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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

MICHAEL CHUPA, Individually and on behalf of all others similarly situated,

Plaintiff,

v.

ARMSTRONG FLOORING, INC., et al.,

Defendants.

Case No. 2:19-cv-09840-CAS-MRWx
Judge: Hon. Christina A. Snyder
Courtroom 8D – 8th Floor

CLASS ACTION
[PROPOSED] ORDER
PRELIMINARILY APPROVING
SETTLEMENT AND
AUTHORIZING DISSEMINATION
OF NOTICE OF SETTLEMENT

WHEREAS, a securities class action is pending in this court entitled *Chupa v. Armstrong Flooring, Inc.*, 2:19-cv-09840-CAS-MRW (C.D. Cal.) (the “Action”);

WHEREAS, (a) Lead Plaintiff Randy Marker (“Lead Plaintiff”), on behalf of himself and the Settlement Class (defined below), and (b) defendant Armstrong Flooring, Inc. (“Armstrong Flooring”) have determined to settle all claims asserted in this Action in their entirety and as against all Defendants with prejudice on the terms and conditions set forth in the Stipulation and Agreement of Settlement dated January 15, 2021 (the “Stipulation”), subject to the approval of this Court (the “Settlement”);

WHEREAS, Lead Plaintiff has made a motion, pursuant to Rule 23(e)(1) of the Federal Rules of Civil Procedure, for an order preliminarily approving the Settlement

1 in accordance with the Stipulation and allowing notice to Settlement Class Members
2 as more fully described herein;

3 WHEREAS, the Court has read and considered: (a) Lead Plaintiff’s motion for
4 preliminary approval of the Settlement and authorization to send notice of the
5 Settlement to the Settlement Class, and the papers filed and arguments made in
6 connection therewith; and (b) the Stipulation and the exhibits attached thereto; and

7 WHEREAS, unless otherwise defined in this Order, the capitalized terms
8 herein shall have the same meanings as they have in the Stipulation;

9 NOW THEREFORE, IT IS HEREBY ORDERED:

10 1. **Proposed Class Certification for Settlement Purposes** – Solely for
11 purposes of effectuating the proposed Settlement, the Parties have proposed the
12 certification of the following Settlement Class pursuant to Rule 23(a) and (b)(3) of
13 the Federal Rules of Civil Procedure: all persons or entities who purchased Armstrong
14 Flooring common stock on the open market between March 6, 2018 and March 3,
15 2020 (the “Class Period”), and were damaged thereby (the “Settlement Class”).
16 Excluded from the Settlement Class are: (i) Defendants; (ii) members of the
17 Immediate Family of each Individual Defendant; (iii) any person who was an Officer
18 or director of Armstrong Flooring; (iv) any firm or entity in which any Defendant has
19 or had a controlling interest; (v) any person who participated in the wrongdoing
20 alleged; (vi) Defendants’ liability insurance carriers; (vii) any affiliates, parents, or
21 subsidiaries of Armstrong Flooring; (viii) all Armstrong Flooring plans that are
22 covered by ERISA; and (ix) the legal representatives, agents, affiliates, heirs,
23 beneficiaries, successors-in-interest, or assigns of any excluded person or entity, in
24 their respective capacity as such. Also excluded from the Settlement Class are any
25 persons and entities who or which exclude themselves by submitting a request for
26 exclusion that is accepted by the Court.

27 2. **Class Findings** – The Court finds, pursuant to Rule 23 of the Federal
28 Rules of Civil Procedure, that it will likely be able to certify the Settlement Class

1 solely for purposes of the proposed Settlement. Specifically, the Court finds that each
2 element required for certification of the Settlement Class pursuant to Rule 23 of the
3 Federal Rules of Civil Procedure has been met or will likely be met: (a) the members
4 of the Settlement Class are so numerous that their joinder in the Action would be
5 impracticable; (b) there are questions of law and fact common to the Settlement Class
6 which predominate over any individual questions; (c) the claims of Lead Plaintiff in
7 the Action are typical of the claims of the Settlement Class; (d) Lead Plaintiff and
8 Lead Counsel have and will fairly and adequately represent and protect the interests
9 of the Settlement Class; and (e) a class action is superior to other available methods
10 for the fair and efficient adjudication of the Action.

11 3. The Court also finds that it will likely be able to certify Lead Plaintiff as
12 Class Representative for the Settlement Class and appoint Lead Counsel as Class
13 Counsel for the Settlement Class pursuant to Rule 23(g) of the Federal Rules of Civil
14 Procedure.

15 4. **Preliminary Approval of the Settlement** – The Court hereby
16 preliminarily approves the Settlement, as embodied in the Stipulation, and finds,
17 pursuant to Rule 23(e)(1)(B)(i) of the Federal Rules of Civil Procedure, that it will
18 likely be able to finally approve the Settlement under Rule 23(e)(2) as being fair,
19 reasonable, and adequate to the Settlement Class, subject to further consideration at
20 the Settlement Hearing to be conducted as described below. The Court finds probative
21 that the Settlement was negotiated at arm’s length under the oversight of an
22 experienced mediator.

23 5. **Settlement Hearing** – The Court will hold a settlement hearing (the
24 “Settlement Hearing”) on July 19, 2021, at 10:00 a.m. in Courtroom 8D of the First
25 Street U.S. Courthouse, 350 W. 1st Street, 8th Floor, Los Angeles, CA 90012, for the
26 following purposes: (a) to determine whether the proposed Settlement on the terms
27 and conditions provided for in the Stipulation is fair, reasonable, and adequate to the
28 Settlement Class, and should be finally approved by the Court; (b) to determine

1 whether, for purposes of the Settlement only, the Action should be certified as a class
2 action on behalf of the Settlement Class, Lead Plaintiff should be certified as Class
3 Representative for the Settlement Class, and Lead Counsel should be appointed as
4 Class Counsel for the Settlement Class; (c) to determine whether a Judgment
5 substantially in the form attached as Exhibit B to the Stipulation should be entered
6 dismissing the Action with prejudice against Defendants; (d) to determine whether
7 the Releases set forth in the Stipulation should be ordered; (e) to determine whether
8 the proposed Plan of Allocation for the proceeds of the Settlement is fair and
9 reasonable and should be approved; (f) to determine whether Lead Counsel’s motion
10 for attorneys’ fees and Litigation Expenses should be approved; (g) to consider any
11 Settlement Class Members’ timely objections to the Settlement, Plan of Allocation,
12 or motion for attorneys’ fees and Litigation Expenses; and (h) to consider any other
13 matters that may properly be brought before the Court in connection with the
14 Settlement. Notice of the Settlement and the Settlement Hearing shall be given to
15 Settlement Class Members as set forth in paragraph 7 of this Order.

16 6. The Court may adjourn the Settlement Hearing without further notice to
17 the Settlement Class and may approve the proposed Settlement with such
18 modifications as the Parties may agree to, if appropriate, without further notice to the
19 Settlement Class, provided that doing so would not impair Settlement Class Members’
20 rights in a manner inconsistent with Rule 23 and due process of law.

21 7. **Retention of Claims Administrator and Manner of Giving Notice** –
22 Lead Counsel is hereby authorized to retain Strategic Claims Services (the “Claims
23 Administrator”) to supervise and administer the notice procedure in connection with
24 the proposed Settlement as well as the processing of Claims as more fully set forth
25 below.

26 a. not later than ten (10) business days after the date of entry of this
27 Order, Armstrong Flooring shall, at no cost to the Settlement Fund, Lead Counsel, or
28 the Claims Administrator, provide or cause to be provided to the Claims

1 Administrator in electronic format a list consisting of names and mailing addresses
2 and email addresses, if available, of those who purchased or held Armstrong Flooring
3 common stock during the Class Period;

4 b. beginning not later than twenty (20) business days after the date
5 of entry of this Order (the “Notice Date”), the Claims Administrator shall cause a
6 copy of the Postcard Notice to be mailed by first-class mail or emailed to potential
7 Settlement Class Members at the addresses set forth in the records provided by
8 Armstrong Flooring or in the records which Armstrong Flooring caused to be
9 provided, or who otherwise may be identified through further reasonable effort;

10 c. contemporaneously with the mailing of the Postcard Notice, the
11 Claims Administrator shall cause copies of the Internet Notice and Claim Form to be
12 posted on a website to be developed for the Settlement, from which copies of the
13 Internet Notice and Claim Form can be downloaded;

14 d. not later than ten (10) business days after the Notice Date, the
15 Claims Administrator shall cause the Summary Notice, substantially in the form
16 attached hereto as Exhibit 3, to be published once in Investor’s Business Daily and to
17 be transmitted once over the PR Newswire; and

18 e. not later than seven (7) calendar days prior to the Settlement
19 Hearing, Lead Counsel shall serve on Defendant’s Counsel and file with the Court
20 proof, by affidavit or declaration, of such mailing and publication.

21 8. **Approval of Form and Content of Notice** – The Court: (a) approves,
22 as to form and content, the Postcard Notice, Internet Notice, the Claim Form, and the
23 Summary Notice, attached hereto as Exhibits 1, 2, 3, and 4 respectively; and, (b) finds
24 that the mailing and distribution of the Postcard Notice and the publication of the
25 Summary Notice, Internet Notice and Claim Form in the manner and form set forth
26 in paragraph 7 of this Order (i) is the best notice practicable under the circumstances;
27 (ii) constitutes notice that is reasonably calculated, under the circumstances, to apprise
28 Settlement Class Members of the pendency of the Action, of the effect of the proposed

1 Settlement (including the Releases to be provided thereunder), of Lead Counsel's
2 motion for attorneys' fees and Litigation Expenses, of their right to object to the
3 Settlement, the Plan of Allocation, and/or Lead Counsel's motion for attorneys' fees
4 and Litigation Expenses, of their right to exclude themselves from the Settlement
5 Class, and of their right to appear at the Settlement Hearing; (iii) constitutes due,
6 adequate, and sufficient notice to all persons and entities entitled to receive notice of
7 the proposed Settlement; and (iv) satisfies the requirements of Rule 23 of the Federal
8 Rules of Civil Procedure, the United States Constitution (including the Due Process
9 Clause), the Private Securities Litigation Reform Act of 1995, 15 U.S.C. § 78u-4, as
10 amended, and all other applicable law and rules. The date and time of the Settlement
11 Hearing shall be included in the Postcard Notice, Internet Notice and Summary Notice
12 before they are mailed and published, respectively.

13 9. **Nominee Procedures** – Plaintiffs' Counsel, through the Claims
14 Administrator, shall make all reasonable efforts to give notice to nominee owners
15 such as brokerage firms and other persons or entities who purchased Armstrong
16 Flooring common stock during the Class Period for the benefit of another person or
17 entity. Brokers and other nominees who purchased Armstrong Flooring common
18 stock during the Class Period for the benefit of another person or entity shall, within
19 seven days of receipt of the Postcard Notice, either: (a) provide to the Claims
20 Administrator the name and last known address of each such person or entity; (b)
21 request additional copies of the Postcard Notice from the Claims Administrator,
22 which will be provided free of charge, and, within seven days of receipt, mail the
23 Postcard Notice directly to all such persons or entities; or (c) request an electronic
24 copy of the Postcard Notice from the Claims Administrator, which will be provided
25 free of charge, and, within seven days of receipt, email the Postcard Notice directly
26 to all such persons and entities for which email addresses are available. If available,
27 the broker or other nominee must also provide the Claims Administrator with the e-mails
28 of the beneficial owners. If a broker or other nominee opts to utilize procedure (b) or

1 (c) above, then such broker or nominee must provide a statement to the Claims
2 Administrator confirming that the mailing was made as directed and keep a record of
3 the names and mailing addresses used. Upon full compliance with this Order, such
4 brokers or other nominees may seek reimbursement of their reasonable expenses
5 actually incurred in complying with this Order by providing the Claims Administrator
6 with proper documentation supporting the expenses for which reimbursement is
7 sought, up to a maximum of \$0.05 plus postage at the current pre-sort rate used by the
8 Claims Administrator per Postcard Notice mailed; \$0.05 per Postcard Notice emailed;
9 or \$0.05 per name, address, and email address provided to the Claims Administrator.
10 Such properly documented expenses incurred by brokers or other nominees in
11 compliance with the terms of this Order shall be paid from the Settlement Fund, with
12 any disputes as to the reasonableness or documentation of expenses incurred subject
13 to review by the Court.

14 10. **CAFA Notice** – As provided in the Stipulation, Defendants shall serve
15 the notice required under the Class Action Fairness Act, 28 U.S.C. § 1715 *et seq.*
16 (“CAFA”) no later than ten (10) calendar days following the filing of the Stipulation
17 with the Court. Defendants are solely responsible for the costs of the CAFA notice
18 and administering the CAFA notice. No later than seven (7) calendar days before the
19 Settlement Hearing, Defendants shall cause to be served on Lead Counsel and filed
20 with the Court proof, by affidavit or declaration, regarding compliance with 28 U.S.C.
21 § 1715(b).

22 11. **Participation in the Settlement** – Settlement Class Members who wish
23 to participate in the Settlement and to be eligible to receive a distribution from the Net
24 Settlement Fund must complete and submit a Claim Form in accordance with the
25 instructions contained therein. Unless the Court orders otherwise, all Claim Forms
26 must be postmarked or received electronically no later than ninety (90) calendar days
27 after the Notice Date. Notwithstanding the foregoing, Lead Counsel may, at its
28 discretion, accept for processing late claims, provided such acceptance does not delay

1 the distribution of the Net Settlement Fund to the Settlement Class. By submitting a
2 Claim, a person or entity shall be deemed to have submitted to the jurisdiction of the
3 Court with respect to his, her, or its Claim and the subject matter of the Settlement.

4 12. In order to be entitled to participate in the recovery from the Net
5 Settlement Fund after the Effective Date, each Claim Form submitted must satisfy the
6 following conditions: (a) it must be properly completed, signed, and submitted in a
7 timely manner in accordance with the provisions of the preceding paragraph; (b) it
8 must be accompanied by adequate supporting documentation for the transactions and
9 holdings reported therein, in the form of broker confirmation slips, broker account
10 statements, an authorized statement from the broker containing the transactional and
11 holding information found in a broker confirmation slip or account statement, or such
12 other documentation as is deemed adequate by Lead Counsel or the Claims
13 Administrator; (c) if the person executing the Claim Form is acting in a representative
14 capacity, a certification of his, her, or its current authority to act on behalf of the
15 Settlement Class Member must be included in the Claim Form to the satisfaction of
16 Lead Counsel or the Claims Administrator; and (d) the Claim Form must be complete
17 and contain no material deletions or modifications of any of the printed matter
18 contained therein and must be signed under penalty of perjury.

19 13. Any Settlement Class Member that does not timely and validly submit a
20 Claim Form or whose Claim is not otherwise approved by the Court: (a) shall be
21 deemed to have waived his, her, or its right to share in the Net Settlement Fund; (b)
22 shall be forever barred from participating in any distributions therefrom; (c) shall be
23 bound by the provisions of the Stipulation and the Settlement and all proceedings,
24 determinations, orders, and judgments in the Action relating thereto, including,
25 without limitation, the Judgment and the Releases provided for therein, whether
26 favorable or unfavorable to the Settlement Class; and (d) will be barred from
27 commencing, maintaining, or prosecuting any of the Released Plaintiffs' Claims
28 against each and all of the Defendants' Releasees, as more fully described in the

1 Stipulation and the Internet Notice. Notwithstanding the foregoing, late Claim Forms
2 may be accepted for processing as set forth in paragraph 11 above.

3 14. **Exclusion From the Settlement Class** – All Settlement Class Members
4 shall be bound by all determinations and judgments in this Action, whether favorable
5 or unfavorable, unless such persons or entities request to be excluded, or “opt out,”
6 from the Settlement Class. Any member of the Settlement Class who wishes to
7 exclude himself, herself, or itself from the Settlement Class must request exclusion in
8 writing within the time and in the manner set forth in the Internet Notice, which shall
9 provide that: (a) any such request for exclusion from the Settlement Class must be
10 mailed or delivered, such that it is received no later than twenty-one (21) calendar
11 days prior to the Settlement Hearing, to: Armstrong Flooring, Inc. Securities
12 Litigation, c/o Strategic Claims Services, 600 N. Jackson St., Suite 205, P.O. Box
13 230, Media, PA 19063 and (b) each request for exclusion must (i) state the name,
14 address, and telephone number of the person or entity requesting exclusion, and in the
15 case of entities, the name and telephone number of the appropriate contact person; (ii)
16 state that such person or entity “requests exclusion from the Settlement Class in
17 *Chupa v. Armstrong Flooring, Inc.*, 2:19-cv-09840-CAS-MRW (C.D. Cal.)”; (iii)
18 state the number of Armstrong Flooring common shares that the person or entity
19 requesting exclusion (A) owned as of the opening of trading on March 6, 2018 and
20 (B) purchased and/or sold during the Class Period, as well as the dates and prices of
21 each such purchase and sale; and (iv) be signed by the person or entity requesting
22 exclusion or an authorized representative. A request for exclusion shall not be
23 effective unless it provides all the required information and is received within the time
24 stated above or is otherwise accepted by the Court.

25 15. Any person or entity who or which timely and validly requests exclusion
26 in compliance with the terms stated in this Order and is excluded from the Settlement
27 Class shall not be a Settlement Class Member, shall not be bound by the terms of the
28

1 Settlement or any orders or judgments in the Action, and shall not receive any
2 payment out of the Net Settlement Fund.

3 16. Any Settlement Class Member who or which does not timely and validly
4 request exclusion from the Settlement Class in the manner stated in this Order: (a)
5 shall be deemed to have waived his, her, or its right to be excluded from the Settlement
6 Class; (b) shall be forever barred from requesting exclusion from the Settlement Class
7 in this or any other proceeding; (c) shall be bound by the provisions of the Stipulation
8 and Settlement and all proceedings, determinations, orders, and judgments in the
9 Action, including, but not limited to, the Judgment and the Releases provided for
10 therein, whether favorable or unfavorable to the Settlement Class; and (d) will be
11 barred from commencing, maintaining, or prosecuting any of the Released Plaintiffs'
12 Claims against any of the Defendants' Releasees, as more fully described in the
13 Stipulation and Internet Notice.

14 17. **Appearance and Objections at Settlement Hearing** – Any Settlement
15 Class Member who or which does not request exclusion from the Settlement Class
16 may enter an appearance in the Action, at his, her, or its own expense, individually or
17 through counsel of his, her, or its own choice, by filing with the Clerk of Court and
18 delivering a notice of appearance to both Lead Counsel and Defendant's Counsel, at
19 the addresses set forth in paragraph 18 below, such that it is received no later than
20 twenty-one (21) calendar days prior to the Settlement Hearing, or as the Court may
21 otherwise direct. Any Settlement Class Member who does not enter an appearance
22 will be represented by Lead Counsel.

23 18. Any Settlement Class Member who or which does not request exclusion
24 from the Settlement Class may file a written objection to the proposed Settlement, the
25 proposed Plan of Allocation, and/or Lead Counsel's motion for attorneys' fees and
26 Litigation Expenses and appear to show cause, if he, she, or it has any cause, why the
27 proposed Settlement, the proposed Plan of Allocation, and/or Lead Counsel's motion
28 for attorneys' fees and Litigation Expenses should not be approved; *provided,*

1 *however*, that no Settlement Class Member shall be heard or entitled to contest the
2 approval of the terms and conditions of the proposed Settlement, the proposed Plan
3 of Allocation, and/or the motion for attorneys' fees and Litigation Expenses unless
4 that person or entity has filed a written objection with the Court and served copies of
5 such objection on Lead Counsel and Defendant's Counsel at the addresses set forth
6 below such that they are received no later than twenty-one (21) calendar days prior to
7 the Settlement Hearing.

8 **Lead Counsel**
9 Bernstein Liebhard LLP
10 Michael S. Bigin
11 10 East 40th St., 28th Floor
 New York, NY 10016

Defendant's Counsel
 Skadden, Arps, Slate, Meagher & Flom LLP
 Peter B. Morrison, Esq.
 300 South Grand Avenue, Suite 3400
 Los Angeles, CA 90071

12 19. Any objections, filings, and other submissions by the objecting
13 Settlement Class Member must: (a) state the name, address, and telephone number of
14 the person or entity objecting and must be signed by the objector; (b) state with
15 specificity the grounds for the Settlement Class Member's objection, including any
16 legal and evidentiary support the Settlement Class Member wishes to bring to the
17 Court's attention and whether the objection applies only to the objector, to a specific
18 subset of the Settlement Class, or to the entire Settlement Class; and (c) include
19 documents sufficient to prove membership in the Settlement Class, including
20 documents showing the number of shares of Armstrong Flooring common stock that
21 the objecting Settlement Class Member (i) owned as of the opening of trading on
22 March 6, 2018 and (ii) purchased and/or sold during the Class Period, as well as the
23 dates and prices of each such purchase and sale. Documentation establishing
24 membership in the Settlement Class must consist of copies of brokerage confirmation
25 slips or monthly brokerage account statements, or an authorized statement from the
26 objector's broker containing the transactional and holding information found in a
27 broker confirmation slip or account statement. Objectors who enter an appearance and
28 desire to present evidence at the Settlement Hearing in support of their objection must

1 include in their written objection or notice of appearance the identity of any witnesses
2 they may call to testify and any exhibits they intend to introduce into evidence at the
3 hearing.

4 20. Any Settlement Class Member who or which does not make his, her, or
5 its objection in the manner provided herein shall be deemed to have waived his, her,
6 or its right to object to any aspect of the proposed Settlement, the proposed Plan of
7 Allocation, and Lead Counsel’s motion for an award of attorneys’ fees and Litigation
8 Expenses and shall be forever barred and foreclosed from objecting to the fairness,
9 reasonableness, or adequacy of the Settlement, the Plan of Allocation, or the requested
10 attorneys’ fees and Litigation Expenses, or from otherwise being heard concerning
11 the Settlement, the Plan of Allocation, or the requested attorneys’ fees and Litigation
12 Expenses in this or any other proceeding. Settlement Class Members do not need to
13 appear at the Settlement Hearing or take any other action to indicate their approval of
14 the Settlement, the Plan of Allocation, or the application for attorneys’ fees and
15 Litigation Expenses.

16 21. **Stay and Temporary Injunction** – Until otherwise ordered by the
17 Court, the Court stays all proceedings in the Action other than proceedings necessary
18 to carry out or enforce the terms and conditions of the Stipulation. Pending final
19 determination of whether the Settlement should be approved, the Court bars and
20 enjoins Lead Plaintiff and all other members of the Settlement Class from
21 commencing or prosecuting, directly or indirectly, any and all of the Released
22 Plaintiffs’ Claims against each and all of the Defendants’ Releasees.

23 22. **Settlement Administration Fees and Expenses** – All reasonable costs
24 incurred in identifying Settlement Class Members and notifying them of the
25 Settlement as well as in administering the Settlement shall be paid as set forth in the
26 Stipulation without further order of the Court.

27 23. **Settlement Fund** – The contents of the Settlement Fund held by the
28 Escrow Agent at Signature Bank shall be deemed and considered to be *in custodia*

1 *legis* of the Court and shall remain subject to the jurisdiction of the Court until such
2 time as they shall be distributed pursuant to the Stipulation and/or further order(s) of
3 the Court.

4 24. **Taxes** – Lead Counsel is authorized and directed to prepare any tax
5 returns and any other tax reporting form for, or in respect to, the Settlement Fund, to
6 pay from the Settlement Fund any Taxes owed with respect to the Settlement Fund,
7 and to otherwise perform all obligations with respect to Taxes and any reporting or
8 filings in respect thereof without further order of the Court in a manner consistent
9 with the provisions of the Stipulation.

10 25. **Plan of Allocation and Motion for Attorneys’ Fees and Litigation**
11 **Expenses** – Defendants’ Releasees shall have no responsibility or liability for (i) the
12 Plan of Allocation, (ii) any actions of the Escrow Agent, (iii) any distributions from
13 the Net Settlement Fund, or (iv) any application for attorneys’ fees or Litigation
14 Expenses submitted by Lead Counsel or Lead Plaintiff. The Court will consider the
15 Plan of Allocation and any applications for attorneys’ fees or Litigation Expenses
16 separately from the fairness, reasonableness, and adequacy of the Settlement. Any
17 order or proceeding relating to the Plan of Allocation or any application for attorneys’
18 fees or expenses, or any appeal from any order relating thereto or reversal or
19 modification thereof, shall not operate to terminate or cancel the Stipulation, or affect
20 or delay the finality of the Judgment approving the Stipulation and the settlement of
21 the Action and Releases. At or after the Settlement Hearing, the Court shall determine
22 whether the Plan of Allocation proposed by Lead Counsel and any application for
23 attorneys’ fees or payment of expenses shall be approved.

24 26. **Termination of Settlement** – If the Settlement is terminated as provided
25 in the Stipulation, the Settlement is not approved, or the Effective Date of the
26 Settlement otherwise fails to occur, this Order shall be vacated, rendered null and
27 void, and be of no further force and effect, except as otherwise provided by the
28 Stipulation, and this Order shall be without prejudice to the rights of Lead Plaintiff,

1 the other Settlement Class Members, and Defendants, and the parties shall revert to
2 their respective positions in the Action immediately prior to the execution of the
3 Stipulation.

4 27. **Use of this Order** – Neither this Order, the Stipulation (whether or not
5 consummated), including the exhibits thereto and the Plan of Allocation contained
6 therein (or any other plan of allocation that may be approved by the Court), the
7 negotiations leading to the execution of the Stipulation, nor any proceedings taken
8 pursuant to or in connection with the Stipulation and/or approval of the Settlement
9 (including any arguments proffered in connection therewith): (a) shall be offered
10 against any of the Defendants’ Releasees as evidence of, or construed as, or deemed
11 to be evidence of any presumption, concession, or admission by any of the
12 Defendants’ Releasees with respect to the truth of any fact alleged by Lead Plaintiff
13 or the validity of any claim that was or could have been asserted or the deficiency of
14 any defense that has been or could have been asserted in this Action or in any other
15 litigation, or of any liability, negligence, fault, or other wrongdoing of any kind of
16 any of the Defendants’ Releasees or in any way referred to for any other reason as
17 against any of the Defendants’ Releasees, in any arbitration proceeding or other civil,
18 criminal, or administrative action or proceeding, other than such proceedings as may
19 be necessary to effectuate the provisions of the Stipulation; (b) shall be offered against
20 any of the Plaintiffs’ Releasees, as evidence of, or construed as, or deemed to be
21 evidence of any presumption, concession, or admission by any of the Plaintiffs’
22 Releasees that any of their claims are without merit, that any of the Defendants’
23 Releasees had meritorious defenses, or that damages recoverable under the Complaint
24 would not have exceeded the Settlement Amount or with respect to any liability,
25 negligence, fault, or wrongdoing of any kind, or in any way referred to for any other
26 reason as against any of the Plaintiffs’ Releasees, in any arbitration proceeding or
27 other civil, criminal, or administrative action or proceeding, other than such
28 proceedings as may be necessary to effectuate the provisions of the Stipulation; or (c)

