FOR SETTLEMENT PURPOSES ONLY (FRE 408)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

DAVID G. RAY, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED, Plaintiff, v. TIERONE CORPORATION, GILBERT G. LUNDSTROM, EUGENE B. WITKOWICZ, MICHAEL J. FALBO, JAMES A. LAPHEN, AND CHARLES W. HOSKINS, Defendants.	Lead Case No. 8:10-cv-00199
DOUGLAS L. STEJSKAL, Plaintiff, v. GILBERT G. LUNDSTROM, Defendant.	Member Case No. 4:10-cv-3177
DOUGLAS L. STEJSKAL, Plaintiff, v. JAMES A. LAPHEN, Defendant.	Member Case No. 8:10-cv-332

STIPULATION OF SETTLEMENT

This Stipulation of Settlement is submitted to the Court pursuant to Rule 23 of the Federal Rules of Civil Procedure. Subject to the approval of the Court, this Stipulation of Settlement is made and entered into by and between Lead Plaintiffs Vincent Valentino, Raoul and Sharon Turcot, and Eric Follestad (collectively, "The Valentino Group"), on behalf of themselves and the putative Settlement Class; and defendants Gilbert G. Lundstrom, Eugene B. Witkowicz, Michael J. Falbo, James A. Laphen, and Charles W. Hoskins (collectively, the "Individual Defendants"), and Defendants' Insurers, Arch Insurance Company, Hudson Insurance Company, and St. Paul Mercury Insurance Company/The Travelers Companies, Inc., by and through their respective counsel.

WHEREAS, on May 20, 2010, David G. Ray filed a class action complaint against TierOne Corporation and certain of the Individual Defendants, in the United States District Court for the District of Nebraska (the "Court"), No. 8:10-cv-00199. The complaint alleged violations of the federal securities laws.

WHEREAS, on June 24, 2010, defendant TierOne Corporation ("TierOne") filed for Chapter 7 bankruptcy in the United States Bankruptcy Court for the District of Nebraska, No. 4:10-bk-41974 (Bankr. D. Neb.) (the "Bankruptcy Case"). As a result, on July 8, 2010 the Court, pursuant to Neb. Gen. R. 1.5(a)(1) and 28 U.S.C. § 157, stayed the litigation in *Ray v. Lundstrom*, No. 8:10-cv-00199 (D. Neb.) and referred the case to the United States Bankruptcy Court for the District of Nebraska as an advisory proceeding.

WHEREAS, by Report and Recommendation dated August 11, 2010, Chief Bankruptcy Judge Thomas Saladino determined that while proceedings in *Ray v. Lundstrom*, No. 8:10-cv-00199 (D. Neb.) are stayed as to TierOne Corporation pending resolution of the Bankruptcy Case, the case may proceed against the Individual Defendants. Judge Saladino recommended that *Ray v. Lundstrom*, No. 8:10-cv-00199 (D. Neb.) be withdrawn to the district court for further proceedings. By order dated September 30, 2010, the Court adopted in its entirety the Report and Recommendation of Judge Saladino.

WHEREAS, on October 12, 2010, the Court appointed The Valentino Group as Lead Plaintiffs, and The Rosen Law Firm, P.A. as Lead Counsel for Lead Plaintiffs in *Ray v. Lundstrom*, No. 8:10-cv-00199 (D. Neb).

WHEREAS, by orders dated December 2, 2010 and January 21, 2011, the Court consolidated *Ray v. Lundstrom*, No. 8:10-cv-00199 (D. Neb.) with the related *pro se* lawsuits filed by plaintiff Douglas L. Stejskal: *Stejskal v. Lundstrom*, No. 4:10-cv-3177 (D. Neb.) and *Stejskal v. Laphen*, No. 8:10-cv-332 (D. Neb.) (collectively, the "Action"). The Court designated *Ray v. Lundstrom*, No. 8:10-cv-00199 (D. Neb.) as the Lead Case, and designated *Stejskal v. Lundstrom*, No. 4:10-cv-3177 (D. Neb.) and *Stejskal v. Laphen*, No. 8:10-cv-332 (D. Neb.) as Member Cases.

WHEREAS, on March 2, 2011, the Lead Plaintiffs filed a consolidated amended class action complaint, alleging: (Count I) violations of Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 10(b)-5 promulgated thereunder against defendants

TierOne, Lundstrom, Witkowicz, and Hoskins; and (Count II) violations of Section 20(a) of the Exchange Act against the Individual Defendants.

WHEREAS, on May 2, 2011, the Individual Defendants filed a joint (omnibus) motion to dismiss the consolidated amended class action complaint. Defendants Laphen, Hoskins, and Falbo also filed separate, individual motions to dismiss, and defendants Lundstrom and Witkowicz filed a separate, joint motion to dismiss claims against them.

WHEREAS, on August 23, 2011, in lieu of a response, the Court granted Lead Plaintiffs' motion for leave to file a second amended consolidated complaint.

WHEREAS, on August 24, 2011, the Lead Plaintiffs filed a second amended consolidated complaint (the "Operative Complaint"), alleging: (Count I) violations of Section 10(b) of the Exchange Act and Rule 10(b)-5 promulgated thereunder against defendants TierOne, Lundstrom, Witkowicz, and Hoskins; and (Count II) violations of Section 20(a) of the Exchange Act against the Individual Defendants.

WHEREAS, on October 27, 2011, the parties to this Stipulation (the "Settling Parties") participated in a full-day mediation conference with the Honorable Layn R. Phillips, a partner at Irell & Manella and a former United States district court judge. At the mediation, the participants engaged in extensive arm's-length negotiations.

WHEREAS, on July 7, 2010 the first of three class action complaints asserting claims for breaches of fiduciary duties under the Employee Retirement Income Security Act was filed in this Court against certain of the defendants named in the Operative Complaint. That action, *Bredthauer v. Lundstrom*, No. 4:10-cv-3132 (D. Neb.), and the related actions, *Laird v. Lundstrom*, No. 4:10-cv-3139 (D. Neb.), and *Barker v. Baird*, No. 8:10-cv-0326 (D. Neb.) were consolidated for all purposes on September 28, 2010 (collectively, the "ERISA Actions").

WHEREAS, this Stipulation of Settlement should not be read, construed, or otherwise interpreted as resolving, releasing, settling, or otherwise impacting the claims asserted in the ERISA Actions.

WHEREAS, the Defendants believe that investors that are members of this Settlement Class and potential members of the ERISA Actions class(es) should not be able to obtain a double recovery in this Action and the ERISA Actions. To that end, the Individual Defendants reserve the right to seek a setoff in the ERISA Actions whereby any recovery to which any investor ultimately may be entitled in the ERISA Actions, whether by settlement, judgment, or otherwise, shall be offset, dollar for dollar, by the recovery each such investor receives under the terms of this Settlement for any share(s) of TierOne stock acquired through the TierOne Corporation Employee Stock Ownership Plan or the TierOne Bank Savings Plan (the "Plans").

WHEREAS, in recognition of the attendant risks and costs of continued litigation and the benefits of resolving the Action, the Settling Parties desire to settle and resolve, pursuant to the terms of this Stipulation of Settlement, any and all claims that have been advanced in the Operative Complaint or that could have been advanced by the Lead Plaintiffs, on the one hand,

against the Individual Defendants or any of the Released Persons, on the other hand, arising out of or relating to the subject matter of the Action, including, but not limited to claims based on the Allegedly False and Misleading Statements (defined below).

WHEREAS, the Individual Defendants deny any wrongdoing whatsoever, and this Stipulation of Settlement shall in no event be construed as, or be deemed to be evidence of, an admission or concession on the part of any Individual Defendant with respect to any actual or potential claim, liability, wrongdoing, or damage whatsoever, or any infirmity in the defenses that the Individual Defendants have asserted. This Stipulation also shall not be construed as, or be deemed to be evidence of, an admission or concession by the Lead Plaintiffs with respect to any of the defenses that the Individual Defendants have asserted, or of any infirmity in the claims asserted in the Action. The Settling Parties wish to settle and compromise any dispute regarding the Action or its subject matter, including but not limited to whether the Action was filed by the Lead Plaintiffs and defended by the Individual Defendants in good faith and with adequate basis in fact under Rule 11 of the Federal Rules of Civil Procedure. The Settling Parties agree that the Action is being voluntarily settled after advice of counsel and that the terms of the Stipulation are fair, adequate, and reasonable.

WHEREAS, Lead Counsel has conducted an investigation relating to the claims and the underlying events and transactions alleged in the Action, and has analyzed the facts and the applicable law with respect to the claims of the Lead Plaintiffs against the Individual Defendants and the potential defenses thereto, which in Lead Plaintiffs' judgment have provided an adequate and satisfactory basis for the evaluation of an agreement to settle, as described herein.

AND WHEREAS, based upon the investigation conducted by Lead Counsel, Lead Counsel has concluded that the terms and conditions of this Stipulation and Settlement are fair, reasonable, and adequate to Lead Plaintiffs and the Settlement Class, and are in the Lead Plaintiffs' and the Settlement Class's best interests, and has agreed to settle the Released Claims pursuant to the terms and conditions of this Stipulation of Settlement, after considering: (a) the substantial benefits that Lead Plaintiffs and the Settlement Class will receive from settlement of the Released Claims; (b) the attendant risks of litigation; and (c) the desirability of permitting the Settlement to be consummated as provided by the terms of this Stipulation of Settlement.

NOW THEREFORE, in consideration of the mutual undertakings and consideration provided for herein, the Lead Plaintiffs, on behalf of themselves and the Settlement Class, on the one hand, and the Individual Defendants, on the other hand, through their respective attorneys and subject to approval by the Court pursuant to Federal Rule of Civil Procedure 23(e), hereby stipulate and agree that the Released Claims are settled, compromised, released, and dismissed with prejudice upon the terms and conditions set forth herein:

A. DEFINITIONS

For purposes of this Stipulation of Settlement, the following terms have the meanings specified below:

1. "Action" means *Ray v. TierOne Corp.*, No. 8:10-cv-00199 (D. Neb.), and consolidated member cases *Stejskal v. Lundstrom*, No. 4:10-cv-3177 (D. Neb.) and *Stejskal v. Laphen*, No. 8:10-cv-332 (D. Neb.).

2. "Allegedly False and Misleading Statements" means all statements that were or could have been challenged as misleading by the Plaintiffs in this Action.

3. "Attorneys Fees and Expenses" means the portion of the Settlement Amount approved by the Court for payment to Lead Counsel, including attorneys' fees, costs, litigation expenses, and fees and expenses of experts (excluding Notice and Administration Expenses), and such attorneys' fees and expenses expended or incurred by counsel working under the direction of Lead Counsel.

4. "Authorized Claimant" means any Claimant whose claim for recovery has been allowed by the Claims Administrator pursuant to the terms of the Stipulation of Settlement or by order of the Court.

5. "Award to Lead Plaintiffs" means any award by the Court to Lead Plaintiff of reasonable costs and expenses (including lost wages) directly relating to the representation of the Class pursuant to 15 U.S.C. § 78u-4(a)(4) to be paid from the Settlement Amount.

6. "Bankruptcy Case" means *In re TierOne Corp.*, No. 4:10-bk-41974 (Bankr. D. Neb.).

7. "Claimant" means any Settlement Class Member who files a Proof of Claim and Release in such form and manner, and within such time, as set forth in this Stipulation of Settlement, or as the Court shall prescribe.

8. "Claims Administrator" means the accounting and claims administration firm, Strategic Claims Services, which Lead Counsel requests be appointed by the Court to administer the Settlement and disseminate notice to the Settlement Class.

9. "Class Notice" means the Notice of Pendency and Proposed Settlement of Class Action that is to be mailed to the Settlement Class substantially in the form attached as Exhibit A-1 hereto.

10. "Court" means the United States District Court for the District of Nebraska.

11. "Defendants" means TierOne Corporation, Gilbert G. Lundstrom, Eugene B. Witkowicz, Michael J. Falbo, James A. Laphen, and Charles W. Hoskins.

12. "Defendants' Insurers" and "Insurers" mean Arch Insurance Company, Hudson Insurance Company, and St. Paul Mercury Insurance Company/ The Travelers Companies, Inc., which issued directors and officers liability insurance policies to TierOne Corporation.

13. "Effective Date" means the date on which all of the conditions set forth in section L, below, shall have been satisfied, and the Court's Order and Final Judgment ("Final Judgment"), substantially in the form of Exhibit B, attached hereto, becomes "Final." The Court's Final Judgment shall be deemed to be "Final" when either of the following has occurred: (a) if an appeal or review is not sought by any person from the Final Judgment, the day following the expiration of the time to appeal or petition from the Final Judgment; or (b) if an appeal or review is sought from the Final Judgment, the day after such Final Judgment is affirmed or the appeal or review is dismissed or denied and such Final Judgment is no longer subject to further judicial review.

14. "ERISA Actions" means *Bredthauer v. Lundstrom*, No. 4:10-cv-3132 (D. Neb.) and consolidated member cases *Laird v. Lundstrom*, No. 4:10-cv-3139 (D. Neb.) and *Barker v. Baird*, No. 8:10-cv-326 (D. Neb.).

15. "Escrow Account" means the interest-bearing account selected by the Escrow Agent. The Escrow Account shall be managed by the Escrow Agent for the benefit of the Lead Plaintiffs and the Settlement Class until the Effective Date of the Settlement.

16. "Escrow Agent" means Laurence Rosen, Esq. of Rosen Law Firm, P.A., or his duly appointed agent(s). The Escrow Agent shall perform the duties as set forth in this Stipulation.

17. "Exchange Act" means the Securities Exchange Act of 1934.

18. "Final Judgment" means the order and judgment entered by the Court, including a Bar Order, approving the Settlement and dismissing the Action as against the Individual Defendants with prejudice and without costs to any party.

19. "Gross Settlement Fund" means the Settlement Amount plus all interest earned thereon.

20. "Individual Defendants" means Gilbert G. Lundstrom, Eugene B. Witkowicz, Michael J. Falbo, James A. Laphen, and Charles W. Hoskins.

21. "Lead Case" means *Ray v. Lundstrom*, No. 8:10-cv-00199 (D. Neb.).

22. "Lead Counsel" means The Rosen Law Firm, P.A.

23. "Lead Plaintiffs" means Vincent Valentino, Raoul and Sharon Turcott, and Eric Follestad (collectively, "The Valentino Group").

24. "Member Cases" means *Stejskal v. Lundstrom*, No. 4:10-cv-3177 (D. Neb.) and *Stejskal v. Laphen*, No. 8:10-cv-332 (D. Neb.).

25. "Net Settlement Fund" means the Gross Settlement Fund, less: (i) Attorneys' Fees and Expenses and Award to Lead Plaintiffs; (ii) Notice and Administration Expenses; (iii) taxes; and (iv) other fees and expenses authorized by the Court.

26. "Notice and Administration Account" means the portion of the Gross Settlement Fund designated by the Court that may be drawn upon by Lead Counsel for Notice and Administration Expenses without further order of the Court.

27. "Notice and Administration Expenses" means all expenses incurred (whether or not paid) in connection with the preparation, printing, mailing, and publication of the Class Notice to the Settlement Class of the proposed settlement, and all expenses of Settlement administration; provided, however, that none of these expenses shall be deemed to include Attorneys' Fees and Expenses through the Effective Date. All such Notice and Administration Expenses shall be paid from the Gross Settlement Fund.

28. "Operative Complaint" means the second amended consolidated complaint filed by the Lead Plaintiffs in the Action on August 24, 2011.

29. "Opt-out Termination Option" means the Individual Defendants' option to terminate the Stipulation of Settlement, as set forth in section M.3, below, and the Supplemental Agreement between Lead Counsel and counsel for the Individual Defendants.

30. "Person" means any individual, corporation, partnership, limited liability company or partnership, limited partnership, professional corporation, association, affiliate, joint stock company, trust, estate, unincorporated association, government, or any political subdivision or agency thereof, any other type of legal or political entity, any legal representative, and, as applicable, their respective spouses, heirs, predecessors, successors, representatives, and assigns.

31. "Plaintiffs" means the Lead Plaintiffs, David G. Ray, Gabriel D'Souza, Douglas L. Stejskal, and the Settlement Class Members.

32. "Plan of Allocation" means the plan for allocating the Net Settlement Fund, as set forth in the Class Notice, to Authorized Claimants after payment of Notice and Administration Expenses, Taxes and Tax Expenses, and Attorneys' Fees and Expenses. Any Plan of Allocation is not part of the Stipulation and the Released Persons shall have no liability with respect thereto.

33. "Preliminary Approval Order" means the order granting preliminary approval of this Stipulation of Settlement, substantially in the form of Exhibit A, attached hereto.

34. "Released Persons" means the Individual Defendants and all other former officers, directors, and employees of TierOne Bank or TierOne Corporation and any of their current, former, or future legal representatives, heirs, successors-in-interest, assigns, insurers, reinsurers, agents (acting in their capacity as agents), attorneys, trustees, advisors, accountants, associates, and/or any other individual or entity in which any Individual Defendant has or had a controlling interest or which is related to or affiliated with any Individual Defendant, all of which are intended third-party beneficiaries hereunder with standing to sue to enforce the rights and obligations set forth herein. Released Persons also includes TierOne Bank and TierOne Corp., or any of their current, former, or future successors-in-interest, assigns, insurers, reinsurers, agents (acting in their capacity as agents), attorneys, trustees, advisors, accountants, and/or associates.

35. "Released Claims" means any and all claims, duties, debts, demands, obligations, liabilities, rights, and causes of action of every kind, nature, and description whatsoever (including, but not limited to, claims for damages, interest, attorneys' fees, expert or consulting fees, and any other costs, expenses, or liabilities whatsoever), whether based on federal, state, local, statutory or common law, or any other law, rule, or regulation, whether at law or in equity, whether class or individual in nature, whether or not mature, accrued, or ripe, including both known claims and Unknown Claims (as defined below) (i) that have been asserted in the Action by the Lead Plaintiffs and/or Settlement Class Members against any of the Released Persons, including, without limitation, any claim arising out of or relating to TierOne's Allegedly False and Misleading Statements or any of the alleged acts, omissions, representations, facts, events, matters, transactions, or occurrences asserted in or relating to the Action, or otherwise alleged, asserted, or contended in the Action; or (ii) that could have been alleged, asserted, or contended in any forum by the Lead Plaintiffs and/or Settlement Class Members against any of the Released Persons if those claims arise out of or relate to the Allegedly False and Misleading Statements, or to conduct otherwise alleged, asserted, or contended in the Action; or (iii) that relate to the purchase of

TierOne common stock during the Settlement Class Period, including, without limitation, claims for fraud, negligent misrepresentation, or claims based upon or related in any way to the purchase, acquisition, or sale of TierOne stock by the Lead Plaintiffs or any Settlement Class Member, on behalf of themselves, their heirs, executors, administrators, successors, and assigns against the Released Persons or any of them during the class period. Released Claims also include any and all claims arising out of, relating to, or in connection with the Settlement or resolution of the Action against the Released Persons (including Unknown Claims that arise out of, relate to, or are in connection with the Settlement or resolution of the Action against the Released Persons), except claims to enforce any of the terms of this Stipulation. Excluded from this definition of Released Claims are any claims, demands, allegations, or causes of action asserted in the ERISA Actions or any similar or related ERISA litigation.

36. "Released Defendants' Claims" means all claims, demands, rights, remedies, liabilities, and causes of action of every nature and description whatsoever, whether based on federal, state, local, statutory, or common law, or any other law, rule, or regulation, including both known and Unknown Claims, that (i) have been or could have been asserted in the Action by the Individual Defendants, or any of them, or the successors and assigns of any of them, against any of the Lead Plaintiffs, Settlement Class Members, or any of their attorneys, and (ii) arise out of or relate in any way to the institution, prosecution, or Settlement of this Action or the Released Claims, including but not limited to all claims for malicious prosecution or sanctions. "Settled Defendants' Claims" does not include claims to enforce any of the terms of this Stipulation.

37. "Settlement" means the settlement contemplated by this Stipulation of Settlement.

38. "Settlement Amount" means a fund in the amount of $3,100,000 (Three Million, One Hundred Thousand Dollars).

39. "Settlement Class" and "Settlement Class Members" mean all persons who purchased the common stock of TierOne Corporation during the time period of August 9, 2007 through May 14, 2010, inclusive, and were allegedly damaged thereby. Excluded from the Settlement Class are all of the Individual Defendants and all former officers and directors of TierOne Corporation, and such excluded persons' immediate families, legal representatives, heirs, predecessors, successors, and assigns, and any entity in which any excluded person has or had a controlling interest. 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 concerning this Stipulation of Settlement

40. "Settlement Class Distribution Order" means the order entered by the Court, upon application of Lead Counsel following the occurrence of the events identified in section E.13, below, which authorizes the Claims Administrator to distribute the Net Settlement Fund to the Settlement Class.

41. "Settlement Class Period" means the period from August 9, 2007 through May 14, 2010, inclusive.

42. "Settlement Consideration" means the consideration and benefits set forth in section D, below.

43. "Settlement Hearing" means the final approval hearing to be scheduled by the Court to determine (1) whether the proposed Stipulation of Settlement is fair, reasonable, and adequate, and should be approved pursuant to Federal Rule of Civil Procedure 23(e); (2) whether all Released Claims should be dismissed with prejudice; (3) whether an order approving the Settlement should be entered thereon; (4) whether the allocation of the Settlement Fund should be approved; and (5) whether the Lead Plaintiffs' application for an award of Attorneys' Fees and Expenses and Award to Lead Plaintiffs should be approved.

44. "Settling Parties" means the Lead Plaintiffs, the Individual Defendants, and the Defendants' Insurers.

45. "Stipulation" means this Stipulation of Settlement.

46. "TierOne" and "Company" mean TierOne Corporation.

47. "Unknown Claims" means (a) any Settled Claim that the Lead Plaintiffs, or any Settlement Class Member does not know or suspect to exist in his, her, or its favor at the time of the release of the Released Persons, which if known by him, her, or it, might have affected his, her, or its decision(s) with respect to the Settlement, including, but not limited to, the decision not to object to the Settlement, and (b) any Released Defendants' Claims that any Individual Defendant does not know or expect to exist in his favor, which if known by him, might have affected his decision(s) with respect to the Settlement. With respect to any and all Released Claims, the Settling Parties stipulate and agree that upon the Effective Date, the Settling Parties shall expressly waive, and each of the Settlement Class Members shall be deemed to have waived and by operation of the Final Judgment shall have waived, any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States, or principle of common law that is similar, comparable, or equivalent to Cal. Civ. Code § 1542, which provides: "A general release does not extend to claims which the creditor does not know or suspect to exist in his or her

favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

B. SCOPE AND EFFECT OF SETTLEMENT AND RELEASES

1. The obligations incurred pursuant to this Stipulation of Settlement shall be in full, final, and irrevocable disposition and settlement of any and all Released Claims against the Released Persons, and any and all Released Defendants' Claims against the Lead Plaintiffs, the Settlement Class Members, and their attorneys.

2. Upon the Effective Date of this Settlement, the Settlement Class Members, on behalf of themselves, their current and future heirs, executors, administrators, successors, attorneys, insurers, agents, representatives, and assigns, shall, with respect to each and every Released Claim, release and forever relinquish and discharge, and shall forever be enjoined from prosecuting, all Released Claims and any and all claims arising out of, relating to, or in connection with the Settlement, the Action, or the resolution of the Action against the Released Persons, whether or not such Settlement Class Member executes and delivers the Proof of Claim and Release, except claims to enforce any of the terms of this Stipulation. Further, all Settlement Class Members on behalf of themselves, their current and future heirs, executors, administrators, successors, attorneys, insurers, agents, representatives, and assigns, expressly covenant not to assert any claim or action against any of the Released Persons that: (i) arises out of or relates to the purchase or sale of TierOne's common stock during the Class Period, or (ii) that could have been alleged, asserted, or contended in any forum by the Settlement Class Members or any of them against any of the Released Persons, arising out of or relating to the purchase or sale of TierOne's common stock during the Class Period, or any of the alleged acts, omissions, representations, facts, events, matters, transactions, or occurrences asserted in or relating to the Action or otherwise alleged, asserted, or contended in the Action, and shall forever be enjoined from commencing, instituting, or prosecuting any such claim, so long as such claim relates to the purchase or sale of TierOne's common stock during the Class Period.

3. The releases to be executed by the Settlement Class Members shall be substantially in the form and content contained in Exhibit A-3 to the Preliminary Approval Order, attached hereto as Exhibit A. The releases shall take effect upon the Effective Date.

4. Pursuant to the Final Judgment, upon the Effective Date of this Settlement, the Individual Defendants shall release and forever discharge each and every one of the Released Defendants' Claims, and shall forever be enjoined from prosecuting the Released Defendants' Claims as against

any of the Lead Plaintiffs, Settlement Class Members, or their attorneys, including but not limited to claims for malicious prosecution or sanctions.

C. ERISA ACTIONS

The Settling Parties agree and intend that the ERISA Actions be specifically carved-out from this Settlement, and this Stipulation should not be read, construed, or otherwise interpreted as resolving, releasing, settling, or otherwise impacting the claims asserted in the ERISA Actions. Nonetheless, to prevent a double recovery in this Action and in the ERISA Actions on any share of TierOne stock, the Individual Defendants believe they are entitled to, and reserve the right to seek, a set-off in the ERISA Actions whereby the amount of recovery received by any investor in the ERISA Actions, whether by settlement, judgment, or otherwise, shall be offset, dollar for dollar, by the amount of the recovery each such investor has received under the terms of this Settlement for any share(s) of TierOne stock acquired through the Plans.

D. THE SETTLEMENT CONSIDERATION

Subject to the terms of this Stipulation of Settlement, and in full, complete and irrevocable satisfaction and settlement of the Released Claims, the Settlement Consideration shall consist of the following:

1. Subject to the terms of this Stipulation, the sum of $3,100,000 (Three Million, One Hundred Thousand Dollars) shall be paid into the Escrow Account within ten (10) business days after the Court issues the Preliminary Approval Order. That payment shall constitute the Settlement Amount. Defendants' Insurers shall pay the entire Settlement Amount. The Individual Defendants shall not have any responsibility or liability for the payment of the Settlement Amount.

2. The Gross Settlement Fund, net of any Taxes (as defined below) on the income thereof and any Tax Expenses (as defined below), shall be used to pay: (i) the Notice and Administration Expenses as authorized by this Stipulation of Settlement; (ii) Attorneys' Fees and Expenses and Award to Lead Plaintiffs authorized by the Court; and (iii) other fees and expenses authorized by the Court. The balance of the Gross Settlement Fund remaining after the above payments shall be the Net Settlement Fund, which shall be distributed to the Authorized Claimants in accordance with this Stipulation of Settlement.

3. Any sums required to be held in escrow hereunder shall be held by the Escrow Agent for the benefit of the Lead Plaintiffs and the Settlement Class until the Effective Date. Until the date the Final Judgment is entered, all payments made from the Settlement Fund (other than Notice and Administration Expenses) shall require the signature of an authorized representative of both the Escrow Agent and the Individual Defendants' counsel. After the Final Judgment is entered, a signature of the Individual Defendants' counsel is not required. 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 shall be distributed or returned pursuant to this Stipulation of Settlement and/or further order of the Court. Other than amounts disbursed for providing notice to the Settlement Class, customary administration costs, Taxes and Tax Expenses, and the Attorneys Fee and Expenses (which shall be paid to Lead Counsel within two business days after the Court executes an order awarding such fees and expenses), the Settlement Fund shall not be distributed until the Effective Date. The Escrow Agent shall not disburse the Gross Settlement Fund, or any portion thereof, except as provided in this Stipulation of Settlement, or upon order of the Court.

4. The Escrow Agent shall invest any funds in excess of $150,000 in an interest-bearing account invested in or backed by short-term United States Treasury Securities (or a mutual fund invested solely in such instruments), and shall collect and reinvest all interest accrued thereon. Any funds held in escrow in an amount of less than $150,000 may be held in a bank account insured to the extent possible by the FDIC. Interest earned on the money deposited into the Escrow Account shall be part of the Gross Settlement Fund.

5. The Notice and Administration Expenses shall be paid from the Gross Settlement Fund. In order to pay Notice and Administration Expenses, $100,000 from the Gross Settlement Fund shall be allocated as the Notice and Administration Account upon payment by the Defendants' Insurers of the Settlement Amount into the Escrow Account. The Notice and Administration Account may be drawn upon by Lead Counsel for Notice and Administration Expenses without further Court approval. The Notice and Administration Account shall be administered solely by the Escrow Agent. Any taxes or other expenses incurred in connection with the Notice and Administration Account shall be paid from the Notice and Administration Account or from the remainder of the Gross Settlement Fund. The Individual Defendants and their Insurers shall not have any obligation for payment of taxes or other expenses associated with the Notice and Administration Account. Notice and Administration Expenses in excess of $100,000 shall not be paid out of the Gross Settlement Fund until after the Effective Date. In no event shall an amount more than the Settlement Amount, which is to be paid exclusively with insurance proceeds from Defendants' Insurers as set forth in section D.1, be paid under this Stipulation of Settlement, and in no event shall the Individual Defendants be responsible to pay any amount under this Stipulation of Settlement.

6. The Settling Parties shall have access to all records of the Escrow Account, and upon request made to the Escrow Agent, shall receive copies of all records of disbursements, deposits, and statements of accounts.

7. After the Effective Date, the Individual Defendants and their Insurers shall have no interest in the Settlement Amount, the Gross Settlement Fund or the Net Settlement Fund. The Individual Defendants and their Insurers shall not be liable for the loss of any portion of the Gross Settlement Fund or the Net Settlement Fund, nor have any liability, obligation, or responsibility for the payment of claims, taxes, legal fees, or any other expenses payable from the Gross Settlement Fund.

E. ADMINISTRATION AND CALCULATION OF CLAIMS, FINAL AWARDS, AND DISTRIBUTION OF NET SETTLEMENT FUND

1. The Claims Administrator shall administer and calculate the claims that shall be allowed and oversee distribution of the Net Settlement Fund, under the supervision of Lead Counsel, and subject to appeal to, and jurisdiction of, the Court. The Individual Defendants and Defendants' Insurers shall have no liability, obligation, or responsibility for the administration of the Gross Settlement Fund or Net Settlement Fund, or for the distribution of the Net Settlement Fund.

2. Except as otherwise provided below, on and after the Effective Date, the Gross Settlement Fund shall be applied as follows:

i. To the extent not paid from the Notice and Administration Account, to pay, without prior order of the Court, Notice and Administration Expenses and any applicable taxes;

ii. In addition to the Attorneys' Fees and Expenses paid pursuant to sections I.1 and I.2 herein, to pay any additional Attorneys' Fees and Expenses as may be awarded to Lead Counsel by the Court pursuant to section I.4 herein; and to pay any Award to Lead Plaintiffs; and

iii. Subject to the approval and further order(s) of the Court, the Net Settlement Fund shall be allocated to Authorized Claimants as set forth in section G below.

3. Each Settlement Class Member wishing to participate in the Settlement shall be required to submit a Proof of Claim and Release (in substantially the form set forth in Exhibit A-3 hereto, which *inter alia* releases all Released Claims against all Released Parties) that is (a) signed under penalty of perjury by the beneficial owner(s) of the securities that are the subject of the Proof of Claim and Release, or by someone with documented authority to sign for the beneficial owners; and (b) supported by such documents as specified in the instructions accompanying the Proof of Claim and Release.

4. All Proofs of Claim must be postmarked or received within the time prescribed in the Preliminary Approval Order unless otherwise ordered by the Court. Any Settlement Class Member who fails to submit a properly completed Proof of Claim within such period as shall be authorized by the Court shall be forever barred from receiving any payments pursuant to this Stipulation or from the Net Settlement Fund (unless Lead Counsel in its discretion deems such late filing to be a formal or technical defect, or unless by order of the Court a later submitted Proof of Claim by such Settlement Class Member is approved), but will in all other respects be subject to the provisions of this Stipulation of Settlement and the Final Judgment, including, without limitation, the release of the Released Claims and dismissal of the Action as against the Individual Defendants. Provided that it is received before the motion for the Settlement Class Distribution Order is filed, a Proof of Claim shall be deemed to have been submitted when posted if received with a postmark indicated on the envelope and if mailed by first-class mail and addressed in accordance with the instructions thereon. In all other cases, the Proof of Claim shall be deemed to have been submitted when actually received by the Claims Administrator.

5. Each Proof of Claim shall be submitted to the Claims Administrator who shall determine, under the supervision of Lead Counsel, in accordance with this Stipulation of Settlement and any applicable orders of the Court, the extent, if any, to which each claim shall be allowed, subject to appeal to the Court. No later than seven (7) days prior to disbursement of the Net Settlement Fund, Lead Counsel shall provide the other Settling Parties with a list of Proofs of Claim received by the Claims Administrator indicating which Proofs of Claim have been allowed by the Claims Administrator.

6. 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 in the interest of achieving substantial justice.

7. Proofs of Claim that do not meet the filing requirements may be rejected. Prior to rejection of a Proof of Claim, the Claims Administrator shall communicate with the Claimant in order to remedy curable deficiencies in the Proof of Claim submitted. The Claims Administrator, under the supervision of Lead Counsel, shall notify in a timely fashion and in writing, all Claimants whose Proofs of Claim they propose to reject in whole or in part, setting forth the reasons thereof, and shall indicate in such notice that the Claimant whose claims are to be rejected has the right to review by the Court if the Claimant so desires and complies with the requirement of subparagraph (8) below.

8. If any Claimant whose claim has been rejected in whole or in part desires to contest such rejection, the Claimant must, within twenty (20) days after the date of mailing of the notice required by subparagraph (7) above, 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 a dispute concerning a claim cannot be otherwise resolved, Lead Counsel shall thereafter present the request for review to the Court.

9. The administrative determination of the Claims Administrator accepting and rejecting claims shall be presented to the Court, on notice to the Individual Defendants' Counsel, for approval by the Court in the Settlement Class Distribution Order.

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

11. Payment pursuant to this Stipulation shall be deemed final and conclusive against all Settlement Class Members. All Settlement Class Members whose claims are not approved by the Court shall be barred from participating in distributions from the Net Settlement Fund, but are otherwise bound by all of the terms of the Final Judgment to be entered in the Action and the releases provided for herein, and will be barred from bringing any action against the Released Persons arising out of or relating to the Released Claims.

12. All proceedings with respect to the administration, processing, and determination of claims described by this paragraph of this Stipulation 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.

13. The Net Settlement Fund shall be distributed to Authorized Claimants by the Claims Administrator upon application to the Court by Lead Counsel for a Settlement Class Distribution Order only after all of the following having occurred: (i) the Effective Date; (ii) all claims have been processed, and all Claimants whose claims have been rejected or disallowed, in whole or in part, have been notified and provided the opportunity to be heard concerning such rejection or disallowance; (iii) all objections with respect to all rejected or disallowed claims have been

resolved by the Court, and all appeals therefrom have been resolved or the time therefor has expired; (iv) all matters with respect to Attorneys' Fees and Expenses, costs, and disbursements and Award to Lead Plaintiffs have been resolved by the Court, and all appeals therefrom have been resolved or the time therefor has expired; and (v) all Notice and Administration Expenses have been paid.

14. 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 Settlement Class Members 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 one (1) year after the initial distribution of such funds shall be re-distributed, after payment of any unpaid costs or fees incurred in administering the Net Settlement Fund for such re-distribution, to Settlement Class Members who have cashed their checks and who would receive at least $10.00 from such re-distribution. If any funds shall remain in the Net Settlement Fund six months after such re-distribution, then such balance shall be contributed to Creighton University.

15. Before the Effective Date, Lead Counsel shall file with the Court an affidavit describing how notice of the Settlement was given to the Settlement Class and listing the names and addresses of all persons to whom individual notice of the Settlement was mailed.

F. TAX TREATMENT

1. The Parties agree to treat the Gross Settlement Fund as being at all times a qualified settlement fund within the meaning of Treasury Regulation § 1.468B-1 and Section 468B of the Internal Revenue Code, as amended, for the taxable years of the Gross Settlement Fund, beginning with the date it is created. In addition, the Escrow Agent and, as required, the Settling Parties, shall jointly and timely make such elections as are necessary or advisable to carry out the provisions of this paragraph, including the "relation-back election" (as defined in Treas. Reg. § 1.468B-1(j)(2)) 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 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.

2. For purposes of Section 468B of the Internal Revenue Code, as amended, and the regulations promulgated thereunder, the "administrator" shall be Lead Counsel. Lead Counsel shall timely and properly file all tax returns necessary or advisable with respect to the Gross Settlement Fund, and make all required tax payments, including deposits of estimated tax payments in accordance with Treas. Reg. § 1.468B-2(k). Such returns (as

well as the election described in section F.1 hereof) shall be consistent with this paragraph and reflect that all taxes (including any interest or penalties) on the income earned by the Gross Settlement Fund shall be paid out of the Gross Settlement Fund as provided in section F.3 hereof.

3. All (i) taxes (including any interest or penalties) arising with respect to the income earned by the Gross Settlement Fund, including any taxes or tax detriments that may be imposed upon the Settling Defendants with respect to any income earned by the Gross Settlement Fund for any period during which the Gross Settlement Fund does not qualify as a qualified settlement fund for Federal or state income tax purposes ("Taxes"); and (ii) expenses and costs incurred in connection with the operation and implementation of this paragraph (including, without limitation, expenses of tax attorneys and/or accountants, and mailing and distribution costs and expenses relating to filing (or failing to file) the returns described in this paragraph) ("Tax Expenses"), shall be paid out of the Gross Settlement Fund. In all events, the Released Persons shall have no liability for Taxes or the Tax Expenses, and Lead Plaintiffs and Lead Counsel agree to indemnify and hold the Released Persons harmless for Taxes and Tax Expenses. Further, Taxes and Tax Expenses shall be treated as, and considered to be, a cost of administration of the Settlement and shall be timely paid by the Escrow Agent out of the Gross 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 the Settlement Class Members any funds necessary to pay such Taxes and Tax Expenses, including the establishment of adequate reserves for any Taxes and Tax Expenses (as well as any amounts that may be required to be withheld under Treas. Reg. § 1468B-2(l)(2)). The Released Persons shall have no responsibility or liability therefore. The Settling Parties hereto agree to cooperate with the Escrow Agent, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of this paragraph.

G. ALLOCATION OF NET SETTLEMENT FUND

1. The Plan of Allocation is based upon Lead Counsel's assessment of the merits and the relative strengths and weaknesses, including recoverable damages, of the claims of the Settlement Class Members in this Action.

2. The Individual Defendants do not and shall not take any position as to the proposed Plan of Allocation.

3. The Released Persons shall have no responsibility for and no obligations or liabilities of any kind whatsoever in connection with the determination, administration, calculation, or payment of claims to Settlement Class Members.

4. The Individual Defendants shall have no involvement in the solicitation of, or review of Proofs of Claim, or involvement in the administration process itself, which shall be conducted by the Claims Administrator in accordance with this Stipulation of Settlement and the Final Judgment to be entered by the Court. No Claimant or Authorized Claimant shall have any claim against the Individual Defendants or their counsel based on, or in any way relating to, the distributions from the Net Settlement Fund.

5. No Authorized Claimant shall have any claim against Lead Counsel or the Claims Administrator based on, or in any way relating to, the distributions from the Net Settlement Fund that have been made substantially in accordance with this Stipulation and any applicable orders of the Court.

6. Any change in the allocation of the Net Settlement Fund ordered by the Court shall not affect the validity or finality of this Settlement.

H. OBLIGATIONS AND LIMITATIONS OF LIABILITY OF ESCROW AGENT

The Escrow Agent shall not be responsible for the payment of any sums due to Authorized Claimants or other Persons, except to the extent of maintaining account of and properly paying sums that have been delivered into the Escrow Account or Notice and Administration Account as required by this Stipulation of Settlement. The Escrow Agent shall be liable only for acts of gross negligence or willful misconduct. The assumption of duties as Escrow Agent shall not preclude Lead Counsel from continuing to represent, as the case may be, Lead Plaintiffs or the Settlement Class Members.

I. ATTORNEYS' FEES AND EXPENSES

1. Lead Counsel intends to submit an application to the Court, on notice to counsel for the other Settling Parties, for (a) the payment of Attorneys' Fees and Expenses, including (i) an award of attorneys' fees of approximately one-third (33.3%) of the Settlement Amount; and (ii) reimbursement of litigation costs and expenses incurred in connection with the prosecution of the Action, plus interest (including fees and expenses of experts), of no more than $100,000 (One Hundred Thousand Dollars); and (b) an award to each Lead Plaintiff not to exceed $2,500.

2. Lead Counsel's Attorneys' Fees and Expenses and the Award to Lead Plaintiffs shall be paid only out of the Gross Settlement Fund. Under no circumstances shall the Individual Defendants have any obligation to pay and award to Lead Plaintiffs or to pay attorneys' fees or expenses to any person or persons on account of or with respect to the settlement effectuated by this Stipulation.

3. Any Attorneys' Fees and Expenses and Award to Lead Plaintiffs approved by the Court shall be paid from the Gross Settlement Fund within two (2)

business days after the Court executes an order awarding such award, fees and expenses. Lead Counsel may thereafter allocate the attorneys' fees among other plaintiffs' counsel in a manner in which Lead Counsel in good faith believe reflects the contributions of such counsel to the initiation, prosecution, and resolution of the Action. If, and when, as a result of any appeal and/or further proceedings on remand, or successful collateral attack, the Attorneys' Fees and Expenses or the Award to Lead Plaintiffs are overturned or lowered, or if the Settlement is terminated or is not approved by the Court, or if there is an appeal and any order approving the Settlement does not become final and binding upon the Settlement Class, then, within five (5) business days from receiving notice from the Individual Defendants' counsel or from a court of appropriate jurisdiction, Lead Counsel shall refund to the Settlement Fund such fees and expenses previously paid to them from the Settlement Fund plus interest thereon at the same rate as earned on the Settlement Fund in an amount consistent with such reversal or modification. Each such plaintiffs' counsel's law firm receiving fees and expenses, as a condition of receiving such fees and expenses, on behalf of itself and each partner and/or shareholder of it, agrees that the law firm and its partners and/or shareholders are subject to the jurisdiction of the Court for the purpose of enforcing the provisions of this paragraph.

4. Lead Counsel reserves the right to make an additional application or applications for payment from the Gross Settlement Fund for fees and expenses incurred after the Settlement Hearing.

5. The Settling Parties agree that the Court has sole discretion to approve Attorneys' Fees and Expenses and the Award to Lead Plaintiffs, and the failure of the Court to approve Lead Counsel's fee application as set forth in this section or to award Lead Counsel the full amount of the requested fees and costs, or approve the Award to Lead Plaintiffs shall not operate to terminate or cancel this Stipulation of Settlement, and shall have no effect on the terms of this Stipulation of Settlement or on the enforceability of this Settlement. The Individual Defendants shall take no position on any application concerning Lead Counsel's request or award of attorneys' fees and reimbursement of expenses, and Award to Lead Plaintiffs.

6. Except as otherwise provided in this section, the Settling Parties shall bear all of their own costs, fees, and expenses associated with the prosecution and settlement of the Released Claims.

J. THE PRELIMINARY APPROVAL ORDER

Within thirty (30) days of the execution of this Stipulation of Settlement, the Settling Parties shall submit this Stipulation together with its exhibits to the Court and shall jointly move for entry of the Preliminary Approval Order substantially in the form attached hereto as Exhibit A and its attachments, (i) the Notice of Pendency and Settlement of Class Action (the "Class

Notice") (Exhibit A-1 to the Preliminary Approval Order); (ii) the Summary Notice of Class Action Settlement ("Summary Notice") (Exhibit A-2 to the Preliminary Approval Order); and (iii) the Proof of Claim and Release (Exhibit A-3 to the Preliminary Approval Order).

The Individual Defendants are not liable or responsible for the method of, or representations made in, the Class Notice or the Summary Notice.

K. THE FINAL JUDGMENT

At the Settlement Hearing, the Settling Parties shall seek to have the Court enter a Final Judgment substantially in the form of Exhibit B hereto.

L. CONDITIONS OF SETTLEMENT

1. The Effective Date of the Settlement shall be conditioned upon the occurrence of all of the following events:

i. The Court shall have entered the Preliminary Approval Order substantially, in all material respects, in the form of Exhibit A, attached hereto;

ii. None of the Settling Parties shall have exercised within the required time period any right to terminate this Stipulation of Settlement as permitted by section M, below;

iii. The Court shall have entered the Final Judgment substantially, in all material respects, in the form of Exhibit B, attached hereto;

iv. The Final Judgment shall have become "Final," as defined in section A.13; and

v. The Defendants' Insurers shall have paid the sum of $3,100,000 (Three Million, One Hundred Thousand Dollars) into the Escrow Account, as set forth in section D.1, above.

2. Upon occurrence of all of the events listed in this section, Lead Plaintiffs shall have, and each and all of the members of the Settlement Class shall hereby be deemed to have, and by operation of the Final Judgment shall have, fully, finally, and forever, released, settled, and discharged the Released Parties from and with respect to the Released Claims, whether or not such members of the Settlement Class execute and deliver a Proof of Claim.

3. Upon occurrence of all of the events listed in this section, the obligation of the Escrow Agent to return funds from the Gross Settlement Fund to Defendants' Insurers pursuant to section M.5 or any other provision hereof shall be absolutely and forever extinguished.

M. RIGHTS OF TERMINATION AND EFFECTS THEREOF

1. The Lead Plaintiffs and the Individual Defendants shall each have the right to terminate the Settlement and this Stipulation of Settlement by providing written notice of their election to do so to counsel for all other Settling Parties within twenty-one (21) days after the date on which any of the following occurs:

i. The Court issues an order declining to enter the Preliminary Approval Order in any material respect;

ii. The Court does not approve this Stipulation of Settlement or any material part of it (except with respect to any decision by the Court concerning attorneys' fees, costs, and expenses as set forth in section I.5, above);

iii. The Court declines to enter the Final Judgment, or enters the Final Judgment with material modifications (except with respect to any decision by the Court concerning attorneys' fees, costs, and expenses as set forth in section I.5, above); or

iv. The Final Judgment is modified or reversed in any material respect by a Court of Appeals or the United States Supreme Court.

v. In the event that the Court enters an order and final judgment in a form other than that provided above (an "Alternative Judgment") and none of the Parties hereto elects to terminate this Settlement, the date that such Alternative Judgment is modified or reversed in any material respect by the Court of Appeals or the Supreme Court.

2. If the Defendants' Insurers fail to pay the Settlement Amount pursuant to the terms of this Stipulation, then the Individual Defendants shall not be permitted to terminate the Settlement and this Stipulation pursuant to preceding sub-paragraphs M.1.iii or M.1.iv.

3. Opt-out Termination Option: If, prior to the Settlement Hearing, 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, and (i) such Persons in the aggregate purchased stock during the Settlement Class Period in an amount greater than the amounts specified in a separate Supplemental Agreement between the Settling Parties, or (ii) such Persons in the aggregate represent a greater percentage of the possible Settlement Class Members than the percentage specified in the Supplemental Agreement between the Settling

Parties, then the Individual Defendants shall have the option to terminate this Stipulation and Settlement in strict accordance with the requirements and procedures set forth in the Supplemental Agreement ("Opt-out Termination Option"). The Supplemental Agreement shall not be filed with the Court unless and until a dispute among the parties concerning its interpretation or application arises. Copies of all requests for exclusion received, together with copies of all written revocations of requests for exclusion, shall be delivered to the Settling Parties no later than fourteen (14) days prior to the Settlement Hearing. The required procedure for and consequences of exercising an Opt-out Termination Option are as follows:

i. To exercise the Opt-out Termination Option, the Individual Defendants must serve written notice, signed by their respective counsel, upon Lead Counsel, not less than seven (7) days before the Settlement Hearing;

ii. If the Individual Defendants exercise the Opt-out Termination Option as provided herein, this Stipulation of Settlement shall be null and void.

4. If the Settlement Amount payable pursuant to section D.1 of this Stipulation of Settlement is not paid, then the Lead Plaintiffs, in its sole discretion, may elect, at any time prior to the Court's entering the Final Judgment, (a) to terminate the Settlement by providing written notice to all Settling Parties; or (b) to enforce the terms of the Settlement and this Stipulation of Settlement and seek a judgment effecting the terms herein. Failure of Defendants' Insurers to pay the sum of $3,100,000 (Three Million, One Hundred Thousand Dollars) into the Escrow Account, as set forth in section D.1, above, shall neither serve as a basis for any Individual Defendant or Defendants' Insurer to terminate the Settlement, nor alter the requirements of sections D.1 and D.5 that in no event shall the Individual Defendants be responsible to pay any amount under this Stipulation of Settlement, or pursuant to any proceeding to enforce this Settlement.

5. If this Stipulation of Settlement is terminated pursuant to the terms of this section, then upon the termination of the Stipulation:

i. The Stipulation of Settlement and any orders entered pursuant thereto shall be null, void, and unenforceable;

ii. The Escrow Agent shall refund the Gross Settlement Fund, less any amounts expended for notice to the Settlement Class pursuant to the terms of the Stipulation, to Defendants' Insurers within ten (10) business days thereafter (the "Returned Settlement Amount"); and at the request of any Settling Party, the Escrow Agent or his designee shall apply for any tax refund owed to the Gross Settlement Fund and

pay the percentage of the proceeds of the tax refund, after deduction of any fees and expenses incurred in connection with such application(s) for refund, to Defendants' Insurers.

iii. The Settling Parties shall revert to their respective litigation positions immediately prior to the execution of this Stipulation of Settlement, and they shall proceed in all respects as if this Stipulation of Settlement had not been executed and any related orders had not been entered, preserving in that event all of their respective claims and defenses in the Action, except that the provisions of sections D.5, F.1-3, H, M.5, N.11, and N.13 shall survive termination; and

iv. The fact and terms of the Stipulation of Settlement shall not be used in any proceeding against any of the Plaintiffs, the Individual Defendants, Defendants' Insurers, or the Released Persons.

N. MISCELLANEOUS PROVISIONS

1. Confidentiality. The terms of this Stipulation of Settlement shall remain confidential until a motion for preliminary approval is filed with the Court.

2. Cooperation. The Settling Parties acknowledge that it is their intent to consummate the Settlement contemplated by this Stipulation. The Settling Parties agree to cooperate fully with one another in seeking preliminary and final Court approval of this Stipulation of Settlement and consummation of its terms. The Settling Parties agree to exercise their best efforts and to act in good faith to effectuate and implement all terms and conditions of this Stipulation of Settlement.

3. No Oral or Unilateral Modification. This Stipulation of Settlement may not be amended, revoked, or modified except by way of a written agreement signed by counsel for each of the Settling Parties, or their successors-in-interest.

4. Merger. This Stipulation of Settlement, the exhibits attached hereto, and the agreements referred to herein constitute the entire agreement among the Settling Parties, which supersedes and revokes any and all previous oral or written representations, warranties, or agreements entered into between the Settling Parties, whether at the above-referenced mediation or otherwise, that relate to the subject matter of this Stipulation of Settlement.

5. Integration. Each of the Settling Parties acknowledges, warrants, and represents that no promises, representations, or inducements have been offered or made to any Settling Party to secure the execution of this Stipulation of Settlement, other than the representations, warranties, and covenants contained and memorialized herein. The Settling Parties further

acknowledge, warrant, and represent that this Stipulation of Settlement is executed without reliance on any statements or any representations not contained herein.

6. Counsel. Each of Settling Parties acknowledges that she, he, or it has been represented by counsel in connection with this Stipulation of Settlement, and specifically in connection with the review and execution of this Stipulation of Settlement, and each has read and fully understands the provisions of this Stipulation of Settlement and intends to be legally bound hereby. Each Settling Party represents and warrants that such person has had an opportunity to consult with their respective attorneys and/or business advisors prior to the execution of this Stipulation of Settlement.

7. Authority of Counsel. The counsel signing this Stipulation of Settlement represent and warrant that they have authority to bind the Settling Party for whom such counsel acts.

8. Authority of Lead Counsel. Lead Counsel, on behalf of the Settlement Class, is expressly authorized to take all appropriate action required or permitted to be taken by the Settlement Class pursuant to this Stipulation to effectuate its terms and is also expressly authorized to enter into any modifications or amendments to this Stipulation on behalf of the Settlement Class.

9. Counterparts. This Stipulation of Settlement may be executed in one or more counterparts and via electronic mail and facsimile. Each counterpart when so executed shall be deemed to be an original, and all such counterparts together shall be deemed to be one and the same instrument. The Settling Parties shall exchange among themselves original signed counterparts of this Stipulation of Settlement, and a complete set of executed counterparts of this Stipulation of Settlement shall be filed with the Court.

10. Assignment. This Stipulation of Settlement shall be binding upon, and inure to the benefit of, the successors, assigns, executors, administrators, heirs, and legal representatives of each of the Settling Parties. No assignment shall relieve any party hereto of any obligations hereunder. The Settlement Class represents and warrants that as of the Effective Date none of the Released Claims has been transferred or otherwise encumbered and that the Released Claims are owned by the Settlement Class.

11. Choice of Law. This Stipulation of Settlement shall be governed by the substantive laws of the State of Nebraska without regard to its choice-of-law or conflict of law principles or provisions, except to the extent that

federal law requires that federal law governs, and in accordance with the laws of the United States.

12. Drafted Equally. The Settling Parties agree that this Stipulation of Settlement and all provisions hereof shall be deemed to have been jointly and equally drafted by them, for purposes of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter. The Settling Parties further agree that this Stipulation of Settlement was negotiated fairly at arm's length and in good faith, and that the final terms of this Stipulation of Settlement are the product of substantial and material contributions by each of the Settling Parties, and were agreed to voluntarily.

13. Denial of Liability. Neither this Stipulation of Settlement nor the fact of the Settlement, is an admission or concession by any of the Individual Defendants of any liability or wrongdoing whatsoever. This Stipulation of Settlement shall in no event constitute a finding of the validity or invalidity of any of the claims or defenses asserted in the Action or of any fault, liability, wrongdoing, or misconduct by any of the Individual Defendants named therein.

14. Limited Use of Stipulation of Settlement. This Stipulation; the fact of settlement; the settlement negotiations, proceedings, and any statements made therein (including determinations by the Claims Administrator); and any related documents, exhibits, or instruments; shall not be:

i. Used or construed as an admission of any fault, liability or wrongdoing of any sort whatsoever, or a finding of negligence or of wrongful conduct, acts, or omissions;

ii. Used or construed as a concession of invalidity of any claim or defense asserted in the Action;

iii. Offered or received as evidence in the Action or in any other proceeding between the Lead Plaintiffs and one or more of the Individual Defendants except to enforce this Stipulation of Settlement;

iv. Construed as or deemed to be evidence of an admission or concession by an Individual Defendant or Settling Party of the appropriateness of class certification in any other context; or

v. Used for any purpose except the enforcement of this Stipulation of Settlement by any of the Settling Parties.

15. No Oral or Unilateral Waiver. The waiver of one Settling Party of any breach of this Stipulation of Settlement by any other Settling Party shall not be deemed a waiver of any other breach or of any other right or remedy of this Stipulation or applicable law. The provisions of this Stipulation may not be waived except by a writing signed by the affected Settling Party or counsel for that Settling Party.

16. Headings. The headings in this Stipulation or Settlement are used for ease of reference only and are not meant to have any legal effect, nor are they intended to influence the construction of this Stipulation of Settlement in any way.

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COUNTERPART SIGNATURE PAGE TO STIPULATION OF SETTLEMENT

THE FOREGOING STIPULATION OF SETTLEMENT HAS BEEN READ AND FULLY UNDERSTOOD BEFORE THE SIGNING OF SUCH AGREEMENT.

IN WITNESS WHEREOF, the Lead Plaintiffs, on behalf of itself and the Settlement Class, and the Individual Defendants and the Defendants' Insurers, intending to be legally bound by this Stipulation of Settlement, have caused this Stipulation of Settlement to be executed by their duly authorized attorneys, as of the date listed below.

Dated: May 25, 2012

THE VALENTINO GROUP

By: _____
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Phillip C. Kim (pro hac vice)
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COUNTERPART SIGNATURE PAGE TO STIPULATION OF SETTLEMENT

THE FOREGOING STIPULATION OF SETTLEMENT HAS BEEN READ AND FULLY UNDERSTOOD BEFORE THE SIGNING OF SUCH AGREEMENT.

IN WITNESS WHEREOF, the Lead Plaintiffs, on behalf of itself and the Settlement Class, and the Individual Defendants and the Defendants' Insurers, intending to be legally bound by this Stipulation of Settlement, have caused this Stipulation of Settlement to be executed by their duly authorized attorneys, as of the date listed below.

Dated: May 25, 2012

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