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10 **DISTRICT COURT OF THE STATE OF NEVADA**
11 **IN AND FOR THE COUNTY OF CLARK**

12 Case No. A-20-819986-B

13 WALTER AERTS and JOHN SHEEHY, On
14 Behalf of Themselves and All Others Similarly
15 Situated, and LARRY ALLEN, Derivatively, on
16 Behalf of CHINA XD PLASTIC COMPANY
17 LIMITED,

18 Plaintiff,

19 v.

20 JIE HAN, TAYLOR ZHANG, LINYUAN
21 ZHAI, HUIYI CHEN, GUANBAO HUANG,
22 FAITH DAWN LIMITED, FAITH HORIZON
23 INC., FAITH ABUNDANT LIMITED, and XD
24 ENGINEERING PLASTICS COMPANY
25 LIMITED,

26 Defendants,

27 and,
28 CHINA XD PLASTICS COMPANY LIMITED,
Nominal Defendant.

STIPULATION AND AGREEMENT OF SETTLEMENT

This Stipulation and Agreement of Settlement (“Stipulation”), dated January 31, 2023, is made and entered into by and among the following Parties (as defined herein), by and through their respective counsel of record: (1) plaintiffs John Sheehy, Walter Aerts, and Larry Allen (“Plaintiffs”) (on behalf of themselves and derivatively on behalf of China XD Plastics Companies Limited) (collectively “Plaintiffs”); and (2) nominal defendant China XD Plastics Company Limited (“China XD”, “Company,” or “Nominal Defendant”) (together with Plaintiffs, the “Settling Parties”). This

1 Stipulation is intended by the Settling Parties to settle the above-captioned action and to fully, finally,
2 and forever resolve, discharge, and settle the Released Claims (as defined below), subject to the terms
3 and conditions set forth herein.

4 **I. FACTUAL AND PROCEDURAL BACKGROUND**

5 Plaintiffs, on behalf of China XD, brought the Derivative Claim (defined below) purportedly
6 to remedy alleged breaches of fiduciary duty against current and former directors and officers of
7 China XD.¹

8 Plaintiffs allege that on January 22, 2020, China XD carried out a transaction (“January 2020
9 Transaction”), in which an unnamed investor acquired nearly 40% of the equity interest of the
10 Company’s two wholly owned PRC² subsidiaries [*i.e.*, its primary operating businesses]. Plaintiffs
11 contend the Company did not disclose the January 2020 transaction until June 29, 2020. In the
12 intervening time, the Individual Defendants entered into an agreement and plan of merger (“Merger
13 Agreement”) with affiliates of Defendant Han, in which he would take China XD private (“Proposed
14 Transaction”). Plaintiffs alleged that the January 2020 Transaction was carried out at an undervalued
15 price, driving down the value of the Company in advance of a self-interested merger.

16 On August 21, 2020, Plaintiffs filed the Verified Class Action and Derivative Complaint for
17 Breach of Fiduciary Duties and Aiding and Abetting (“Complaint”), bringing direct claims for breach
18 of fiduciary duties and aiding and abetting in connection with the Proposed Transaction and the
19 Derivative Claim challenging the January 20 Transaction (together, “Action”). On May 8, 2021,
20 however, China XD terminated the Merger Agreement on the basis of alleged breaches of the
21 agreement by Defendant Han and his affiliates. While the termination of the Merger Agreement
22 rendered Plaintiffs’ direct claims in connection with the Proposed Transaction moot, Plaintiffs

23 _____
24 ¹ The “Individual Defendants,” consisting of Jie Han (“Han”), the Company’s chairman, Chief
25 Executive Officer (“CEO”), and majority shareholder, Taylor Zhang (“Zhang”), the Company’s
26 former Chief Financial Officer (“CFO”) and former member of the board of directors, Linyuan Zhai
27 (“Zhai”), a director of the Company, Huiyi Chen (“Chen”), a director of the Company, and Guanbao
28 Huang (“Huang”), a director of the Company.

² “PRC” is People’s Republic of China.

1 continued to assert the Derivative Claim for breaches of fiduciary duty in connection with the January
2 20 Transaction.

3 In December 2021, the Settling Parties first engaged in negotiations concerning Plaintiffs'
4 proposal that China XD's Board of Directors enact a set of durable corporate governance reforms. On
5 January 28, 2022, the Settling Parties participated in a settlement conference with Judge Timothy
6 Williams. However, the Settling Parties were unable to reach agreement at that time. Both prior to
7 and subsequent to the settlement conference, the Settling Parties engaged in discovery, including
8 serving and responding to document requests, requests for admission, and interrogatories.

9 In June 2022, the Settling Parties re-engaged in settlement negotiations, until they reached an
10 agreement in principle to settle the Derivative Claim and, therefore, the Action. The Settling Parties
11 executed a term sheet on October 3, 2022.

12 **II. PLAINTIFFS' CLAIMS, AND THE BENEFIT OF SETTLEMENT**

13 Plaintiffs' Counsel conducted investigations relating to the claims and the underlying events
14 alleged in the Action, including, but not limited to: (1) reviewing and analyzing the Company's public
15 filings with the SEC, press releases, announcements, transcripts of investor conference calls, and
16 news articles; (2) researching and drafting the complaint filed on August 21, 2020; (3) researching
17 applicable law with respect to the claims in the Action and potential defenses thereto; (4) researching
18 corporate governance issues and oversight best practices generally and among China XD's peer
19 corporations; (5) identifying reforms that would materially benefit China XD's minority stockholders;
20 (6) engaging in discovery; (7) retaining a private investigator to obtain information about the January
21 2020 Transaction in the PRC; (8) preparing settlement demands; and (9) engaging in extensive
22 settlement discussions with China XD's counsel.

23 Plaintiffs' entry into the Settlement is not an admission as to the lack of any merit of Derivative
24 Claim. In light of the benefits of the Settlement, as well as to avoid the potentially protracted time,
25 expense, and uncertainty associated with continued litigation, including potential trials and appeals,
26 Plaintiffs have concluded that it is desirable that the Action be fully and finally settled and satisfied
27 in the manner, and upon the terms and conditions, set forth in this Stipulation. Plaintiffs and Plaintiffs'
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1 Counsel recognize the significant risk, expense, and length of continued proceedings necessary to
2 litigate the Action through trials and possible appeals. Plaintiffs' Counsel has also taken into account
3 the uncertain outcome and the risk of litigation.

4 Based on Plaintiffs' Counsel's review and analysis of the relevant facts, allegations, defenses,
5 and controlling legal principles, Plaintiffs and Plaintiffs' Counsel believe that the Settlement set forth
6 in this Stipulation is fair, reasonable and adequate; confers substantial benefits upon China XD and
7 its minority stockholders; and would serve the best interests of China XD and its stockholders.

8 **III. DEFENDANTS' DENIAL OF WRONGDOING**

9 Defendants have denied and continue to deny any and all claims of wrongdoing and liability
10 in the Action, and deny that any Defendant has breached a fiduciary duty to shareholders or the
11 Company. Defendants have agreed to the Settlement and the dismissal of the Action with prejudice,
12 under the terms and conditions set forth in this Stipulation, in order to (i) avoid further expense,
13 inconvenience and distraction associated with continued litigation of Plaintiffs' claims, and (ii) put to
14 rest with finality all claims arising out of the Action. Defendants' entry into the Stipulation is not an
15 admission by Defendants as to any merit to any of the claims asserted in the Action or lack of
16 defenses..

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

18 Plaintiffs and China XD, by and through their respective counsel or attorneys of record, hereby
19 stipulate and agree that, subject to approval by the Court, in consideration of the benefits flowing to
20 the Settling Parties hereto the sufficiency of which are hereby acknowledged, the Action and all of
21 the Released Claims shall be fully, finally, and forever satisfied, compromised, settled, released,
22 discharged, and dismissed with prejudice, upon the terms and subject to the conditions set forth herein
23 as follows:

24 **1. DEFINITIONS**

25 As used in this Stipulation, the following terms have the meaning specified below.

26 1.1. "Action" shall have the meaning set forth above.

27 1.2. "Board" means the Board of Directors of the Company.

1 1.3. "Complaint" shall have the meaning set forth above.

2 1.4. "Court" means the District Court for Clark County, Nevada.

3 1.5. The terms "Company," "China XD," or "Nominal Defendant" as defined above and
4 used herein include all of the Company's subsidiaries, predecessors, successors, affiliates, officers,
5 directors, employees, and agents.

6 1.6. "Defendants" mean, collectively, the Individual Defendants, Nominal Defendant
7 China XD Plastics Company Limited, Faith Dawn Limited, Faith Horizon Inc., Faith Abundant
8 Limited, and XD Engineering Plastics Company Limited.

9 1.7. "Defendants' Released Claims" means collectively all actions, suits, claims, demands,
10 rights, liabilities, and causes of action of every nature and description whatsoever, including both
11 known claims and Unknown Claims, asserted or that might have been asserted in any forum by
12 Defendants' Released Persons against Plaintiffs' Released Persons, which arise out of, are based on,
13 or relate in any way, directly or indirectly, to the institution, prosecution, or settlement of the
14 Derivative Claim; *provided, however*, that "Defendants' Released Claims" shall not include any
15 claims to enforce the Settlement nor any claims to enforce any confidentiality, nondisclosure, or other
16 agreements previously entered into by Defendants, Plaintiffs, and/or their respective counsel.

17 1.8. "Defendants' Released Persons" mean each of the Defendants, Defendants' Counsel,
18 and, to the maximum extent permitted by law, each of their immediate family members, spouses,
19 heirs, executors, estates, administrators, trustees, assigns, and any trusts in which Defendants, or any
20 of them, are settlors, or which are for the benefit of any Defendants and/or members of his or her
21 immediate family; any entity in which a Defendant, and/or members of his family has a controlling
22 interest; each of the Defendants' present and former attorneys, legal representatives, and assigns in
23 connection with the Action; Defendants' insurers (except as stated in Section 4.3); and all of the
24 Company's present and former directors and officers, agents, advisors, consultants, auditors,
25 accountants, underwriters, employees, representatives, Board members, affiliates, predecessors,
26 successors or assigns, parents, subsidiaries, departments and divisions.

27 1.9. "Derivative Claim" means the claim asserted in Count III of the Complaint.

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1 1.10. "Effective Date" means the first date by which all of the events and conditions
2 specified in Paragraph 6.1 herein have been met and have occurred

3 1.11. "Escrow Account" means an interest-bearing escrow account to be established and
4 maintained by the Rosen Law Firm, P.A. for the purpose of payment of the Fee and Expense Amount,
5 as provided in Paragraphs 5.1-5.3 of this Stipulation.

6 1.12. "Execution Date" means the date this Stipulation has been signed by all the signatories
7 through their respective counsel.

8 1.13. "Fee and Expense Amount" means the sum to be paid to Plaintiffs' Counsel for their
9 attorneys' fees and expenses, detailed in Paragraph 5.1-5.3 herein, subject to Court approval.

10 1.14. "Final" means the date when the Order and Final Judgment has not been reversed,
11 vacated, or modified in any way and is no longer subject to appellate review, either because of
12 disposition on appeal and conclusion of the appellate process or because of passage, without action,
13 of time for seeking appellate review. More specifically, it is that situation when (1) either no appeal
14 has been filed and the time has passed for any notice of appeal to be timely filed in the Action;
15 (2) an appeal has been filed and the court of appeals has either affirmed the judgment or dismissed
16 that appeal and the time for any reconsideration or further appellate review has passed; or (3) a higher
17 court has granted further appellate review and that court has either affirmed the underlying Order and
18 Final Judgment or affirmed the court of appeals' decision affirming the judgment or dismissing the
19 appeal.

20 1.15. "Individual Defendants" shall have the meaning set forth above.

21 1.16. "Notice to China XD Stockholders" or "Notice" means the Notice of Proposed
22 Settlement, substantially in the form of Exhibit C attached hereto.

23 1.17. "Order and Final Judgment" means the [Proposed] Order and Final Judgment to be
24 rendered by the Court, substantially in the form attached hereto as Exhibit E.

25 1.18. "Party" or "Parties" mean, collectively, each of the Plaintiffs, each of the Individual
26 Defendants, and Nominal Defendant China XD.

1 1.19. “Person” or “Persons” means an individual, corporation, limited liability corporation,
2 professional corporation, partnership, limited partnership, limited liability partnership, association,
3 joint stock company, estate, legal representative, trust, unincorporated association, government or any
4 political subdivision or agency thereof, and any business or legal entity, and their spouses, heirs,
5 predecessors, successors, representatives, or assignees.

6 1.20. “Plaintiffs” shall have the meaning set forth above and for the avoidance of doubt
7 means plaintiffs John Sheehy, Walter Aerts, and Larry Allen individually and derivatively on behalf
8 of China XD.

9 1.21. “Plaintiffs’ Counsel” means the Rosen Law Firm, P.A.

10 1.22. “Plaintiffs’ Released Claims” means all actions, suits, claims, demands, losses,
11 obligations, rights, liabilities, and causes of action of every nature, and description whatsoever,
12 including both known claims or Unknown Claims, contingent or absolute, suspected or unsuspected,
13 that have been, could have been, or in the future can or might be asserted in any federal, state or
14 foreign court, tribunal, forum or proceeding by China XD and Plaintiffs’ Released Persons, whether
15 asserted directly, derivatively, legal or equitable or otherwise, or any current or former China XD
16 stockholder derivatively on behalf of China XD, against any of Defendants’ Released Persons, based
17 upon, arising out of, or related in any way to any of the allegations, facts, transactions, events,
18 occurrences, acts, disclosures, statements, representations, purported omissions, or failures to act
19 relating to all matters involved, set forth, referred to, or alleged in the Complaint filed in the Action
20 including claims for breach of fiduciary duty, aiding and abetting, and any claims relating to the
21 Proposed Transaction and Merger Agreement; *provided however*, that “Released Claims” shall not
22 include any claims to enforce the Settlement.

23 1.23. “Plaintiffs’ Released Persons” mean Plaintiffs, Plaintiffs’ Counsel and each of their
24 immediate family members, spouses, heirs, executors, administrators, successors, trustees, attorneys,
25 personal or legal representatives, advisors, estates, assigns, and agents thereof.

26 1.24. “Preliminary Approval Order” means the [Proposed] Order Preliminarily Approving
27 Settlement to be entered by the Court, substantially in the form of Exhibit B attached hereto,
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1 including, *inter alia*, preliminarily approving the terms and conditions of the Settlement as set forth
2 in this Stipulation, directing that Notice and Summary Notice be provided to China XD stockholders,
3 and scheduling a Settlement Hearing to consider whether the Settlement and the Fee and Expense
4 Amount should be finally approved.

5 1.25. “Released Claims” means Defendants’ Released Claims and Plaintiffs’ Released
6 Claims.

7 1.26. “Released Parties” means Defendants’ Released Persons and Plaintiffs’ Released
8 Persons.

9 1.27. “Settlement” means the settlement documented in this Stipulation.

10 1.28. “Settlement Hearing” means a hearing by the Court to review this Stipulation and
11 determine: (i) whether to enter the Order and Final Judgment; and (ii) all other matters related to the
12 Settlement that are properly before the Court.

13 1.29. “Stipulation” shall have the meaning set forth above.

14 1.30. “Summary Notice” means the Summary Notice of Proposed Settlement, substantially
15 in the form of Exhibit D attached hereto.

16 1.31. “Unknown Claims” means any of Plaintiffs’ Released Claims and Defendants’
17 Released Claims that any Party does not know or suspect exists in his, her, or its favor at the time of
18 the Settlement, including, without limitation, those claims which, if known, might have affected the
19 decision to enter into, or not object to, this Settlement. The Settling Parties expressly waive,
20 relinquish, and release any and all provisions, rights, and benefits conferred by or under section 1542
21 of the California Civil Code (“§ 1542”) or any other law of the United States or any state or territory
22 of the United States, or principle of common law, which is similar, comparable, or equivalent to
23 § 1542, which provides:

24 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
25 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
26 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE,
27 AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY
28 AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED
PARTY.

1 The Settling Parties acknowledge that they may hereafter discover facts in addition to or different
2 from those now known or believed to be true by them, with respect to Plaintiffs' Released Claims and
3 Defendants' Released Claims in the Settlement, as the case may be, but it is the intention of the
4 Settling Parties to completely, fully, finally, and forever compromise, settle, release, discharge, and
5 extinguish any and all Plaintiffs' Released Claims and Defendants' Released Claims that are known
6 or unknown, suspected or unsuspected, contingent or absolute, apparent or unapparent, which do not
7 exist, or heretofore existed, or may hereafter exist, and without regard to the subsequent discovery of
8 additional or different facts. The Settling Parties acknowledge that the foregoing waiver was
9 separately bargained for and is a key element of the Stipulation of which this release is a part.

10 **2. Consideration**

11 2.1. The Board has agreed to adopt the corporate governance measures set forth in
12 Exhibit A (the "Reforms"). China XD shall maintain the Reforms for at least five (5) years after
13 implementation unless a change is needed in order for the Board to comply with its fiduciary duties,
14 or in order to comply with significant changes in institutional investor or proxy advisory guidelines,
15 or in the event that China XD becomes a privately held company.

16 2.2. China XD acknowledges that the Plaintiffs' pursuit of the Action, and subsequent
17 resolution efforts were, in the aggregate, a contributing cause in the Company's implementation of
18 the reforms described in Exhibit A and that the settlement confers substantial benefits on the Company
19 and its stockholders.

20 **3. Procedure for Implementing the Settlement**

21 3.1. Within five (5) business days after the Execution Date of this Stipulation,
22 Plaintiffs shall submit this Stipulation, together with its exhibits, to the Court and apply for entry of
23 an Order substantially in the form of Exhibit B attached hereto (the "Preliminary Approval Order"),
24 requesting, *inter alia*: (i) preliminary approval of the Settlement set forth in this Stipulation;
25 (ii) approval of the method of providing notice of the proposed Settlement to current China XD
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1 minority stockholders; (iii) approval of the forms of notice substantially in the form of Exhibits C and
2 D attached hereto; and (iv) a date for the Settlement Hearing.

3 3.2. China XD shall undertake the administrative responsibility for giving notice to
4 current China XD minority shareholders and shall be solely responsible for paying the costs and
5 expenses related to providing such notice to current China XD minority shareholders as described in
6 this paragraph. Within fourteen (14) business days after the Court's entry of the Preliminary Approval
7 Order, China XD shall publish the Notice via a press release in Globe Newswire and shall file a
8 Current Report on Form 8-K with the SEC attaching the Notice. The Settling Parties believe the
9 content of the Notice and the manner of the notice procedures set forth in this paragraph constitute
10 adequate and reasonable notice to current China XD minority stockholders pursuant to applicable law
11 and due process.

12 3.3. At least ten (10) business days prior to the Settlement Hearing, China XD's
13 counsel shall file with the Court an appropriate affidavit or declaration with respect to filing and
14 publishing the Notice.

15 3.4. Plaintiffs' Counsel shall request that the Court hold the Settlement Hearing at
16 least forty-five (45) calendar days after the deadline to provide the notice described in ¶ 3.2 above to
17 current China XD minority shareholders to approve the Settlement and the Fee and Expense Amount.

18 3.5. Pending the Court's determination as to final approval of the Settlement,
19 Plaintiffs and Plaintiffs' Counsel, and any current or former China XD minority shareholders,
20 derivatively on behalf of China XD, are barred and enjoined from commencing, prosecuting,
21 instigating, or in any way participating in the commencement or prosecution of any action asserting
22 any Released Claims against any of the Released Parties in any court or tribunal.

23 3.6. Within thirty (30) business days of the Court's final approval of the Settlement,
24 China XD's Board of Directors shall implement the Reforms.

25 3.7. China XD shall notify shareholders in each of its annual reports in the five
26 years following the implementation of the Reforms whether the Reforms remain in place.

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1 **4. Releases**

2 4.1. Upon the Effective Date, China XD, Plaintiffs, and each of China XD’s current
3 and former stockholders, on behalf of themselves and their successors and assigns, shall be deemed
4 to have, and by operation of the Court’s entry of the Order and Final Judgment shall have, fully,
5 finally, and forever released, relinquished, and discharged the Released Claims against the Released
6 Parties. China XD, Plaintiffs, and each of China XD’s current and former stockholders shall be
7 deemed to have, and by operation of the Order and Final Judgment shall have, covenanted not to sue
8 any Released Party with respect to any Released Claims, and shall be permanently barred and
9 enjoined from instituting, commencing or prosecuting the Released Claims against the Released
10 Parties except to enforce the releases and other terms and conditions contained in this Stipulation
11 and/or the Order and Final Judgment entered pursuant thereto.

12 4.2. Nothing herein shall in way release, waive, impair, or restrict the rights of any
13 of the Settling Parties to enforce the terms of the Stipulation.

14 4.3. Nothing in this Stipulation constitutes or reflects a waiver or release of any
15 rights or claims of Defendants and/or China XD against their insurers, or their insurers’ subsidiaries,
16 predecessors, successors, assigns, affiliates, or representatives, including, but not limited to, any
17 rights or claims by the Defendants under any directors’ and officers’ liability insurance or other
18 applicable insurance coverage maintained by the Company. Nothing in this Stipulation constitutes or
19 reflects a waiver or release of any rights or claims of the Defendants relating in any way to
20 indemnification or advancement of attorneys’ fees relating to the Action or the Released Claims,
21 whether under any written indemnification or advancement agreement, or under the Company’s
22 charter, by-laws or operating agreement, or under applicable law.

23 **5. Plaintiffs’ Counsels’ Attorneys’ Fee and Expenses**

24 5.1. After negotiating the principal terms of the Settlement, counsel for the Settling
25 Parties separately negotiated the attorneys’ fees and expenses that China XD would pay or cause to
26 be paid to Plaintiffs’ Counsel based on the substantial benefits conferred upon the Company by the
27 Reforms.

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1 5.2. In consideration of the substantial benefits conferred upon the Company as a
2 direct result of the Settlement and the efforts of Plaintiffs and Plaintiffs' Counsel in the Derivative
3 Actions, Plaintiffs' Counsel shall move the Court for an award of fees, costs, and expenses not to
4 exceed \$75,000, to be paid by China XD (the "Fee and Expense Amount"). China XD shall not oppose
5 Plaintiffs' Counsel's motion.

6 5.3. The Fee and Expense Amount awarded by the Court shall constitute final and
7 complete payments for Plaintiffs' attorneys' fees and expenses that have been incurred or will be
8 incurred in the Action. The Fee and Expense Amount shall be funded to the Escrow Account within
9 fourteen (14) business days of the entry of the Final Order and Judgment and delivery of adequate
10 wire instructions and taxpayer identification. In the event the Final Order and Judgment does not
11 become Final, or any part of the Fee and Expense Amount is reversed or modified on appeal, then
12 Plaintiffs' Counsel shall refund the Fee and Expense Amount as appropriate within fifteen (15)
13 business days from the date of the court order reducing the Fee and Expense Amount.

14 5.4. The Settling Parties agree that Plaintiffs may apply to the Court for approval
15 of reasonable service awards ("Service Awards") of \$1,000.00 for each Plaintiff, to be paid out of
16 any Fee and Expense Amount approved by the Court in recognition of Plaintiffs' participation and
17 effort in the prosecution of the Action. The failure of the Court to approve any requested service
18 award, in whole or in part, shall have no effect on the Settlement set forth in this Stipulation. Neither
19 China XD nor any of the Individual Defendants shall be liable for any portion of any Service Award
20 under any circumstance.

21 5.5. Plaintiffs and Plaintiffs' Counsel will be solely responsible for satisfying any
22 and all tax obligations that may arise out of the Fee and Expense Amount and Service Awards.

23 5.6. Except as expressly provided herein, Defendants shall bear no expenses, costs,
24 damages, or fees alleged or incurred by the Plaintiffs, or by any shareholder, or by any of their
25 attorneys, experts, advisors, agents, or representatives.

26 **6. Conditions of Settlement, Effect of Disapproval, Cancellation, or Termination**

27 6.1. The Effective Date of the Stipulation shall be conditioned on the occurrence of
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1 all the following events:

- 2 a) the entry of the Final Order and Judgment by the Court;
 - 3 b) the Final Order and Judgment has become Final; and
 - 4 c) the payment of the Fee and Expense Amount in accordance with the terms detailed
- 5 here.

6 6.2. If any of the conditions specified in ¶ 6.1 is not met, then the Stipulation shall
7 be canceled and terminated subject to ¶ 6.4, and the Settling Parties shall be restored to their respective
8 positions in the Action as of the date immediately preceding the Execution Date of this Stipulation,
9 unless Plaintiffs' Counsel and China XD's counsel mutually agree in writing to proceed with the
10 Stipulation.

11 6.3. Each of the Settling Parties shall have the right to terminate the Settlement by
12 providing written notice of their election to do so to all other Settling Parties within twenty (20)
13 calendar days of the date on which: (i) the Court refuses to approve this Stipulation, or the terms
14 contained herein, in any material respect; (ii) the Preliminary Approval Order is not entered in
15 substantially the form attached as Exhibit B hereto; (iii) the Final Order and Judgment is not entered
16 in substantially the form attached as Exhibit E hereto; (iv) the Judgment is reversed or substantially
17 modified on appeal, reconsideration, or otherwise; or (v) the Effective Date of the Settlement cannot
18 otherwise occur; except that such termination shall not be effective unless and until the terminating
19 Settling Party has, within twenty (20) calendar days of the date on which notice of the termination
20 event has been provided to all other Settling Parties and attempted in good faith to confer with the
21 other Settling Parties to attempt to remedy the issue. Any order or proceeding relating to the Fee and
22 Expense Amount, or any appeal from any order relating thereto or reversal or modification thereof,
23 shall not operate to cancel the Stipulation, nor allow for the termination of the Settlement, or affect
24 or delay the finality of the Judgment approving the Settlement unless Plaintiffs request a Fee and
25 Expense Amount in excess of the amount agreed in ¶ 5.2.

26 6.4. In the event that the Stipulation is not approved by the Court, or the Settlement
27 is terminated for any reason, including pursuant to ¶ 6.3 above, the Settling Parties shall be restored
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1 to their respective positions as of the date immediately preceding the Execution Date of this
2 Stipulation, and all negotiations, proceedings, documents prepared and statements made in connection
3 herewith shall be without prejudice to the Settling Parties, shall not be deemed or construed to be an
4 admission by any of the Settling Parties of any act, matter, or proposition, and shall not be used in
5 any manner for any purpose in any subsequent proceeding in the Action or in any other action or
6 proceeding. In such event, the terms and provisions of the Stipulation, and the October 3, 2022
7 Settlement Term Sheet, shall have no further force and effect with respect to the Settling Parties and
8 shall not be used in the Action or in any other proceeding for any purpose, and any judgment or orders
9 entered by the Court in accordance with the terms of the Stipulation shall be treated as vacated, *nunc*
10 *pro tunc*.

11 **7. Bankruptcy**

12 7.1. In the event any proceedings by or on behalf of China XD, whether voluntary
13 or involuntary, are initiated under any chapter of the United States Bankruptcy Code, including any
14 act of receivership, asset seizure, or similar federal or state law action (“Bankruptcy Proceedings”),
15 the Settling Parties agree to use their reasonable best efforts to obtain all necessary orders, consents,
16 releases, and approvals for effectuation of this Stipulation in a timely and expeditious manner.

17 7.2. In the event of any Bankruptcy Proceedings by or on behalf of China XD, the
18 Settling Parties agree that all dates and deadlines set forth herein will be extended for such periods of
19 time as are necessary to obtain necessary orders, consents, releases, and approvals from the
20 Bankruptcy Court to carry out the terms and conditions of the Stipulation.

21 **8. Miscellaneous Provisions**

22 8.1. The Settling Parties: (i) acknowledge that it is their intent to consummate this
23 Stipulation; and (ii) agree to cooperate to the extent reasonably necessary to effectuate and implement
24 all terms and conditions of the Stipulation and to exercise their best efforts to accomplish the
25 foregoing terms and conditions of the Stipulation.

26 8.2. The Settling Parties agree that the terms of the Settlement were negotiated in
27 good faith and at arm’s-length by the Settling Parties and reflect a settlement that was reached
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1 voluntarily based upon adequate information and after consultation with competent legal counsel.
2 The Settling Parties agree that each has complied fully with the applicable requirements of Rule 11
3 of the Nevada Rules of Civil Procedure and all other similar rules of professional conduct under
4 Nevada law. The Settling Parties shall not assert any claims of any violation or take the position that
5 the litigation was brought or defended in bad faith or in violation of Rule 11 of the Nevada Rules of
6 Civil Procedure and all other similar rules of professional conduct under Nevada law.

7 8.3. Neither the Stipulation (including any exhibits attached hereto) nor the
8 Settlement, nor any act performed or document executed pursuant to or in furtherance of the
9 Stipulation or the Settlement: (i) is or may be deemed to be or may be offered, attempted to be offered
10 or used in any way against the Released Parties as a presumption, a concession or an admission of, or
11 evidence of, the validity, or lack thereof, of any of the Released Claims, or of any fault, wrongdoing
12 or liability of any of the Released Parties; or (ii) is or may be deemed to be or may be offered,
13 attempted to be offered or used for any purpose (including against the Released Parties as a
14 presumption, a concession or an admission of, or evidence of, any fault, omission, wrongdoing or
15 liability of any of the Released Parties) in any arbitration proceeding or other civil, criminal, or
16 administrative action or proceeding in any court, administrative agency, or other tribunal. The Settling
17 Parties and Released Parties may file the Stipulation or Order and Final Judgment to enforce the
18 settlement or in any action that may be brought against them in order to support a defense or
19 counterclaim based on principles of *res judicata*, collateral estoppel, release, good-faith settlement,
20 judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar
21 defense or counterclaim, to the extent applicable. Any and all discussions, statements, and/or
22 communications of any type between the Settling Parties and their counsel in the course of settlement
23 negotiations shall remain confidential.

24 8.4. The exhibits to the Stipulation are material and integral parts hereof and are
25 fully incorporated herein by this reference.

26 8.5. The Stipulation may be amended or modified only by a written instrument
27 signed by or on behalf of all the Settling Parties or their respective successors-in-interest and with
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1 Court approval. After prior notice to the Court, but without further order of the Court, the Settling
2 Parties may agree to reasonable extensions of time to carry out any provisions of this Stipulation.

3 8.6. In the event that any part of the Settlement is found to be unlawful, void,
4 unconscionable, or against public policy by a court of competent jurisdiction, the remaining terms
5 and conditions of the settlement shall remain intact.

6 8.7. This Stipulation and the exhibits attached hereto represent the complete and
7 final resolution of all disputes among the Settling Parties with respect to the Action, constitute the
8 entire agreement among the Settling Parties, and supersede any and all prior negotiations, discussions,
9 agreements, or undertakings, whether oral or written, with respect to such matters.

10 8.8. The waiver by one party of any breach of the Settlement by any other party
11 shall not be deemed a waiver of any other prior or subsequent breach of the Settlement. The provisions
12 of the Settlement may not be waived except by a writing signed by the affected party, or counsel for
13 that party.

14 8.9. The headings in the Stipulation and its exhibits are used for the purpose of
15 convenience only and are not meant to have legal effect.

16 8.10. The Stipulation and the Settlement shall be binding upon, and inure to the
17 benefit of, the successors and assigns of the Settling Parties and the Released Parties. The Settling
18 Parties agree that this Stipulation will run to their respective successors-in-interest, and they further
19 agree that any planned, proposed or actual sale, merger or change-in-control of China XD shall not
20 void this Stipulation, and that in the event of a planned, proposed or actual sale, merger, or change-
21 in-control of China XD they will continue to seek final approval of this Stipulation expeditiously,
22 including, but not limited to, the settlement terms reflected in this Stipulation and the Fee and Expense
23 Amount.

24 8.11. The Stipulation and the exhibits attached hereto shall be considered to have
25 been negotiated, executed, and delivered, and to be wholly performed, in the State of Nevada and the
26 rights and obligations of the Settling Parties to the Stipulation shall be construed and enforced in
27 accordance with, and governed by, the internal, substantive laws of the State of Nevada without giving
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1 effect to that State's choice of law principles. No representations, warranties, or inducements have
2 been made to any party concerning the Stipulation or its exhibits other than the representations,
3 warranties, and covenants contained and memorialized in such documents.

4 8.12. This Stipulation shall not be construed more strictly against one Settling Party
5 than another merely by virtue of the fact that it, or any part of it, may have been prepared by counsel
6 for one of the Settling Parties, it being recognized that it is the result of arm's-length negotiations
7 among the Settling Parties and all Settling Parties have contributed substantially and materially to the
8 preparation of this Stipulation.

9 8.13. Nothing in this Stipulation, or the negotiations or proceedings relating to the
10 Settlement, is intended to or shall be deemed to constitute a waiver of any applicable privilege or
11 immunity, including, without limitation, the attorney-client privilege, the joint defense privilege, the
12 accountants' privilege, or work product immunity; further, all information and documents transmitted
13 between Plaintiffs' Counsel and China XD's counsel in connection with the Settlement shall be kept
14 confidential and shall be inadmissible in any proceeding in any U.S. federal or state court or other
15 tribunal or otherwise, in accordance with Rule 408 of the Federal Rules of Evidence as if such Rule
16 applied in all respects in any such proceeding or forum, or any similar rule existing under Nevada
17 law.

18 8.14. The Settling Parties intend that the Court retain jurisdiction for the purpose of
19 effectuating and enforcing the terms of the Settlement.

20 8.15. Each counsel or other Person executing the Stipulation or its exhibits on behalf
21 of any of the Settling Parties hereby warrants that such Person has the full authority to do so. The
22 Stipulation shall be binding upon, and inure to the benefit of, the successors and assigns of the Settling
23 Parties.

24 8.16. The Stipulation may be executed in one or more counterparts, including by
25 signature transmitted via facsimile, or by a .pdf/.tif image of the signature transmitted via e-mail. All
26 executed counterparts and each of them shall be deemed to be one and the same instrument.
27 A complete set of original executed counterparts shall be filed with the Court.

1 8.17. The Settling Parties agree that there will be no public announcements regarding
2 this Stipulation except as otherwise provided in the Stipulation. Once disclosure is made by
3 Defendants, the Settling Parties agree that other than disclosures required by law, any public
4 comments from the Settling Parties regarding this Settlement will not substantially deviate from the
5 words to the effect that the parties have reached a mutually acceptable resolution and that both sides
6 are satisfied with this resolution.

7 8.18. Plaintiffs shall execute and file a dismissal with prejudice of the Action upon
8 the “Effective Date” of the Stipulation.

9 IN WITNESS WHEREOF, the Settling Parties hereto have caused the Stipulation to be
10 executed, by their duly authorized attorneys, dated as of January 31, 2023.

11 **LEWIS ROCA ROTHGERBER CHRISTIE THE ROSEN LAW FIRM, P.A.**
12 **LLP**

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