Amount. Such
19 amount is paid as consideration for full and complete settlement of all the Released
20 Plaintiffs’ Claims.

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

24 (ii) “Settlement Fund” means the Settlement Amount plus any and all
25 interest earned thereon.

26 (jj) “Summary Notice” means the Summary Notice of (I) Pendency of
27 Class Action and Proposed Settlement; (II) Settlement Fairness Hearing; and (III) Motion
28 for an Award of Attorneys’ Fees and Reimbursement of Litigation Expenses, substantially

1 in the form attached hereto as Exhibit 3 to Exhibit A, to be published as set forth in the
2 Preliminary Approval Order.

3 (kk) “Taxes” means: (i) all federal, state, and/or local taxes of any kind
4 (including any interest or penalties thereon) arising with respect to any income earned by
5 the Settlement Fund, including any taxes or tax detriments that may be imposed upon the
6 Releasees or their counsel with respect to any income earned by the Settlement Fund for
7 any period after the deposit of the Settlement Amount in the Escrow Account during
8 which the Settlement Fund does not qualify as a “qualified settlement fund” for federal or
9 state income tax purposes; and (ii) all taxes imposed on payments by the Settlement
10 Fund, including withholding taxes.

11 (ll) “Tax Expenses” means the expenses and costs incurred by Lead
12 Counsel or Escrow Agent in connection with determining the amount of, and paying, any
13 taxes owed by the Settlement Fund (including, without limitation, expenses of tax
14 attorneys and/or accountants and mailing and distribution costs and expenses relating to
15 filing (or failing to file) tax returns for the Settlement Fund).

16 (mm) “Unknown Claims” means any Released Plaintiffs’ Claims which
17 Lead Plaintiff or any other Class Member does not know or suspect to exist in his, her, or
18 its favor at the time of the release of such claims, and any Released Defendants’ Claims
19 which any Defendant does not know or suspect to exist in his or its favor at the time of
20 the release of such claims. This includes any such claims which, if known by such party,
21 might have affected such party’s settlement with and release of a released party, or might
22 have affected such party’s decision(s) with respect to the Settlement, including, but not
23 limited to, whether or not to object to this Settlement or seek exclusion from the Class.
24 With respect to any and all Released Claims, the Parties stipulate and agree that, upon the
25 Effective Date of the Settlement, Lead Plaintiff and Defendants shall expressly waive,
26 and each of the Class Members shall be deemed to have, and by operation of the
27 Judgment shall have, expressly waived the provisions, rights, and benefits conferred by
28 California Civil Code § 1542, as well as by any law of any state or territory of the United

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

3 A general release does not extend to claims that the creditor or releasing
4 party does not know or suspect to exist in his or her favor at the time of
5 executing the release and that, if known by him or her, would have
6 materially affected his or her settlement with the debtor or released party.

7 The Parties acknowledge that they may hereafter discover facts in addition to or different
8 from those which any Party or their counsel now knows or believes to be true with
9 respect to the subject matter of the Released Claims, but, upon the Effective Date, Lead
10 Plaintiff and Defendants shall expressly waive, compromise, settle, discharge, extinguish,
11 and release, fully, finally, and forever, and each of the other Class Members shall be
12 deemed to have, and by operation of the Judgment shall have, waived, compromised,
13 settled, discharged, extinguished, and released, fully, finally, and forever, any and all
14 Released Claims, whether known or Unknown, suspected or unsuspected, contingent or
15 non-contingent, whether or not concealed or hidden, without regard to the subsequent
16 discovery or existence of such different or additional facts, legal theories, or authorities.
17 Lead Plaintiff and Defendants acknowledge, and each of the other Class Members shall
18 be deemed by operation of the Judgment to have acknowledged, that the foregoing
19 waiver was separately bargained for and is a key element of the Settlement of which this
20 release is a part.

21 **PRELIMINARY APPROVAL OF SETTLEMENT**

22 2. Promptly upon execution of this Stipulation, Lead Plaintiff will move for
23 preliminary approval of the Settlement and the scheduling of a hearing for consideration
24 of, *inter alia*, final approval of the Settlement and Lead Counsel's application for an
25 award of reasonable attorneys' fees and reimbursement of Litigation Expenses. Lead
26 Plaintiff's motion for preliminary approval shall be unopposed by Defendants, and the
27 Settlement Fairness Hearing shall be scheduled for no earlier than 100 days following the
28 execution of this Settlement. Concurrently with the motion for preliminary approval,

1 Lead Plaintiff shall apply to the Court for, and Defendants shall agree to, entry of the
2 Preliminary Approval Order, substantially in the form attached hereto as Exhibit A.

3 **RELEASE OF CLAIMS**

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

7 4. Pursuant to the Judgment, without further action by anyone, upon the
8 Effective Date of the Settlement, Lead Plaintiff and each of the other Class Members, on
9 behalf of themselves, and their respective heirs, executors, administrators, predecessors,
10 successors and assigns in their capacities as such, and on behalf of any other person or
11 entity legally entitled to bring Released Plaintiffs' Claims on behalf of any Class Member
12 (collectively, the "Releasing Party Plaintiffs"), shall be deemed to have, and by operation
13 of law and of the Judgment shall have, fully, finally, and forever compromised, settled,
14 released, resolved, relinquished, remised, waived, and discharged each and every
15 Released Plaintiffs' Claim against the Defendants' Releasees, and shall forever be barred
16 and enjoined from commencing, instituting, maintaining, prosecuting, or continuing to
17 prosecute any or all of the Released Plaintiffs' Claims against any of the Defendants'
18 Releasees, in this Action or in any other proceeding, whether or not such Releasing Party
19 Plaintiff executes and delivers the Proof of Claim and Release or shares in the Net
20 Settlement Fund. This Release shall not apply to any Excluded Plaintiffs' Claims.

21 5. Pursuant to the Judgment, if applicable, without further action by anyone,
22 upon the Effective Date of the Settlement, Defendants, on behalf of themselves, and their
23 respective heirs, executors, administrators, predecessors, successors and assigns in their
24 capacities as such, and on behalf of any other person or entity legally entitled to bring
25 Released Defendants' Claims on behalf of the Defendants, shall be deemed to have, and
26 by operation of law and of the Judgment shall have, fully, finally, and forever
27 compromised, settled, released, resolved, relinquished, waived, and discharged each and
28 every Released Defendants' Claim against the Plaintiffs' Releasees, and shall forever be

1 administration of the Settlement and any costs associated therewith (except for the
2 provision of notice pursuant to CAFA as detailed in ¶ 39 hereof) and any attorneys' fees
3 or costs awarded by the Court, is the Settlement Amount, and Defendants' Releasees shall
4 not be liable for any other amount or amounts.

5 10. Other than the obligation to pay or cause to be paid the Settlement Amount
6 into the Escrow Account within the time period set forth in ¶ 8, the Defendants' Releasees
7 shall have no responsibility for, interest in, or liability whatsoever with respect to: (i) any
8 act, omission, or determination by Lead Counsel or the Claims Administrator, or any of
9 their respective designees, in connection with the administration of the Settlement or
10 otherwise; (ii) the management, investment, or distribution of the Settlement Fund; (iii)
11 the Plan of Allocation; (iv) the determination, administration, calculation, or payment of
12 any Claims asserted against the Settlement Fund; (v) any loss suffered by, or fluctuation
13 in value of, the Settlement Fund; (vi) the payment or withholding of any Taxes, expenses,
14 and/or costs incurred in connection with the taxation of the Settlement Fund, distributions
15 or other payments from the Escrow Account, or the filing of any federal, state, or local
16 returns.

17 **USE OF SETTLEMENT FUND**

18 11. The Settlement Fund shall be used to pay: (a) any Taxes and Tax Expenses;
19 (b) any Notice and Administration Costs; (c) any Litigation Expenses awarded by the
20 Court; (d) any attorneys' fees awarded by the Court; (e) any fees, expenses, or costs
21 awarded to Lead Plaintiff by the Court; and (f) any other costs or fees approved by the
22 Court. Under no circumstances will Defendants' Releasees be required to pay more than
23 the Settlement Amount. The balance remaining in the Settlement Fund, that is, the Net
24 Settlement Fund, shall be distributed to Authorized Claimants as provided in ¶¶ 20-29
25 below.

26 12. Except as provided herein or pursuant to orders of the Court, the Net
27 Settlement Fund shall remain in the Escrow Account prior to the Effective Date. All
28 funds held by the Escrow Agent shall be deemed to be in the custody of the Court and

1 shall remain subject to the jurisdiction of the Court until such time as the funds shall be
2 distributed, or returned, pursuant to the terms of this Stipulation and/or further order of
3 the Court. The Escrow Agent shall invest any funds in the Escrow Account exclusively in
4 instruments or accounts backed by the full faith and credit of the United States
5 Government or fully insured by the United States Government or an agency thereof,
6 including a United States Treasury Fund or a bank account that is either (a) fully insured
7 by the Federal Deposit Insurance Corporation (“FDIC”) or (b) secured by instruments
8 backed by the full faith and credit of the United States Government. The Escrow Agent
9 shall reinvest the proceeds of these instruments or accounts as they mature in similar
10 instruments or accounts at their then-current market rates. All risks related to the
11 investment of the Settlement Fund in accordance with the investment guidelines set forth
12 in this paragraph shall be borne by the Settlement Fund, and the Defendants’ Releasees
13 shall have no responsibility for, interest in, or liability whatsoever with respect to
14 investment decisions or the actions of the Escrow Agent, or any transactions executed by
15 the Escrow Agent. Provided the Escrow Agent invests the Settlement Fund as set forth
16 herein, the Escrow Agent shall have no liability whatsoever with respect to any
17 investment decision made in connection with Settlement Fund.

18 13. The Escrow Agent shall not disburse the Settlement Fund except as
19 provided in this Stipulation. The Parties agree that the Settlement Fund is intended to be a
20 Qualified Settlement Fund within the meaning of Treasury Regulation § 1.468B-1 and
21 that the Claims Administrator, as administrator of the Settlement Fund within the
22 meaning of Treasury Regulation § 1.468B-2(k)(3), shall be responsible for filing or
23 causing to be filed all informational and other tax returns as may be necessary or
24 appropriate (including, without limitation, the returns described in Treasury Regulation §
25 1.468B-2(k)) for the Settlement Fund. Taxes or Tax Expenses owed with respect to the
26 Settlement Fund shall be timely paid by the Escrow Agent out of the Settlement Fund.
27 The Claims Administrator, as administrator of the Settlement Fund within the meaning of
28 Treasury Regulation § 1.468B-2(k)(3), shall timely make such elections as are necessary

1 or advisable to carry out this paragraph, including, as necessary, making a “relation back
2 election,” as described in Treasury Regulation § 1.468B-1(j), to cause the Qualified
3 Settlement Fund to come into existence at the earliest allowable date, and shall take or
4 cause to be taken all actions as may be necessary or appropriate in connection therewith.

5 14. All Taxes and Tax Expenses shall be paid out of the Settlement Fund, and in
6 all events the Defendants’ Releasees, Lead Plaintiff, and Lead Counsel shall have no
7 liability or responsibility whatsoever for the payment of Taxes or Tax Expenses. Taxes
8 and Tax Expenses shall be timely paid by the Escrow Agent pursuant to the disbursement
9 instructions to be set forth in the Escrow Agreement, and without further order of the
10 Court, and the Escrow Agent shall be authorized (notwithstanding anything herein to the
11 contrary) to withhold from distribution to Authorized Claimants any funds necessary to
12 pay such amounts, including the establishment of adequate reserves for any Taxes and
13 Tax Expenses (as well as any amounts that may be required to be withheld under Treas.
14 Reg. §1.468B-2(1)(2)). The Parties hereto agree to cooperate with the Escrow Agent, each
15 other, and their tax attorneys and accountants to the extent reasonably necessary to carry
16 out the provisions of ¶¶ 13 and 14 of this Stipulation.

17 15. The Settlement is not a claims-made settlement. Upon the occurrence of the
18 Effective Date, none of the Defendants’ Releasees or any other person or entity who or
19 which paid any portion of the Settlement Amount shall have any right to the return of the
20 Settlement Fund or any portion thereof for any reason whatsoever, including, without
21 limitation, the number of Claim Forms submitted, the collective amount of Recognized
22 Claims of Authorized Claimants, the percentage of recovery of losses, or the amounts to
23 be paid to Authorized Claimants from the Net Settlement Fund.

24 16. Lead Counsel may approve payment from the Settlement Fund, without
25 further approval from Defendants or further order of the Court, all Notice and
26 Administration Costs actually incurred and paid or payable; *provided, however*, that Lead
27 Counsel may only approve up to \$175,000 in Notice and Administration Costs prior to
28 the Settlement Fairness Hearing without further Court approval. Such costs and expenses

1 shall include, without limitation, the actual costs of printing and mailing the Notice and
2 Claim Form, publishing the Summary Notice, reimbursements to nominee owners for
3 forwarding the Notice and Claim Form to their beneficial owners, the administrative
4 expenses incurred and fees charged by the Claims Administrator in connection with
5 providing notice, administering the Settlement (including processing submitted Claims),
6 and the fees, if any, of the Escrow Agent. In the event that the Settlement is terminated
7 pursuant to the terms of this Stipulation, all Notice and Administration Costs paid or
8 incurred, including any related fees, shall not be returned or repaid to Defendants'
9 Releasees or any other person or entity who or which paid any portion of the Settlement
10 Amount.

11 **ATTORNEYS' FEES AND LITIGATION EXPENSES**

12 17. Lead Counsel will apply to the Court for an award of reasonable attorneys'
13 fees to be paid from (and out of) the Settlement Fund. Lead Counsel also will apply to
14 the Court for reimbursement of Litigation Expenses. Lead Counsel's application for an
15 award of attorneys' fees and/or Litigation Expenses is not the subject of any agreement
16 between Defendants and Lead Plaintiff other than what is set forth in this Stipulation.

17 18. Lead Counsel will be entitled to payment of any and all attorneys' fees and
18 Litigation Expenses that are awarded by the Court, including any interest thereon,
19 immediately upon the award by the Court, notwithstanding the existence of any timely
20 filed objections thereto, or potential for appeal therefrom, or collateral attack on the
21 Settlement or any part thereof, subject to Lead Counsel's obligation to make appropriate
22 refunds or repayments to the Settlement Fund, plus accrued interest at the same net rate
23 as is earned by the Settlement Fund, if the Settlement is terminated pursuant to the terms
24 of this Stipulation or if, as a result of any appeal or further proceedings on remand, or
25 successful collateral attack, the award of attorneys' fees and/or Litigation Expenses is
26 reduced or reversed and such order reducing or reversing the award has become Final.
27 Lead Counsel, including its partners, and such other counsel for Lead Plaintiff, including
28 any law firms, partners, and/or shareholders who received any portion of fee and expense

1 award, shall make the appropriate refund or repayment in full no later than thirty (30)
2 days after: (a) receiving from Defendants' Counsel notice of the termination of the
3 Settlement; or (b) any order reducing or reversing the award of attorneys' fees and/or
4 Litigation Expenses has become Final. The procedure for, the allowance or disallowance
5 of, and the amount of any attorneys' fees and/or Litigation Expenses are not necessary
6 terms of this Stipulation, are not conditions of the Settlement embodied herein, and shall
7 be considered separately from the Court's consideration of the fairness, reasonableness,
8 and adequacy of the Settlement. The approval of the Settlement, and its becoming Final,
9 shall not be contingent on the award of attorneys' fees and expenses, any award to Lead
10 Counsel, nor any appeals from such awards. Neither Lead Plaintiff nor Lead Counsel
11 may cancel or terminate the Settlement based on this Court's or any appellate court's
12 ruling with respect to attorneys' fees and/or Litigation Expenses, and any appeal from any
13 order awarding attorneys' fees and/or Litigation Expenses or any reversal or modification
14 of any such order shall not operate to terminate or cancel this Stipulation, or affect or
15 delay the finality of the Judgment and the Settlement of the Action set forth herein.

16 19. Defendants' Releasees shall have no responsibility for or liability
17 whatsoever with respect to the allocation or award of attorneys' fees or Litigation
18 Expenses. The attorneys' fees and Litigation Expenses that are awarded to Lead Counsel
19 shall be payable solely from the Settlement Fund. With the sole exception of Defendants'
20 obligation to cause the Settlement Amount to be paid into the Escrow Account pursuant
21 to ¶ 8 above, the Defendants' Releasees shall have no responsibility for, and no liability
22 whatsoever with respect to, any payment (including taxes) of attorneys' fees and/or
23 Litigation Expenses to Lead Counsel pursuant to this Stipulation, or for any other
24 attorneys' fees and/or Litigation Expenses incurred by or on behalf of any other Class
25 Member in connection with this Action or the Settlement.

26 **NOTICE AND SETTLEMENT ADMINISTRATION**

27 20. As part of the Preliminary Approval Order, Lead Plaintiff shall seek
28 appointment of a Claims Administrator. The Claims Administrator shall administer the

1 Settlement, including, but not limited to, the process of receiving, reviewing and
2 approving or denying Claims, under Lead Counsel's supervision and subject to the
3 jurisdiction of the Court. None of the Defendants' Releasees shall have any involvement
4 in or any responsibility, authority, or liability whatsoever for the selection of the Claims
5 Administrator, the Plan of Allocation, the Claims process, or disbursement of the Net
6 Settlement Fund, and shall have no liability whatsoever to any person or entity, including,
7 but not limited to, Lead Plaintiff, any other Class Members or Lead Counsel, in
8 connection with the foregoing or any other aspect of the administration, investment, or
9 distribution of the Settlement, Settlement Amount and/or Settlement Fund. Defendants'
10 Counsel shall cooperate in the administration of the Settlement to the extent reasonably
11 necessary to effectuate its terms.

12 21. In accordance with the terms of the Preliminary Approval Order to be
13 entered by the Court, the Claims Administrator shall mail or email the Postcard Notice to
14 those members of the Class as may be identified through reasonable effort. The Claims
15 Administrator shall publish the Notice and Claim Form and Summary Notice in
16 accordance with the terms of the Preliminary Approval Order to be entered by the Court.
17 The Claims Administrator shall, among other duties and obligations, receive Proofs of
18 Claim and determine whether they present valid claims in whole or part, work with Class
19 Members as needed to help them supplement or clarify their Proofs of Claim, and
20 determine each Authorized Claimant's *pro rata* share of the Net Settlement Fund based
21 upon each Authorized Claimant's Recognized Claim compared to the total Recognized
22 Claims of all Authorized Claimants (as set forth in the Plan of Allocation, or in such other
23 plan of allocation as the Court approves)..

24 22. The Plan of Allocation proposed in the Notice is not a necessary term of the
25 Settlement or of this Stipulation, and it is not a condition of the Settlement or of this
26 Stipulation that any particular plan of allocation be approved by the Court. Lead Plaintiff
27 and Lead Counsel may not cancel or terminate the Settlement (or this Stipulation) based
28 on this Court's or any appellate court's ruling with respect to the Plan of Allocation or

1 any other plan of allocation approved in this Action. Any order or proceeding relating to
2 the Plan of Allocation shall not operate to terminate or cancel this Stipulation or affect the
3 finality of the Court's Judgment approving this Stipulation and the Settlement set forth
4 herein, or any other orders entered pursuant to the Stipulation. Defendants' Releasees
5 shall not object in any way to Lead Plaintiff's Plan of Allocation or any other plan of
6 allocation in this Action. None of the Defendants' Releasees shall have any involvement
7 with or liability, obligation, or responsibility whatsoever for the application of the Court-
8 approved plan of allocation.

9 23. Any Class Member who does not submit a valid Claim Form will not be
10 entitled to receive any distribution from the Net Settlement Fund, but will otherwise be
11 bound by all of the terms of this Stipulation and Settlement, including the terms of the
12 Judgment, to be entered in the Action and the Releases provided for herein and therein,
13 and will be permanently barred and enjoined from bringing any action, claim, or other
14 proceeding of any kind against any of the Defendants' Releasees with respect to the
15 Released Plaintiffs' Claims in the event that the Effective Date occurs with respect to the
16 Settlement.

17 24. The Claims Administrator shall administer and calculate the claims
18 submitted by Class Members and shall oversee distribution of the Settlement Fund to
19 Authorized Claimants. None of the Defendants' Releasees shall have any responsibility
20 for, interest in, or liability for any decision. Lead Counsel shall have the right, but not the
21 obligation, to waive what it deems to be formal or technical defects in any Claims
22 submitted in the interests of achieving substantial justice.

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

26 (a) Each Claimant shall be required to submit a Claim in paper form,
27 substantially in the form attached hereto as Exhibit 2 to Exhibit A, or in electronic form,
28 in accordance with the instructions for the submission of such Claims, and supported by

1 such documents as are designated therein, including proof of the Claimant's claimed loss,
2 or such other documents or proof as the Claims Administrator or Lead Counsel, in their
3 discretion, may deem acceptable;

4 (b) All Claims must be submitted by the date set by the Court in the
5 Preliminary Approval Order and specified in the Notice. Any Class Member who fails to
6 submit a Claim by such date shall be forever barred from receiving any distribution from
7 the Net Settlement Fund or payment pursuant to this Stipulation (unless by Order of the
8 Court such Class Member's Claim Form is accepted), but shall in all other respects be
9 bound by all of the terms of this Stipulation and the Settlement, including the terms of the
10 Judgment, and the Releases provided for herein and therein, and will be permanently
11 barred and enjoined from bringing any action, claim, or other proceeding of any kind
12 against any of the Defendants or the Defendants' Releasees with respect to any Released
13 Plaintiffs' Claim. A Claim Form shall be deemed to be submitted when postmarked, if
14 received with a postmark indicated on the envelope and if mailed by first-class mail and
15 addressed in accordance with the instructions thereon. In all other cases, the Claim Form
16 shall be deemed to have been submitted on the date when actually received by the Claims
17 Administrator;

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

22 (d) Claims that do not meet the submission requirements may be
23 rejected. Prior to rejecting a Claim in whole or in part, the Claims Administrator shall
24 communicate with the Claimant in writing, to give the Claimant the chance to remedy
25 any curable deficiencies in the Claim Form submitted. The Claims Administrator shall
26 notify, in a timely fashion and in writing, all Claimants whose Claim the Claims
27 Administrator proposes to reject in whole or in part, setting forth the reasons therefor, and
28 shall indicate in such notice that the Claimant whose Claim is to be rejected has the right

1 to review by the Court if the Claimant so desires and complies with the requirements of
2 subparagraph (e) below; and

3 (e) If any Claimant whose Claim has been rejected in whole or in part
4 desires to contest such rejection, the Claimant must, within twenty (20) days after the
5 date of mailing of the notice required in subparagraph (d) above, serve upon the Claims
6 Administrator a notice and statement of reasons indicating the Claimant's grounds for
7 contesting the rejection along with any supporting documentation, and requesting a
8 review thereof by the Court. If a dispute concerning a Claim cannot be otherwise
9 resolved, Lead Counsel shall thereafter present the request for review to the Court.

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

16 27. No person or entity shall have any claim against Lead Plaintiff, Lead
17 Counsel, the Claims Administrator, or any other agent designated by Lead Counsel, or the
18 Defendants' Releasees and/or their respective counsel, arising from distributions made
19 substantially in accordance with the Stipulation, the plan of allocation approved by the
20 Court, or any order of the Court. Lead Plaintiff and Defendants, and their respective
21 counsel, Lead Plaintiff's damages consultant/expert, and all other Releasees shall have no
22 liability whatsoever for the investment or distribution of the Settlement Fund or the Net
23 Settlement Fund, the plan of allocation, or the determination, administration, calculation,
24 or payment of any Claim or nonperformance of the Claims Administrator, the payment or
25 withholding of Taxes (including interest and penalties) of Tax Expenses owed by the
26 Settlement Fund, or any losses incurred in connection therewith.

27 28. All proceedings with respect to the administration, processing, and
28 determination of Claims and the determination of all controversies relating thereto,

1 including disputed questions of law and fact with respect to the validity of Claims, shall
2 be subject to the jurisdiction of the Court, but shall not in any event delay or affect the
3 finality of the Judgment. All Class Members, other Claimants, and the Parties to this
4 Settlement expressly waive trial by jury (to the extent any such right may exist) and any
5 right of appeal or review with respect to such determinations.

6 29. It shall be Lead Counsel's responsibility to disseminate the Notice, Proof of
7 Claim and Release, and Summary Notice to the Class in accordance with this Stipulation
8 and as ordered by the Court. Neither Defendants' Releasees nor Defendants' Counsel
9 shall have any responsibility or liability whatsoever with respect to the Notice and
10 Administration Costs, nor shall they have any responsibility or liability whatsoever for
11 any claims with respect thereto, including any claims that may arise from any failure of
12 the notice process.

13 **TERMS OF THE JUDGMENT**

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

17 **CONDITIONS OF SETTLEMENT AND EFFECT OF**
18 **DISAPPROVAL, CANCELLATION OR TERMINATION**

19
20 31. The Effective Date of the Settlement shall be deemed to occur on the
21 occurrence or waiver of all of the following events:

22 (a) the Court has entered the Preliminary Approval Order, substantially
23 in the form set forth in Exhibit A attached hereto, as required by ¶ 2 above;

24 (b) the Settlement Amount has been deposited into the Escrow Account
25 in accordance with the provisions of ¶ 8 above;

26 (c) Defendants have not exercised their option to terminate the
27 Settlement pursuant to the provisions of this Stipulation or the Supplemental Agreement;

28 (d) Plaintiff has not exercised its option to terminate the Settlement

1 pursuant to the provisions of this Stipulation; and

2 (e) the Court has approved the Settlement as described herein, following
3 notice to the Class and a hearing, as prescribed by Rule 23 of the Federal Rules of Civil
4 Procedure, and entered the Judgment and the Judgment has become Final.

5 32. If the Settlement Amount is not paid into the Escrow Account in accordance
6 with ¶ 8 of this Stipulation, then Lead Plaintiff in its sole discretion, and not Defendants,
7 shall have the right to terminate the Settlement and Stipulation by providing written
8 notice to Defendants at any time prior to the Court's entry of Final Judgment.
9 Notwithstanding the foregoing, Defendants shall have a period of ten (10) business days
10 after Lead Plaintiff provides written notice of their intent to terminate the Settlement and
11 Stipulation in which to cure the alleged non-compliance with ¶ 8 of this Stipulation. If
12 Defendants cure such alleged non-compliance within that ten (10) business day period,
13 then Lead Plaintiff shall not have the right to terminate the Settlement and Stipulation.

14 33. Simultaneously herewith, Lead Plaintiff and Defendants are executing a
15 "Supplemental Agreement" setting forth certain conditions under which this Settlement
16 may be withdrawn or terminated at Defendants' sole discretion if Class Members who
17 meet certain criteria exclude themselves from the Class. The Supplemental Agreement
18 shall not be filed with the Court, except that the Supplemental Agreement and/or its
19 contents may be brought to the attention of the Court, in camera, if so requested by the
20 Court or as otherwise ordered by the Court. The Parties will keep the terms of the
21 Supplemental Agreement confidential, except if compelled by judicial process to disclose
22 them.

23 34. Upon the occurrence of all of the events referenced in ¶ 31 above, any and
24 all remaining interest or right of any of the Defendants' Releasees in or to the Settlement
25 Fund, if any, shall be absolutely and forever extinguished, and the Releases herein shall
26 be effective.

27 35. If (i) Defendants exercise their right to terminate the Settlement as provided
28 in this Stipulation or the Supplemental Agreement; (ii) Lead Plaintiff exercises its right to

1 terminate the Settlement as provided in this Stipulation; (iii) the Court disapproves the
2 Settlement; or (iv) the Effective Date as to the Settlement otherwise fails to occur, then:

3 (a) the Settlement and the relevant portions of this Stipulation shall be
4 canceled and terminated;

5 (b) Lead Plaintiff and Defendants shall revert to their respective positions
6 in the Action as of the date immediately prior to the execution of this Stipulation;

7 (c) the terms and provisions of this Stipulation, with the exception of this
8 ¶ 35 and ¶¶ 16, 18, and 37, shall have no further force and effect with respect to the
9 Parties and shall not be used in the Action or in any other proceeding for any purpose,
10 and any Judgment or order entered by the Court in accordance with the terms of this
11 Stipulation shall be treated as vacated, nunc pro tunc; and

12 (d) Within thirty (30) days after joint written notification of termination
13 is sent by Defendants' Counsel and Lead Counsel to the Escrow Agent, the Settlement
14 Fund (including accrued interest thereon and any funds received by Lead Counsel
15 consistent with ¶ 18 above), less any Notice and Administration Costs actually incurred,
16 paid or payable and less any Taxes and Tax Expenses paid, due or owing shall be returned
17 by the Escrow Agent to Defendants. In the event that the funds received by Lead
18 Counsel consistent with ¶ 18 above have not been refunded to the Settlement Fund within
19 the thirty (30) days specified in this paragraph, those funds shall be refunded by the
20 Escrow Agent to Defendants immediately upon their deposit into the Escrow Account
21 consistent with ¶ 18 above. In addition, the Escrow Agent or its designee shall apply for
22 any tax refund owed on the Settlement Amount and pay the proceeds, after deduction of
23 any fees or expenses incurred in connection with such application(s) for the refund to the
24 Defendants in the same manner as the Settlement Fund described in this Paragraph. Such
25 payments shall be pursuant to written instructions from Defendants' Counsel.

26 36. It is further stipulated and agreed that Lead Plaintiff, on the one hand, and
27 Defendants, on the other hand, shall each have the right to terminate the Settlement and
28 this Stipulation, by providing written notice of their election to do so ("Termination

1 Notice”) to the other Parties to this Stipulation within thirty (30) days of: (a) the Court’s
2 final refusal to enter the Preliminary Approval Order in any material respect; (b) the
3 Court’s final refusal to approve the Settlement or any material part thereof; (c) the Court’s
4 final refusal to enter the Judgment in any material respect as to the Settlement; or (d) the
5 date upon which the Judgment is modified or reversed in any material respect by the
6 United States Court of Appeals for the Ninth Circuit or the United States Supreme Court;
7 and in the event of any such termination the provisions of ¶ 35 above shall apply.
8 However, any decision or proceeding, whether in this Court or any appellate court, with
9 respect to an application for attorneys’ fees or reimbursement of Litigation Expenses or
10 with respect to any plan of allocation shall not be considered material to the Settlement,
11 shall not affect the finality of any Judgment and shall not be grounds for termination of
12 the Settlement.

13 **NO ADMISSION OF WRONGDOING**

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

20 (a) shall be offered against any of the Defendants’ Releasees as evidence
21 of, or construed as, or deemed to be evidence of any presumption, concession, or
22 admission by any of the Defendants’ Releasees with respect to the truth of any fact
23 alleged by Lead Plaintiff or the validity of any claim that was or could have been asserted
24 or the deficiency of any defense that has been or could have been asserted in this Action
25 or in any other litigation, or of any liability, negligence, fault, or other wrongdoing of any
26 kind of any of the Defendants’ Releasees or in any way referred to for any other reason as
27 against any of the Defendants’ Releasees, in any arbitration proceeding or other civil,
28 criminal, or administrative action or proceeding, other than such proceedings as may be

1 necessary to effectuate the provisions of this Stipulation;

2 (b) shall be offered against any of the Defendants' Releasees as evidence
3 of, or construed as, or deemed to be evidence of any presumption, concession, or
4 admission of any fault, misrepresentation, or omission with respect to any statement or
5 written document approved or made by any of the Defendants' Releasees;

6 (c) shall be offered against Lead Plaintiff or any of the Plaintiffs'
7 Releasees, as evidence of, or construed as, or deemed to be evidence of any presumption,
8 concession, or admission by Lead Plaintiff or any of the Plaintiffs' Releasees that any of
9 their claims are without merit, that any of the Defendants' Releasees had meritorious
10 defenses, or that damages recoverable under the complaint would not have exceeded the
11 Settlement Amount or with respect to any liability, negligence, fault, or wrongdoing of
12 any kind, or in any way referred to for any other reason as against Lead Plaintiff or any of
13 the Plaintiffs' Releasees, in any civil, criminal, or administrative action or proceeding,
14 other than such proceedings as may be necessary to effectuate the provisions of this
15 Stipulation; or

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

22 **MISCELLANEOUS PROVISIONS**

23 38. All of the exhibits attached hereto are hereby incorporated by reference as
24 though fully set forth herein. Notwithstanding the foregoing, in the event that there exists
25 a conflict or inconsistency between the terms of this Stipulation and the terms of any
26 exhibit attached hereto, the terms of the Stipulation shall prevail.

27 39. Pursuant to the Class Action Fairness Act ("CAFA"), no later than ten (10)
28 calendar days after the Stipulation is filed with the Court, Defendants, at their own cost,

1 shall serve proper notice of the proposed Settlement upon those who are entitled to notice
2 pursuant to CAFA.

3 40. The Parties intend this Stipulation and the Settlement to be a final and
4 complete resolution of all disputes asserted or which could be asserted by Lead Plaintiff
5 and any Class Members against the Defendants' Releasees with respect to the Released
6 Plaintiffs' Claims. Accordingly, Lead Plaintiff and their counsel and Defendants and their
7 counsel agree not to assert in any forum that this Action was brought by Lead Plaintiff or
8 defended by Defendants in bad faith or without a reasonable basis. No party shall assert
9 any claims of any violation of Rule 11 of the Federal Rules of Civil Procedure, or of 28
10 U.S.C. Section 1927, or otherwise make any accusation of wrongful or actionable
11 conduct by any other Party, relating to the institution, prosecution, defense, or settlement
12 of this Action. The Parties agree that the amounts paid and the other terms of the
13 Settlement were negotiated at arm's-length and in good faith by the Parties, and reflect
14 the Settlement that was reached voluntarily after extensive negotiations and consultation
15 with experienced legal counsel, who were fully competent to assess the strengths and
16 weaknesses of their respective clients' claims or defenses.

17 41. In all events, Lead Plaintiff and their counsel and Defendants and their
18 counsel shall not make any accusations of wrongful or actionable conduct by either Party
19 concerning the prosecution, defense, and resolution of the Action, and shall not otherwise
20 suggest that the Settlement constitutes an admission of any claim or defense alleged.

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

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

26 44. Pending approval of the Court of this Stipulation and its exhibits, all
27 proceedings in this Action shall be stayed and all members of the Class shall be barred
28 and enjoined from prosecuting any of the Released Plaintiffs' Claims against any of the

1 Defendants' Releasees.

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

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

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

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

21 49. This Stipulation shall be binding upon and inure to the benefit of the
22 successors and assigns of the Parties, including any and all Releasees and any
23 corporation, partnership, limited liability company, or other entity into or with which any
24 party hereto may merge, consolidate, or reorganize.

25 50. The construction, interpretation, operation, effect, and validity of this
26 Stipulation and all documents necessary to effectuate it shall be governed by the internal,
27 substantive laws of the State of Arizona without regard to its choice-of-laws principles,
28 except to the extent that federal law requires that federal law govern.

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

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

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

12 54. Lead Counsel and Defendants' Counsel agree to cooperate fully with one
13 another in seeking Court approval of the Preliminary Approval Order and the Settlement,
14 as embodied in this Stipulation, and to use best efforts to promptly agree upon and
15 execute all such other documentation as may be reasonably required to obtain final
16 approval by the Court of the Settlement.

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

21
22 If to Lead Plaintiff or
23 Lead Counsel:

 Wolf Haldenstein Adler Freeman & Herz LLP
 Attn: Matthew M. Guiney
 270 Madison Avenue
 New York, New York 10016
 Telephone: (212) 545-4600
 Email: guiney@whafh.com

24
25
26 If to Defendants or
27 Defendants' Counsel:

 King & Spalding LLP
 Attn: Lisa R. Bugni
 101 Second Street, Suite 1000
 San Francisco, CA 94105

Telephone: (415) 318-1234
Email: lbugni@KSLAW.com

1
2
3 56. The Court shall retain jurisdiction with respect to implementation and
4 enforcement of the terms of this Stipulation, and all Parties submit to the jurisdiction of
5 the Court for purposes of implementing and enforcing the Settlement embodied in this
6 Stipulation and matters related to the Settlement.

7 57. Any disputes relating to the finalization of the Settlement documentation or
8 the Settlement itself will be resolved first by Michelle Yoshida by way of telephonic
9 mediation and, if unsuccessful, then by way of final, binding, non-appealable arbitration
10 under a procedure determined by Michelle Yoshida. If for any reason Michelle Yoshida is
11 unavailable or has a conflict, the parties agree to seek expedited resolution of any such
12 issue before Judge G. Murray Snow, or such other judge as has been assigned to this
13 Action by the Court.

14 58. Except as otherwise provided herein, each Party shall bear its own fees and
15 costs.

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

18 60. No opinion or advice concerning the tax consequences of the proposed
19 Settlement to individual Class Members is being given or will be given by the Parties or
20 their counsel; nor is any representation or warranty in this regard made by virtue of this
21 Stipulation. Each Class Member's tax obligations, and the determination thereof, are the
22 sole responsibility of the Class Member, and it is understood that the tax consequences
23 may vary depending on the particular circumstances of each individual Class Member.

24 61. Unless otherwise provided, the Parties may agree to reasonable extensions
25 of time to carry out any of the provisions of this Stipulation without further order of the
26 Court.

1 IN WITNESS WHEREOF, the Parties hereto have caused this Stipulation to be
2 executed, by their duty authorized attorneys, as of September 24, 2020.

3
4 /s/ Matthew M. Guiney
5 Matthew M. Guiney (*pro hac vice*)
6 Malcolm T. Brown (*pro hac vice*)
7 Kevin G. Cooper (*pro hac vice*)
8 WOLF HALDENSTEIN ADLER
9 FREEMAN & HERZ LLP
10 270 Madison Avenue
11 New York, NY 10016
12 Tel: (212) 545-4600
13 Fax: (212) 686-0114
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