

EXHIBIT I

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8

9 **UNITED STATES DISTRICT COURT**
10 **NORTHERN DISTRICT OF CALIFORNIA**
SAN FRANCISCO DIVISION

11 IN RE: SANDISK LLC SECURITIES
12 LITIGATION

Case No. 3:15-cv-01455-VC

Hon. Vince Chhabria

13 **REVISED STIPULATION AND**
14 **AGREEMENT OF SETTLEMENT**

15
16 This stipulation and agreement of settlement (the “Stipulation”) is made and entered into
17 by and between: (a) City of Bristol Pension Fund (“Bristol”); City of Milford, Connecticut
18 Pension & Retirement Board (“Milford”); Pavers and Road Builders Pension, Annuity and
19 Welfare Funds (“Pavers and Road Builders Benefit Funds”); City of Newport News Employees’
20 Retirement Fund (“NNERF”); and Massachusetts Laborers’ Pension Fund (“Massachusetts
21 Laborers,” together with Bristol, Milford, Pavers and Road Builders Benefit Funds, and NNERF,
22 the “Class Representatives” or “Lead Plaintiffs”), on behalf of themselves and each of the
23 members of the certified Class (defined below), on the one hand; and (b) SanDisk Corporation
24 (n/k/a “SanDisk LLC” and owned by Western Digital, referred to herein as “SanDisk” or the
25 “Company”), Sanjay Mehrotra (“Mehrotra”), and Judy Bruner (“Bruner,” together, with
26 Mehrotra, the “Individual Defendants” and, with SanDisk as well, the “Defendants”), on the other
27 hand, by and through their counsel of record in the above-captioned litigation pending in the
28 United States District Court for the Northern District of California (the “Court”). This Stipulation

1 is intended by the parties to fully, finally, and forever resolve, discharge, and settle the Released
2 Claims and Released Defendants' Claims (both defined below) upon and subject to the terms and
3 conditions hereof and subject to the Court's approval.

4 **WHEREAS:**

5 A. All words or terms used herein that are capitalized shall have the meaning ascribed
6 to those words or terms as set forth herein and in ¶1 hereof, entitled "Definitions."

7 B. On March 30, 2015, a class action complaint was filed in the Court, captioned
8 *Glore v. SanDisk Corp.*, No. 3:15-cv-01455-VC. Two subsequently filed complaints – *Bowers*
9 *v. SanDisk Corp.*, No. 3:15-cv-02050-VC, and *City of Sterling Heights General Employees'*
10 *Retirement System v. SanDisk Corp.*, No. 3:15-cv-02358-VC – were consolidated into the *Glore*
11 action by orders dated May 27, 2015 and July 15, 2015. By order dated July 27, 2017, the caption
12 in the consolidated action was changed to *In re: SanDisk LLC Securities Litigation*.¹

13 C. Although another group of investors was initially appointed as lead plaintiffs, at
14 the Court's invitation, the Class Representatives filed a motion on February 2, 2016, seeking
15 reconsideration of the Court's prior order appointing lead plaintiffs. On February 22, 2016, the
16 Court granted the Class Representatives' motion, appointing them Lead Plaintiffs and appointing
17 Scott+Scott Attorneys at Law LLP as Lead Counsel.

18 D. Lead Plaintiffs filed an Amended Consolidated Class Action Complaint for
19 Violations of the Federal Securities Laws on March 23, 2016 (ECF No. 129); and a Second
20 Amended Consolidated Class Action Complaint for Violations of the Federal Securities Laws on
21 July 15, 2016 (ECF No. 148) ("SAC"). On June 22, 2017, the Court entered an order denying
22 Defendants' motion to dismiss the SAC. The SAC is the operative complaint in this Action and
23 it alleges that Defendants fraudulently misrepresented the condition and prospects of SanDisk's
24 enterprise business, including the then-recently acquired Fusion-io business unit, in violation of
25 §§10(b) and 20(a) of the Securities Exchange Act of 1934, and Rule 10b-5 promulgated
26 thereunder.

27 _____
28 ¹ Prior to changing the caption for this consolidated action to *In re SanDisk Securities Litigation*, the caption for this consolidated action was briefly *Union Asset Management Holding AG, et al. v. SanDisk LLC, et al.*, reflecting the name of the initial lead plaintiff.

1 E. The parties completed comprehensive class, fact, and expert discovery in the
2 Action during which the Class Representatives analyzed over 160,000 documents produced by
3 Defendants. In addition, the Class Representatives took a total of 12 fact and expert depositions.
4 The Class Representatives sat for Rule 30(b)(6) depositions, and Lead Counsel twice defended
5 the deposition of the Class' expert on causation and damages, once in connection with class
6 certification proceedings and later on merits issues.

7 F. On September 4, 2018, the Court granted Lead Plaintiffs' motion to certify the
8 Action as a class action, certifying a Class consisting of all persons and entities who purchased
9 or otherwise acquired SanDisk's publicly traded common stock during the period from October
10 16, 2014, through April 15, 2015, inclusive, and were damaged thereby, with certain exclusions.

11 G. Pursuant to an order entered December 13, 2018, beginning on January 9, 2019,
12 the Notice of Pendency of Class Action (the "Class Notice") was mailed to potential Class
13 Members, and the Summary Notice of Pendency of Class Action was published in *Investor's*
14 *Business Daily* and transmitted over the *PR Newswire* on January 21, 2019. The Class Notice
15 provided Class Members with the opportunity to request exclusion from the Class, explained that
16 right, and set forth the deadline and procedures for doing so. The Class Notice informed Class
17 Members that if they chose to remain a member of the Class, they would "be bound by all
18 determinations, orders, and judgments in this Action, whether favorable or unfavorable." The
19 deadline for requesting exclusion from the Class pursuant to the Class Notice was February 28,
20 2019.

21 H. Following the completion of fact discovery and the exchange of expert reports, the
22 parties engaged the Honorable Layn R. Phillips (Ret.) ("Judge Phillips"), a well-respected and
23 highly experienced mediator and former federal judge, to assist them in exploring a potential
24 negotiated resolution of the claims in the Action. Following an exchange of mediation statements
25 and exhibits, on October 29, 2018, the Parties met with Judge Phillips in an attempt to reach a
26 settlement in a full-day mediation. The mediation did not result in a settlement of the Action, but
27 Judge Phillips continued his efforts to facilitate discussions among the parties.

28

1 I. On January 17, 2019, Defendants moved for summary judgment and to exclude
2 the opinions of Class Representatives' loss causation and damages expert, Chad Coffman. Class
3 Representatives filed their opposition papers on February 28, 2019, and also moved to exclude
4 the opinions of Defendants' loss causation expert Daniel R. Fischel.

5 J. Before Defendants filed their reply papers in support of summary judgment, the
6 parties attended a second in-person mediation with Judge Phillips on March 8, 2019, which
7 resulted in an agreement-in-principle to settle the Action for \$50,000,000 and entered into a
8 Memorandum of Understanding. This Stipulation (together with the exhibits hereto) constitutes
9 the final agreement between the parties.

10 K. Defendants have denied, and continue to deny, any wrongdoing or that they have
11 committed any act or omission giving rise to any liability or violation of law, including the U.S.
12 securities laws. Defendants have denied, and continue to deny, each and every one of the claims
13 alleged by Class Representatives in the Action, including all claims in the complaints filed in the
14 Action. Defendants also have denied, and continue to deny, *inter alia*, the allegations that Class
15 Representatives or Class Members have suffered damage or were otherwise harmed by the
16 conduct alleged in the Action. Defendants have asserted, and continue to assert, that, at all times,
17 they acted in good faith and in a manner they reasonably believed to be in accordance with all
18 applicable rules, regulations, and laws. Nonetheless, Defendants have determined that it is
19 desirable and beneficial to them that the Action be settled in the manner and upon the terms and
20 conditions set forth in this Stipulation to avoid the further expense, inconvenience, and burden of
21 this Action, the distraction and diversion of personnel and resources, and to obtain the conclusive
22 and complete dismissal and/or release of this Action and Released Claims.

23 L. The Stipulation, whether or not consummated, any proceedings relating to any
24 settlement, or any of the terms of any settlement, whether or not consummated, shall in no event
25 be construed as, or deemed to be evidence of, an admission or concession on the part of the
26 Defendants, or any of them, with respect to any fact or matter alleged in the Action, or any claim
27 of fault or liability or wrongdoing or damage whatsoever, or any infirmity in any claim or defense
28

1 that has been or could have been asserted. Each Defendant reserves all defenses to any claims
2 that may be filed by any individual or entity that has sought, or seeks, exclusion from the Class.

3 M. Class Representatives believe that the claims asserted in the Action have merit and
4 that the evidence developed to date supports the claims asserted. However, Class Representatives
5 and Class Counsel recognize and acknowledge the expense and length of continued proceedings
6 necessary to prosecute the Action through trial (and any possible appeals). Class Representatives
7 and Class Counsel also have taken into account the uncertain outcome and risk of any litigation,
8 especially in complex actions, such as the Action, as well as the difficulties and delays inherent
9 in such litigation. Class Counsel also are mindful of the inherent problems of proof and the
10 possible defenses to the claims alleged in the Action. Based on their evaluation, Class
11 Representatives and Class Counsel believe that the Settlement set forth in this Stipulation confers
12 substantial monetary benefits upon the Class and is in the best interests of the Class.

13 **NOW THEREFORE**, without any concession by Class Representatives that the Action
14 lacks merit, and without any concession by the Defendants of any liability or wrongdoing or lack
15 of merit in their defenses, it is hereby **STIPULATED AND AGREED**, by and among the parties
16 to this Stipulation (“Parties”), through their respective attorneys, subject to approval by the Court
17 pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, that, in consideration of the
18 benefits flowing to the Parties hereto, all Released Claims and all Released Defendants’ Claims,
19 as against all Released Parties, shall be fully, finally, and forever compromised, settled, released,
20 discharged, and dismissed with prejudice, and without costs (except as provided in the
21 Stipulation), upon and subject to the following terms and conditions:

22 **DEFINITIONS**

23 1. As used in this Stipulation, the following terms shall have the meanings set forth
24 below. In the event of any inconsistency between any definition set forth below and any definition
25 in any other document related to the Settlement, the definition set forth below shall control.

26 (a) “Action” means the civil action captioned *In re: SanDisk LLC Securities*
27 *Litigation*, No. 3:15-cv-01455-VC (N.D. Cal.), pending in the United States District Court
28 for the Northern District of California before the Honorable Vince Chhabria. For the

1 avoidance of doubt, the Action includes all of the actions that were consolidated into this
2 Action, as set forth in Paragraph B above, specifically, the *Glore* action (now captioned
3 *In re: SanDisk LLC Securities Litigation*), the *Bower* action, and the *City of Sterling*
4 *Heights* action.

5 (b) “Alternative Judgment” means a form of final judgment that may be
6 entered by the Court, but in a form other than the form of Judgment (defined below)
7 provided for in this Stipulation and where none of the Parties hereto elects to terminate
8 the Settlement (defined below) by reason of such variance.

9 (c) “Authorized Claimant” means a Class Member (defined below) whose
10 claim for recovery from the Settlement has been allowed pursuant to the terms of the
11 Stipulation and Court-approved Plan of Allocation (defined below).

12 (d) “Claims Administrator” means the firm Epiq Class Action & Claims
13 Solutions, Inc. retained, subject to Court approval, to provide all notices approved by the
14 Court to Class Members, process proofs of claim, and administer the Settlement.

15 (e) “Class” means all persons and entities who purchased or otherwise
16 acquired publicly traded shares of common stock of SanDisk Corporation from October
17 16, 2014, through April 15, 2015, inclusive, and were damaged thereby. Excluded from
18 the Class, by definition, are: Defendants and their immediate family members; the officers
19 and directors of the Company during the Class Period and their immediate family
20 members; any entity in which Defendants have, or had, a controlling interest; any person
21 or entity that timely and validly sought exclusion from the Class in connection with the
22 Class Notice (defined above) previously disseminated, who does not opt back into the
23 Class; any person or entity that seeks exclusion by timely submitting a valid request for
24 exclusion in connection with the Settlement Notice (defined below); and the legal
25 representatives, heirs, successors, assigns, or affiliates of any excluded person. Also
26 excluded from the Class are those who had: (a) sold all of their SanDisk stock prior to the
27 first alleged corrective disclosure on March 26, 2015; and (b) made no subsequent
28 purchases between March 26, 2015, and April 15, 2015.

1 (f) “Class Counsel” means the law firm of Scott+Scott Attorneys at Law LLP.

2 (g) “Class Member” means any person or entity that meets the definition of
3 the Class.

4 (h) “Class Notice” means the Notice of Pendency of the Action previously
5 authorized by order of the Court, which was mailed to Class Members beginning on
6 January 9, 2019.

7 (i) “Class Period” means the period from October 16, 2014, through April 15,
8 2015, inclusive.

9 (j) “Class Representatives” means City of Bristol Pension Fund; City of
10 Milford, Connecticut Pension & Retirement Board; Pavers and Road Builders Pension,
11 Annuity and Welfare Funds; City of Newport News Employees’ Retirement Fund; and
12 Massachusetts Laborers’ Pension Fund.

13 (k) “Defendants” means SanDisk Corporation (n/k/a SanDisk LLC and owned
14 by Western Digital), Sanjay Mehrotra, and Judy Bruner.

15 (l) “Defendants’ Counsel” means the law firm of Wilson, Sonsini, Goodrich
16 & Rosati Professional Corporation.

17 (m) “Effective Date” means the date upon which the Settlement shall have
18 become effective, as set forth in ¶37 below.

19 (n) “Escrow Account” means the separate escrow account maintained at
20 Huntington National Bank into which the Settlement Amount will be deposited for the
21 benefit of the Class.

22 (o) “Escrow Agent” means Huntington National Bank.

23 (p) “Fee and Expense Application” means Class Counsel’s application, on
24 behalf of Plaintiffs’ Counsel (defined below), for an award of attorneys’ fees and payment
25 of litigation expenses incurred in prosecuting the case, including reimbursement of any
26 expenses of Class Representatives pursuant to 15 U.S.C. §78u-4(a)(4) of the Private
27 Securities Litigation Reform Act of 1995 (“PSLRA”).

28

1 (q) “Final,” with respect to a court order, means the later of: (i) if there is an
2 appeal from a court order, the date of final affirmance on appeal and the expiration of the
3 time for any further judicial review whether by appeal, reconsideration, or a petition for a
4 *writ of certiorari* and, if *certiorari* is granted, the date of final affirmance of the order
5 following review pursuant to the grant; (ii) the date of final dismissal of any appeal from
6 the order or the final dismissal of any proceeding on *certiorari* to review the order; or (iii)
7 the expiration of the time for the filing or noticing of any appeal or petition for *certiorari*
8 from the order (or, if the date for taking an appeal or seeking review of the order shall be
9 extended beyond this time by order of the issuing court, by operation of law or otherwise,
10 or if such extension is requested, the date of expiration of any extension if any appeal or
11 review is not sought), without any such filing or noticing being made. However, any
12 appeal or proceeding seeking subsequent judicial review pertaining solely to the Plan of
13 Allocation, or to the Court’s award of attorneys’ fees or expenses, shall not in any way
14 delay or affect the time set forth above for the Judgment or Alternative Judgment to
15 become Final or otherwise preclude the Judgment or Alternative Judgment from becoming
16 Final.

17 (r) “Individual Defendants” means Sanjay Mehrotra and Judy Bruner.

18 (s) “Judgment” means the proposed judgment to be entered by the Court
19 approving the Settlement, substantially in the form attached hereto as Exhibit B.

20 (t) “Mediator” means Honorable Layn R. Phillips (Ret.).

21 (u) “Net Settlement Fund” means the Settlement Fund (defined below) less:
22 (i) Court-awarded attorneys’ fees and expenses; (ii) Notice and Administration Expenses
23 (defined below); (iii) Taxes (defined below); and (iv) any other fees or expenses approved
24 by the Court.

25 (v) “Notice and Administration Expenses” means all costs, fees, and expenses
26 incurred in connection with providing notice to the Class and the administration of the
27 Settlement, including, but not limited to: (i) providing Class Notice and the Settlement by
28 mail, publication, and other means to Class Members; (ii) receiving and reviewing claims;

1 (iii) applying the Plan of Allocation; (iv) communicating with Persons (defined below)
2 regarding the Settlement and claims administration process; (v) distributing the proceeds
3 of the Settlement; and (vi) fees related to the Escrow Account and investment of the
4 Settlement Fund.

5 (w) “Person(s)” means any individual, corporation (including all divisions and
6 subsidiaries), general or limited partnership, association, joint stock company, joint
7 venture, limited liability company, professional corporation, estate, legal representative,
8 trust, unincorporated association, government or any political subdivision or agency
9 thereof, and any other business or legal entity.

10 (x) “Plaintiffs’ Counsel” means Scott+Scott Attorneys at Law LLP, Labaton
11 Sucharow LLP, and Cohen Milstein Sellers & Toll PLLC, as well as additional counsel
12 that assisted certain Class Representatives, the Thornton Law Firm and The Corrente Law
13 Corporation.

14 (y) “Plan of Allocation” means the Plan of Allocation for the Net Settlement
15 Fund, which shall be substantially in the form described in the Settlement Notice or any
16 other plan of distributing the Net Settlement Fund, as shall be approved by the Court.

17 (z) “Preliminary Approval Order” means the proposed Order Granting
18 Preliminary Approval of Class Action Settlement, Approving Form and Manner of Notice,
19 and Setting Date for Hearing on Final Approval of Settlement, substantially in the form
20 attached hereto as Exhibit A.

21 (aa) “Proof of Claim” or “Claim Form” means the Proof of Claim and Release
22 form for submitting a claim, which shall be substantially in the form attached as Exhibit
23 A-2 hereto.

24 (bb) “Released Claims” means all claims, demands, losses, rights, and causes
25 of action of any nature whatsoever that have been, or could have been, asserted in the
26 Action or could in the future be asserted in any forum, whether foreign or domestic,
27 whether arising under federal, state, common, or foreign law, by Class Representatives,
28 any member of the Class, or their successors, assigns, executors, administrators,

1 representatives, attorneys, and agents, in their capacities as such, whether brought directly
2 or indirectly against any of the Released Defendants' Parties (defined below), which both:
3 (a) arise out of, are based on, or relate in any way to any of the allegations, acts,
4 transactions, facts, events, matters, occurrences, representations, or omissions involved
5 that are set forth, alleged, or referred to in the Action, or which could have been alleged
6 in the Action; and (b) arise out of, are based on, or relate to the purchase or acquisition of
7 any SanDisk common stock. This means that the Released Claims are only those claims
8 that are based on the identical factual predicate as the securities fraud claims at issue in
9 the Action. Released Claims do not include claims to enforce this Settlement.

10 (cc) "Released Defendants' Claims" means all claims, demands, losses, rights,
11 and causes of action of any nature whatsoever by the Released Defendants' Parties or any
12 of them against Class Representatives, members of the Class, or Plaintiffs' Counsel, which
13 arise out, or relate in any way to, the institution, prosecution, assertion, settlement, or
14 resolution of the Action (except for claims to enforce this Settlement).

15 (dd) "Released Defendants' Parties" means: (i) each Defendant; (ii) each of
16 their respective family members (for individuals) and each of their direct or indirect parent
17 entities, subsidiaries, and related entities and affiliates (including Western Digital); and
18 (iii) for any of the entities listed in parts (i) or (ii), their respective past and present general
19 partners, limited partners, principals, shareholders, joint venturers, members, officers,
20 directors, managers, managing directors, supervisors, employees, contractors, consultants,
21 auditors, accountants, financial advisors, professional advisors, investment bankers,
22 representatives, insurers, trustees, trustors, agents, attorneys, professionals, predecessors,
23 successors, assigns, heirs, executors, administrators, and any controlling person thereof,
24 in their capacities as such.

25 (ee) "Released Parties" means the Released Defendants' Parties and Released
26 Plaintiffs' Parties (defined below).

27 (ff) "Released Plaintiffs' Parties" means: (i) Class Representatives and the
28 members of the Class; and (ii) each of their respective family members and their respective

1 general partners, limited partners, principals, shareholders, joint venturers, members,
2 officers, directors, managers, managing directors, supervisors, employees, contractors,
3 consultants, auditors, accountants, financial advisors, professional advisors, investment
4 bankers, representatives, insurers, trustees, trustors, agents, attorneys, professionals,
5 predecessors, successors, assigns, heirs, executors, administrators, and any controlling
6 person thereof, in their capacities as such.

7 (gg) “Settlement” means the resolution of the Action in accordance with the
8 terms and provisions of this Stipulation.

9 (hh) “Settlement Amount” means the total principal amount of fifty million
10 U.S. dollars (\$50,000,000).

11 (ii) “Settlement Fund” means the Settlement Amount and any interest earned
12 thereon.

13 (jj) “Settlement Hearing” means the final hearing to be held by the Court to
14 determine whether: (i) the Settlement is fair, reasonable, and adequate and should be
15 approved; (ii) the Plan of Allocation is fair, reasonable, and adequate and should be
16 approved; and (iii) Class Counsel’s request for an award of attorneys’ fees and expenses
17 should be approved.

18 (kk) “Settlement Notice” means the Notice of Proposed Class Action
19 Settlement and Motion for Attorneys’ Fees and Expenses, which is to be provided to Class
20 Members and shall be substantially in the form attached hereto as Exhibit A-1.

21 (ll) “Stipulation” means this Stipulation and Agreement of Settlement.

22 (mm) “Summary Settlement Notice” means the Summary Notice of Proposed
23 Class Action Settlement and Motion for Attorneys’ Fees and Expenses for publication,
24 which shall be substantially in the form attached as Exhibit A-3.

25 (nn) “Taxes” means all federal, state, or local taxes of any kind on any income
26 earned by the Settlement Fund and the expenses and costs incurred in connection with the
27 taxation of the Settlement Fund (including, without limitation, interest, penalties, and the
28 reasonable expenses of tax attorneys and accountants).

1 **SCOPE AND EFFECT OF SETTLEMENT**

2 2. The obligations incurred pursuant to the Stipulation are: (a) subject to approval by
3 the Court and the Judgment, or Alternative Judgment, reflecting such approval becoming Final;
4 and (b) in full and final disposition of the Action, with respect to the Released Parties and any
5 and all Released Claims and Released Defendants' Claims.

6 3. By operation of the Judgment or Alternative Judgment, as of the Effective Date,
7 Class Representatives and each and every other Class Member, on behalf of themselves and each
8 of their respective heirs, executors, trustees, administrators, predecessors, successors, assigns,
9 representatives, agents, and attorneys, in their capacities as such, shall be deemed to have fully,
10 finally, and forever waived, compromised, settled, discharged, dismissed, extinguished, and
11 released each and every one of the Released Claims against each and every one of the Released
12 Defendants' Parties and shall forever be barred from commencing, instituting, prosecuting, or
13 maintaining any and all of the Released Claims against any and all of the Released Defendants'
14 Parties.

15 4. By operation of the Judgment or Alternative Judgment, as of the Effective Date,
16 Defendants, on behalf of themselves and each of their respective heirs, executors, trustees,
17 administrators, predecessors, successors, assigns, representatives, agents, and attorneys, in their
18 capacities as such, shall be deemed to have fully, finally, and forever waived, compromised,
19 settled, discharged, dismissed, extinguished, and released each and every one of the Released
20 Defendants' Claims against each and every one of the Released Plaintiffs' Parties and shall
21 forever be barred from commencing, instituting, prosecuting, or maintaining any and all of the
22 Released Defendants' Claims against any and all of the Released Plaintiffs' Parties.

23 **THE SETTLEMENT CONSIDERATION**

24 5. In full settlement of the claims asserted in the Action against Defendants and in
25 consideration of the releases specified in ¶¶3-4 above, all of which the Parties agree are good and
26 valuable consideration, Defendants agree to cause the Settlement Amount to be paid into the
27 Escrow Account within thirty (30) calendar days after the later of: (i) entry of the Preliminary
28 Approval Order; or (ii) Class Counsel's provision to Defendants' Counsel information necessary

1 to effectuate a transfer of funds to the Escrow Account, including, but not limited to, wire transfer
2 instructions, payment address, and a complete and executed Form W-9 for the Settlement Fund
3 that reflects a valid tax identification number.

4 6. With the sole exception of Defendants' obligation to secure payment of the
5 Settlement Amount into the Escrow Account, as provided for in ¶5, their obligations pursuant to
6 ¶52, and SanDisk's obligation pursuant to ¶35, Defendants and Defendants' Counsel shall have
7 no responsibility for, interest in, or liability whatsoever with respect to: (i) any act, omission, or
8 determination by Class Counsel or the Claims Administrator, or any of their respective designees,
9 in connection with the administration of the Settlement or otherwise; (ii) the management,
10 investment, or distribution of the Settlement Fund; (iii) the Plan of Allocation; (iv) the
11 determination, administration, calculation, or payment of any claims asserted against the
12 Settlement Fund; (v) any loss suffered by, or fluctuation in value of, the Settlement Fund; or
13 (vi) the payment or withholding of any Taxes, expenses, and/or costs incurred in connection with
14 the taxation of the Settlement Fund, distributions, or other payments from the Escrow Account,
15 or the filing of any federal, state, or local returns.

16 7. Other than the obligation to cause the payment of the Settlement Amount pursuant
17 to ¶5, Defendants shall have no obligation to make any other payments into the Escrow Account
18 or to any Class Member pursuant to this Stipulation.

19 **USE AND TAX TREATMENT OF SETTLEMENT FUND**

20 8. The Settlement Fund shall be used to pay: (i) any Taxes; (ii) Notice and
21 Administration Expenses; (iii) any attorneys' fees and expenses awarded by the Court; (iv) any
22 costs and expenses allowed by the PSLRA and awarded to Class Representatives by the Court;
23 (v) any other fees and expenses ordered by the Court; and (vi) the claims of Authorized Claimants.

24 9. The Net Settlement Fund shall be distributed to Authorized Claimants as provided
25 in ¶¶20-33 hereof. The Net Settlement Fund shall remain in the Escrow Account before the
26 Effective Date. All funds held in the Escrow Account, and all earnings thereon, shall be deemed
27 to be in the custody of the Court and shall remain subject to the jurisdiction of the Court until
28 such time as the funds shall have been disbursed or returned, pursuant to the terms of this

1 Stipulation, and/or further order of the Court. The Settlement Fund shall be invested exclusively
2 in accounts backed by the full faith and credit of the U.S. government or fully insured by the U.S.
3 government or an agency thereof, including a U.S. Treasury fund or a bank account that is either:
4 (a) fully insured by the Federal Deposit Insurance Corporation (“FDIC”); or (b) secured by
5 instruments backed by the full faith and credit of the U.S. government. The proceeds of these
6 accounts shall be reinvested in similar instruments at their then-current market rates as they
7 mature. All risks related to the investment of the Settlement Fund in accordance with the
8 investment guidelines set forth in this paragraph shall be borne by the Settlement Fund.

9 10. After the Settlement Amount has been paid into the Escrow Account, the Parties
10 agree to treat the Settlement Fund as a “qualified settlement fund” within the meaning of Treas.
11 Reg. §1.468B-1. In addition, Class Counsel shall timely make, or cause to be made, such
12 elections, as necessary or advisable, to carry out the provisions of this ¶10, including the “relation-
13 back election” (as defined in Treas. Reg. §1.468B-1) back to the earliest permitted date. Such
14 election shall be made in compliance with the procedures and requirements contained in such
15 regulations. It shall be the responsibility of Class Counsel to timely and properly prepare and
16 deliver, or cause to be prepared and delivered, the necessary documentation for signature by all
17 necessary parties, and thereafter take all such actions as may be necessary or appropriate to cause
18 the appropriate filing(s) to occur. Consistent with the foregoing:

19 (a) For the purposes of §468B of the Internal Revenue Code of 1986, as
20 amended, and Treas. Reg. §1.468B promulgated thereunder, the “administrator” shall be
21 Class Counsel or their successors, who shall timely and properly file, or cause to be filed,
22 all federal, state, or local tax returns and information returns (together, “Tax Returns”), as
23 necessary or advisable, with respect to the earnings on the funds deposited in the Escrow
24 Account (including, without limitation, the returns described in Treas. Reg. §1.468B-
25 2(k)). Such Tax Returns (as well as the election described above) shall be consistent with
26 this subparagraph and in all events shall reflect that all Taxes (including any estimated
27 taxes, earnings, or penalties) on the income earned on the funds deposited in the Escrow
28 Account shall be paid out of such funds as provided in subparagraph (c) of this ¶10;

1 (b) All Taxes shall be paid out of the Settlement Fund. In all events,
2 Defendants and Defendants' Counsel shall have no liability or responsibility whatsoever
3 for the Taxes or the filing of any tax return or other document with the Internal Revenue
4 Service or any other state or local taxing authority. In the event any Taxes are owed by
5 any of the Defendants on any earnings on the funds accrued after the funds are on deposit
6 in the Escrow Account, such amounts shall also be paid out of the Settlement Fund. Any
7 Taxes or Tax expenses owed on any earnings on the Settlement Amount accrued before
8 their transfer to the Escrow Account shall be the sole responsibility of the entities that
9 make the deposit; and

10 (c) Taxes shall be treated as, and considered to be, a cost of administration of
11 the Settlement and shall be timely paid, or caused to be paid, by Class Counsel out of the
12 Settlement Fund, without prior order from the Court or approval by Defendants, and Class
13 Counsel shall be obligated (notwithstanding anything herein to the contrary) to withhold
14 from distribution to Authorized Claimants any funds necessary to pay such amounts (as
15 well as any amounts that may be required to be withheld under Treas. Reg. §1.468B-
16 2(1)(2)). The Parties agree to cooperate with Class Counsel, each other, and their tax
17 attorneys and accountants to the extent reasonably necessary to carry out the provisions
18 of this ¶10.

19 11. This is not a claims-made settlement. As of the Effective Date, Defendants, and/or
20 any other Person funding the Settlement on a Defendant's behalf, shall not have any right to the
21 return of the Settlement Fund or any portion thereof for any reason.

22 **ATTORNEYS' FEES AND EXPENSES**

23 12. Class Counsel, on behalf of Plaintiffs' Counsel, will apply to the Court for an
24 award from the Settlement Fund of attorneys' fees and payment of litigation expenses incurred in
25 prosecuting the Action, including reimbursement to Class Representatives pursuant to the
26 PSLRA, with earnings on such amounts at the same rate and for the same periods as earned by
27 the Settlement Fund. Class Counsel reserves the right to make additional applications for fees
28 and expenses incurred.

1 13. The amount of attorneys' fees and expenses awarded by the Court is within the
2 sole discretion of the Court. Any attorneys' fees and expenses awarded by the Court shall be paid
3 from the Settlement Fund to Class Counsel immediately after entry of the Judgment (or
4 Alternative Judgment) and order awarding such attorneys' fees and expenses, notwithstanding
5 the existence of any timely filed objections thereto or to the Settlement, or potential for appeal
6 therefrom, or collateral attack on the awarded fees and expenses, the Settlement, or any part
7 thereof, or as otherwise ordered by the Court. Class Counsel shall allocate any Court-awarded
8 attorneys' fees and expenses among Plaintiffs' Counsel.

9 14. Any payment of attorneys' fees and expenses pursuant to ¶¶12-13 above shall be
10 subject to Class Counsel's obligation to make refunds or repayments to the Settlement Fund of
11 any paid amounts, plus accrued earnings at the same net rate as is earned by the Settlement Fund,
12 if the Settlement is terminated pursuant to the terms of this Stipulation or fails to become effective
13 for any reason, or if, as a result of any appeal or further proceedings on remand or successful
14 collateral attack, the award of attorneys' fees and/or expenses is reduced or reversed by Final non-
15 appealable court order. Class Counsel shall make the appropriate refund or repayment in full no
16 later than fourteen (14) calendar days after receiving notice of the termination of the Settlement
17 pursuant to this Stipulation, notice from a court of appropriate jurisdiction of the disapproval of
18 the Settlement by Final non-appealable court order, or notice of any reduction or reversal of the
19 award of attorneys' fees and/or expenses by Final non-appealable court order.

20 15. With the sole exception of Defendants' obligation to pay the Settlement Amount
21 into the Escrow Account as provided for in ¶5, Defendants shall have no responsibility for, and
22 no liability whatsoever with respect to, any payment whatsoever to Plaintiffs' Counsel in the
23 Action that may occur at any time.

24 16. Defendants shall have no responsibility for, and no liability whatsoever with
25 respect to, any allocation of any attorneys' fees or expenses among Plaintiffs' Counsel in the
26 Action, or to any other Person who may assert some claim thereto, or any fee or expense awards
27 the Court may make in the Action.

1 17. Defendants shall have no responsibility for, and no liability whatsoever with
2 respect to, any attorneys' fees, costs, or expenses incurred by or on behalf of Class Members,
3 whether or not paid from the Escrow Account. The Settlement Fund will be the sole source of
4 payment from Defendants for any award of attorneys' fees and expenses ordered by the Court.

5 18. The procedure for and the allowance or disallowance by the Court of any Fee and
6 Expense Application are not part of the Settlement set forth in this Stipulation and are separate
7 from the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement
8 set forth in this Stipulation, and any order or proceeding relating to any Fee and Expense
9 Application, including an award of attorneys' fees or expenses in an amount less than the amount
10 requested by Class Counsel, or any appeal from any order relating thereto, or reversal or
11 modification thereof, shall not operate to terminate or cancel the Stipulation, or affect or delay
12 the finality of the Judgment or Alternative Judgment approving the Stipulation and the Settlement
13 set forth herein. Class Representatives and Class Counsel may not cancel or terminate the
14 Stipulation or the Settlement in accordance with ¶¶38-42 or otherwise based on the Court's, or
15 any appellate court's, ruling with respect to fees and expenses in the Action.

16 **ADMINISTRATION EXPENSES**

17 19. Before the Effective Date, without further approval from Defendants or further
18 order of the Court, Class Counsel may use the Settlement Fund to pay Notice and Administration
19 Expenses actually incurred. Taxes and fees related to the Escrow Account and investment of the
20 Settlement Fund may be paid as incurred, without further approval of Defendants or further order
21 of the Court. After the Effective Date, without approval of Defendants or further order of the
22 Court, Notice and Administration Expenses may be paid as incurred.

23 **DISTRIBUTION TO AUTHORIZED CLAIMANTS**

24 20. Except as otherwise provided herein, the Net Settlement Fund shall be held in the
25 Escrow Account until the Effective Date.

26 21. The Claims Administrator, subject to such supervision and direction of Class
27 Counsel and/or the Court as may be necessary or as circumstances may require, shall administer
28 and calculate the claims submitted by Class Members subject to the jurisdiction of the Court and

1 shall oversee distribution of the Net Settlement Fund to Authorized Claimants. Defendants and
2 Defendants' Counsel shall have no responsibility for (except as stated in ¶¶5 and 35 hereof),
3 interest in, or liability whatsoever with respect to the administration of the Settlement or the
4 actions or decisions of the Claims Administrator and shall have no liability to the Class in
5 connection with such administration.

6 22. The Claims Administrator shall determine each Authorized Claimant's *pro rata*
7 share of the Net Settlement Fund based upon each Authorized Claimant's recognized loss, as
8 defined in the Plan of Allocation included in the Settlement Notice, or in such other plan of
9 allocation as the Court may approve.

10 23. Defendants have no role in the development of the Plan of Allocation. The Plan
11 of Allocation is a matter separate and apart from the Settlement, and any decision by the Court
12 concerning the Plan of Allocation shall not affect the validity or finality of the proposed
13 Settlement. The Plan of Allocation is not a necessary term of the Stipulation and it is not a
14 condition of the Stipulation that any particular plan of allocation be approved by the Court. Class
15 Representatives and Class Counsel may not cancel or terminate the Stipulation or Settlement in
16 accordance with ¶38 or otherwise based on the Court's, or any appellate court's, ruling with
17 respect to the Plan of Allocation or any plan of allocation in the Action. Defendants and
18 Defendants' Counsel shall have no responsibility or liability for reviewing or challenging claims,
19 the allocation of the Net Settlement Fund, or the distribution of the Net Settlement Fund.

20 24. Upon the Effective Date and thereafter, and in accordance with the terms of the
21 Stipulation, Plan of Allocation, or such further approval and further order(s) of the Court as may
22 be necessary or as circumstances may require, the Net Settlement Fund shall be distributed to
23 Authorized Claimants.

24 25. If there is any balance remaining in the Net Settlement Fund (whether by reason
25 of tax refunds, uncashed checks, or otherwise) after at least four (4) months from the date of initial
26 distribution of the Net Settlement Fund, Class Counsel shall, if feasible and economical,
27 redistribute such balance among Authorized Claimants who have cashed their checks in an
28 equitable and economic fashion. These redistributions shall be repeated until the balance in the

1 Net Settlement Fund is no longer feasible to distribute to Class Members. Any balance that still
2 remains in the Net Settlement Fund after re-distribution(s), which is not feasible or economical
3 to reallocate, after payment of Notice and Administration Expenses, Taxes, and attorneys' fees
4 and expenses, shall be donated in equal amounts to the Consumer Federation of America and the
5 Council of Institutional Investors.

6 **ADMINISTRATION OF THE SETTLEMENT**

7 26. Any Class Member who fails to timely submit a valid Proof of Claim (substantially
8 in the form of Exhibit A-2) will not be entitled to receive any of the proceeds from the Net
9 Settlement Fund, except as otherwise ordered by the Court, but will otherwise be bound by all of
10 the terms of this Stipulation and the Settlement, including the terms of the Judgment or Alternative
11 Judgment to be entered in the Action and all releases provided for herein, and will be barred from
12 bringing any action against the Released Defendants' Parties concerning the Released Claims.

13 27. Class Counsel shall be responsible for supervising the administration of the
14 Settlement and disbursement of the Net Settlement Fund by the Claims Administrator. Class
15 Counsel shall have the right, but not the obligation, to advise the Claims Administrator to waive
16 what Class Counsel deem to be *de minimis* or formal or technical defects in any Proof of Claim
17 submitted. Defendants and Defendants' Counsel shall have no liability, obligation, or
18 responsibility for the administration of the Settlement, the allocation of the Net Settlement Fund,
19 or the reviewing or challenging of claims of Class Members.

20 28. For purposes of determining the extent, if any, to which a claimant shall be entitled
21 to be treated as an Authorized Claimant, the following conditions shall apply:

22 (a) Each claimant shall be required to submit a Proof of Claim, substantially
23 in the form attached hereto as Exhibit A-2, supported by such documents as are designated
24 therein, including proof of the claimant's loss, or such other documents or proof as the
25 Claims Administrator or Class Counsel, in their discretion, may deem acceptable;

26 (b) All Proofs of Claim must be submitted by the date set by the Court in the
27 Preliminary Approval Order and specified in the Settlement Notice, unless such deadline
28 is extended by Class Counsel in their discretion or by order of the Court. Any Class

1 Member who fails to submit a Proof of Claim by such date shall be barred from receiving
2 any distribution from the Net Settlement Fund or payment pursuant to this Stipulation
3 (unless, by order of the Court or the discretion of Class Counsel, late-filed Proofs of Claim
4 are accepted), but shall, in all other respects, be bound by all of the terms of this Stipulation
5 and the Settlement, including the terms of the Judgment or Alternative Judgment and all
6 releases provided for herein, and will be permanently barred from bringing any action,
7 claim, or other proceeding of any kind against any Released Defendants' Party. A Proof
8 of Claim shall be deemed to be submitted when mailed, if received with a postmark on
9 the envelope and if mailed by first-class or overnight U.S. mail and addressed in
10 accordance with the instructions thereon. In all other cases, the Proof of Claim shall be
11 deemed to have been submitted when actually received by the Claims Administrator.
12 Notwithstanding the foregoing, Class Counsel shall have the discretion (but not the
13 obligation) to accept for processing late-submitted claims, so long as the distribution of
14 the Net Settlement Fund to Authorized Claimants is not materially delayed. Class Counsel
15 shall have no liability for their discretion in accepting late claims;

16 (c) Each Proof of Claim shall be submitted to and reviewed by the Claims
17 Administrator, under such supervision of Class Counsel, as necessary, who shall
18 determine in accordance with this Stipulation the extent, if any, to which each claim shall
19 be allowed;

20 (d) Proofs of Claim that do not meet the submission requirements may be
21 rejected. Before rejecting a Proof of Claim in whole or in part, the Claims Administrator
22 shall communicate with the claimant in writing to give the claimant the chance to remedy
23 any curable deficiencies in the Proof of Claim submitted. The Claims Administrator,
24 under such supervision of Class Counsel, as necessary, shall notify, in a timely fashion
25 and in writing, all claimants whose claims the Claims Administrator proposes to reject in
26 whole or in part for curable deficiencies, setting forth the reasons therefor and shall
27 indicate in such notice that the claimant whose claim is to be rejected has the right to a
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1 review by the Court if the claimant so desires and complies with the requirements of
2 subparagraph (e) below; and

3 (e) If any claimant whose timely claim has been rejected in whole or in part
4 for curable deficiency desires to contest such rejection, the claimant must, within twenty
5 (20) calendar days after the date of mailing of the notice required in subparagraph (d)
6 above, or a lesser period of time if the claim was untimely, serve upon the Claims
7 Administrator a notice and statement of reasons indicating the claimant's grounds for
8 contesting the rejection, along with any supporting documentation, and requesting a
9 review thereof by the Court.

10 29. Each claimant who submits a Proof of Claim shall be deemed to have submitted
11 to the jurisdiction of the Court with respect to the claimant's claim, including, but not limited to,
12 all releases provided for herein and in the Judgment or Alternative Judgment, and the claim will
13 be subject to investigation and discovery under the Federal Rules of Civil Procedure, provided
14 that such investigation and discovery shall be limited to the claimant's status as a Class Member
15 and the validity and amount of the claimant's claim. In connection with processing the Proofs of
16 Claim, no discovery shall be allowed on the merits of the Action or the Settlement.

17 30. Payment pursuant to the Stipulation and Plan of Allocation shall be deemed final
18 and conclusive against any and all Class Members. All Class Members whose claims are not
19 approved shall be barred from participating in distributions from the Net Settlement Fund, but
20 otherwise shall be bound by all of the terms of this Stipulation and the Settlement, including the
21 terms of the Judgment or Alternative Judgment to be entered in the Action, and the releases
22 provided for herein and therein, and will be barred from bringing any action against the Released
23 Defendants' Parties concerning the Released Claims.

24 31. All proceedings with respect to the administration, processing, and determination
25 of claims described by this Stipulation, and the determination of all controversies relating thereto,
26 including disputed questions of law and fact with respect to the validity of claims, shall be subject
27 to the jurisdiction of the Court, but shall not, in any event, delay or affect the finality of the
28 Judgment or Alternative Judgment.

1 (a) entry of the Preliminary Approval Order, which shall be in all material
2 respects substantially in the form set forth in Exhibit A annexed hereto;

3 (b) payment of the Settlement Amount into the Escrow Account pursuant to ¶5;

4 (c) approval by the Court of the Settlement, following notice to the Class and
5 the Settlement Hearing, as prescribed by Fed. R. Civ. P. 23; and

6 (d) a Judgment, which shall be in all material respects substantially in the form
7 set forth in Exhibit B annexed hereto, will have been entered by the Court, and will have
8 become Final; or in the event that an Alternative Judgment will have been entered, the
9 Alternative Judgment will have become Final.

10 **WAIVER OR TERMINATION**

11 38. Defendants and Class Representatives shall have the right to terminate the
12 Settlement and Stipulation by providing written notice of their election to do so (“Termination
13 Notice”), through counsel, to all other Parties hereto within fourteen (14) calendar days of: (i) the
14 Court’s Final refusal to enter the Preliminary Approval Order in any material respect; (ii) the
15 Court’s Final refusal to approve this Stipulation or any material part of it; (iii) the Court’s Final
16 refusal to enter the Judgment in any material respect; (iv) the Court’s Final refusal to enter an
17 Alternative Judgment in any material respect; or (v) the date upon which the Judgment or
18 Alternative Judgment is modified or reversed in any material respect by a Final order of the Court,
19 the United States Court of Appeals for the Ninth Circuit, or the Supreme Court of the United
20 States. For the avoidance of doubt, Class Representatives shall not have the right to terminate the
21 Settlement due to any decision, ruling, or order relating to the Fee and Expense Application or
22 any plan of allocation.

23 39. In addition to the foregoing, Defendants shall also have the right to withdraw from
24 the Settlement in the event the Termination Threshold (defined below) has been reached.

25 (a) Simultaneously herewith, Defendants’ Counsel and Class Counsel are
26 executing a confidential Supplemental Agreement Regarding Requests for Exclusion
27 (“Supplemental Agreement”). The Supplemental Agreement sets forth certain conditions
28 under which Defendants shall have the option to terminate the Settlement and render the

1 Stipulation null and void in the event that requests for exclusion from the Class exceed
2 certain agreed-upon criteria (the “Termination Threshold”). The Parties agree to maintain
3 the confidentiality of the Supplemental Agreement, which shall not be filed with the Court
4 unless a dispute arises as to its terms, or as otherwise ordered by the Court, nor shall the
5 Supplemental Agreement otherwise be disclosed unless ordered by the Court. If
6 submission of the Supplemental Agreement is required for resolution of a dispute or is
7 otherwise ordered by the Court, the Parties will use their best reasonable efforts to have
8 the Supplemental Agreement submitted to the Court *in camera* or under seal. In the event
9 of a termination of the Settlement pursuant to the Supplemental Agreement, the
10 Stipulation shall become null and void and of no further force and effect, with the
11 exception of the provisions of ¶¶46-47 which shall continue to apply.

12 40. The Preliminary Approval Order, attached hereto as Exhibit A, shall provide that
13 requests for exclusion shall be received no later than twenty-one (21) calendar days before the
14 Settlement Hearing (“Notice Date”). Upon receiving any request for exclusion pursuant to the
15 Settlement Notice, the Claims Administrator shall promptly, and no later than fifteen (15)
16 calendar days before the Settlement Hearing, notify Class Counsel and Defendants’ Counsel of
17 such request for exclusion and provide copies of such request for exclusion, and any
18 documentation accompanying it, by email.

19 41. In addition to all of the rights and remedies that Class Representatives have under
20 the terms of this Stipulation, Class Representatives shall also have the right to terminate the
21 Settlement in the event that the Settlement Amount has not been paid in the time period provided
22 for in ¶5 above, by providing written notice of the election to terminate to all other Parties’ counsel
23 and, thereafter, there is a failure to pay the Settlement Amount within fourteen (14) calendar days
24 of such written notice.

25 42. If, before the Settlement becomes Final, any Defendant files for protection under
26 the Bankruptcy Code, or any similar law, or a trustee, receiver, conservator, or other fiduciary is
27 appointed under Bankruptcy, or any similar law, and in the event of the entry of a final order of a
28 court of competent jurisdiction determining the transfer of money or any portion thereof to the

1 Settlement Fund by or on behalf of such Defendant to be a preference, voidable transfer,
2 fraudulent transfer, or similar transaction, and any portion thereof is required to be returned, and
3 such amount is not promptly deposited into the Settlement Fund by others, then, at the election of
4 Class Representatives, the Parties shall jointly move the Court to vacate and set aside the release
5 given and the Judgment or Alternative Judgment entered in favor of that Defendant or all
6 Defendants, and that Defendant or all Defendants, Class Representatives, and the members of the
7 Class shall be restored to their litigation positions as of March 8, 2019. All releases and the
8 Judgment or Alternative Judgment as to other Defendants shall remain unaffected.

9 43. Defendants each warrant, as to themselves and the payments made on their
10 behalves, that, at the time of such payment, they will not be insolvent, nor will payment render
11 them insolvent, within the meaning of and/or for the purposes of the U.S. Bankruptcy Code,
12 including §§101 and 547 thereof.

13 44. If an option to withdraw from and terminate this Stipulation and Settlement arises
14 under any of ¶¶38-42 above: (i) neither Defendants nor Class Representatives (as the case may
15 be) will be required for any reason or under any circumstance to exercise that option; and (ii) any
16 exercise of that option shall be made in good faith, but in the sole and unfettered discretion of
17 Defendants or Class Representatives, as applicable.

18 45. With the exception of the provisions of ¶¶46-47, which shall continue to apply, in
19 the event the Settlement is terminated, as set forth herein, or cannot become effective for any
20 reason, then the Settlement shall be without prejudice and none of its terms shall be effective or
21 enforceable, except as specifically provided herein; the Parties shall be deemed to have reverted
22 to their respective litigation positions in the Action as of March 8, 2019; and, except as
23 specifically provided herein, the Parties shall proceed in all respects as if this Stipulation and any
24 related order had not been entered. In such event, this Stipulation, and any aspect of the
25 discussions or negotiations leading to this Stipulation, shall not be admissible in this Action and
26 shall not be used against or to the prejudice of Defendants or against or to the prejudice of Class
27 Representatives, in any court filing, deposition, at trial, or otherwise.

1 statement or written document approved or made by Defendants, or against or to the
2 prejudice of Class Representatives, or any other member of the Class, as evidence of any
3 infirmity in the claims of Class Representatives, or the other members of the Class;

4 (c) do not constitute, and shall not be offered or received against or to the
5 prejudice of Defendants, the Released Defendants' Parties, Class Representatives, the
6 Released Plaintiffs' Parties, any other member of the Class, or their respective counsel, as
7 evidence of a presumption, concession, or admission, with respect to any liability,
8 damages, negligence, fault, infirmity, or wrongdoing, or in any way referred to for any
9 other reason against, or to the prejudice of, any of the Defendants, the Released
10 Defendants' Parties, Class Representatives, the Released Plaintiffs' Parties, any other
11 member of the Class, or their respective counsel, in any other civil, criminal, or
12 administrative action or proceeding, other than such proceedings as may be necessary to
13 effectuate the provisions of this Stipulation;

14 (d) do not constitute, and shall not be construed against Defendants, the
15 Released Defendants' Parties, Class Representatives, the Released Plaintiffs' Parties, or
16 any other member of the Class, as an admission or concession that the consideration to be
17 given hereunder represents the amount that could be, or would have been, recovered after
18 trial; and

19 (e) do not constitute, and shall not be construed as or received in evidence, as
20 an admission, concession, or presumption against Class Representatives, the Released
21 Plaintiffs' Parties, or any other member of the Class, that any of their claims are without
22 merit or infirm or that damages recoverable under the SAC would not have exceeded the
23 Settlement Amount.

24 48. Notwithstanding ¶47 above, the Parties, and their respective counsel, may file this
25 Stipulation and/or the Judgment or Alternative Judgment in any action that may be brought
26 against them in order to support a defense or counterclaim based on principles of *res judicata*,
27 collateral estoppel, release, statute of limitations, statute of repose, good-faith settlement,
28 judgment bar or reduction, or any theory of claim preclusion or issue preclusion or similar defense

1 or counterclaim, or to effectuate any liability protection granted them under any applicable
2 insurance policy. The Parties may file this Stipulation and/or the Judgment or Alternative
3 Judgment in any action that may be brought to enforce the terms of this Stipulation and/or the
4 Judgment or Alternative Judgment. All Parties submit to the jurisdiction of the Court for purposes
5 of implementing and enforcing the Settlement.

6 **MISCELLANEOUS PROVISIONS**

7 49. All of the exhibits to the Stipulation, and the Supplemental Agreement, are
8 material and integral parts hereof and fully incorporated herein by this reference.

9 50. The Parties intend the Settlement to be the full, final, and complete resolution of
10 all claims asserted, or that could have been asserted, by the Parties with respect to the Released
11 Claims and Released Defendants' Claims. Accordingly, the Parties agree not to assert in any
12 forum that the Action was brought, prosecuted, or defended in bad faith or without a reasonable
13 basis. The Parties and their respective counsel agree that each has complied fully with Fed. R.
14 Civ. P. 11 in connection with the maintenance, prosecution, defense, and settlement of the Action
15 and shall not make any application for sanctions, pursuant to Rule 11 or other court rule or statute,
16 with respect to any claim or defense in this Action. The Judgment shall contain a finding that the
17 Parties and their counsel, at all times, complied with Rule 11. The Parties agree that the amount
18 paid and the other terms of the Settlement were negotiated at arm's-length and in good faith by
19 the Parties and their respective counsel and reflect a settlement that was reached voluntarily based
20 upon adequate information and after consultation with experienced legal counsel.

21 51. This Stipulation, along with its exhibits and the Supplemental Agreement, may not
22 be modified or amended, nor may any of its provisions be waived, except by a writing signed by
23 counsel for the Parties hereto.

24 52. Defendants shall be responsible for, and shall pay for, at no cost to the Class,
25 timely service of any notice that might be required pursuant to the Class Action Fairness Act, 28
26 U.S.C. §1715.

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

1 54. The administration and consummation of the Settlement, as embodied in this
2 Stipulation, shall be under the authority of the Court, and the Court shall retain jurisdiction for
3 the purpose of entering orders providing for awards of attorneys' fees and any expenses and
4 implementing and enforcing the terms of this Stipulation.

5 55. The waiver by one Party of any breach of this Stipulation by any other Party shall
6 not be deemed a waiver of any other prior or subsequent breach of this Stipulation.

7 56. This Stipulation, its exhibits, and the Supplemental Agreement constitute the
8 entire agreement among the Parties concerning the Settlement, as against the Defendants, and no
9 representation, warranty, or inducement has been made by any Party concerning this Stipulation
10 and its exhibits other than those contained and memorialized in such documents.

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

14 58. Without further order of the Court, the Parties may agree to reasonable extensions
15 of time to carry out any of the provisions of this Stipulation.

16 59. All designations and agreements made, or orders entered during the course of the
17 Action relating to the confidentiality of documents or information shall survive this Stipulation.

18 60. This Stipulation may be executed in one or more counterparts. All executed
19 counterparts and each of them shall be deemed to be one and the same instrument. Signatures
20 sent by facsimile or via e-mail in pdf format shall be deemed originals.

21 61. This Stipulation shall be binding when signed, but the Settlement shall be effective
22 upon the entry of the Judgment or Alternative Judgment and the payment in full of the Settlement
23 Amount, subject only to the condition that the Effective Date will have occurred.

24 62. This Stipulation shall be binding upon, and inure to the benefit of, the successors
25 and assigns of the Parties.

26 63. The construction, interpretation, operation, effect, and validity of this Stipulation,
27 and all documents necessary to effectuate it, shall be governed by the laws of the state of
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1 California, without regard to conflicts of laws, except to the extent that federal law requires that
2 federal law govern.

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

8 65. All counsel and any other person executing this Stipulation and any of the exhibits
9 hereto, or any related Settlement document, warrant and represent that they have the full authority
10 to do so, and that they have the authority to take appropriate action required or permitted to be
11 taken pursuant to the Stipulation to effectuate its terms.

12 66. The Parties and their respective counsel agree to cooperate fully with one another
13 in promptly applying for preliminary approval by the Court of the Settlement and for the
14 scheduling of a hearing for consideration of Final approval of the Settlement, the Plan of
15 Allocation, and Class Counsel's Fee and Expense Application, and to agree promptly upon and
16 execute all such other documentation, as reasonably may be required, to obtain Final approval by
17 the Court of the Settlement.

18 67. Except as otherwise provided herein, each Party shall bear its own costs.

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[SIGNATURES TO FOLLOW]

