

Exhibit 1

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION
No. 7:12-CV-00023-D**

PHILLIP J. SINGER, Individually and on Behalf of All Other Persons Similarly Situated,	:
	:
Plaintiff,	:
	:
v.	:
	:
TRANS1 INC., KENNETH REALI, JOSEPH P. SLATTERY, RICHARD RANDALL, and MICHAEL LUETKEMEYER,	:
	:
Defendants.	:

STIPULATION AND AGREEMENT OF SETTLEMENT

This stipulation and agreement of settlement, dated May 18, 2018 (the “Stipulation”), is made and entered into by and between the following Settling Parties: (1) Lead Plaintiff Phillip J. Singer (“Lead Plaintiff” or “Plaintiff”) on behalf of all Settlement Class Members and (2) Defendants Baxano Surgical, Inc. f/k/a TranS1, Inc.¹ (“TranS1” or the “Company”), Kenneth Reali, Joseph P. Slattery, Richard Randall, and Michael Luetkemeyer (the “Individual Defendants,” and collectively with TranS1, the “Defendants”).²

¹ On November 12, 2014, Baxano Surgical, Inc. petitioned for bankruptcy relief in the United States Bankruptcy Court for the District of Delaware. On July 24, 2015, the bankruptcy court confirmed Baxano’s bankruptcy plan, which provided for the dissolution of Baxano upon the effective date of the plan. The plan went into effect on August 10, 2015.

² Plaintiff and the Defendants are referred to herein collectively as the “Settling Parties.” Capitalized terms shall have the meanings set forth in the section below entitled “Definitions” unless defined elsewhere in the Stipulation.

I. THE LITIGATION

Procedural History

On January 24, 2012, plaintiff Joel Caplin filed the initial complaint against the Defendants asserting claims under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (the “Exchange Act”), 15 U.S.C. §§ 78j(b) & 78t(a), and Rule 10b-5 promulgated thereunder by the Securities and Exchange Commission (“SEC”), 17 C.F.R. § 240.10b-5. The initial complaint alleged, among other things, that the Defendants made false and misleading statements and/or omissions concerning Trans1’s alleged reimbursement practices and that the alleged reimbursement practices violated federal healthcare fraud and false claim statutes. The Defendants deny these allegations.

By order dated May 8, 2012, Phillip J. Singer was appointed Lead Plaintiff and Pomerantz LLP was appointed Lead Counsel. On July 11, 2012, Lead Plaintiff filed an Amended Class Action Complaint (“AC”) against the Defendants. The Defendants deny the allegations contained therein.

On September 7, 2012, the Defendants filed a motion to dismiss the AC for failure to allege falsity, scienter, and loss causation. Lead Plaintiff opposed the Defendants’ motion on November 6, 2012.

On January 8, 2013, while the Motion remained *sub judice*, Lead Plaintiff submitted a letter brief to the Court requesting judicial notice of the Company’s announcement of a \$6 million tentative settlement with the U.S. Department of Justice (“DOJ”) and the U.S. Department of Health and Human Services, Office of the Inspector General (“DHHS”) related to a subpoena issued to the Company in October 2011 under the authority of the federal healthcare fraud and false claims statutes (the “DHHS Investigation”). Thereafter, on August 9, 2013, Lead Plaintiff submitted a second letter brief requesting judicial notice of the settlement agreement

entered into by Trans1 to resolve the DHHS Investigation, as well as a *qui tam* lawsuit, which was brought by an alleged former Company employee. On January 18, 2013 and August 30, 2013, the Defendants responded to Lead Plaintiff's letters and noted, among other things, that under the settlement agreement Trans1 admitted no wrongdoing and expressly denied the allegations of the DHHS Investigation and the *qui tam* lawsuit.

On September 19, 2013, the Court granted the Defendants' motion to dismiss the AC with prejudice on the ground that the AC failed to plead loss causation. The Court did not address any of the alternative grounds for dismissal raised by the Defendants' motion. The Court denied leave to amend and entered judgment in favor of the Defendants.

On October 17, 2013, Lead Plaintiff moved to alter or amend the order and judgment of dismissal with prejudice. Lead Plaintiff also sought leave to file a proposed Second Amended Class Action Complaint ("SAC") to add further allegations related to loss causation in light of the Court's September 19, 2013 order.

On May 5, 2014, the Court granted Lead Plaintiff's motion, vacated the September 19, 2013 order and judgment, and docketed the proposed SAC as the operative complaint. The Court allowed the Defendants to file a renewed motion to dismiss on other grounds but ruled that the SAC adequately alleged loss causation based on a materialization of the risk theory.

On July 3, 2014, the Defendants filed a motion to dismiss the SAC for failure to allege falsity and scienter. Lead Plaintiff opposed the motion on September 2, 2014.

On November 18, 2014, while the Defendants' motion was *sub judice*, Trans1 filed a Notice of Bankruptcy Filing and Automatic Stay. On November 20, 2014, the Court entered an order staying the case as to Trans1, but requested briefing as to whether the case should be stayed as against the Individual Defendants, which briefs were submitted by the Settling Parties

on December 12, 2014.

On May 14, 2015, the Court partially lifted the automatic stay and granted the Defendants' motion to dismiss as to the Individual Defendants with prejudice on the grounds that the SAC failed to adequately allege falsity and scienter. The May 14, 2015 order denied Lead Plaintiff's request for leave to amend.

On October 21, 2015, following lifting of the automatic stay, the Court directed the Settling Parties to submit supplemental briefing on the motion to dismiss as it related to Trans1, which briefs were submitted by November 17, 2015.

On December 7, 2015, the Court entered an order granting the motion to dismiss as to Trans1 with prejudice on the grounds that the SAC failed to adequately allege falsity and scienter. On December 8, 2015, the Court also entered judgment in favor of all of the Defendants and closed the case.

On December 16, 2015, Lead Plaintiff filed a timely Notice of Appeal with respect to the May 14 and December 7, 2015 orders. On January 6, 2016, the Defendants filed a timely Notice of Cross-Appeal with respect to the May 5, 2014 order.

On January 11, 2016, the Settling Parties were referred to mediation by the United States Court of Appeals for the Fourth Circuit. The Settling Parties engaged in a telephonic mediation session on January 25, 2016. The session was not successful, although the Settling Parties continued to discuss the possibility of settlement.

On February 22, 2018, following Lead Plaintiff's and the Defendants' appellate briefing, the United States Court of Appeals for the Fourth Circuit vacated the Court's judgment as to the May 14 and December 7, 2015 orders dismissing the SAC for failure to adequately allege falsity and scienter and affirmed the Court's May 5, 2014 holding that the SAC adequately alleged loss

causation. The case was remanded to the district court for further proceedings.

Subsequently, the Settling Parties renewed arm's-length settlement discussions. Given the time and expense of discovery and Trans1's dissolution in bankruptcy, the Settling Parties reached an agreement to settle this Action, which they memorialized in a Memorandum of Understanding ("MOU"), dated April 11, 2018.

Lead Plaintiff's Assessment of the Claims and Benefits of Settlement

Lead Plaintiff believes that the claims asserted in the Action are meritorious and are supported by the evidence developed to date. Additionally, Lead Counsel is familiar with the applicable law underlying the alleged claims and believes that any defenses the Defendants raise can be refuted.

Nonetheless, Lead Plaintiff and Lead Counsel recognize the expense and length of any further prosecution of the Action against the Defendants through completion of discovery, trial, and appeals. Lead Plaintiff and Lead Counsel are also mindful of inherent problems of proof, possible defenses to the violations asserted in the litigation, and practical impediments to judgment enforcement. Lead Plaintiff and Lead Counsel, based upon their thorough evaluation, believe that the settlement set forth in the Stipulation is fair, reasonable, and adequate and in the best interests of the Settlement Class Members and that it confers substantial benefits upon Settlement Class Members. Lead Plaintiff and Lead Counsel shall use their best efforts to obtain final Court approval of the Settlement and to encourage all Settlement Class Members to participate in the Settlement.

Defendants' Denials of Wrongdoing

The Defendants have denied and continue to deny each and all of the claims and contentions alleged by Lead Plaintiff in this Action. The Defendants expressly have denied and

continue to deny all charges of wrongdoing or liability against them arising out of any of the conduct, statements, acts or omissions alleged, or that could have been alleged, in this litigation. The Defendants also have denied and continue to deny, *inter alia*, the allegations that Lead Plaintiff or class members have suffered damage, or were otherwise harmed by the conduct alleged in this litigation. The Defendants have asserted and continue to assert that, at all times, they acted in good faith and in a manner reasonably believed to be in accordance with all applicable rules, regulations and laws.

Nonetheless, taking into account the uncertainty and risks inherent in any litigation, especially in complex cases such as this one, the Defendants have concluded that further litigation of the Action would be protracted, burdensome, and expensive, and that it is desirable and beneficial that the Settled Claims be fully and finally settled and terminated in the manner and upon the terms and conditions set forth in this Stipulation.

II. TERMS OF STIPULATION AND AGREEMENT OF SETTLEMENT

NOW THEREFORE, without any concession by Plaintiff that the Action lacked merit, and without any concession by the Defendants of any liability or wrongdoing or lack of merit in their defenses, it is hereby **STIPULATED AND AGREED**, by and among the Settling Parties, through their respective attorneys, subject to approval by the Court pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, in consideration of the benefits flowing to the Settling Parties hereto, that all Settled Claims shall be fully, finally, and forever compromised, settled, released, and discharged, and the Action shall be dismissed with prejudice upon and subject to the terms and conditions set forth in this Stipulation and the exhibits attached hereto:

Definitions

In addition to the terms defined above, as used in this Stipulation the following terms have the following meanings:

1.0 “Action” means *Singer v. TranSI, Inc., et al.*, No. 7:12-CV-00023-D, also known as *Caplin v. TranSI, Inc. et al.*, pending in the United States District Court for the Eastern District of North Carolina and all appeals therefrom.

1.1 “Authorized Claimant” means a Settlement Class Member who submits a timely and valid Proof of Claim form in accordance with the requirements established by the Court, whose claim for recovery has been allowed pursuant to the terms of this Stipulation.

1.2 “CAFA Notice” means the proper notice of the Settlement that counsel for TranSI, on behalf of the Defendants, shall serve upon the United States Attorney General and each State Attorney General no later than ten (10) calendar days after the Stipulation is filed with the Court. Simultaneously, the Defendants shall provide a copy of such notice as well as proof of service of such notice to Lead Counsel.

1.3 “Claimant” means a Settlement Class Member who submits a Proof of Claim in such form and manner, and within such time, as the Court shall prescribe.

1.4 “Claims Administrator” means the firm of Epiq Class Action & Claims Solutions, Inc., which shall administer the Settlement, including sending a mailed Notice to Settlement Class Members in the form of Exhibit B hereto, arranging for publication of Notice in the form of Exhibit C hereto, processing claims, and performing such other administrative functions as are required under this Stipulation.

1.5 “Class Period” means the period between February 23, 2009 and October 17, 2011, both dates inclusive.

1.6 “Court” means the United States District Court for the Eastern District of North Carolina.

1.7 “Effective Date” means the first date by which all of the events and conditions specified in ¶ 8.0 of the Stipulation have occurred and/or been met.

1.8 “Escrow Accounts” mean, collectively, the Notice & Administration Fund and the Settlement Fund.

1.9 “Escrow Agent” means Huntington National Bank.

1.10 “Final” means, with respect to any order of court, including, without limitation, the Judgment, that such order represents a final and binding determination of all issues within its scope and is not subject to further review on appeal or otherwise. Without limitation, an order becomes “Final” when: (i) no appeal has been filed and the prescribed time for commencing any appeal has expired; or (ii) an appeal has been filed and either (a) the appeal has been dismissed and the prescribed time, if any, for commencing any further appeal has expired, or (b) the order has been affirmed in all material respects and the prescribed time, if any, for commencing any further appeal has expired. For purposes of this paragraph, an “appeal” includes appeals as of right, discretionary appeals, interlocutory appeals, proceedings involving any writs, including writs of certiorari or mandamus, and any other proceedings of like kind. Any appeal or proceeding seeking judicial review pertaining solely to (i) Court approval of the Plan of Allocation of the Net Settlement Fund; or (ii) the Court’s award of attorneys’ fees, costs or expenses, shall not in any way delay or preclude the Judgment from becoming Final or affect the time set forth above for the Judgment to become Final.

1.11 “Judgment” means the Judgment and Order of Final Approval to be entered by the Court approving the Settlement, certifying the Settlement Class for settlement purposes only, approving the release of the Settled Claims, and dismissing the Settled Claims with prejudice and

without costs to any party, substantially in the form attached hereto as Exhibit E or in similar form adopted by the Court.

1.12 “Net Settlement Fund” means the Settlement Fund less any Taxes and Tax Expenses; any Fee and Expense Award to Lead Counsel (or any other counsel designated by Lead Counsel); any compensatory award to Plaintiff approved by the Court; and Notice & Administration Costs.

1.13 “Notice” means the Notice of Proposed Settlement of Class Action, Motion for Attorneys’ Fees and Expenses, and Settlement Fairness Hearing, which is to be sent to Settlement Class Members substantially in the form attached hereto as Exhibit B.

1.14 “Notice & Administration Costs” means the costs and expenses reasonably and actually incurred by, and the reasonable fees charged by, the Claims Administrator in connection with notice dissemination and claims administration upon presentation of customary invoices therefor, which invoices have been approved by Lead Counsel, including, without limitation: the cost of identifying and locating members of the Class; mailing Notice and Proof of Claim and publishing the Publication Notice (such amounts shall include, without limitation, the actual costs of publication in national newswires, printing and mailing the Notice, and reimbursement to nominee owners for forwarding notice to their beneficial owners), soliciting Class claims, assisting with the filing of claims, processing Proof of Claim and Release forms, communicating with Persons regarding the Settlement, administering and distributing the Net Settlement Fund to Authorized Claimants, and paying escrow fees and costs, if any.

1.15 “Notice & Administration Fund” means an interest-bearing escrow account that may be used only to pay Notice & Administration Costs.

1.16 “Person” or “Persons” means any natural or legal person, including without limitation any individual, corporation, general or limited partnership, association, joint stock company, joint venture, limited liability company, professional corporation, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, and any other business or legal entity, as well as each of their spouses, heirs, predecessors, successors, representatives, agents, trustees, estates, administrators, executors, or assignees.

1.17 “Plan of Allocation” means the plan that Lead Plaintiff will submit to the Court at a later date that shall be utilized for allocating the Net Settlement Fund to Authorized Claimants. The Defendants shall have no responsibility or liability with respect to the Plan of Allocation.

1.18 “Preliminary Approval Order” means an order by the Court certifying the Settlement Class for settlement purposes only, preliminarily approving the Settlement, and authorizing notice thereof to the Settlement Class and related matters as set forth as Exhibit A hereto.

1.19 “Proof of Claim” means the Proof of Claim and Release Form to be submitted by Claimants, substantially in the form attached as Exhibit D.

1.20 “Publication Notice” means the Notice of Pendency and Settlement of Class Action to be published on a national business newswire, substantially in the form attached as Exhibit C.

1.21 “Released Parties” means the Released Defendant Parties and the Released Plaintiff Parties.

1.22 “Released Defendant Parties” means the Defendants and each of their respective past or present subsidiaries, parents, general or limited partnerships, limited liability companies,

affiliates, divisions, principals, accountants, advisors, successors and predecessors, assigns, officers, directors, shareholders, trustees, partners, agents, attorneys, fiduciaries, contractors, employees, attorneys, including Defendants' counsel, auditors, insurers, co-insurers, or re-insurers; the spouses, members of the immediate families, representatives, and heirs of the Individual Defendants, as well as any trust of which any Individual Defendant is the settlor or which is for the benefit of any of their immediate family members; any firm, trust, corporation, or entity in which any Defendant has a controlling interest; and any of the legal representatives, heirs, successors in interest or assigns of the Defendants.

1.23 "Released Defendants' Claims" means all claims and causes of action of every nature and description, including both known claims, counterclaims, claims for violations of Fed. R. Civ. P. 11, any fee or cost shifting claims, and Unknown Claims (as defined below), whether arising under federal, state, common or foreign law, or any other law, that the Defendants could have asserted against any of the Released Plaintiff Parties that arise out of or relate in any way to the institution, prosecution, or settlement of the claims in the Action. For the avoidance of doubt, Released Defendants' Claims do not include claims relating to the enforcement of the Settlement.

1.24 "Released Plaintiff Parties" means each and every Settlement Class Member, Plaintiff, and each of their respective past or present trustees, officers, directors, partners, employees, contractors, auditors, principals, agents, attorneys, accountants, advisors, predecessors, successors, assigns, insurers, parents, divisions, subsidiaries, general or limited partners or partnerships, and limited liability companies; and the spouses, members of the immediate families, representatives, and heirs of any Released Plaintiff Party who is an individual, as well as any trust of which any Released Plaintiff Party is the settlor or which is for

the benefit of any of their immediate family members. Released Plaintiff Parties does not include any Person who timely and validly seeks exclusion from the Settlement Class.

1.25 “Settled Claims” means the Released Defendants’ Claims and the Settlement Class Claims.

1.26 “Settlement” means the settlement contemplated by this Stipulation.

1.27 “Settlement Amount” means the total principal amount of three million two hundred fifty thousand U.S. dollars (\$3,250,000.00) in cash.

1.28 “Settlement Class” and “Settlement Class Member(s)” means, for purposes of this Settlement only, all Persons who purchased or acquired TranS1 securities (including through the exercise of warrants or options) during the Class Period who were allegedly damaged thereby. Excluded from the Settlement Class are (i) the Defendants; (ii) the officers and directors of TranS1 during the Class Period; (iii) members of the immediate families of the Individual Defendants and the officers and directors of TranS1 during the Class Period; (iv) any entity in which any Defendant had a controlling interest during the Class Period; and (v) the successors, heirs, and assigns of any such excluded Person. Also excluded from the Settlement Class are those Persons who timely and validly seek exclusion from the Settlement Class.

1.29 “Settlement Class Claims” means any and all claims, debts, demands, controversies, obligations, losses, rights or causes of action or liabilities of every nature and description, including both known claims and Unknown Claims (defined below), whether arising under federal, state, common or foreign law, whether fixed or contingent, accrued or unaccrued, liquidated or unliquidated, at law or in equity, matured or unmatured, whether class or individual in nature, that Plaintiff or any Settlement Class Member (i) asserted in the Action or (ii) that could have been asserted in the Action, or any other action, or in any forum, that arise out of,

relate to or are based upon the facts, matters, allegations, transactions, events, disclosures, representations, statements, acts, or omissions or failures to act that were alleged or that could have been alleged in the Action, relating to the purchase or sale of TranS1 securities during the Class Period. The Settlement Class Claims further include all claims and causes of action of every nature and description, including both known claims and Unknown Claims (as defined below), whether arising under federal, state, common or foreign law, or any other law, that could have been asserted against the Released Defendant Parties that arise out of or relate in any way to the litigation, defense, or settlement of the claims in the Action. For the avoidance of doubt, Settlement Class Claims do not include claims relating to the enforcement of the Settlement.

1.30 “Settlement Fairness Hearing” means the hearing to be held by the Court to make a final decision pursuant to Federal Rule of Civil Procedure 23 as to whether the Settlement is fair, reasonable, and adequate and, therefore, should be finally approved by the Court.

1.31 “Settlement Fund” means an interest-bearing escrow account established by the Escrow Agent to receive the Settlement Amount.

1.32 “Taxes” means: (i) all federal, state, local and/or other taxes of any kind on any income earned by the Settlement Fund; and (ii) the reasonable and necessary costs and expenses incurred in connection with determining the amount of, and paying, any taxes owed by the Net Settlement Fund (including, without limitation, the reasonable and necessary costs and expenses of tax attorneys and accountants).

1.33 “Tax Expenses” means expenses incurred in connection with the implementation of ¶ 2.10 of the Stipulation, including reasonable expenses of tax attorneys and accountants retained by the Escrow Agent.

1.34 “Unknown Claims” means any and all Settlement Class Claims that Plaintiff 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 Defendant Parties, and any and all Released Defendants’ Claims that any Defendant does not know or suspect to exist in his, her, or its favor at the time of the release of the Released Plaintiff Parties, which if known by him, her, or it might have affected his, her, or its decision(s) with respect to the Settlement, including the decision to object to the terms of the Settlement or to exclude himself, herself, or itself from the Settlement Class. With respect to any and all Settlement Class Claims and Released Defendants’ Claims, the Settling Parties stipulate and agree that, upon the Effective Date, Plaintiff and the Defendants shall expressly, and each Settlement Class Member shall be deemed to have, and by operation of the Judgment shall have, to the fullest extent permitted by law, expressly waived and relinquished 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, which 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.

Plaintiff, Settlement Class Members, or the Defendants may hereafter discover facts, legal theories, or authorities in addition to or different from those which any of them now knows or believes to be true with respect to the subject matter of the Settlement Class Claims and the Released Defendants’ Claims, but Plaintiff and the Defendants shall expressly, fully, finally, and forever settle and release, and each Settlement Class Member shall be deemed to have settled and released, and upon the Effective Date and by operation of the Judgment shall have settled and released, fully, finally, and forever, any and all Settlement Class Claims and Released

Defendants' Claims as applicable, without regard to the subsequent discovery or existence of such different or additional facts, legal theories, or authorities. Plaintiff and the Defendants acknowledge, and Settlement Class Members by operation of law shall be deemed to have acknowledged, that the inclusion of "Unknown Claims" in the definition of Settlement Class Claims and Released Defendants' Claims was separately bargained for and was a material element of the Settlement.

Settlement Amount

2.0 In consideration of the full and final settlement of the Settled Claims, the Defendants and/or Defendants' insurance carrier(s) shall pay or cause to be paid the Settlement Amount to the Escrow Agent for deposit into the Settlement Fund within fifteen (15) business days after the latter of (i) the Preliminary Approval Order has been entered, and (ii) the receipt by Defendants' counsel of payment instructions, including a completed EFT form, and a Form W-9 providing the tax identification number for the Escrow Account.

2.1 With the sole exception of the Defendants' obligation to cause the payment of the Settlement Amount into the Escrow Account as provided for in ¶ 2.0, Released Defendant Parties shall have no obligation to make any other payments into the Escrow Account, to Plaintiff, Lead Counsel, or to any Settlement Class Member pursuant to this Settlement. All payments made to Authorized Claimants pursuant to the Plan of Allocation as approved by the Court, the fees and expenses awarded by the Court to Lead Counsel for distribution by Lead Counsel in its discretion among itself and other Plaintiffs' counsel involved in the Action, and any compensatory award to the Plaintiff as awarded by the Court, and all administrative and other approved expenses of the Settlement, including Taxes and Tax Expenses, shall be paid from the Settlement Fund.

The Escrow Agent

2.2 At the written direction of Lead Counsel, the Settlement Funds shall be invested exclusively in instruments or accounts backed by the full faith and credit of the United States Government or fully insured by the United States Government or an agency thereof, including a U.S. Treasury Fund or a bank account that is either (a) fully insured by the Federal Deposit Insurance Corporation or (b) secured by instruments backed by the full faith and credit of the United States Government. The Escrow Agent shall reinvest the proceeds of these instruments as they mature in similar instruments at their then-current market rates. The Released Defendant Parties shall not bear any responsibility for or liability related to the investment of the Settlement Fund by the Escrow Agent.

Handling and Disbursement of Funds by the Escrow Agent

2.3 Subject to further order and/or direction as may be made by the Court, the Escrow Agent is authorized to execute such transactions on behalf of the Settlement Class as are consistent with the terms of this Stipulation. The Escrow Agent shall not disburse the Settlement Fund except as provided in this Stipulation, by an order of the Court, or with the written agreement of Defendants' counsel and Lead Counsel.

2.4 No monies will be disbursed from the Settlement Fund until after the Effective Date except as provided in ¶¶ 2.6–2.8 regarding the Notice & Administration Fund, ¶ 2.10 regarding Taxes, and ¶ 7.1 regarding attorneys' fees and expenses.

2.5 All funds held by the Escrow Agent shall be deemed and considered to be in *custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court, until such time as such funds shall be distributed or returned to the parties who deposited such funds pursuant to this Stipulation and/or further order of the Court. Once the Settlement and Judgment

become Final, there shall be no reversion whatsoever of any of the Settlement Amount to any of the Defendants or their insurance carriers.

Notice & Administration Fund

2.6 Within seven (7) calendar days after payment of the Settlement Amount into the Settlement Fund, the Escrow Agent shall establish a Notice & Administration Fund and may deposit up to \$250,000 from the Settlement Fund in it. The Notice & Administration Fund may be invested and earn interest as provided for in this Stipulation, and references in this Stipulation to the Notice & Administration Fund shall include such interest.

2.7 Without prior approval from the Court, the Notice & Administration Fund shall be used by the Escrow Agent to pay Notice & Administration Costs. If Notice & Administration Costs exceed \$250,000, any such additional costs and expenses shall, subject to approval of the Court, be transferred from the Settlement Fund to the Notice & Administration Fund. Any residual monies held in the Notice & Administration Fund upon the completion of notice and claims administration for the Settlement shall be transferred to the Settlement Fund.

2.8 In the event the Settlement and Judgment do not become Final or the Settlement is terminated as provided herein, within ten (10) business days of entry of the order rendering the Settlement and Judgment non-Final or notice of the Settlement being terminated, all monies then held in the Notice & Administration Fund and the Settlement Fund, including interest earned thereon, shall be returned to the paying party per its instructions except for any monies actually incurred and paid or payable for Notice & Administration Costs and Taxes. Under those circumstances, Lead Counsel shall undertake to return those amounts by taking all steps necessary to cause the Escrow Agent to make the foregoing repayments and, at the request of Defendants' Counsel, to apply for and repay to the paying party the proceeds of any tax refund

owed on the amounts held in those accounts. Plaintiff and the Settlement Class shall have no responsibility for the return of such consideration. Once the Settlement and Judgment become Final, there shall be no reversion whatsoever of any monies held in the Notice & Administration Fund or Settlement Fund to any of the Defendants or their insurance carriers.

2.9 The Notice & Administration Fund shall not be used to pay any fees for services provided by Lead Counsel or any of its affiliates. The Escrow Agent shall maintain a record of all funds disbursed. The Released Defendant Parties shall have no obligation to pay any expenses associated with the Notice & Administration Fund. In no event shall the Released Defendant Parties be responsible to pay any amount for costs of notice and administration.

Taxes

2.10

(a) The Escrow Agent will, to the extent possible, agree to treat the Notice & Administration Fund and Settlement Fund as “qualified settlement funds” within the meaning of Treasury Regulation §1.468B-1. In addition, the Escrow Agent shall timely make such elections as necessary or advisable to carry out the provisions of this ¶ 2.10, including the “relation-back election” (as defined in Treasury Regulation §1.468B-1) back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the responsibility of the Escrow Agent 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.

(b) The Escrow Agent shall timely and properly file all informational and other tax returns necessary or advisable with respect to the Notice & Administration Fund and Settlement Fund (including without limitation the returns described in Treasury Regulation §1.468B-2(k)).

Such returns (as well as the election described in ¶ 2.10(a)) shall be consistent with this ¶ 2.10 and in all events shall reflect that all Taxes (including any estimated Taxes, interest or penalties on the income earned) shall be paid out of the Settlement Fund.

(c) All Taxes and Tax Expenses relating to the income earned by the Notice & Administration Fund and Settlement Fund shall be paid out of the Settlement Fund.

(d) 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 Settlement Fund without prior order from the Court.

(e) The Released Defendant Parties, Plaintiff, and Plaintiff's counsel shall have no liability or responsibility for Taxes or Tax Expenses. The Escrow Agent shall indemnify and hold each of the Released Defendant Parties, Plaintiff, and Plaintiff's counsel harmless for Taxes and Tax Expenses (including, without limitation, Taxes payable by reason of any such indemnification).

(f) The Escrow Agent shall be obligated (notwithstanding anything herein to the contrary) to withhold from distribution to Authorized Claimants any funds necessary to pay expenses relating to the establishment of adequate reserves for any Taxes and Tax Expenses (as well as any amounts that may be required to be withheld under Treasury Regulation §1.468B-2(1)(2)). Neither the Released Defendant Parties, Plaintiff, nor Plaintiff's counsel are responsible therefor, nor shall they have any liability with respect thereto.

(g) The Settling Parties 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 ¶ 2.10. The Defendants' counsel agrees to promptly provide or cause to provide the Escrow Agent with the statement described in Treasury Regulation §1.468B-3(e).

Termination of Settlement

2.11 The Defendants and Plaintiff shall have the right to terminate the Settlement and this Stipulation by providing written notice of their election to do so to all other Settling Parties within ten (10) business days of: (a) the Court's declining to enter the Preliminary Approval Order in any material respect without leave to amend and resubmit; (b) the Court's refusal to approve this Stipulation or any material part of it without leave to amend and resubmit; (c) the Court's declining to enter the Judgment in any material respect without leave to amend and resubmit; or (d) the date upon which the Judgment is modified or reversed in any material respect by the Court, the United States Court of Appeals for the Fourth Circuit, or the Supreme Court of the United States. Any decision with respect to any Plan of Allocation or Fee and Expense Award shall not be grounds for termination.

2.12 In addition, Plaintiff shall have the right to terminate the Settlement and this Stipulation by providing written notice of his election to do so to all other Settling Parties within ten (10) business days of the Defendants' and/or their insurance carrier(s) failure to timely make full payment of the Settlement Amount into the Escrow Account (except that such failure to make full payment shall not give Plaintiff the right to terminate unless Plaintiff provides the Defendants and their insurance carriers with written notice of their failure to timely make full payment and accords both with the opportunity to cure within thirty (30) calendar days).

2.13 If, before the Settlement Fairness Hearing, any persons who otherwise would be members of the Settlement Class have timely filed for exclusion from the Settlement Class in accordance with the provisions of the Preliminary Approval Order and the notice given pursuant thereto, and such persons in the aggregate have purchased a number of securities during the Class Period in an amount greater than the sum specified in a separate Supplemental Agreement

between the Settling Parties, the Defendants, acting collectively and in their sole discretion, shall have the option to terminate this Stipulation in accordance with the procedures set forth in the Supplemental Agreement. The Supplemental Agreement shall not be filed with the Court and its terms shall not be disclosed in any other manner (other than the statements herein and in the Notice, to the extent necessary, or as otherwise provided in the Supplemental Agreement) unless and until a dispute arises among the Settling Parties concerning its interpretation or application. If submission of the Supplemental Agreement is required for resolution of a dispute or is otherwise ordered by the Court, the Settling Parties will undertake to have the Supplemental Agreement submitted to the Court *in camera* or under seal. Upon receiving any request for exclusion, Lead Counsel shall promptly notify Defendants' counsel via email of such request for exclusion and provide copies of such request for exclusion and any documentation accompanying it.

2.14 If (i) the Defendants exercise their right to terminate the Settlement as provided in this Stipulation; or (ii) Plaintiff exercises his right to terminate this Settlement as provided in this Stipulation, then:

The Settlement and the relevant portions of this Stipulation shall be canceled and terminated without prejudice, and this Stipulation shall be null and void and shall have no further force or effect (except for ¶¶ 2.8, 8.3, 8.4, 9.1);

The Settlement Amount, subject to the provisions of ¶ 2.8 above, shall be refunded by check or wire transfer in accordance with the instructions to be provided by counsel for the Defendants; and

The Settling Parties shall revert to their respective positions in the Action prior to the execution of the MOU, the execution of the Stipulation, and the entry of any orders pursuant to

the Stipulation. In such circumstances, the Settling Parties shall thereafter work together to arrive at a mutually agreeable schedule for resuming litigation of the Action.

Class Certification

3.0 For the sole purpose of this Settlement, the Settling Parties hereby stipulate, agree, and consent to: (a) certification of the Action as a class action pursuant to Fed. R. Civ. P. 23(a) and 23(b)(3); (b) appointment of Plaintiff as class representative; and (c) appointment of Lead Counsel as class counsel pursuant to Fed. R. Civ. P. 23(g). Following execution of this Stipulation, Plaintiff shall move for, and the Defendants shall not oppose, entry of the Preliminary Approval Order in the form attached as Exhibit A hereto, which will certify the Action to proceed as a class action for settlement purposes only. The certification of the Class shall be binding only with respect to the Settlement and only if the Judgment becomes Final and the Effective Date occurs.

Preliminary Approval Order

4.0 Promptly after execution of this Stipulation, Lead Counsel shall submit this Stipulation together with its exhibits to the Court and shall request entry of a Preliminary Approval Order (substantially in the form of Exhibit A) that will, *inter alia*, (1) grant preliminary approval to the Settlement; (2) certify the Settlement Class for settlement purposes only; (3) authorize dissemination of notice to the Settlement Class substantially in the form of Exhibits B and C hereto, along with provision of a Proof of Claim and Release Form substantially in the form of Exhibit D; and (4) schedule the Settlement Fairness Hearing.

4.1 The Notice shall describe the Settlement; the proposed Plan of Allocation; the requests for a Fee and Expense Award for Lead Counsel, for distribution by Lead Counsel in its discretion among itself and other Plaintiffs' counsel that were involved in the Action and a

compensatory award to Plaintiff; the date of the Settlement Fairness Hearing; Settlement Class Members' rights to opt out, object, or otherwise be heard with regard to these matters; and Settlement Class Members' opportunity to file claims upon the Settlement Fund. The Stipulation of Settlement, Notice, Proof of Claim Form, and all papers submitted in support thereof shall be posted on a website to be maintained by the Claims Administrator.

4.2 Within fourteen (14) business days after the Court enters a Preliminary Approval Order, Defendants shall assist the Claims Administrator in obtaining, from TranS1's transfer agent, records of ownership sufficient to identify Settlement Class Members. The cost, if any, associated with compiling and/or delivering these records from the transfer agent to the Claims Administrator shall be payable to the transfer agent from the Settlement Fund. Plaintiff and the Claims Administrator agree to maintain this information in confidence and only for the purpose of administering this settlement.

Releases

5.0 The obligations incurred pursuant to this Stipulation are in full and final disposition of the Action with respect to all Released Parties and all Settled Claims.

5.1 Upon the Effective Date, Plaintiff and each Settlement Class Member (whether or not they submit a Proof of Claim or share in the Settlement Fund), and the heirs, representatives, attorneys, affiliates, executors, trustees, administrators, predecessors, successors, and assigns of each of them, in their capacity as such, shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever waived, released, relinquished, discharged, and dismissed each and every one of the Settlement Class Claims against each and every one of the Released Defendant Parties and shall forever be barred and enjoined from the assertion, institution, maintenance, prosecution, or enforcement in any state or federal court or arbitral

forum, or in the court of any foreign jurisdiction, administrative forum or other forum of any kind, of any and all of the Settlement Class Claims against any and all of the Released Defendant Parties.

5.2 Upon the Effective Date, the Defendants, and the heirs, representatives, attorneys, affiliates, executors, trustees, administrators, predecessors, successors, and assigns of each of them, in their capacity as such, shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever waived, released, relinquished, discharged, and dismissed each and every one of the Released Defendants' Claims against each and every one of the Released Plaintiff Parties and shall forever be barred and enjoined from the assertion, institution, maintenance, prosecution, or enforcement in any state or federal court or arbitral forum, or in the court of any foreign jurisdiction, administrative forum or other forum of any kind, of any and all of the Released Defendants' Claims against any and all of the Released Plaintiff Parties.

Administration and Calculation of Claims, Plan of Allocation, and Distribution of the Settlement Fund

6.0 The Claims Administrator shall administer and calculate the claims submitted by Settlement Class Members and shall oversee distribution of the Net Settlement Fund to Authorized Claimants. The distribution checks will be drawn upon the Settlement Fund.

6.1 The Defendants and their insurance carriers shall have no involvement in reviewing or challenging claims and shall have no responsibility or liability for the allocation of the Settlement Fund among the Settlement Class Members or the allocation of any Fee and Expense Award to Lead Counsel or compensatory award to Plaintiff. Any such awards shall be paid solely by the Settlement Fund.

6.2 The Settlement Fund shall be applied as follows:

- (i) To pay Taxes and Tax Expenses;
- (ii) To pay Notice & Administration Costs;
- (iii) To pay a Fee and Expense Award to Lead Counsel to the extent allowed by the Court;
- (iv) To pay a compensatory award to Plaintiff to the extent allowed by the Court;
- (v) Upon court approval, to distribute the Net Settlement Fund to the Authorized Claimants as allowed by this Stipulation, the Plan of Allocation, or the Court.

6.3 Upon the Effective Date, subject to ¶¶ 2.3–2.5 and in accordance with the terms of the Plan of Allocation, or such further approval and further order(s) of the Court as may be necessary or as circumstances may require, the Net Settlement Fund shall be distributed to Authorized Claimants subject to and in accordance with the following:

- (i) Each Settlement Class Member claiming to be an Authorized Claimant shall be required to submit to the Claims Administrator a completed Proof of Claim, substantially in the form of Exhibit D hereto, supported by such documents as are designated therein, including proof of the transactions claimed and the losses incurred thereon, or such other documents or proof as the Claims Administrator, in its discretion may deem acceptable;
- (ii) Except as otherwise ordered by the Court, all Settlement Class Members who fail to timely submit a Proof of Claim and Release, or who file a Proof of Claim that is rejected, shall be forever barred from receiving any payments pursuant to this Stipulation and Settlement, but will in all other respects be subject to and bound by the provisions of this Stipulation, the Releases, and the Judgment and will be barred and enjoined from bringing any action against the Released Parties concerning the Settled Claims.

6.4 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 of the amount of the Claimant's claim. No discovery shall be allowed on the merits of the Action or Settlement in conjunction with the processing of the Proofs of Claim.

6.5 Payment pursuant to this Stipulation shall be deemed final and conclusive against all Claimants. No Person shall have any claim against Plaintiff, Lead Counsel, the Released Defendant Parties, the Claims Administrator, the Escrow Agent or any other agent designated by Lead Counsel based on distribution determinations or claim rejections made substantially in accordance with this Stipulation and the Settlement contained therein, the Plan of Allocation, or further orders of the Court.

6.6 The Net Settlement Fund shall be distributed to the Authorized Claimants substantially in accordance with a Plan of Allocation to be described in the Notice and approved by the Court. However, if there is any balance remaining in the Net Settlement Fund after six (6) months from the date of distribution of the Net Settlement Fund (whether by reason of tax refunds, uncashed checks or otherwise), the Claims Administrator under the supervision of Lead Counsel shall, if feasible, reallocate such balance among Authorized Claimants in an equitable and economic fashion. Thereafter, any balance that still remains in the Net Settlement Fund shall be donated to such not-for-profit as the Court may direct and approve.

6.7 This is not a claims-made settlement. If all conditions of the Stipulation are satisfied and the Settlement becomes Final, no portion of the Settlement Fund will be returned to the Defendants or their insurance carriers.

6.8 The Plaintiff and Released Defendant Parties shall have no responsibility for, interest in, or liability whatsoever with respect to: (i) any act, omission or determination of Lead Counsel, the Escrow Agent or the Claims Administrator, or any of their respective designees or agents, in connection with the administration of the Settlement or otherwise; (ii) the administration, management, investment, allocation or distribution of the Settlement Fund; (iii) the Plan of Allocation; (iv) the determination, administration, calculation or payment of any claims asserted against the Settlement Fund; (v) any losses suffered by, or fluctuations in the value of, the Settlement Fund; (vi) the payment or withholding of any Taxes or Tax Expenses or (vii) any failure of Notice or failure to identify Settlement Class Members pursuant to ¶ 4.2 above.

6.9 It is understood and agreed by the Parties that any proposed Plan of Allocation of the Net Settlement Fund including, but not limited to, any adjustments to an Authorized Claimant's claim set forth therein, is not a part of this Stipulation and is to be considered by the Court separately from the Court's consideration of the fairness, reasonableness and adequacy of the Settlement set forth in this Stipulation, and any order or proceedings relating to the Plan of Allocation shall not operate to terminate or cancel this Stipulation or affect the finality of the Court's Judgment approving this Stipulation and the Settlement set forth therein, or any other orders entered pursuant to this Stipulation.

Attorneys' Fees and Expenses

7.0 Lead Counsel may submit an application or applications (a "Fee and Expense Application") for payments to Lead Counsel from the Settlement Fund for: (a) an award of attorneys' fees; plus (b) reimbursement of actual costs and expenses, including the fees and expenses of experts or consultants, incurred in connection with prosecuting the Action. Lead Counsel reserves the right to make additional applications for fees and expenses incurred, plus interest, if necessary.

7.1 Any award of attorneys' fees, costs, and expenses approved by the Court ("Fee and Expense Award") shall be payable to Lead Counsel, for distribution by Lead Counsel in its discretion among itself and other Plaintiffs' counsel that were involved in the Action, solely from the Settlement Fund no later than ten (10) business days after the entry of the Court's order awarding such fees and expenses, notwithstanding any timely filed objections thereto, or potential for appeal therefrom, or collateral attack on the Settlement or any part thereof, subject to the joint and several obligation of all counsel who receive any award of attorneys' fees and costs to make full refunds or repayments to the Settlement Fund plus interest earned thereon if, as a result of any appeal and/or further proceedings on remand or successful collateral attack, the award is lowered or the Settlement is disapproved by a final order.

7.2 If the Fee and Expense Award is reduced or reversed on appeal, Lead Counsel and all other Plaintiffs' counsel to whom Lead Counsel has distributed payments shall make all necessary refunds and repayments into the Settlement Fund no later than thirty (30) calendar days of Plaintiffs' counsel's receipt from the Court of notice of any order that reverses or reduces any award of attorneys' fees or expenses, which shall be distributed by the Escrow Agent to the Settlement Class pursuant to the manner directed in the Final order.

7.3 The procedure for and allowance or disallowance by the Court of any application by Lead Counsel for attorneys' fees and expenses, including the fees and expenses of experts and consultants, to be paid out of the Settlement Fund, are not part of the Settlement set forth in this Stipulation and are to be considered by the Court separately from the Court's consideration of the fairness, reasonableness and adequacy of the Settlement set forth in this Stipulation. Any order or proceedings relating to a Fee and Expense Application, or any appeal from any order relating thereto or reversal or modification thereof, shall not operate to modify, terminate or cancel this Stipulation, or affect or delay the finality of the Judgment approving this Stipulation and the Settlement of the Action.

7.4 The Defendants agree that they will not oppose Lead Counsel's Fee and Expense Application.

Effect of Disapproval, Cancellation or Termination

8.0 The Effective Date of the Stipulation shall be conditioned upon the occurrence of all of the following events:

- (a) Entry of the Preliminary Approval Order;
- (b) The Settlement Amount has been paid into the Settlement Fund;
- (c) Neither the Defendants nor Plaintiff has exercised their right to terminate the Settlement in accordance with the terms of ¶¶ 2.11-2.14 herein;
- (d) Approval by the Court of the Settlement, following the period set forth for CAFA Notice, and following notice to the Settlement Class and the Settlement Fairness Hearing, as prescribed by Fed. R. Civ. P. 23;
- (e) Entry by the Court of the Judgment, which has become Final, or in the event that the Court enters and order of judgment not in all material respects in the form of the

Judgment and none of the Settling Parties elects to terminate this Settlement, the date that such alternative judgment becomes Final.

Any appeal or delay in (a) the approval of the Plan of Allocation, (b) the consideration of any Fee and Expense Application, or (c) the granting of a compensatory award to Plaintiff, shall not affect, alter, or delay the occurrence of the Effective Date.

8.1 Upon the occurrence of the Effective Date, any and all interest or right of the Defendants in or to the Settlement Fund, if any, shall be absolutely and forever extinguished, except as set forth in this Stipulation. The Settlement Fund shall be distributed in accordance with ¶ 6.2 hereof.

8.2 Unless otherwise ordered by the Court, in the event the Stipulation is terminated, or is canceled, or fails to become effective for any reason, within ten (10) business days after written notification of such event is sent by Defendants' counsel or Lead Counsel to the Escrow Agent, subject to the terms of ¶¶ 2.11-2.14 hereof, the Settlement Amount (including accrued interest), less any expenses and any costs which have either been properly disbursed pursuant to ¶¶ 2.3–2.5 hereof, or are determined to be chargeable to the Settlement Fund or the notice and administration of the Settlement pursuant to ¶¶ 2.6-2.8 hereof, shall be refunded by the Escrow Agent to the appropriate sources of the funds in proportion to their contribution to the Settlement Fund, plus accrued interest attributable to that amount by check or wire transfer pursuant to written instructions from Defendants' counsel.

8.3 In the event this Settlement is terminated as provided in ¶¶ 2.11-2.14, then the terms and provisions of the Stipulation, with the exception of ¶¶ 2.8; 8.3, 8.4, 9.1 hereof, shall have no further force and effect and shall not be used in this Action or in any other proceeding for any purpose, and any judgment or order entered by the Court in accordance with the terms of

this Stipulation shall be treated as vacated, *nunc pro tunc*. No order of the Court or modification or reversal on appeal of any order of the Court concerning the Plan of Allocation or the amount of any attorneys' fees, costs, expenses and interest awarded by the Court to Lead Counsel shall constitute grounds for cancellation or termination of the Stipulation.

8.4 In the event this Settlement is terminated as provided in ¶¶ 2.11-2.14, neither Plaintiff nor Lead Counsel shall have any obligation to repay any amounts actually and properly disbursed from the Notice & Administration Fund. In addition, any expenses already incurred and properly chargeable to the Notice & Administration Fund pursuant to this Stipulation at the time of such termination or cancellation, but which have not been paid, shall be paid by the Escrow Agent in accordance with the terms of the Stipulation before the balance being refunded in accordance with ¶ 8.2.

No Admission

9.0 The Defendants deny any wrongdoing whatsoever, and this Stipulation shall in no event be construed or deemed to be evidence of, or an admission or concession on the part of the Defendants with respect to any claim of any fault or liability or wrongdoing or damage whatsoever, or any infirmity in any defenses that the Defendants have asserted or could assert in the Action or any other action.

9.1 This Stipulation, whether or not consummated, and any proceedings taken pursuant to it, shall not be deemed to be, and may not be argued to be offered or received:

(a) Against any of the Defendants as evidence of, or construed as evidence of any presumption, concession, or admission by any of the Defendants with respect to the truth of any fact alleged by the Plaintiff in this Action or the validity of any claim that has been or could have been asserted against any of the Defendants in this Action, or the deficiency of any defense that has been or could have been asserted in the Action, or of any wrongdoing or liability

by any of the Defendants;

(b) Against any of the Defendants as evidence of, or construed as evidence of any presumption, concession, or admission of any fault, misrepresentation, or omission with respect to any statement or written document approved or made by any of the Defendants, or against the Plaintiff or any Settlement Class Member as evidence of, or construed as evidence of any infirmity of the claims alleged by the Plaintiff in the Action;

(c) Against any of the Defendants, the Plaintiff, or any Settlement Class Member as evidence of, or construed as evidence of any presumption, concession, or admission by any of the Defendants, the Plaintiff, or any Settlement Class Member with respect to any liability, negligence, fault, or wrongdoing as against any of the Defendants, the Plaintiff, or any Settlement Class Member in any other civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Stipulation, provided, however, that if this Stipulation is approved by the Court, the Defendants, the Plaintiff, and any Settlement Class Member may refer to it to effectuate the liability protection granted them hereunder;

(d) Against any of the Defendants as evidence of, or construed as evidence of any presumption, concession, or admission by any of them that the Settlement Amount represents the amount which could or would have been received after trial of the Action against them;

(e) Against the Plaintiff or any Settlement Class Member as evidence of, or construed as evidence of any presumption, concession, or admission by any of the Plaintiff or any Settlement Class Member that any of their claims are without merit, or that any defenses asserted by the Defendants in the Action have any merit, or that damages recoverable in the Action would not have exceeded the Settlement Fund; and

(f) As evidence of, or construed as evidence of any presumption, concession, or admission that class certification is appropriate in this Action, except for purposes

of this Settlement.

(g) Notwithstanding the above, the Settling Parties, and their respective counsel, may file this Stipulation and/or the Judgment in any action that may be brought against them in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, release, statute of limitations, statute of repose, good-faith settlement, judgment bar or reduction, or any theory of claim preclusion or issue preclusion or similar defense or counterclaim, or to effectuate any liability protection granted them under any applicable insurance policy. The Settling Parties may file this Stipulation and/or the Judgment any action that may be brought to enforce the terms of this Stipulation and/or the Judgment.

Miscellaneous Provisions

9.2 The Settling Parties intend the Settlement to be a final and complete resolution of all disputes which have been asserted, could have been asserted, or could be asserted by Plaintiff or the Settlement Class Members against the Defendants and all Released Parties concerning the Settled Class Claims and against the Plaintiff and Settlement Class Members by the Defendants concerning the Defendant Claims. Accordingly, Settling Parties agree not to assert in any forum that the litigation was brought by Plaintiff or defended by the Defendants in bad faith or without a reasonable basis. The Settling Parties, and each of them, shall not assert or pursue any action, claim or rights that any party hereto violated any provision of Rule 11 of the Federal Rules of Civil Procedure or otherwise seek reimbursement or shifting of attorneys' fees or other costs associated with this litigation. The Settling Parties, and each of them, and their respective counsel agree that the Action was resolved in good faith, following arm's length bargaining, and reflect a settlement that was reached voluntarily after consultation with experienced legal counsel.

9.3 The Settling Parties (a) acknowledge that it is their intent to consummate this agreement; and (b) agree, subject to their fiduciary and other legal obligations, to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of this Stipulation and to exercise their reasonable best efforts to accomplish the foregoing terms and conditions of this Stipulation. Subject to their fiduciary and legal obligations to their clients, Lead Counsel and Defendants' counsel agree to cooperate with one another in seeking Court approval of the Preliminary Approval Order, the Stipulation and the Settlement, and to use best efforts to promptly agree upon and execute all such other documentation as may be reasonably required to obtain final approval of the Settlement.

9.4 Neither the Settlement Class Members nor the Defendants shall be bound by the Stipulation if the Court modifies material terms thereof, provided, however, that it shall not be a basis for Settlement Class Members to terminate the Settlement if the Court modifies any proposed Plan of Distribution or criteria for allocation of the Net Settlement Fund amongst Settlement Class Members, or the Plan of Distribution is modified on appeal. Nor shall it be a basis to terminate the Stipulation if the Court disapproves of or modifies the terms of this Stipulation with respect to the distribution of the Net Settlement Fund. Nor shall it be a basis to terminate the Stipulation if the Court denies, in whole or in part, Lead Counsel's application for attorneys' and expenses.

9.5 The administration and consummation of the Settlement as embodied in this Stipulation shall be under the authority of the Court and the Court shall retain jurisdiction for the purpose of entering orders providing for awards of attorneys' fees and expenses to Lead Counsel (including for distribution among any other plaintiffs' counsel) and enforcing the terms of this Stipulation.

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

9.7 The waiver by one Settling Party of any breach of this Stipulation by any other Settling Party shall not be deemed as a waiver by the waiving Settling Party of any other prior or subsequent breaches of this Stipulation or a waiver by any other Settling Party of any breach of this Stipulation.

9.8 All of the exhibits to this Stipulation are material and integral parts hereof and are fully incorporated herein by this reference. Notwithstanding the foregoing, in the event of a conflict or inconsistency between the terms of this Stipulation and the terms of any exhibit attached hereto, the terms of this Stipulation shall prevail.

9.9 This Stipulation, along with its exhibits and the Supplemental Agreement, may be amended or modified only by a written instrument signed by counsel on behalf of all Settling Parties or their respective successors-in-interest.

9.10 Other than the Supplemental Agreement, this Stipulation and the exhibits attached hereto constitute the entire agreement among the Settling Parties hereto and no representations, warranties, or inducements have been made to any party concerning this Stipulation or its exhibits other than the representations, warranties and covenants contained and memorialized in such documents.

9.11 Each counsel or other Person executing this Stipulation, any of its exhibits, or any related settlement documents on behalf of any party hereto hereby warrants and represents that such Person has the full authority to do so and that they have the authority to take appropriate action required or permitted to be taken pursuant to the Stipulation to effectuate its terms.

9.12 This Stipulation may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. Signatures sent by facsimile or via email in PDF format shall be deemed originals.

9.13 This Stipulation shall be binding upon, and inure to the benefit of, the successors, heirs, and assigns of the Settling Parties.

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

9.15 Any disputes arising out of finalizing and implementing this Stipulation or the Settlement itself shall be resolved by a third party selected by agreement of the Settling Parties. If such mediation fails to produce an agreed resolution, or if the Settling Parties cannot agree upon a mediator, the dispute shall be submitted to the Court.

9.16 This Stipulation and the exhibits thereto shall be considered to have been negotiated, executed and delivered, and to be wholly performed, in the State of North Carolina and the rights and obligations of the parties to this Stipulation shall be construed and enforced in accordance with, and governed by, the internal, substantive laws of the State of North Carolina without giving effect to that State's choice of law principles, except to the extent that federal law requires that federal law govern.

9.17 This Stipulation is deemed to have been prepared by counsel for all Settling Parties, as a result of arm's length negotiations among the Settling Parties. Whereas all Settling Parties have contributed substantially and materially to the preparation of this Stipulation, it shall not be construed more strictly against one party than another.

9.18 All time periods set forth herein shall be computed in calendar days unless otherwise expressly provided. In computing any period of time prescribed or allowed by this Stipulation or by order of the Court, the day of the act, event, or default from which the designated period of time begins to run shall not be included.

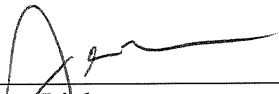
9.19 Without further order of the Court, the Settling Parties may agree to reasonable extensions of time to carry out any of the provisions in the Stipulation.

9.20 Nothing in the Stipulation, or the negotiations relating thereto, is intended to or shall be deemed to constitute a waiver of any applicable privilege or immunity, including, without limitation, attorney-client privilege, joint defense privilege, or work product protection.

9.21 Pending final approval by the Court of the Settlement, all proceedings in the Action shall remain stayed.

9.22 Except as otherwise provided herein, each party shall bear its own costs.

IN WITNESS WHEREOF, the parties hereto have caused this Stipulation to be executed, by their duly authorized attorneys, dated May 18, 2018.



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Reali, Joseph P. Slattery, Richard Randall,
and Michael Luetkemeyer*

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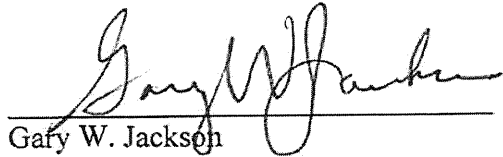
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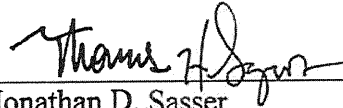
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