

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

NICHOLAS SKIADAS, Individually and on Behalf of
All Others Similarly Situated,

Plaintiff,

v.

ACER THERAPEUTICS INC., CHRIS SCHELLING,
and HARRY PALMIN,

Defendants

Case No. 1:19-cv-06137-GHW

STIPULATION AND AGREEMENT OF SETTLEMENT

This Stipulation and Agreement of Settlement (together with all Exhibits thereto, the “Stipulation”), dated as of July 21, 2021, is entered into by and among (i) Lead Plaintiff Nicholas Skiadas (“Skiadas” or “Lead Plaintiff”), on behalf of himself and on behalf of the Settlement Class (as defined herein) and (ii) Acer Therapeutics Inc. (“Acer” or the “Company”), Chris Schelling, and Harry Palmin (collectively “Defendants”), by and through their undersigned attorneys, and embodies the terms and conditions of the settlement of the above-captioned action (the “Action”). Subject to the approval of the Court and the terms and conditions expressly provided herein, this Stipulation is intended to fully, finally, and forever compromise, settle, release, resolve, waive, discharge, and dismiss with prejudice the Action and the Released Claims (as defined herein) against Defendants and their Related Parties (as defined herein) and Defendants’ Released Claims (also defined below) against Lead Plaintiff, Settlement Class Members, Lead Counsel, and their Related Parties.

Throughout this Stipulation, all terms used with initial capitalization, but not immediately

defined, shall have the meanings ascribed to them in Section 1 below.

WHEREAS:

A. The Action

This litigation was commenced on July 1, 2019 styled as *Sell v. Acer Therapeutics Inc., et. al.*, Case No. 1:19-cv-06137-GHW, alleging violations of the Securities Exchange Act of 1934 (“Exchange Act”) as against the Defendants (Dkt. No. 1).

On August 30, 2019, Skiadas filed a motion for appointment of lead plaintiff and approval of lead counsel (Dkt. No. 12). On September 25, 2019, the Court appointed Skiadas as Lead Plaintiff and The Rosen Law Firm, P.A. as Lead Counsel (Dkt. No. 24).

On December 3, 2019, Lead Plaintiff, on behalf of himself and a putative class, filed the Amended Class Action Complaint for Violations of the Federal Securities Laws (“Amended Complaint”) asserting claims under Section 10(b) and 20(a) of the Exchange Act (Dkt. No. 28).

On December 9, 2019, the Court directed the Clerk of Court to restyle the Action as *Nicholas Skiadas v. Acer Therapeutics Inc., et. al.*, Case No. 1:19-cv-06137-GHW.

On January 15, 2020, Defendants filed a pre-motion letter requesting leave to move to dismiss the Amended Complaint (Dkt. No. 31), which Lead Plaintiff opposed on January 21, 2020 (Dkt. No. 35). On February 7, 2020, Defendants filed the motion to dismiss (Dkt. No. 38).

In response to Defendants’ motion to dismiss, Lead Plaintiff filed the Second Amended Class Action Complaint for Violation of the Federal Securities Laws on February 28, 2020 (“Second Amended Complaint”) (Dkt. No. 43).

On May 1, 2020, Defendants filed a motion to dismiss the Second Amended Complaint (Dkt. No. 49). Lead Plaintiff filed his opposition on May 22, 2020 (Dkt. No. 52) and Defendants filed their reply on May 29, 2020 (Dkt. No. 53).

On June 16, 2020, the Court granted in part and denied in part Defendants' motion to dismiss the Second Amended Complaint ("Motion to Dismiss Order") (Dkt. No. 54).

On July 1, 2020, Defendants filed a motion for reconsideration of the Motion to Dismiss Order (Dkt. No. 58). Lead Plaintiff filed his opposition on July 13, 2020 (Dkt. No. 61) and Defendants filed their reply on July 17, 2020 (Dkt. No. 62). On July 21, 2020, the Court denied Defendants' motion for reconsideration (Dkt. No. 63).

On August 7, 2020, Defendants filed their answer to the Second Amended Complaint (Dkt. No. 64).

On August 8, 2020, in advance of the Initial Pretrial Conference, the Parties jointly submitted a letter advising the Court about the status of the case (Dkt. No. 65). The Court held the Initial Pretrial Conference on August 17, 2020 and entered the Amended Civil Case Management Plan and Scheduling Order (Dkt. No. 67).

On November 10, 2020, Lead Plaintiff filed a letter to the Court indicating his intention to file a proposed Third Amended Complaint for Violation of the Federal Securities Laws ("Third Amended Complaint") (Dkt. No. 72). Defendants submitted a letter in response objecting to Lead Plaintiff's intention to move to file an amended complaint (Dkt. No. 74). At a November 25, 2020 pre-motion conference, the Court directed the Parties to focus their briefs on issues relating to Rule 16 of the Federal Rules of Civil Procedure only. The Court further instructed the Parties to raise any arguments relating to the legal sufficiency of the proposed Third Amended Complaint in a motion to dismiss.

On December 3, 2020, Lead Plaintiff filed a motion for leave to file a Third Amended Complaint (Dkt. No. 84). Defendants opposed the motion on December 14, 2020 (Dkt. No. 90) and Lead Plaintiff filed his reply on December 18, 2020 (Dkt. No. 91). After a telephonic hearing

held on January 18, 2021, the Court granted Lead Plaintiff's motion to file the Third Amended Complaint (Dkt. No. 93). The Court also stayed discovery pending resolution of Defendants' motion to dismiss the Third Amended Complaint.

On February 4, 2021, Lead Plaintiff filed the operative Third Amended Complaint (Dkt. No. 97). Lead Plaintiff filed an unredacted version of the Third Amended Complaint on February 16, 2021 (Dkt. No. 101).

On February 18, 2021, Defendants filed a pre-motion letter requesting leave to move to dismiss part of the Third Amended Complaint (Dkt. No. 104). Lead Plaintiff responded to Defendants' letter on February 23, 2021 (Dkt. No. 106). After a telephonic conference on Defendants' pre-motion letter, the Court granted Defendants' request for leave to file a motion to dismiss (Dkt. No. 108).

On May 6, 2021, the Parties jointly filed a letter motion requesting that the Court stay the Action in light of the Parties reaching a settlement in principle to allow the Parties to negotiate and finalize the settlement papers (Dkt. No. 112). The Court stayed the Action on May 6, 2021 (Dkt. No. 113).

B. The Settlement

With the litigation ongoing, the Parties began settlement negotiations in the fall of 2020. The Parties attended a mediation with Jed Melnick, Esq. of JAMS on October 7, 2020. Prior to the mediation, the Parties exchanged detailed mediation statements with numerous exhibits that were also submitted to Mr. Melnick. A settlement was not reached at the mediation, but extensive negotiations continued after the mediation with the assistance of Mr. Melnick. The Parties attended a second mediation with Mr. Melnick on March 30, 2021. A settlement was not reached at the second mediation, but negotiations continued after the second mediation with Mr. Melnick's

assistance. On May 3, 2021, Mr. Melnick made a mediator's proposal as a resolution of the Action. On May 5, 2021, Mr. Melnick informed the Parties that both sides accepted the mediator's proposal.

This Stipulation memorializes the agreement between the Parties to fully and finally settle the Action and to fully release all Released Claims against Defendants and the Released Parties with prejudice in return for the consideration specified herein.

C. Defendants' Denial of Fault, Wrongdoing, and Liability

Throughout the course of the Action, and in this Stipulation, Defendants have denied and continue to deny each, any and all allegations of wrongdoing, fault, liability or damage whatsoever that have or could have been asserted in the Action. Defendants have also denied and continue to deny, *inter alia*, the allegations and claims that have been or could have been asserted by Lead Plaintiff, as well as the allegations that Lead Plaintiff and the Settlement Class have suffered damages and that Lead Plaintiff and the Settlement Class were harmed by the conduct alleged in the Action. Defendants continue to believe the claims asserted against them in the Action are without merit and that the Action itself should not be certified as a class action for purposes of trial and adjudication of liability and damages. Defendants have not acknowledged, conceded, or admitted any fault, wrongdoing, or liability, are not doing so by entering into this Stipulation, and disclaim any and all fault, wrongdoing, and liability whatsoever.

Defendants have agreed to enter into this Stipulation solely to avoid the uncertainties, burden, and expense of further litigation and to put the Released Claims to rest finally and forever. Nothing in this Stipulation, nor any of its terms or provisions, nor any of the negotiations or proceedings connected with it, shall be deemed to be, argued to be, or offered or received as evidence supporting an admission by any of Defendants or any of the Released Parties with respect

to any of Lead Plaintiff's allegations or claims, or of any wrongdoing, fault, liability or damages whatsoever.

D. Lead Plaintiff's Claims and Benefits of Settlement

Lead Plaintiff believes that the claims asserted in the Action have merit. Lead Plaintiff, however, recognizes and acknowledges the expense and length of continued proceedings necessary to prosecute the Action against Defendants through trial and appeals. Lead Plaintiff has also taken into account the uncertain outcome and the risk of any litigation. In particular, Lead Plaintiff has considered the inherent problems of proof and possible defenses to the federal securities law violations asserted in the Action, including the defenses that have been or could be asserted by Defendants during the litigation, motion for summary judgment, motion for class certification, and trial. Lead Plaintiff has therefore determined that the Settlement set forth in this Stipulation is fair, adequate, reasonable, and in the best interests of the Settlement Class.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among the Lead Plaintiff (on behalf of himself and each of the Settlement Class Members) and Defendants (by and through their respective undersigned counsel) that, subject to the approval of the Court, in consideration of the benefits flowing to the Parties from the Settlement set forth herein, the Action and the Released Claims as against the Released Parties shall be finally and fully compromised, settled and released, the Action shall be dismissed fully, finally and with prejudice, and the Released Claims shall be finally and fully released as against the Released Parties, upon and subject to the terms and conditions of this Stipulation, as follows:

1. Definitions

In addition to the terms defined above, the following capitalized terms, used in this Stipulation, shall have the meanings specified below:

1.1. “Action” means the putative securities class action titled *Nicholas Skiadas v. Acer Therapeutics Inc., et. al.*, Case No. 1:19-cv-06137-GHW (S.D.N.Y.).

1.2. “Administrative Costs” means all costs and expenses associated with providing notice of the Settlement to the Settlement Class and otherwise administering or carrying out the terms of the Settlement. Such costs may include, without limitation: escrow agent costs, the costs of publishing the summary notice, the costs of printing and mailing, and/or emailing of the Notice and Proof of Claim, as directed by the Court, and the costs of allocating and distributing the Net Settlement Fund (as defined in paragraph 1.19) to the Authorized Claimants. Such costs do not include legal fees.

1.3. “Authorized Claimant” means any Settlement Class Member who is a Claimant and whose claim for recovery has been allowed pursuant to the terms of this Stipulation, the exhibits hereto, and any order of the Court.

1.4. “Award to Lead Plaintiff” means the requested reimbursement to Lead Plaintiff for his reasonable costs and expenses (including lost wages) directly related to Lead Plaintiff’s representation of the Settlement Class in the Action.

1.5. “Business Day” means any day except Saturday or Sunday or any Legal Holiday as that term is defined in Rule 6(a)(6) of the Federal Rules of Civil Procedure.

1.6. “Claimant” means any person or entity who or which files a Proof of Claim in such form and manner, and within such time, as the Court shall prescribe, seeking to be eligible to share in the proceeds of the Net Settlement Fund.

1.7. “Claims” means any and all manner of claims, debts, demands, controversies, obligations, losses, costs, interest, penalties, fees, expenses, rights, duties, judgments, sums of money, suits, contracts, agreements, promises, damages, actions, causes of action and liabilities,

of every nature and description in law or equity (including, but not limited to, any claims for damages, whether compensatory, special, incidental, consequential, punitive, exemplary or otherwise, injunctive relief, declaratory relief, rescission or rescissionary damages, interest, attorneys' fees, expert or consulting fees, costs, or expenses), accrued or unaccrued, known or unknown, contingent or absolute, mature or not mature, discoverable or undiscoverable, liquidated or unliquidated, including those that are concealed or hidden, arising under federal, state, common, administrative, or foreign law, or any other law, rule, or regulation.

1.8. "Claims Administrator" means Strategic Claims Services ("SCS"), which shall administer the Settlement.

1.9. "Defendants" means Acer Therapeutics Inc., Chris Schelling, and Harry Palmin.

1.10. "Defense Counsel" means Morrison & Foerster LLP.

1.11. "Effective Date" shall have the meaning set forth in ¶ 11.2 of this Stipulation.

1.12. "Escrow Account" means an interest-bearing escrow account established by the Escrow Agent wherein the Settlement Amount shall be deposited and held in escrow. The Escrow Account shall be managed by the Escrow Agent, subject to the Court's supervisory authority, for the benefit of Lead Plaintiff and the Settlement Class in accordance with the terms of the Stipulation and any order of the Court.

1.13. "Escrow Agent" means SCS or its appointed agents. The Escrow Agent shall perform the duties as set forth in this Stipulation and any order of the Court.

1.14. "Final," when referring to the Final Judgment, means exhaustion of all possible appeals, meaning (i) if no appeal or request for review is filed, the day after the date of expiration of any time for appeal or review of the Final Judgment, and (ii) if an appeal or request for review is filed, the day after the date the last-taken appeal or request for review is dismissed, or the Final

Judgment is upheld on appeal or review in all material respects, and is not subject to further review on appeal or by certiorari or otherwise. For purposes of this definition of “Final,” an “appeal” includes any motion to alter or amend under Rule 52(b) or Rule 59(e) of the Federal Rules of Civil Procedure, any appeal as of right, discretionary appeal, interlocutory appeal, petition for writ of *certiorari*, or other proceeding involving writs of *certiorari* or mandamus, and any other proceedings of like kind. However, no order of the Court or modification or reversal on appeal or any other order relating solely to the amount, payment, or allocation of attorneys’ fees and expenses or to the Plan of Allocation shall constitute grounds for cancellation or termination of this Settlement or affect its terms, including the release in ¶ 6.1 hereof, or shall affect or delay the date on which the Final Judgment becomes Final.

1.15. “Final Judgment” means the order and final judgment to be entered by the Court finally approving the Settlement and dismissing the Action, materially in the form attached hereto as Exhibit B.

1.16. “Insurers” means the insurers under director and officer liability policies covering Defendants for the period between September 25, 2017 through June 24, 2019.

1.17. “Lead Counsel” means The Rosen Law Firm, P.A.

1.18. “Lead Plaintiff” means Nicholas Skiadas as identified in the Court’s September 25, 2019 Order. (Dkt. No. 24).

1.19. “Net Settlement Fund” means the Settlement Fund, less: (i) the Fee and Expense Award (as defined below); (ii) Administrative Costs; (iii) Taxes and Tax Expenses; (iv) any Award to Lead Plaintiff; and (v) other fees and expenses authorized by the Court.

1.20. “Notice” means collectively, the Notice of Pendency and Proposed Settlement of Securities Class Action (“Long Notice”) and the Summary Notice of Pendency and Proposed

Securities Class Action Settlement (“Summary Notice”), which are to be made available to Settlement Class Members, substantially in the forms attached hereto as Exhibits A-1 and A-3, on the Claims Administrator’s website and/or mailed to Settlement Class Members.

1.21. “Opt-Out” means any one of, and “Opt-Outs” means all of, any Persons who otherwise would be Settlement Class Members and have timely and validly requested exclusion from the Settlement Class in accordance with the provisions of the Preliminary Approval Order and the Notice given pursuant thereto.

1.22. “Parties” means Lead Plaintiff (on behalf of himself and the Settlement Class) and Defendants. “Party” means any one of the Parties.

1.23. “Person” means an individual, corporation, fund, limited liability corporation, professional corporation, limited liability partnership, partnership, limited partnership, association, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, and any business or legal entity and all heirs, predecessors, successors, representatives, or assigns of the foregoing.

1.24. “Plan of Allocation” means a plan or formula for allocating the Net Settlement Fund to Authorized Claimants. Any Plan of Allocation is not a condition to the effectiveness of this Stipulation, and the Released Parties shall have no responsibility or liability with respect thereto.

1.25. “Preliminary Approval Order” means the proposed order preliminarily approving the Settlement and directing notice thereof to the Settlement Class Members substantially in the form attached hereto as Exhibit A.

1.26. “Proof of Claim” means the Proof of Claim and Release Form to be submitted by Claimants, substantially in the form attached hereto as Exhibit A-2.

1.27. “Related Parties” means, with respect to each Released Party and Releasing Party, the immediate family members, any entity in which any immediate family members has, or had during the Settlement Class Period, a controlling interest (directly or indirectly), and any estate or trust of which any Party is a settlor or which is for the benefit of any Party and/or his or her immediate family members; and (ii) for each and every Person listed in part (i) their respective past, present, and future heirs, executors, trustees, estates, administrators, predecessors, successors, assigns, and present and former employees, accountants, agents, affiliates, analysts, assignees, attorneys, auditors, co-insurers, commercial bank lenders, consultants, contractors, controlling shareholders, directors, divisions, financial advisors, general or limited partners, general or limited partnerships, insurers, reinsurers, excess insurers, co-insurers, investment advisors, investment bankers, investment banks, joint ventures and joint venturers, managers, managing directors, marital communities, members, officers, parents, personal or legal representatives, principals, shareholders, subsidiaries (foreign or domestic), trustees, underwriters, and other retained professionals, in their respective capacities as such.

1.28. “Released Claims” means and includes any and all Claims (including Unknown Claims as defined in ¶ 1.38) of every nature and description whatsoever (including, but not limited to, any claims for damages, restitution, rescission, interest, attorneys’ fees, expert or consulting fees, and any other costs, expenses, or liability whatsoever), whether based on federal, state, local, statutory or common law or any other law, rule or regulation, whether known or unknown, contingent or absolute, mature or immature, discoverable or undiscoverable, whether concealed or hidden, suspected or unsuspected, which now exist, or heretofore have existed, that any of the Releasing Parties, in any capacity: (i) asserted in the Action; or (ii) could have asserted in any forum that arise out of, are based upon, or relate to, directly or indirectly, in whole or in part, (A)

the facts, allegations, transactions, claims, matters, events, disclosures, non-disclosures, occurrence, representations, statements, acts, omissions, or failures to act involved, set forth, or referred in the Action and that relate to the purchase, sale, acquisition or retention of Acer common stock during the Settlement Class Period; or (B) Defendants' and/or their attorneys' defense or settlement of the action and/or the claims alleged therein. For the avoidance of doubt, and notwithstanding anything to the contrary in this Stipulation, "Released Claims" do not include (i) any claims to enforce the terms of this Stipulation or orders or judgments issued by the Court in connection with this Settlement, (ii) any claims of any person or entity who or which submits a request for exclusion that is accepted by the Court, or (iii) any claims asserted derivatively on behalf of Acer in pending shareholder derivative lawsuits arising from the same alleged facts asserted in the Action.

1.29. "Released Parties" means the Defendants and each of their Related Parties.

1.30. "Releasing Parties" means jointly and severally, individually and collectively, Lead Plaintiff, each and every Settlement Class Member, and each of their Related Parties.

1.31. "Settlement" means the settlement contemplated by this Stipulation.

1.32. "Settlement Amount" means the sum of \$8,350,000 (Eight Million Three Hundred and Fifty Thousand U.S. Dollars). The Settlement Amount is intended to encompass all Administrative Costs, any Fee and Expense Award approved by the Court, any Award to Lead Plaintiff approved by the Court, all Settlement Class Member benefits arising from the Settlement, and any other costs, expenses, or fees of any kind whatsoever associated with the Settlement.

1.33. "Settlement Class" means all persons and entities who purchased or otherwise acquired any publicly-traded Acer common stock during the Settlement Class Period and suffered compensable damages thereby. Excluded from the Settlement Class are: Defendants and their

immediate families; the officers and directors of Acer at all relevant times; their legal representatives, heirs, successors or assigns; any entity in which Defendants have or had a controlling interest; and any entity affiliated with, controlling, controlled by, or under common control with TVM Capital Life Science. Also excluded from the Settlement Class are those persons who file valid and timely requests for exclusion in accordance with the Preliminary Approval Order.

1.34. “Settlement Class Member” means any one of, and “Settlement Class Members” means all of, the members of the Settlement Class.

1.35. “Settlement Class Period” means the period from September 25, 2017 through June 24, 2019, both dates inclusive.

1.36. “Settlement Fund” means all funds transferred to the Escrow Account pursuant to this Stipulation and any interest or other income earned thereon.

1.37. “Settlement Hearing” means the hearing at or after which the Court will make a final decision pursuant to Rule 23 of the Federal Rules of Civil Procedure as to whether the Settlement set forth in the Stipulation is fair, reasonable, and adequate, and therefore, should receive final approval from the Court.

1.38. “Unknown Claims” means and includes any and all claims that one or more Releasing Parties does not know or suspect to exist in his, her or its favor at the time of the release of the Released Parties. This includes claims which, if known by him, her, or it, might have affected his, her or its settlement with and release of the Released Parties, or might have affected his, her or its decision(s) with respect to the Settlement and the Released Claims, including his, her, or its decision whether to object to or opt out of this Settlement. Unknown Claims include, without limitation, those claims in which some or all of the facts composing the claim may be unsuspected

or undisclosed, concealed, or hidden. The Parties expressly acknowledge, and the Releasing Parties by operation of the Judgment shall have, and shall be deemed to have, expressly waived and relinquished any and all provisions, rights, and benefits conferred by California Civil Code ¶ 1542 and any law of any state or territory of the United States or any other jurisdiction, or principle of common law that is similar, comparable, or equivalent to California Civil Code ¶ 1542, which provides:

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

Lead Plaintiff and each of the Releasing Parties may hereafter discover facts, legal theories, or authorities in addition to or different from those which he, she or it now knows or believes to be true with respect to the subject matter of the Released Claims, but Lead Plaintiff shall expressly, fully, finally, and forever settle and release, and each Settlement Class Member shall be deemed to have settled and released, and upon the Effective Date and by operation of the Judgment shall have settled and released, fully, finally, and forever, any and all Released Claims, without regard to the subsequent discovery or existence of such different or additional facts, legal theories, or authorities. Lead Plaintiff expressly acknowledges, and the Settlement Class Members by operation of law shall be deemed to have acknowledged, that the inclusion of “Unknown Claims” in the definition of Released Claims was separately bargained for and a material element of the Settlement.

2. The Settlement Consideration

2.1. In consideration of the full and final release, settlement and discharge of all Released Claims against the Released Parties, within twenty (20) Business Days after the latest of (i) entry of the Preliminary Approval Order, and (ii) delivery of complete and accurate payment

instructions, a completed Form W-9 reflecting a valid taxpayer identification number for the qualified settlement fund in which the Settlement is to be deposited, and EFT Authorization by Lead Counsel to Defense Counsel, Acer shall cause Defendants' Insurers to transfer the Settlement Amount (\$8,350,000), by wire transfer or check, to the Escrow Account.

2.2. Under no circumstances will Defendants, Defendants' Insurers, or their Related Parties be required to pay, or cause payment of, more than the Settlement Amount pursuant to this Stipulation for any reason whatsoever, including, without limitation, as compensation to any Settlement Class Member, as payment of Administrative Costs, as payment of attorneys' fees and expenses awarded by the Court, in payment of any fees or expenses incurred by any Settlement Class Member or Lead Counsel, or as interest on the Settlement Amount of any kind and relating to any time period (including prior to the payment of the Settlement Amount into the Escrow Account).

2.3. Immediately upon deposit of the Settlement Amount into the Escrow Account, Defendants, Defendants' Insurers, and the Released Parties shall have no responsibility for, or liability or obligation whatsoever to anyone with respect to: the Net Settlement Fund, the Escrow Account, the Claims Administrator, the Claims Administrator's actions, any transaction executed or approved by the Escrow Agent, the maintenance, administration, investment, or distribution of the Settlement Fund or the Net Settlement Fund, the establishment or administration of the Plan of Allocation, the determination, administration, or calculation of Claims, the payment or withholding of Taxes, the administration of the Settlement, or any losses incurred in connection with such matters. The Released Parties shall have no further or other liability or obligations to Lead Plaintiff, Lead Counsel, or any Settlement Class Member with respect to the Claims, except as expressly stated herein. Notwithstanding anything herein to the contrary, the Escrow Agent shall

be obligated to withhold from distribution to Authorized Claimants all funds necessary to pay all Notice and Administrative Costs and all other fees, costs, and expenses associated with administration of the Settlement and the Settlement Fund; neither Defendants nor Defendants' Counsel nor any other of the Released Parties is responsible therefor, nor shall they have any liability whatsoever with respect thereto, above and beyond the Acer's obligation to cause the Settlement Amount to be paid into the Escrow Account as set forth above. The Settlement Fund shall indemnify and hold harmless all Released Parties for any costs of administration of the Settlement and the Settlement Fund (including, without limitation, costs associated with any such indemnification).

3. Handling and Disbursement of Funds by the Escrow Agent

3.1. No monies will be disbursed from the Settlement Fund until after the Effective Date except:

- (i) for Administrative Costs as provided in ¶ 3.4 below;
- (ii) for a Fee and Expense Award as provided in ¶ 8.2 below;
- (iii) to refund the Settlement Fund in the event that the Stipulation shall be terminated, or be canceled, or shall not become effective for any reason, as provided in ¶ 11.8 below, if applicable; and

(iv) To pay Taxes and Tax Expenses (as defined in ¶ 4.1 below) on the income earned by the Settlement Fund. Taxes and Tax Expenses shall be paid out of the Settlement Fund and shall be considered to be a cost of administration of the Settlement and shall be timely paid by the Escrow Agent without prior Order of the Court.

3.2. All funds held by the Escrow Agent shall be deemed to be in the custody of the Court and shall remain subject to the jurisdiction of the Court until such time as the funds shall be

distributed or returned pursuant to the terms of this Stipulation and/or further order of the Court. The Escrow Agent shall invest the Settlement Fund in short term instruments backed by the full faith and credit of the United States Government or fully insured by the United States Government or an agency thereof, and shall reinvest the proceeds of these instruments as they mature in similar instruments at their then-current market rates. The Escrow Agent shall bear all responsibility and liability for managing the Escrow Account and cannot assign or delegate its responsibilities without approval of the Parties. Defendants, their counsel, and the other Released Parties shall have no responsibility for, interest in, or any liability whatsoever with respect to any investment or management decisions executed by the Escrow Agent. The Settlement Fund shall bear all risks related to the investments of the Settlement Amount in accordance with the guidelines set forth in this ¶ 3.2.

3.3. The Escrow Agent shall not disburse the Settlement Fund except as provided in this Stipulation, by an order of the Court, or with the written agreement of Defense Counsel.

3.4. At any time after the Court grants preliminary approval of the Settlement, the Escrow Agent may, without further approval from Defendants or the Court, disburse at the direction of Lead Counsel up to \$125,000 (One Hundred Twenty-Five Thousand U.S. Dollars) from the Settlement Fund prior to the Effective Date to pay Administrative Costs. After the Effective Date, additional amounts, up to \$50,000 (Fifty Thousand Dollars), may be transferred from the Settlement Fund to pay for any necessary additional Administrative Costs without further order of the Court.

4. Taxes

4.1. The Parties agree that the Settlement Fund is intended to be a “qualified settlement fund” within the meaning of Treasury Regulation § 1.468B-1. In addition, Lead Counsel or their

designee shall timely make such elections as necessary or advisable to carry out the provisions of this ¶ 4.1, including the “relation-back election” (as defined in Treasury Regulation § 1.468B-1) back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the responsibility of Lead Counsel or their designee to timely and properly prepare and deliver the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur.

(i) For purposes of § 1.468B of the Internal Revenue Code of 1986, as amended, and Treasury Regulation § 1.468B-2(k)(3) promulgated thereunder, the “administrator” shall be Lead Counsel or their designee. Lead Counsel or their designee shall timely and properly file all informational and other tax returns necessary or advisable with respect to the Settlement Fund (including without limitation the returns described in Treasury Regulation § 1.468B-2(k)). Such returns (as well as the election described in this ¶ 4.1) shall be consistent with this ¶ 4.1 and in all events shall reflect that all Taxes (including any estimated Taxes, interest or penalties) on the income earned by the Settlement Fund shall be paid out of the Settlement Fund.

(ii) All Taxes (including any estimated Taxes, interest or penalties) arising with respect to the income earned by the Settlement Fund, including any Taxes or tax detriments that may be imposed upon Defendants or their counsel with respect to any income earned by the Settlement Fund for any period during which the Settlement Fund does not qualify as a “qualified settlement fund” for federal or state income tax purposes (“Taxes”), and all expenses and costs incurred in connection with the operation and implementation of this ¶ 4.1 (including, without limitation, expenses of tax attorneys and/or accountants and mailing and distribution costs and expenses or penalties relating to filing (or failing to file) the returns described in this ¶ 4.1) (“Tax Expenses”), shall be paid out of the Settlement Fund, as appropriate. Defendants, their counsel,

and the other Released Parties shall have no liability or responsibility for the Taxes or the Tax Expenses. Taxes and Tax Expenses shall be treated as, and considered to be, a cost of administration of the Settlement and shall be timely paid out of the Settlement Fund without prior order from the Court. The Escrow Agent shall be obligated (notwithstanding anything herein to the contrary) to withhold from distribution to Authorized Claimants any funds necessary to pay such amounts, including the establishment of adequate reserves for any Taxes and Tax Expenses (as well as any amounts that may be withheld under Treasury Regulation § 1.468B-2(1)(2)). Defendants, their counsel, and the other Released Parties shall have no responsibility for, interest in, or any liability whatsoever with respect to the foregoing provided in this ¶ 4.1. The Parties agree to cooperate with each other, and their tax attorneys and accountants, to the extent reasonably necessary to carry out the provisions of this ¶ 4.1.

5. Preliminary Approval Order and Settlement Hearing

5.1. Within fifteen (15) calendar days of the execution of this Stipulation, Lead Counsel shall submit this Stipulation and its exhibits to the Court and shall apply for preliminary approval of the Settlement set forth in this Stipulation, entry of the Preliminary Approval Order, approval for the dissemination of notice, and the scheduling of a hearing for final approval of the Settlement. The Preliminary Approval Order to be submitted to the Court shall contain the exhibits substantially in the form set forth in: (i) the Long Notice (Exhibit A-1); (ii) the Proof of Claim (Exhibit A-2); and (iii) Summary Notice (Exhibit A-3). The Notice shall include the general terms of the Settlement and the provisions of the Plan of Allocation and shall set forth the procedure by which recipients of the Notice may object to the Settlement or the Plan of Allocation or request to be excluded from the Settlement Class. The date and time of the Settlement Hearing shall be added to the Long Notice and Summary Notice before they are disseminated or otherwise provided to

Settlement Class Members. Defendants shall not object to, or have any responsibility for, Lead Counsel's proposed Plan of Allocation.

5.2. At the time of the submission described in ¶ 5.1 hereof, Lead Counsel shall request, with the consent of Defendants and on behalf of all Parties, that, after the Notice is provided and the Settlement Class Members are notified of the Settlement, the Court hold the Settlement Hearing and (i) approve the Settlement as set forth herein and (ii) enter a final order and judgment substantially in the form of Exhibit B hereto, as promptly after the Settlement Hearing as possible.

5.3. No later than ten (10) calendar days following the filing of this Stipulation with the Court, Defendants shall serve, or cause the Claims Administrator to serve, on behalf of all Defendants the notice required under the Class Action Fairness Act, 28 U.S.C. § 1715 et seq. ("CAFA"). At least seven (7) calendar days before the Settlement Hearing, Defendants shall cause to be served on Lead Counsel and filed with the Court an affidavit or declaration regarding compliance with the CAFA notice requirements.

6. Releases and Covenants Not to Sue

6.1. The obligations incurred pursuant to this Stipulation are in consideration of: (i) the full and final disposition of the Action as against Defendants; and (ii) the Releases and other relief provided for herein. Upon the Effective Date, the Releasing Parties, on behalf of themselves and any other Person claiming (now or in the future) through or on behalf of them, regardless of whether any such Releasing Party ever seeks or obtains by any means, including without limitation by submitting a Proof of Claim, any disbursement from the Settlement Fund: (i) shall be deemed by this Settlement to have, and by operation of law and of the Final Judgment shall have fully, finally, and forever released, relinquished, compromised, settled, waived, dismissed, and discharged each and all of the Released Claims (including Unknown Claims) against the Released

Parties, and shall have covenanted not to sue any of the Released Parties with respect to any of the Released Claims (including any Unknown Claims); (ii) shall be forever permanently barred, enjoined, and restrained from bringing, commencing, instituting, asserting, maintaining, enforcing, prosecuting, instituting, assisting, instigating, pursuing, or in any way participating in, either directly or in any other capacity, the commencement or prosecution of any action or any other proceeding, asserting any of the Released Claims (including any Unknown Claims) against any of the Released Parties or Defense Counsel in any state, federal, or foreign court of law or equity, arbitration tribunal, administrative forum, or other forum of any kind. The foregoing provisions shall not apply to any Person who would be a member of the Class and timely excludes himself, herself, or itself. Nothing contained herein shall bar the Releasing Parties from bringing any action or claim to enforce the terms of this Stipulation or the Final Judgment.

6.2. Upon the Effective Date, Defendants, on behalf of themselves and their Related Parties, shall be deemed to have, and by operation of the Final Judgment shall have, fully, finally, and forever released, relinquished, and discharged Lead Plaintiff, Settlement Class Members, Lead Counsel, and their Related Parties from all Claims, whether known or unknown, which arise out of, concern or relate to the institution, prosecution, settlement or dismissal of the Action (the “Defendants’ Released Claims”), and shall be permanently enjoined from prosecuting the Defendants’ Released Claims against Lead Plaintiff, Settlement Class Members, Lead Counsel, and their Related Parties (collectively, the “Plaintiff Released Parties”). Nothing contained herein shall, however, bar the Defendants or their Related Parties from bringing any action or claim to enforce the terms of this Stipulation or the Final Judgment.

6.3. It is understood that Lead Plaintiff and the other Settlement Class Members or Defendants, or any of them, may hereafter discover additional or different facts from those that he,

she, or it now knows or believes to be true with respect to the subject matter of the Released Claims or Defendants' Released Claims (including Unknown Claims), but the Lead Plaintiff and the Defendants shall, upon the Effective Date, expressly fully, finally, and forever discharge, settle, and release, and each Settlement Class Member, upon the Effective Date, shall be deemed to have, and by operation of law and of the Judgment shall have, expressly fully, finally, and forever discharged, settled, and released, any and all Released Claims. Lead Plaintiff and Defendants acknowledge, and the Settlement Class Members by operation of law and of the Judgment shall be deemed to have acknowledged, that the foregoing waiver of Released Claims that are Unknown Claims, including the provisions, rights, and benefits of California Civil Code § 1542 (and the inclusion of "Unknown Claims" in the definition of Released Claims and Defendants' Released Claims), was separately bargained for and is a material element of the Settlement.

6.4. By entering into this Stipulation, Lead Plaintiff and Lead Counsel represent and warrant that they have not assigned, hypothecated, conveyed, transferred, or otherwise granted or given any interest in the Released Claims to any other Person, and the Defendants represent and warrant that they have not assigned, hypothecated, conveyed, transferred, or otherwise granted or given any interest in the Defendants' Released Claims to any other Person.

6.5. The Proof of Claim to be executed by Claimants shall release all Released Claims against all Released Parties and shall be substantially in the form attached hereto as Exhibit A-2.

7. Administration and Calculation of Claims, Final Awards and Supervision and Distribution of the Settlement Fund

7.1. Under the supervision of Lead Counsel, acting on behalf of the Settlement Class, and subject to such supervision and direction of the Court as may be necessary or as circumstances may require, the Claims Administrator shall administer and calculate the claims submitted by

Settlement Class Members and shall oversee distribution of the Net Settlement Fund (as defined below) to Authorized Claimants.

7.2. The Settlement Fund shall be applied as follows:

(i) To pay the Taxes and Tax Expenses described in ¶ 4.1 above;

(ii) To pay Administrative Costs;

(iii) To pay Lead Counsel’s attorneys’ fees with interest and expenses and payment to the Lead Plaintiff for reimbursement of his time and expenses (the “Fee and Expense Award”), to the extent allowed by the Court; and

(iv) To distribute the balance of the Settlement Fund, that is, the Settlement Fund less the items set forth in ¶¶ 7.2(i), (ii), and (iii) hereof (the Net Settlement Fund), plus all accrued interest, to the Authorized Claimants as allowed by this Stipulation, the Plan of Allocation, or the Court.

7.3. Upon and after the Effective Date, the Net Settlement Fund shall be distributed to Authorized Claimants in accordance with the terms of the Plan of Allocation set forth in the Long Notice and any orders of the Court.

7.4. This is not a claims-made settlement, and if all conditions of the Stipulation are satisfied and the Final Judgment becomes Final, no portion of the Settlement Fund will be returned to any of the Defendants or their Insurers. Defendants, their counsel, and the other Released Parties shall have no responsibility for, involvement in, interest in, or liability whatsoever with respect to the administration of the Settlement, selection of the Claims Administrator, the management, investment, disposition, allocation, or distribution of the Net Settlement Fund, the Plan of Allocation, the determination, management, administration, or calculation of claims, the payment or withholding of Taxes or Tax Expenses, any nonperformance of the Claims Administrator, or

any losses incurred in connection therewith. No Person shall have any claims against Lead Counsel, the Claims Administrator or any other agent designated by Lead Counsel based on distribution determinations or claim rejections made substantially in accordance with this Stipulation and the Settlement contained herein, the Plan of Allocation, or orders of the Court. Lead Counsel shall have the right, but not the obligation, to waive what they deem to be formal or technical defects in any Proofs of Claim filed, where doing so is in the interest of achieving substantial justice.

7.5. It is understood and agreed by the Parties that any proposed Plan of Allocation of the Net Settlement Fund including, but not limited to, any adjustments to an Authorized Claimant's claim set forth therein, is not a necessary term of Settlement or of this Stipulation, and it is not a condition of this Stipulation and is to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement set forth in this Stipulation. Lead Plaintiff and Lead Counsel may not cancel or terminate the Settlement (or this Stipulation) based on the Court's or any appellate court's ruling with respect to the Plan of Allocation or any other plan of allocation in this Action. Any order or proceedings relating to the Plan of Allocation, or any appeal from any order relating thereto or reversal or modification thereof, shall not operate to modify, terminate, or cancel this Stipulation, or affect or delay the finality of the Final Judgment and the releases contained therein, or any other orders entered pursuant to this Stipulation.

7.6. No later than ten (10) Business Days after the date of entry of the Preliminary Approval Order, Acer, at no cost to Lead Plaintiff or Lead Counsel, shall provide and/or cause its transfer agent to provide to Lead Counsel a list of the record holders of Acer common stock during the Settlement Class Period. The list shall be provided in an electronic format, such as an Excel

spreadsheet (“Settlement Class Information”). If in the transfer agent’s possession, the Settlement Class Information should include email addresses of record owners of Acer common stock in the Settlement Class. The Parties acknowledge that any information provided to Lead Counsel by the Company pursuant to this paragraph shall be treated as confidential and will be used by Lead Counsel and the Claims Administrator solely to disseminate notice, apprise Settlement Class Members of the Settlement, and/or implement the Settlement.

7.7. If any funds remain in the Net Settlement Fund by reason of uncashed checks or otherwise, then, after the Claims Administrator has made reasonable and diligent efforts to have Authorized Claimants who are entitled to participate in the distribution of the Net Settlement Fund cash their distribution checks, any balance remaining in the Net Settlement Fund six (6) months after the initial distribution of such funds shall be used: (i) first, to pay any amounts mistakenly omitted from the initial distribution to Authorized Claimants and who would receive at least a \$10.00 payment; (ii) second, to pay any additional Administrative Costs incurred in administering the Settlement; and (iii) finally, to make a second distribution to Authorized Claimants who cashed their checks from the initial distribution and who would receive at least \$10.00 from such second distribution, after payment of the estimated costs or fees to be incurred in administering the Net Settlement Fund and in making this second distribution, if such second distribution is economically feasible. If any funds shall remain in the Net Settlement Fund six months after such re-distribution, then such balance shall be contributed to a non-sectarian not-for-profit organization chosen by Lead Counsel.

7.8. Payment pursuant to the class distribution order shall be final and conclusive against all Claimants. All Settlement Class Members whose claims are not approved by the Court for payment shall be barred from participating in distributions from the Net Settlement Fund, but

otherwise shall be bound by all of the terms of this Stipulation and the Settlement, including the terms of the Judgment to be entered in this Action and the Releases provided for herein and therein, and will be permanently barred and enjoined from bringing any action against any and all Released Parties with respect to any and all of the Released Claims.

7.9. Any Settlement Class Member who does not submit a timely and valid claim form will be bound by all of the terms of this Stipulation and the Settlement, including the terms of the Judgment to be entered in the Action and the Releases provided for herein and therein, and will be permanently barred and enjoined from bringing, commencing, instituting, prosecuting, or continuing to prosecute any action, claim, or other proceeding of any kind against the Released Parties with respect to the Released Claims in the event that the Effective Date occurs with respect to the Settlement.

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

8. Lead Counsel's Attorneys' Fees and Reimbursement of Expenses

8.1. Lead Counsel may submit an application or applications (the "Fee and Expense Application") for distributions from the Settlement Fund to Lead Counsel for: (i) an award of attorneys' fees with interest from the Settlement Fund; (ii) reimbursement of actual costs and expenses, including the fees and expenses of any experts or consultants, incurred in connection with prosecuting the Action; and (iii) the Award to Lead Plaintiff. Defendants shall take no position with respect to the Fee and Expense Application.

8.2. Except as otherwise provided in this paragraph, the Fee and Expense Award shall be paid to Lead Counsel from the Settlement Fund immediately after the Court enters the Final Judgment and an order awarding such fees and expenses, notwithstanding any objections to or appeals of such order or of the Final Judgment. In the event that the Effective Date does not occur, or the Final Judgment is reversed or modified in any way that affects the award of attorneys' fees and expenses, or the Stipulation is terminated for any other reason, then Lead Counsel shall be jointly and severally obligated to refund to the Escrow Account, within ten (10) Business Days from receiving notice from Defense Counsel or from a court of appropriate jurisdiction, either the full amount of the fees and expenses paid to Lead Counsel or an amount consistent with any modification of the Final Judgment with respect to the Fee and Expense Award, including accrued interest at the same rate as is earned by the Settlement Fund. Lead Counsel agrees that the law firm and its partners and/or shareholders are subject to jurisdiction of the Court for the purpose of enforcing the provisions of this paragraph, and they shall be jointly and severally liable for repayment of all attorneys' fees and expenses awarded by the Court. Furthermore, without limitation, Lead Counsel agree that the Court may, upon application of Defendants, summarily issue orders, including, without limitation, judgments and attachment orders and may make appropriate findings of or sanctions for contempt against the firm should they fail timely to repay fees and expenses pursuant to this paragraph. Any Award to Lead Plaintiff shall not be paid from the Settlement Fund until after the Effective Date.

8.3. The procedure for, and allowance or disallowance by the Court of, the Fee and Expense Application are not a condition of the Settlement set forth in this Stipulation and are to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement set forth in this Stipulation. Any order or

proceeding relating to the Fee and Expense Application, or any objection to, motion regarding, or appeal from any order or proceeding relating thereto or reversal or modification thereof, shall not operate to modify, terminate, or cancel this Stipulation, or affect or delay the finality of the Final Judgment or the releases contained therein or any other orders entered pursuant to this Stipulation.

8.4. Any award of attorneys' fees and interest and/or expenses to Lead Counsel or Award to Lead Plaintiff shall be paid solely from the Settlement Fund and shall reduce the settlement consideration paid to the Settlement Class accordingly. No Released Party shall have any responsibility for payment of Lead Counsel's attorneys' fees and interest, expenses, or other Award to Lead Plaintiff beyond the obligation of Acer to cause the funding of the Settlement Amount as set forth in ¶ 2.1 above. The Released Parties shall have no responsibility for, and no liability whatsoever with respect to, any payments to Lead Counsel, Lead Plaintiff, the Settlement Class and/or any other Person who receives payment from the Settlement Fund.

9. Class Certification

9.1. In the Final Judgment, the Settlement Class shall be certified for purposes of this Settlement. For purposes of this Settlement only, in connection with the Final Judgment, Defendants consent to (i) the appointment of Lead Plaintiff as the class representative, (ii) the appointment of Lead Counsel as class counsel, and (iii) the certification of the Settlement Class pursuant to Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure. In the event that the Final Judgment is not entered by the Court or the Settlement fails to become effective for any reason, all Parties reserve all their rights on all issues, including certification of the Settlement Class or any other class, to oppose certification or appointment of Lead Plaintiff as Class Representative, and to oppose the appointment of Lead Counsel as class counsel in the Action. In such event, (i) nothing in this Stipulation or in the Preliminary Approval Order shall in any way

prejudice any argument Defendants make in opposition to the certification of any class, the appointment of any class representative, or the appointment of class counsel, and (ii) Lead Plaintiff shall not cite the Stipulation or the Preliminary Approval Order in support of any motion for class certification or the appointment of class representative or class counsel.

10. Objections and Requests for Exclusion

10.1. Pursuant to the terms and subject to the conditions set forth in the Preliminary Approval Order, any Settlement Class Member may appear at the Settlement Hearing and show cause why the Stipulation, and the proposed Settlement embodied herein, should or should not be approved as fair, reasonable and adequate and in the best interests of the Settlement Class, or why the Judgment should or should not be entered thereon, and/or to present opposition to the Plan of Allocation or to the application of Lead Counsel for attorneys' fees and reimbursement of Litigation Expenses.

10.2. Pursuant to the terms and subject to the conditions set forth in the Preliminary Approval Order, any putative Settlement Class Member may request to be excluded from the Settlement Class.

10.3. The Claims Administrator shall scan and electronically send copies of all requests for exclusion in .pdf format (or such other format as shall be agreed) to Defendants' counsel and to Lead Counsel expeditiously after the Claims Administrator receives such a request.

10.4. The Parties will request that the deadline for submitting requests for exclusion from the Class shall be no later than twenty-one (21) calendar days prior to the Settlement Hearing.

10.5. Copies of all requests for exclusion from the Settlement Class received by the Claims Administrator (or other person designated to receive exclusion requests) shall be provided to Defense Counsel via electronic mail within five (5) Business Days of receipt of the request or

no later than fourteen (14) calendar days prior to the Settlement Hearing, whichever is earlier.

11. Conditions of Settlement, Effect of Disapproval, Cancellation or Termination

11.1. Lead Plaintiff, on behalf of the Settlement Class, and Defendants shall each have the right to terminate the Settlement and Stipulation by providing written notice of his or its election to do so (“Termination Notice”) to all other Parties within seven (7) Business Days of any of the following:

- (i) entry of a Court order declining to enter the Preliminary Approval Order in any material respect;
- (ii) entry of a Court order refusing to approve this Stipulation in any material respect;
- (iii) entry of a Court order declining to enter the Final Judgment in any material respect;
- (iv) entry of a Court order refusing to dismiss the Action with prejudice;
- (v) entry of an order by which the Final Judgment is modified or reversed in any material respect by any appeal or review; and
- (vi) failure on the part of any Party to abide, in material respect, with the terms of this Stipulation.

In the absence of any of the events enumerated above in this ¶ 11.1 and below in ¶ 11.4, no Party shall have the right to terminate the Stipulation for any reason. Notwithstanding the foregoing, any decision by the Court or any appeals court with respect to a Fee and Expense Application or the Fee and Expense Award or with respect to a Plan of Allocation shall not be considered material to this Settlement, shall not preclude the Judgment from being deemed Final, and shall not be grounds for termination of the Settlement.

11.2. The Effective Date of this Stipulation (“Effective Date”) shall not occur unless and until each of the following events occurs, and it shall be the date upon which the last in time of the following events occurs:

- (i) Acer has not exercised its option to terminate the Settlement pursuant to ¶ 11.4;
- (ii) The Court has entered the Preliminary Approval Order attached hereto as Exhibit A or an order containing materially the same terms;
- (iii) The sum of \$8,350,000 (Eight Million Three Hundred and Fifty Thousand U.S. Dollars) has been paid into the Escrow Account, as set forth in ¶ 2.1 above;
- (iv) The Court has approved the Settlement, following notice to the Settlement Class Members and the Settlement Hearing, and has entered the Final Judgment;
- (v) The Final Judgment has become Final as defined in ¶ 1.15; and
- (vi) The Action has been dismissed with prejudice.

11.3. Upon the occurrence of the Effective Date, any and all interest or right of Defendants in or to the Settlement Fund, if any, shall be absolutely and forever extinguished, except as set forth in this Stipulation.

11.4. If prior to Final Judgment, Persons who otherwise would be Settlement Class Members have filed with the Court valid and timely requests for exclusion from the Settlement Class in accordance with the provisions of the Preliminary Approval Order and the notice given pursuant thereto (“Opt-Outs”), and such Persons in the aggregate purchased securities during the Settlement Class Period in an amount greater than the amount specified in a separate Confidential Supplemental Agreement between the Parties (the “Supplemental Agreement”), then Acer shall have, at its sole and absolute discretion, the option to terminate this Stipulation and Settlement in

accordance with the requirements and procedures set forth in the Supplemental Agreement (hereinafter the “Supplemental Termination Option”). The Supplemental Agreement may be disclosed to the Court *in camera* for purposes of approval of the Settlement, if required by the Court, but otherwise shall not be filed with the Court unless and until a dispute among the Parties concerning its interpretation or application arises.

11.5. None of the Parties, or any of them, shall have any obligation whatsoever to proceed under any terms other than those provided for and agreed herein. If any Party engages in a material breach of the terms hereof, any other Party, provided that he, she, or it is in substantial compliance with the terms of this Stipulation, may terminate this Stipulation on written notice to all the Parties. Additionally, if Defendants do not cause their insurers to timely pay the Settlement Amount, Lead Plaintiff, at his sole discretion, may file a motion to enforce the Stipulation and payment of the Settlement Amount or terminate the Settlement.

11.6. In the event the Stipulation shall be terminated, or be canceled, or shall not become effective for any reason, the Parties shall be restored to their respective positions in the Action immediately prior to July 21, 2021, and they shall proceed in all respects as if the Stipulation had not been executed and the related orders had not been entered, and in that event all of their respective claims and defenses as to any issue in the Action and shall be preserved without prejudice.

11.7. In the event that the Stipulation is not approved by the Court or the Settlement set forth in this Stipulation is terminated or fails to become effective in accordance with its terms, the terms and provisions of this Stipulation, except as otherwise provided herein, shall have no further force and effect with respect to the Parties and shall not be used in the Action or in any other

proceeding for any purpose, and any judgment or order entered by the Court in accordance with the terms of this Stipulation shall be treated as vacated, *nunc pro tunc*.

11.8. In the event that the Stipulation shall be terminated, or be canceled, or shall not become effective for any reason, within seven (7) Business Days (except as otherwise provided in the Supplemental Agreement) after the occurrence of such event, the Settlement Fund (less taxes already paid and any Administrative Costs which have either been disbursed or are determined to be chargeable) shall be refunded by the Escrow Agent to the entity or entities which paid the Settlement Fund, in proportion to their contribution to the Settlement Fund, plus accrued interest attributable to that amount by check or wire transfer pursuant to written instructions from said entity or entities. At the request of said entity or entities the Escrow Agent or its designee shall apply for any tax refund owed on the Settlement Fund and pay the proceeds, after deduction of any fees or expenses incurred in connection with such application(s) for refund, to said entity or entities pursuant to written direction received from said entity or entities.

11.9. No order of the Court or modification or reversal on appeal of any order of the Court concerning the Plan of Allocation or the Fee and Expense Application shall constitute grounds for cancellation or termination of the Stipulation.

12. No Admission of Liability or Wrongdoing

12.1. The Parties covenant and agree that neither this Stipulation, nor the fact nor any terms of the Settlement, nor any communication relating thereto, nor the Supplemental Agreement, is evidence, or an admission, presumption or concession by any Party, or their counsel, any Settlement Class Member, or any of the Released Parties, of any fault, liability or wrongdoing whatsoever, as to any facts or claims alleged or that have been or could have been asserted in the Action, or in any other actions or proceedings, or as to the validity or merit of any of the claims or

defenses alleged or that have been or could have been asserted in any such action or proceeding. This Stipulation is not a finding or evidence of the validity or invalidity of any claims or defenses in the Action, any wrongdoing by any Party, Settlement Class Member, or any of the Released Parties, or any damages or injury to any Settling Party, Settlement Class Member, or any Released Parties. The Parties acknowledge that Defendants make no admission of fault, liability, or wrongdoing.

12.2. Whether or not the Settlement, as embodied in this Stipulation, is approved by the Court, and whether or not this Settlement is consummated, the fact and terms of this Settlement, this Stipulation, the Supplemental Agreement, and any related statements, negotiations, or proceedings, shall not be offered or received:

(i) against the Released Parties, Lead Plaintiff or the other Settlement Class Members as evidence of, or be deemed to be evidence of, any presumption, concession or admission by any of the Released Parties or by Lead Plaintiff or the other Settlement Class Members with respect to the truth of any fact alleged by Lead Plaintiff or the validity, or lack thereof, of any claim that has been or could have been asserted in the Action or in any litigation, or the deficiency of any defense that has been or could have been asserted in the Action or in any litigation, or of any liability, negligence, fault or wrongdoing of the Released Parties;

(ii) against the Released Parties as evidence of a presumption, concession or admission of any wrongdoing, fault, or liability, including (without limitation) any misrepresentation, omission, or violation of the securities laws alleged in the Third Amended Complaint;

(iii) against the Released Parties, Lead Plaintiff or the other Settlement Class Members as evidence of a presumption, concession or admission with respect to any liability,

negligence, fault, misrepresentation, omission, or wrongdoing, or in any way referred to for any other reason as against any of the foregoing parties, in any arbitration proceeding or other civil, criminal or administrative action or proceeding, or other action or proceeding; provided, however, that the Released Parties and the Plaintiff Released Parties may refer to this Settlement to enforce its terms, including (without limitation) any release from liability granted hereunder; shall not be construed against the Released Parties, Defense Counsel, Lead Counsel or Lead Plaintiff or the other Settlement Class Members as an admission or concession that the consideration to be paid hereunder represents the amount which could be or would have been recovered after trial; and shall not be construed as or received in evidence as an admission, concession or presumption against Lead Plaintiff or the other Settlement Class Members or any of them that any of their claims are without merit or that damages recoverable in the Action would not have exceeded the Settlement Amount.

13. Miscellaneous Provisions

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

13.2. Except in the event of the filing of a Termination Notice pursuant to ¶ 11.1 of this Stipulation or a termination notice in accordance with the Supplemental Agreement and ¶ 11.4 of this Stipulation, the Parties shall take all actions necessary to consummate this agreement; and agree to cooperate with each other to the extent reasonably necessary to effectuate and implement all terms and conditions of the Stipulation.

13.3. The Parties and their respective counsel represent that they will not encourage or otherwise influence (or seek to influence) any Settlement Class Members to request exclusion from, or object to, the Settlement.

13.4. Each of the attorneys executing this Stipulation, any of its exhibits, and any related settlement documents on behalf of any Party hereto hereby warrants and represents that he or she has been duly empowered and authorized to do so by the Party he or she represents, respectively.

13.5. Lead Plaintiff and Lead Counsel represent and warrant that Lead Plaintiff is a Settlement Class Member and none of Lead Plaintiff's claims or causes of action against one or more Defendants in the Action, or referred to in this Stipulation, or that could have been alleged against one or more Defendants in the Action have been assigned, encumbered or in any manner transferred in whole or in part.

13.6. This Stipulation and the Supplemental Agreement constitute the entire agreement between the Parties related to the Settlement and supersede any prior agreements. No representations, warranties, promises, inducements, or other statements have been made to or relied upon by any Party concerning this Stipulation, other than the representations, warranties and covenants expressly set forth herein and in the Supplemental Agreement. Lead Plaintiff, on behalf of himself and the Settlement Class, acknowledges and agrees that any and all other representations and warranties of any kind or nature, express or implied, are specifically disclaimed and were not relied upon in connection with this Stipulation. In entering this Stipulation, the Parties relied solely upon their own knowledge and investigation. Except as otherwise provided herein, each Party shall bear his or its own costs.

13.7. This Stipulation may not be modified or amended, nor may any of its provisions be waived, except by a writing signed by all Parties, or their respective counsel or their respective successors in interest.

13.8. This Stipulation shall be binding upon, and shall inure to the benefit of, the Parties and their respective agents, successors, executors, heirs, and assigns, including any and all Released Parties and any corporation, partnership, or other entity into or with which any Released Party may merge, consolidate, or reorganize.

13.9. The Released Parties who do not appear on the signature lines below, are acknowledged and agreed to be third party beneficiaries of this Stipulation and Settlement.

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

13.11. This Stipulation may be executed in any number of counterparts by any of the signatories hereto and the transmission of an original signature page electronically (including by facsimile or portable document format) shall constitute valid execution of the Stipulation as if all signatories hereto had executed the same document. Copies of this Stipulation executed in counterpart shall constitute one and the same agreement.

13.12. This Stipulation, the Settlement, the Supplemental Agreement and any and all disputes arising out of or relating in any way to this Stipulation, whether in contract, tort or otherwise, shall be governed by and construed in accordance with the laws of the State of New York without regard to conflict of laws principles, except to the extent that federal law requires that federal law govern.

13.13. The Court shall retain jurisdiction with respect to the implementation and enforcement of the terms of this Stipulation, and all parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the Settlement embodied in this Stipulation.

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

13.15. Lead Plaintiff, Lead Counsel, and the attorneys, staff, experts, and consultants assisting them in the Action agree that (i) they will not intentionally assist or cooperate with any person or entity in the pursuit of legal action related to the subject matter of the Action against the Released Parties, (ii) they will not intentionally assist or cooperate with any person or entity seeking to publicly disparage or economically harm the Released Parties with respect to any matter relating to the subject matter of the Action, and (iii) they will not discuss any confidential matters related to the Action or the Settlement with anyone apart from their own attorneys, accountants, insurers and legal advisors or as required by law or in order to effectuate the Settlement. Defendants and Defense Counsel agree that (i) they will not intentionally assist or cooperate with any person or entity in the pursuit of legal action related to the subject matter of the Action against Lead Plaintiff, Settlement Class Members, Lead Counsel, and their Related Parties, (ii) they will not intentionally assist or cooperate with any person or entity seeking to publicly disparage or economically harm Lead Plaintiff, Settlement Class Members, Lead Counsel, and their Related Parties with respect to any matter relating to the subject matter of the Action, and (iii) they will not discuss any confidential matters related to the Action, or the Settlement with anyone apart from

their own attorneys, accountants, insurers and legal advisors or as required by law or in order to effectuate the Settlement.

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

13.17. All agreements by, between or among the Parties, their respective counsel and their other advisors as to the confidentiality of information exchanged between or among them shall remain in full force and effect and shall survive the execution and any termination of this Stipulation and the final consummation of the Settlement, if finally consummated, without regard to any of the conditions of the Settlement.

13.18. The Parties shall not assert or pursue any action, claim or rights that any party violated any provision of Rule 11 of the Federal Rules of Civil Procedure, any corollary state law rule or statute, and/or the Private Securities Litigation Reform Act of 1995 (“PSLRA”) in connection with the Action, the Settlement, the Stipulation, or the Supplemental Agreement. The Parties agree that the Action was resolved in good faith following arm’s-length bargaining, in full compliance with applicable requirements of good faith litigation under the Securities Exchange Act of 1934, Rule 11 of the Federal Rules of Civil Procedure, any corollary state law rule or statute, and/or the PSLRA. Moreover, none of the Parties shall seek any cost-shifting claims against the others. The Parties agree that the amounts paid and the other terms of the Settlement were negotiated at arm’s length and in good faith by the Parties, including through a mediation process supervised and conducted by Jed Melnick, Esq. and reflect the Settlement that was reached

voluntarily after extensive negotiations and consultation with experienced legal counsel, who were fully competent to assess the strengths and weaknesses of their respective clients' claims or defenses.

13.19. Any failure by any of the Parties to insist upon the strict performance by any other Party of any of the provisions of the Stipulation shall not be deemed a waiver of any of the provisions hereof, and such Party, notwithstanding such failure, shall have the right thereafter to insist upon the strict performance of any and all of the provisions of this Stipulation to be performed by the other Parties.

13.20. The waiver, express or implied, by any Party of any breach or default by any other Party in the performance of such Party of its obligations under the Stipulation shall not be deemed or construed to be a waiver of any other breach, whether prior, subsequent, or contemporaneous, under this Stipulation.

13.21. The Parties reserve the right, subject to the Court's approval, to make any reasonable extensions of time that might be necessary to carry out any of the provisions of this Stipulation.

IN WITNESS WHEREOF, the Parties have executed this Stipulation by their undersigned counsel effective as of the date set forth below.

Dated: July 21, 2021

THE ROSEN LAW FIRM, P.A.

By: 

Laurence Rosen

Phillip Kim

Brian B. Alexander

275 Madison Avenue, 40th Floor

New York, NY 10016

Tel: (212) 686-1060

Fax: (212) 202-3827

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pkim@rosenlegal.com

balexander@rosenlegal.com

Lead Counsel for Lead Plaintiff and the Class

Dated: July 21, 2021

MORRISON & FOERSTER LLP

By: 

Jamie A. Levitt

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New York, New York 10019

Telephone: (212) 468-8000

Facsimile: (212) 468-7900

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Jordan Eth (admitted *pro hac vice*)

425 Market Street

San Francisco, California 94105

Telephone: (415) 268-7000

Facsimile: (415) 268-7522

Email: JEth@mof.com

*Counsel for Defendants Acer Therapeutics Inc.,
Chris Schelling, and Harry Palmin*

EXHIBIT A

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

NICHOLAS SKIADAS, Individually and on
Behalf of All Others Similarly Situated,

Plaintiff,

V.

ACER THERAPEUTICS INC., CHRIS
SCHELLING, AND HARRY PALMIN,

Defendants.

Case No. . 1:19-cv-06137-GHW

CLASS ACTION

**[PROPOSED] ORDER GRANTING MOTION FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

WHEREAS, Lead Plaintiff Nicholas Skiadas (“Lead Plaintiff”) on behalf of himself and the Settlement Class, and Defendants Acer Therapeutics Inc. (“Acer” or the “Company”), Chris Schelling, and Harry Palmin (“Defendants” and with Lead Plaintiff, collectively, the “Parties”) have entered into the Stipulation and Agreement of Settlement, dated July 21, 2021 and amended per the Court’s instructions (the “Stipulation”), which is subject to review under Rule 23 of the Federal Rules of Civil Procedure, and which, together with the exhibits annexed thereto, sets forth the terms and conditions for the proposed settlement and dismissal with prejudice of the securities class action pending before the Court titled, *Nicholas Skiadas v. Acer Therapeutics, Inc., et. al.*, Case No. 1:19-cv-06137-GHW (S.D.N.Y.) (the “Action”); and the Court having read and considered the Stipulation and the exhibits thereto and submissions made relating thereto, and finding that substantial and sufficient grounds exist for entering this Order; and the Parties having consented to the entry of this Order;

NOW, THEREFORE, IT IS HEREBY ORDERED, this ____ day of _____, 2021, that:

1. Capitalized terms used herein have the meanings defined in the Stipulation.
2. Pursuant to Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure and for the purposes of the Settlement only, the Action is hereby preliminarily certified as a class action on behalf of all persons and entities that purchased or otherwise acquired publicly traded Acer Therapeutics Inc. common stock between September 25, 2017 and June 24, 2019, both dates inclusive, and suffered compensable damages thereby. Excluded from the Settlement Class are Defendants and their immediate families; the officers and directors of Acer at all relevant times; their legal representatives, heirs, successors or assigns; any entity in which Defendants have or had a controlling interest; and any entity affiliated with, controlling, controlled by, or under

common control with TVM Capital Life Science. Also excluded from the Settlement Class are those persons who file valid and timely requests for exclusion in accordance with this Order.

3. This Court finds, preliminarily and for purposes of the Settlement of the Action only, that the prerequisites for a class action under Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure have been satisfied in that: (a) the number of Settlement Class Members is so numerous that joinder of all members of the Settlement Class is impracticable; (b) there are questions of law and fact common to the Settlement Class; (c) Lead Plaintiff's claims are typical of the claims of the Settlement Class they seek to represent; (d) Lead Plaintiff fairly and adequately represents the interests of the Settlement Class; (e) questions of law and fact common to the Settlement Class predominate over any questions affecting only individual members of the Settlement Class; and (f) a class action is superior to other available methods for the fair and efficient adjudication of the Action.

4. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, preliminarily and for the purposes of the Settlement of the Action only, Lead Plaintiff is certified as class representative on behalf of the Settlement Class ("Class Representative") and Lead Counsel, previously selected by Lead Plaintiff and appointed by the Court, is hereby appointed as Class Counsel for the Settlement Class ("Class Counsel").

5. The Court finds that (a) the Settlement memorialized in the Stipulation resulted from good faith, arm's length negotiations, and (b) the Settlement memorialized in the Stipulation is sufficiently fair, reasonable and adequate to the Settlement Class Members to warrant providing notice of the Settlement to Settlement Class Members and holding a Settlement Hearing.

6. The Court hereby preliminarily approves the Settlement, subject to further consideration at a telephonic hearing (the "Settlement Hearing") pursuant to Federal Rules of Civil

Procedure 23(e), which is hereby scheduled to be held before the Court on _____ 2021 at __:__ .m. for the following purposes:

(a) to determine finally whether the applicable prerequisites for class action treatment of the Action under Federal Rules of Civil Procedure 23(a) and (b) are satisfied;

(b) to determine finally whether the Settlement is fair, reasonable, and adequate, and should be approved by the Court;

(c) to determine finally whether the Judgment, substantially in the form of Exhibit B to the Stipulation, should be entered, dismissing the Action on the merits and with prejudice, and to determine whether the release by the Releasing Parties of the Released Claims against the Released Parties, as set forth in the Stipulation, should be ordered, along with a permanent injunction barring efforts to prosecute or attempt to prosecute any Released Claims extinguished by the release against any of the Released Parties, as also set forth in the Stipulation;

(d) to determine finally whether the proposed Plan of Allocation for the distribution of the Net Settlement Fund is fair and reasonable and should be approved by the Court;

(e) to consider the applications of Class Counsel for awards of attorneys' fees with interest and expenses to Class Counsel and award to the Class Representative;

(f) to consider Settlement Class Members' objections to the Settlement, if any, whether submitted previously in writing or presented orally at the Settlement Hearing by Settlement Class Members (or by counsel on their behalf) provided that they give proper notice that they intend to appear at the Settlement Hearing; and

(g) to rule upon such other matters as the Court may deem appropriate.

7. The Court reserves the right to alter the time and date of the Settlement Hearing and to approve the Settlement without modification, or with such modifications as may be agreed to by the Parties, and with or without further notice of any kind. The Court further reserves the right to enter its Judgment approving the Settlement and dismissing the Action, on the merits and with prejudice, regardless of whether it has approved the Plan of Allocation or awarded attorneys' fees and expenses.

8. The Court approves the form, substance and requirements of (a) the Notice of Pendency and Proposed Settlement of Securities Class Action ("Long Notice"), (b) the Summary Notice of Pendency and Proposed Securities Class Action Settlement ("Summary Notice"), and (c) the Proof of Claim and Release Form ("Proof of Claim"), all of which are exhibits to the Stipulation.

9. Class Counsel has the authority to enter into the Settlement on behalf of the Settlement Class and has the authority to act on behalf of the Settlement Class with respect to all acts or consents required by or that may be given pursuant to the Stipulation or such other acts that are reasonably necessary to consummate the Settlement.

10. For settlement purposes only, Strategic Claims Services is appointed and approved as the Claims Administrator to supervise and administer the notice procedure as well as the processing of claims.

11. The Escrow Agent may, at any time after entry of this Order and without further approval from Defendants or the Court, disburse at the direction of Class Counsel up to \$125,000 (One Hundred Twenty-Five Thousand Dollars) from the Settlement Fund prior to the Effective Date to pay Administrative Costs. After the Effective Date, additional amounts, up to \$50,000

(Fifty Thousand Dollars), may be transferred from the Settlement Fund to pay for any necessary additional Administrative Costs without further order of the Court.

12. No later than ten (10) Business Days after the date of entry of this Order, Acer, at no cost to Lead Plaintiff or Lead Counsel, shall provide and/or cause its transfer agent to provide to Lead Counsel a list of the record owners of Acer common stock in the Settlement Class in electronic format, such as an Excel spreadsheet (“Settlement Class Information”). If in the transfer agent’s possession, the Settlement Class Information should include email addresses of record owners of Acer common stock in the Settlement Class. The Parties acknowledge that any information provided to Lead Counsel by the Company pursuant to this paragraph shall be treated as confidential and will be used by Lead Counsel and the Claims Administrator solely to disseminate notice, apprise Settlement Class Members of the Settlement, and/or implement the Settlement.

13. Within sixteen (16) Business Days of the entry of this Order, Class Counsel, through the Claims Administrator, shall either (a) email the Summary Notice to Settlement Class Members for whom the Claims Administrator is able to obtain email addresses, substantially in the form annexed to the Stipulation as Exhibit A-3 or (b) cause the Long Notice, if no electronic mail address can be obtained, mailed, by first class mail, postage prepaid, to Settlement Class Members who can be identified with reasonable effort by Class Counsel, through the Claims Administrator.

14. Class Counsel, through the Claims Administrator, shall make all reasonable efforts to give notice to nominees or custodians who held Acer common stock during the Settlement Class Period as record owners but not as beneficial owners. Such nominees or custodians shall, within ten (10) calendar days of receipt of the notice, either: (i) request copies of the Long Notice

sufficient to send the Long Notice to all beneficial owners for whom they are nominee or custodian, and within ten (10) calendar days after receipt thereof send copies to such beneficial owners; (ii) request links to the Long Notice and Proof of Claim and email the links to the Long Notice and Proof of Claim to each beneficial owner for whom they are nominee or custodian within ten (10) calendar days after receipt thereof; or (iii) provide the Claims Administrator with lists of the names, last known addresses and email addresses (to the extent known) of such beneficial owners, in which event the Claims Administrator shall promptly deliver the Long Notice and Proof of Claim to such beneficial owners. Nominees or custodians who elect to email links to the Long Notice and Proof of Claim or send the Long Notice and Proof of Claim to their beneficial owners shall send a written certification to the Claims Administrator confirming that the mailing has been made as directed. Copies of the Long Notice shall be made available to any nominee or custodian requesting same for the purpose of distribution to beneficial owners. The Claims Administrator shall, if requested, reimburse nominees or custodians out of the Settlement Fund solely for their reasonable out-of-pocket expenses, incurred in providing notice to beneficial owners, which expenses would not have been incurred except for the providing of names and addresses, up to a maximum of \$0.05 per name, address, and email address provided to the Claims Administrator; up to \$0.10 per Long Notice actually mailed, plus postage at the rate used by the Claims Administrator; or up to \$0.05 per link to the Long Notice and Proof of Claim sent by email, and subject to further order of this Court with respect to any dispute concerning such reimbursement.

15. Class Counsel shall, at least seven (7) calendar days before the Settlement Hearing, serve upon counsel for Defendants and file with the Court proof of the mailing of the Long Notice as required by this Order.

16. Class Counsel, through the Claims Administrator, shall cause the Stipulation and its exhibits, this Order, and a copy of the Long Notice and Proof of Claim and Release Form to be posted on the Claims Administrator's website within sixteen (16) calendar days after entry of this Order.

17. Class Counsel, through the Claims Administrator, shall cause the Summary Notice to be published electronically once on *GlobeNewswire* and in print once in *Investor's Business Daily* within ten (10) calendar days after the Long Notice mailing or Summary Notice emailing. Class Counsel shall, at least seven (7) calendar days before the Settlement Hearing, serve upon counsel for Defendants and file with the Court proof of publication of the Summary Notice.

18. The forms and methods set forth herein of notifying the Settlement Class Members of the Settlement and its terms and conditions meet the requirements of due process, Rule 23 of the Federal Rules of Civil Procedure, and Section 21D(a)(7) of the Securities Exchange Act of 1934, 15 U.S.C. 78u-4(a)(7), as amended by the Private Securities Litigation Reform Act of 1995; constitute the best notice practicable under the circumstances; and constitute due and sufficient notice to all persons and entities entitled thereto. No Settlement Class Member will be relieved from the terms and conditions of the Settlement, including the releases provided for therein, based upon the contention or proof that such Settlement Class Member failed to receive actual or adequate notice.

19. In order to be entitled to participate in recovery from the Net Settlement Fund after the Effective Date, each Settlement Class Member shall take the following action and be subject to the following conditions:

- (a) A properly completed and executed Proof of Claim must be submitted to the Claims Administrator: (a) electronically through the Claims Administrator's website,

www.strategicclaims.net/Acer/ by 11:59 p.m. EST on _____, 2021; or (b) at the Post Office Box indicated in the Notice, postmarked no later than _____, 2021 (thirty (30) calendar days prior to the Settlement Hearing). Such deadline may be further extended by Order of the Court. Each Proof of Claim shall be deemed to have been submitted when: (a) the claim receives a confirmation notice from Strategic Claims Services for electronic submissions; or (b) legibly postmarked (if properly addressed and mailed by first class mail), provided such Proof of Claim is actually received before the filing of a motion for an Order of the Court approving distribution of the Net Settlement Fund. Any Proof of Claim submitted in any other manner shall be deemed to have been submitted when it was actually received by the Claims Administrator at the address designated in the Notice.

(b) The Proof of Claim submitted by each Settlement Class Member must satisfy the following conditions: (i) it must be properly completed, signed and submitted in a timely manner in accordance with the provisions of the preceding subparagraph; (ii) it must be accompanied by adequate supporting documentation for the transactions reported therein, in the form of broker confirmation slips, broker account statements, an authorized statement from the broker containing the transactional information found in a broker confirmation slip, or such other documentation as is deemed adequate by the Claims Administrator or Class Counsel; (iii) if the person executing the Proof of Claim is acting in a representative capacity, a certification of his/her current authority to act on behalf of the Settlement Class Member must be provided with the Proof of Claim; and (iv) the Proof of Claim must be complete and contain no material deletions or modifications of any of the printed matter contained therein and must be signed under penalty of perjury.

(c) Once the Claims Administrator has considered a timely submitted Proof of Claim, it shall determine whether such claim is valid, deficient or rejected. For each claim determined to be either deficient or rejected, the Claims Administrator shall send a deficiency letter or rejection letter as appropriate, describing the basis on which the claim was so determined. Persons who timely submit a Proof of Claim that is deficient or otherwise rejected shall be afforded a reasonable time (at least ten (10) calendar days) to cure such deficiency if it shall appear that such deficiency may be cured. If any Claimant whose claim has been rejected in whole or in part wishes to contest such rejection, the Claimant must, within ten (10) calendar days after the date of mailing of the notice, serve upon the Claims Administrator a notice and statement of reasons indicating the Claimant's ground for contesting the rejection along with any supporting documentation, and requesting a review thereof by the Court. If an issue concerning a claim cannot be otherwise resolved, Class Counsel shall thereafter present the request for review to the Court.

(d) As part of the Proof of Claim, each Settlement Class Member shall submit to the jurisdiction of the Court with respect to the claim submitted, and shall, upon the Effective Date, release all claims as provided in the Stipulation. No discovery shall be allowed on the merits of the Action or the Settlement in connection with processing of the Proof of Claim, nor shall any discovery from or of Defendants be allowed on any topic.

20. Settlement Class Members who do not submit valid and timely Proof of Claim will be subject to and bound by the provisions of the Stipulation and the Judgment, if entered, unless they request exclusion from the Settlement Class in a timely and proper manner.

21. Settlement Class Members shall be bound by all determinations and judgments in the Action whether favorable or unfavorable, unless such Persons request exclusion from the

Settlement Class in a timely and proper manner, as hereinafter provided. A Settlement Class Member wishing to make such request for exclusion from the Settlement shall mail it, in written form, by first class mail, postage prepaid, or otherwise deliver it, so that it is received no later than _____, 2021 (twenty-one (21) calendar days prior to the Settlement Hearing) (the “Exclusion Deadline”), to the address listed in the Long Notice. In order to be valid, such request for exclusion must (A) indicate the name, address, phone number and e-mail contact information (if any) of the Person seeking exclusion, and state that the sender specifically “requests to be excluded from the Settlement of *Nicholas Skiadas v. Acer Therapeutics, Inc., et. al.*, Case No. 1:19-cv-06137-GHW (S.D.N.Y.)” and (B) state the date, number of shares and dollar amount of each Acer common stock purchase or acquisition during the Settlement Class Period and any sale transactions, as well as the number of shares of Acer common stock held by the Person as of the opening and closing of the Settlement Class Period. In order to be valid, such request for exclusion must be submitted with documentary proof: (i) of each purchase or acquisition and, if applicable, sale transaction of Acer common stock during the Settlement Class Period; and (ii) demonstrating the Person’s status as a beneficial owner of the Acer common stock. Any such request for exclusion must be signed and submitted by the beneficial owner under penalty of perjury. The request for exclusion shall not be effective unless it provides the required information, is legible, and is made within the time stated above, or the exclusion is otherwise accepted by the Court. Class Counsel may contact any Person filing a request for exclusion, or their attorney if one is designated, to discuss the request for exclusion.

22. The Claims Administrator shall provide all requests for exclusion and supporting documentation submitted therewith (including untimely requests and revocations of requests) to counsel for the Parties as soon as possible and no later than the Exclusion Deadline or upon the

receipt thereof (if later than the Exclusion Deadline). The Settlement Class will not include any Person who delivers a valid and timely request for exclusion that has not been thereafter revoked.

23. Any Person that submits a request for exclusion may thereafter submit to the Claims Administrator a written revocation of that request for exclusion, provided that it is received no later than two (2) Business Days before the Settlement Hearing, in which event that Person will be included in the Settlement Class.

24. All Persons who submit a valid, timely and unrevoked request for exclusion will be forever barred from receiving any payments from the Net Settlement Fund.

25. The Court will consider comments and/or objections to the Settlement, the Plan of Allocation, or the Fee and Expense Application, provided, however, that no Settlement Class Member or other Person shall be heard or entitled to contest the approval of the terms and conditions of the proposed Settlement, the Plan of Allocation, or the Fee and Expense Application, or any other order relating thereto, unless that Person has served copies of any objections, papers and briefs on each of the following counsel to be received at least twenty-one (21) calendar days prior to the Settlement Hearing Date:

CLASS COUNSEL:

THE ROSEN LAW FIRM, P.A.
Brian Alexander
275 Madison Avenue, 40th Floor
New York, NY 10016

COUNSEL FOR DEFENDANTS:

MORRISON & FOERSTER LLP
Jamie Levitt
250 West 55th Street
New York, NY 10019

and that Person has (at least twenty-one (21) calendar days prior to the Settlement Hearing date) filed said objections, papers and briefs, and proof of service upon counsel identified above, with the Clerk of the Court, U.S. District Court, Southern District of New York, 500 Pearl Street, New

York, NY 10007. To be valid, any such objection must contain the Settlement Class Member's: (1) name, address, and telephone number; (2) a list of all purchases or acquisitions and sales of Acer common stock during the Settlement Class Period in order to show membership in the Settlement Class; (3) all grounds for the objection, including any legal support known to the Settlement Class Member and/or his, her, or its counsel; (4) the name, address and telephone number of all counsel who represent the Settlement Class Member, including former or current counsel who may be entitled to compensation in connection with the objection; and (5) the number of times the Settlement Class Member and/or his, her, or its counsel has filed an objection to a class action settlement in the last five years, the nature of each such objection in each case, the jurisdiction in each case, and the name of the issuer of the security or seller of the product or service at issue in each case. Attendance at the Settlement Hearing is not necessary, but Persons wishing to be heard orally in opposition to the approval of the Stipulation, the Plan of Allocation, and/or the Fee and Expense Application are required to indicate in their written objection (or in a separate writing that is submitted in accordance with the deadline and instructions pertinent to the submission of a written objection) that they intend to appear at the Settlement Hearing and identify any witnesses they may call to testify or exhibits they intend to introduce into evidence at the Settlement Hearing. Settlement Class Members do not need to appear at the Settlement Hearing or take any other action to indicate their approval.

26. Any Settlement Class Member who does not object in the manner prescribed above shall be deemed to have waived all such objections and shall forever be foreclosed from making any objection to the fairness, adequacy or reasonableness of the Settlement, the Judgment to be entered approving the Settlement, the Plan of Allocation, and/or the Fee and Expense Application, unless otherwise ordered by the Court; shall be bound by all the terms and provisions of the

Stipulation and by all proceedings, orders and judgments in the Action; and shall also be foreclosed from appealing from any judgment or order entered in this Action.

27. All papers in support of the Settlement, the Plan of Allocation and/or the Fee and Expense Application shall be filed and served no later than twenty-eight (28) calendar days before the Settlement Hearing.

28. Any submissions filed in response to any objections or in further support of the Settlement, the Plan of Allocation and/or the Fee and Expense Application shall be filed no later than seven (7) calendar days prior to the Settlement Hearing.

29. Defendants, their counsel, and other Released Parties shall have no responsibility for, or liability with respect to, the Plan of Allocation or any application for attorneys' fees and interest, or expenses or payments to the Class Representative submitted by Class Counsel, and such matters will be considered separately from the fairness, reasonableness, and adequacy of the Settlement.

30. Pending final determination of whether the Settlement should be approved, all Releasing Parties shall be enjoined from commencing, prosecuting, or attempting to prosecute any Released Claims against any Released Party in any court or tribunal or proceeding. Unless and until the Stipulation is cancelled and terminated pursuant to the Stipulation, all proceedings in the Action, other than such proceedings as may be necessary to carry out the terms and conditions of the Stipulation, are hereby stayed and suspended until further order of the Court.

31. All funds held by the Escrow Agent shall be deemed and considered to be in the custody of the Court, and shall remain subject to the jurisdiction of the Court, until such time as such funds shall be distributed or returned pursuant to the Stipulation and Plan of Allocation and/or further order(s) of the Court.

32. Neither this Order, the Stipulation, nor any of its terms or provisions, nor any of the negotiations or proceedings connected with it, shall be construed as an admission or concession by Defendants, their counsel, or any of the other Released Parties of the truth of any of the allegations in the Action, or of any liability, fault, or wrongdoing or any kind and shall not be construed as, or deemed to be evidence of or an admission or concession that Class Representative or any Settlement Class Members directly have suffered any damages, harm, or loss. Further, neither this Order, the Stipulation, nor any of its terms or provisions, nor any of the negotiations or proceedings connected with it, nor this Order shall be construed as an admission or concession by Class Representative of the validity of any factual or legal defense or of the infirmity of any of the claims or facts alleged in the Action.

33. In the event the Settlement is not consummated in accordance with the terms of the Stipulation, then the Stipulation and this Order (including any amendment(s) thereof, and except as expressly provided in the Stipulation or by order of the Court) shall be null and void, of no further force or effect, and without prejudice to any Party, and may not be introduced as evidence or used in any action or proceeding by any Person against the Parties or the Released Parties, and each Party shall be restored to his, her or its respective litigation positions as they existed prior to July 21, 2021, pursuant to the terms of the Stipulation.

34. The Court retains exclusive jurisdiction over the Action to consider all further matters arising out of, or relating to, the Stipulation, including by way of illustration and not limitation, any dispute concerning any Proof of Claim submitted and any future requests by one or more of the Parties that the Judgment, the releases and/or the permanent injunction set forth in the Stipulation be enforced.

Dated: _____, 2021

HON. GREGORY H. WOODS
UNITED STATES DISTRICT JUDGE

EXHIBIT A-1

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

NICHOLAS SKIADAS, Individually and on
Behalf of All Others Similarly Situated,

Plaintiff,

v.

ACER THERAPEUTICS INC., CHRIS
SCHELLING, and HARRY PALMIN,

Defendants.

Case No. 1:19-cv-06137-GHW

CLASS ACTION

**NOTICE OF PENDENCY AND PROPOSED SETTLEMENT OF SECURITIES
CLASS ACTION**

If you purchased or otherwise acquired the publicly-traded common stock of Acer Therapeutics Inc. (“Acer” or the “Company”) during the period between September 25, 2017 and June 24, 2019, both dates inclusive (the “Settlement Class Period”) and suffered compensable damages thereby, you could get a payment from a class action settlement (the “Settlement”) and your rights may otherwise be affected by the Settlement.

A federal court has authorized this Notice. This is not attorney advertising.

- If approved by the Court, the Settlement will provide eight million three hundred and fifty thousand dollars (\$8,350,000) (the “Settlement Fund”), plus interest as it accrues, minus attorneys’ fees, costs, administrative expenses, and Award to Lead Plaintiff, net of any taxes on interest, to pay claims of investors who purchased Acer common stock during the Settlement Class Period.
- Lead Plaintiff calculates that the Settlement represents an estimated average recovery of \$1.76 per damaged share of Acer common stock, per Lead Plaintiff’s estimate of damaged shares. This is not an estimate of the actual recovery per share you should expect. Your actual recovery will depend on the Recognized Losses of all Settlement Class Members, the date(s) you purchased and sold Acer common stock, your purchase and sale prices, and the total number of claims filed.
- Attorneys for Lead Plaintiff (“Lead Counsel”) will ask the Court to award them fees of up to one-third of the Settlement Amount (\$2,783,333.33) plus interest, reimbursement of litigation expenses of no more than \$200,000, and Award to Lead Plaintiff not to exceed \$10,000. If approved by the Court, these amounts (which Lead Plaintiff calculates as

totaling an average of \$0.63 per estimated damaged share of Acer common stock) will be paid from the Settlement Fund.

- The average approximate recovery, after deduction of attorneys' fees and interest and expenses approved by the Court, is \$1.13 per damaged share of Acer common stock. This estimate is based on the assumptions set forth in the preceding paragraphs. This is not an estimate of the actual recovery per share you should expect. Your actual recovery if you are a Settlement Class Member, if any, will depend on the aggregate losses of all Settlement Class Members, the date(s) you purchased and sold Acer common stock, the purchase and sale prices, and the total number of claims filed.
- The Settlement resolves the Action concerning whether Defendants Acer, Chris Schelling and Harry Palmin (collectively "Defendants") violated federal securities laws by allegedly making misrepresentations and/or omissions of material fact in various public statements regarding the likelihood that the U.S. Food and Drug Administration ("FDA") would approve the New Drug Application of the Company's drug candidate, EDSIVO. Defendants have denied and continue to deny each, any and all allegations of wrongdoing, fault, liability, or damage whatsoever Lead Plaintiff asserted. Defendants have also denied, among other things, the allegations that Lead Plaintiff or the Settlement Class have suffered damages or that Lead Plaintiff or the Settlement Class were harmed by the conduct alleged in the Action. Defendants continue to believe the claims asserted against them in the Action are without merit.
- Your legal rights will be affected whether you act or do not act. If you do not act, you may permanently forfeit your right to recover on this claim. Therefore, you should read this Notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
Submit a Claim Form if You are a Settlement Class Member	Fill out the attached Proof of Claim and Release Form and submit it no later than _____. This is the only way to get a payment.
Exclude Yourself from the Class	Submit a request for exclusion no later than _____. This is the only way you can ever be part of any other lawsuit against the Defendants or the other Released Parties about the legal claims in this case. If you exclude yourself, you will receive no payment and cannot object or speak at the hearing.
Object	Write to the Court no later than _____ about why you do not like the Settlement. You can still submit a claim form. If the Court approves the Settlement, you will be bound by it.
Participate in the Hearing	Ask to speak in Court about the fairness of the Settlement at the hearing on _____. You can still submit a claim form. If the Court approves the Settlement, you will be bound by it.
Do Nothing	Get no payment AND give up your right to bring your own individual action.

INQUIRIES

Please do not contact the Court, the Clerk's Office, Defendants, or Defendants' counsel regarding this Notice. All inquiries concerning this Notice, the Proof of Claim and Release Form, or the Settlement should be directed to:

Acer Therapeutics Inc. Securities Litigation c/o Strategic Claims Services P.O. Box 230 600 N. Jackson St., Ste. 205 Media, Pennsylvania 19063 Tel.: (866) 274-4004 Fax: (610) 565-7985 info@strategicclaims.net	or	Brian Alexander THE ROSEN LAW FIRM, P.A. 275 Madison Avenue, 40 th Floor New York, NY 10016 Tel: (212) 686-1060 Fax: (212) 202-3827 balexander@rosenlegal.com
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DEFINITIONS

All capitalized terms not otherwise defined herein shall have the same meanings as set forth in the Stipulation and Agreement of Settlement, dated July 21, 2021 (the “Stipulation”).

COMMON QUESTIONS AND ANSWERS CONCERNING THE SETTLEMENT

1. Why did I get this Notice?

You or someone in your family may have purchased or acquired publicly traded Acer common stock from September 25, 2017 through June 24, 2019, both dates inclusive.

2. What is this lawsuit about?

The case is known as *Nicholas Skiadas v. Acer Therapeutics Inc., et. al.*, Case No. 1:19-cv-06137-GHW (S.D.N.Y.) (the “Action”). The Court in charge of the case is the United States District Court for the Southern District of New York.

The Action involves allegations that Defendants violated certain federal securities laws by making misrepresentations or omissions of material fact regarding the likelihood that the FDA would approve the New Drug Application of the Company’s drug candidate, EDSIVO. The complaint alleges that the misstatements or omissions artificially inflated the price of Acer common stock, and that the Company’s stock price dropped in response to certain subsequent disclosures. Defendants have denied and continue to deny each, any and all allegations of wrongdoing, fault, liability, or damage whatsoever asserted in the Action. The Settlement shall in no event be construed as, or deemed to be evidence of, liability, fault, wrongdoing, injury, or damages, or of any wrongful conduct, acts or omissions on the part of any of the Released Parties, or of any infirmity of any defense, or of any damages to the Lead Plaintiff or any other Settlement Class Member.

3. Why is this case a class action?

In a class action, one or more persons and/or entities, called plaintiffs, sue on behalf of all persons and/or entities who have similar claims. All of these persons and/or entities are referred to collectively as a class, and these individual persons and/or entities are known as class members. One court resolves all of the issues for all class members, except for those class members who exclude themselves from the class.

4. Why is there a Settlement?

The Parties do not agree regarding the merits of Lead Plaintiff’s allegations and Defendants’ defenses with respect to liability or the damages per share, if any, that would be recoverable if Lead Plaintiff were to prevail at trial on each claim. The issues on which the Parties disagree include, without limitation: (1) whether the challenged statements were materially false or misleading or otherwise actionable under federal securities law; (2) whether Defendants acted with scienter, which means intent to deceive, manipulate, or defraud, including an extreme departure from the standards of ordinary care, presenting a danger of misleading buyers that is either known to the defendant or is so obvious that the

actor must have been aware of it; (3) whether the alleged disclosures were corrective disclosures; (4) the causes of the loss in the value of the securities; and (5) the amount of alleged damages, if any, that could be recovered at trial.

This matter has not gone to trial, and the Court has not decided in favor of either Lead Plaintiff or Defendants. Instead, the Parties have agreed to settle the case. Lead Plaintiff and Lead Counsel believe the Settlement is fair, reasonable, and adequate, and in the best interests of the Settlement Class Members because of the risks associated with continued litigation and the nature of the defenses raised by Defendants. Among the reasons that Lead Plaintiff and Lead Counsel believe the Settlement is fair is the fact that there is uncertainty about whether they will be able to prove that any challenged statement was false or misleading, that Defendants acted with scienter, that the alleged misstatements and omissions actually caused the Settlement Class any damages, and the amount of damages, if any.

Even if Lead Plaintiff were to win at trial, and also prevail on any on appeal, Lead Plaintiff might not be able to collect some, or all, of any judgment he is awarded. Moreover, while litigation of this type is usually expensive, it appears that, even if Lead Plaintiff's allegations were found to be true, the total amount of damages to which Settlement Class Members would be entitled could be substantially less than the Settlement.

5. How do I know if I am part of the Settlement?

The Settlement Class consists of all persons and entities, other than Defendants and their affiliates, who purchased or acquired publicly traded Acer common stock from September 25, 2017 through June 24, 2019, both dates inclusive, and suffered compensable damages thereby.

6. Are there exceptions to being included in the Settlement Class?

Yes. Excluded from the Settlement Class are Defendants and their immediate families; the officers and directors of Acer at all relevant times; their legal representatives, heirs, successors or assigns; any entity in which Defendants have or had a controlling interest; and any entity affiliated with, controlling, controlled by, or under common control with TVM Capital Life Science. You may choose to be excluded from the Settlement Class by filing a valid and timely request for exclusion as described below in the response to question 11.

7. I am still not sure whether I am included in the Settlement Class.

If you are still not sure whether you are included in the Settlement Class, you can ask for free help. For more information, you can contact the Claims Administrator, Strategic Claims Services, by phone at (866) 274-4004 or by facsimile at (610) 565-7985, visit the website www.strategicclaims.net/Acer/, or fill out and return the Proof of Claim and Release Form described in Question 9, to see if you qualify.

8. What does the Settlement provide?**a. What is the Settlement Fund?**

The proposed Settlement provides that Defendants have caused eight million three hundred and fifty thousand dollars (\$8,350,000) (the “Settlement Fund”) to be paid into the Escrow Account for the benefit of the Settlement Class. The Settlement is subject to Court approval. Also, subject to the Court’s approval, a portion of the Settlement Fund will be used to pay attorneys’ fees with interest and reasonable litigation expenses to Lead Counsel, and any Award to Lead Plaintiff. A portion of the Settlement Fund also will be used to pay taxes due on interest earned by the Settlement Fund, if necessary, and the costs of the claims administration, including the costs of printing and mailing this Notice and the costs of publishing notice. After the foregoing deductions from the Settlement Fund have been made, the amount remaining (the “Net Settlement Fund”) will be distributed to Settlement Class Members who submit timely, valid claims, according to the Plan of Allocation to be approved by the Court.

b. What can you expect to receive under the proposed Settlement if you are a Settlement Class Member?

If you are a Settlement Class Member, your share of the Net Settlement Fund will or may depend on: (i) the number of claims filed by all Settlement Class Members; (ii) the dates you purchased and sold Acer common stock; (iii) the prices of your purchases and sales; (iv) the amount of administrative costs, including the costs of notice; and (v) the amount awarded by the Court to Lead Counsel for attorneys’ fees, costs, and expenses and the amount awarded to the Lead Plaintiff.

The Claims Administrator will determine each Settlement Class Member’s *pro rata* share of the Net Settlement Fund based upon each Settlement Class Member’s valid “Recognized Loss.” The Recognized Loss formula is not intended to be an estimate of the amount that a Settlement Class Member might have been able to recover after a trial; it also is not an estimate of the amount that will be paid to Settlement Class Members pursuant to the Settlement. The Recognized Loss formula is the basis upon which the Net Settlement Fund will be proportionately allocated to the Settlement Class Members with valid claims.

The Net Settlement Fund will be distributed to Settlement Class Members who submit a Proof of Claim and Release Form and whose claims for recovery are allowed by the Claims Administrator pursuant to the terms of the Stipulation or by order of the Court under the below Plan of Allocation (“Authorized Claimants”), which reflects Lead Plaintiff’s contention that because of the alleged misrepresentations made by Defendants, the price of Acer common stock was artificially inflated during the Settlement Class Period and that certain subsequent disclosures caused changes in the inflated price of Acer common stock. Defendants have denied and continue to deny these allegations and any and all allegations of wrongdoing, fault, liability or damage whatsoever asserted in the Action.

PROPOSED PLAN OF ALLOCATION OF THE NET SETTLEMENT FUND

The Plan of Allocation is a matter separate and apart from the proposed Settlement, and any decision by the Court concerning the Plan of Allocation shall not affect the validity or finality of the proposed Settlement. The Court may approve the Plan of Allocation with or without modifications agreed to among the Parties, or another plan of allocation, without further notice to Settlement Class Members. Any orders regarding a modification of the Plan of Allocation will be posted to the Claims Administrator's website, www.strategicclaims.net/Acer/.

To the extent there are sufficient funds in the Net Settlement Fund, each Authorized Claimant will receive an amount equal to the Authorized Claimant's Recognized Loss and subject to the provisions in the preceding paragraph. If, however, the amount in the Net Settlement Fund is not sufficient to permit payment of the total Recognized Loss of each Authorized Claimant, then each Authorized Claimant shall be paid the percentage of the Net Settlement Fund that each Authorized Claimant's Recognized Loss bears to the total Recognized Losses of all Authorized Claimants and subject to the provisions in the preceding paragraph (*i.e.*, "*pro rata* share"). Payment in this manner shall be deemed conclusive against all Authorized Claimants. No distribution will be made on a claim where the potential distribution amount is less than ten dollars (\$10.00) in cash.

If any funds remain in the Net Settlement Fund by reason of uncashed checks, or otherwise, after the Claims Administrator has made reasonable and diligent efforts to have Authorized Claimants who are entitled to participate in the distribution of the Net Settlement Fund cash their distribution checks, then any balance remaining in the Net Settlement Fund six (6) months after the initial distribution of such funds shall be used: (i) first, to pay any amounts mistakenly omitted from the initial distribution to Authorized Claimants; (ii) second, to pay any additional Administration Costs incurred in administering the Settlement; and (iii) finally, to make a second distribution to Authorized Claimants who cashed their checks from the initial distribution and who would receive at least \$10.00 from such second distribution, after payment of the estimated costs or fees to be incurred in administering the Net Settlement Fund and in making this second distribution, if such second distribution is economically feasible. If six (6) months after such second distribution, if undertaken, or if such second distribution is not undertaken, any funds shall remain in the Net Settlement Fund after the Claims Administrator has made reasonable and diligent efforts to have Authorized Claimants who are entitled to participate in this Settlement cash their checks, any funds remaining in the Net Settlement Fund shall be donated to a non-profit charitable organization(s) selected by Lead Counsel.

THE BASIS FOR CALCULATING YOUR RECOGNIZED LOSS:

Each Authorized Claimant shall be allocated a *pro rata* share of the Net Settlement Fund based on his, her or its Recognized Loss as compared to the total Recognized Losses of all Authorized Claimants. Recognized Losses will be calculated as follows:

- I) For Acer common shares purchased between September 25, 2017 and June 24, 2019, inclusive, the Recognized Loss shall be calculated as follows:
 - A. For shares retained at the end of trading on September 20, 2019, the Recognized Loss shall be the lesser of:

- (i) \$15.13 per share; or
 - (ii) the difference between the purchase price per share and \$2.96 per share¹.
- B. For shares sold on or before June 24, 2019, the Recognized Loss per share shall be \$0.00.
- C. For shares sold between June 25, 2019 and September 20, 2019, inclusive, the Recognized Loss shall be the lesser of:
- i) \$15.13 per share; or
 - ii) the difference between the purchase price per share and the average closing price per share as of date of sale provided in Table A below.

Table A

<u>Date</u>	<u>Closing Price</u>	<u>Average Closing Price</u>	<u>Date</u>	<u>Closing Price</u>	<u>Average Closing Price</u>
6/25/2019	\$4.12	\$4.12	8/8/2019	\$2.59	\$3.18
6/26/2019	\$3.85	\$3.99	8/9/2019	\$2.38	\$3.15
6/27/2019	\$3.45	\$3.81	8/12/2019	\$2.31	\$3.13
6/28/2019	\$3.90	\$3.83	8/13/2019	\$2.45	\$3.11
7/1/2019	\$3.93	\$3.85	8/14/2019	\$2.17	\$3.08
7/2/2019	\$3.76	\$3.84	8/15/2019	\$1.95	\$3.05
7/3/2019	\$3.69	\$3.81	8/16/2019	\$2.09	\$3.03
7/5/2019	\$3.41	\$3.76	8/19/2019	\$2.18	\$3.01
7/8/2019	\$3.52	\$3.74	8/20/2019	\$2.29	\$2.99
7/9/2019	\$3.61	\$3.72	8/21/2019	\$2.26	\$2.97
7/10/2019	\$3.44	\$3.70	8/22/2019	\$2.30	\$2.96
7/11/2019	\$3.44	\$3.68	8/23/2019	\$2.26	\$2.94
7/12/2019	\$3.40	\$3.66	8/26/2019	\$2.50	\$2.93
7/15/2019	\$3.30	\$3.63	8/27/2019	\$2.41	\$2.92
7/16/2019	\$2.99	\$3.59	8/28/2019	\$2.58	\$2.91
7/17/2019	\$2.89	\$3.54	8/29/2019	\$2.65	\$2.90
7/18/2019	\$3.06	\$3.52	8/30/2019	\$2.70	\$2.90
7/19/2019	\$3.09	\$3.49	9/3/2019	\$2.56	\$2.89
7/22/2019	\$2.92	\$3.46	9/4/2019	\$2.60	\$2.89
7/23/2019	\$3.02	\$3.44	9/5/2019	\$2.88	\$2.89
7/24/2019	\$2.92	\$3.41	9/6/2019	\$2.81	\$2.89

¹Pursuant to Section 21(D)(e)(1) of the Private Securities Litigation Reform Act of 1995, "in any private action arising under this title in which the plaintiff seeks to establish damages by reference to the market price of a security, the award of damages to the plaintiff shall not exceed the difference between the purchase or sale price paid or received, as appropriate, by the plaintiff for the subject security and the mean trading price of that security during the 90-day period beginning on the date on which the information correcting the misstatement or omission that is the basis for the action is disseminated." \$2.96 per share was the mean (average) daily closing trading price of the Company's common shares during the 90-day period beginning on June 25, 2019 and ending on September 20, 2019.

EXHIBIT A-1

7/25/2019	\$2.81	\$3.39	9/9/2019	\$2.91	\$2.89
7/26/2019	\$2.85	\$3.36	9/10/2019	\$3.23	\$2.89
7/29/2019	\$2.70	\$3.34	9/11/2019	\$3.41	\$2.90
7/30/2019	\$2.87	\$3.32	9/12/2019	\$3.16	\$2.91
7/31/2019	\$2.99	\$3.31	9/13/2019	\$3.27	\$2.91
8/1/2019	\$2.72	\$3.28	9/16/2019	\$3.44	\$2.92
8/2/2019	\$2.73	\$3.26	9/17/2019	\$3.36	\$2.93
8/5/2019	\$2.55	\$3.24	9/18/2019	\$3.42	\$2.94
8/6/2019	\$2.61	\$3.22	9/19/2019	\$3.47	\$2.95
8/7/2019	\$2.60	\$3.20	9/20/2019	\$3.62	\$2.96

To the extent a Claimant had a trading gain or “broke even” from his, her or its overall transactions in Acer shares during the Settlement Class Period, the value of the Recognized Loss will be zero and the Claimant will not be entitled to a share of the Net Settlement Fund. To the extent that a Claimant suffered a trading loss on his, her or its overall transactions in Acer shares during the Settlement Class Period, but that trading loss was less than the Recognized Loss calculated above, then the Recognized Loss shall be limited to the amount of the Claimant’s actual trading loss.

For purposes of calculating your Recognized Loss, the date of purchase, acquisition or sale is the “contract” or “trade” date and not the “settlement” or “payment” date. The receipt or grant by gift, inheritance or operation of law of Acer shares shall not be deemed a purchase, acquisition or sale of Acer shares for the calculation of an Authorized Claimant’s Recognized Loss. The covering purchase of a short sale is not an eligible purchase. Only publicly traded common shares are eligible purchases.

For purposes of calculating your Recognized Loss, all purchases, acquisitions and sales shall be matched on a First In First Out (“FIFO”) basis in chronological order. Therefore, on the Proof of Claim and Release Form enclosed with this Notice, you must provide all of your purchases and acquisitions of Acer common shares during the time period from September 25, 2017 through and including September 20, 2019.

Payment pursuant to the Plan of Allocation approved by the Court shall be conclusive against all Authorized Claimants. No person shall have any claim against Defendants, Defendants’ Counsel, Lead Plaintiff, Lead Counsel or the Claims Administrator or other agent designated by Lead Counsel based on the distributions made substantially in accordance with the Stipulation and the Settlement contained therein, the Plan of Allocation, or further orders of the Court. Each Claimant shall be deemed to have submitted to the jurisdiction of the Court with respect to the Claimant’s Proof of Claim and Release Form. All persons involved in the review, verification, calculation, tabulation, or any other aspect of the processing of the claims submitted in connection with the Settlement, or otherwise involved in the administration or taxation of the Settlement Fund or the Net Settlement Fund shall be released and discharged from any and all claims arising out of such involvement, and all Settlement Class Members, whether or not they are to receive payment from the Net Settlement Fund, will be barred from making any further claim against the Net

Settlement Fund beyond the amount allocated to them as provided in any distribution orders entered by the Court.

9. How can I get a payment if I am a Settlement Class Member?

To qualify for a payment if you are a Settlement Class Member, you must send in a form titled “Proof of Claim and Release Form.” This Proof of Claim and Release Form is attached to this Notice. You may also obtain a Proof of Claim and Release Form at www.strategicclaims.net/Acer/. Read the instructions carefully, fill out the form, and sign it in the location indicated. The Proof of Claim and Release Form may be completed in two ways: (1) by completing and submitting it electronically at www.strategicclaims.net/Acer/ by **11:59 p.m. EST on _____, 2021**; or (2) by mailing the claim form together with all documentation requested in the form, **postmarked no later than _____, 2021**, to:

Acer Therapeutics Inc. Securities Litigation
c/o Strategic Claims Services
P.O. Box 230
600 N. Jackson St., Ste. 205
Media, PA 19063
Fax: (610) 565-7985
info@strategicclaims.net

The Claims Administrator will process your claim and determine whether you are an Authorized Claimant.

10. What am I giving up to get a payment or stay in the Settlement Class?

Unless you exclude yourself from the Settlement Class by the _____ 2021 deadline, you will remain a member of the Settlement Class and will be bound by the release of claims against Defendants and other Released Parties if the Settlement is approved. That means you and all other Settlement Class Members and each of their respective parent entities, associates, affiliates, subsidiaries, predecessors, successors, assigns, attorneys, immediate family members, heirs, representatives, administrators, executors, devisees, legatees, and estates will release (agreeing never to sue, continue to sue, or be part of any other lawsuit) as against Defendants and other Released Parties any and all claims which arise out of, are based upon or relate in any way to the purchase or acquisition of Acer common stock during the Settlement Class Period. It also means that all of the Court’s orders will apply to you and legally bind you. That means you will accept your allocated share, if any, of the Net Settlement Fund as sole compensation for any losses you suffered in the purchase, acquisition, sale, or ownership of Acer common stock during the Settlement Class Period. The specific terms of the release are included in the Stipulation.

11. How do I get out of the Settlement if I am a Settlement Class Member?

If you are a Settlement Class Member, but you do not want to receive a payment from the Settlement, and you want to keep any right you may have to sue or continue to sue Defendants or other Released Parties on your own about the claims made in the Action, then you must take steps to exclude yourself from the Settlement. To exclude yourself from the Settlement, you must mail a letter that (A) clearly indicates your name, address, phone number and e-mail contact information (if any) and states that you “request to be excluded from the Settlement Class in *Nicholas Skiadas v. Acer Therapeutics, Inc., et. al.*, Case No. 1:19-cv-06137-GHW (S.D.N.Y.)” and (B) states the date, number of shares and dollar amount of each Acer common stock purchase or acquisition during the Settlement Class Period, any sale transactions, and the number of shares of Acer common stock held by you as of the opening and closing of the Settlement Class Period. In order to be valid, such request for exclusion must be submitted with documentary proof: (i) of each purchase and, if applicable, sale transaction of Acer common stock during the Settlement Class Period; and (ii) demonstrating your status as a beneficial owner of the Acer common stock. Any such request for exclusion must be signed and submitted by you, as the beneficial owner, under penalty of perjury. You must mail your exclusion request, to be **received no later than _____, 2021**, to the Claims Administrator at the following address:

Acer Therapeutics Inc. Securities Litigation
c/o Strategic Claims Services
P.O. Box 230
600 N. Jackson St., Ste. 205
Media, PA 19063

You cannot exclude yourself by telephone or by e-mail.

If you properly exclude yourself, you will not receive a payment from the Net Settlement Fund, you cannot object to the Settlement of the Action, and you will not be legally bound by the judgment in this case.

12. If I am a Settlement Class Member and I do not exclude myself, can I sue Defendants or the other Released Parties for the same thing later?

No. Unless you followed the procedure outlined in the Notice to exclude yourself, you give up any right to sue Defendants or other Released Parties for the claims being released in this Settlement. If you have a pending lawsuit related to any Released Claims, speak to your lawyer in that case immediately, since you must exclude yourself from this Settlement Class to continue your own lawsuit.

13. If I am a Settlement Class Member, do I have a lawyer in this case?

The Court appointed The Rosen Law Firm, P.A. as Lead Counsel to represent you and the other Settlement Class Members. If you want to be represented by your own lawyer, you may hire one at your own expense. Contact information for The Rosen Law Firm, P.A. is provided below.

14. How will the lawyers be paid?

Lead Counsel have expended considerable time litigating this Action on a contingent fee basis and have paid for the expenses of the case themselves. They have not been paid attorneys' fees or reimbursed for their expenses in advance of this Settlement. Lead Counsel have done so with the expectation that, if they are successful in recovering money for the Settlement Class, they will receive attorneys' fees and be reimbursed for their litigation expenses from the Settlement Fund, as is customary in this type of litigation. Lead Counsel will not receive attorneys' fees or be reimbursed for their litigation expenses except from the Settlement Fund. Therefore, Lead Counsel will file a motion asking the Court at the Settlement Hearing to make an award of attorneys' fees in an amount not to exceed one-third plus interest on the Settlement Amount (\$2,783,333.33), reimbursement of litigation expenses of no more than \$200,000 and Award to Lead Plaintiff not to exceed \$10,000. The Court may award less than these amounts. Any amounts awarded by the Court will come out of the Settlement Fund.

15. How do I tell the Court that I do not like the Settlement?

You can tell the Court you do not agree with the Settlement, any part of the Settlement, and/or Lead Counsel's motion for attorneys' fees and expenses and application for an Award to Lead Plaintiff, and that you think the Court should not approve the Settlement, by mailing a letter stating that you object to the Settlement in the matter of *Nicholas Skiadas v. Acer Therapeutics, Inc., et. al.*, Case No. 1:19-cv-06137-GHW (S.D.N.Y.). Be sure to include: (1) your name, address, and telephone number; (2) a list of all purchases or acquisitions and sales of Acer publicly-traded common stock during the Settlement Class Period in order to show membership in the Settlement Class; (3) all grounds for the objection, including any legal support known to you or your counsel; (4) the name, address and telephone number of all counsel, if any, who represent you, including your former or current counsel who may be entitled to compensation in connection with the objection; and (5) the number of times you and/or your counsel has filed an objection to a class action settlement in the last five years, the nature of each such objection in each case, the jurisdiction in each case, and the name of the issuer of the security or seller of the product or service at issue in each case.

Attendance at the Settlement Hearing is not necessary. Objectors wishing to be heard orally at the Settlement Hearing are required to indicate in their written objection (or in a separate writing that is submitted in accordance with the deadline and after instruction pertinent to the submission of a written objection) that they intend to appear at the Settlement Hearing and identify any witnesses they may call to testify or exhibits they intend to introduce into evidence at the Settlement Hearing. Be sure to serve copies of any objections, papers, and briefs to **each** of the addresses listed below, to be **received no later than _____, 2021:**

Clerk of the Court
United States Southern District Court
District of New York
500 Pearl Street
New York, NY 10007

LEAD COUNSEL:

THE ROSEN LAW FIRM, P.A.
Brian Alexander
275 Madison Avenue, 40th Floor
New York, NY 10016

COUNSEL FOR DEFENDANTS:

MORRISON & FOERSTER LLP
Jamie Levitt
250 West 55th Street
New York, NY 10019

16. What is the difference between objecting and requesting exclusion?

Objecting is simply telling the Court you do not like something about the Settlement or some portion thereof. You can object only if you stay in the Settlement Class. Requesting exclusion is telling the Court you do not want to be part of the Settlement Class and Settlement. If you exclude yourself, you cannot object to the Settlement because it no longer concerns you. If you stay in the Settlement Class and object, but your objection is overruled, you will not be allowed a second opportunity to exclude yourself.

17. When and where will the Court decide whether to approve the Settlement?

The Court will hold a telephonic Settlement Hearing on _____, 2021, at __: __.m. To participate in or listen to the Settlement Hearing, dial 1-888-633-0347 and enter access code 39444610#.

At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate and whether to approve the Settlement. If there are objections, the Court will consider them, and the Court will listen to people who have asked to speak at the hearing. The Court may also decide how much to pay Lead Counsel for attorneys' fees and expenses and how much to award Lead Plaintiff.

18. Do I have to participate in the hearing?

No. Lead Counsel will answer any questions the Court may have. However, you are welcome to participate. If you send an objection, you do not have to participate in the hearing. As long as you mail your written objection on time, the Court will consider it.

19. What happens if I do nothing at all?

If you do nothing, you will not receive a payment from the Settlement. However, unless you exclude yourself, you will not be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against Defendants or the Released Parties about the Released Claims (as defined in the Stipulation) ever again.

SPECIAL NOTICE TO BROKERS AND OTHER NOMINEES

If, between September 25, 2017 and June 24, 2019, both dates inclusive, you purchased, otherwise acquired, or sold Acer common stock for the beneficial interest of a person or organization other than yourself, the Court has directed that, WITHIN TEN (10) DAYS OF YOUR RECEIPT OF THE CLAIMS ADMINISTRATOR'S NOTICE, you either: (a) provide to the Claims Administrator the name, last known address, and email address, if an email address is available, of each person or organization for whom or which you purchased such Acer common stock during such time period; (b) request a link to the Long Notice and Proof of Claim and Release form and email the link to the Long Notice and Proof of Claim and Release Form to each beneficial owner for whom you are nominee or custodian within ten (10) days after receipt thereof; or (c) request additional copies of the Long Notice, which will be provided to you free of charge, and within ten (10) days mail the Long Notice directly to the beneficial owners of the Acer common stock. If you choose to follow alternative procedures (b) or (c), the Court has directed that, upon such mailing or emailing, you send a statement to the Claims Administrator confirming that the mailing or emailing was made as directed. You are entitled to reimbursement from the Settlement Fund of your reasonable out-of-pocket expenses actually incurred in connection with the foregoing, up to a maximum of \$0.10 plus postage at the pre-sort rate unit by the Claims Administrator per Long Notice mailed, \$0.05 per link to the Notice and Proof of Claim and Release Form emailed, or \$0.05 per name and address provided to the Claims Administrator. Those expenses will be paid upon request and submission of appropriate supporting documentation. All communications regarding the foregoing should be addressed to the Claims Administrator at the address listed on page 10 above.

DO NOT CONTACT THE COURT, THE CLERK'S OFFICE, DEFENDANTS, OR DEFENDANTS' COUNSEL REGARDING THIS NOTICE.

Dated: _____, 2021

BY ORDER OF THE UNITED STATES
DISTRICT COURT FOR THE SOUTHERN
DISTRICT OF NEW YORK

EXHIBIT A-2

PROOF OF CLAIM AND RELEASE FORM

Deadline for Submission: _____

IF YOU PURCHASED OR OTHERWISE ACQUIRED PUBLICLY TRADED ACER THERAPEUTICS INC. (“ACER”) COMMON STOCK BETWEEN SEPTEMBER 25, 2017 AND JUNE 24, 2019, BOTH DATES INCLUSIVE (THE “SETTLEMENT CLASS PERIOD”) AND SUFFERED COMPENSABLE DAMAGES THEREBY, YOU ARE A “SETTLEMENT CLASS MEMBER” AND YOU MAY BE ENTITLED TO SHARE IN THE SETTLEMENT PROCEEDS. (EXCLUDED FROM THE SETTLEMENT CLASS DEFENDANTS AND THEIR IMMEDIATE FAMILIES; THE OFFICERS AND DIRECTORS OF ACER AT ALL RELEVANT TIMES; THEIR LEGAL REPRESENTATIVES, HEIRS, SUCCESSORS OR ASSIGNS; ANY ENTITY IN WHICH DEFENDANTS HAVE OR HAD A CONTROLLING INTEREST; AND ANY ENTITY AFFILIATED WITH, CONTROLLING, CONTROLLED BY, OR UNDER COMMON CONTROL WITH TVM CAPITAL LIFE SCIENCE. ALSO EXCLUDED FROM THE SETTLEMENT CLASS ARE THOSE PERSONS WHO FILE VALID AND TIMELY REQUESTS FOR EXCLUSION IN ACCORDANCE WITH THE COURT’S PRELIMINARY APPROVAL ORDER.)

IF YOU ARE A SETTLEMENT CLASS MEMBER, YOU MUST COMPLETE AND SUBMIT THIS PROOF OF CLAIM AND RELEASE FORM (“CLAIM FORM”) IN ORDER TO BE ELIGIBLE FOR ANY SETTLEMENT BENEFITS. YOU CAN COMPLETE AND SUBMIT THE ELECTRONIC VERSION OF THIS CLAIM FORM BY 11:59 P.M. EST ON _____, 2021 AT WWW.STRATEGICCLAIMS.NET/ACER/.

IF YOU DO NOT COMPLETE AND SUBMIT AN ELECTRONIC VERSION OF THIS CLAIM FORM, YOU MUST COMPLETE AND SIGN THIS CLAIM FORM AND MAIL IT BY FIRST CLASS MAIL, POSTMARKED NO LATER THAN _____, 2021 TO STRATEGIC CLAIMS SERVICES, THE CLAIMS ADMINISTRATOR, AT THE FOLLOWING ADDRESS:

Acer Therapeutics Inc. Securities Litigation
c/o Strategic Claims Services
600 N. Jackson St., Ste. 205
P.O. Box 230
Media, PA 19063
Tel.: 866-274-4004
info@strategicclaims.net

YOUR FAILURE TO SUBMIT YOUR CLAIM BY _____, 2021 WILL SUBJECT YOUR CLAIM TO REJECTION AND PRECLUDE YOU FROM RECEIVING ANY MONEY IN CONNECTION WITH THE SETTLEMENT OF THIS ACTION. DO NOT MAIL OR DELIVER YOUR CLAIM TO THE COURT OR TO ANY OF THE PARTIES OR THEIR COUNSEL AS ANY SUCH CLAIM WILL BE DEEMED NOT TO HAVE BEEN SUBMITTED. SUBMIT YOUR CLAIM ONLY TO THE CLAIMS ADMINISTRATOR. IF YOU ARE A SETTLEMENT CLASS MEMBER AND DO NOT SUBMIT A PROPER CLAIM FORM, YOU WILL NOT SHARE IN THE SETTLEMENT BUT YOU NEVERTHELESS WILL BE BOUND BY THE COURT’S ORDER AND FINAL JUDGMENT UNLESS YOU EXCLUDE YOURSELF. SUBMISSION OF A CLAIM FORM DOES NOT ASSURE THAT YOU WILL SHARE IN THE PROCEEDS OF THE SETTLEMENT.

CLAIMANT'S STATEMENT

1. I (we) purchased or otherwise acquired Acer Therapeutics Inc. ("Acer") common stock during the Settlement Class Period. (Do not submit this Proof of Claim and Release Form if you did not purchase or otherwise acquire Acer common stock during the Settlement Class Period.)
2. By submitting this Proof of Claim and Release Form, I (we) state that I (we) believe in good faith that I am (we are) a Settlement Class Member(s) as defined above and in the Notice of Pendency and Proposed Settlement of Securities Class Action (the "Notice"), or am (are) acting for such person(s); that I am (we are) not a Defendant in the Action or anyone excluded from the Settlement Class; that I (we) have read and understand the Notice; that I (we) believe that I am (we are) entitled to receive a share of the Net Settlement Fund, as defined in the Notice; that I (we) elect to participate in the proposed Settlement described in the Notice; and that I (we) have not filed a request for exclusion. (If you are acting in a representative capacity on behalf of a Settlement Class Member [e.g., as an executor, administrator, trustee, or other representative], you must submit evidence of your current authority to act on behalf of that Settlement Class Member. Such evidence would include, for example, letters testamentary, letters of administration, or a copy of the trust documents.)
3. I (we) consent to the jurisdiction of the Court with respect to all questions concerning the validity of this Claim Form ("Claim Form"). I (we) understand and agree that my (our) claim may be subject to investigation and discovery under the Federal Rules of Civil Procedure, provided that such investigation and discovery shall be limited to my (our) status as a Settlement Class Member(s) and the validity and amount of my (our) claim. No discovery shall be allowed on the merits of the Action or Settlement in connection with processing of the Claim Form.
4. I (we) have set forth where requested below all relevant information with respect to each purchase or acquisition of Acer common stock during the Settlement Class Period, and each sale, if any, of such securities. I (we) agree to furnish additional information to the Claims Administrator to support this claim if requested to do so.
5. I (we) have enclosed photocopies of the stockbroker's confirmation slips, stockbroker's statements, or other documents evidencing each purchase and sale of Acer common stock listed below in support of my (our) claim. (IF ANY SUCH DOCUMENTS ARE NOT IN YOUR POSSESSION, PLEASE OBTAIN A COPY OR EQUIVALENT DOCUMENTS FROM YOUR BROKER OR TAX ADVISOR BECAUSE THESE DOCUMENTS ARE NECESSARY TO PROVE AND PROCESS YOUR CLAIM.)
6. I (we) understand that the information contained in this Claim Form is subject to such verification as the Claims Administrator may request or as the Court may direct, and I (we) agree to cooperate in any such verification. (The information requested herein is designed to provide the minimum amount of information necessary to process most simple claims. The Claims Administrator may request additional information as required to efficiently and reliably calculate your Recognized Loss. In some cases, the Claims Administrator may condition acceptance of the claim based upon the production of additional information, including, where applicable, information concerning transactions in any derivatives securities such as options.)
7. Upon the occurrence of the Court's approval of the Settlement, as detailed in the Notice, I (we) agree and acknowledge that my (our) signature(s) hereto shall effect and constitute a full and complete release, remise and discharge by me (us) and my (our) heirs, joint tenants, tenants in common, beneficiaries, executors, administrators, predecessors, successors, attorneys, insurers and assigns (or, if I am (we are) submitting this Claim Form on behalf of a corporation, a partnership, estate or one or more other persons, by it, him, her or them, and by its, his, her or their heirs, executors, administrators, predecessors, successors, and assigns) of each of the "Released Parties" of all "Released Claims," as those terms are defined in the Stipulation and Agreement of Settlement, dated July 21, 2021 ("Stipulation").

8. Upon the occurrence of the Court's approval of the Settlement, as detailed in the Notice, I (we) agree and acknowledge that my (our) signature(s) hereto shall effect and constitute a covenant by me (us) and my (our) heirs, joint tenants, tenants in common, beneficiaries, executors, administrators, predecessors, successors, attorneys, insurers and assigns (or, if I am (we are) submitting this Claim Form on behalf of a corporation, a partnership, estate or one or more other persons, by it, him, her or them, and by its, his, her or their heirs, executors, administrators, predecessors, successors, and assigns) to permanently refrain from prosecuting or attempting to prosecute any Released Claims against any of the Released Parties.
9. "Released Parties" has the meaning laid out in the Stipulation.
10. "Released Claims" has the meaning laid out in the Stipulation.
11. "Unknown Claims" has the meaning laid out in the Stipulation.
12. I (We) acknowledge that the inclusion of "Unknown Claims" in the definition of claims released pursuant to the Stipulation was separately bargained for and is a material element of the Settlement of which this release is a part.
13. NOTICE REGARDING INSTITUTIONAL FILERS: Representatives with authority to file on behalf of (a) accounts of multiple Settlement Class Members and/or (b) institutional accounts with large numbers of transactions ("Representative Filers") must submit information regarding their transactions in an electronic spreadsheet format. If you are a Representative Filer, you must contact the Claims Administrator at efile@strategicclaims.net or visit their website at www.strategicclaims.net to obtain the required file layout. Claims which are not submitted in electronic spreadsheet format and in accordance with the Claims Administrator's instructions may be subject to rejection. All Representative Filers MUST also submit a manually signed Claim Form, as well as proof of authority to file (see Item 2 of the Claimant's Statement), along with the electronic spreadsheet format. No claims submitted in electronic spreadsheet format will be considered to have been properly submitted unless the Claims Administrator issues to the Claimant a written acknowledgment of receipt and acceptance of electronically submitted data.
14. NOTICE REGARDING ONLINE FILING: Claimants who are not Representative Filers may submit their claims online using the electronic version of the Claim Form hosted at www.strategicclaims.net/Acer/. If you are not acting as a Representative Filer, you do not need to contact the Claims Administrator prior to filing; you will receive an automated e-mail confirming receipt once your Claim Form has been submitted. If you are unsure if you should submit your claim as a Representative Filer, please contact the Claims Administrator at info@strategicclaims.net or (866) 274-4004. If you are not a Representative Filer, but your claim contains a large number of transactions, the Claims Administrator may request that you also submit an electronic spreadsheet showing your transactions to accompany your Claim Form.

I. CLAIMANT INFORMATION

Beneficial Owner Name:		
Address:		
City	State	ZIP
Foreign Province	Foreign Country	
Day Phone	Evening Phone	
Email		
Social Security Number (for individuals):	OR	Taxpayer Identification Number (for estates, trusts, corporations, etc.):

II. SCHEDULE OF TRANSACTIONS IN ACER THERAPEUTICS INC. ("ACER") COMMON STOCK

Beginning Holdings:

A. State the total number of shares of Acer common stock held at the close of trading on September 24, 2017 (*must be documented*). If none, write "zero" or "0."

--

Purchases/Acquisitions:

B. Separately list each and every purchase or acquisition of Acer common stock between September 25, 2017 and September 20, 2019, both dates inclusive, and provide the following information (*must be documented*):

Trade Date (List Chronologically) (Month/Day/Year)	Number of Shares Purchased/Acquired	Price per Share	Total Cost (Excluding Commissions, Taxes, and Fees)

Sales:

C. Separately list each and every sale of Acer common stock between September 25, 2017 and September 20, 2019, both dates inclusive, and provide the following information (*must be documented*):

Trade Date (List Chronologically) (Month/Day/Year)	Number of Shares Sold	Price per Share	Amount Received (Excluding Commissions, Taxes, and Fees)

Ending Holdings:

D. State the total number of shares of Acer common stock held at the close of trading on September 20, 2019 (*must be documented*).

If additional space is needed, attach separate, numbered sheets, giving all required information, substantially in the same format, and print your name and Social Security or Taxpayer Identification number at the top of each sheet.

III. SUBSTITUTE FORM W-9

Request for Taxpayer Identification Number:

Enter taxpayer identification number below for the Beneficial Owner(s). For most individuals, this is your Social Security Number. The Internal Revenue Service ("I.R.S.") requires such taxpayer identification number. If you fail to provide this information, your claim may be rejected.

Social Security Number (for individuals)	or	Taxpayer Identification Number (for estates, trusts, corporations, etc.)

IV. CERTIFICATION

I (We) submit this Proof of Claim and Release Form under the terms of the Stipulation described in the Notice. I (We) also submit to the jurisdiction of the United States District Court for the Southern District of New York with respect to my (our) claim as a Settlement Class Member(s) and for purposes of enforcing the release and covenant not to sue set forth herein. I (We) further acknowledge that I am (we are) bound by and subject to the terms of any judgment that may be entered in this Action. I (We) have not submitted any other claim covering the same purchases or sales of Acer common stock during the Settlement Class Period and know of no other Person having done so on my (our) behalf.

I (We) certify that I am (we are) NOT subject to backup withholding under the provisions of Section 3406 (a)(1)(c) of the Internal Revenue Code because: (a) I am (We are) exempt from backup

EXHIBIT A-2

withholding; or (b) I (We) have not been notified by the I.R.S. that I am (we are) subject to backup withholding as a result of a failure to report all interest or dividends; or (c) the I.R.S. has notified me (us) that I am (we are) no longer subject to backup withholding.

NOTE: If you have been notified by the I.R.S. that you are subject to backup withholding, please strike out the language that you are not subject to backup withholding in the certification above.

UNDER THE PENALTIES OF PERJURY UNDER THE LAWS OF THE UNITED STATES, I (WE) CERTIFY THAT ALL OF THE INFORMATION I (WE) PROVIDED ON THIS PROOF OF CLAIM AND RELEASE FORM IS TRUE, CORRECT AND COMPLETE.

Signature of Claimant (If this claim is being made on behalf of Joint Claimants, then each must sign):

(Signature)

(Signature)

(Capacity of person(s) signing, e.g. beneficial purchaser(s), executor, administrator, trustee, etc.)
 Check here if proof of authority to file is enclosed.
(See Item 2 under Claimant's Statement)

Date: _____

**THIS PROOF OF CLAIM AND RELEASE FORM MUST BE SUBMITTED NO LATER THAN _____,
2021 AND MUST BE MAILED TO:**

Acer Therapeutics Inc. Securities Litigation
c/o Strategic Claims Services
600 N. Jackson St., Ste. 205
P.O. Box 230
Media, PA 19063
Fax: (610) 565-7985
info@strategicclaims.net

A Claim Form received by the Claims Administrator shall be deemed to have been submitted when posted, if mailed by _____, 2021 and if a postmark is indicated on the envelope and it is mailed first class and addressed in accordance with the above instructions. In all other cases, a Claim Form shall be deemed to have been submitted when actually received by the Claims Administrator.

The Claims Administrator will acknowledge receipt of your Claim Form by mail or email within 45 days of receipt. Your claim is not deemed filed until you receive such an acknowledgement. If you do not receive an acknowledgement within 45 days, please contact the Claims Administrator by telephone toll-free at 866-274-4004 or by email at info@strategicclaims.net.

You should be aware that it will take a significant amount of time to process fully all of the Claim Forms and to administer the Settlement. This work will be completed as promptly as time permits, given the need to investigate and tabulate each Claim Form. Please notify the Claims Administrator of any change of address.

REMINDER CHECKLIST

- Please be sure to sign this Claim Form on page 6. If this Claim Form is submitted on behalf of joint claimants, then each claimant must sign.
- Please remember to attach supporting documents. Do NOT send any stock certificates. Keep copies of everything you submit.
- Do NOT use highlighter on the Claim Form or any supporting documents.
- If you move or change your address, telephone number or email address, please submit the new information to the Claims Administrator, as well as any other information that will assist us in contacting you. NOTE: Failure to submit updated information to the Claims Administrator may result in the Claims Administrator's inability to contact you regarding issues with your claim or deliver payment to you.

EXHIBIT A-3

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

NICHOLAS SKIADAS, Individually and on
Behalf of All Others Similarly Situated,

Plaintiff,

v.

ACER THERAPEUTICS INC., CHRIS
SCHELLING, and HARRY PALMIN,

Defendants.

Case No. 1:19-cv-06137-GHW

CLASS ACTION

**SUMMARY NOTICE OF PENDENCY AND
PROPOSED SECURITIES CLASS ACTION SETTLEMENT**

**TO: ALL PERSONS WHO PURCHASED OR OTHERWISE ACQUIRED THE
PUBLICLY TRADED COMMON STOCK OF ACER THERAPEUTICS INC.
("ACER") FROM SEPTEMBER 25, 2017 THROUGH JUNE 24, 2019, BOTH
DATES INCLUSIVE**

YOU ARE HEREBY NOTIFIED, pursuant to an Order of the United States District Court for the Southern District of New York, that a telephonic hearing will be held on _____, 202__, at __: __.m. before the Honorable Gregory H. Woods, United States District Judge of the Southern District of New York, for the purpose of determining: (1) whether the proposed Settlement of the claims in the above-captioned Action for consideration including the sum of \$8,350,000 should be approved by the Court as fair, reasonable, and adequate; (2) whether the proposed plan to distribute the Settlement proceeds is fair, reasonable, and adequate; (3) whether the application of Lead Counsel for attorneys' fees of up to one-third of the Settlement Amount (\$2,783,333.33) plus a proportionate share of interest accrued on the Settlement Amount, Lead Counsel's reimbursement of litigation expenses incurred of not more than \$200,000, and Award

to Lead Plaintiff of not more than \$10,000, should be approved; and (4) whether the Action should be dismissed with prejudice as set forth in the Stipulation and Agreement of Settlement, dated July 21, 2021 (the “Stipulation”). To participate in or listen to the Settlement Hearing, dial: 1-888-633-0347 and enter access code 39444610#.

If you purchased or otherwise acquired publicly traded Acer common stock between September 25, 2017 and June 24, 2019, both dates inclusive (“Settlement Class Period”) and suffered compensable damages thereby, your rights may be affected by this Settlement, including the release and extinguishment of claims you may possess relating to your ownership interest in Acer common stock. You may obtain copies of the detailed Notice of Pendency and Proposed Settlement of Securities Class Action (“Notice”) and the Proof of Claim and Release Form by writing to or calling the Claims Administrator: Acer Therapeutics Inc. Securities Litigation, c/o Strategic Claims Services, 600 N. Jackson St., Ste. 205, P.O. Box 230, Media, PA 19063; (Tel) (866) 274-4004; (Fax) (610) 565-7985; info@strategicclaims.net. You can also download copies of the Notice and submit your Proof of Claim and Release Form online at www.strategicclaims.net/Acer/. If you are a member of the Settlement Class, in order to share in the distribution of the Net Settlement Fund, you must submit a Proof of Claim and Release Form electronically or postmarked no later than _____, 2021 to the Claims Administrator, establishing that you are entitled to recovery. Unless you submit a written exclusion request, you will be bound by any judgment rendered in the Action whether or not you make a claim.

If you are a Settlement Class Member and desire to be excluded from the Settlement Class, you must submit to the Claims Administrator a request for exclusion so that it is received no later than _____, 2021, in the manner and form explained in the detailed Notice. All members

of the Settlement Class who have not requested exclusion from the Settlement Class will be bound by any judgment entered in the Action pursuant to the Stipulation.

Any objection by a Settlement Class Member to the Settlement, Plan of Allocation, Lead Counsel's requests for an award to Lead Counsel of attorneys' fees and reimbursement of expenses and Award to Lead Plaintiff must be in the manner and form explained in the detailed Notice and received no later than _____, 2021, by each of the following:

Clerk of the Court
United States Southern District Court
District of New York
500 Pearl Street
New York, NY 10007

LEAD COUNSEL:

THE ROSEN LAW FIRM, P.A.
Brian Alexander
275 Madison Avenue
40th Floor
New York, NY 10016

COUNSEL FOR DEFENDANTS:

MORRISON & FOERSTER LLP
Jamie Levitt
250 West 55th Street
New York, NY 10019

If you have any questions about the Settlement, you may call or write to Lead Counsel:

THE ROSEN LAW FIRM, P.A.
Brian Alexander
275 Madison Avenue, 40th Floor
New York, NY 10016
Tel: (212) 686-1060
balexander@rosenlegal.com

PLEASE DO NOT CONTACT THE COURT, THE CLERK'S OFFICE, DEFENDANTS, OR DEFENDANTS' COUNSEL REGARDING THIS NOTICE.

Dated: _____, 2021

BY ORDER OF THE UNITED STATES
DISTRICT COURT FOR THE SOUTHERN
DISTRICT OF NEW YORK

EXHIBIT B

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

NICHOLAS SKIADAS, Individually and on
Behalf of All Others Similarly Situated,

Plaintiff,

v.

ACER THERAPEUTICS INC., CHRIS
SCHELLING, and HARRY PALMIN,

Defendants.

Case No. 1:19-cv-06137-GHW

CLASS ACTION

**[PROPOSED] ORDER AND JUDGMENT APPROVING
CLASS ACTION SETTLEMENT**

WHEREAS, Lead Plaintiff Nicholas Skiadas (“Lead Plaintiff”), on behalf of himself and the Class, and Defendants Acer Therapeutics Inc. (“Acer”), Chris Schelling, and Harry Palmin (“Defendants” and collectively with Lead Plaintiff the “Parties”) have entered into a Stipulation and Agreement of Settlement, dated July 21, 2021 and amended per the Court’s instructions (the “Stipulation”), which provides for a complete dismissal with prejudice of the claims asserted against Defendants in the Action on the terms and conditions set forth in the Stipulation, subject to the approval of this Court (the “Settlement”);

WHEREAS, unless otherwise defined in this Judgment, the capitalized terms herein shall have the same meaning as they have in the Stipulation, which is attached hereto;

WHEREAS, by Order dated _____, 2021 (the “Preliminary Approval Order”), this Court: (a) found, pursuant to Rule 23(e)(1)(B) of the Federal Rules of Civil Procedure, that it would likely be able to approve the Settlement as fair, reasonable, and accurate under Rule 23(e)(2); (b) ordered that notice of the proposed Settlement be provided to potential Class Members; (c) provided Settlement Class Members with the opportunity either to exclude themselves from the Class or to object to the proposed Settlement; and (d) scheduled a hearing regarding final approval of the Settlement;

WHEREAS, due and adequate notice has been given to the Settlement Class as provided for in the Preliminary Approval Order;

WHEREAS, the Court conducted a hearing on the _____, 2021 (the “Settlement Hearing”) to consider, among other things, (a) whether the terms and conditions of the Stipulation are fair, reasonable, and adequate for the settlement of all claims asserted by the Settlement Class against Defendants, including the release of the Released Claims against the Released Parties; and (b) whether judgment should be entered dismissing the Action with prejudice;

WHEREAS, the Court having reviewed and considered the Stipulation, all papers filed and proceedings held herein in connection with the Settlement, all oral and written comments received regarding the Settlement, and the record in the Action, and good cause appearing therefor;

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. The Court has jurisdiction over the subject matter of the Action and all matters relating to the Settlement, as well as personal jurisdiction over all of the Parties and each of the Settlement Class Members.

2. This Order and Judgment incorporates and makes part hereof: (a) the Stipulation filed with the Court on August 6, 2021, and (b) the Long Notice and Summary Notice filed with the Court on August 6, 2021.

3. The Court finds that, for settlement purposes only, the prerequisites for a class action under Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure have been satisfied in that:

(a) the number of Settlement Class Members is so numerous that joinder of all members thereof is impracticable;

(b) there are questions of law and fact common to the Settlement Class;

(c) the claims of the Lead Plaintiff are typical of the claims of the Settlement Class he seeks to represent;

(d) Lead Plaintiff and Lead Counsel fairly and adequately represent the interests of the Settlement Class;

(e) questions of law and fact common to the members of the Settlement Class predominate over any questions affecting only individual members of the Settlement Class; and

(f) a class action is superior to other available methods for the fair and efficient adjudication of this Action, considering:

- i. the interests of the Settlement Class Members in individually controlling the prosecution of the separate actions;
- ii. the extent and nature of any litigation concerning the controversy already commenced by Settlement Class Members;
- iii. the desirability or undesirability of concentrating the litigation of these claims in this particular forum; and
- iv. the difficulties likely to be encountered in the management of the class action.

The Settlement Class is being certified for settlement purposes only.

4. The Court hereby finally certifies this action as a class action for purposes of the Settlement, pursuant to Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure, on behalf of all persons and entities that purchased or otherwise acquired the publicly traded Acer common stock from September 25, 2017 through June 24, 2019, both dates inclusive, and suffered compensable damages thereby. Excluded from the Settlement Class are Defendants and their immediate families; the officers and directors of Acer at all relevant times; their legal representatives, heirs, successors or assigns; any entity in which Defendants have or had a controlling interest; any entity in which Defendants have or had a controlling interest; and any entity affiliated with, controlling, controlled by, or under common control with TVM Capital Life Science. Also excluded from the Settlement Class are those persons who file valid and timely requests for exclusion in accordance with the Preliminary Approval Order. All persons who filed valid and timely requests for exclusion are listed on Exhibit A hereto.

5. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, for the purposes of this Settlement only, Lead Plaintiff is certified as the class representative on behalf of the Settlement Class (“Class Representative”) and Lead Counsel previously selected by Lead Plaintiff and appointed by the Court is hereby appointed as Class Counsel for the Settlement Class (“Class Counsel”).

6. In accordance with the Court’s Preliminary Approval Order, the Court hereby finds that the forms and methods of notifying the Settlement Class of the Settlement and its terms and conditions met the requirements of due process, Rule 23 of the Federal Rules of Civil Procedure, and Section 21D(a)(7) of the Securities Exchange Act of 1934, 15 U.S.C. § 78u-4(a)(7), as amended by the Private Securities Litigation Reform Act of 1995; constituted the best notice practicable under the circumstances; and constituted due and sufficient notice of these proceedings and the matters set forth herein, including the Settlement and Plan of Allocation, to all persons and entities entitled to such notice. No Settlement Class Member is relieved from the terms and conditions of the Settlement, including the releases provided for in the Stipulation, based upon the contention or proof that such Settlement Class Member failed to receive actual or adequate notice. A full opportunity has been offered to the Settlement Class Members to object to the proposed Settlement and to participate in the hearing thereon. The Court further finds that the notice provisions of the Class Action Fairness Act, 28 U.S.C. § 1715, were fully discharged. Thus, it is hereby determined that all Settlement Class Members are bound by this Order and Judgment except those persons listed on Exhibit A to this Order and Judgment.

7. The Settlement is approved as fair, reasonable, and adequate under Rule 23 of the Federal Rules of Civil Procedure. This Court further finds that the Settlement set forth in the Stipulation is the result of good faith, arm’s-length negotiations between experienced counsel

representing the interests of Class Representative, Settlement Class Members, and Defendants. The Parties are directed to consummate the Settlement in accordance with the terms and provisions of the Stipulation.

8. The Action and all claims contained therein, as well as all of the Released Claims, are dismissed with prejudice as against Defendants and the Released Parties. The Parties are to bear their own costs, except as otherwise expressly provided in the Stipulation.

9. The Releasing Parties, on behalf of themselves, their successors and assigns, and any other Person claiming (now or in the future) through or on behalf of them, regardless of whether any such Releasing Party ever seeks or obtains by any means, including without limitation by submitting a Proof of Claim and Release Form, any disbursement from the Settlement Fund, shall be deemed to have, and by operation of this Order and Judgment shall have, fully, finally, and forever released, relinquished, compromised, settled, waived, dismissed, and discharged each and all of the Released Claims against the Released Parties. The Releasing Parties shall be deemed to have, and by operation of this Order and Judgment shall have, covenanted not to sue the Released Parties with respect to any and all Released Claims in any forum and in any capacity. The Releasing Parties shall be and hereby are permanently barred, restrained, and enjoined from asserting, commencing, prosecuting, instituting, assisting, instigating, or in any way participating in the commencement or prosecution of any action or other proceeding, in any forum, asserting any Released Claim, in any capacity, against any of the Released Parties, including Defendants' Counsel. Nothing contained herein shall, however, bar the Releasing Parties from bringing any action or claim to enforce the terms of the Stipulation or this Order and Judgment.

10. Defendants, on behalf of themselves and their Related Parties, shall be deemed to have, and by operation of this Judgment shall have, fully, finally, and forever released,

relinquished, and discharged Class Representative, Settlement Class Members, Class Counsel, and their respective Related Parties from all Claims, whether known or unknown, which arise out of, concern or relate to the institution, prosecution, settlement or dismissal of the Actions (the “Defendants’ Released Claims”), and shall be permanently enjoined from prosecuting the Defendants’ Released Claims against Class Representative, Settlement Class Members, Class Counsel, and their respective Related Parties. Nothing contained herein shall, however, bar the Defendants or their Related Parties from bringing any action or claim to enforce the terms of the Stipulation or this Order and Judgment.

11. To the fullest extent permitted by law, all Persons shall be permanently enjoined, barred and restrained from bringing, commencing, prosecuting or asserting any claims, actions, or causes of action for contribution, indemnity or otherwise against any of the Released Parties seeking as damages or otherwise the recovery of all or any part of any liability, judgment or settlement that they pay or are obligated to pay or agree to pay to the Settlement Class or any Settlement Class Member arising out of, relating to or concerning such Persons’ participation in any acts, facts, statements or omissions that were or could have been alleged in the Action, whether arising under state, federal or foreign law as claims, cross-claims, counterclaims, third-party claims or otherwise, in the Court or any other federal, state, or foreign court, or in any arbitration proceeding, administrative agency proceeding, tribunal, or any other proceeding or forum. Further, nothing in the Stipulation or this Order and Judgment shall apply to bar or otherwise affect any claim for insurance coverage by any Defendant.

12. The Court hereby finds that the proposed Plan of Allocation is a fair and reasonable method to allocate the Net Settlement Fund among Settlement Class Members, and Class Counsel

and the Claims Administrator are directed to administer the Plan of Allocation in accordance with its terms and the terms of the Stipulation.

13. The Court finds that the Parties and their counsel have complied with all requirements of Rule 11 of the Federal Rules of Civil Procedure and the Private Securities Litigation Reform Act of 1995 as to all proceedings herein.

14. Neither this Order and Judgment, the Stipulation (nor the Settlement contained therein), nor any of its terms and provisions, nor any of the negotiations, documents or proceedings connected with them:

(a) is or may be deemed to be, or may be used as an admission, concession, or evidence of, the validity or invalidity of any Released Claims, the truth or falsity of any fact alleged by Class Representative the sufficiency or deficiency of any defense that has been or could have been asserted in the Action, or of any wrongdoing, liability, negligence or fault of Defendants, the Released Parties, or each or any of them;

(b) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or misrepresentation or omission with respect to any statement or written document attributed to, approved or made by Defendants or Released Parties in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal;

(c) is or may be deemed to be or shall be used, offered or received against the Parties, Defendants or the Released Parties, or each or any of them, as an admission, concession or evidence of the validity or invalidity of the Released Claims, the infirmity or strength of any claim raised in the Action, the truth or falsity of any fact alleged by Class Representative, the Settlement Class, or the availability or lack of availability of meritorious defenses to the claims raised in the Action;

(d) is or may be deemed to be or shall be construed as or received in evidence as an admission or concession against Defendants, or the Released Parties, or each or any of them, that any of Class Representative's or Settlement Class Members' claims are with or without merit, that a litigation class should or should not be certified, that damages recoverable in the Action would have been greater or less than the Settlement Fund or that the consideration to be given pursuant to the Stipulation represents an amount equal to, less than or greater than the amount that could have or would have been recovered after trial.

15. The Released Parties may file the Stipulation and/or this Order and Judgment in any other action that may be brought against them in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, full faith and credit, release, good faith settlement, judgment bar or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim. The Parties may file the Stipulation and/or this Order and Judgment in any proceedings that may be necessary to consummate or enforce the Stipulation, the Settlement, or this Order and Judgment.

16. Except as otherwise provided herein or in the Stipulation, all funds held by the Escrow Agent shall be deemed to be in *custodia legis* and shall remain subject to the jurisdiction of the Court until such time as the funds are distributed or returned pursuant to the Settlement Stipulation and/or further order of the Court.

17. Without affecting the finality of this Order and Judgment in any way, this Court hereby retains continuing exclusive jurisdiction over the Parties and the Settlement Class Members for all matters relating to the Action, including the administration, interpretation, effectuation or enforcement of the Stipulation and this Order and Judgment, and including any application for fees

and expenses incurred in connection with administering and distributing the Settlement proceeds to the Settlement Class Members.

18. Without further approval from the Court, Class Representative and Defendants are hereby authorized to agree to and adopt such amendments or modifications of the Stipulation or any exhibits attached thereto to effectuate the Settlement that: (a) are not materially inconsistent with this Judgment; and (b) do not materially limit the rights of Settlement Class Members in connection with the Settlement. Without further order of the Court, Defendants and Class Representative may agree to reasonable extensions of time to carry out any of the provisions of the Stipulation.

19. The finality of this Order and Judgment shall not be affected, in any manner, by rulings that the Court may make on Class Counsel's application for an award of attorneys' fees and expenses to Class Counsel or award to Class Representative.

20. In the event the Settlement is not consummated in accordance with the terms of the Stipulation, then the Stipulation and this Order and Judgment (including any amendment(s) thereof, and except as expressly provided in the Stipulation or by order of the Court) shall be null and void, of no further force or effect, and without prejudice to any Party, and may not be introduced as evidence or used in any action or proceeding by any Person against the Parties or the Released Parties, and each Party shall be restored to his, her or its respective litigation positions as they existed prior to July 21, 2021 pursuant to the terms of the Stipulation.

21. There is no just reason for delay in the entry of this Order and Judgment and immediate entry by the Clerk of the Court is expressly directed pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

SO ORDERED this ____ day of _____, 2021.

HON. GREGORY H. WOODS
UNITED STATES DISTRICT JUDGE