

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION

JOEL CLEARY, M.D., individually and
on behalf of all others similarly situated,

Plaintiff,

Case No. 4:16-cv-00061-BMM-JCL

v.

RETIREMENT PLAN FOR
EMPLOYEES OF NORTHERN
MONTANA HOSPITAL,
ADMINISTRATIVE COMMITTEE OF
THE RETIREMENT PLAN FOR
EMPLOYEES OF NORTHERN
MONTANA HOSPITAL, DAVID
HENRY, KIM LUCKE, BONNIE
O'NEILL, and NORTHERN
MONTANA HOSPITAL,

Defendants.

SETTLEMENT STIPULATION AND ORDER

WHEREAS, in June, 2016, Joel Cleary, M.D. commenced this action, in his own capacity and in his capacity as a participant in the Retirement Plan for Employees of Northern Montana Hospital, against the Retirement Plan for Employees of Northern Montana Hospital, the Administrative Committee of the Retirement Plan for Employees of Northern Montana Hospital, David Henry, Kim Lucke, Bonnie O'Neill and Northern Montana Hospital, in which action he alleged, *inter alia*, that he was improperly denied pension benefits, and

WHEREAS, on May 24, 2018, the *Parties* (as defined below) and their respective counsel participated in a mediation presided over by the Honorable Jeremiah C. Lynch, United States Magistrate Judge, and

WHEREAS, as a result of that mediation the *Parties* (as defined below), in consultation with their respective counsel, have agreed to settle this action on the terms and conditions set forth herein,

NOW, THEREFORE, in consideration of the premises and the mutual covenants set forth below, it is hereby

STIPULATED AND AGREED, by and among the *Parties* (as defined below) to the *Action* (as defined below) as follows:

1. DEFINITIONS – for the purposes of this *Stipulation* (as defined below), the following terms have the meanings ascribed to them below:

1.1. “*Action*” shall mean: *Cleary v. Retirement Plan for Employees of Northern Montana Hospital, et al.*, No. 4:16-cv-00061-BMM (Dist. of Montana).

1.2. “*Barred Claims*” shall mean: any claim, in law or in equity, that any *Covered Participant* (as defined below) may have against any of the *Defendants* (as defined below) arising out of the facts alleged in the *Complaint* (as defined below), including any and all actual or potential claims, actions, causes of action, demands, obligations, liabilities, attorneys’ fees, expenses and costs, subsumed therein. *Barred Claims* include the express waiver and relinquishment, to the fullest extent permitted by law and equity, of the provisions, rights and benefits of § 1542 of the California Civil Code, which provides: “A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.” The foregoing notwithstanding, *Barred Claims* shall not include any claim for *Vested Benefits* (as defined below) from the *Plan* (as defined below).

1.3. “*Complaint*” shall mean: the Third Amended Complaint (ECF No. 79) filed herein by *Plaintiff* (as defined below) on September 14, 2017.

1.4. “*Covered Participants*” shall mean: those persons, other than *Plaintiff* (as defined below), who are entitled to a payment pursuant the terms of this *Stipulation* (as defined below). The names of all *Covered Participants* and the

amounts to which they are entitled pursuant to this *Stipulation* (as defined below) are set forth on Exhibit 1 to this *Stipulation*.¹

1.5. “*Court*” shall mean: The United States District Court for the District of Montana.

1.6. “*Defendants*” shall mean: the Retirement Plan for Employees of Northern Montana Hospital, the Administrative Committee of the Retirement Plan for Employees of Northern Montana Hospital, David Henry, Kim Lucke, Bonnie O’Neill and Northern Montana Hospital.

1.7. “*Effective Date of Settlement*” shall mean: the date on which all of the conditions to settlement set forth in Section 3 of this *Stipulation* (as defined below) have been fully satisfied or waived and the *Settlement* (as defined below) shall have become *Final* (as defined below).

1.8. “*ERISA*” shall mean: the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001 et seq., including all regulations promulgated thereunder.

1.9. “*Final Hearing*” shall mean: a hearing held by the *Court* to consider whether to enter the *Final Order* (as defined below).

1.10. “*Final*” shall mean: with respect to any judicial ruling or order in the *Action*, (i) that thirty days shall have elapsed after the entry thereof without the filing of a notice of appeal or motion for reconsideration or modification thereof, or (ii) if a notice or motion described in clause (i) is filed within such thirty day period, that (a) if a notice of appeal has been filed, the ruling is affirmed on appeal, and the time for the filing of a petition for certiorari has run, certiorari has been denied, or the ruling is affirmed by the Supreme Court, whichever first occurs; and (b) if a motion for reconsideration or modification, that such motion has been denied and no notice of appeal is filed within thirty days thereof (or if a notice is filed, the appeal is resolved as described in clause (ii) above).

1.11. “*Final Order*” shall mean: an order substantially in the form attached hereto as Exhibit 2.

1.12. “*Hospital*” shall mean: *Defendant* Northern Montana Hospital.

¹ The *Parties* (as defined infra) shall jointly move to file Exhibit 1 under seal.

1.13. “*Notice*” shall mean: collectively, (1) the notice, substantially in the form attached hereto as one part of Exhibit 3, which shall be sent to all *Covered Participants* informing each of them of the terms of this *Stipulation* (as defined below) and setting forth the procedure for objecting to entry of the *Final Order* and (2) the individualized cover letter, substantially in the form attached hereto as the other part of Exhibit 3, that will be sent along with the notice. The cover letter shall be individualized only to the extent that each *Covered Participant* shall only be informed of the amount of the *Settlement Payment* (as defined below) to which he or she is entitled pursuant to this *Stipulation*.

1.14. “*Parties*” shall mean: *Plaintiff* (as defined below) and *Defendants*.

1.15. “*Person*” shall mean: an individual, partnership, corporation or any other form of organization.

1.16. “*Plaintiff*” shall mean: Joel Cleary, M.D.

1.17. “*Plaintiff’s Counsel*” shall mean: Keller Rohrbach L.L.P.

1.18. “*Plan*” shall mean: *Defendant* Retirement Plan for Employees of Northern Montana Hospital.

1.19. “*Representatives*” shall mean: representatives, attorneys, agents, directors, officers, employees, insurers and reinsurers.

1.20. “*Settlement*” shall mean: the settlement to be consummated under this *Stipulation* (as defined below) pursuant to the *Final Order*.

1.21. “*Settlement Payments*” shall mean: the payments to *Plaintiff* and to the *Covered Participants* set forth in the tenth column of Exhibit 1 (with the heading “Total Damages”)

1.22. “*Stipulation*” shall mean: this *Stipulation* and Order.

1.23. “*Successor-In-Interest*” shall mean: a *Person’s* estate, legal representatives, heirs, successors or assigns, and any other *Person* who can make a legal claim by or through such *Person*.

1.24 “*Vested Benefits*” shall mean: benefits from the *Plan* which have vested or will vest under the terms of the *Plan* which terms shall not be inconsistent with *ERISA*.

2. RECITALS

2.1. In the *Complaint*, *Plaintiff* alleges losses due to various violations of *ERISA* and seeks monetary and injunctive relief to redress such violations.

2.2. *Defendants* deny any and all liability to *Plaintiff* (other than for his *Vested Benefits* from the *Plan*) and/or the *Covered Participants*, and deny any and all allegations of wrongdoing made in the *Action*. *Defendants* aver that the *Plan* was at all times properly administered in accordance with its terms and with *ERISA*. Nothing in this *Stipulation* constitutes an admission or acknowledgement by any of the *Defendants* otherwise.

2.3. *Plaintiff's Counsel* has conducted an extensive investigation into the facts, circumstances and legal issues associated with the allegations made in the *Action*. This investigation has included, *inter alia*: (a) inspecting, reviewing and analyzing documents produced by *Defendants* and documents produced by the *Plan's* current and former Third Party Administrators; (b) researching the applicable law with respect to the claims asserted in the *Action* and the defenses and potential defenses thereto; and (c) conducting depositions of each of the individual *Defendants* as well as Rule 30(b)(6) depositions of the *Plan*, the *Hospital*, the *Plan's* current Third Party Administrator and one of the *Plan's* former Third Party Administrators.

2.4. *Plaintiff's Counsel* believes that the *Settlement* will provide a benefit to the *Plaintiff*, the *Covered Participants* and the *Plan*, and that, when that benefit, which comports in essence to the relief sought in the *Complaint*, is weighed against the attendant risks of continuing the prosecution of the *Action*, the *Settlement* represents a reasonable, fair, and adequate resolution of the claims asserted in the *Action*. In reaching this conclusion, *Plaintiff's Counsel* has considered, among other things, the risks of litigation; the complexity of the claims set forth in the *Complaint*; and the benefit accruing under the *Settlement*.

2.5. *Plaintiff* and *Defendants* have thus reached this *Settlement* by and through their respective counsel on the terms and conditions set forth herein, which they have had a full and meaningful opportunity to consider with the advice of their respective counsel.

3. CONDITIONS PRECEDENT TO EFFECTIVENESS OF THE SETTLEMENT

3.1. *Effectiveness of This Stipulation*. This *Stipulation* shall become effective when each and every one of the following conditions in paragraphs 3.2 through 3.8

shall have been satisfied. As used herein, “effective” means this *Stipulation* is no longer subject to termination under Section 11 of this *Stipulation*.

3.2. *Court Approval*. The *Settlement* shall have been approved by the *Court*, as provided for in this paragraph 3.2. The *Parties* agree to undertake their best efforts, including all steps and efforts contemplated by this *Stipulation*, and any other steps or efforts which may become necessary by order of the *Court* (unless such order modifies the terms of this *Stipulation*) or otherwise, to carry out this *Stipulation*, including the following:

3.2.1 *Preliminary Approval of Settlement and of Notices*. By “So Ordering” this *Stipulation* the *Court* shall have preliminarily approved the *Settlement*, the content of the *Notice*, and the procedure for providing notice to *Covered Participants*.

3.2.2 *Issuance of Notice*. On the date set by the *Court* herein, *Defendants*, at their sole cost and expense, will cause the *Notice* to be sent solely by first class mail to the last known address of each *Covered Participant* unless another or additional form of notice is approved by the *Court* in which case notice will be provided in the manner directed. *Defendants* shall make reasonable efforts to ascertain the address of any *Covered Participant* for whom *Defendants* do not currently know an address. Similarly, *Defendants* shall make reasonable efforts to ascertain the address of any *Covered Participant* whose *Notice* is returned as undeliverable. At least fourteen (14) business days prior to the *Final Hearing*, *Defendants* shall file a Declaration with the *Court* setting forth their compliance with the provisions of this paragraph 3.2.2, including, but not limited to, the names of the *Covered Participants* whose addresses were not ascertained and the efforts *Defendants* employed to locate those *Covered Participants*.

3.2.3 *The Final Hearing*.

- (a) On the date set by the *Court* herein, the *Parties* shall participate in the *Final Hearing* during or after which the *Court* will determine by order (the “*Final Order*”) whether: (i) this *Settlement* is fair, reasonable and adequate and should be approved by the *Court*; (ii) final judgment approving the *Settlement* should be entered (“*Judgment*”); and (iii) the requirements of due process have been satisfied in connection with notice to the *Covered Participants*.

- (b) The *Parties* covenant and agree that they will reasonably cooperate with one another in obtaining a final order approving the *Settlement* at the *Final Hearing* and will not do anything inconsistent with obtaining such a final order. It shall be a condition to the *Effective Date of Settlement* that any such order be substantially in the form of the *Final Order* attached hereto as Exhibit 2.

3.2.4 *Finality of Final Order.* The *Final Order* shall have become *Final*, as defined in Section 1.10 of this *Stipulation*.

3.3. *Dismissal of Action.* The *Action* shall have been dismissed with prejudice as of the *Effective Date of Settlement* except as to Plaintiff's claim for attorney's fees, costs and expenses as provided for in Section 4 and Section 5, paragraph 5.6 of this *Stipulation*.

3.4. *No Termination.* The *Settlement* shall not have terminated pursuant to Section 11 of this *Stipulation*.

3.5. *Materiality of Stipulation Conditions.* The *Parties* expressly acknowledge that the effectiveness of this *Stipulation* is specifically conditioned upon the occurrence of each and every one of the foregoing conditions precedent prior to the *Effective Date of Settlement*, and that a failure of any condition set forth in paragraphs 3.1 through 3.4 above at any time prior to the *Effective Date of Settlement* shall make this *Stipulation*, and any obligation to pay the *Settlement Payments* specified in paragraph 10.1.2 of this *Stipulation*, or any portion thereof, null, void, and of no force and effect.

3.6. *Establishment of Effective Date of Settlement.* If *Plaintiff* and *Defendants* disagree as to whether each and every condition set forth in this Section 3 has been satisfied, they shall promptly confer in good faith and, if unable to resolve their differences within five (5) business days thereafter, shall present their disputes for determination to the *Court*.

4. ATTORNEYS' FEES, COSTS AND EXPENSES

Within fourteen (14) days after the entry of *Judgment*, *Plaintiff* shall file his motion for an award of attorneys' fees, costs and expenses to be paid by one or more of the *Defendants*.

5. PROCEDURAL SCHEDULE

5.1. *Notices* to be mailed - within 14 days after this *Stipulation* has been so ordered and entered.

5.2. *Covered Participants* to file any objections to the *Settlement* – 63 days after this *Stipulation* has been so ordered and entered.

5.3. *Defendants* to file the Declaration attesting to the mailing of *Notices* as provided for in paragraph 3.2.2. of this *Stipulation* – 77 days after this *Stipulation* has been so ordered and entered.

5.4. *Plaintiff* to file response to any objections – 84 days after this *Stipulation* has been so ordered and entered.

5.5. *Final Hearing* - 91 days after this *Stipulation* has been so ordered and entered.

5.6. *Plaintiff's* application for an award of attorneys' fees, costs and expenses – 14 days after entry of *Judgment*.

5.6.1 If any of the foregoing fall on a Saturday, Sunday or holiday, the next business day shall be applicable.

6. RELEASES AND COVENANT NOT TO SUE

6.1. *Releases by Plaintiff and Defendants*. Upon the *Effective Date of Settlement*:

a. *Plaintiff* hereby forever releases *Defendants* from and with respect to any and all actual or potential claims, actions, causes of action, demands, obligations and liabilities and hereby expressly waives and relinquishes, to the fullest extent permitted by law and equity, the provisions, rights and benefits of § 1542 of the California Civil Code, except *Plaintiff* does not release, waive or relinquish his claims for attorneys' fees, costs and expenses for the prosecution of the *Action*.

b. *Defendants*, jointly and severally, hereby forever release *Plaintiff* from and with respect to any and all actual or potential claims, actions, causes of action, demands, obligations liabilities, attorneys' fees, expenses and costs. *Defendants*, jointly and severally, hereby expressly waive and relinquish, to the fullest extent permitted by law and equity, the provisions, rights and benefits of

§ 1542 of the California Civil Code.

c. Any Covered Participant who receives a Settlement Payment may not pursue *Barred Claims*.

7. COVENANTS; INJUNCTION

7.1. *Retention of Records*

The Hospital agrees to an injunction requiring it to comply with ERISA § 209, 29 U.S.C. § 1059, which requires, *inter alia*, that the “every employer shall, in accordance with such regulations as the Secretary [of Labor] may prescribe, maintain records with respect to each of its employees sufficient to determine the benefits due or which may become due to such employees.”

7.2. *Claims Procedures*

The *Hospital* agrees to an injunction requiring the following:

7.2.1 The *Plan*’s claims procedure must comply in writing and in practice with the provisions of ERISA § 503, 29 U.S.C. § 1033, and 29 C.F.R. § 2560.503-1.

7.2.2 Whenever a *Person* seeks benefits under the *Plan*, the *Person* shall be informed of the amount of the benefit to which he/she is entitled or that he/she is not entitled to a benefit as the case may be (collectively the “Benefit Determination”). In either event, the *Plan* will apprise the *Person* of his/her right to question the calculation of the benefit amount or the denial of a benefit via the *Plan*’s claims procedures. The *Person* shall be further informed of his/her right to receive the information used to calculate the benefit amount and the *Person*’s right to appeal the benefit calculation. This shall include the information required by 29 C.F.R. § 2560.503-1(g), (h)(i)-(iv) without regard to whether or not the Benefit Determination would be considered an adverse benefit determination under 29 C.F.R. § 2560.503-1.

8. REPRESENTATIONS AND WARRANTIES

8.1. *Parties’ Representations and Warranties*.

8.1.1 The *Parties*, and each of them, represent and warrant that they are voluntarily entering into this *Stipulation* as a result of arm’s-length negotiations

among their counsel; in executing this *Stipulation* they are relying solely upon their own judgment, belief and knowledge, and the advice and recommendations of their own independently selected counsel, concerning the nature, extent and duration of their rights and claims hereunder and regarding all matters which relate in any way to the subject matter hereof; except as expressly stated herein, they have not been influenced to any extent whatsoever in executing this *Stipulation* by any representations, statements or omissions pertaining to any of the foregoing matters by any other *Party* or its *Representatives*; and each *Party* assumes the risk of and unconditionally waives any and all claims or defenses arising out of any alleged mistake as to facts or law.

8.1.2 The *Parties*, and each of them, represent and warrant that they have carefully read the contents of this *Stipulation*; they have made such investigation of the facts and law pertaining to this *Stipulation* and all of the matters pertaining thereto as they deem necessary; and this *Stipulation* is executed freely by each *Person* executing it on behalf of each of the *Parties*.

8.2. *Signatories' Representations and Warranties*. Each individual executing this *Stipulation* on behalf of any other *Person* does hereby personally represent and warrant to the other *Parties* that he or she has the authority to execute this *Stipulation* on behalf of, and fully bind, each *Person* which such individual represents or purports to represent.

9. NO ADMISSION OF LIABILITY

The *Parties* understand and agree that this *Stipulation* embodies a compromise and settlement of disputed claims, and that nothing in this *Stipulation*, including the furnishing of consideration for this *Stipulation*, shall be deemed to constitute any finding of any wrongdoing or actionable conduct. This *Stipulation* and the payments made hereunder are made in compromise of disputed claims and are not admissions of any liability of any kind, whether legal, equitable, or factual.

10. SETTLEMENT PAYMENTS

10.1. *The Settlement Payments*.

10.1.1 No later than August 8, 2018, the *Plan* shall pay *Plaintiff* the *Settlement Payment* provided for in Exhibit 1 to this *Stipulation*. The *Plan* will provide *Plaintiff* with Internal Revenue Form 1099-R for this payment.

10.1.2 Within thirty (30) business days of the *Effective Date of Settlement*, the *Plan* will pay each of the *Covered Participants* to whom the *Notice* has successfully been provided the *Settlement Payment* set forth for that *Covered Participant* on Exhibit 1 to this *Stipulation*. The *Plan* will provide each *Covered Participant* to whom a payment is made with Internal Revenue Form 1099-R for the payment. No payment will be made to *Covered Participants* to whom *Notice* has not been successfully provided nor will such *Covered Participants* be bound by the provisions of this *Stipulation*.

11. TERMINATION OF THE *STIPULATION*

11.1. *Termination*. This *Stipulation* shall automatically terminate, and thereupon become null and void, in the following circumstances:

11.1.1 If the *Court* declines to approve the *Settlement*, and if such order declining approval has become *Final*, then this *Stipulation* shall automatically terminate, and thereupon become null and void, on the date that any such order becomes *Final*.

11.1.2 If the *Court* issues an order modifying the *Stipulation*, and if within thirty-one (31) days after the date of any such ruling the *Parties* have not agreed in writing to proceed with all or part of the *Stipulation* as modified by the *Court* or by the *Parties*, then this *Stipulation* shall automatically terminate, and thereupon become null and void, on the thirty-first day after issuance of the order.

11.2. *Consequences of Termination of the Stipulation*. If the *Stipulation* is terminated and rendered null and void for any reason, the following shall occur:

11.2.1 The *Action* shall for all purposes with respect to the *Parties* revert to its status as of May 23, 2018.

11.2.2 Any payment made to *Plaintiff* under paragraph 10.1.1 shall be refunded.

11.2.3 All releases given or executed pursuant to the *Stipulation* shall be null and void; none of the terms of the *Stipulation* shall be effective or enforceable; neither the fact nor the terms of the *Stipulation* shall be offered or received in

evidence in the *Action* or in any other action or proceeding for any purpose, except in an action or proceeding arising under this *Stipulation*.

12. MISCELLANEOUS PROVISIONS

12.1. *Jurisdiction*. After the *Effective Date of Settlement*, the *Court* shall retain jurisdiction over all *Parties*, the *Action*, and this *Stipulation* to resolve any dispute that may arise regarding this *Stipulation* or the orders and *Notice* referenced in Section 3 above, including any dispute regarding validity, performance, interpretation, administration, enforcement, enforceability, or termination of the *Stipulation* and no *Party* shall oppose the reopening and reinstatement of the *Action* on the *Court*'s active docket for the purposes of effecting this paragraph 12.1.

12.2. *Governing Law*. This *Stipulation* shall be governed by the laws of the United States, including federal common law, except to the extent that, as a matter of federal law, state law controls, in which case Montana law will apply without regard to conflict of law principles.

12.3. *Severability*. The provisions of this *Stipulation* are not severable.

12.4. *Amendment*. Before entry of a *Final Order*, any law to the contrary notwithstanding, this *Stipulation* may be modified or amended only by written agreement signed by or on behalf of all *Parties*. Following entry of a *Final Order*, any law to the contrary notwithstanding, the *Stipulation* may be modified or amended only by written agreement signed on behalf of all *Parties*, and approved by the *Court*.

12.5. *Waiver*. The provisions of this *Stipulation* may be waived only by an instrument in writing executed by the waiving *Party*. The waiver by any *Party* of any breach of this *Stipulation* shall not be deemed to be or construed as a waiver of any other breach of this *Stipulation*, whether prior, subsequent, or contemporaneous with this *Stipulation*.

12.6. *Construction*. None of the *Parties* hereto shall be considered to be the drafter of this *Stipulation* or any *provision* hereof for the purpose of any statute, case law or rule of interpretation or construction that would or might cause any provision to be construed against a drafter.

12.7. *Principles of Interpretation*. The following principles of interpretation apply to this *Stipulation*:

12.7.1 *Headings.* The headings of this *Stipulation* are for reference purposes only and do not affect in any way the meaning or interpretation of this *Stipulation*.

12.7.2 *Singular and Plural.* Definitions apply to the singular and plural forms of each term defined.

12.7.3 *Gender.* Definitions apply to the masculine, feminine, and neuter genders of each term defined.

12.7.4 *References to a Person.* References to a *Person* are also to the *Person's* permitted successors and assigns.

12.7.5 *Terms of Inclusion.* Whenever the words “include,” “includes” or “including” are used in this *Stipulation*, they shall not be limiting but rather shall be deemed to be followed by the words “without limitation.”

12.8. *Further Assurances.* Each of the *Parties* agrees, without further consideration, and as part of finalizing the *Settlement* hereunder, that they will in good faith execute and deliver such other documents and take such other actions as may be necessary to consummate and effectuate the subject matter and purpose of this *Stipulation*.

12.9. *Survival.* All representations, warranties and covenants set forth in this *Stipulation* shall be deemed continuing and shall survive the *Effective Date of Settlement*.

12.10. *Notices.* Any notice, demand or other communication under this *Stipulation* (other than *Notices* to the *Covered Participants*) shall be in writing and shall be deemed duly given if it is addressed to each of the intended recipients as set forth below and personally delivered, sent by registered or certified mail (postage prepaid), sent by confirmed facsimile, or delivered by reputable express overnight courier:

A. IF TO NAMED PLAINTIFF:

David S. Preminger
KELLER ROHRBACK L.L.P.
1140 Avenue of the Americas, FL 9
New York, NY 10036
Fax: (646) 380-6692

B. IF TO DEFENDANTS:

Steven R. Milch
CROWLEY FLECK PLLP
490 N. 31st Street, Suite 500
Billings, MT 59101
Fax: (406) 252-5292

Any Party may change the address at which it is to receive notice by written notice delivered to the other *Parties* in the manner described above.

12.11. *Entire Agreement.* This *Stipulation* contains the entire agreement among the *Parties* relating to the settlement of the *Action*.

12.12. *Counterparts.* This *Stipulation* may be executed by exchange of faxed or emailed executed signature pages, and any signature transmitted by facsimile or email for the purpose of executing this *Stipulation* shall be deemed an original signature for purposes of this *Stipulation*. This *Stipulation* may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same instrument.

12.13. *Binding Effect.* This *Stipulation* binds and inures to the benefit of the *Parties* hereto, their assigns, heirs, administrators, executors and successors-in-interest.

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

Dated the ___th day of July, 2018.

By:

Gary A. Gotto

KELLER ROHRBACK L.L.P.
3255 Bending Tree Ln.
Missoula, MT 59808
Tel: (406) 215-9100
Fax: (206) 623-3384
Email: ggotto@kellerrohrback.com

David S. Preminger (admitted *pro hac vice*)
KELLER ROHRBACK L.L.P.
1140 Avenue of the Americas
Ninth Floor
New York, NY 10036
Tel: (646) 380-6690
Fax: (646) 380-6692
dpreminger@kellerrohrback.com

Plaintiff's Counsel

Dated the ____th day of July, 2018

By:

Steven R. Milch
CROWLEY FLECK PLLP
490 N. 31st Street, Suite 500
Billings, Montana, 59101
Tel: (406) 252-3441
Fax: (406) 252-5292
E-mail: smilch@crowleyfleck.com

Attorneys for Defendants

SO ORDERED: This 30th day of July, 2018



Brian Morris
United States District Court Judge

CERTIFICATE OF SERVICE

I hereby certify that on July 30, 2018, a true and correct copy of the foregoing document was filed with the Court utilizing its CM/ECF system, which will send notice of such filing to all counsel of record.

/s/ Gary A. Gotto

Gary A. Gotto