

1 Lynn Lincoln Sarko (Admitted Pro Hac Vice)
2 lsarko@kellerrohrback.com
3 Derek W. Loeser (Admitted Pro Hac Vice)
4 dloeser@kellerrohrback.com
5 T. David Copley (Admitted Pro Hac Vice)
6 dcopley@kellerrohrback.com
7 Sarah H. Kimberly (Admitted Pro Hac Vice)
8 skimberly@kellerrohrback.com
9 KELLER ROHRBACK L.L.P.
10 1201 Third Avenue, Suite 3200
11 Seattle, WA 98101-3052
12 Tel: (206) 623-1900 • Fax: (206) 623-3384

13 ***Class Counsel***

14 Michael C. Lieb (SBN 126831)
15 mlieb@willenken.com
16 Leemore L. Kushner (SBN 221969)
17 lkushner@willenken.com
18 WILLENKEN WILSON LOH & LIEB, LLP
19 707 Wilshire Blvd., Suite 3850
20 Los Angeles, CA 90017
21 Tel: 213-955-8023 • Fax: 213-955-9250

22 ***Counsel for Defendants***

23 **Additional counsel listed on signature page*

24 UNITED STATES DISTRICT COURT
25 FOR THE CENTRAL DISTRICT OF CALIFORNIA

26 **IN RE FREMONT GENERAL
27 CORPORATION LITIGATION**

28 **CASE No.: CV07-02693 JHN(FFMx)**

**STIPULATION AND AGREEMENT
OF SETTLEMENT – ERISA CLASS
ACTION**

**Judge: HON. JACQUELINE HONG-NOC
NGUYEN**

1 Subject to the approval of the *Court* pursuant to Rule 23(e) of the Federal
2 Rules of Civil Procedure, Class Representatives Marcy Johannesson, Wendy
3 Horvat, Robert Anderson, Linda Sullivan, and James K. Hopkins ("*Named*
4 *Plaintiffs*"), individually and on behalf of themselves and the certified Class, enter
5 into this Stipulation and Agreement ("*Stipulation*") with Fremont General
6 Corporation, Wayne R. Bailey, Thomas W. Hayes, Patrick E. Lamb, Robert F.
7 Lewis, Russell K. Mayerfeld, James McIntyre, Raymond G. Meyers, Louis J.
8 Rampino, and Dickinson C. Ross ("*Defendants*") to settle this *Action* on, and
9 subject to, the terms and conditions below.

10 **RECITALS**

11 WHEREAS, *Named Plaintiffs* commenced independent actions against
12 *Defendants*, asserting various claims for relief under the Employee Retirement
13 Income Security Act of 1974, as amended ("*ERISA*"), all of which claims
14 *Defendants* dispute;

15 WHEREAS, *Defendants* deny any wrongdoing whatsoever, and this
16 *Stipulation* shall in no event be construed or deemed to be evidence of, or an
17 admission or concession on the part of, any *Defendant* with respect to any claim of
18 any fault or liability or wrongdoing or damage whatsoever, or any infirmity in the
19 defenses that any of the *Defendants* have asserted or could have asserted;

20 WHEREAS, the *Court* consolidated *Named Plaintiffs'* actions and all other
21 actions asserting claims for relief under ERISA into the above-captioned *Action* on
22 August 17, 2007;

23 WHEREAS, *Named Plaintiffs* filed the Consolidated Complaint for Breaches
24 of Fiduciary Duty under ERISA (the "*Complaint*") in the *Action* on October 25,
25 2007;

26 WHEREAS, following the filing of the *Complaint*, an additional action,
27 styled *Fulkerson v. Richard Wallace, et al.*, No. 09-cv-02272 (C.D. Cal.), was filed
28

1 and later consolidated into the *Action*, with the Fulkerson Complaint deemed
2 superseded by the *Complaint*;

3 WHEREAS, in addition to the claims alleged by way of the *Complaint*, the
4 following proofs of claim, alleging substantially the same claims and theories of
5 recovery as were alleged in the *Complaint*, were filed in the Fremont General
6 Corporation bankruptcy case (*In re Fremont General Corp.*, USDC C.D. Cal.
7 Bkrtcy. case no. 08-13421), each of which shall be deemed withdrawn and released
8 with prejudice upon entry of the *Final Order and Judgment*:

9 POC# 613: ERISA Plaintiffs (collectively)

10 POC# 839: James K. Hopkins

11 POC# 841: Wendy Horvat

12 POC# 846: Marcy Johannesson

13 POC# 854: Armando Salas

14 POC# 855: Linda Sullivan

15 POC# 856: Robert Anderson.

16 WHEREAS, *Named Plaintiffs* and *Defendants* (the "*Parties*") and the
17 *Underwriters*, at their own expense, have engaged in a mediation process before
18 The Honorable Daniel Weinstein (ret.) of JAMS, which efforts included a day-long,
19 in-person mediation on September 29, 2010, at the conclusion of which an
20 agreement in principle between the *Parties* was reached on certain settlement terms;

21 WHEREAS, the *Parties* have engaged in extensive, further arm's-length
22 negotiation following the September 29, 2010 mediation;

23 WHEREAS, the *Parties* desire to promptly and fully resolve and settle with
24 finality all of the *Released Claims* asserted by *Named Plaintiffs* on behalf of
25 themselves and the *Class Members* against all of the *Released Parties*;

26 WHEREAS, based upon their investigation as well as informal and formal
27 discovery, *Named Plaintiffs* and *Class Counsel* have concluded that the terms and
28 conditions of this *Stipulation* are fair, reasonable, and adequate to *Named Plaintiffs*

1 and the *Class*, and are in their best interests, and *Named Plaintiffs* have agreed to
2 settle the claims raised in the *ERISA Action* pursuant to the terms and provisions of
3 this *Stipulation*, after considering (a) the substantial benefits that the members of
4 the *Class* will receive from settlement of this *Action*, (b) the attendant risks of
5 litigation, and (c) the desirability of permitting the *Settlement* to be consummated as
6 provided by the terms of this *Stipulation*;

7 WHEREAS, the *Underwriters* have agreed to provide the funds for this
8 *Settlement* under the applicable insurance policies;

9 NOW, THEREFORE, the *Parties*, in consideration of the promises,
10 covenants, and agreements herein described, and for other good and valuable
11 consideration, acknowledged by each of them to be satisfactory and adequate, and
12 intending to be legally bound, do hereby mutually agree as follows:

13 **1. DEFINITIONS**

14 1.1. As used in this *Settlement*, italicized and capitalized terms and phrases
15 not otherwise defined herein have the meanings provided below:

16 1.2. “*Action*” means *In re Fremont General Corporation Litigation*, Case
17 No. CV07-02693 JHN(FFMx) (C.D. Cal.), including all actions consolidated
18 therewith, as recited above.

19 1.3. “*Claims*” has the meaning set forth in Paragraph 1.31.

20 1.4. “*Class*” means a no opt-out class to be certified for purposes of
21 settlement only pursuant to Federal Rule of Civil Procedure 23(b)(1), and as set
22 forth in Paragraph 13.3.2, below, consisting of all persons, other than *Defendants*,
23 who were participants in or beneficiaries of the *Plans* at any time between January
24 1, 2005 and December 31, 2008, whose accounts included investments in *Fremont*
25 stock.

26 1.5. “*Class Counsel*” means Keller Rohrback, LLP and Liaison Counsel,
27 The Braun Law Group, P.C.

1 1.6. “*Class Member(s)*” means the member(s) of the *Class*, individually or
2 collectively.

3 1.7. “*Class Notice*” means the forms of notice appended as Exhibits 1 and
4 2 to the *Order for Notice and Hearing*, attached hereto as Exhibit A.

5 1.8. “*Court*” means the United States District Court for the Central District
6 of California.

7 1.9. “*Defendant(s)*” means *Fremont*, Wayne R. Bailey, Thomas W. Hayes,
8 Patrick E. Lamb, Robert F. Lewis, Russell K. Mayerfeld, James McIntyre,
9 Raymond G. Meyers, Louis J. Rampino, and Dickinson C. Ross.

10 1.10. “*Defendants’ Counsel*” means Willenken Wilson Loh & Lieb, LLP.

11 1.11. “*Effective Date*” means the date on which all the conditions set out in
12 Paragraph 8.1 of this *Settlement* have been satisfied.

13 1.12. “*ERISA*” means the Employee Retirement Income Security Act of
14 1974, as amended, 29 U.S.C. §§ 1001 *et seq.*

15 1.13. “*Final*” as applied to contemplated orders or rulings of the *Court* shall
16 mean that each such order or ruling has been entered and all rights of appeal
17 therefrom or review thereof shall have been exhausted or expired without the
18 applicable order or ruling having been modified.

19 1.14. “*Final Approval and Fairness Hearing*” and “*Fairness Hearing*” have
20 the meaning that is set forth in Paragraph 9.2.

21 1.15. “*Final Order and Judgment*” and “*Judgment*” have the meaning that is
22 set forth in Paragraph 9.2 and refer to the document attached hereto as Exhibit B.

23 1.16. “*Financial Institution*” means Wells Fargo Bank, National
24 Association.

25 1.17. “*Fremont*” means Fremont General Corporation and, except where the
26 context clearly forecloses it, each and all of its present and former officers,
27 directors, agents, and all employees, and each and all of its subsidiaries, affiliates,
28 predecessors or successors in interest, including, without limitation, Signature

1 Group Holdings Inc., Fremont General Credit Corporation, and Fremont Investment
2 & Loan, together with the present and former officers, directors, agents and
3 employees of each.

4 1.18. “*Gross Settlement Fund*” shall have the meaning set forth in Paragraph
5 3.3.

6 1.19. “*Independent Fiduciary*” means a *Person* who may, at the election of
7 *Defendants*, be appointed to consider whether to approve and authorize in writing
8 the *Stipulation*. The *Independent Fiduciary* shall have all of the rights and
9 responsibilities contemplated by Prohibited Transaction Class Exemption 2003-39,
10 including any amendments or successors thereto.

11 1.20. “*Net Settlement Fund*” is defined by Paragraph 3.5.

12 1.21. “*Named Plaintiffs*” means Class Representatives Marcy Johannesson,
13 Wendy Horvat, Robert Anderson, Linda Sullivan, and James K. Hopkins.

14 1.22. “*Notice*” means the “Notice of Class Action Settlement and Fairness
15 Hearing,” which is to be sent to members of the *Class* substantially in the form of
16 Exhibit 1 to the *Order for Notice and Hearing*, attached hereto as Exhibit A.

17 1.23. “*Order for Notice and Hearing*” means the order granting preliminary
18 approval of the *Settlement* and directing notice thereof to the *Class*, substantially in
19 the form attached hereto as Exhibit A.

20 1.24. “*Party*” or “*Parties*” means *Named Plaintiffs* and *Defendants*,
21 individually and collectively.

22 1.25. “*Person*” means an individual, partnership, corporation, government
23 entity or any other form of entity or organization.

24 1.26. “*Plaintiffs*” means *Named Plaintiffs* and each *Class Member*.

25 1.27. “*Plaintiffs’ Counsel*” means *Class Counsel* and any other counsel
26 representing any *Class Member* in any action consolidated into this *Action*.

27 1.28. “*Plan of Allocation*” means a plan of allocation of the *Net Settlement*
28 *Fund* as proposed by *Class Counsel* and approved by the *Court*.

1 1.29. “*Plan of Allocation Implementation Expenses*” means all reasonable
2 expenses incurred in implementing the *Plan of Allocation*, including the costs of
3 gathering required data and performing required calculations.

4 1.30. “*Plan(s)*” means the Fremont General Corporation and Affiliated
5 Companies Investment Incentive Plan, as amended through Mar. 19, 2007, and the
6 Fremont General Corporation Employee Stock Ownership Plan, effective Jan. 1,
7 2000.

8 1.31. “*Released Claims*” means any and all claims whether known or
9 unknown, (1) that were asserted in the *Action* or that could have been asserted in
10 the *Action*; (2) that would have been barred by res judicata, including by the
11 doctrines of claim bar or claim merger, had the *Action* been fully litigated to a final
12 judgment; and/or (3) that relate to any loss on any investment in *Fremont* stock or
13 the *Fremont* stock fund by the *Plans* or by any *Plan* participant with regard to his or
14 her investment in the *Plans* made or in existence during the Class Period
15 (collectively, “*Claims*”). *Released Claims* shall extend to all *Released Parties*.
16 Provided, however, that *Released Claims* shall not extend to any claims asserted by
17 or on behalf of the plaintiffs in the *Securities Actions*. Further, *Released Claims*
18 shall not extend to claims (1) related to enforcement of the *Settlement Stipulation*;
19 (2) for individual or vested benefits separate and distinct from the claims asserted in
20 the *Action*; (3) among *Defendants* and/or *Defendants* and the *Underwriters*; (4)
21 between the *Defendants* and the *Underwriters*; or (5) against the *Independent*
22 *Fiduciary*.

23 1.32. “*Released Parties*” means any and all *Defendants*, all of *Fremont’s*
24 direct and indirect subsidiaries and affiliated entities and successors-in-interest—
25 including without limitation Signature Group Holdings Inc., Fremont General
26 Credit Corporation, and Fremont Investment & Loan—and every *Person* who, at
27 any time during the *Class Period* was a director, officer, governor, management
28 committee member, in-house or outside counsel, employee, or agent of *Fremont* or

1 any direct or indirect subsidiary or affiliate thereof, or a trustee or fiduciary
2 (including de facto fiduciaries) for the *Plans*, together with, for each of the
3 foregoing, any present or former representatives, insurers, reinsurers, consultants,
4 administrators, employee benefit plans, investment advisors, investment
5 underwriters, spouses, and successors.

6 1.33. “*Securities Actions*” means *New York State Teachers’ Retirement*
7 *Systems v. Fremont General Corp.*, No. 07-5756 (C.D. Cal.) (on appeal) and any
8 other action pending in federal or state court and asserting state or federal securities
9 claims against *Fremont* or any of the *Released Parties*.

10 1.34. “*Settlement*” means the settlement of the *Action* contemplated by this
11 *Stipulation*.

12 1.35. “*Settlement Administrator*” means the person or firm hired, at *Class*
13 *Counsel’s* discretion, to administer the provision of *Class Notice* provided for in
14 Paragraph 4.2 as well as calculate and distribute the amounts payable to *Class*
15 *Members* pursuant to the *Plan of Allocation*, as set forth in Paragraph 4.6.

16 1.36. “*Settlement Amount*” means the sum of \$21,000,000.00 (twenty-one
17 million U.S. dollars) to be paid by the *Underwriters* on behalf of *Defendants*.

18 1.37. “*Settlement Fund*” has the meaning set forth in Paragraph 3.1.

19 1.38. “*Settlement Stipulation*” and “*Stipulation*” refer to this Stipulation and
20 Agreement of Settlement of the *Action*.

21 1.39. “*Summary Notice*” means the summary notice of the proposed
22 *Settlement* and fairness hearing intended for electronic publication substantially in
23 the form of Exhibit 2 to the *Order for Notice and Hearing*, attached hereto as
24 Exhibit A.

25 1.40. “*Underwriters*” means the insurers who provided policies for *Fremont*
26 for the claims at issue in this *Action* for the period January 1, 2007- January 1,
27 2008, and are contributing to the *Settlement Fund*.

28

1 **2. SCOPE AND EFFECT OF SETTLEMENT**

2 2.1. The obligations incurred pursuant to this *Settlement* shall be in full and
3 final disposition of the *Action* and shall release and discharge all *Released Parties*
4 from all *Released Claims*.

5 2.2. Upon the *Effective Date* of the *Settlement*, *Named Plaintiffs* and all
6 *Class Members*, on behalf of themselves, their current and former spouses, personal
7 representatives, heirs, executors, administrators, trustees, successors, and assigns
8 will completely and finally settle, release, and discharge the *Released Claims*.

9 Upon the *Effective Date* of the *Settlement*, *Named Plaintiffs* and all *Class Members*
10 shall be bound by this *Settlement*, and shall, regarding the *Released Claims*, have
11 exclusive recourse to the benefits, rights, and remedies provided by this *Settlement*
12 and shall be precluded from pursuing any other action, demand, suit, or other claim,
13 in any judicial or administrative forum of any kind, against the *Released Parties*
14 with respect to the *Released Claims*.

15 2.3. Upon the *Effective Date* of the *Settlement*, each *Defendant*, on behalf
16 of each of them and of their respective predecessors and successors in interest,
17 releases and forever discharges each and every one of the *Named Plaintiffs*, all
18 *Class Members*, and *Class Counsel* with respect specifically and exclusively to any
19 claim or cause of action that may arise from the institution or prosecution of the
20 *Action*, and not with respect to any other pending or future claims, rights or causes
21 of action that Defendants may have now or in the future that concerns any other
22 matters.

23 2.4. It is understood by the *Named Plaintiffs* and *Class Members* that a risk
24 exists that, following the *Effective Date* of this *Settlement*, they may incur or suffer
25 losses, damages, or injuries which are related to the *Released Claims*, but which
26 they do not know about or anticipate on or before the *Effective Date*. Further a risk
27 exists that any loss or damage *Named Plaintiffs* and *Class Members* presently
28 associate with the *Released Claims* may be or become greater than currently

1 estimated. The *Named Plaintiffs* and *Class Members* assume these risks, and agree
2 to be bound by this *Settlement*, including the releases of claims contemplated by the
3 *Settlement*, even if such unknown or unanticipated results later become known or
4 anticipated. To this end, the *Named Plaintiffs* and *Class Members* acknowledge
5 that this *Settlement* will waive and relinquish all rights under Section 1542 of the
6 California Civil Code, which provides that “[a] general release does not extend to
7 claims which the creditor does not know or suspect to exist in his or her favor at the
8 time of executing the release, which, if known by him or her must have materially
9 affected his or her settlement with the debtor,” as well as under any statutes or
10 common law principles of similar effect in any jurisdiction, to the fullest extent
11 they may lawfully do so.

12 2.5. Except as stated herein, the *Settlement* shall not bar, waive, or release
13 any claims asserted in the *Securities Actions*; provided, however, that the *Parties*
14 agree that the question of the extent, if any, to which the amount paid in settlement
15 of this matter may constitute an offset or credit against, or a reduction in the gross
16 amount of any claim asserted in the *Securities Actions*, is to be determined in such
17 other action, and the *Parties* reserve all rights with respect to the position they may
18 take on that question in those actions. Provided, however, that nothing herein shall
19 permit *Named Plaintiffs* and *Class Members* to recover more than 100% of their
20 losses.

21 3. CONSIDERATION FOR SETTLEMENT

22 3.1. In consideration for the releases and discharges provided for herein, on
23 or before the fourteenth (14th) business day following preliminary approval of this
24 *Settlement Stipulation* by the *Court*, and the provision of adequate wiring
25 instructions to the *Underwriters*, the *Underwriters* shall deliver by wire transfer the
26 *Settlement Amount* to the *Financial Institution*, which shall constitute the *Settlement*
27 *Fund*, and which shall be strictly governed by the terms of the *Settlement*
28 *Stipulation* and shall not be used for any purpose in advance of the *Effective Date*

1 absent written consent of the *Parties* and the *Underwriters* or as otherwise provided
2 herein in Paragraphs 4.2 and 4.3 below.

3 3.2. *Defendants* agree to take reasonable and necessary steps to cause the
4 *Underwriters* to make the payment called for in Paragraph 3.1.

5 3.3. The *Settlement Fund*, together with all interest earned from the date of
6 deposit of the *Settlement Amount*, shall constitute the *Gross Settlement Fund*.

7 3.4. The *Settlement Amount* shall be the full and sole monetary
8 contribution made by or on behalf of the *Released Parties* in connection with the
9 *Settlement* effected under this *Stipulation*. The *Settlement Amount* specifically
10 covers any claims for costs and attorneys' fees by *Plaintiffs*, on their behalf or on
11 behalf of the *Class*, as well as costs or expenses of the *Notice and Publication*
12 *Notice*. Except as otherwise specified in this *Stipulation*, *Defendants* will look to
13 their *Underwriters* to bear *Defendants'* costs and expenses (including attorneys'
14 fees) in connection with effectuating the *Settlement* and securing all necessary
15 *Court* orders and approvals with respect to the same.

16 3.5. The *Gross Settlement Fund* shall be used to pay (i) all costs of *Notice*,
17 *Summary Notice*, and administration costs referred to in Paragraph 4.2; and (ii) the
18 attorneys' fee and expense award referred to in Paragraph 5.1, and the *Named*
19 *Plaintiff* case contribution awards, if any, referred to in Paragraph 5.2. The balance
20 of the *Gross Settlement Fund* (inclusive of interest earned) after the matters
21 described in clauses (i) and (ii) of this paragraph, and after the payment of any taxes
22 or other charges allowed against the *Gross Settlement Fund* under the terms of this
23 *Stipulation* shall be the *Net Settlement Fund*.

24 3.6. The *Gross Settlement Fund* shall be structured to qualify as a Qualified
25 Settlement Fund under Treasury Regulation § 1.468B-1. All federal, state, or local
26 taxes that may apply to the income of the *Gross Settlement Fund* shall be paid out
27 of the *Gross Settlement Fund*. *Class Counsel* shall arrange for the preparation and
28 filing of all tax reports and tax returns, including any information returns and payee

1 statements required to be filed or furnished by the *Gross Settlement Fund* and for
2 the payment from the *Gross Settlement Fund* of any taxes owed. *Class Counsel*
3 shall be authorized to retain a certified public accounting firm for those purposes.
4 All taxes on the income of the *Gross Settlement Fund*, all taxes with respect to
5 distributions from the *Gross Settlement Fund*, and all tax-related expenses incurred
6 in connection with the taxation of and distributions from the *Gross Settlement Fund*
7 shall be paid out of the *Gross Settlement Fund*, and shall be considered a cost of
8 administration of the *Settlement*, and shall be timely paid without further order of
9 the *Court*. Further, *Defendants*, *Defendants' Counsel*, and the *Underwriters* shall
10 be held harmless for any liability for taxes. *Class Counsel* shall provide to
11 *Defendants' Counsel* and the *Underwriters* copies of all tax returns filed with
12 respect to the *Gross Settlement Fund* promptly upon the filing thereof, and evidence
13 of the payment of taxes as and when all such payments are made.

14 3.7. All funds held by the *Financial Institution* shall be deemed to be in the
15 custody of the *Court* to be held exclusively for the purposes described in this
16 *Settlement* until such time as the funds shall be disbursed pursuant to this *Settlement*
17 and/or further order of the *Court*. The *Financial Institution* shall invest any funds
18 in excess of \$250,000 in U.S. Treasury securities, securities issued by United States
19 agencies or fully insured by the Federal Deposit Insurance Corporation ("FDIC"),
20 deposits and certificates of deposit fully insured by the FDIC and backed by the full
21 faith and credit of the U.S. Treasury, and/or short term debt or commercial
22 paper fully guaranteed by the FDIC under the Temporary Liquidity Guarantee
23 Program and backed by the full faith and credit of the U.S. Treasury, and shall
24 collect and reinvest in the *Gross Settlement Fund* all earnings accrued thereon.

25 3.8. Any funds held by the *Financial Institution* in an amount of less than
26 \$250,000 may be held in a bank account or Certificates of Deposit insured by the
27 FDIC or may be invested as funds in excess of \$250,000 are invested. The *Parties*
28 agree that the *Gross Settlement Fund* shall be treated as a Qualified Settlement

1 Fund from the earliest date possible, and agree to any relation-back election
2 required to treat the *Gross Settlement Fund* as a Qualified Settlement Fund from the
3 earliest date possible. *Defendants* agree to timely provide to the *Financial*
4 *Institution* the statement described in Treasury Regulation § I.468B-3(e).

5 3.9. None of the *Defendants*, the *Released Parties*, the *Underwriters*,
6 *Plaintiffs* or their respective counsel shall have any responsibility for or liability
7 with respect to (i) any act, omission, or determination of the *Financial Institution* or
8 the *Settlement Administrator* or any of their respective designees or agents, in
9 connection with the administration of the *Settlement* or; (ii) the management or
10 investment of the *Gross Settlement Fund*; (iii) any losses suffered by, or
11 fluctuations in the value of, the *Gross Settlement Fund*; (iv) the payment or
12 withholding of any taxes, expenses, and/or costs incurred in connection with the
13 taxation of the *Gross Settlement Fund* or the filing of any returns; or (v) the
14 determination, administration, calculation or payment of any claims asserted against
15 the *Gross Settlement Fund*.

16 4. ADMINISTRATION

17 4.1. Except as provided in Paragraphs 4.2 and 4.3 below, no distribution of
18 any part, or all, of the *Settlement Fund* shall be made until the *Financial Institution*
19 has received: (i) a joint notice signed by *Class Counsel* and by counsel for
20 *Defendants* and counsel for the *Underwriters*, directing that the *Settlement Fund* be
21 disbursed and designating the appropriate recipient(s); or (ii) a *Court* order,
22 directing that the *Settlement Fund* be disbursed and designating the appropriate
23 recipient(s) as specifically set forth herein upon the *Effective Date* .

24 4.2. Following entry of the *Order for Notice and Hearing*, payment from
25 the *Gross Settlement Fund* shall be expended, without further approval from the
26 *Court* or *Defendants*, for all reasonable costs and expenses up to the amount of
27 \$75,000 associated with identifying and notifying the *Class Members* and effecting
28 mailing of the *Notice* and electronic publication of the *Summary Notice* as ordered

1 by the *Court*, and the administration of the *Settlement*, including without limitation,
2 the actual costs of printing and mailing the *Notice* and electronic publication of the
3 *Summary Notice* on the Business Wire. Prior to the *Effective Date*, the aggregate
4 payments made from the *Gross Settlement Fund* shall not exceed \$75,000 absent
5 approval by the *Court*, following notice to *Defendants* and the *Underwriters* and an
6 opportunity to be heard. In the event that the *Settlement* is terminated as provided
7 for herein, the amounts expended pursuant to this Paragraph 4.2 shall not be
8 returned to the *Underwriters*. Neither *Defendants* nor the *Underwriters* shall have
9 any responsibility for the costs and expenses described in this paragraph.

10 4.3. Following entry of the *Order for Notice and Hearing*, *Class Counsel*
11 may cause any required taxes to be paid from the *Gross Settlement Fund* without
12 further approval from the *Court* or *Defendants*.

13 4.4. *Defendants' Counsel* shall cooperate with *Class Counsel* and the
14 *Settlement Administrator* to accomplish the *Notice* in accordance with the *Order for*
15 *Notice and Hearing*, including by authorizing the provision to and/or release by the
16 *Settlement Administrator* of participant addresses, social security numbers, and
17 contact information in electronic spreadsheet format, to the extent that *Defendants*
18 possess the authority to do so. Any such information provided by *Defendants* or
19 *Defendants' Counsel* shall be treated as confidential pursuant to the Protective
20 Order entered in this *Action* on December 1, 2009, provided that the *Parties*
21 acknowledge that the information may be used to deliver the *Notice* and/or
22 implement the *Settlement*, including the *Plan of Allocation*. Neither *Defendants* nor
23 the *Underwriters* shall have any responsibility to pay or reimburse any third party
24 for expenses incurred in connection with the provision of *Notice* or the compliance
25 with any other aspect of this *Settlement*. Such expenses shall be paid and
26 reimbursed as stated in this *Settlement Stipulation*.

1 4.5. In the event the *Settlement* is terminated, as provided for herein, the
2 *Gross Settlement Fund* shall be returned to the *Underwriters* in accordance with
3 Paragraph 10.1.

4 4.6. **Plan of Allocation:**

5 4.6.1. The *Plan of Allocation* shall be prepared by *Class Counsel* and
6 submitted to the *Court* for approval in connection with final approval of the
7 *Settlement*. The *Plan of Allocation* shall provide for the calculation of each *Class*
8 *Member's* share of the *Net Settlement Fund*, and shall be in substantial conformity
9 to Exhibit C hereto. If any revisions to the *Plan of Allocation* become necessary,
10 *Class Counsel* shall be responsible for presenting the revised *Plan of Allocation* to
11 the *Court*. The *Plan of Allocation* is a matter separate and apart from the *Settlement*
12 between the *Parties*, and no decision by the *Court* concerning the *Plan of*
13 *Allocation* shall affect the validity of this *Stipulation* or finality of the *Settlement* in
14 any manner. Nothing herein shall constitute approval or disapproval of the *Plan of*
15 *Allocation* by the *Released Parties*. *Defendants* reserve their rights to challenge
16 any *Plan of Allocation* submitted to the *Court* if it is not in substantial conformity
17 to Exhibit C hereto. *Defendants* will in good faith, however, at the request of *Class*
18 *Counsel* and without charge, consult with and provide *Class Counsel* with
19 information related to any *Plan of Allocation* being considered by *Class Counsel*.

20 4.6.2. *Plan of Allocation Implementation Expenses* will be paid by (or
21 reimbursed from) the *Gross Settlement Fund* after the *Effective Date* to the extent of
22 the first \$100,000 thereof, with any excess above such amount paid promptly by the
23 *Gross Settlement Fund* if such payment is approved by the *Court*. Neither
24 *Defendants* nor the *Underwriters* shall have any responsibility for the *Plan of*
25 *Allocation Implementation Expenses*.

26 4.6.3. The *Settlement Administrator* shall be exclusively responsible
27 and liable for calculating the amounts payable to *Class Members* pursuant to the
28 *Plan of Allocation*. *Class Counsel* and *Named Plaintiffs* shall have no

1 responsibility or liability for the *Plan of Allocation* calculations or the expenses
2 incurred in connection with the calculations.

3 4.6.4. The *Settlement Administrator* shall be exclusively responsible
4 and liable for distributing the *Net Settlement Fund* to *Class Members* in accordance
5 with the *Plan of Allocation*. The *Defendants* and *Defendants' Counsel*, the
6 *Underwriters*, *Class Counsel*, and *Named Plaintiffs* shall have no responsibility or
7 liability for the distribution of the *Net Settlement Fund* to *Class Members*. In
8 addition, none of *Defendants*, *Defendants' Counsel*, or the *Underwriters* shall have
9 any responsibility or liability whatsoever with respect to the formulation, design, or
10 terms of the *Plan of Allocation*.

11 4.6.5. After the *Effective Date*, any questions regarding the
12 implementation of the *Plan of Allocation* or distribution of the *Net Settlement Fund*
13 shall be directed to the *Settlement Administrator* and not to *Defendants*.

14 **5. ATTORNEYS' FEES AND EXPENSES**

15 5.1. *Class Counsel* will apply to the *Court* for an award of attorneys' fees
16 not to exceed 30% of the *Gross Settlement Fund*, and reimbursement of expenses
17 payable from the *Gross Settlement Fund*, and shall further provide to the *Court*, as
18 part of the motion for approval of the *Settlement*, all necessary information required
19 by the *Court* concerning the total award of attorneys' fees and reimbursement of
20 expenses to be payable from the *Gross Settlement Fund*. Such application shall be
21 made in accordance with such schedule as the *Court* may establish, and the
22 proposed *Order for Notice and Hearing* shall provide that such application shall be
23 made no later than twenty-eight (28) days prior to the *Fairness Hearing*. Neither
24 *Defendants* nor the *Underwriters* shall have any obligations with respect to any
25 attorneys' fees or expenses incurred by *Plaintiffs' Counsel*.

26 5.2. *Class Counsel* may also apply to the *Court* for case contribution
27 awards to *Named Plaintiffs* in an amount not to exceed \$10,000 per *Named*
28 *Plaintiff*. *Defendants* will take no position with respect to any such applications for

1 attorneys' fees or expenses, or *Named Plaintiffs'* case contributions awards. Such
2 amounts are awarded by the *Court* from the *Gross Settlement Fund* and shall be
3 payable within fourteen (14) calendar days following the *Effective Date*.

4 *Defendants, Defendants' Counsel*, and the *Underwriters* shall have no obligations
5 whatsoever with respect to any attorneys' fees or expenses incurred by *Class*
6 *Counsel*, which shall be payable solely from the *Gross Settlement Fund*, or for any
7 case contribution award, which also shall be payable solely from the *Gross*
8 *Settlement Fund*.

9 5.3. Except as provided in this Section 5, no other applications for payment
10 of fees or expenses shall be made on behalf of any persons or entities claiming to
11 represent *Named Plaintiffs* or the *Class Members*, and if any such applications are
12 made and granted, *Defendants, Defendants Counsel*, and the *Underwriters* shall not
13 have any responsibility for payment of such claims.

14 **6. TERMS OF ORDER FOR NOTICE AND HEARING**

15 6.1. Promptly after this *Stipulation* has been fully executed, *Class Counsel*
16 shall file a motion for preliminary approval of the *Settlement*, which shall include a
17 request that the *Court* convert the certified *Class* from a 23(b)(3) class to a 23(b)(1)
18 class, and apply to the *Court* for entry of the *Order for Notice and Hearing*,
19 substantially in the form attached hereto as Exhibit A.

20 6.2. The mailing or publication of the *Class Notice* shall not occur until the
21 *Court* has entered the *Order for Notice and Hearing* in substantially the form of
22 Exhibit A hereto.

23 **7. TERMS OF ORDER AND FINAL JUDGMENT**

24 7.1. If the *Settlement* contemplated by this *Stipulation* is approved by the
25 *Court*, *Class Counsel* shall request that the *Court* enter the *Final Order and*
26 *Judgment* substantially in the form attached hereto as Exhibit B.

1 **8. EFFECTIVE DATE**

2 8.1. The *Effective Date* of the *Settlement* shall be the date when all of the
3 following conditions have been met:

4 8.1.1. the *Gross Settlement Amount* has been deposited into the
5 *Settlement Fund* in accordance with the provisions of Paragraph 3.1;

6 8.1.2. *Class Notice* has been sent to *Class Members* in accordance with
7 the provisions of Paragraph 4.2;

8 8.1.3. the *Court* has entered the *Final Order and Judgment* in all
9 material respects in the form set forth in Exhibit B, following the *Final Approval*
10 *and Fairness Hearing*; and

11 8.1.4. the *Final Order and Judgment* has become *Final* and, in the
12 event that the *Court* modifies the *Final Order and Judgment*, neither the *Named*
13 *Plaintiffs* nor *Defendants* have elected to terminate this *Settlement* pursuant to the
14 provisions in Paragraph 10.2.

15 **9. PROCEDURES AND TIMING FOR APPROVAL OF SETTLEMENT**

16 9.1. Notice to *Class Members*:

17 9.1.1. The mailing or publication of the *Class Notice* shall not occur
18 until the *Order for Notice and Hearing* has been entered by the *Court*.

19 9.1.2. Within thirty (30) days of the date the *Court* enters the *Order for*
20 *Notice and Hearing*, *Class Counsel* shall retain the *Settlement Administrator* to
21 facilitate *Class Notice* as provided herein and in the *Order for Notice and Hearing*.

22 9.1.3. By no later than sixty (60) days before the *Final Approval and*
23 *Fairness Hearing*, the *Settlement Administrator* shall cause the *Class Notice*,
24 together with such non-substantive modifications thereto as may be agreed upon by
25 the *Parties* and presented to the *Court* to be mailed, by first-class mail, postage
26 prepaid, to the last known address of each *Class Member* who can be identified by
27 reasonable effort.
28

1 9.1.4. By no later than sixty (60) days before the *Final Approval and*
2 *Fairness Hearing*, the *Settlement Administrator* shall cause the *Summary Notice*,
3 together with such non-substantive modifications thereto as may be agreed upon by
4 the *Parties*, to be published electronically on the Business Wire.

5 9.1.5. By no later than sixty (60) days before the *Final Approval and*
6 *Fairness Hearing*, *Class Counsel* shall cause the *Class Notice* to be published on
7 each website identified within the *Class Notice*.

8 9.1.6. No later than twenty-eight (28) days before the *Final Approval*
9 *and Fairness Hearing*, the *Settlement Administrator* and *Class Counsel* shall file
10 with the *Court* (i) a motion for entry of the *Final Order and Judgment* and approval
11 of the *Plan of Allocation*; (ii) proofs of timely compliance with the foregoing
12 mailing and publication requirements; (iii) the application for award of attorneys'
13 fees and costs referenced in Paragraph 5.1.

14 9.1.7. The last day for *Class Members* to file objections to the
15 *Settlement* shall be no less than twenty-one (21) days before the *Final Approval and*
16 *Fairness Hearing*.

17 9.1.8. No later than fourteen (14) days before the *Final Approval and*
18 *Fairness Hearing*, *Class Counsel* may file a reply in support of (i) the motion for
19 entry of the *Final Order and Judgment* and approval of the *Plan of Allocation*; and
20 (ii) the application for award of attorneys' fees and costs referenced in Paragraph
21 5.1.

22 **9.2. Final Approval and Fairness Hearing:** The *Court* will, in its
23 discretion, conduct a hearing at which it will consider whether the *Settlement* is fair,
24 reasonable, and adequate (the "*Final Approval and Fairness Hearing*"). At or after
25 the *Final Approval and Fairness Hearing*, the *Court* will determine: (i) whether to
26 enter judgment approving the *Settlement* and dismissing the *Action* (which
27 judgment is referred to herein as the "*Final Order and Judgment*"); (ii) whether the
28 distribution of the *Settlement Amount* as provided in the proposed *Plan of*

1 *Allocation* should be approved; and (iii) what legal fees, case contribution awards,
2 and costs and expenses should be awarded to *Class Counsel* and *Named Plaintiffs*
3 as contemplated by Paragraph 5.1 of this *Settlement*. The *Parties* agree to support
4 entry of the *Final Order and Judgment* as contemplated by clause (i) of this
5 paragraph; however, pursuant to the provisions in Paragraph 5.1, *Defendants* agree
6 not to take any position, and are not required to take any position, with respect to
7 the matters described in clause (iii) of this paragraph (provided that nothing
8 contained herein shall prohibit the *Independent Fiduciary*, if appointed, from taking
9 a position with respect to such matters). The *Parties* covenant and agree that they
10 will reasonably cooperate with one another in obtaining the *Final Order and*
11 *Judgment* as contemplated hereby at the *Fairness Hearing* and will not do anything
12 inconsistent with obtaining the *Final Order and Judgment*.

13 **10. TERMINATION OF SETTLEMENT**

14 10.1. This *Settlement* shall be voidable pursuant to the procedures set forth
15 in Paragraph 10.2 and under the circumstances listed in Paragraph 10.2. If this
16 *Settlement* is terminated or not consummated for any reason, this *Settlement* shall be
17 deemed null and void and shall have no further force and effect, and neither this
18 *Settlement* nor the negotiations leading up to it, nor any of the *Parties'* filings in
19 support of this *Settlement*, nor any interim rulings of the *Court* in connection with
20 the process for approval of the *Settlement*, shall be used or referred to by any *Party*
21 in this *Action* or in any other action or proceeding for any purpose. The *Parties*
22 shall then be restored to their respective positions in the *Action* as of September 29,
23 2010, and the *Gross Settlement Fund*, less only the expenses set forth in Paragraphs
24 4.2 and 4.3, shall be returned to the *Underwriters* within ten (10) business days. In
25 such event, any judgment or order entered by the *Court* in accordance with the
26 terms of this *Settlement* shall be treated as vacated *nunc pro tunc*. Nothing in this
27 paragraph gives any *Party* any right to unilaterally terminate or not to consummate
28 the *Settlement*.

1 10.2. *Named Plaintiffs and Defendants* shall each have the right to terminate
2 this *Settlement* as provided in Paragraph 10.3.2 or by providing written notice of
3 their election to do so to one another within thirty (30) days following any of the
4 following: (i) the *Court* declining to enter the *Order for Notice and Hearing* in any
5 material respect; (ii) the *Court* refusing to approve this *Settlement* as set forth in this
6 *Stipulation*; (iii) the *Court* declining to enter the *Final Order and Judgment*; or (iv)
7 the date upon which the *Judgment* is modified or reversed in any material respect
8 by any level of appellate court.

9 10.3. **Independent Fiduciary:**

10 10.3.1. Within thirty (30) days of the date the *Court* grants
11 preliminary approval to the *Settlement*, *Defendants* shall either cause an
12 *Independent Fiduciary* to be appointed or shall notify *Class Counsel* in writing that
13 *Defendants* have waived their right to terminate the *Settlement* pursuant to this
14 Paragraph 10.3.

15 10.3.2. If, as of the date that is thirty (30) days prior to the
16 *Fairness Hearing*, the *Independent Fiduciary* has not approved the *Settlement*,
17 authorized settlement of the *Action* consistent with the terms of this *Settlement*
18 *Stipulation*, and approved the release of the *Released Claims* in its capacity as
19 fiduciary of the Plans as contemplated by Department of Labor Prohibited
20 Transaction Class Exemption 2003-39, *Defendants* each shall have the right to
21 terminate this *Settlement* by providing written notice of their election to do so
22 within twenty (20) days of the *Fairness Hearing*.

23 10.3.3. The *Parties* shall promptly provide to the *Independent*
24 *Fiduciary* such non-privileged information, documents, and other materials (and
25 shall make available for interview by the *Independent Fiduciary* such persons) as
26 the *Independent Fiduciary* reasonably requests. All reasonable fees and expenses
27 (including the cost of counsel and other advisors) of the *Independent Fiduciary*
28 shall be paid by the *Underwriters*, and *Defendants* shall cause the *Underwriters* to

1 make such payments if *Defendants* have not waived their right to terminate the
2 *Settlement* pursuant to this Paragraph 10.3.

3 10.4. The Independent Fiduciary will comply with the provisions for return
4 or destruction of any Discovery Materials he may receive in accordance with the
5 provisions of Paragraph 13.4.

6 **11. COVENANTS NOT TO SUE**

7 11.1. The *Named Plaintiffs* covenant and agree on behalf of themselves, the
8 *Class*, and the *Plans*: (i) not to file against any of the *Released Parties* or the *Plans*
9 any additional *Claim* based on, relating to, or arising from any *Released Claims*, or
10 refile any *Claim* brought in the *Action*; and (ii) that the foregoing covenants and
11 agreements shall be a complete defense to any such *Claims* brought by any *Class*
12 *Member* against any of the respective *Released Parties* or the *Plans*. The
13 *Defendants* covenant and agree on behalf of themselves, their agents, and their
14 representatives: (i) not to file against any of the *Named Plaintiffs* or *Class Counsel*
15 any claims pertaining to or arising specifically and expressly out of the claims
16 released by Paragraph 2.3; and (ii) that the foregoing covenants and agreements
17 shall be a complete defense to any such claim brought by any *Defendant* or agent or
18 representative thereof.

19 **12. REPRESENTATIONS AND WARRANTIES**

20 12.1. *Class Counsel* and *Defendants' Counsel* represent that they have
21 carefully read the contents of this *Stipulation*, and this *Stipulation* is signed freely
22 by each *Person* executing this *Stipulation* on behalf of each of the *Parties*.

23 12.2. *Class Counsel* represents and confirms that it has conducted sufficient
24 discovery to determine that the *Settlement* is fair, reasonable, and adequate.

25 12.3. Each *Person* executing this *Stipulation* on behalf of any other *Person*
26 does hereby personally represent and warrant that he or she has the authority to
27 execute this *Stipulation* on behalf of, and fully bind, each principal whom such
28 individual represents or purports to represent.

1 **13. MISCELLANEOUS PROVISIONS**

2 13.1. **No Admission of Liability:** This *Stipulation*, whether or not
3 consummated, and any proceedings taken pursuant to it:

4 13.1.1. shall not be offered or received against any of the
5 *Defendants* as evidence of or construed as or deemed to be evidence of any
6 presumption, concession, or admission by any of those *Defendants* with respect to
7 the truth of any fact alleged by any of the *Plaintiffs* or the validity of any claim that
8 has been or could have been asserted in the *Action* or in any litigation, or the
9 deficiency of any defense that has been or could have been asserted in the *Action* or
10 in any litigation, or of any liability, negligence, fault, or wrongdoing of *Defendants*;

11 13.1.2. shall not be offered or received against *Defendants* as
12 evidence of a presumption, concession or admission of any fault, misrepresentation
13 or omission with respect to any statement or written document approved or made
14 by any of the *Defendants*;

15 13.1.3. shall not be offered or received against *Defendants* as
16 evidence of a presumption, concession or admission with respect to any liability,
17 negligence, fault or wrongdoing, or in any way referred to for any other reason as
18 against any of the *Defendants*, in any other civil, criminal or administrative action
19 or proceeding, other than such proceedings as may be necessary to effectuate the
20 provisions of this *Stipulation*; provided, however, that if this *Stipulation* is
21 approved by the *Court*, the *Released Parties* may refer to it to effectuate the
22 liability protection granted them hereunder;

23 13.1.4. shall not be construed against any of the *Defendants* as an
24 admission or concession that the consideration to be given hereunder represents the
25 amount that could be or would have been recovered after trial;

26 13.1.5. shall not be construed against any of the *Defendants* as an
27 admission or concession that any *Defendant* had any fiduciary status under *ERISA*;
28 and

1 13.1.6. shall not be construed as or received in evidence as an
2 admission, concession or presumption against any *Named Plaintiff* or any of the
3 *Class Members* that any of their claims are without merit, or that any defenses
4 asserted by *Defendants* have any merit, or that damages recoverable under the
5 *Action* would not have exceeded the *Gross Settlement Fund*.

6 13.2. Each *Party* understands and agrees that the agreement embodied in
7 this *Settlement* is a compromise and settlement of disputed claims, and that this
8 *Settlement* is not and shall not be construed as an admission or evidence of liability
9 by any of the *Defendants* regarding any of the claims made in the *Action* or
10 otherwise.

11 **13.3. Cooperation:**

12 13.3.1. The *Parties* agree to cooperate fully with one another in
13 seeking *Court* approval of this *Settlement* and to use their best efforts to effect its
14 consummation. Such efforts include, without limitation, the execution of any
15 documents reasonably necessary to implement the provisions of this *Settlement*, and
16 cooperation seeking appropriate orders from the *Court*. Neither *Named Plaintiffs*
17 nor *Defendants* shall evade their good faith obligation to seek approval of this
18 *Settlement* by virtue of any rulings, orders, governmental reports, or any other
19 developments in any action that might occur after the *Parties* execute this
20 *Settlement* that might be deemed to alter the relative strength of the *Parties*'
21 positions with respect to any claim or defense in this *Action*.

22 13.3.2. *Defendants*, the *Underwriters*, and *Named Plaintiffs*
23 prefer that the *Class* be converted to a Rule 23(b)(1) non-opt out class for purposes
24 of the *Settlement* only. In this regard, *Defendants* agree not to oppose *Named*
25 *Plaintiffs*' request that the *Court* convert the certified *Class* from a 23(b)(3) class to
26 a 23(b)(1) class, provided that that request is limited to seeking certification of a no
27 opt-out class for settlement purposes. *Defendants*' non-opposition will not be
28 construed as an acknowledgement of the validity of any argument that may be made

1 by *Class Counsel* in support of conversion or as an abandonment of any arguments
2 *Defendants* made in opposition to class certification, as stated in Defendants'
3 Opposition to Motion for Class Certification and in oral argument on that motion.
4 In the event that the Court grants conversion, but the *Settlement* does not become
5 final, the *Parties* stipulate that they will jointly request that any interim ruling by
6 the Court on certification of a Rule 23(b)(1) class will be deemed vacated and void,
7 and *Named Plaintiffs* will not make any use of or reference to that order, as stated in
8 Section 10.1.

9 13.3.3. *Defendants* shall use their best efforts to provide *Class*
10 *Counsel* with the names and last known addresses of members of the *Class* in
11 electronic spreadsheet format (to the extent *Defendants* have such information)
12 within ten (10) days of entry of the *Order for Notice and Hearing*. No charge
13 against the *Gross Settlement Fund* shall be made by *Defendants* for the gathering or
14 the provision of such information, except that any charges incurred to third parties
15 shall be payable out of the *Gross Settlement Fund* in accordance with the provisions
16 of Paragraph 4.4. Such information shall be used to deliver the *Class Notice*, and
17 implement the *Settlement*, including the *Plan of Allocation*, and for no other
18 purpose.

19 13.3.4. *Class Counsel* anticipates receiving inquiries from *Plan*
20 participants concerning whether they are *Class Members*. To the extent that such
21 persons are not included in the information provided in the paragraph above,
22 *Defendants' Counsel* agree to assist *Class Counsel* in confirming whether such
23 persons are or are not *Class Members*.

24 13.4. **Discovery Materials:** Except as a disclosing party otherwise expressly
25 authorizes in writing, within thirty (30) days after the entry of the *Final Order and*
26 *Judgment*, each *Party's* counsel shall either return or certify the destruction of all
27 documents and information that was produced to them in discovery in the *Action*,
28 including without limitation, document productions, deposition transcripts and

1 exhibits thereto, electronically stored information, and information obtained either
2 by way of subpoena or voluntary production from third parties. If any discovery
3 materials constitute original documents, they must be returned to counsel for the
4 disclosing party and may not be destroyed. Provided, however, that counsel for a
5 *Party* may retain a file copy of work product created in connection with the *Action*
6 that includes confidential materials, but such work product shall continue to be kept
7 confidential and shall not be shared with any third party including, without
8 limitation, any plaintiff or claimant, or any counsel to any such plaintiff or
9 claimant, in any other action or proceeding against any *Defendant*.

10 **13.5. Amendment of Settlement:** This *Settlement* may be amended or
11 modified only by a written instrument signed by the *Parties* or their respective
12 successors-in-interest or their respective counsel and approved by the *Court*.

13 **13.6. Waiver:** No waiver of any breach of any term or provision of this
14 *Settlement* shall be construed to be, or shall be, a waiver of any other breach of this
15 *Settlement*. No waiver shall be binding unless in writing and signed by the *Party*
16 waiving the breach.

17 **13.7. Successors and Assigns:** This *Settlement* shall be binding upon, and
18 inure to the benefit of, the successors and assigns of the *Parties*.

19 **13.8. Counterparts:** This *Settlement* may be executed in one or more
20 counterparts, all and each of which shall be deemed one and the same instrument.
21 Signatures transmitted via facsimile or email shall have the same force and effect as
22 the originals.

23 **13.9. Construction:** Each *Party* represents that he, she, or it has cooperated
24 in the drafting and preparation of this *Settlement*. The *Parties* additionally agree
25 that in any construction of this *Settlement*, this *Settlement* shall not be construed
26 against any *Party* on the basis that the *Party* might have had a greater hand in
27 drafting this *Settlement*. The *Parties* also agree that the terms of this *Settlement*
28 shall be interpreted according to their fair meaning. The headings of sections and

1 paragraphs herein are for convenience of reference only and shall not affect the
2 meaning or interpretation of this *Settlement*.

3 **13.10. Entire Agreement:** This *Settlement*, including the Exhibits thereto,
4 sets forth the entire agreement and understanding of the *Parties* concerning the
5 subject matter hereof, and supersedes and replaces all prior negotiations, proposed
6 agreements, and any other agreements, written or verbal. Each of the *Parties* to this
7 *Settlement* acknowledges that no other *Party* to this *Settlement*, nor any attorney of
8 any such *Party*, has made any promise, statement, representation, or warranty
9 whatsoever, express or implied, not contained in this *Settlement*, to induce either
10 *Party* to execute this *Settlement*. The *Parties* further acknowledge that they are not
11 executing this *Settlement* in reliance on any promise, representation, or warranty by
12 any *Party* not contained in this *Settlement*.

13 **13.11. Governing Law:** To the extent not governed by federal law, the rights
14 and obligations of the *Parties* and the *Class Members* shall be construed and
15 enforced in accordance with, and governed by, the laws of the State of California,
16 without giving effect to choice of law principles.

17 **13.12. Advice of Counsel:** In entering into this *Settlement*, the *Parties*
18 represent that they have relied upon the advice of their attorneys, who are the
19 attorneys of their own choice, that the terms of this *Settlement* have been read
20 completely and explained to them by their attorneys, and that those terms are fully
21 understood and voluntarily accepted by them.

22 **13.13. Authority:** Each person, including counsel, executing this *Settlement*
23 on behalf of any *Party* hereby warrants and represents that he or she has the full
24 authority to do so. Each *Party* further warrants and represents that he, she or it has
25 not assigned or transferred to any person not a *Party* to this *Settlement* any *Released*
26 *Claim*, in whole or in part, and that each *Party* shall hold harmless the other *Parties*
27 from and against any claim based on or in connection with any such assignment or
28 transfer made, or claimed to have been made, by him, her or it.

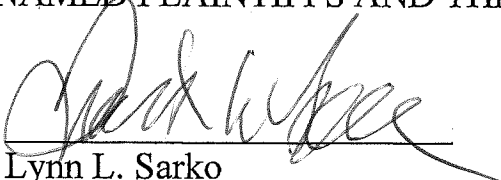
1 **13.14. Continuing Jurisdiction:** The administration, effectuation, and
2 enforcement of the *Stipulation* as provided for herein will be under the authority of
3 the *Court*. The *Court* will retain continuing and exclusive jurisdiction over the
4 *Parties* and *Class Members*, and over the administration, effectuation, and
5 enforcement of the terms of the *Stipulation* and the benefits to *Class Members*
6 hereunder, and for such other matters that may properly come before the *Court*,
7 including any dispute or controversy arising with respect to the interpretation,
8 enforcement, or implementation of the *Stipulation* or any of its terms. Any such
9 dispute or controversy must be brought to the attention of the *Court* by written
10 motion. The *Parties* and each of the *Class Members* consent to the jurisdiction of
11 the *Court* with respect to any proceedings brought to enforce or interpret this
12 *Settlement* and hereby waive all objections to venue and personal and subject matter
13 jurisdiction in that regard.

14 **13.15. Calculation of Time Periods:** The computation of any date or period
15 of time prescribed by the *Stipulation* shall be governed by Rule 6(a) of the Federal
16 Rules of Civil Procedure.

17 IN WITNESS WHEREOF, the *Parties* have executed this *Stipulation* on the
18 dates set forth below.

1 FOR NAMED PLAINTIFFS AND THE CLASS:

2
3 By:



Dated:

3/22/2011

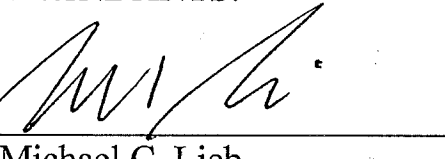
4 Lynn L. Sarko
5 Derek W. Loeser
6 T. David Copley
7 Sarah H. Kimberly
8 KELLER ROHRBACK L.L.P.
9 1201 Third Avenue, Suite 3200
Seattle, Washington 98101
Telephone: (206) 623-1900
Facsimile: (206) 623-3384

10 Michael D. Braun
11 BRAUN LAW GROUP, P.C.
12 10680 West Pico Boulevard, Suite 280
13 Los Angeles, California 90064
14 Telephone: (310) 836-6000
Facsimile: (310) 836-6010

15 *Class Counsel*

16 FOR DEFENDANTS:

17
18 By:



Dated:

March 22, 2011

19 Michael C. Lieb
20 Leemore L. Kushner
21 WILLENKEN WILSON LOH & LIEB, LLP
22 707 Wilshire Blvd., Suite 3850
23 Los Angeles, California 90017
24 Telephone: (213) 955-8023
25 Facsimile: (213) 955-9250

26
27
28 *Counsel for Defendants*